

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2017-01978

BETWEEN

CARIBBEAN BORDER AND SAFETY TECHNOLOGIES LTD.

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before The Hon. Madam Justice C. Gobin

Date of Delivery: May 05, 2020

Appearances:

Mr. Ramesh L. Maharaj S.C., Ms. Vijaya Maharaj, instructed by Ms. Nyala Badal for the Claimant

Mr. Duncan Byam instructed by Mr. Brent James for the Defendant

JUDGMENT

The contract/parties

1. This is a claim by Caribbean Border and Safety Technologies Ltd (CBST) for damages for breach of a contract dated 17/03/2015 for the building and outfitting of an airport hangar at the Cumuto Air Base. The Claimant claimed it entered into the contract with the Government of Trinidad and Tobago (GORTT), but the State has denied this. The State claims that even on the face of it, the contract says otherwise, but it contends further, that when one looks more closely, the entities who were the true contracting parties, had no authority to bind GORTT under the contract.

2. I shall set out the clauses in the contract which I have considered relevant in my determination of the issues in this case. Contracts generally start with what we call “the parties clause”, which in this case stated:-

“This contract is made the 17th day of MARCH, 2015 by and between the Government of the Republic of Trinidad and Tobago through the Office of the Prime Minister on behalf of the National Operations Centre (hereinafter referred to as “OPMNOC”) and Caribbean Border and Safety Technologies Ltd. (hereinafter referred to as “the Company”), a company incorporated under the laws of Trinidad and Tobago Companies Act Chap 81:10 having its registered office situate at #1 Global Avenue, Aranguez, Trinidad, (hereinafter referred to as “the Contract”).

The Company and OPMNOC may be referred to individually as a “Party” and collectively as the “Parties”. (The effect of this on the above “parties clause” will be considered in due course.)

3. The above was followed by this sole recital,

WHEREAS:

OPMNOC awarded the Contract to the Company on the 14th day of November 2015 for the construction and outfitting of an Aircraft Hangar (as hereinafter defined the “Aircraft Hangar”) and the Company agreed to construct and outfit the Aircraft Hangar in accordance with the terms and subject to the conditions hereinafter appearing.

4. Other relevant clauses were those dealing with the price and the payment schedule.

Article (3) TOTAL CONTRACT PRICE

[3.1] In consideration of the Company providing the Scope of Works, OPMNOC will pay the Company the Total Contract Price of Twenty

One Million, Eight Hundred Thousand United States Dollars (\$21,800,000.00 USD) (Plus VAT).

[3.2] Appendix F provides a detailed line item price breakdown of the Total Contract Price. (It is important to insert Appendix F here).

Total Contract Line Item Pricing

Design & Construction 48m (157ft)x52m (170ft) 10.6m (35ft) Hangar (26690sqft) and 157’x60’ Ramp (9,420sq.ft) Hangar Frame Construction will be fabricated and erected by ~~Bettabuilt~~ of which Caribbean Border and Safety Technologies are the Caribbean Representatives. ~~Bettabuilt is a world renowned Hanger construction company that has erected hundreds of hangers worldwide and is known for their excellence in the quality of the products they provide.~~ All local construction will be in collaboration with the international Hangar Contractor, Bettabuilt and ~~done by~~ Caribbean Border and Safety Technologies Ltd. and our professional local contractors. Hanger space will be able to accommodate 6 helicopters. Hanger will also have a center lane with adequate movement of any Helicopter in and out of the facility, eliminating the need to shift one to use another. This additional center lane can also accommodate 3 Helicopters if the need arises.

All Engineering and the material supply is all designed, engineered and supplied by ~~Bettabuilt~~/CBAST, using their advanced patented techniques and technologies, to the local engineering specifications and standards. Will require Site Power & Staff Amenities on site. (Until Genset is setup) All warranties will be honoured by ~~Bettabuilt~~/CBAST Ltd and our respective Manufacturers. Includes all local Civil works and Geotechnical Investigation and reports. Hanger will be handed over in a completed TURN KEY status and will be of International Standards and best practice. A 10 year warranty will be given for the Hanger Structure and 3 year warranty on Central Air-condition System, Generator, Compressor, and Hydraulic Tilt Doors. N.B. Maintenance Contract and schedule, separate to this contract will be issued.

Description	Quantity	Unit Price
Base components		
157ft (Span) x 170ft (Length) x 35ft (Ridge, 3 x Custom Hydraulic Tilt Doors. (With Anti-Fail Counter Balance Valves), Concrete Footings, Gully Galvanised Structural		

Steel Work, Zinc Custom Orb Roof Cladding, Trimdek Colorbond Wall Cladding, R2.6 Insulation in Roof & Walls, 4 x PA Emergency Exit Doors, 2 x Crane Rains with 2 x 5,000kg capacity Hoists, Mezzanine Floor Steelwork. (Incl. Bondek), Hand Rails on Mezzanine & Stairs and Railings, 30 x Powder coated windows, Delivery of all materials. Bettabuilt /CBAST Construction Management Plan & QA Documentation. Hydraulic Design & Plans compliant ~~complainant~~ to US standards & ATSM Engineering Code of Practice.

Structural Designs & Plans compliant ~~complainant~~ to US standards & ATSM Engineering Code of Practice.

Architectural Design & Plans compliant ~~complainant~~ to US standards & ATSM Engineering Code of Practice.

~~Bettabuilt~~/CNAST Safety Management Plans

\$11,060,000.00

Equipment and services to be supplied include

3 x Hydraulic Tilt Doors incl. all supporting Equipment, Hydraulic Power Pack, Rams & fittings, 200Kva Genset Generator (Auto switch over in power failure), Hot dipped galvanized Structural steel. (Columns, Rafters & Bracing), 120 ton Air-condition unit for Hanger area, cooling the entire floor space of the Hanger, 80 to Air-conditioning unit for 2 story mezzanine (all rooms) Bolts and screws, Roof Purlins. (Zincalume Coated 450Mpa High Tensile Steel), Wall Girts, (Zincalume Coated 450Mpa High Tensile Steel), 0.42 BMT Colorbond Trimdek Wall Cladding, 0.42 BMT Zinc Custom Orb Roof Cladding, 0.42 BMT Smartspan Sliding Door Cladding, 2 x P/A door, (emergency exits), R2.6 Insulation in Roof & Office, Large Colorbond Gutters, 0.55BMT flashing, 2 x Crain Rails full length of building on grids E & G, (5,000kg SWL each), Concrete Pier Footings for Columns, Design and supply Complete Plumbing for entire facility, including all toilet facilities, both levels and throughout Hanger and to include connection of hanger sewer lines to existing sewage system, Design and supply Complete Drainage and sewer system for Hanger facility, Design and supply Complete Electrical supply throughout the facility, Design and supply I.T. for all offices, including Phone access, Computer access and Internet Access, Adequate Server system for computers.

