

THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

SAINT CHRISTOPHER AND NEVIS

SKBHCVAP2021/0016

BETWEEN:

SAINT CHRISTOPHER AIR AND SEA PORTS AUTHORITY

Appellant

and

EURICK DORSETT

Respondent

Before:

The Hon. Mr. Mario Michel
The Hon. Mde. Gertel Thom
The Hon. Mr. Gerard St. C. Farara

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Terence Byron for the Appellant
Mrs. Angelina Gracy Sookoo-Bobb and Ms. Renal Edwards for the Respondent

2022: June 23;
October 20.

Civil appeal – Contract law – Contract of employment – Termination of employment – Interpretation of contracts – Whether extrinsic evidence can be used to determine the intention of parties to a contract – Whether contract came to an end by effluxion of time – Whether the judge erred in the construction of the term “completion of the pier construction project”

By contract dated 7th June 2013, the respondent, Eurick Dorsett (“Mr. Dorsett”) was appointed as Construction Manager to provide construction management and consultancy services to the appellant, the Saint Christopher Air and Sea Ports Authority (“SCASPA”), in relation to the development and construction of a second cruise terminal at Port Zante in Basseterre. Mr. Dorsett was also required to represent SCASPA in its dealings with Jay

Cashman, Inc., a joint venture partner, and any other service providers or stakeholders in relation to the project. A Memorandum of Understanding (“MOU”) was executed between Jay Cashman, Inc., SCASPA and the Federation of Saint Christopher and Nevis (“the Federation”) which set out certain understandings between them in relation to the construction of the terminal.

Mr. Dorsett’s contract stipulated that his engagement would commence on 20th May 2013 and terminate on 30th November 2014, or at the completion of the project, whichever was later. Clause 4.3.1 of the contract allowed SCASPA to terminate the contract if Mr. Dorsett failed to competently perform his duties, whilst clause 4.3.2 allowed SCASPA to terminate it if the Chief Executive Officer determined that the continued engagement was not in the best interest of SCASPA. In the latter case, however, SCASPA had to pay a termination fee to Mr. Dorsett amounting to four (4) months’ fee payments, or US\$48,000.00.

Mr. Dorsett claimed that he provided his services to SCASPA from 20th May 2013 to July 2015. He claimed that he continued to provide these services even after Jay Cashman, Inc pulled out of the project in August 2014, but that SCASPA refused to pay him for the months of February 2015 to July 2015, amounting to US\$72,000.00 in unpaid fees.

By letter dated 20th July 2015, SCASPA wrote to Mr. Dorsett indicating that his professional engagement with them had ended on 30th November 2014. Mr. Dorsett claimed that that letter was a repudiation of the contract and he was therefore entitled to be paid the termination fee of US\$48,000.00 as stipulated in clause 4.3.2 of the contract. In response, SCASPA reiterated that Mr. Dorsett’s contract had come to an end on 30th November 2014, the duration of which was an express term outlined in the contract, unless that term had to be extended to accommodate the completion of the pier by Jay Cashman, Inc.

Mr. Dorsett instituted proceedings against SCASPA seeking recovery of unpaid fees, damages for repudiation of the contract, and pre-judgment and post-judgment interest. SCASPA’s primary contentions were that Mr. Dorsett’s contract came to an end by effluxion of time and that his engagement related to the construction of the pier by Jay Cashman, Inc only. The learned judge was of the view that the determination date of the contract would have been the date that the pier was completed, subject to clause 4.3.2 of the contract being invoked, which clause provided for termination if Mr. Dorsett’s engagement was not in the best interest of SCASPA. After analysing the evidence, she was satisfied that the suspension of Mr. Dorsett’s services amounted to a repudiatory breach of the contract. Accordingly, Mr. Dorsett was awarded US\$72,000.00 in unpaid fees for the months of February 2015 to July 2015, the termination fee of US\$48,000.00, and pre-judgment and post-judgment interest.

