

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2023/0412 (formerly GDAHCV2020/0314)

BETWEEN:

ATLANTIC PARTNERSHIP ARCHITECTS INC.

Claimant

and

RICHARD NIXON

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Ms. Hazel Hopkin for the Claimant

Ms. Carah St. Paul for the Defendant

2023: October 24; 30
2024: January 11

JUDGMENT

- [1] **ACTIE, J.:** This dispute is mainly about the determination of liability for alleged monies due and owing to the claimant for professional fees under an oral contract for the rendering of architectural services, and for damages for conversion of electronic architectural drawings.

Brief Facts

- [2] The claimant is a company engaged in the provision of architectural services to the public. It is the claimant's case that sometime prior to 2015, the defendant approached Erik Johnson, a director of the claimant, with a request for the

provision of architectural services for an apartment building in True Blue, St. George.

- [3] The claimant agreed orally to perform the requested services, and states that it was understood that the defendant would pay for the services upon the presentation of invoices for such services, rendered at a rate of 4% of the estimated build cost of \$7,000,000.00.
- [4] The claimant issued A “Fee Appraisal 1” dated 30th March 2015 in the amount of \$32,200.00. The defendant made a part payment in the sum of \$5,000.00, leaving a balance of \$27,200.00.
- [5] The claimant asserts that the work continued until approximately September 2017, and that “Fee Appraisal 3” dated 31st January 2018 was thereafter submitted to the defendant. The total amount due under this invoice was \$147,200.00, including the previous balance under “Fee Appraisal 1” amounting to \$27,200.00. By that date, the claimant avers that the defendant had paid a total of \$12,000.00.
- [6] No further fees were paid, and on 6th September 2018, the claimant wrote to the defendant through its attorneys demanding the payment of the balance of \$147,200.00 on “Fee Appraisal 3”. The defendant’s attorneys responded alleging that the total sum agreed for services rendered was \$32,200.00, and paid the sum of \$20,200.00. The claimant now claims the balance on “Fee Appraisal 3”.
- [7] The claimant further contends that the defendant, without its knowledge or consent, converted or caused to be converted to his own use and benefit, architectural designs, plans and drawings of the claimant for the construction of the defendant’s building.

Defendant’s case

- [8] The defendant’s case is that he requested that the claimant design conceptual plans for phases up to at least preliminary planning approval, and that he verbally agreed with Mr. Erik Johnson of the claimant for the preparation of conceptual plans at a cost of \$32,200.00.

- [9] The defendant contends that he paid the total payment of \$32,200.00 and is not indebted to the claimant any further sum of money. The defendant further denies that any cause of action is made out for conversion on the part of the claimant as alleged.

Issues

- [10] At the trial, the parties conceded that they entered into an oral contract for the claimant's services through one of its directors, Erik Johnson. The claimant issued "Fee Appraisal 1" dated 31st March 2015 which expressly stated the value of the project and percentage payable for the claimant's services under the contract. The defendant admitted having paid the claimant in accordance with the terms of "Fee Appraisal 1" and accepted that the claimant provided services post the Fee Appraisal Invoice.
- [11] The issues which remain to be determined are with respect to the terms of the oral contract, being whether the contract provided for payment of the defendant to the claimant of the sum of \$140,000.00, exclusive of value added tax, and further whether the defendant converted the claimant's architectural drawings.

Legal Analysis

Whether the contract provided for payment of the claimant's fee in the sum of \$140,000.00

- [12] The parties dispute the quantum of remuneration agreed for the claimant's architectural services. The claimant's pleaded case is that the agreed price was 4% of the estimated build cost of \$7,000,000.00XCD, being \$140,000.00 value added tax exclusive, as indicated in "Fee Appraisal 3" issued to the defendant on 31st January 2018.
- [13] The defendant on the other hand avers that the oral arrangement between the parties was for the provision of conceptual drawings for the purposes of submission to the Physical Planning Authority for planning permission, and that "Fee Appraisal 1" issued by the claimant covered all work that was done for the

conceptual plans. The defendant asserts that there is no consideration moving from the defendant to the claimant with respect to “Fee Appraisal 3”.