\$9,612,000.00

CONSTRUCTION & SUPPLY

Fire suspension system, 3 x Avionics storage Rooms-Air-conditioned, Compressor Room with 16 Compressor outlets thru out Hanger, Battery Shop, State of the art Paint Bay, equipped with hearing elements, dust submission and extraction elements, 19ft wide x 50ft long and a door clearance of 13ft., Avionics work shop, Major Components Workshop (sterile), Eye wash station and medical infirmary, Passenger waiting area with separate entrance equipped with 150"TV, 3pc couch set, 2coffee tables, coffee machine, cold/hot water dispenser, sitting table with 4 chairs, Sufficient Electrical outlets throughout the facility that will include 115AC, 230V AC single and 3 phase as necessary, Tool Room 12'x12', Specialized Hanger Flooring High Intensity Coating, 23 offices averaging 12'x12', 1 20'x20' Fully Equipped Training Room, outfitted with Furniture, projection system, 1 30'x30' Fully Equipped Conference Room, outfitted with outfitted Conference table, chairs, highlight Furniture, Mission Boards and Projection system, 1 30'x30' Recreational Room outfitted with Furniture, 1 Exercise Bikes, 1 Treadmill, 1 50" TV with DVD player and 2 Desktop Computers, 130'x30' Dining Room with furniture and Adjoining Kitchen outfitted with appropriate appliances such as a Fridge/Freezer, Stove/Oven, and Microwave, All above inside infrastructure will be constructed as a 2 storey facility with fully equipped male and female toilets on both levels, Hanger will contain adequate Roof insulation and heat extraction apparatus where applicable, Outside Ramp Area will accommodate 6 Helicopters, 2 x Crain Hoists, External Windows and doors, Mezzanine Floor Steelwork, Stairs & Hand railing, 4 Steel Staircases with handrails, Hangar Internal & External Lights, Delivery of all materials to site, Construction (of items identified) to all relevant standards.

\$2,109,000.00

Total	\$22,781,000.00
Discount Applied (4.3%)	\$981,000.00
Contract Total	\$21,800,000.00

Article 4 – PAYMENT

[4.1.1] OPMNOC must make all payments of the Total Contract Price in instalments in accordance with Article 4 and Appendix G.

[Appendix G]

Payment Schedule

- Upon contract mobilisation 50% Contract Value
- Upon arrival of imported supplies 10% Contract Value
- Upon completion of concrete works 20% Contract Value
- Upon completion of steel works 10% Contract Value
- Upon completion and & Handover 10% Contract Value

5. The contract made express provision for breach by either party. This is what it stated in relation to breach by OPNOC or I understand it GORTT.

Article 13.4 – Remedies for Breach by OPMNOC

[13.4.1] In the event that OPMNOC commits a breach, as defined in Article 13.2, for reasons attributable to OPMNOC and that do not constitute an event of Force Majeure in accordance with Article 14, the Company may, upon written notice to OPMNOC, suspend performance of the Company's obligations under the Contract until the breach has been cured, or may if the breach shall have continued for a period of sixty (60) calendar days after OPMNOC's receipt of such notice, terminate the Contract in part or in whole, upon additional written notice to OPMNOC.

[13.4.2] In case of termination of the Contract by the Company for OPMNOC's breach of contract, the Company shall retain all payments previously made by OPMNOC as liquidated damages but not as a penalty.

[13.4.3] If the Contract is terminated by the Company under Article 13.4.2 as soon as practicable after a notice of termination has taken effect but in no event no later than two (2) weeks after the end of the two (2) weeks' notice provided for in this clause the Company shall promptly measure with a representative of OPMNOC and value for payment the Scope of Works executed and provided in

accordance with the Contract and the Company shall give notice, with supporting particulars to OPMNOC of this evaluation.

[13.4.4] OPMNOC shall pay the Company the:

- a. said valuated sum with thirty (30) days of receipt of same; and
- b. the cost of removal of any of the Company's equipment and materials from the Aircraft Hangar.

CBST's claim

6. The claim is simply this – the contract was executed on 17th March 2015 between it and GORTT. Given the tight schedule for delivery, i.e. 6-9 months, it immediately began to mobilize. It entered into agreements with several subcontractors who in good faith proceeded to incur their own costs because they were all aware CBST had been granted the Government contract. They were told that the mobilization installment was due and they expected to be paid out of it.
7. CBST claims that having entered into these arrangements and having mobilized including by engaging in sub-contracts, 50% of the contract price in the sum of USD \$10,900,000.00 became payable. The government failed and or refused to pay leaving CBST with liability to the following subcontractors: -
 - (a) To Bettabuilt PTY – for design/engineering and fabrication works – USD \$7,000,000.00;
 - (b) Chan General Contractors – USD \$28,890.00/TT\$195,000.00
Topographical Survey – Preliminary designs, engineering works;
 - (c) Amalgamated Security Services – procurement of a fire suppression USD \$150,000.00 system;
 - (d) Knaggs Development Limited pre/post construction activities in relation to supply and installation inter alia of venting AC, ventilation system, electrical works – office equipment etc. –
USD\$296,297.00/TT\$2,000,000.00

8. In addition to its liabilities under the subcontracts, CBST claimed that it had itself incurred expenses for preparatory works done by its team since the execution the contract on 17th March 2015. These claims were particularised as follows: -
- (a) Travelling expenses for 24 months during preparation of programme,
 - (i) USD\$33,481.48 or TT\$226,000.00 in “numerous flights, car rentals, hotel accommodation, food”;
 - (b) Salary for personnel – during that 24 month period – USD \$64,000.00 (TT\$432,000.00);
 - (c) General office supplies for preparation of programme - USD\$7,111.11 or (TT\$48,000.00);
 - (d) Salary for assistant during preparation of program – USD \$21,333.33 or (TT\$144,000.00);
9. The Claimant also claimed loss of profit on the contract in the sum of USD \$4,360,000.00 or alternatively the sum of USD \$1,900,285.25 representing the loss of profit **on the value of the works conducted** to date. (emphasis added)

The Defence

10. The State read the contract as purporting to be made by GORTT when it was not in fact so made. The State contended that the contract itself said it was made through OPM on behalf of, and, it submitted further, as agent of OPNOC. The Defence raised the sole issue of lack of authority on the part of the office of the Prime Minister (OPM) or OPNOC to bind the Government. Put another way, the State’s case was that the contract was made through the office of the Prime Minister on behalf of OPNOC and was therefore void as against GORTT. The State claimed that support for its argument appeared on the face of the document. The contract itself defined the parties as CBST and OPNOC. The terms imposed no obligation on GORTT including, and especially for payment to CBST, but expressly on OPNOC. The Defendant denied “GORTT’s” liability to pay.