SCASPA, being dissatisfied with the learned judge’s decision, filed a notice of appeal on 22nd August 2018. Although 9 grounds of appeal were raised, the central issue in this appeal concerned the construction and interpretation of Mr. Dorsett’s contract.

Held: dismissing the appeal; affirming the orders made by the learned judge on 10th July 2018; and making the orders set out at paragraph 52 of the judgment, that:

1. Questions of contractual construction are questions of law and the standard of review on questions of law is one of correctness. Unlike the reluctance of the appellate court to interfere with findings of fact, unless it can be said that the findings fall beyond the generous ambit within which reasonable judicial disagreement is possible so as to be clearly wrong, the appellate court has a broad scope of review with respect to matters of law.

Margaret Blackburn v James A.L. Bristol GDAHCVAP2012/0019 (delivered 12th October 2015, unreported) followed; **Housen v Nikolaisen** [2002] 2 SCR 235 applied.

2. The court will infer that the parties to a contract have used words which convey what they intend to be bound by. In order to ascertain what the parties intended by 'completion of the pier construction project', it is important to consider the contract in its entirety. It is clear that Mr. Dorsett entered into a contract with SCASPA and not Jay Cashman, Inc. Had SCASPA intended for the 'pier construction project' to be linked only to Jay Cashman, Inc.'s involvement in the project, it could simply have included a clause in the contract to this effect. Thus, Mr. Dorsett's contract for services was dependent on the completion of the construction of the pier and not on Jay Cashman, Inc.'s involvement. As the construction had not been completed by 30th November 2014, Mr. Dorsett continued to be employed and was entitled to be paid for his services directly relating to the construction of the pier, which, after August 2014, included dealing with other potential joint venture partners, until such time as the construction of the pier was completed or the contract was otherwise terminated.

Ocean Conversion BVI Limited v Attorney General BVIHCVAP2009/019 heard together with BVIHCVAP2009/0020 (delivered 18th April 2012 and corrected and re-issued 30th July 2012, unreported) followed; **Rainy Sky SA and others v Kookmin Bank** [2011] UKSC 50 considered; **Al Sanea v Saad Investments Co Ltd** [2012] EWCA Civ 313 considered.

3. Extrinsic evidence is not admissible to determine the intention of the parties to a contract. That intention is to be determined from reading the document itself in its entirety, having regard to the factual matrix. Therefore, it is impermissible to allow consideration of the MOU, which Mr. Dorsett was not a party to, to ascertain what was meant by the terms of the contract between Mr. Dorsett and SCASPA. The MOU makes no mention of SCASPA's contract with Mr. Dorsett and thus bears no weight on the construction and interpretation of the contract.

Clement Donovan v Adina Whitrod et al BVIHCVAP2020/0003 (delivered 4th June 2021, unreported) followed.

4. It is not for the court to seek to rescue a party to a contract from the consequences of its unfair bargain. Mr. Dorsett was contracted to provide consultancy services in relation to the development and construction of the cruise terminal. Although construction had not been completed, this was through no fault of Mr. Dorsett and he was still entitled to be paid for his services. SCASPA had the option to terminate the contract by invoking clause 4.3.2 and paying the price of US\$48,000.00, which, under the contract, should be paid to Mr. Dorsett in such an eventuality. If the view is taken that this may be unfair to SCASPA, one only needs to bear in mind that this is the contract that SCASPA entered into.

Attorney General of Belize and others v Belize Telecom Ltd and another
[2009] 1 WLR 1988 applied.

5. Although the word 'termination' was not expressly used in SCASPA's letter to Mr. Dorsett dated 20th July 2015, it was stated in the letter in no uncertain terms that his engagement with them had come to an end on 30th November 2014. However, Mr. Dorsett's contract was terminated, not on 30th November 2014 as was said in the letter, but on the date of the letter itself, which was 20th July 2015.

