

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

IN THE HIGH COURT OF JUSTICE

CLAIM NO.: ANUHCv2021/0447

BETWEEN:

CHRISTOPHER K. MARTIN

Claimant

And

DEWS PRO BUILDERS LIMITED

Defendant

Appearances:

Ms. Andrea Smithen-Henry for the Claimant
Mr. Justin L. Simson KC for the Defendant

2024: December 3rd;
2025: February 14th

JUDGMENT

[1] **WILLIAMS, J.:** The claimant- by Claim Form and Statement of Claim filed on 8th December 2021 seeks the following:

- a) Payment of the sum of \$89, 854.98 being the sum due and owing to the Claimant from the Defendant pursuant to an agreement to redeem shares dated 19th February, 2021;
- b) Damages for breach of contract;
- c) Attorney's fixed cost on issue: \$1,500.00;
- d) Court fees: \$100.00;
- e) Process Server fees: \$100.00;
- f) Costs; and
- g) Such further or other relief which this Honourable Court deems just.

- [2] The claimant alleges that he was a shareholder and director of the defendant- Dews Pro Builders Ltd. - a hardware supplier. By agreement dated 19th February 2021, the claimant agreed that he would redeem the share capital he held in the defendant company for the sum of EC\$4,272,272.50.
- [3] The crux of the claimant's case is at paragraph 4 of the Statement of Claim as follows:
"Pursuant to the Agreement and the said resolution, the Shares have been so redeemed but in breach of the same, the Defendant Company has only paid the sum of \$4,182,417.52 instead of the agreed sum of \$4,272,272.50. As such, the Defendant owes the Claimant \$89,854.98."
- [4] The claimant therefore claims the sum of \$89,854.98 owed pursuant to the agreement.

Defence

- [5] The defendant by Defence filed on 4th January 2022 states that at all material times, the defendant was employed as its Chief Executive Officer earning a monthly salary of \$24,793.95 of which \$22,500.00 was paid to his bank account via standing order. The defendant alleges that pursuant to said agreement of 19th February 2021 the claimant tendered his resignation from the defendant effective 18th February 2021.
- [6] The crux of the defendant's case is at paragraph 4 of the Defence which states as follows:
"The Claimant received his full salary for the month of February 2021, and thereafter the salary amount paid via standing order, which erroneously had not been revoked up to June 21, 2021, amounting to \$89,854.98. Attached and marked "DPB2" are the calculations of payment made to the Claimant in respect of his share redemption final tranche payment taking into consideration the erroneous salary payments that he received."
- [7] The defendant also seeks a counterclaim and set off as follows:

“10. The Claimant is indebted to the Defendant in the sum of \$89,854.98 in respect of the erroneous salary payments received from the Defendant to his use for the period February 19, 2021 to June 21 2021 which sum has not been returned or repaid.

11. The Defendant claims the said sum of \$89,854.98 as monies rightly belonging to the Defendant and erroneously received and kept by the Claimant with interest thereon from 22 June 2021 and costs.

12. In the alternative the Defendant is entitled to set off the sum of \$89,845.98 against the Claimant’s claim and costs.”

Reply and Defence to Counterclaim

[8] The claimant filed a Reply and Defence to Counterclaim on 26th January 2022. The crucial paragraph of that document (in my view) is paragraph 11 which reads as follows:

“11. Paragraphs 10 and 11 of the Counterclaim are denied. The Claimant specifically repeats paragraph 3 of the Reply in that he remained engaged by the Defendant for the period February, 2021 to June, 2021 and was therefore entitled to be paid for his services to the Defendant for this period. The Claimant puts the Defendant to strict proof that the said salary payments were made by the Defendant in error. In any event, the Claimant states that the allegation as to erroneous salary payments is entirely irrelevant to the proceedings herein which pertain to payment for redemption of Shares.”

Trial

[9] Trial of this matter took place on 4th December 2024 with the claimant and Mr. Christopher Williams who is a Director and present Chief Executive Officer of the defendant giving evidence and being cross-examined. The parties filed written closing submissions on 11th December 2024.

Evidence

The Claimant

[10] The claimant gave evidence by witness statement filed on 15th December 2022 which stood as his evidence-in-chief. In his statement, he recounts that in January 2011 he went into business with Mr. Christopher Williams, Mr. Joseph Williams and Ms. Alison Williams and together they incorporated the defendant. In addition to being a director and shareholder, the claimant was also employed as the Chief Executive Officer (CEO) of the defendant. According to him, his roles and responsibilities as CEO included generating profits via supplier relationships, inventory management, placing all orders, pricing, marketing, creating office procedures, selecting accounting and computer software, fostering and preserving customer relationships and dealing with banking relationships and staffing.