The Reply

11. The want of authority to contract having been raised as the sole defence, the Claimant filed a Reply in which it detailed the history of the contract, starting with an invitation from GORTT to tender for the provisions of Helicopters and other services as well as the construction of the Hangar. Bell Helicopters tendered and was notified of an award in November 2014. The documents indicated that at some stage Bell entered into a contract for the supply of Helicopters and the Claimant entered one for the construction of the Hangar with GORTT.
12. The Reply included annexures several documents emanating from the Ministry of Finance and the Economy, the Cabinet, the Office of the Prime Minister and OPNOC. The documents indicated the involvement of various State agencies and government ministries including the Ministry of Finance and the Economy and the Ministry of National Security in the negotiations for the contract. The annexures also included those which disclosed the efforts on part of the Cabinet even up to September 2015 to arrange financing for the acquisition of the Helicopters as well as the support services and the construction of the hangar, through devices to secure loans to be taken by statutory boards NHSL and NGC in which GORTT was a sole or majority shareholder. The Claimant also annexed legal opinions including one from the firm KR Lalla and Company to the NHSL. Some of the undisputed matters set out in that legal opinion are instructive. I shall refer to them at a later state.
13. The matter proceeded to trial up to which stage, as I have said before the sole issue arising on the Defence was identified as want of authority of OPM or OPNOC to bind the GORTT.

The Evidence

14. The Claimant filed four witness statements and one witness summary. Mr. George Tannous, Director of CBST filed the main one which supported the basic claim of the contract, established the breach (which was never in dispute) and to which were attached voluminous documents including those attached to the statement of case and the reply.

15. Three witness statements were filed by sub-contractors in support of CBST's claim for damages. The deponents were Mr. John Aboud, CFO Amalgamated Security Limited, Mr. Russel Chan of Chan General Contractors and Mr. Marcus Knaggs of Knaggs Development Limited. They essentially confirmed their contractual arrangements with the Claimant and said that they acted in good faith to supply goods and services to CBST without any payment in advance on the expectation that they would be paid out of the mobilization fees. Each deponent attached documentary evidence of more contemporaneous statements of CBST's alleged debts to them dating back to about April 2015. They were claiming that they had all themselves proceeded to mobilize on the sub-contracts and to incur expenses for which they claim, and CBST agrees, it is liable.
16. The Claimant filed a witness summary on behalf of Matthew Garry the CEO of Bettabuilt PTY, who lives in Australia. CBST claimed liability to Bettabuilt in the sum of USD \$7,000,000.00 which is almost two thirds of the value of its entire claim. It claimed that by 29th April 2015 Bettabuilt had completed a substantial amount of work to the value of some USD \$6,000,000.00. A few months later that value had risen to USD\$7,000,000.00 The Claimant produced demand letters from Bettabuilt dated 29th April 2015 to 16th September 2015, 1st March 2017 and 18th May 2017.
17. CBST did not file a witness statement on behalf of Mr. Garry. No application was made for him to give evidence from abroad by way of video conference. In a supplemental witness statement filed on 30th September 2018, Mr. Tannous detailed his several efforts to get Mr. Garry to sign the witness statement and to secure his participation in the trial. I think it is important to set out these paragraphs of the supplemental witness statement since I have drawn certain inferences from the failure to produce Mr. Garry as a witness.
18. Paragraphs 3-7 of the Supplemental Witness Statement of Mr. Tannous filed on 30th September 2019, set out as follows: -

- (3) Mr. Matthew Garry, Managing Director of Bettabuilt originally agreed to sign to a witness statement on behalf of the Claimant. A draft witness statement was prepared and sent to Mr. Garry for his review. Mr. Garry did indicate to me that he would review the statement, make any necessary adjustments and then sign it. However I then had great difficulties in getting contact with him after this.
- (4) Because of the difficulties I had in getting in touch with Mr. Garry, my Attorneys at Law filed a witness summary of Mr. Garry on 9th April 2019.
- (5) Since the filing of the witness summary, I made numerous attempts to contact Mr. Garry in order to confirm his willingness to cooperate to give his evidence in Court. I left numerous messages for him giving him details of the hearing dates and also requesting that he return my call.
- (6) On Friday 27th September 2019, I received a letter dated 5th September 2018 from Mr. Garry. In that letter he refers to our previous telephone conversations in which he assured me that if the contract goes forward he would be willing to continue to build the Hangar but that this could only happen once Bettabuilt's expenses and deposit are paid up.
- (7) He also made it clear in his letter that he is not interested in any other discussions with me until he receives payment. A true copy of this letter is now produced and shown to me marked "G.T.41"

No Defence Evidence

- 19. For the Defence, the State filed one witness statement by Mr. Junior Dell but the witness was not produced. The State was left therefore with no evidence.

The Trial

- 20. At the trial, the sole witness for the claimant who was cross examined by Counsel for the State was Mr. Tannous. The limited cross examination confirmed that Mr. Tannous signed a contract (or so he believed) with GORTT following a RFP that indicated it emanated from Government. It also established that although Bettabuilt, of which Mr. Matthew Garry was the CEO, had made demands for sums owed and had threatened legal action, CBST had not

to the date of trial been served with Court proceedings for the alleged debt. At the end of the cross-examination, the evidence of Mr. Tannous had been for the main part, unchallenged. There was no objection to the contents of any of the documents and no questions were asked about them.

21. At the close of the trial the parties confirmed that the sole issue was the authority of OPM or OPNOC to bind the Government. Directions were given for the filing of submissions on this sole issue.

Fresh Issue of Illegality

22. The Defendant filed submissions on 15th November 2019 in which for the first time it raised a further issue of illegality of the contract for breach of sections 2, 4, 20 and 26 of the Central Tenders Board, Act. Ch. 71:91 (CTBA). The State sought to introduce a new argument that this was a contract for the construction of a Hangar and was one which could only be legally done under the jurisdiction and subject to the procedures set out by the CTBA. Since this issue had not been raised on the pleadings, the Claimant submitted that I ought not to entertain it.

Should the illegality argument be entertained?