JUDGMENT

- [1] **MICHEL JA:** This is an appeal against the judgment of a trial judge dated 10th July 2018 in which the learned judge ordered the appellant to pay to the respondent the sum of US\$120,000.00, together with interest and prescribed costs, for monies due and owing to the respondent for services rendered, and damages for the repudiation of a contract between the appellant and the respondent.

Background

- [2] By a contract dated 7th June 2013 ("the contract"), the respondent, Eurick Dorsett ("Mr. Dorsett") was appointed as Construction Manager to provide construction management and consultancy services to the appellant, the Saint Christopher Air and Sea Ports Authority ("SCASPA"), in relation to the development and construction of a second cruise terminal at Port Zante, Basseterre, Saint Christopher and Nevis.
- [3] In addition to providing consultancy services, Mr. Dorsett was required to represent SCASPA in its dealings with Jay Cashman, Inc., a joint venture partner

and 'any other service providers or stakeholders, as directed, in relation to the said project'.¹ A Memorandum of Understanding ("MOU") was executed between Jay Cashman, Inc., SCASPA and the Federation of Saint Christopher and Nevis ("the Federation") on 17th May 2013, which set out non-binding understandings and binding agreements between Jay Cashman Inc., as developer, and SCASPA and the Federation, in relation to the construction and development of the second cruise terminal at Port Zante.

- [4] As to the tenure of Mr. Dorsett's engagement under the contract, it was stipulated under clause 2.0 of the contract that:

"This engagement shall commence on 20th May 2013 and terminate on 30th November 2014 or at the completion of the pier construction project, whichever is later."

- [5] It was also agreed (in clause 4.1 of the contract) that in exchange for his services, Mr. Dorsett would be paid a professional fee of US\$12,000.00 per month or any part thereof, beginning from 20th May 2013.²

- [6] Further, clause 4.3 stated:

"This Agreement may be terminated by SCASPA in the event of:-

4.3.1 The failure of the Construction Manager to competently perform his duties as detailed in the scope of services. In the event of termination under this clause the Construction Manager will be entitled to payment of fees up to the date of termination; or

4.3.2 If for any reason (except in relation to 4.3.1 above), a determination is made by the Chief Executive Officer that the continued engagement is not in the best interest of SCASPA. The Construction Manager, on termination, will be entitled to a termination fee amounting to four (4) months' Professional service Fee payments, or Forty Eight Thousand Dollars United States Currency (US\$48,000.00)."

¹ Clause 1.0 of the contract, Hearing Bundle Volume 1, page 337.

² Clause 4.1 of the contract, Hearing Bundle Volume 1, page 339.

- [7] Mr. Dorsett claimed that, pursuant to the contract, he provided project management and consultancy services to SCASPA from 20th May 2013 to July 2015. He claimed that he continued to provide these services after August 2014 when Jay Cashman, Inc. pulled out of the pier construction project, including representing SCASPA in brokering a deal with a new joint venture partner.³ However, according to Mr. Dorsett, SCASPA, in breach of the contract, short-paid him for the months of December 2014 and January 2015 by a total sum of US\$7,200.00 and refused to pay him for the months of February 2015 to July 2015, totaling US\$72,000.00.
- [8] By a letter dated 20th July 2015, SCASPA's acting CEO, Mr. Marcus Phillip, wrote to Mr. Dorsett.⁴ The relevant parts of the letter are reproduced below:
- "[Y]our professional engagement to represent SCASPA with Jay Cashman Inc., ended on 30th November 2014 and that you have not acted on behalf of SCASPA or in any way in relation to SCASPA and the 2nd pier project since that date."
 - "[W]e hereby demand that with immediate effect you suspend all activities in which you are acting or purporting to act on behalf of SCASPA as its agent, construction manager or in any other capacity."
- [9] Mr. Dorsett claimed that the 20th July 2015 letter was a repudiation of the contract, which he accepted by a letter dated 27th July 2015 in response to SCASPA. Mr. Dorsett therefore claimed that in addition to the outstanding payments on his professional fees, he was entitled to a termination fee of US\$48,000.00 as per clause 4.3.2 of the contract.
- [10] In response, SCASPA, via a letter from its attorney at law dated 28th August 2015, reiterated that Mr. Dorsett's contract had come to an end on 30th November 2014, the duration of which was 'an express term...delimited by the fixed dates of 20th May, 2013 to 30th November, 2014, unless that term had to be extended to

³ Amended Claim Form and Statement of Claim, Hearing Bundle Volume 1, page 193, paragraph 8.

