

EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

COMMERCIAL DIVISION

CLAIM NO. SLUHCM2022/0015

BETWEEN:

RUFUS MCLEAN
Trading as Rufus Equipment Rental

Claimant

And

NIPAT GENERAL CONTRACTORS LTD.

Defendant

Before:

The Hon. Mde. Justice Cadie St Rose-Albertini

High Court Judge

Appearances:

Mr Kenroy Justin for the Claimant
Ms Tianah Foster for the Defendant

2023: March 27; 28.

JUDGMENT

- [1] **ST ROSE-ALBERTINI, J. [Ag]:** Rufus McLean ("Rufus" or "the claimant"), engages in the rental of construction equipment to contractors undertaking large projects on the island. He operates his business under the trade name Rufus Equipment Rental. He claims that Nipat General Contractors Ltd. ("Nipat" or "the defendant"), a company incorporated in Trinidad

and Tobago and registered as a Member State Company in Saint Lucia, is indebted to him for the sum of \$598,835.26, for equipment rental services rendered through his business operations. Despite his repeated requests for payment, the defendant has failed to settle the debt.

- [2] The defendant denies being indebted to the claimant and asserts that the contracted services were to be provided in accordance with an agreed method of issuing purchase orders beforehand, which would form the basis for initiating the claimant's services, as and when required. The defendant further says that the claimant has been paid in full for the services provided, where that method was followed, and is not liable for any sums incurred for services provided outside of the agreed method of issuing purchase orders in advance.

The Issue

- [3] The sole issue to be determined is whether the defendant is indebted to the claimant for the sums claimed, for rental of construction equipment and incidental services, provided by the claimant.

The Pleadings

- [4] In claimant asserts that in 2020, the defendant was contracted by a third party to undertake certain works on a project in Saint Lucia, which commenced in that same year. In March 2021, the defendant subcontracted his services for rental and provision of construction equipment, in order to fulfil its duties on the project. By oral agreement, the parties established a course of dealings for provision of equipment on demand, at pre-agreed rates. The claimant commenced providing these services to the defendant from March 2021, through to October 2021. To date several invoices issued in relation to the services provided remain unpaid, even after several requests to the defendant to settle the outstanding sums.
- [5] The defendant avers that all equipment was to be rented through an agreed method of requesting such services using purchase orders, and all payments in relation to issued purchase orders have been settled. The agreed method of initiated the claimant's services

was always emphasized, and the claimant was aware that a purchase order had to be issued by the defendant, prior to any equipment being dispatched. Furthermore, each purchase order would specify the number of days for which the equipment was required, and would be signed by Nigel Vincent ("Nigel") as director of the defendant. The claimant was also informed that invoices presented for services rendered, without the supporting purchase order, would not be honoured. The defendant annexed to its defence an email dated 7th June 2021 ("NGC1"), addressed to the claimant, which stressed the need for a purchase order to initiate the required service. The defendant further asserts that in a reply email dated 8th June 2021, the claimant accepted that position. On that basis, the defendant says it is not responsible for payment of invoices, for which no purchase order was issued, and the claimant was warned and put on notice of this in the said email. The defendant denies that there was any other course of dealings, apart from the agreed method of issuing purchase orders, for the services required, and puts the claimant to proof of the debt.

- [6] In reply, the claimant accepted that the defendant instructed by way of email that only requests made via purchase orders should be acknowledged and fulfilled. However provision of the services commenced in March 2021, and the instructions in relation to purchase orders was issued several months later in June 2021. In any event, there are several authorized purchase orders for which services were provided, which remain unpaid, and for which the claimant has no record of payment. Further, for operational efficiency on the project, a course of dealings was established where the defendant's agents requested equipment on demand without purchase orders, with the only evidence being signed receipts, copies of which were kept by the claimant. In several instances the defendant undertook, and was responsible for generating purchase orders retroactively, for services provided on demand. The defendant failed to do so, despite having requested and utilized the claimant's services.¹ Thus, the claimant maintains that the defendant has breach the contract and remains indebted for the sums claimed for equipment rental services, as detailed in the accounts receivable statement annexed to the statement of claim as RM1.

¹ See paragraphs 2 - 7 of the Claimant's Reply to Defence.