[11] According to the claimant, after a series of negotiations which took place between himself, Christopher Williams and Joseph Williams between 2018 and 2021 it was agreed that he would depart the defendant company as director, shareholder and employee. This would be on the following terms:

(a) "The entering into of an Agreement for the Sale/purchase of Redeemable Shares dated 19th February 2019 pursuant to which the Company agreed to redeem 2,500 redeemable shares "the Shares" which I held in the share Capital of the Company for the sum of EC\$4,272,272.50.

(b) I tendered my resignation as a director and employee of the company by letter dated 18th February, 2021."¹

[12] At paragraph 6 of his witness statement, he states that pursuant to clause 7 of the agreement he was to receive the sum of EC\$4,272,272.50 on 19th February 2021 or at a later date to be agreed between the parties. However, the payment was not made in full on 19th February 2021 as the other directors informed him that the

¹ claimant's witness statement paragraph 6

company had not yet obtained banking financing to cover the full amount for redemption of the shares.

[13] Thus, the claimant states; "I therefore received payment in tranches. As a result, I agreed with the company that the final tranche payment for shares could be deferred until the loan facility was disbursed and in the interim, it was agreed that I would continue to work for the company to assist in the handing over of matters given my detailed knowledge and involvement in the Company's affairs as Chief Executive Officer to include the Company's client portfolio and customer and supplier databases, for which I would be remunerated my regular salary.²

[14] The claimant therefore states that notwithstanding his resignation letter, his resignation as director and employee did not take effect on 18th February 2021. He continued in these roles and remained a signatory on the company's accounts until June 2021. He states that during this period he asserts that he was heavily involved in approving payments to be made on behalf of the company, authorizing bank transfers, cheques, supplier payments, staff salaries, wages and executive salaries and monitoring credit card transactions and limits. He also remained the primary point of contact with the company's bank.

[15] He states that he was a member of the Management WhatsApp group by which means he stayed in contact with the other directors namely Mr. Christopher Williams and Mr. Joseph Williams. By this means they discussed management issues including financial matters, approval of payments and matters involving clients. The claimant remained in this WhatsApp group until June 2021.

[16] On 10th June 2021, the claimant received an email from Mr. Christopher Williams which he reproduces in full at paragraph 12 of his witness statement as follows:

"Good morning Mr. Martin, attached please find the Certificate of Good Standing, the original of which was delivered to the Bank on Tuesday June 8th 2021.

² claimant's witness statement-paragraph 8

“As mentioned previously, this item was the last outstanding document requested by the Bank, for which the delay was in no way our fault.

In delivering the certificate we have completely satisfied all of the Conditions Precedent for the loan, and I've been assured that they are currently working on disbursing funds in a very short order.

As is customary and prudent in these matters, we have updated access privileges to all the Company's platforms in order to ensure a seamless transition.

Let me take this opportunity to thank you for your contribution over the years to Dews Pro Builders Limited, and I sincerely wish you every success in your future endeavours.”

[17] On or about 21st June 2021, the claimant received the final tranche payment of EC\$2,182,417.52 which he says brought the total received to EC\$4,182,417.52 instead of the full EC\$4,272,272.50 as per clause 5 of the agreement. The claimant states that he tried to contact Mr. Christopher Williams for an explanation but to no avail.

[18] In summary, Mr. Martin denies that he owes the company (the defendant) any money as alleged in the counterclaim. He simply states that he should be compensated for the significant work which he carried out for the company. At paragraph 17 of his witness statement he asks; “Why would I a prudent businessman, continue to do all the work for the Company (as outlined above) without compensation for the same and certainly without agreeing to be remunerated before carrying out the work? Why also, would I have simply accepted delayed payment for the shares without more?”

[19] In cross-examination, Mr. Martin admitted that there had been no discussions between him and the other directors with respect to him staying with the company after his resignation on 18th February 2021. He also admits that he did not perform all the functions of the job description of the CEO during the period 18th February to 21st June 2021. He also admitted that he did not receive his full salary of \$24,793.95 for the period.