⁴ Letter dated 20th July 2015, Hearing Bundle Volume 1, page 648.

accommodate the completion of the anticipated construction of the 2nd Pier by Jay Cashman, Inc.⁵ and that SCASPA categorically rejected Mr. Dorsett's demands for payment 'on account of [Mr. Dorsett's] expired contract under the MOU which fell apart before the fixed termination of [Mr. Dorsett's] contract'.⁶

[11] Mr. Dorsett instituted proceedings against SCASPA, claiming:

- "1. Damages in the sum of US\$79,200.00 arrears of instalments;
2. Damages for repudiation of contract in the sum of US\$48,000.00;
3. Pre-judgment interest from the 20th July, 2015 to 18th November, 2015 at a rate of 5% per annum (US\$6,360.00) or 121 days @ US\$17.42 per day, in the sum of US\$2,107.82;
4. Post-judgment interest pursuant to section 29 of the Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act Cap 3.11 of the Revised Laws of Saint Christopher and Nevis 2009;
5. Such further or other relief that this Honourable Court deems fit."⁷

The judgment

[12] After a summary trial, the learned judge by a written decision dated 10th July 2018 gave judgment in favour of Mr. Dorsett in the following terms:

"[1] That the [appellant] shall pay to the [respondent] the sum of US\$120,000.00 made up as follows:

- (a) US\$72,000.00 being monies due for services rendered to SCASPA during the months of February, March, April, May, June, July 2015.
- (b) US\$48,000.00 being termination fee (sic) due and payable under clause 4.3.2 of the contract.
- (c) Pre-judgment interest on the total of these sums from the date of issue of the claim to today's date. The judgment attracts statutory interest from today to the date of final payment.

⁵ Letter dated 28th August 2015, Hearing Bundle Volume 1, page 662.

⁶ Letter dated 28th August 2015, Hearing Bundle Volume 1, page 664.

⁷ Amended Claim Form and Statement of Claim, Hearing Bundle Volume 1, page 191.

(d) Prescribed costs in accordance with CPR 65.5 Appendices B and C as amended.”

[13] In arriving at her decision, the learned judge noted:

“I have read the entire Agreement most carefully, and I am satisfied from an objective standpoint, that when they entered into the agreement, the parties intended that unless the construction of the pier was completed on the 30th November 2014, the [respondent] would continue to be employed until the construction of the pier is completed.”⁸

She continued:

“In the case at bar, the [respondent’s] contract was not terminated under 4.3.1 (incompetent work); and the pier was not completed by the 30th November 2014. Therefore, the determination date of the contract would have been the date that the pier is completed, subject to clause 4.3.2 of the contract being invoked, which clause provides for termination if the [respondent’s] engagement is not in the best interest of SCASPA. Although not expressly stated in the letter dated 20th July 2015 of the Acting CEO, Mr. Marcellus Philip, inferentially, or impliedly SCASPA terminated the [respondent’s] services pursuant to clause 4.3.2 of the contract.”⁹

[14] The learned judge then concluded that ‘[c]lause 2.0 of the contract is clear, and I have given it its plain meaning.’¹⁰

[15] The learned judge also found, after analysing the evidence before her, that the suspension of the services of Mr. Dorsett indefinitely, amounted to a repudiatory breach of the contract. She wrote: “The undisputed evidence is that the [respondent’s] services were never terminated after Cashman Inc. pulled out; that he continued to be engaged by SCASPA; that he was purportedly suspended by letter dated 20th July 2015, and 28th August 2015, without payment for the months

⁸ Eurick Dorsett and Saint Christopher Air and Seaports Authority SKBHCV2015/0254 (delivered 10th July 2018, unreported), paragraph 32.