Trial

- [7] On the first day of a two-day trial the defendant was absent at the commencement of the proceedings, and had not filed any witness statements. No skeleton arguments had been filed on behalf of the defendant, as ordered.
- [8] Counsel for the defendant, Ms Tianah Foster, addressed the Court stating that she was no longer instructed in the matter and wished to be removed from the record. She requested a short period to file and serve the requisite application for removal. She stated further that she has been unable to contact or locate the defendant despite best efforts. Counsel for the claimant Mr Kenroy Justin opposed the request, and urged that the matter proceed to trial as scheduled, as the claimant had taken all the steps ordered, and was ready to proceed.
- [9] Having ruled that in all the circumstances the request should be disallowed, and the matter proceed to trial, Ms Foster requested a short recess to take instructions for cross examination of the claimant's witnesses, and to make a final effort to contact the defendant. Upon resuming, the defendant's director Nigel joined the proceedings, and the trial proceeded.

The Evidence

- [10] The claimant's witnesses were Desiray McLean ("Desiray"), Malone Raymond ("Malone") and himself.
- [11] Rufus stated that he is a businessman involved in the rental of plant (heavy equipment) in the construction industry, from 1989, and operates his business under the stated trade name. Following negotiations with the defendant he entered into an oral contract to provide equipment rental services, for various projects being undertaken by the defendant, in Saint Lucia. He was instructed by the defendant's director Nigel to liaise with the Project Manager John Barrington ("John") regarding requests for plant. On a daily basis he was instructed by John on what equipment was needed, and equipment was frequently required at short notice. Desiray, who was employed with the business, was responsible for recording all equipment provided to the defendant and the hours for which it was utilized. These records

were captured in receipt books in copies of three, referred to as work slips or tickets. They were signed by John or Malone and submitted to the defendant's secretary Brenda on a daily basis, for transmission to the defendant's office in Trinidad. Rufus says on occasion he would assist the defendant by purchasing materials with his own funds, to allow ongoing work to continue. Such funds were to be repaid and formed part of his accounting record.

[12] He further stated that from commencement of the contract payments from the defendant were made intermittently and was often late, sometimes as long as one month after invoicing. He prepared the invoices himself, using the ticket information stored electronically on his office QuickBooks software, and would include the ticket numbers on each invoice. This was the agreed method used up until June or July 2021, when the defendant introduced a system for issuing a purchase order in advance of a request for equipment. He says the use of purchase orders was sporadic and operational inefficiencies arose, which led to the defendant requesting equipment at short notice, on the understanding that the purchase order would be issued subsequently. Nigel visited Saint Lucia in August 2021 and advised the claimant to continue with daily work and the purchase orders would be provided afterwards. However several purchase orders were never provided. By August 2021 only 6 payments had been received from the defendant, despite having submitted several invoices containing references to purchase orders. He expressed this concern to Nigel who indicated that payment would be remitted. Two further payments were received, however he continued to work daily as indicated on the tickets which were signed by the defendant's agents. In October 2021 he took the decision to cease all work on account of non-payment of invoices. Since then only one further payment has been received. A copy of the accounts receivable register in relation to services provided to the defendant, as generated from the office QuickBooks software was exhibited as "RM1". It is said to contain references to each invoice issued, all payments remitted, and the unpaid balance, which amounts to \$598,835.26.

[13] In cross examination Rufus maintained that he always dealt with the defendant's project managers and took instructions from them. He denies disregarding the instruction contained in the email of 7th June 2021, by continuing to send equipment to the site without receiving a signed purchase order. He reiterated that at the beginning of the contract there was no

purchase order system in place, but sometime in the working it came about. It was his first time operating with purchase orders, and he could not say whether this was a normal or reasonable practice for this industry. He said he has worked with large companies such as NH International and others, and never used purchase orders for equipment rental services. In support of the claim he says he has produced evidence of signed purchase orders which remain unpaid, as well as evidence to show that all equipment for which payment is being claimed were in fact used by the defendant.

