THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO: CV2017-04512

BETWEEN

RONALD SIMON

(TRADING AS R.M. SIMON AND COMPANY)

CLAIMANT

AND

TRANSCORP DEVELOPMENT COMPANY LIMITED

FIRST DEFENDANT

BROADGATE PLACE PROPERTY COMPANY LIMITED

SECOND DEFENDANT

Before the Honourable Madame Justice Quinlan-Williams

Appearances: Mr. Brent Hallpike instructed by Ms. Michelle Sorzano for the Claimant

Mr. Gilbert Peterson S.C. instructed by Amerelle TS Francis for the First and Second Defendants

Date of Delivery: 8th November, 2019

JUDGMENT

---

1. This claim concerns a business relationship between the claimant and the defendants that eventually went bad. The reason for the breakdown of the relationship could be an honest difference of opinion over the responsibilities and expectations. Another possibility could be a dishonest attempt at obtaining that to which one is not entitled. At the end of the evidence, having found the facts and after considered the respective submissions, the court is satisfied on a balance of probabilities, that there was no honest difference of opinion over the parameters of the agreement and the obligations of each party.

The Claimant's Case

2. On the 21st February 2008 the claimant an Attorney at Law, with seven years call, entered into an agreement (partly in writing, partly by conduct and partly orally) with the first defendant, ostensibly through its Corporate Secretary Ms. Jacqueline Bowen. The contract was to provide legal work and services on a time and effort basis. His duties revolved around the Broadgate Place Property Project ("the Project") including:
    a. The incorporation of the second defendant;
    b. Review of the relevant documentation;
    c. Preparation with the undersigned and the Board of Directors when necessary for the negotiation of the Agreement to Lease and the attached Forms of Lease;
    d. Negotiations with the Government of the Republic of Trinidad and Tobago's representatives in relation to same; and
    e. All other services necessary in the execution of the Agreement to Lease with the Form of Lease attached.

3. The claimant, submitted his schedule of fees in consideration of the agreement for the services he was retained by the first defendant to

provide. The claimant avers that he did not receive any challenges and/or protestations in relation to the said schedule of fees.

4. Pursuant to the agreement, the claimant avers that he provided his services to the first defendant initially and then to the second defendant after its incorporation during the period 21st February 2008 to the 3rd May 2010. The claimant states that he engaged in several thousand hours of legal work and services which included:
    a. Several meetings and teleconferences with the Board of Directors with the first defendant and second defendant including a meeting with the then Prime Minister of Trinidad and Tobago, Mr. Patrick Manning relative to the preparation and review of the Agreement to Lease, Form of Lease, Consent and Agreement and Construction Contract;
    b. Several meetings with the then Minister of Public Administration, Mr. Kennedy Swaratsingh and other officials from the said Ministry relative to the preparation and review of the Agreement to Lease, Form of Lease, Consent and Agreement and Construction Contract;
    c. Several meetings with the then Junior Minister of Finance, Mr. Mariano Browne and other officials from the Ministry relative to the preparation and review of the Agreement to Lease, Form of Lease, Consent and Agreement and Construction Contract;
    d. Several meetings with officials from the First Caribbean International Bank (the financer), including one of its representatives, Mr. Ian Chinapoo relative to the preparation and review of the Agreement to Lease, Form of Lease, Consent and Agreement and Loan Agreement;
    e. Several teleconferences and review of email correspondence with officials from Barclays International Bank (the financer) in the

United States of America relative to the preparation and review of the Agreement to Lease, Form of Lease, Consent and Agreement and Loan Agreement;

f. Several meetings, preparation and review of the proposed construction contract with Bougues Baitment, the proposed contractor for Broadgate Place Property Project; and

g. Several meetings, preparation and review of documents with Turner Alpha, the proposed Project Co-Ordinator for the Broadgate Place Property Project.

5. The claimant asserts that he would submit invoices to the defendants for payment and all were satisfied without complaint, challenge or protestation.

6. On or about the 1st February 2010, the claimant tendered his invoice for legal services and work provided in relation to the subject Agreement to Lease between the second defendant and the Government of Trinidad and Tobago in the amount of $621,132.83. On account of the ongoing business relationship between the parties, it was agreed between Ms. Jacqueline Bowen for the defendants and the claimant that a part payment would be made to the claimant in the sum of $365,066.92 and the balance of the invoice amounting to $265,065.91 (note there is an error in calculation, the correct figure is 256,065.91, the incorrect figure was pleaded by the claimant) was to be requested by the claimant in due course.

7. Notwithstanding the outstanding balance, the claimant continued to provide legal services to the defendants in relation to the Broadgate Place Property Project until May 2010. At that time the project was brought to a halt due to the General Elections in Trinidad and Tobago and the resulting change in Government. Consequently, it was agreed between Ms.

Jacqueline Bowen for the defendants and the claimant that the outstanding balance of $265,065.91 would be deferred as the defendants were unable to access funds from the First Caribbean International Bank. It was also agreed that the debt would accrue interest at the rate of 1.5% per month until the Project was restarted or the debt was settled.

8. The claimant avers that despite the outstanding debt due to him the parties continued to maintain a good business relationship. He was retained by the defendants to institute legal proceedings against the Government of Trinidad and Tobago in CV2010-04524 and CA P 225 of 2012 *Broadgate Property Company Limited and Minister of Planning and Economic and Social Restructuring and Gender Affairs* and to provide legal services in the matter of an Arbitration pursuant to Clause 13.1 of the Agreement to Lease dated June 17th 2009 entered into between Broadgate Property Company Limited and the Government of Trinidad and Tobago.