⁹ Ibid, paragraph 33.

¹⁰ Ibid, paragraph 34.

of February to July 2015, and without being paid professional fees as provided for under the contract.”¹¹

- [16] The learned judge therefore determined that Mr. Dorsett was entitled to payment of US\$120,000.00, being US\$72,000.00 for the months of February 2015 - July 2015 for which he was not paid, as well as the termination fee of US\$48,000.00. She made no allowance however for the balance of the ‘short fall’ in payment claimed for the period of December 2014 to January 2015 because, in her considered view, there was no satisfactory evidence before the court to prove the amount. Additionally, interest at 5% from the date of the issue of the claim to the date of the judgment (pre-judgment interest), prescribed costs and post-judgment interest at the rate of 5% per annum from the date of the delivery of the judgment to the date of the final payment were awarded.

The appeal

- [17] SCASPA, being dissatisfied with the learned judge’s decision, filed a notice of appeal on 22nd August 2018. The notice of appeal listed 9 grounds of appeal. Grounds 1 to 3 essentially challenge the learned judge’s interpretation of what is meant by ‘completion of the pier construction project’, while grounds 4 to 9 essentially challenge the way the judge dealt with the evidence at trial.
- [18] Notwithstanding the appellant’s 9 grounds of appeal, the main issue for determination in this appeal concerns the interpretation of the contractual terms of Mr. Dorsett’s engagement, in particular, what is meant by the expression ‘completion of the pier construction project’.

Appellant’s submissions

- [19] Learned counsel for SCASPA, Mr. Terence Byron, argued before this Court that the learned trial judge fell into error in construing the words ‘completion’ and ‘pier

¹¹ Ibid, paragraph 36.

construction project' in clause 2.0 of the contract. Mr. Byron contends that the learned judge failed to give significance to the meaning of the word 'project' as it is used in the context of the contract. He submits that the expression 'pier construction project' is tied to a particular project, that is, the 'Cashman pier construction project'¹² and not the actual construction of the new pier.¹³ Further, Mr. Byron argued that the word 'completion' in the context of the contract is capable of two meanings - firstly, the completion of the construction of the pier, as the learned judge found or, secondly, the abandonment or end of something. According to learned counsel, the construction of the pier had not begun, therefore, the correct interpretation of the word 'completion', in relation to Mr. Dorsett's contract, referred to whenever the 'Cashman pier project' came to an end. This occurred in August 2014 when Jay Cashman, Inc. pulled out.

[20] Further, Mr. Byron says that the MOU signed by Jay Cashman, Inc., SCASPA and the Federation is important to the factual matrix of the construction of the contract. Mr. Byron admits that Mr. Dorsett was not a party to the MOU, but says that SCASPA was a party, and was bound in certain ways by the MOU. He submitted, therefore, that the agreement which SCASPA entered into with Mr. Dorsett was guided by the MOU. This is why, Mr. Byron contends, Mr. Dorsett's scope of services was exclusively related to 'dealings of SCASPA with Cashman'.¹⁴ Mr. Dorsett could not have engaged in the task of helping to find a new venture partner after the Jay Cashman, Inc. deal fell apart, as a service of this type was not part of the scope of services envisioned under the contract.

[21] Mr. Byron submitted that the conduct of the parties is useful in ascertaining their intentions. In this regard, he referred to the conduct of the former CEO of SCASPA, Mr. Jonathan Bass, who at the relevant time signed the contract for and on behalf of SCASPA and to whom Mr. Dorsett was obliged to report. Mr. Byron

¹² Appellant's Submissions, paragraph 8.