23. The principles applicable to this aspect of the matter may be summarised in this way. It is settled that the rules of pleading under the CPR do not generally permit the amendment of a party's case as the Defendant is attempting to do here. (See **Charmaine Bernard (Legal Representative of the Estate of Reagan Nicky Bernard) v Ramesh Seebalack** [2010] UKPC) 15. Moreover, more stringent rules have always applied to a plea of illegality in contract. Illegality must be specially pleaded. However, the failure to plead illegality is not a bar to the consideration of the issue by the Court. The Court will itself take notice of illegality if it appears either on the face of the contract on which the Plaintiff is suing, or from evidence brought before it by either party. And in those circumstances, even if the Defendant has not pleaded the illegality, once it is brought to the attention of the Court, the issue overrides all

questions of pleadings. Where the contract is not ex facie illegal, as a general rule the Court will not entertain the question of illegality, unless it is specifically pleaded and the Court is satisfied that it has before it all the necessary facts, concerning the contract and its setting. (See **AG. v. Ramhit Civ App No P031 of 2018, Odgers- Principles and Practice, 22nd Edition page 185, North Western Salt Co. v Electolytic Alkali Co. [1914] AC 461 at 469 per Viscount Haldane L.C.)**)

Was the contract ex facie illegal their?

24. The State relied on S. 4(a) of the CTBA which establishes the procedure to be followed when government requires goods and services to be supplied. Section 4 (a) provides as follows:

4. (1) there is hereby established a Central Tenders Board which save as is provided in section 20A and in section 35 of this Act shall have the sole and exclusive authority in accordance with this Act—

(a) to act for, in the name and on behalf of the Government and the statutory bodies to which this Act applies, in inviting, considering and accepting or rejecting offers for the supply of articles or for the undertaking of works or any services in connection therewith, necessary for carrying out the functions of the Government or any of the statutory bodies;

It is not in dispute there was no involvement of the CTB in the invitation to tender or the selection of the Claimant for this project of the building of the hangar at Cumuto.

25. The State contends that ex facie, a contract for the supply of or construction of a Hangar would fall squarely under the purview of the legislation. The undisputed lack of CTB involvement, renders the contract illegal.
26. In the circumstances of this case, that submission appears to me to be somewhat superficial and I cannot accept it. The full contract setting was disclosed in CBST's reply and in Mr. Tannous' evidence. The facts pleaded and the unchallenged evidence at the trial established that CBST's contract for the Hangar was originally part of a larger contract for the supply of Helicopters and services for the NOC as well as the construction of it, and that the contract

was subsequently split. I do not think there is any question that CBST's contract remained ancillary to the Helicopter supply contract.

27. Together these contracts were for supply of goods and services to GORTT for the NOC. What then is the NOC.

28. The NOC is described at page 3 of the RFP issued by GORTT in these terms: -

The National Operations Centre is a strategic unit the purpose of which is to provide support to the Defence Force and the protective services along with other national security agencies. (emphasis added) It is described as:

- i. a strategic coordination centre with the ability to support other agencies utilizing its air assets;
- ii. a specialised unit strategically placed to be able to deliver 24/7 air support to National Security and Non-National Security stakeholders because of the capability and myriad of allocated tasks;
- iii. being mandated to introduce innovative approaches in responding to the challenge of evolving crime in support of the national law enforcement effort.

29. The Request for Proposal for the original contract identified the assets for procurement as aircrafts namely four light Twin Engine Helicopters and other services which included maintenance support and a helicopter hangar for the aircraft. It was specifically stated at page 6 of the Request for Tender, that the agencies to be supported included inter alia the Police Service, the Defence Force, the Prison Service and the Fire Service. These are all included in the protective services identified in the Fourth Schedule to the Central Tenders Board Act).

30. Against this background this was not a contract which can be described as ex facie illegal. The State has not argued that the splitting of the original contract to allow for the supply of the helicopters by a separate party, Bell and the contract for the construction of the hangar by CBST was illegal or effected for a corrupt or illegal purpose. CBST having been awarded part of the original contract for the provision of housing facilities and Hangar facilities, it would be simply wrong in my opinion to view its contract independently of the main one and on that basis to argue that the contract was illegal under the CTBA. This was an instance in which more was required than a cursory glance at the contract, itself. The CTBA provides exceptions. The Defence submission plainly failed to consider whether the contract fell within an exception. In those circumstances, the invitation to rule on legality ex facie, was misplaced, and I rejected it.
31. The pleadings as well as the evidence which was not challenged, firmly established the contract setting. I am satisfied that the goods and services ordered were required for the use by the protective services and that the contract fell squarely within the exception created by S. 20. A.1 (f) which permits Government to contract on its own behalf (i.e. Without the CTB involvement) where:
- [f] Items and services listed in the third schedule are approved by the Minister as being required for the purposes of the T&T Defence Force or for the protective services.
- Among the items identified in the Third Schedule
- [2] Repair and Maintenance of aircraft and Coast Guard Vessels
- [5] Aircraft, marine craft or parts thereof.

Ruling on Illegality

32. In the circumstances I find that the contract is not ex facie illegal and in the absence of proper pleading of illegality and in the absence of any evidence of fraud, corruption and immoral purpose, the plea of illegality strictly speaking ought not to be entertained. But there was no prejudice to the Claimant in my considering it and I have ruled that having regard to the evidence of the contractual setting, I find that the contract, since it was part of the original

award for the supply of helicopter and services and the building of the hangar, fell squarely within the exception created by S. 20 (2) (f). In the absence of any claim of corruption, illegal or immoral purpose, it would be absurd and utterly unfair to consider it without reference to the broader purpose of the original contract.

Authority to Contract

33. The Defendant submitted that when the contract is looked at more closely, GORTT is in fact identified as the agent and not the Principal. OPNOC is the contracting party. The contract imposes no liability on Government but on OPNOC. The contract does not say that GORTT is acting on its own behalf. It reflects roles for OPM and OPNOC but not for GORTT.

34. I reject this submission for the following reasons. The Parties clause states it is made between the Government of Trinidad and Tobago through OPNOC and CBST. The execution clause reflects the signing party as GORTT/OPNOC. The State led no evidence to discharge the evidential burden imposed upon it to establish a lack of authority on the part of the party executing the contract to bind the Government. In **AG v Mootilal Ramhit & Sons Contracting Ltd Cv A No. 124 of 1996 (Ramhit No.1)**. In similar circumstances where the issue of want of authority was raised **Nelson JA** said this:-

“It is therefore manifest that a person relying on the Ordinance has initially the evidential burden to show that there is lack of authority in the contracting officer”.