9. By February 2013 the debt was still due and owing to the claimant. The defendants retained the services of Garison and Company as their auditors in the preparation of their financial statements for the year ended on the 31st December 2012. By correspondence dated the 18th February 2013, the defendants requested that the claimant forward a correspondence to their auditors Garison and Company providing details of any litigation or lawsuits in which the defendants are involved directly or indirectly and of any claims asserted against or on behalf of the defendants even though legal proceedings have not started.

10. The claimant avers that a meeting was held in the shared office space between Ms. Jacqueline Bowen as the Director and Corporate Secretary of the defendants and the claimant. It is the claimant's case that at the said

meeting Ms. Jacqueline Bowen acknowledged the debt owed to him and requested that the claimant write off the said debt, failing which it would have had to be listed as a liability on the defendants' financial statements for the year ended on the 31st December 2012. The claimant states that he agreed to consider the request pending a consultation with his Financial Advisor.

11. Shortly thereafter, the claimant held a teleconference with Mrs. Gemma Bowen, another Director of the defendants. He told her about Ms. Jacqueline Bowen's request to write off the said debt. However, he was advised not to do so in the event that the Project restarted or the fortune of the defendants changed in the near future. Subsequently, the claimant informed Ms. Jacqueline Bowen that he was not prepared to write off the debt based on the advice he had received. In response, Ms. Jacqueline Bowen directed the claimant to submit a correspondence directly to Garison and Company outlining the outstanding debt owed by the defendants and the claimant duly complied.

12. The claimant asserts that in February 2014, March 2015 and March 2016 the defendants again requested that the claimant forward correspondence to their auditors Garison and Company providing details of any litigation or lawsuits in which the defendants are involved directly or indirectly and of any claims asserted against or on behalf of the defendants even though legal proceedings have not started. In like manner the claimant submitted correspondence each time directly to Garison and Company outlining the outstanding debt owed by the defendants to him.

13. The claimant further avers that in or about March 2016, Ms. Jacqueline Bowen held a conference with the claimant asking him to submit to the auditors the total debt inclusive of the principal and interest. In so doing,

the claimant obtained the assistance of Mrs. Gabriella Khoza, the Office Administrator and Accountant of both defendants, to calculate the outstanding debt inclusive of interest. At that time, Mrs. Gabriella Khoza calculated the interest at a rate of 1.5% per month to be the amount of $300,839.30.The calculation for interest was done on the principal sum of $231,065.91.

14. Additionally, by letter dated the 17th January 2017 the defendants through Ms. Jacqueline Bowen acting on behalf of the defendants' affiliate company the Transcorp Credit Union Co-operative Society Limited, requested that the claimant produce details as it relates to any possible claims for advice or representation the claimant may have provided and is outstanding. The claimant avers that he again duly complied with this request.

15. In light of the defendants' continuous acknowledgment of the debt owed and their failure to effect payment, the claimant caused his Attorney at Law to make a formal demand for payment by letter dated the 1st September 2017. The claimant asserts that the defendants for the first time during the history of the relationship between the parties denied the debt on the basis of it being, inter alia, excessive.

16. In the circumstances, the claimant claims the sum of $535,182.90 being the principal sum and interest as the rate of 1.5% per month. In the alternative, the claimant contends that pursuant to the agreement he provided much legal work and services to the defendants from the 8th October 2009 to the 1st February 2010 relative to the preparation of the subject Agreement to Lease. He therefore claims the sum of $535,182.90 as a reasonable remuneration for his legal services.

The Defendants' Case

17. The defendants contend that the claim brought against them is barred by the time limitation period. The invoice in contention, forming the subject of this claim, was generated in or about February 2010. Since the last payment on that invoice, the defendants aver that the claimant has never demanded or made any claim against them until the Pre-Action Protocol Letter dated the 1st September 2017 addressed to the first defendant. In these circumstances any indebtedness claimed remains statute barred and outside the limitation period.

18. The defendants state that the claimant was one of the Attorneys at Law on its panel and still sits on the said panel. It is admitted that pursuant to the letter dated the 21st February 2008 the first defendant requested legal services to be performed by the claimant. However, the second defendant was not a party to the correspondence as it was incorporated on the 24th March 2009.

19. The defendants aver that the period the claimant provided legal services as per the abovementioned letter was from the 21st February 2008 to August 2009. The provision of the claimant's legal services was not on "a time and effort" basis but was on an "as and when required" basis. Additionally, the same did not amount to several thousand hours of work as Ms. Jacqueline Bowen the defendants' Corporate Secretary, provided the claimant with full legal support which reduced the claimant's hours of work. Furthermore, the defendants contend that neither the claimant nor themselves ever met with the then Attorney General of Trinidad and Tobago, Mr. John Jeremy and only had one meeting with the then Junior Minister of Finance, Mr. Mariano Brown.

20. As it relates to the claimant's legal fees, he was required to submit his schedule of legal fees pursuant to the Attorneys-at-Law (Remuneration) (Non-Contentious Business) Legal Profession Act Chapter 90:03. It is further contended that the first defendant did indeed challenge the fee structure sent by the claimant. Although all payments on the claimant's invoices were satisfied, this was subsequent to challenges made by the first defendant. The first defendant asserts that payment was only advanced when the claimant complied by reducing his fees to a reasonable sum in accordance with the aforesaid schedule of fees.