[20] In re-examination the claimant clarified that the sum of \$22,500.00 was paid to his bank account via standing order monthly. The balance of \$2,293.95 monthly was left with the company so that it could draw upon should cash flow become restricted.

Defendant's Evidence

Christopher Williams

[21] Mr. Christopher Williams is at present the Chief Executive Officer and a director of the defendant. He admits that Mr. Martin was the Chief Executive Officer of the defendant and also a director and shareholder. After lengthy discussions, it was agreed that Mr. Martin's shares would be sold to the defendant and that he would resign from his employee position.

[22] He outlines that the claimant held 2,500 common shares in the defendant which were converted into redeemable stock by resolution of the shareholders at a meeting held on 12th February 2021. He outlines the agreement between the defendant and the claimant as follows:

- (a) The consideration payable for the shares would be EC\$4,272,272.50;
and
- (b) As conditions precedent, the purchase price shall be paid subject to the resignations of the Seller as Director of the Company; a letter of resignation from employment with the Company, return of the motor vehicle and all keys to all property of the Company; and a release from any liability arising from the employment relationship.

[23] According to Mr. Williams the payment of the purchase price to Mr. Martin necessitated a loan from the Company's bankers and this became a protracted process which was not finalized until 21st June 2021 when the sum of EC2,182,417.52 was paid to Mr. Martin's Attorney-at-Law.

- [24] Mr. Williams admits that the claimant's salary when employed was \$24,793.95 of which the sum of \$22,500.00 was paid to him via a standing order with the defendant's bank. The balance of \$2,293.95 was paid as a credit to the claimant's Shareholder draw account.
- [25] Mr. Williams continues, following his 18th February 2021 he states that the claimant was only due a pro rata salary EC\$15,938.97 or 64.29% of his monthly salary. However, the standing order of \$22,500.00 remained in effect until 21st June 2021. On 21st June 2021 Mr. Martin received the final tranche of payment for his shares. Thus, the full amount of \$89,854.98 which is the sum that the claimant received from 19th February, 2021 to 21st June 2021 was deducted from the final payment.
- [26] Mr. Williams further outlines that during the period 19th February to 21st June 2021, the claimant never visited the defendant's premises. He states that the claimant did not perform any of his previous employment duties nor were any requested of him. The claimant did however approve wire transfers, countersigned local payments and remained a signatory to the defendant's bank account. Mr. Williams states that this was at Mr. Martin's insistence in order for him to maintain oversight over the company's funds to ensure that there were sufficient funds available for his payout as opposed to providing services to the defendant. Finally, he explains that the standing order was not stopped on the basis of compassion in respect of the period when payment for Mr. Martin's shares was delayed due to the bank's internal process.
- [27] Under cross-examination Mr. Williams admitted that between 19th February and 21st June 2021 the defendant took no steps to have the claimant removed as a signatory to the company's bank accounts. Further, his email and access to online banking was not terminated until 21st June 2021. In terms of Mr. Martin's non-attendance at the company premises during this period, he admits that he was aware that the claimant was abroad caring for his father who was ill. Finally, he admitted that Mr. Martin remained in contact with customers during this period.

However, he clarified that the claimant would refer these customers to him in order for their orders to be processed.

Issue

- [28] The defendant has not alleged that the agreement of 19th February 2021 is not binding on the parties. Therefore, the issue for determination is whether the defendant can set off the sum of EC\$89,854.98 from the sum of EC\$4,272,272.50 owed to the claimant pursuant to the agreement between the parties dated 19th February 2021?

Discussion

- [29] There is no dispute as to the terms of the agreement between the claimant and the defendant. Clause 7 (i) of the agreement provides as follows:

“Completion of the sale and purchase of the Shares shall take place at the offices of the Buyer’s Attorneys at 10 am on Friday 19th February 2021 (or at such later date as may be agreed between the Seller and the Buyer) when and where the matters referred to in Clauses 5.1 to 5.2 shall be carried out.

- [30] It is clear from Clause 7(i) of the agreement quoted above that it was envisaged by the parties that payment would have been made to the claimant in full on 19th February 2021. However, as both witnesses have outlined, the defendant was not in position to immediately pay the entire sum and required loan financing to make the payment.

- [31] There is also no dispute that the claimant was paid the sum of EC\$89,854.98 during the period 19th February to 21st June 2021. Mr. Williams on behalf of the defendant admits that the said sum was deducted from the final tranche of the payment for the claimant’s shares. The defendant’s pleaded case is that it was entitled to do so.

