

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

THE HIGH COURT OF JUSTICE

CLAIM NO.ANUHCV2024/0378

BETWEEN:

VINCENZO ROMEO MEGNA

CLAIMANT

And

FLATPOINT DEVELOPMENT LTD.

DEFENDANT

APPEARANCES:

Mr. Hugh Marshall of counsel for the Claimant

Dr. David Dorsett of counsel for the Defendant

2025: March 19th

May 28th

DECISION

- [1] **DRYSDALE, J.:** This matter concerns a legal claim for damages arising from an alleged breach of an employment contract.

THE PLEADINGS

THE CLAIM

- [2] The Claimant commenced these proceedings on 19th May 2014. In the Statement of Claim, the Claimant identifies himself as an Italian national with experience in managing Construction Development Projects. He alleges that in or about January 2006, the Defendant, a developer of a project known as Emerald Cove, which consists of residences and supporting amenities, engaged him to perform the services of Chief Technical Installation Manager in the Defendant's Residential and Tourist Complex.

- [3] The Claimant asserts that the agreement's material terms encompassed: a salary of £8,000.00 or USD \$12,000.00; a housing allowance of \$3,000.00; living expenses of \$2,000.00; a company car, with petrol and maintenance expenses reimbursed; a mobile phone allowance of \$800.00; reimbursement of the cost of two tickets per year to Italy; and a bonus equal to 6.5% of the value of assets constructed during the Emerald Cove Project.
- [4] The Claimant asserts that the Defendant's breaches of the material terms of the agreement resulted in the following unpaid amounts: \$1,841,400.00 in salary; \$23,161,769.67 in unpaid bonuses; \$51,000.00 in housing expenses; \$34,000.00 in living expenses; \$19,200.00 for petrol reimbursement; and \$20,000.00 for two tickets to Italy for the years 2012 and 2013.

The Defence and Counterclaim

- [5] The Defendant denies that the Claimant was an employee of the Defendant and disputes the existence and validity of the purported contract relied upon by the Claimant. It is further contended by the Defendant that the said purported contract was never executed by Elisa Garmondi, whose name appears thereon, and the Defendant avers that the document is a forgery.
- [6] The Defendant counterclaims, alleging the Claimant's continued possession of a motor vehicle, machinery, equipment, a 40-foot container, and office keys, which have not been returned despite repeated demands. The Defendant additionally contends the Claimant's failure to remove personal property from the Defendant's Emerald Cove premises, despite repeated requests, and seeks an order for their removal, together with payment for all accrued Marina usage fees.

The Defence to Counter Claim

- [7] In his Reply, the Claimant denies that the Defendant's counterclaim discloses a valid cause of action. He further denies holding any property belonging to the Defendant without express authorization, contending that any items in his possession were placed there by the Defendant in his capacity as Director of Construction. The Claimant also denies owing the Defendant any fees.
- [8] Notwithstanding the above the Defendant appears to have abandoned the counterclaim. Given the absence of evidence presented for it, coupled with its overall conduct and submissions at trial, the strategy was clearly to concentrate solely on defending the primary claim. Given that a party must prove what they plead, and with no discernible evidence to support it, this counterclaim lacks validity. As a result, the court will now limit its focus to the original claim and will not consider the counterclaim.

The Issues

[9] Three issues need to be determined. The resolution of the latter two depends on the outcome of the first issue. These issues are as follows

- i. Whether a legally binding contract of employment existed between the Claimant and the Defendant?
- ii. If a contract of employment is found to have existed, was there a breach of the terms of that contract by either party?
- iii. If a breach of contract is established, what is the appropriate measure of damages to be awarded?

Discussion and Disposition

Issue 1 - Whether a legally binding contract of employment existed between the Claimant and the Defendant.

[10] At the heart of this legal action lies the fundamental question of whether a contract of employment existed between the Claimant and the Defendant. The Claimant asserts the existence of such a contract, pursuant to a written memorandum dated 11th January 2011 outlining specific terms in that memorandum which he alleges the Defendant subsequently breached. Conversely, the Defendant emphatically denies the existence of any written employment agreement and further contends that the Claimant was never employed by it in any capacity. Moreover, the Defendant specifically challenges the authenticity of the purported contract and the terms therein presented by the Claimant, asserting that this document purportedly signed by Elisa Garmondi, was a forgery. This dispute over the foundational issue of an employment contract will necessarily determine the trajectory and potential success of the Claimant's broader claims of breach.

[11] The parties agreed to appoint a joint expert. Emily J Will was appointed to provide an impartial opinion on the authenticity of the document and the signatures therein. Following a court order, Ms. Will produced an expert report concluding that the purported signature of Elisa Garmondi was not written by her. This finding remained unchallenged at trial.

[12] At this juncture, it's vital to note that the **Browne v Dunn**¹ rule traditionally mandates cross-examination if a party intends to discredit a witness's testimony, whether that witness is a witness of fact or opinion such an expert. However, the UK Supreme Court, in its recent ruling on **TUI UK Ltd v Griffiths**², reinforced that while expert evidence can be very valuable, the court is the ultimate arbiter of fact. Therefore, even in the absence of a challenge to expert evidence, the court retains

¹ (1893) 6 R 67 HL

² [2023] UKSC 48

the discretion to accept or reject it. A judge is never bound to accept expert testimony but must diligently examine it to decide what weight it warrants.