21. The Agreement to Lease between the Government of the Republic of Trinidad and Tobago and the second defendant was executed on the 17th June 2009. The claimant submitted invoices in relation to same dated the 8th October 2009 for his legal services in the amount of $1,095,200.77, all of which were fully satisfied.

22. The defendants contend that invoice forming the subject of these proceedings dated the 1st February 2010 in the amount of $621,132.83 represented a projection of fees for the provision of legal services for the Form of Lease between the second defendant and the Government of the Republic of Trinidad and Tobago. In this regard, it was the second defendant that retained the services of the claimant as the first defendant was no longer involved legally, contractually or physically in the Broadgate Place Project after the 8th October 2009. As a result, the first defendant avers that the claimant submitted the said invoice as a resubmitted invoice to the second named defendant.

23. By letter dated the 17th February 2010 the second defendant after acknowledging the sum of $621,132.83 as projected fees for services not yet rendered, agreed that the claimant would be paid the sum of

$365,066.92 as a deposit until the claimant provided a detailed requisition of all services completed.

24. The defendants admit that the claimant continued to provide legal services in relation to the Broadgate Place Project until May 2010 when General Elections were held in the Republic of Trinidad and Tobago. The change in government caused the Project to grind to a halt. In May 2010 a meeting was held between the claimant and Ms. Bowen on behalf of the second defendant to discuss the future of the Broadgate Place Project in light of the recent developments. It was agreed that the contents of the said letter dated the 17th February 2010 would stand but the balance of $265,065.91 would be treated as aborted fees. The second defendant stated that in attempts to fulfill the conditions of the said letter the claimant undertook to provide a detailed requisition of the said sum of $365,066.92. However, to date the claimant has failed and/or neglected and/or refused to provide same. Therefore, it is the defendants' case that there are no monies due and owing to the claimant.

25. With respect to the letters from the second defendant concerning details of any litigation or lawsuits in which the defendants are involved directly or indirectly and of any claims asserted against or on behalf of the defendants, the second defendant contends that this letter was sent to the claimant on the basis that he was one of the defendant's Attorneys at Law. As such, the claimant was required to confirm in writing whether there were any legal matters existing or lawsuits pending or threatening by any third party. This was a general and generic letter generated by the second defendant upon the request of the auditors, sent to the parties as directed by the auditors. Moreover, the party to whom the letter is addressed, is required to send a response to the auditors only as directed by the said letter. For this reason, the defendants contend that they were never in

possession of any letters sent to their auditors by the claimant in this regard.

26. The first defendant admits that it was in receipt of the letter dated the 1st September 2017 from the claimant's Attorney at Law to which a response was elicited by letter dated the 19th October 2017. To date the claimant has refused and/or neglected and/or failed to respond to the said letter and has instead hastily filed these proceedings.

Issues

27. The issues for the court's determination are whether:
    a. The claim is statute barred pursuant to section 3(1)(a) of the Limitation of Certain Actions Act Chapter 7:09;
    b. The claimant's claim is actionable against the first and/or the second defendant; and
    c. If not statute barred, the claimant is entitled to the sum of $535,182.90 as a balance on invoice dated 1st February 2010, inclusive of interest.

Law and Analysis

a. Limitation Period

28. Section 3(1)(a) of the Limitation of Certain Actions Act Chapter 7:09 prescribes:

> "3. (1) The following actions shall not be brought after the expiry of four years from the date on which the cause of action accrued, that is to say:
>
> (a) actions founded on contract (other than a contract made by deed) on quasi-contract or in tort;"

29. Also, section 12 of the Limitation of Certain Actions Act, provides for the fresh accrual of a cause of action otherwise limited by virtue of section 3 on acknowledgment or part payment:

> "12. (1)…
> (2) Where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest therein, and the person liable or accountable therefore acknowledges the claim or makes any payment in respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgment or payment.
> (3) Notwithstanding subsection (2), a payment of a part of any interest that is due at any time shall not extend the period for claiming the remainder then due, and any payment of interest shall be treated as a payment in respect of the principal debt.
> (4) Subject to subsection (3), a current period of limitation may be repeatedly extended under this section by further acknowledgments or payments, but a right of action, once barred by this Act, shall not be revived by any subsequent acknowledgment or payment."

30. The defendants assert that the sums claimed pursuant to the invoice dated the 1st February 2010, forming the subject of these proceedings, is statute barred and the claim ought to be struck out. The claimant agrees that more than four years had elapsed between the date of the invoice and the date of filing of this claim. He asserts however, a fresh accrual of the cause of action as a consequence of acknowledgment of the debt by the defendants.

31. The court is of the opinion and is satisfied that given the circumstances it is reasonable to expect that the claimant would have memorialized any discussion about a debt admittedly owing to him in writing at the time that the discussion occurred.

32. Following the issuance of the invoice, the second defendant immediately confirmed in writing their disagreement with the sums claimed. The second defendant also asked for proof and justification of the sums claimed. In response the claimant, did nothing according to him, for three years. The claimant says that the action he took was not even initiated by him, rather it was in response to an enquiry by the second defendant's auditors.