35. Further, no evidence has been led as to the legal status of OPNOC. Nothing in the description set out in the RFP indicates that the OPNOC is a legal person capable of contracting for its own supplies and services. In the absence of evidence of its legal status I am not prepared to assume that OPNOC can in fact on its own enter into a contract for goods and services. It is not in dispute that the goods and services including (the helicopters/ the Hangar) were to be used by OPNOC to support the protective services. The NOC operates out of the Office of the Prime Minister. I repeat the Parties clause says: -

“This contract is made the 17th day of March 2015 by and between the Government of the Republic of Trinidad and Tobago through the office of

the Prime Minister on behalf of the NOC hereinafter called OPNOC.’(emphasis added)

36. I construe this as clearly identifying the contracting party as the GORTT. The words “on behalf of” do not in these circumstances indicate “agency”. I see them as indicating no more than that the goods and services to be supplied are for the benefit of OPNOC. That Government for reasons best known to it, chose to channel the administration and other obligations to pay through a particular entity OPNOC, does not make it any less a Government contract in the circumstances. OPNOC was a vehicle selected by Government for effecting the transaction. In the circumstances the words which follow the Parties Clause which state:-

“the company and OPNOC may be referred to individually as “a Party” or “the Parties”

have no substantive effect on the opening words which identify GORTT as one of the two contracting Parties.

37. The correspondence with the NHSL and NGC and the legal opinions which were produced show that the channelling of funding and loan arrangements through other statutory boards is not unknown to Government. It has not been suggested that this is illegal. The legal opinion of attorneys KR Lalla and Company to NHSL dated 1st September 2015 has been helpful too, in providing evidence of the relationship between the various State entities and the relationship between Government and OPNOC.

38. The opinion of the attorneys was sought on the issue of potential liability and exposure of the NHSL under a proposed loan financial facility of USD \$81,133,858.27 with the First Caribbean Bank on behalf of the NOC. NHSL was being asked by OPMNOC to enter into the facility. At p.3 of the opinion, under the caption “Chronology and Key Documents” critical information as to the relationship between OPNOC/GORTT is to be found. This is what appeared in the opinion.

CHRONOLOGY AND KEY DOCUMENTS

NHSL formerly the Air Division (Helicopter Unit) of the Ministry of National Security, is a joint venture between the Government of Trinidad and Tobago GOTT as an 82% shareholder, and The National Gas Company of Trinidad and Tobago Limited (NGC) with 18% of the issued share capital. NHSL was incorporated on October 3rd 1989 and commenced operations on February 1st 1990. It was continued under the Companies Act 1995 pursuant to Section 343 on April 14th 1998.

NHSL was formed for the purpose of providing offshore helicopter services to the oil/gas sector and other commercial entities as well as continuance of services to Government, particularly in an Emergency or Disaster situation.

NHSL has over the years we are instructed acted by way of a facilitating agent for NOC and GORTT in various ways specific to helicopter acquisition maintenance and related services, including dealing with NOC employees and acting as a management agent of sorts, it is usual for NHSL to take on all payment requirements for NOC and be reimbursed.

Further, NHSL concretized this relationship in or about June 2014 and entered into a Memorandum of Understanding with NOC and GORTT with regards to their relationship and how same is to be governed (hereinafter referred to as “the MOU”) and **the MOU states as follows:-**

“GORTT has, through Cabinet and through MNS and for the facilitation of the Operations of National Operations Centre (hereinafter referred to as “NOC”), agreed that MNS will enter into an agreement with NHSL for the operation and maintenance of helicopters inclusive of pilots, Tactical Flight Officers (“TFOs”), administrative staff, technicians, and any other NOC Air Division staffing requirement, fuel, training, insurance and other related services.

GORTT has mandated that NHSL, at the request of MNS provide NOC with the following services:-

- a) The supply of parts, materials, equipment and personnel as necessary for the maintenance and repair of NOC’s helicopters, and any other aircraft assigned to NOC Air Division;

- b) Provision of aviation fuel;
- c) Facility development to support helicopter operations in Trinidad and Tobago (hangar, workshops, runways, off base Landing Zones, etc.);
- d) The contracting of pilots, TFOs, mechanics, administrative and other technically skilled personnel assigned to NOC Air Division;
- e) Facilitating the Coordination of all logistics and maintenance scheduling of NOC's helicopter programmes;
- f) Provision of advisory and other ancillary services for NOC's Air Division;
- g) Facilitate payment and final delivery of all specialize equipment and/or services that is sourced by NOC Air Division; and
- h) Any other services that may arise from time to time in connection with the facilitation and operation of the agreement and specifically requested by either party in writing."

39. The State did not object to the admissibility of this evidence nor did it attempt to challenge it. The matters set out confirm to my mind, the existence of an arrangement through which GORTT was dictating the terms to facilitate the acquisition by OPNOC of the helicopters and related services.

40. The sole recital in the contract that "OPNOC awarded the contract to the company on 14th November 2014", assumes more significance here. The Claimant has not sought to enforce a contract between itself and OPNOC, and the party executing on behalf of Government did not seek to remove the recital. I believe that its inclusion points to a recognition that OPNOC's purported award on 14th November 2014, was incapable of legal enforcement. What was necessary to bind Government was the subject contract which expressly made the Government a party.

41. I have said before that the State led no evidence to discharge the burden that Mr. Garvin Heerah, who signed on behalf of the GORTT/OPNOC was not authorised to act in the negotiations or to execute a contract on behalf of the State. The evidence established

that at all material times the GORTT through various agencies including the Cabinet recognised its obligations under this contract, including to secure funding for meeting its financial obligations.

42. I find that the contract dated 17th March 2015 was properly entered into by Government. The contract did not contravene the provisions of the CTBA and that the party executing was properly authorised and clothed with authority to sign on behalf of the Government. In the circumstances the Defendant's submissions on the applicability of the guidance of the Court of Appeal in **AG v Mootilal Ramhit Civ App No. P031 of 2018 (Ramhit (2))** are rejected. **Rakjumar JA** in the course of his judgment distinguished **Ramhit (2) from Ramhit (1)** on the basis of the fact that in Ramhit (1) there was a contract between the State and the contractor, as I have found there to be in the instance case.