- [14] Desiray's testimony is that she was employed with the claimant from March 2020, and was charged with responsibility for preparation of invoices, clerical work, managing accounts, chasing and collecting payments, overseeing field work, ordering supplies, and verifying bills, amongst other things. She says the claimant commenced work with the defendant in March or April 2021, which consisted generally of rental of equipment at the Blue Waters construction site at Massade, and the Orange Grove site at Bois D'Orange. The defendant's liaison person on both sites was John, who would communicate with Rufus or herself to indicate what equipment was required, ahead of time. Equipment was usually required on immediate or short notice because of operational demands, and John would make such requests verbally or via telephone. She was responsible for ensuring that labor and equipment was organized, and for logging all the work done and equipment used, within the start and end times of 8am to 6pm. She used a receipt book to record this information, which was referred to as tickets. These tickets would be verified and signed by John, and on the following morning she would take the original tickets to the defendant's secretary Brenda for transmission to the defendant's office in Trinidad. Two copies of the tickets were retained by the claimant as the record of work done for each day. Invoices were prepared separately from the tickets and produced every 2 weeks, for each piece of equipment used. Each invoice outlined all the work done with that piece of equipment for the 2-week period, and was cross referenced to the respective tickets signed by the defendant's representative. By way of an example, she stated that if Excavator 1 was used for four days over two weeks, this would be recorded on four tickets showing the work done on the specific days. At the end of the two-week period an invoice would be produced for Excavator 1, outlining these four days.

[15] In May 2021 John requested that a backhoe be kept on site for immediate and convenient access. Invoices were submitted for the first two weeks of this arrangement. Thereafter the claimant was asked to remove the backhoe from the site. Then in June or July 2012 they were informed that purchase orders would be issued to request work authorized by the defendant. It was agreed that John would make a request for equipment, and the defendant would generate a purchase order with authorized signatures, to be sent to the claimant. The introduction of the purchase order system did not affect the use of tickets. As the system progressed John would occasionally make several changes to his requests. Consequently the purchase order system became confusing and operationally inefficient. Further, the defendant's representative Zacki who prepared the purchase orders was not always available on weekends, to produce them at short notice for weekend work. A discussion was held with John and the defendant's representative Zacki who prepared the purchase orders in Trinidad, and the system became flexible, such that purchase orders would be produced after the work was confirmed and completed. In that way, there was no confusion over what equipment was utilized by the defendant.

[16] Desiray further stated that some purchase orders were never produced or signed, despite the work having been completed and verified by the use of signed tickets. Nigel usually signed purchase orders and none were received for the better part of July 2021. She chased up on outstanding purchase orders with Brenda and Zacki, and received a litany of excuses. In August 2021 Nigel visited Saint Lucia and she reminded him of the outstanding purchase orders. He undertook to sign and submit them upon his return to Trinidad. While visiting on one occasion he came to the Blue Waters site and sought to reinforce the use of purchase orders. He instructed the workers to cease all work where purchase orders had not been received. At that time, the equipment on site comprised of a water pump and an excavator. Delays ensued, and he then instructed the workers to resume and the purchase orders would be produced later. John departed from the projects in August 2021 and Malone replaced him temporarily, while Brenda was responsible for signing tickets. John was eventually replaced by one Peter David who took over signing tickets and purchase order requests. He too, operated a flexible purchase order system, in a similar manner to John.

[17] Desiray stated that she followed up with Nigel for outstanding payments, some of which were substantiated by signed purchase orders. He made promises to pay, none of which were kept. The last partial payment was made in August 2021 for a fraction of what was owed, and no reasons were given for the failure. Due to non-payment of the outstanding amounts, and the defendant's neglect of its contractual obligation to pay for services rendered, a decision was taken in October 2021 to cease providing further services. Thereafter, a further payment was received in November 2021. Desiray compiled a schedule of the payments which remain outstanding to date, which is shown as exhibit DM1. All outstanding invoices are listed in column 1, and the tickets to substantiate these invoices are cross referenced at column 2. The defendant was responsible for issuing purchase orders and several were issued, for which payment has not been received, and they are listed in Column 3 and crossed referenced to the corresponding invoice on which they were billed.