33. The claimant's evidence is that when he was asked to forward information to the auditor, he had a discussion with another director of the second defendant who advised him not to write off the debt.

34. It is important to note the exact words of the request for information to the auditors in preparation of their "Financial Statements":

> "…please furnish details of any litigation or lawsuits in which the company is involved directly or indirectly, and of any claims asserted against or on behalf of this company even though legal proceedings have not started, including (1) the nature of the pending or threatened litigation or claim, (2) the progress of the matter to date, (3) the response which is being made or which will be made to the matter, and (4) an evaluation of the likelihood of a favourable outcome and an estimate, if one can be made, of the amount or range of potential loss or success of the claim"

35. The claimant says that this correspondence dated the 18th February 2013 caused him to hold a meeting with Ms. J. Bowen to discuss the 2010 Invoice No. 4, who acknowledged the debt and requested that he write it off. There is no logic to the claimant's assertion. Why would Ms. J. Bowen acknowledge a debt in 2013 which the second defendant denied in writing in 2010. Even more illogical is the claimant's belief that the letter to direct information to the defendants' auditors related to Invoice No. 4, and not to the professional relationship that the claimant held on the panel of

attorneys for the second defendant. The letter clearly and obviously requested the claimant to express a professional opinion to the second defendant's auditors consequent on the attorney/client relationship and any claims against the second defendant from third parties. Even if the claimant believed it was an opportunity to include monies he felt were owing to him, he makes no reference to providing information about third parties.

36. If the letter of 2013 (and those in 2014, 2015 and 2016) related to the second defendant's indebtedness to the claimant, why would the second defendant be asking the claimant to furnish details of "any litigation or lawsuits in which the company is involved…". More importantly, why would the second defendants be asking the claimant to provide "an evaluation of the likelihood of a favourable outcome and an estimate, if one can be made, of the amount or range of potential loss or success of the claim".

37. If the claimant really believed that he was owed a balance as per Invoice No. 4, the court is satisfied that the claimant would have responded to the second defendant's letter dated the 17th February 2010.

38. There were similar letters from the second defendant to the claimant in February 2014, March 2015 and March 2016. The claimant avers that he responded to letters received letters from the second defendant and directed his response, similar to the 2013 response, to the second defendant's auditors.

39. The defendants deny receiving any responses as alleged to have been sent by the claimant. The court notes that the claimant says he sent the

responses to the auditors and he has provided no evidence that the letters were received by or came to the attention of the second defendant.

40. The second defendant's letter, in 2013, to the claimant asking for information to be sent to the auditors does not amount to an admission or acknowledgement by the second defendant that any debt was owed to him. There is no interpretation of the contents of that letter, which would allow the court to make that finding. Further Ms. J. Bowen denied that she had any conversation with the claimant admitting and acknowledging the debt – the court has already expressed its view that the claimant's evidence in this regard is not believable. The claimant's evidence about his conversation with Ms. G. Bowen is similarly unbelievable. The court is not satisfied on a balance of probabilities that the second defendant acknowledged or admitted any debt owed to the claimant.

41. Since there is no evidence that the debt was acknowledged or admitted in 2013, it would have become time barred by the time the request was made from the second defendant to the claimant in 2014. In any event, the contents of the letters in 2014, 2015 and 2016 cannot and did not serve as an acknowledgement of any debt to the claimant. Further, there is no evidence that the response the claimant says he provided came to the attention of the second defendant. The claimant's claim was barred in 2014 and could not be revived thereafter.

42. The court took note of the claimant's answer in cross examination, that the only demand made for payment was via the letter dated the 1st September 2017. Since the court has already determined that there was no acknowledgement of the debt by the defendants in 2013, or for that matter, in the years that followed, no claim can be sustained by a demand made seven years subsequent to the said invoice.

43. The court finds it inconceivable that the defendants would have admitted the debt yet the claimant continued provide legal services for the defendants and failing to ask, request or enquire about his payment before the pre-action letter dated 1st September 2017.

44. The defendants' averred that the claimant's claim became statute barred from four years after the payment was made on the 2010 Invoice No. 4. The claimant has not adduced any evidence that satisfied the court otherwise. Therefore, the claimant's claim became limited by virtue of the Limitation of Certain Actions Act, on the 31st January 2014.

b. Is the claim actionable against the first and/or second defendant.

45. The court finds that the arrangement between the parties that governed their relationship were somewhat ad hoc. That was even more alarming given the nature and size of the Project. The claimant made a proposal dated 27th February 2008 for the provision of legal services to the first defendant. Under "Fees" it was proposed that in relation to the Lease Agreement, the claimant would be remunerated at the rate of 1.25% of the highest annual rent reserved during the term of the lease. It appears from the proposal that for: Shareholder Arrangements; Leases of Units; Loan Security Documentation; Construction Contracts and all other Contracts the claimant would be remunerated at the hourly rate of $750.00 per hour.

46. There is no evidence that this proposal was formally accepted by the first defendant.

47. However, the claimant did provide legal services to the first defendant and invoiced for those services. There was an Invoice No. 2 which the first

defendant queried. In response to that query, the claimant wrote in a letter dated 11th August 2009, that he was of the view that the proposal dated the 27th February 2008 had been rejected by the first defendant and that his retention was "to provide individual services".