Damages

43. The Claimant has pegged the quantum of its claim first for 'liquidated' damages first to the sum payable on mobilisation i.e. 50% of the contract price in the substantial sum of USD\$10,900,000.00 in accordance with Article 13.4.2 of the contract. Alternatively it claims compensation for the money it expended, loss of profit, and the money it caused sub-contractors to expend on the faith of CBST's government contract for which it claims it remains liable to refund them.
44. Article 13.2.1 expressly identifies non-payment by OPNOC as breach and the breach is not in dispute. Two clauses of the contract are relevant to the issue of damages on breach by the Government/OPNOC.
45. First Article 13.4.2 – provides that:-
“in the event of termination the company shall retain all payments previously made as Liquidated Damages, but not as a penalty”.

I do have some doubts as to whether the mere fact the contract says a payment is not a penalty is sufficient to prevent the court looking beyond that label, but no moneys were paid, so this clause is of no assistance to the Claimant.

46. Article 13.3.2 provided for a notice of termination as soon as practicable after the breach but in any case no later than after the end of two weeks. It specifically provided for a measuring with a representation of OPNOC and valuation for payment of the scope of works executed. CBST was required to give notice with supporting particulars.

47. This clause was clearly triggered in the circumstances of the non-payment by GORTT, however there is no evidence that the Claimant invoked the process or complied with the terms. While the non-compliance is not a bar to the Claimant's claim for damages, the absence of an evaluation of the works made in accordance with the contract has left the claimant with an uphill task. While the claims for these sums were not labelled "Special Damage" they were just that. They were all claims for calculated and specific sums and required strict proof. Since the Claimant claimed 50% of the contract price as 'liquidated damages', I shall begin with that aspect of the claim.

Is the Claimant entitled to 50% of the contract price

48. The answer to this is in my opinion simply no. This sum was no more than installment agreed under the Payment Schedule. **White J, in Egan v. The State Transport Authority** (1982) 31 SASR 481 put it this way.

"Payments have long been recognised as being merely agreed installments in reduction of a lump sum price, made on that account to keep the building contractor on the job. The purpose of the installment payment is not to pay for material in the sense that a purchaser of land or of specific goods pays money for or toward the purchase price. Installment payments are made in contracts like this as a practical measure to enable the contractor to keep working under

the contract; they are also made in reduction of the lump sum contract price.
Such payments have been described as the “life blood of the contract”.

49. So while fifty percent of the contract price was payable on mobilisation under the Payment Schedule, that sum of money bore no relationship to the value of works. If the Claimant’s argument as to the basis of its claim to that quantum is simply that the sum was due under the payment schedule then it would follow that had the cost of the mobilisation been significantly less, say \$50,000.00 TT, it would be entitled to USD \$10,900,000.00. That is a consequence that I daresay neither party could have contemplated. What the contract did provide for specifically, was a valuation of works up to the time of the breach and payment on the basis of that figure pursuant to (Article 13.4). No such valuation was carried out.

Evidence of Special Damage

50. The claimant adduced evidence on the claim for special damage through Mr. Tannous, Mr. Aboud, Mr. Chan and Mr. Knaggs. Before I proceed to indicate my findings on the evidence and credibility of the claims I think it would be useful to remind of the very basic principles to be applied at this assessment stage. **Rajkumar J** as he then was, in **CV2007-02193 Company Limited v National Maintenance Training and Security Company Limited** enunciated them in his judgment delivered in what was a case that arose out of breach of a construction contract. The Judge cited several authorities and re-stated the basic principles which are relevant to this part of the exercise.
51. The first principle: The fact that the Defendant has not challenged the quantum of damages does not automatically entitle the Claimant to recover the amounts claimed. The burden is on the Claimant to prove its damages (**Archie JA as he then was in Anand Rampersad v. Willies Ice Cream – CV20/2002**). In this case the State did not cross-examine any witness on the issue of quantum. That did not mean the Claimant was home and dry on its monetary claims.

52. The claims for money owed to CBST including its debt to the subcontractors and its loss of profit are all claims in which the sums have been identified and calculated. They were not claimed specifically under a head of “Special Damage” in the pleading, but they are all in fact claims for Special Damage which attract rules that required them to be pleaded, particularized and strictly proved (Charmaine Bernard LPR of the Estate of Regan Ricky Bernard v. Ramesh Seebalack 2010 UKPC 15 (at para 16)).
53. The degree of strictness of proof that is required depends on the particular circumstances of each case (**Bowen LJ – Ratcliffe v. Evans-1892 2 UB 524-532-533**). With proof as with pleading, “The Courts are realistic and accept that particularity must be tailored to the facts *Mc Gregor on Damages*”. The degree of flexibility with which the Court approaches the standard of proof of special damage depends on
- (a) The circumstances
 - (b) The nature of the claim
 - (c) The difficulty or case with which proper evidence of value might be obtained and
 - (d) The value of the item involved. (**De La Bastide CJ in *David Sookoo, Auchin Sookoo v. Ramnarace Ramdath CV. No 43 of 1998***).
54. I shall consider whether the CBST has proof the Special Damage claimed against the guidance above. The claims for special damage range from \$200,000.00 TT to 7 million USD including some which are by any standard enormous claims. They are all claims which arose out of expenses incurred by the contractor and his sub-contractor under a building contract with GORTT ultimately funded by the taxpayers of Trinidad and Tobago. Neither the Claimant nor any of these subcontractors should have had any difficulty in securing evidence of the value of their goods and services. People who contract at this level for contracts of these values are expected to keep books and to preserve documentation, details of relevant activity and spending. Insofar as the provision of

services is concerned, one would expect their records to detail quantities and measurements in accordance with standards in their respective businesses.

55. I turn to the evidence in support of the specific claims for loss and begin with the observation that while the Claimant may be entitled to compensation for loss sustained by reason of the breach, the mere assertion that the Claimant has incurred loss or liability under a sub contract or otherwise is not sufficient to establish such a claim. Moreover, the mere fact that sub-contractors may have themselves mobilized, on its own, is not sufficient to pass CBST's liability on to the State.

56. First, the credibility of the claims would in any case have to be scrutinised bearing in mind that strict proof of special damage, is required. Where the Claimant is claiming the cost of goods and services produced by sub-contractors, credible evidence of the basis of the valuation of the goods and services in addition not only to the ability and readiness to deliver at the date of the breach, but continuing readiness to deliver the goods and services for the benefit of the State in accordance with the scope of works and specifications under the principal contract.

Claimant's Expenses/Loss

57. At paragraph 11 (5) of the statement of case the Claimant claimed that it incurred expenses in the sum of US\$125,925.00 or TT\$850,000.00. The breakdown is as follows:-

- (a) Travelling expenses for 24 months during preparation of program
which includes numerous flights, Car rentals, hotel accommodations,
food.-USD\$33,481.48/TT\$226,000.00;
- (b) Salary for personnel during that 24 month period -
USD\$64,000.00/TT\$432,000.00;
- (c) General office supplies for preparation of program -
USD\$7,111.11/TT\$48,000.00;
- (d) Salary for assistant during preparations of program –
USD\$21,333.33/TT\$144,000.00.