[18] Malone testified that he is a Construction Manager, having worked in this industry for 18 years. He was employed with the defendant from February to September 2021 as Project Coordinator. His duties involved procurement, and supervision of subcontractors and heavy equipment. He was also responsible for validating equipment usage by signing the receipts called tickets, and taking photographs of activities. He stated that he came to know Rufus during his time working with the defendant, and confirmed that he (Rufus) provided the defendant with construction equipment (plant) which was needed on a daily basis. Equipment was usually requested beforehand, or whenever required. At the end of each day, the equipment used was recorded in Rufus' receipt book and was verified by the signature of one of the defendant's agents. He (Malone) was authorized to sign these receipts until June 2021. Otherwise, the project manager was authorized to do so, and eventually the defendant directed the secretary Brenda to sign them. He stated that the defendant introduced a system of using purchase orders to approve equipment rental prior to usage. However, that system was not very efficient for productivity, which the project manager constantly expressed at weekly meetings with head office. It became problematic with work being delayed while awaiting purchase orders, therefore the system reverted and became more flexible, whereby purchase orders could be delivered after the equipment was used, to correspond with signed tickets.

- [19] At the close of the claimants case the defendant was unable to adduce evidence or call any witnesses, having failed to file and serve any witness statements, as directed by order dated 12th January 2023, and further extended by consent order dated 2nd February.

Is the defendant indebted to the claimant for the sums claimed?

The Claimant's Submissions

- [20] Counsel for the claimant Mr Justin submits that there is no dispute that an oral contract existed for the claimant to furnish the defendant with equipment rental services, at agreed rates, for its construction projects in Saint Lucia. The claimant has performed his part of the bargain and the defendant has admitted at paragraph 2.5 of its defence that issuance of a purchase order was the agreed method for confirming requests for services from the claimant. Counsel submits that this admission confirms that whenever purchase orders were in fact issued by the defendant, and the claimant's services were provided, the defendant was obligated to honour the corresponding invoices. Counsel further submits that the purchase orders which have not been settled are particularized in the third column of exhibit DM1 and they are exhibited from pages 240 to 315 of Trial Bundle 3.
- [21] Counsel says that the defendant has provided no evidence to refute the claimant's assertion that these purchase orders have not been paid. They were prepared and issued by the defendant, unlike the tickets and invoices which were prepared by the claimant. Therefore, it cannot be said that having supplied the services requisitioned through these purchase orders, that the invoices generated for these purchase orders are not the defendant's liability. Counsel submits that the evidence shows that the cost of the services rendered under purchase orders received, and which remains unpaid, amounts to \$521,986.99, and this information is contained in the Schedule referred to as DM2 in the claimant's List of Standard Disclosure, which lists the cumulative total for all outstanding purchase orders. The difference in relation to tickets for which no purchase orders were issued. The claimant has also presented evidence of all payments made by the defendant, by way of wire transfers, which are exhibited at pages 12 to 17 of Trial Bundle 3. In this regard, the defendant has

provided no evidence of payment of the outstanding purchase orders to show that they have in fact been settled. Thus, by the defendant's own admission all sums due under purchase orders ought to be settled, and all the purchase orders presented as unpaid by the claimant remain unchallenged. Counsel contends that the defendant ought to be held liable for all sums claimed for outstanding invoices which relate directly to purchase orders.

[22] Mr Justin argued further that even where purchase orders were not issued, the defendant is still liable for the sums incurred for services rendered and recorded on signed tickets. Even after purchase orders were introduced, the defendant took the liberty to vary that arrangement through Nigel, or the other authorized agents. Desiray's evidence confirms that when Nigel was in St. Lucia he reiterated the importance of purchase orders, but also gave instructions to resume work and that purchase orders would be produced later². This evidence is consistent for all the claimant's witnesses, and particularly Malone who stated that on occasion the system was varied for operational efficiency, and the work would be carried out, with purchase orders produced subsequently. A record of the equipment used and work undertaken was always maintained by the claimant through the ticket system. The defendant's agents verified the information by signing the tickets. Having benefited from these services, as requested by its agents, the defendant cannot now say that payment is not owed. Counsel highlighted Rufus testimony where he says that when the contract commenced Nigel directed him to John as the defendant's Project Manager, for all dealings with the defendant, concerning performance of the contract³. When John departed the projects Malone, who held the position of Project Coordinator, was authorized to sign and validate tickets, and eventually the defendant directed the secretary Brenda to sign these tickets.