48. Up to this time, the relationship was between the claimant and the first defendant.

49. The claimant pleads, and there is no dispute, that the second defendant was incorporated on the instructions of the first defendant for the purpose of executing the Broadgate Place Property Project. The second defendant was incorporated on the 24th day of March 2009. The second defendant, and not the first defendant, was a party to the Agreement to Lease executed on 17th day of June 2009 with the Government of Trinidad and Tobago. Following the second defendant's incorporation, they later became financially liquid when on the 2nd October 2009, a mortgage agreement was executed with the First Caribbean International Bank (Trinidad and Tobago).

50. Following the second defendant's incorporation and finalizing of the mortgage agreement with First Caribbean International Bank, they assumed the responsibility for all disbursements to cover expenses and services relating to the Broadgate Project. There was a Drawdown Notice dated the 19th October 2009 which included a disbursement to the claimant in the amount of $977,900.77. There was another Drawdown Notice dated the 22nd February 2010 which included a disbursement to the claimant in the amount of $365,066.92.

51. The court is satisfied, that from the 2nd October 2009, at the latest, the claimant and the second defendant had agreed the provision and payment

of legal services for the Broadgate Project would be within the sole purview of the second defendant.

52. The Invoice No. 4 submitted by the claimant notes that it relates to services rendered in relation to "agreement to Lease general care and conduct". The agreement to lease was the concern of the second defendant. Unsurprisingly therefore, the second defendant responded to the claimant regarding Invoice No. 4. The second defendant's response surmised that Invoice No. 4 must have related to "a projection of your legal fees for the legal services relative to settlement of Form of Lease". The Form of Lease could only be the lease for Broadgate between the Government of Trinidad and Tobago and the second defendant.

53. In keeping with the agreement that the second defendant was the party responsible for retaining and paying for legal services in relation to the Broadgate Project, the claimant was paid by the second defendant on the 12th February 2010, for the demolition contract. The demolition contract related to works to be done for the Broadgate Project.

54. The court is therefore satisfied on a balance of probabilities, that any dispute regarding Invoice No. 4 dated the 1st February 2010 is between the claimant and the second defendant. On this basis, the claimant's claim against the first defendant is dismissed.

    c. The claimant's claim that the sum of $535,182.90 is due and owing to him.

55. If the claim had been filed within the time allowed, the claimant would also fail in satisfying the court, on a balance of probabilities, that the second defendant owes him the sum of $535,182.90.

56. There is no dispute between the parties that there was an agreement between the claimant and second defendant to provide legal services to the second claimant[1]. The parties dispute how the attorney's fees (the claimant's fees) were to be calculated. The claimant asserts that it was on "a time and effort basis" but he also asserts that he was to be paid for services rendered. The second defendant says the claimant was retained to provide services "as and when required".

57. Whatever was the relationship between the claimant and the first defendant, the court is satisfied was also the relationship between the claimant and the second defendant. The court is satisfied that neither the claimant nor the second defendant would deny that fact.

58. The claimant states in his viva voce evidence that he was paid $365,000.00, $250,000.00 and $870,000.00 at separate times but he was not paid the full sum of $1,716,333.60 and $256,000.00 is still outstanding on that invoice. Furthermore, the claimant also contended that he has not received the sum of $621,000.00 after he continued to do work on the agreement to lease until January 2010 which was signed on the 17th October 2009. The claimant stated that due to the relationship between the parties, the details as it related to the invoices was not required.

59. The claimant relied on the case of Civil Appeal No. P009 of 2014 *The Attorney General of Trinidad and Tobago -v- Trinsalvage Enterprises Limited* where Bereaux J.A. emphasized the importance of justice between the parties through compensation for works done. The learned Justice of Appeal arrived at that decision although the contract for the performance

[1] It is also not disputed that the claimant was also retained to provide legal services to the first defendant.

of the said works was found to be ultra vires to the Central Tenders Board Act Chapter 71:91.

60. *The Attorney General of Trinidad and Tobago -v- Trinsalvage Enterprises Limited* case is not relevant to the court's determination for two reasons. Firstly, parties had a legally binding contract. Secondly, this is not a case where the issue of quantum merit payment for works done is applicable as the court is not satisfied that it is positioned on the evidence adduced by the claimant to make any quantification of the services alleged to have been provided.

61. The claimant has admitted that the second defendant requested of him, in writing, to provide a detailed requisition of the serviced invoiced in Invoice No. 4. The claimant also admitted that he has failed to provide a detailed requisition to the second defendant. The claimant has not adduced any detailed requisition as part of his evidence in this claim. The court is, as the second defendant was, unable to ascertain the service for which the claimant has demanded payment.

62. The claimant also submitted the case of CV2010-05157 *ACLA: Works Limited Skinner & Joseph QS Practice -v- The University of Trinidad and Tobago* where Justice Boodoosingh decided that the claimant therein did a significant amount of work under the agreement and should be paid for the works done even though the Project did not materialize. The claimants in that case suggested the use of the percentage charge method to calculate the fair and reasonable value of the services provided. For the same reason stated in the previous paragraph, the case *ACLA: Works Limited Skinner & Joseph QS Practice -v- The University of Trinidad and Tobago* is not applicable to the facts of this case, there is no evidence available to afford the court any opportunity to calculate a fair and

reasonable value of the services alleged to have been provided by the claimant.