58. The evidence under this head was set out at paragraph 50 of Mr. Tannous's Witness Statement. It was covered under the broad head of "preparatory works done by its team since the execution of the contract." This was a contract signed 17th March 2015 and repudiated less than two months later. Against this background claims for a 24 months period for travelling and salary for personnel must be rejected. These are broad claims. They are not particularised and are unsupported by documents or data and records such as one would expect by a contractor in a building contract under which valuations of the work for breach was contemplated. More fundamentally, I am unable on the evidence to find any nexus between these claims for preparatory work and the purpose of contract. In any case the patent lack of particulars and detail fall far short of the degree of proof required for special damage even with allowances for flexibility.

Loss of Profit

59. The Claimant also claimed loss of profit in the full contract price of \$4,360,000.00 or \$1,900,285.25 based on the works performed. There was no valuation of the works performed so that this reference point is meaningless. The Statement of Case claimed loss of profit but specified no basis for the calculation. With a contract of this size one would expect evidence of detailed estimates of quantities, including the actual cost of the contract and indication of the profit margin on his original estimating. There is no evidential basis to support this bald claim.

60. Rajkumar J in **Raghunath Singh v MTS CV 2007-02193** dealt with a claim for loss of profit. He cited this paragraph from Hudson's which provides guidance.

95. In **Hudson's Building and Engineering Contracts, Eleventh Edition, Volume 1** at paragraph 8-172 it is stated:-

"Loss of Profit

Terminated Contracts

In 'total prevention' cases, where a contract has been discontinued as a result of the owner breach, the Robinson v Harman compensatory principle will, in the more usual

*case where work has been partially performed at the time of termination, entitle the contractor to the full contract value of any work done up to that time, less sums previously paid and **possibly also, ... a sum for profit lost on the remaining work ...***

...establishing a claim for loss of profit on uncompleted work following a contractor's rescission or termination may not be practical for a number of reasons, namely:

(1) The contractor must be able to establish that his contract prices for the remaining work would as a fact have been profitable. This will depend primarily on the adequacy of his original estimating and pricing of the cost of the contract, rather than any profit percentage used when pricing ...

(emphasis added)

61. Rajkumar J went on to comment on the lack of evidence to support the claim for loss of profit.

96 There has been no evidence before this Court on the **adequacy of the original estimating** of the Bill of Quantities or the **pricing** under this tender, and furthermore no probative evidence of the adequacy of the pricing of **the cost of the contract** has been given by a person who was directly involved in the pricing exercise. Rather, what has been given in evidence by Mr. Ali is a profit percentage used when pricing. This according to Hudson's does not show that the contract would **as a fact have been profitable** and the extent of such profit. The defendant's counsel's submission to this effect is accepted.

62. In the instant case the Claimant is in a similar position. The comments are equally applicable and I find that there is no cogent evidence to support the claim for loss of profit. Mr. Tannous' witness statement for the first time sought to indicate that the contract price included a profit margin of 25%. I consider this to be a material fact which ought to have been pleaded. Had it been pleaded the State would have been entitled to meet it on the Defence. Further, I am unable to accept that this mark-up is in accordance with industry standard as has been submitted. I have no knowledge or cogent evidence of this and I am unable to take judicial notice of such a claim. The extract from Rajkumar

J's judgment cited above and with which I agree, in any case suggests that evidence of a percentage profit margin without more is not sufficient.

The Individual Claims for Special Damage

The Bettabuilt Claim

63. The bulk of CBST's claim i.e. 66% of it arose out of its alleged liability to Bettabuilt PTY of Queensland Australia. Bettabuilt is Hangar Construction Company. Under the terms of the subcontract it was hired to commence design, engineering and fabrication works on the Hangar in preparation for the export of the structure to Trinidad. CBST relied on two documents to establish the Bettabuilt subcontract an undated "Services and Materials Supply Agreement" executed by Mr. Garry and Mr. Tannous, which appeared to be a very general and standard form contract with no pricing or scope of work detail, as well as a document dated 24th March 2015 headed "Contract and Points" which appeared on two sides of one page.
64. The subcontract is remarkably devoid of detail of the breakdown of costs such as one would expect of this nature and for a substantial sum of USD\$14,695,600.00. Here I note that this observation applies to the original contract as well. Appendix F which is supposed to detail line item pricing falls far short of what one would expect. This raised a general question as to credibility. The appearance of references "Bettabuilt" in "F" even after lines were drawn through them, raised some questions as to true nature of Bettabuilt's involvement.
65. Less than six weeks after the date of the execution of the contract, Bettabuilt as is evident from its first demand letter, was already claiming for works done in the considerable sum of Six million USD. Mr. Tannous produced a letter (GT 12) in which Bettabuilt claimed works had commence since twenty-three weeks, which pre-dates the date of execution of the contract with GORTT. The demand letters from Bettabuilt contained little more than broad statements with no details as to quantities, costs, reference to drawings and

design. There is no evidence of the basis of the calculation of the sum claimed for its works. CBST has not been able to establish any details of how Bettabuilt arrived at what by any standard, is an inordinately huge claim.

66. The document dated March 24, 2015, which a one page document, under the heading Price reflected this:

Offsite:

Site Inspection & Preliminary Design (Pre-Contract)
Design, Consultancy & Management Site inspections
All Materials (Structural Steel & Cladding)
2x Crane Hoists
External Windows
Spry Booth
Mez Floor Steelwork, Stairs & Hand railing
Hangar Internal and External Lights
Genset 350Kva
Shipping and Logistics

Offsite Total: \$12,345,100.00

Onsite (Construction):

Site Establishment
Project Management & Site Supervision & Accommodation
Material Handling & Lifting Equipment
Footings
Construction (Steel work Inc. Tilt Doors)
External Cladding (Roof & Door)
Site Clean-up, De-Mob and Handover

Onsite Total: \$2,330,500.00

Total: USD \$14,695,600.00

67. This is hardly sufficient to establish I daresay under any circumstances, the cost of supplies to the tune of \$14 Million USD. The lack of detail is embarrassing. But in any case the Supply Agreement between CBST and Bettabuilt specifically provided that all products sold through Bettabuilt were to remain the property of Bettabuilt until whichever was later – Delivery of Materials or Payment (see clause 6.1). The effect of such a clause is clear. But if authority is needed to support it the case of **Hanson W. Harrow Ltd v Rapid Civil Engineering Ltd and another 11 Con LR 119** is relied upon. Bettabuilt retained its title to its goods. There was no delivery. In these circumstances, there could be no liability to CBST or to the State. There was no evidence or admissible evidence or loss in the circumstances of the Bettabuilt's retention of title.