[13] Additionally the case of **TUI UK Ltd v Griffiths**³, provides important clarification on the when the obligation to cross examine an expert may be relaxed. By way of brief background this case revolved around Mr. Griffiths' claim against TUI for gastric illness he suffered while on an all-inclusive holiday in Turkey. He contended that contaminated food and drink at the hotel caused his sickness, supporting his assertion with an expert microbiologist's report on causation. TUI neither presented its own expert nor cross-examined Mr. Griffiths' expert during the trial, yet later, in its closing arguments, challenged the expert's report as insufficient to establish causation. The Court made it clear that a fair trial is the overriding principle. For this reason, cross-examination is typically required so an expert can properly explain or defend their evidence when challenged. The Court also identified instances where demanding cross-examination would be either disproportionate or just unnecessary. These exceptions which are not rigid rules but guiding principles are:

1. **Collateral or Insignificant Matters:** If the challenge to the disputed aspect of the expert's evidence is insignificant or peripheral to the main issues and fairness to the witness does not demand an opportunity for them to respond or explain, then cross-examination may not be required
2. **Evidence Manifestly Incredible:** Where the expert evidence is so inherently illogical or unbelievable that no amount of explanation in cross-examination could make it credible.
3. **Bare *Ipse Dixit* Reports:** These are expert reports containing merely bold assertions that presents a conclusion or opinion without any supporting reasoning or data.
4. **Obvious Mistake:** If there is a clear and undeniable error or mistake evident on the face of the expert's report, or if the report is inherently inconsistent or illogical.
5. **Contrary Facts:** Where witness evidence of facts is contrary to the basis on which the expert expressed their view.
6. **Sufficient Prior Opportunity to Respond:** If the expert has already been given an adequate opportunity to address criticisms or clarify their report, for instance, through detailed written questions under the Civil Procedure Rules, and has failed to provide satisfactory answers, then further cross-examination on those points might be redundant.
7. **Time Limitations or Disproportionality:** If a judge has set firm time limits for cross-examination, or if extensive questioning would be disproportionate given the case's nature and complexity of the case.

[14] Applying the principles articulated in the **TUI UK Ltd v Griffiths**'s decision to the present case, I find that none of the established exceptions to the requirement for cross-examination apply here. The expert report in question was not a "*bare ipse dixit*" report as it provided detailed and well-reasoned

³ [2023] UKSC 48

analysis to support the conclusion. Furthermore, there were no obvious errors of fact or otherwise evident within the report itself. Crucially, the issue at hand involved an alleged forgery of a written document, and the disputed evidence, along with other supporting documentation, was agreed upon. In the absence of any substantive evidence brought forth to dispute the expert's findings regarding the authenticity of the signature of Elisa Garmondi (the former Director of the Defendant) on the document, I conclude that the letter dated January 10, 2011, upon which the Claimant relies as the written record of his employment and terms with the Defendant, is not authentic and cannot be considered a reliable or accurate representation of any agreement reached between the parties.

[15] It is a well-established principle that a party is bound by their pleaded case. As Hariprashad-Charles J. noted in **Charles v Board of Governors of the H Lavitty Stout College**⁴, echoing **Yorkshire Provident Life Assurance Co. v Gilbert and Rivington**⁵: "It is an elementary rule of pleadings that a party is bound by his pleadings unless he is allowed to amend them, and he is therefore bound by his particulars, which represent part of the pleading under which they are served." Essentially this means that the Claimant must stand or fall by the pleaded case. The primary goal of this rule is to ensure procedural fairness and prevent trial by ambush, guaranteeing that parties are fully aware of the case they face, allowing for proper preparation and avoiding unexpected claims. This principle is further reinforced by Civil Procedure Rule (CPR) 8.7, which expressly states that "the claimant must include in the claim form or in the statement of claim a statement of all the facts on which the claimant relies" and thereby underscores the necessity for the Claimant to lay out the entire factual basis from the outset, in order to ensure transparency and to enable the Defendant to mount a complete defence.

[16] The sole basis pleaded by the Claimant for the existence of the contract is the memorandum of 10th January 2011. The Claimant does not plead that there was an oral agreement or that there was any course of conduct from which a contract might be inferred. Further the Claimant does not plead any alternative formulation of the contract. The pleaded case is wholly dependent on the memorandum which the court finds to be a forged document. Thus, the Claimant's failure to plead any alternative basis for the employment contract, such as one implied by conduct or other written representations, means the Court cannot entertain such arguments or evidence at this stage. This aligns with the case of **Perestrello E. Companhia Limitada v United Paint Co. Ltd.**⁶, where the court highlighted the crucial role of pleadings in preventing surprise, ruling that evidence of loss couldn't be introduced without proper particulars. Therefore, it is not open for the Court to speculate or find for a party on a basis not pleaded. Allowing it would introduce a new cause of action or factual foundation without proper notice to the Defendant, directly undermining the fairness principles central to the Civil Procedure Rules.

⁴ BVIHC2010/0049

⁵ (1895) 2 QB 148, 152 CA

⁶ [1969] 3 All E.R. 47

Disposition

- [17] Accordingly, having failed to establish the existence of a valid contract of employment and there being no alternative basis pleaded upon which such a contract might be founded the resultant effect is that the Claimant's case must fail. As the successful outcome of the entire case hinged on establishing this valid contract, the remaining dependent issues do not require further consideration.

Order

- [18] In light of the above it is hereby declared that:
- i. The Claim is dismissed
 - ii. The Counterclaim is dismissed
 - iii. The Claimant shall pay the Defendant prescribed costs pursuant to CPR 65

Justice Jan Drysdale

High Court Judge

By the Court



Registrar