[23] Counsel referenced the case of **Bowman v Griffith**⁴ as authority for the proposition that the court should regard the substance of the contract over form, in holding the defendant liable for the unpaid sums. In that case it was held that the substance of the contract and not the form, is what makes the contract binding on a defendant. Thus it could not be argued that

² See paragraph 11 of Witness Statement of Desiray McLean

³ See paragraphs 1 - 3 of Rufus Witness Statement of Rufus McLean

⁴ [1930] 1 Ch. 493

the defendant could not be liable for the services provided by the claimant, under a contract which was recognized and accepted by the defendant, where the services were requested by its agents, who verified that such service were provided. Counsel argued that Rufus provided a full account of the amounts due and payable at paragraph 11 of his witness statement, where he stated that the services provided, the invoices and payments received from the defendant, were generated from his office QuickBooks software, and the accounts receivable statement is produced as exhibit RM1⁵. This information is crossed referenced to the invoices which the claimant sent to the defendant and all supporting invoices are shown from page 18-239 of Trial Bundle 3. The invoices are crossed referenced with the purchase orders which authorized the services, as well as the tickets for occasions when services were rendered, without production of a purchase orders. Further, the penultimate column of exhibit RM1 shows all payments made by the defendant which are supported by the wire transfers shown at pages 12 to 17 of Trial Bundle 3.

[24] Mr Justin contends the even where purchase orders were not issued, it was the defendant through its agents who instructed the claimant to carry out the works and verified that it was done. The defendant being the main contractor for the projects, sub-contracted the claimant to assist in the execution of these projects. Having derived substantial commercial benefit from the claimant's services and labour outlay, it cannot be said that the defendant is not liable for the outstanding sums in relation to these tickets. The claimant's services carried a commercial value which assisted the defendant in completing its tasks on the projects, and defendant has provided no evidence or explanation for refusal to settle the debt.

[25] Thus, Counsel submits that the defendant should be held liable for the sum claimed, inclusive of the small sum owed for tickets, where no purchase orders were produced by the defendant. These tickets are included in the invoices referenced in RM1⁶ and the tickets for outstanding payments are listed along with the invoices shown from pages 18 to 239 of Trial Bundle 3. Counsel contends that all of this evidence remains unchallenged and on that basis judgment should be given for the claimant, for the full amount claimed.

⁵ See pages 2 - 6 of Trial Bundle 3.

⁶ See pages 2-7 of Trial Bundle 3

The Defendant's Submissions

- [26] Ms Foster submitted that there was an arrangement in place, for management and control of the relationship between the parties, by way of the purchase order system. Its purpose was to ensure that all rental services required from the claimant for specific equipment, for a specific time, was approved by the defendant. This arrangement was disregarded when the claimant continued to send equipment to the site, without receiving a purchase order. The defendant and its agents emphasized the importance of this arrangement, and the need to await purchase orders before sending equipment to a site, as stated in paragraph 2.4 of the defence. The claimant has not tendered any documentary evidence to prove that the equipment for which payment is claimed was in fact used. Further there is no documentary evidence of signed purchase orders which remain outstanding. All that has been produced is the claimant's own list and tally of alleged ticket numbers and invoices and sums said to be owed. The witness statements make no reference to further documents, beyond the schedules exhibited as RM1 and DM1, which were properly tendered in evidence. There is no reference to the purchase orders, invoices or tickets, found at pages 18 to 315 of Trial Bundle 3. These documents are merely floating within the bundle, and have not been properly referenced through the witness statements or the oral evidence of the witnesses.
- [27] Counsel relied on Article 1163(2) of the Civil Code⁷ which says proof may be by testimony in a matter where the principal sum or value does not exceed \$48. The value of this claim is well in excess of this amount and documentary evidence is required to substantiate the sums claimed. Further, Article 1163(7) says proof may be by testimony in any case where there is commencement of proof in writing, but this article does not apply, as there was no written contract between the parties. Additionally, the invoices and tickets cannot stand as proof in writing, as these were not tendered in evidence. Counsel argued that the **Bowman** case should be distinguished on the basis that there was in fact a written agreement between the parties and the substance of that contract was upheld, while the form was deemed irrelevant. In the present case the substance of the oral agreement was the understanding between the parties was that equipment would only be rented by way of purchase orders signed by

⁷ Cap 4.01

Nigel. The claimant has not submitted any documentary evidence of purchase orders signed by him, which remain outstanding for payment, thus, the defendant maintains that it is not liable for the sums claimed.