- [14] It was borne out in the trial that the claimant was to prepare architectural designs sufficient for a planning submission. The defendant admitted under cross examination that the first set of drawings by the claimant were rejected by him, and that they were never submitted for planning approval. It is also the evidence that the claimant thereafter continued work on a new set of designs.
- [15] The claimant’s evidence is that the process of producing the detailed plans took place over a period of time. It commenced with the defendant’s approach to the said Erik Johnson on the prospect of providing architectural services, to the preparation of initial designs, to the drawing of a second design of a more intense development, to several changes/alterations being made on the instruction of the defendant, to the completion of all drawings and designs.
- [16] It is this set of designs which the claimant delivered to Bob Xu at the request of the defendant, for the application for planning permission. During the trial, Bob Xu was shown drawings prepared by the claimant, and that which was submitted for planning approval, notably the roof design for the building, the design for floor level 3 as well as the three dimensional representation of the building. Bob Xu indicated in evidence that there were minimal to no differences.
- [17] This evidence is corroborated by expert evidence of Marjorie Johanna Tamar which report was filed on 4th February 2022 and accepted by the parties. The expert having compared the two sets of drawings concluded that:

“The similarities between the APA and PITS drawings are striking. A review of the major building components reveal the following:

- a. footprint of the building is nearly identical.
- b. apartment layout, mix and distribution per floor are nearly identical.
- c. material palette and its location are identical – cut stone cladding, profiled metal sheeting as roofing and wall cladding, metal handrails a steel cable railing.

None of the above changes were necessary to correct errors or omissions. All of them are typical of brief development.”

[18] The expert evidence of Marjorie Johanna Tamar further states that the architectural drawings and designs prepared by the claimant were ‘essentially sufficient for the architectural element of a Planning Application’.

[19] The court is fortified of the claimant’s provision of service beyond that of the conceptual plans in the similarities indicated above, as well as in the evidence of the receipt issued to the defendant by Quingdao Fuhaiyang Construction Group Ltd. In both receipts issued to the defendant by Quingdao Fuhaiyang Construction Group Ltd, it is stated that the work done was a “civil design review”. Further, there are multiple emails before the court for the period of March 2016 to September 2017 between the claimant’s Erik Johnson and the defendant. These emails show the continued involvement of Erik Johnson in the claimant’s project, right up to the finalising of plans for construction.

[20] In **Smith v Hughes**¹ Blackburn J. noted that:

“If whatever a man’s real intention may be, he so conducts himself that a reasonable man would believe that he is assenting to the terms proposed by the other party, and that other party upon that belief enters into the contract with him, the man thus conducting himself would be equally bound as if he had intended to agree to the party’s terms...”

[21] Moreover in **RTS Flexible System Ltd v Molkerei Alois Muller GmbH & Co (UK Production)**² Lord Clarke stated that:

“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 terms which they regarded, or the law requires essential for the formation of a legally binding relation.”

[22] The court is of the view that the defendant by his conduct in paying the amount detailed in the “Fee Appraisal 1” accepted the terms with respect to the valuation of the building scheme and the percentage payable to the claimant for its services

¹ (1871) LR 6 QB 597

² [2010] UKSC 14

under the oral contract, which, depending on the stage, could amount to 4% of the estimated building cost. At Stage A, this percentage was 10% of the 4% fee, and at planning permission, this percentage was 50% of the 4% fee.

[23] There is also nothing to support the defendant's position that the claimant had agreed a fixed fee of \$28,000.00 exclusive of value added tax for its services. This is especially so when "Fee Appraisal 1" is described as "design drawings, Stage A", and "Fee Appraisal 3" contemplates "professional services in connection with a scheme design" and references planning permission.

[24] The headnote of **Reville Independent LLC v Anotech Internaitonal (UK) Ltd**³ connotes that:

"It was well accepted that acceptance could be by conduct of the offeree, and it could be of an offer which was only in draft terms (*Brogden v Metropolitan Rly Co* (1877) 2 App Cas 666)."

[25] Certainly at the point of issuance of "Fee Appraisal 1" the defendant was aware of the 4% fee of the claimant, and by his conduct in further engaging its services, knew that a greater percentage of the fee would have been due for the more involved services which would have been required for planning approval.

[26] There is no evidence of the defendant challenging the fees up to the point of the claimant submitting "Fee Appraisal 3", and the defendant's denial of fees through his Attorney's letter of 7th December 2018. Instead, it is the evidence that when demand was made of the defendant by Erik Johnson for payment of "Fee Appraisal 3", the defendant, between the period 25th March 2018 to 24th October 2018, made representations to meet with Erik Johnson on that invoice.

[27] The court therefore finds that the conduct of the parties and the payment of the Fee Appraisal No 1 invoice by the defendant indicates a clear intention that the parties were to be bound by the terms. Accordingly, the court accepts that the

³ [2016] EWCA Civ 443

claimant has proved its claim and the fees due and owing to the claimant were in the amount of \$140,000.00, exclusive of value added tax.