63. Further, the claimant contended that the relationship began with a written contract and along the way it expanded into an oral agreement for the claimant to provide additional services which took place up to the year 2017. In so doing, he relied on the case of CV2014-00653 *DFA Infrastructure International Inc. -v- Water and Sewerage Authority* whereby Madam Justice Donaldson-Honeywell decided that the contractual agreement made between the parties for the provision of consulting services to the defendant was subsequently expanded orally to include "Additional Services". From the evidence it was found that the additional services were carried out by the claimant at the request of the defendant. Again, this case does not assist the court in its findings of fact. The second defendant has not disputed that they were contractually bound to remunerate the claimant if and when he provided services to the second defendant. The second defendant's dispute of the claimant's claim is that the claimant invoiced for services not yet provided by him. This area of disagreement the claimant has not answered as he has not, up to the date of the trial, provided a detailed requisition for his services.

64. In the case of CV2007-01730 *Nation Drivers Company Limited -v- The Attorney General* Madam Justice Joan Charles found that there was sufficient evidence that the claimant carried out work in accordance with the letter of terms from the defendant and that money was still owed to the claimant as considerable resources would have been expended to do the works on the road safety proposal. The court held at paragraph 30 and 33:

> "[30] The employment of a person in a professional capacity raises a rebuttable presumption that he is to be paid for those services. In Clarke and Tucker v Tucker, Wylie J. agreed that there is such a

> presumption; when a person requests professional services, it is implied that he will pay a reasonable fee for those service, even though no fee is mentioned between the parties.
> …
> [33] Further, in creating the CSRP from the NSRP, the Claimant devoted considerable time and employed the services of other personnel, outside of its company, to accomplish this task. The Claimant is therefore entitled to a quantum merit award for the work done in creating the CSRP."

65. Yet again, the court has found that the case of *Nation Drivers Company Limited -v- The Attorney General* was not applicable to the facts here. There was an agreed basis for quantifying the claimant's payment for the legal services that he provided. Although the claimant denied that the first defendant did not accept his proposal wherein he would charge 1.25% of the highest annual rent, he adjusted invoice No. 2 to meet that rate. The claimant also identified a figure that represented the highest annual rent. The court is satisfied that the proposal between the claimant and the first defendant is also what governed the relationship between the claimant and the second defendant. On the evidence adduced and the facts arrived at, the issue of a quantum merit award is not relevant.

66. Mr. Justice Seepersad in CV2012-04468 *Graphix Advantage Limited -v- Trinidad and Tobago Football Federation, Austin Jack Warner, LOC South Africa 2010 Limited* was satisfied that the claimant outlined the goods and services he alleged he provided and the court accepted the claimant's evidence as to the works and material that were supplied. He stated that the court has an obligation to resolve issues based on the case outlined and the evidence as presented by the parties. The claimant in the instant proceedings, in line with the findings of Mr. Justice Seepersad stated that the claimant was an honest man who displayed maybe misguided loyalty to the defendants but he did in fact provide legal services to them. The case *Graphix Advantage Limited -v- Trinidad and Tobago Football*

Federation, Austin Jack Warner, LOC South Africa 2010 Limited, provides support for the court's decision that it is the case outlined; including specifics of the services alleged to have been provided, which must inform the court whether the claimant was paid or not paid. Here, the claimant's evidence has been woefully inadequate. The claimant has not countered with evidence the second defendant's plea that the Invoice No. 4 was prospective as oppose to retrospective.

67. In the case of CV2006-00110 *Vishnu Dindial -v- Trinidad and Tobago Housing Development Corporation formerly The National Housing Authority* Madam Justice Pemberton decided that the claimant in that case provided sufficient documentary evidence to prove that his services were provided based on the oral contracts between the parties. The claimant relying on the words of the Honorable judge at paragraph 61[2] of the judgment stated that it was insufficient for Ms. Jacqueline Bowen to simply say in her testimony that the claimant is not owed anything and was paid for all outstanding invoices without evidence to support her averments. Again the case of *Vishnu Dindial -v- Trinidad and Tobago Housing Development Corporation formerly The National Housing Authority* did not assist the claimant.

68. Ms. J. Bowen did more than assert that the claimant was not owed. Ms. J. Bowen responded to the claimant's invoice disputing the sums claimed and asking for a detailed requisition of the services alleged to have been billed for. The claimant never satisfied what was a reasonably justified request in the face of the second defendant's proposition that the claimant had invoiced for services he had not delivered.

[2] "When a party alleges that another has actual knowledge of facts, the burden is on them to prove that knowledge. A simple averment in a pleading is not enough."

69. As it relates to what constitutes the highest annual rent, the defendants aver that since the Project was aborted in 2010 and without a lease being signed, there was no way for the claimant to calculate a figure for Gross Annual Rent. Notwithstanding this, the second defendant settled an invoice calculated at the rate of 1.25% of the figure for annual rent relied on by the claimant.

70. By invoice dated the 1st February 2010 the claimant requested the sum of $621,132.83. On the 17th February 2010 the second defendant responded to the claimant by letter wherein it was confirmed that his previous invoice dated the 8th October 2009 in the amount of $1,095,200.77 was paid in full. The second defendant noted that the figure of $621,132.83 as per invoice dated the 1st February 2010 represented a projection of legal fees for legal services relative to the settlement of the Form of Lease. The letter further detailed that the second defendant was unable to accept the said figure of $621,132.83 until the claimant's legal services were completed and until the claimant provided a detailed requisition of his fees and services. Nevertheless, the second defendant paid, to the claimant a deposit amounting to $365,066.92 in good faith and on the basis that a detailed requisition for all the services was provided for the total sum.