The Claimant's Reply Submissions

[28] Mr Justin countered that in the **Bowman** case the court laid down the general principle that the substance of the contract is what the court must consider. Although there is no written agreement in the present case the substance of the oral agreement or the understanding was a contract for the provision of equipment rental services by the claimant, which was to be paid for by the defendant. What is important is whether the services were provided and whether the defendant benefited from receiving these services. Counsel referred to paragraphs 2 and 3 of Rufus witness statement, where he explained what the contract entailed and it was simply services provided, for payment. Whatever form the defendant's instructions took did not affect the basis of the contract, and the email simply conveyed how instructions were to be communicated. At no time during the initiation of the contract was it agreed that the use of purchase orders to give instructions was a core term of the contract. Although the defendant insists that work was not to be done until a purchase order was produced, Nigel also varied the use of purchase orders on occasion. These purchase orders were produced by the defendant and the claimant had no control over whether they were produced or not, after the work was completed. Thus, the claimant should not be penalized where purchase orders were not subsequently produced by the defendant. In any event, there is no evidence that purchase orders were to be signed by Nigel, as Counsel for the defendant suggests, and there is nothing stated in the email which asserts or confirm this.

[29] Counsel argued that all the documentary evidence in Trial Bundle 3 is admissible as permitted by section 55(3) of the Evidence Act which says:

".....where oral evidence in respect of a matter would be admissible in proceedings, a statement made in a document that was created or received by a person in the usual or ordinary course of business is admissible as evidence of the truth of its content in proceedings, upon production of the document."

[30] Counsel submits that the claimant has produced his record of accounts which makes reference to all the documents contained in Trial Bundle 3. The purchase orders, invoices, tickets and wire transfer payments relied upon, remain unchallenged. The individual documents have been disclosed and form part of the exhibits by their reference numbers with are contained in the claimant's accounting records exhibited as RM1, and in the schedule prepared by Desiray, exhibited as DM1.

Analysis

[31] This is a money claim for which the onus remains on the claimant to prove the defendant's liability by providing evidence of the quantum of the debt claimed, and how it was calculated. In this case, such evidence would include records of equipment rented to the defendant, any work undertaken, the respective dates and times, and the rates charged for these services.

[32] The general rule is that the court must be persuaded on the the evidence proffered, that the amount claimed is accurate, in accordance with the civil standard of proof, which is on a balance of probabilities⁸. The case of **Emery Planning Partnership Limited v Garie Bevan**⁹ is instructive on the approached to be taken when adjudicating on debt claims. There, a claim was struck out in entirety when the court concluded that the evidence was insufficient to establish the quantum of the claim, where the claimant's entitlement to the amount claimed depended upon proving evidence of who did what work, and when. It was said that the claimant had a record of this information, but had failed to disclose it, and the evidence provided no indication of how the figures were calculated and made up. Thus, the court was not persuaded by a preponderance of the evidence that the amount claimed was due. The decision was upheld on appeal; and the appellate judge was quick to point out that the nature and extent of the evidence which may be sufficient to discharge the burden of proof in any given debt claim will vary depending on the circumstances of the case, and each case will depend upon its own facts¹⁰.

⁸ *Emery Planning Partnership Limited v Garie Bevan* - [2022] EWHC 494 (QB)

⁹ [2022] EWHC 494 (QB)

¹⁰ *Ibid*

[33] I accept that an oral contract existed between the parties, which commenced in March 2021. At that time there were no instructions on the use of purchase orders and requests for the claimant's equipment rental services were made by the defendant's agents in St Lucia, and the services were provided on demand, or as the need arose. In June 2021, the defendant issued an email regarding the use of purchase orders and instructed that requests for services would be initiated through purchase orders. The said email of 7th June 2021, was annexed to the defence and reads as follows:

" Mr Rufus

As per our conversation and previous email with regard to rental of equipment I would like reiterate the grave importance of rental approval from Nipat Trinidad, only. Please note that any other request must seek approval with attached Po or approval from my desk, this will include rental extension if the need arises. I anticipate your full cooperation as we move forward. Further to this any invoices that don't have po or approval from Nipat Trinidad payment would not be honored.

