



[2023] JMSC Civ.217

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. 2015HCV04232**

<b>BETWEEN</b>	<b>PAUL PINNOCK</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>ALBERT FREDRICK MOO</b>	<b>DEFENDANT</b>

**IN OPEN COURT**

Mr. David Clarke for the Claimant

Ms. Tamiko Smith instructed by Smith, Afflick, Robinson & Partners for the Defendant

**Breach of Contract – Application for Oral Evidence where an application for relief from sanctions was refused.**

**Heard: June 8 and 21, 2023**

**CARR, J**

**Background**

[1] The matter came before the court for trial following an unsuccessful application from the Defendant for relief from sanctions. The Defendant therefore could not rely on the witness statement which was filed on his behalf. The pleadings of a Claim, Defence, and Counter Claim remained. However, without the benefit of evidence in support of that defence and counter claim, the Defendant's case was essentially non-existent. It is in this context that I was asked to determine whether the Claimant had made out his case for breach of contract and if so, what was the remedy available to him.

## **Introduction**

[2] The Claimant, Paul Pinnock, averred in his particulars of claim that on or about the 6<sup>th</sup> day of February 2014 the Defendant Mr. Albert Moo employed him as a subcontractor on a job at Rubis Energy Jamaica Ltd. Mr. Moo was to receive Twenty-Five Million Dollars (\$25,000,000) for the job and Mr. Pinnock was to be paid thirty percent (30%) of the contract fee. Work commenced in February of 2014 and sometime in April of that year the job was halted. When the work resumed Mr. Pinnock was not asked to return. At that juncture, he had already completed seventy-five percent (75%) of the job with the help of his assistant Mr. Joseph Barnett. He has not been paid for the work done in accordance with the terms of the agreement.

## **The Submissions**

[3] Counsel for the Claimant argued that there was no doubt that he had satisfied the court of the existence of a contract, that he carried out the work and he was not paid for his services. He asked the court to find that the contract was breached, and that the Claimant was entitled to 75% of the \$25,000,000.00 as promised.

[4] Counsel for the Defendant disagreed it was her submission that the Claimant had not established his case as there was no certainty of contract between the parties and the discussion held between the parties alluded only to a pre contractual negotiation and not a contract.

## **Issues**

[5] Whether there is a binding contract between the parties?

[6] Whether the contract was breached, and if so, what is the remedy available to the Claimant?

## Analysis

[7] Even though the claim is undefended the court still has a duty to look at the evidence presented by the Claimant to determine if the case has been made out on a balance of probabilities. In the Australian case of **United Group Resources Pty Ltd v Calabro(No 5)** <sup>1</sup> Mckerracher J held that in circumstances when the court determines to proceed to trial without the appearance of the defendant the court should :

- (a) Investigate the merits of the matter.
- (b) The applicants must prove their case on the balance of probabilities in the usual way.
- (c) The Court should generally restrict the relief to that claimed.
- (d) ...
- (e) The court is entitled to assume the correctness of the facts claimed by the applicants in their submissions, where there is uncontroverted evidence tendered by the applicants in support of those submissions.

Although the Defendant did appear and conducted cross examination of the witnesses there was no evidence in support of his defence or counter claim. The principles as set out in the Australian case although not binding, are useful in determining this matter.

[8] In assessing the merits of the claim that a contract existed, I rely on the case of **Keith Garvey v Ricardo Richards** <sup>2</sup> Harris JA stated:

*“it is a well – settled rule that an agreement is not binding as a contract unless it shows an intention by the parties to create a legal relationship. Generally, three basic rules underpin the formation of a contract, namely,*

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<sup>1</sup> [2011] FCA 1408

<sup>2</sup> [2011] JMCA Civ 16

*an agreement, an intention to enter into the contractual relationship and consideration. For a contract to be valid and enforceable all essential terms governing the relationship of the parties must be incorporated therein. The subject matter must be certain there must be positive evidence that a contractual obligation, born out of an oral or written agreement is in existence.”*