71. By drawdown notice dated the 22nd February 2010 the claimant was in receipt of $365,066.92. The defendants aver that the next correspondence received from the claimant was the Pre-Action Protocol Letter dated the 1st September 2017 directed to the first defendant. The second defendant at no time received a demand letter. The defendants submitted that the claimant has failed, to date to present any invoice or requisition detailing the works he has done to justify the entire sum of $621,132.83 or the balance he claims, exclusive of interest amounting to $256,056.91. Furthermore, the defendants assert that no invoice could have been

generated for this sum as the Project was subsequently aborted, a fact well known and accepted by the claimant.

72. Both parties raised the issue that quantum merit is applicable to the case at bar. In *Mowlem Plc (Trading as Mowlem Marine) -v- Stena Line Ports Limited* [2004] EWHC, 2206 per Judge Richard Seymour Q.C. at paragraph 40 (citing Lord Dunedin in The Olanda) stated:

> "As regards quantum merit where there are two parties who are under contract quantum merit must be a new contract, and in order to have a new contract you must get rid of the old contract."

73. He adopted the reasoning of Mason P of the Court of Appeal of New South Wales, in *Trimis -v- Mina* (2000) 2 TCLR 346 as set out hereunder and found that it represented the law of England also:

> "The starting point is a fundamental one in relation to restitutionary claims, especially claims for work done or goods supplied. No action can be brought for restitution while an inconsistent contractual promise subsists between the parties in relation to the subject-matter of the claim. This is not a remnant of the now discarded implied contract theory of restitution. The proposition is not based on the inability to imply a contract, but on the fact that the benefit provided by the plaintiff to the defendant was rendered in the performance of a valid legal duty. Restitution respects the sanctity of the transaction, and the subsisting contractual regime chosen by the parties as the framework for settling disputes. This ensures that the law does not countenance two conflicting sets of legal obligations subsisting concurrently. As Deane J explained in the context of the quantum merit claim in Pavey & Matthews (at 256), if there is a valid and enforceable agreement governing the claimant's right to payment, there is "neither occasion nor legal justification for the law to superimpose or impute an obligation or promise to pay a reasonable remuneration".

74. Based on the evidence, the court accepts that there was a contract between the claimant and the defendants for the provision of legal services. The contract was originally formed between the first defendant

and the claimant by virtue of the letters dated the 21st February 2008 and 27th February 2008. Upon the incorporation of the second defendant on the 24th March 2009, another contract was formed. The parties conduct leads the court to be satisfied that the terms of the contract between the claimant and the second defendant were on similar terms as those between the claimant and the first defendant.

75. The court favors the defendants' evidence that the invoice sent by the claimant dated the 8th October 2009 in the amount of $1,095,200.77 was for legal services provided up to and including consideration of drafts Agreements to Lease and Forms of Lease. The claimant's invoice was submitted after the Agreement to Lease was executed by the Government of Trinidad and Tobago and the second defendant.

76. It is reasonable and the court is satisfied that legal services provided thereafter could only relate to other matters, including Forms of Lease. Unless the claimant satisfies the court on a balance of probabilities, by evidence, that Invoice No. 4 relates to services already provided and not paid for, it would be unreasonable for the court to so find.

77. The claimant submitted the invoice in dispute on the 1st February 2010, to the first defendant in the amount of $621,132.83. The second defendant immediately disputed this invoice.

78. Accordingly, in line with the authorities *Mowlem* [supra] and *Trimis* [supra] there can be no claim under the law of quantum merit if there is a contract in existence. The subsisting contractual regime chosen by the parties ought to govern the framework for settling disputes between the parties and in such cases there can be no restitutionary claims.

79. Because the defendant satisfied the earlier invoices calculated at the Annual Rent identified by the claimant, it is difficult for the court to now say that the parties did not understand that quantification based on Annual Rent, was not a term of their contract. For this reason, the court did not accept the assertion by the defendant that the services rendered by the claimant was based on a quantum merit basis until the lease was signed. The court also did not accept the defendants' submission that any balance owing would have been reconciled[3] along with the claimant's assertion as to his entitlement by virtue of quantum merit to the sum of $535,182.90 as there was an existing contract between the claimant and the defendants.

80. However, in accordance with the pleaded case of the defendants, the court agrees that the claimant was still required to submit his invoices to show that he was requesting payment for services already rendered.

81. The claimant appears confused by his own claim. At times he appears to be asserting that the invoice originally submitted for the amount of $1,716,333.60 was not fully paid. At other times, including in his cross examination, the claimant agrees that the invoice originally submitted for $1,716,333.60 was negotiated between the parties, and that invoice was fully satisfied.

82. The claimant cannot have it both ways because the two versions are inconsistent with each other. In answer to questions posed in cross-examination, the claimant asserted that Invoice No. 4 was for follow up work on the Agreement for Lease and the balance on the $1,716,333.60 invoice. The claimant admits that the invoice was challenged but insisted

[3] Paragraph 54 of the Defendant's Closing Submissions filed on the 15th July 2019

that he never adjusted it downwards. The court does not accept this account. It appears that the claimant does not accept this account either, since he admitted in cross examination that the invoice for $1,095,200.77 was a reissued invoice. This reissued invoice clearly took the place of the earlier one following the expressions of concern by the defendant and the adjustment downwards to bring it more in keeping with the percentage rate of interest proposed by the claimant.