Regards

Zakir Majid"

[34] By reply email of 8th June 2021 Rufus responded, stating "*Noted with thanks*"

[35] It is on the basis of this exchange that the defendant denies liability for payment of invoices issued for equipment rental services, where no purchase orders were produced, and the claimant is put to strict proof of the sums claimed. However, the claimant's case is that a greater portion of the debt totaling \$521,986.99 is owed for services for which purchase orders were issued, and the balance represents services requested on demand, which were verified by signed tickets, for which no purchase orders were subsequently produced, although promised by the defendant's agents.

[36] It is fair to say that the use of purchase orders was adopted after the email was issued in June 2021, and the defendant started presenting a purchase order when requesting the claimant's services. I accept the claimant's evidence that later on, the practice developed of producing purchase orders after his services were provided. In that regard the defendant's agents reverted to the former system of requesting services on demand, on the promise that purchase orders would follow, to avoid delays on the projects. Desiray testified that after the

services were provided, she would receive purchase orders 2 or 3 days later, and sometimes only after hounding the defendant. In some instances she never received them.

[37] I considered the claimant and his witnesses to be honest and credible. Malone, a former employee of the defendant was engaged as Project Coordinator during the period of the contract. There is no suggestion of tainted motive, ill-will or malice on his part, towards the defendant. He testified that instructions were indeed given for services to be provided upon presentation of a purchase order. However this brought about delays, when on some occasions, Nigel was out of the office or unavailable. At such times, the system would revert to requests on demand, with purchases orders to be issued subsequently. This pattern of dealings is supported by the testimony of Rufus and Desiray, both of whom say that even Nigel, as the director who gave instructions to abide with the use of purchase orders, recanted on one occasion, and requested that the claimant's workers who operated the equipment should proceed with their work, and the purchase order would follow subsequently.

[38] None of these witnesses were discredited in cross examination, and their evidence remains uncontroverted.

[39] In my opinion, it was the responsibility of the defendant to ensure that adequate measures were in place for turning away equipment which was dispatched to its site without a purchase order being issued. In this setting the defendant and its agents would have had complete control of its project site and work schedule, and ought to have issued instructions for immediate return, if the service had not been requested by way of a purchase order. There is no evidence that this was done. Instead, the evidence in that equipment remained on site over the period for which it was dispatched, and the use of such equipment was accepted and verified by the defendant's agents. This was done through the use of the ticket system introduced by the claimant from inception, and which continued in use even after the introduction of purchase orders.

[40] The evidence establishes that whenever services were requested on demand it was the defendant's agents who made such requests either by presenting a purchase order, or

promised to provide the supporting purchase orders after the service was provided. The claimant says the supporting evidence in instances of the latter, are the tickets which were signed by the defendant's agents, as purchase orders were never issued subsequently by the defendant. I accept that once the defendant's agents allowed the rented equipment to be utilized without a purchase order, and signed a ticket verifying such use, the defendant would be liable to pay for such services. It would be unjust to permit the defendant to hide behind its own failure to generate purchase orders in circumstances where the claimant's services were requested by its agents, such services were received and utilized on the project, and the defendant enjoyed the benefit of having the designated task(s) completed for its project(s).

[41] The email annexed to the defence does not shield the defendant from liability, when the evidence overwhelming suggests that the method of requesting services remained fluid even after the email was issued. This email gives no indication of the position of the individual who authored same, and does not state that purchase orders were to be signed by Nigel. In any event a significant number of purchase orders produced in Trial Bundle 3 are in fact signed by him. It is the case that sometimes services were provided before purchase orders were issued, therefore, it would be plainly wrong for the defendant to refuse to issue purchase orders after these such services were provided. It was entirely within the defendant's control to reject the equipment or the claimant's services, and to turn him away on every occasions where purchase orders were not issued in advance of equipment being dispatched to a site. Therefore, it would be unjust to penalize the claimant for having provided services, acting on a promise from the defendant's agents that these purchase orders would be issued later, and in some instances they were never issued.

[42] The exercise to be undertaken by the claimant to substantiate the quantum of the claim would require (i) reconciling invoices to purchase orders and or tickets for the services rendered, (ii) accurately documenting the rates charged for these services, and (iii) ensuring that payments remitted by the defendant are reconciled with billed amounts, to arrive at the balance which is owed. In that regard, the documentary evidence proffered consisted of exhibit RM1 which is a copy of the accounts receivable register in relation to the services provided to the defendant. Rufus says it was generated from his office QuickBooks software.