- [9] As posited in the **Keith Garvey** case for a legally binding contract to be formed there must be an agreement, an intention to create legal relations and consideration.
- [10] The evidence as to the existence of an agreement came from Mr. Pinnock and his witness Mr. Joseph Barnett. Both are ad idem as to the circumstances surrounding the agreement. They are consistent in their evidence that this was an oral agreement. Mr. Moo informed Mr. Pinnock that he had a contract with Rubis in the sum of \$25,000.000, and he would be hiring him to complete the work. Mr. Pinnock offered to do the job for a fee of 35% of the contract sum, Mr. Moo countered and indicated that he would pay 30%. Although Mr. Pinnock does not say that he accepted the sum, his evidence is that on February 6, 2014, he commenced working on the project at Rubis. There is nothing to refute this evidence and I am therefore bound to accept it as true since there was no inconsistency between the two witnesses.
- [11] On the face of it therefore, there was an offer and an acceptance in keeping with the basic principles of a contract. The consideration for this work was the sum which ought to have been paid to Mr. Pinnock as promised.
- [12] I now turn to the issue of an intention to create legal relations. The applicable test when considering whether there existed an intention to create legal relations was

outlined by Lord Clarke in the case of **RTS Flexible Systems Ltd v Molkerei Alois Muller GmbH & Co KG UK (Production)**<sup>3</sup> as follows:

*“Whether there is a binding contract between the parties and, if so, upon what terms depends upon what they have agreed. It depends not upon their subjective state of mind, but upon a consideration of what was communicated between them by words or conduct, and whether that leads objectively to a conclusion that they intended to create legal relations and had agreed upon all the terms which they regarded, or the law requires as essential for the formation of legally binding relations. Even if certain terms of economic or other significance to the parties have not been finalized, an objective appraisal of their words and conduct may lead to the conclusion that they did not intend agreement of such terms to be a precondition to a concluded and legally binding agreement.”*

- [13] The presumption is that there is an intention to create legal relations in commercial dealings (See **Edwards v Skyways Ltd**<sup>4</sup>). The evidence is that Mr. Moo hired Mr. Pinnock to complete electrical work, at a fee of 30% of the value of the contract between himself and Rubis. The fact that Mr. Pinnock commenced work is evidence that the parties intended to create legally binding relations.
- [14] The law also requires that there is a degree of certainty of terms. Based on the evidence, which is unchallenged, the parties agreed that Mr. Pinnock would provide labour for Mr. Moo and be compensated in return. The fact that there is no documentary evidence of the contract between Mr. Moo and Rubis is of no moment as the terms of the agreement between Mr. Moo and Mr. Pinnock are certain.
- [15] Mr. Pinnock gave evidence that he was told by Mr. Moo that he had won the bid for the sum of \$25,000,000 and such evidence was corroborated by Mr. Joseph Barnett who was present during their conversation which led to the formation of the contract. There is no evidence to refute this. Mr. Pinnock though not privy to

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<sup>3</sup> 2010 3 All ER 1

<sup>4</sup> [1969] 1 WLR 349

the contract between Mr. Moo and Rubis, may still seek to enforce the contract between himself and Mr. Moo.

**[16]** A failure to perform a term of a contract results in a breach of that contract. In this case Mr. Moo has failed to compensate Mr. Pinnock for the work that he did on the project in accordance with the terms of that agreement. As was highlighted, the terms of the agreement were clear. The court accepts the evidence of both witnesses that Mr. Pinnock completed 75 % of the work and was not compensated for same, on that basis Mr. Moo has breached the contract.

**[17]** Mr. Pinnock sought payment of what he termed outstanding salary in the sum of Five Million Six Hundred and Twenty-Five Thousand Dollars (\$5,625,000). The amount represents 75% of the contract fee and is fair considering that Mr. Pinnock completed only 75% of the work.

**Disposition:**

1. Judgment for the Claimant on the claim.
2. The Claimant is awarded the sum of \$5,625,000.00 for breach of contract.
3. Judgment for the Defendant on the Counter claim.
4. Costs to the Claimant/Defendant to be agreed or taxed.