Whether the Defendant converted and used the drawings prepared by the claimant in the construction of the building

[28] The claimant pleads that the defendant, without the knowledge or consent of the claimant, converted or caused to be converted to his own use and benefit, the said architectural designs, plans and drawings of the claimant for the construction of the said building.

[29] Conversion is a tort in which the person entitled to the possession of a chattel is permanently deprived of that possession and the chattel is converted to the use of someone else⁴. In **Rattansingh v The Attorney General of Trinidad and Tobago and Doopan**⁵, which was upheld by the Judicial Committee of the Privy Council⁶, Warner JA, opined as follows:

“To constitute conversion, there must be a positive wrongful dealing with the goods in a manner inconsistent with the owner’s rights and an intention in so doing to deny the owner’s rights or to assert a right inconsistent with them. The gist of the action is inconsistency. There need not be any intention to challenge the true owner’s rights. A demand and refusal is sufficient evidence of conversion.”

[30] Moreover in **Clerk & Lindsell on Torts**⁷ it is stated that:

“Anyone who, without authority, receives or takes possession of another’s goods with the intention of asserting some right or dominion over them, or deals with them in a manner inconsistent with the right of the true owner is prima facie guilty of conversion; provided there is an intention on the part of the person so dealing with them to negative the right of the true owner or to assert a right inconsistent therewith.”

[31] Counsel for the defendant argues that the claimant has failed to establish that it holds a property right in respect of a chattel. She argues that a chattel is

⁴ Clerk and Lindsell on Torts 16th ed., page 1222 at para 22-05

⁵ Civ. App. No. 105 of 2000

⁶ [2004] UKPC 15

⁷ 19th ed., page 1008 para 17-09

something that has physical existence, in the sense that it can be touched and is not immovable, and that the architectural drawings which were generated electronically are still accessible and in the possession of the Claimant. Counsel for the defendant relies on **Halsbury's Laws of England**⁸ and **Clerk and Lindsell on Torts**⁹.

[32] In **Halsbury's Laws of England**¹⁰, the authors state the following:

"In order to sue in conversion, the claimant must establish that he holds a property right in respect of a chattel. Conversion therefore affords protection to property rights relating to chattels. A chattel is something which has a physical existence, in the sense that it can be touched, and is not immovable..."

[33] Choses in action are described in **Halsbury's Laws of England**¹¹, the authors state the following:

"The expression 'chose in action' or 'thing in action' in the literal sense means a thing recoverable by action, as contrasted with a chose in possession, which is a thing of which a person may have physical possession. The meaning of the expression 'chose in action' or 'thing in action' has expanded over time, and is now used to describe all personal rights of property which can only be claimed or enforced by action, and not by taking physical possession"

[34] In footnote (2) to that paragraph, **Halsbury's Laws** goes on to state:

"[it is] impossible to give an accurate and complete definition of what it means and may include at the present day. The various kinds of property included under the term have little in common beyond the characteristic fact of their not being subjects of actual physical possession."

[35] A chose in action is capable of being the subject matter of theft, but not, as indicated above, of conversion¹². **Halsbury's Laws** goes on to identify certain

⁸ (5th ed., 2021) vol. 97A, para. 6 2 (iii)(a)

⁹ 16th edition page 1242 at para 22-35

¹⁰ (5th ed., 2021) vol. 97A, para. 6 2 (iii)(a)

¹¹ (5th ed., 2021) vol. 13, para 1

¹² *Armstrong DLW GmbH v Winnington Networks Ltd* [2012] Bus LR 1199

classes of choses in action, including debts, rights under a contract, rights or causes of action, shares, intellectual property, equitable rights and leases¹³.

[36] The claimant in submissions did not pursue the issue of conversion or establish that its electronic drawings are a chattel capable of conversion, in light of the argument made of defendant counsel. Accordingly, the claim for conversion not pursued by the claimant is dismissed .

Conclusion

[37] For these reasons, the claimant succeeds on its claim for the payment of monies due and owing for professional fees provided to the defendant.

[38] It is therefore ordered and declared as follows:

(1) Judgment is entered in favour of the claimant against the defendant.

(2) The defendant shall pay the claimant the sum of \$115,000.00 being the balance of \$147,200.00 less the payment of \$32,200.00 with interest at the rate of 3% per annum from the date of filing the claim until judgment and at the rate of 6% per annum from the date of judgment until payment in full.

(3) Prescribed costs to be paid to the defendant by the claimant pursuant to CPR 65.5(2)(b) within thirty (30) days of the date of this order.

Agnes Actie
High Court Judge

By the Court

Registrar

¹³ Vol 13 (2021) para 4