83. The claimant's invoice for the amount of $1,716,333.60, was a detailed breakdown of all the works and services the claimant alleged he provided in relation to the Project up to the signing of the Agreement to Lease.

84. On the 13th October 2009, a drawdown notice was sent by the second defendant to its lender in the amount of $977,900.77 which represented a composite payment on all the claimant's invoices sent to the defendants on the 8th October 2009. This composite payment included the sums due to the claimant in the amounts of $41,200.00, $66,500.00 and $870,200.77. The sum of $870,200.00 was explained in the second defendant's letter dated the 17th February 2010 as being full payment on the remainder of the invoice dated the 8th October 2009 which amounted to $1,095,200.77 plus disbursements of $25,000.00, as the claimant had already received a total of $250,000.00 by way of three previous payments.

85. Based on the aforementioned and as a result of their challenge to the said invoice the claimant's invoice dated the 6th April 2009 for the amount of $1,716,333.60 was subsequently reduced by agreement between the parties. The claimant reduced his fees which was reflected in his

resubmitted invoice dated the 8th October 2009 the amount of $1,095,200.77 plus disbursements of $25,000.00.

86. The Invoice No. 4 dated the 1st February 2010 was followed by the letter dated the 17th February 2010. In the letter the second defendant stated that pursuant to discussions and agreement between the parties, the sum of $621,132.83 was to be treated as projected fees for legal services not yet rendered. As a result, the second defendant was unable to accept the figure of $621,132.83 as per the invoice dated the 1st February 2010.

87. The claimant must satisfy the court the services he invoiced for on the 1st February 2010 had already been provided. He has refused to detail the legal services he provided when requested to do so by the second defendant.

88. The claimant asserted in his closing submissions that he provided documentary evidence to show the continued relationship with the defendants for which he was paid. However this appears to provide proof that both parties considered that issues around Invoice No. 4 were settled.

89. Contrary to the claimant's assertion, the stalling of the Project in May 2010, following the General Elections and resulting change in government, had nothing to do with the second defendant not paying the invoice dated the 1st February 2010. The elections and stalling of the Project occurred months after the second defendant queried, in writing to the claimant the February Invoice No. 4.

90. The court in its fact finding exercise in determining the credibility the claimant checked the impression of the evidence of the witness against the contemporaneous documents, the pleaded case and the inherent probability or improbability of rival contentions in assessing the claimant's credibility[4].

91. The court found that the claimant was an untruthful witness. Firstly, in his pleadings he asserted that there was no challenges to his fees and maintained this lie in cross examination until he was forced when confronted with contemporaneous evidence to the eventually admitted that there were concerns about his fees.

92. Secondly, with respect to the second defendant's letter dated the 17th February 2010 which forms part of the Agreed Bundle of Documents in this matter, the claimant indicated that he could not recall receiving this letter. During continued cross examination the claimant was asked if he provided a detailed invoice. The claimant stated that a response was not necessary. After being asked by Senior Counsel for the defendants, "So you didn't do it" (referring to the sending of a detailed invoice to the defendants) the claimant's response was, "Correct". Under further examination of the contents of the letter dated the 17th February 2010, the claimant stated that he was a stranger to same. The court is of the view that the claimant was telling an untruth to support his made up version of events. His evidence was inconsistent as he previously agreed to the existence and knowledge of the letter dated the 17th February 2010. He later retracted perhaps believing this was jeopardizing his case.

[4] Honourable Mr. Justice Kokaram at paragraph 19 in the case of CV2013-03924 *Carlton Morgan v The Attorney General of Trinidad and Tobago*

93. In addition, the claimant gave evidence that sometime in 2016 Ms. Jacqueline Bowen advised him to calculate the total debt including the principal and interest. This advice was proffered so that the information could be submitted the second defendant's auditors. The claimant avers that he sought the assistance of Ms. Gabrielle Khoza, the Office Administrator and Accountant of both defendants. Consequently, the claimant claims, Ms. Khoza calculated that on the principal sum of $231,065.91, interest at a rate of 1.5% per month would amount to $300,839.30.

94. Ms. Gabrielle Khoza produced a witness statement in this matter and her evidence was tested under cross examination. The court is satisfied that Ms. Khoza provided no such assistance to the claimant. The witness denied the allegations made against her as she stated she never had any conversations with the claimant or assisted him in the preparation or calculation of any outstanding debt inclusive of interest in this matter. The court found this witness to be a truthful and her evidence was unshaken under cross examination.

95. Based on the assessment of evidence, the court is satisfied that the claimant was not a credible witness. Where there were divergent points of view, the court accepted the evidence of the defendants.

96. As it relates to the invoice dated the 1st February 2010 for the sum of $621,132.83, the claimant has failed to satisfy the court on a balance of probabilities, that it represented a demand for payment for services already provided. The claimant has failed to provide a detailed requisition of the services alleged to have been provided. Without this, the second defendant was unable to ascertain what works were done and the court is unable to find that the monies claimed are due and owing to him.

Disposition

97. The claimant's claim against the first and second defendants is dismissed

98. The claimant shall pay the defendants' costs, assessed in the sum of $73,638.72

…….

Justice Avason Quinlan-Williams

JRC: Romela Ramberran