Absence of Matthew Garry

68. Earlier on in dealing with the evidence I referred to Mr. Matthew Garry's absence and his reluctance to participate in these proceedings. I have drawn adverse inferences from what I find to be Mr. Garry's deliberate refusal to do so. I consider it highly improbable that a company which is owed \$7,000,000.00 USD and which itself threatened and notified the Claimant of the institution of legal proceedings, would simply not participate because Mr. Garry was not "interested, in discussions" or out of his utter frustration or on a hope that he could still be paid. I reject the explanation that his refusal to sign the witness statement may be explained by pique.
69. I attach no weight to Mr. Garry's demand letters insofar as they have been produced as evidence of the value of works done by Bettabuilt. It falls far short of what would be required to prove the value of works and materials. As a direct consequence of Mr. Garry's refusal to give evidence, CBST was left with hearsay evidence of Bettabuilt's alleged loss. Based on what the documents disclosed quite frankly I do not know that his presence may have made a difference. It is of significance that Bettabuilt has not served Mr. Tannous with legal proceedings. I do not believe it has filed any proceedings against CBST. I do not believe that Bettabuilt would have been able to substantiate a claim against CBST. I find that CBST is under no obligation to pay Mr. Garry any money under the subcontract at all. I do not believe that this is a credible claim. It follows that the State is not liable to CBST insofar as this alleged subcontract is concerned.

Chan General and Associates

70. The Claimant engaged the services of Chan General Contractors to provide certain surveying /engineering services. Mr. Russel Chan, Director gave evidence at the trial. He confirmed his agreement to provide services to the Claimant and his quotation for the job. He detailed the work that was to be done in three phases. He gave evidence, which I accepted, that he commenced the work. I find it significant that he conducted site visits measured and re-measured, redesigned and re-did drawings upon the request of

Government officials. Mr. Chan produced his survey documents. Mr. Tannous produced photographs of Mr. Chan at the site, with himself and persons he identified as Mr. Junior Dell a Government representative. Incidentally Mr. Junior Dell was the person who filed a Witness Statement for the State, but who was not produced. I am satisfied that the claimant engaged Chan General and Associates, and that to date the sum owed is USD \$28,890.00/TT\$195,000.00 and that the Claimant is liable to pay this sum to Mr. Chan. The State received the benefit of Mr. Chan's services and therefore liable to pay CBST's debt in this regard.

Amalgamated Security Services Ltd.

71. Mr. John Aboud, Financial Director, Amalgamated Security Services Limited was approached by the Claimant and quoted for the supply and installation of a fire suppression system in the sum of USD \$248,123.53. Mr Aboud gave evidence as to the steps ASSL took to procure the system. He conferred with several overseas suppliers and identified the best system. When the Claimant confirmed it had signed the contract with Government, Mr. Aboud proceeded to order the system on the expectation that he would be paid when the mobilization fee was paid. Some of the components and equipment of the fire suppression system actually arrived in Trinidad. Because the mobilization fee was not paid, Mr. Aboud was forced to return the part supplied and he incurred expenses of US \$72,000.00 which represented from his supplier's end, a 30% restocking fee. ASSL's paid this fee. Here was cogent evidence of a readiness to deliver to the sub-contractor and in turn to the State, and of the quantum of the loss incurred. On this evidence I find that the ASSL is owed the sum of USD \$72,000.00 by CBST. I note that this falls well short of the sum of USD \$150,000.00 indicated on the Statement of Case.

Knaggs Developers Limited

72. The Claimant claimed reimbursement under a sub-contract with Knaggs Developers Ltd in relation to the supply and installation of:-

- (i) Heating, air conditioning and ventilation systems
- (ii) Electrical works
- (iii) Generator
- (iv) Plumbing Works
- (v) Furniture, fittings and other equipment.

73. KDL supplied a quote in the sum of USD \$2,208,000.00 plus VAT. This is again a substantial claim. It required an advance payment of 20% of the contract price. On the expectation of the payment of CBST's payment on its mobilization, KDL agreed to commence the works. KDL claimed it employed persons to perform the works and to order products and equipment from its external suppliers. When Mr. Knaggs was subsequently informed that the Claimant had not been paid as expected, it had to cancel the orders.

74. Mr. Marcus Knaggs, Managing Director of KDL gave evidence. His M.K.1 included a breakdown of his financial proposal. The basis of KDL's claim is non-payment of the advance payment, but other than a broad statement that it "agreed to immediately engage site personnel to staff the works and that it took steps to procure the equipment and systems", there is nothing to justify its claims.

75. These broad and very bald statements are insufficient to support a claim for under the sub-contract for USD \$2,208,000.00. If it agreed on the expectation of advance to hire staff there is no evidence that staff was hired. There are no particulars of the personnel or staff hired, numbers of persons, skills, and wages. No evidence of contracts of employment was produced. No evidence as to whether any staff entered the site and for what purpose.

76. Further, Mr. Knagg's evidence at its highest was that, KDL "took steps to procure the equipment and systems." These very expensive "steps" were not identified. KDL

established no pecuniary loss or no entitlement to be paid by the Claimant, far less by Government. More importantly, since KDL cancelled the orders, there was no benefit to the State. KDL failed to establish that it incurred loss by reason of the cancellation of the orders.

Determination

77. The Claimant is entitled to compensation to meet its liability to Chan General Associates in the sum of TT\$195,000.00 and to ASSL in the sum of USD \$72,000.00. I am expressing this sum in US dollars because the restocking fee was charged in that currency. The claimant's claims for any sums in excess of these specific ones are refused. There shall be judgment for the claimant in the sum of TT\$195,000.00 plus USD \$72,000.00.

78. On the issue of costs. The Claimant has failed to establish the bulk of its claim. CBST is ordered to pay the costs to the State calculated on the prescribed scale on the balance of the sum claimed and in respect of which it was unsuccessful, that figure is to be reduced by 33 1/3 %.The discount is applied to reflect the court's disapproval of the introduction of the illegality claim after the trial and for the first time at the stage of submissions.

I shall allow the parties seven (7) days to calculate that figure and revert to the court for a final order on costs.

Carol Gobin

Judge