- [32] In closing submissions counsel for the defendant pointed out that there was no discussion between the parties as to whether the claimant would remain employed

with the defendant after 19th February 2021. The defendant relies on the following passage of **Halsbury's Laws of England**³ as follows:

“To constitute a valid contract (1) there must be two or more separate definite parties to the contract; (2) those parties must be in agreement, that is there must be consensus ad idem; (3) those parties must intend to create legal relations in the sense that the promises of each side are to be enforceable simply because they are contractual promises; (4) the promises of each party must be supported by consideration or by some other factor which the law considers sufficient...”⁴

[33] Counsel for the claimant submits that a contract between the parties could be implied from their conduct. In this regard the claimant relies on the Court of Appeal decision in **Mariette Washington v. Dominica Broadcasting Corporation**.⁵ In that case, the Appellant the manager of the Respondent Corporation had remained in office for 16 months after her contract of employment had expired. Although the Appellant's appeal was ultimately dismissed, the court gave the following guidance as to when an implied contract exists:

“A court will imply a contract based on the conduct of the parties where the implication of a mutual agreement is a reasonable deduction from all the circumstances and relation of the parties. A court does not merely assume that a contract exists, it must consider all of the surrounding circumstances to determine whether or not the contract can be properly implied. Generally, a court may imply a contract where the parties enter into a fixed term contract and at the expiration of the contract they continue to act as though the contract was still binding. In such a case, the onus of proof would be on the party asserting that there is an implied contract.”

[34] In this the case it is obvious that despite his resignation Mr. Martin continued to provide services to the defendant. As both parties agreed, he continued to be a

³ Halsbury's Laws of England (4th Ed.) Vol. 9 at paragraph 203

⁴ DOMHCVAP2013/0007 (decided 15th September 2015) unreported

⁵ Act No. 5 of 2009

signatory to the defendant's accounts, approved payments to suppliers and liaised with customers. At no point during this period did the directors of the defendant seek to restrict Mr. Martin in the performance of these duties. There is also no evidence that during this period they informed other employees or customers that Mr. Martin was no longer authorized to transact business on the company's behalf.

[35] It was mentioned earlier that the claimant remained part of the Management WhatsApp Group between February and June 2021. A transcript of these instant messages was tendered into evidence by the claimant. Although this evidence was not admitted strictly in compliance with **section 43 of the Evidence (Special Provisions) Act** no objection was taken on this ground.

[36] In this chat on 25th May 2021 at 10:37 a.m., the claimant requests authorization for payment of his salary. Evidently this was not actioned because at 11:54 a.m. he messaged "Reminder." At 8:54 a.m. on the following day he messaged "Another Reminder." It is clear on the evidence that the claimant received this payment as it does not form part of his claim. What is noteworthy however, is that none of the directors sought to correct the claimant and inform him that the payments he was receiving were not salary but rather payments towards the purchase price of his shares.

[37] The final messages in the group are also instructive. It is undisputed that the claimant received the sum of EC\$4,182,417.52 on or about 21st June 2021. On 23rd June 2021 Mr. Christopher sent the following message which is evidently directed at the claimant; "Regarding the two missed calls. If your enquiries are related to the agreement kindly conduct all communications via your Lawyer." This is consistent with the claimant's evidence that he sought an explanation as to the shortfall in payment but none was provided.

Conclusion

[38] I therefore find as a fact that the defendant never informed the claimant that any payments he received between 19th February and 21st June 2021 would be considered payments towards the purchase price of his shares rather than salary. Having failed to do so, the defendant cannot unilaterally determine that these payments were to be deducted from the final settlement in circumstances where the claimant actually provided services to the company during the relevant period.

[39] Further, having apparently authorized these payments, the defendant cannot state that these were made by mistake as pleaded in the Defence. The defendant's counterclaim must therefore fail. Accordingly, the defendant has breached the agreement dated 19th February 2021 with the claimant. The claimant is therefore entitled to damages as claimed.

Order

[40] It is hereby ordered as follows:

1. Judgment is entered for the claimant in the sum of \$89,854.98.
2. The defendant's counterclaim is dismissed.
3. Interest to the claimant at the rate of 3% per annum from 21st June 2021 until judgment and at the statutory rate of 5% per annum from the date of this judgment until payment.
4. Prescribed costs to the claimant pursuant to CPR Rule 65.5.

Rene Williams
High Court Judge

By The Court



Registrar