Thus, this exercise was undertaken through the use of QuickBooks from which a tabulation of invoices, services rendered, computation of the sums charged for such services and deduction of payments received from the defendant are shown. I note that QuickBooks is a recognized accounting computer software which is utilized for bookkeeping, and have no reason to doubt, or question the credibility of the information contained in this document. No reasonable grounds were advanced for believing that the information contained therein was inaccurate on account of improper use of the software, and no reason has been advanced to cast doubt on the truth or reliability of the information used. There is no evidence that the claimant's computer was not operating properly at the material times, or that the accuracy of the underlying information used in QuickBooks to generate the accounts receivable register was affected by such circumstances.

- [43] Exhibit DM1 was adduced as a schedule prepared by Desiray, as the employee charged with responsibility for maintaining the records of equipment dispatched to the defendant's projects and the duration for which each piece of equipment was utilized. This was recorded on the tickets which were use for generating the invoices submitted for all services rendered to the defendant. This schedule captures purchase orders, tickets, and invoices by reference numbers.
- [44] Counsel for the defendant relied on Article 1168(5) of the Civil Code to say that because the debt far exceeded the sum of \$48, documentary evidence was required to substantiate the claim. This article does not assist the defendant, as the claimant has provided ample documentary evidence of his records of the services provided, the work undertaken, the dates on which such services were provided, and the rates charged for these services. Sums remitted by the defendant have also been taken into account and the outstanding balance is what forms the basis of the claim.
- [45] Counsel's argument that the supporting documents were merely floating around in Trial Bundle 3 without any specific reference being made to them in the witness statements, is also of little assistance. It is trite that having disclosed these documents in the claimants List of Standard Disclosure it was the defendant's responsibility to inspect and object to any documents which were believed to be inadmissible. This was never done. Upon close

examination, all the documents contained in Trial Bundle 3 form part of exhibit RM1 or DM1, which were adduced in the witness statements of Rufus and Desiray, respectively. These documents are referenced a number in one or both exhibits, and are the underlying documents which correlate to the matters contained in each of these exhibits. All outstanding invoices, tickets, and purchase orders are referenced by their respective numbers in exhibit DM1. Details of the services rendered, the dates, charges, and payments remitted by the defendant are captured in exhibit RM1, and copies of wire transfers produced serve to confirm the payments received and captured in that exhibit. I accept that these documents have been properly adduced, and there was no need to tender each one as a separate document, having listed or referenced each one in exhibit RM1 or DM1. They are interconnected and tell the story of what transpired between the parties in relation to provision of the services, the sums charged for such services, payment and the balance owed for providing the services.

[46] In my opinion, the claimant's exhibits and their underlying documents provide cogent and credible evidence of the services provided, the dates and rates billed for these services, the payments received to date, and the balance which remains due and owing. The defendant has not taken issue with the claimant's assertion that its agents to whom the claimant was directed, and with whom he interacted for the purposes of the contract, were authorized to act in the way that they did, on its behalf. They were John who served as Project Manager when the contract commenced in March 2021, Malone who took over from him for a period when he served as Project Coordinator for the defendant, and the defendant's secretary Brenda, who Malone says was also authorized by the defendant to sign tickets. Even where services were requested and promises made to issue purchase order later, the claimant's assertion that such actions were duly authorized by the defendant, has not been displaced.

[47] Apart from stating in its defence that only services which were supported by purchase orders would be acknowledged and paid, and that payment in all such instances have been remitted, the claimant's evidence that the outstanding sums claimed concerned mainly services which were requisitioned by purchase orders, with a few instances being tickets for which purchase orders were promised but never issued by the defendant, also remains undisturbed.

[48] In light of the foregoing, I conclude that exhibit RM1 accurately reflects the claimant's accounts receivable, due from the defendant, and that the claimant has provided adequate documentary evidence and records to prove the quantum of the claim, on the balance of probabilities. Judgment should therefore be given in his favour.

Conclusion

[49] I therefore make the following orders:

1. Judgment is entered for the claimant against the defendant, for the sum of \$598,835.26 with interest at the statutory rate of 6% per annum from the date of judgment, until payment in full.
2. Cost is awarded to the claimant to be assessed, if not agreed within 21 days.

Cadie St Rose-Albertini
High Court Judge

By the Court

[SEAL]


Registrar