¹³ Appellant's Submissions, paragraph 6.

¹⁴ Appellant's Submissions, paragraph 73.

argues that the fact that Mr. Dorsett did not receive payment after 30th November 2014, even while Mr. Bass was still SCASPA's CEO, is further evidence that Mr. Dorsett was not entitled to payment after 30th November 2014. Additionally, Mr. Dorsett failed to submit invoices for payment for the period in question, unlike in previous months when he did submit invoices and he was paid.

- [22] It is SCASPA's position that after the pier construction project came to an end in August 2014, the contract automatically came to an end on 30th November 2014 by effluxion of time,¹⁵ without Mr. Dorsett having been terminated by SCASPA. Consequently, Mr. Dorsett was not entitled to payment of a professional fee for the period of February 2015 to July 2015 as claimed, nor to the termination fee of US\$48,000.00.

Respondent's submissions

- [23] Counsel for Mr. Dorsett, Mrs. Angelina Gracy Sookoo-Bobb, submits that the learned judge's interpretation of clause 2.0 is unimpeachable and is a very clear and reasonable finding of law.
- [24] Mrs. Sookoo-Bobb submits that it is a basic rule of interpretation that one must first determine whether the plain or ordinary interpretation of the words apply. If it does not, because of some ambiguity or absurdity, then the court must look to the entirety of the document to construe the meaning of the words.
- [25] Learned counsel submits that the definition of 'project' must come from the document before the court. According to Mrs. Sookoo-Bobb, the contract is very clear about what project Mr. Dorsett was expected to work on, that is, the pier construction project. 'Pier' is defined as a second cruise terminal at Port Zante, Bay Road, Basseterre, St. Kitts in clause 1.0 of the contract. Mrs. Sookoo-Bobb

¹⁵ Appellant's Submissions, paragraph 3.

urges the Court to reject SCASPA's invitation to find that the word project should be defined as the 'Jay Cashman project'.

[26] Further, it is learned counsel's submission that clause 2.0 is clear that there were two dates for the termination of the contract. The first was a specific date which is 30th November 2014. The clause however did not end there and the word 'or' followed, accompanied by the phrase 'at the completion of the pier construction project, whichever is later'. Mrs. Sookoo-Bobb referred the Court to the **Interpretation Act of Saint Christopher and Nevis**¹⁶ which she says specifically defines 'or' as 'disjunctive'. This means that, while it was contemplated that the contract would come to an end on 30th November 2014, the phrase 'whichever is later' extended the contract after 30th November 2014 if the project was not completed by that date.

[27] As it relates to the conduct of the parties, Mrs. Sookoo-Bobb submits that Mr. Dorsett's failure to submit invoices was not a pre-condition for payment. She submits that there was nothing in the contract to suggest that payment was tied to the submission of invoices. The invoices were only a record of the payment due and owing for work already done. Mr. Dorsett was still performing his contractual duties under the scope of services. In any event, the invoices were in fact submitted, albeit late.

Analysis

[28] The central issue in this appeal concerns the construction and interpretation of the contract. Questions of contractual construction are questions of law. **Halsbury's Laws of England**¹⁷ puts it this way:

"Where a contract has been reduced to writing, its interpretation is a question of law for the court to decide."

¹⁶ Cap 1.02 of the Revised Laws of Saint Christopher and Nevis.

¹⁷ Volume 6 (2018) paragraph 232.

[29] It may be useful at this juncture to review the principles which an appellate court must have regard to when considering questions of law. In the case of **Margaret Blackburn v James A.L. Bristol**,¹⁸ an authority from this Court, Baptiste JA referred with approval to the Canadian Supreme Court case of **Housen v Nikolaisen**¹⁹ where the court held that:

“[O]n a pure question of law, the basic rule with respect to the review of a trial judge’s findings is that an appellate court is free to replace the opinion of the trial judge with its own. Thus the standard of review on mere questions of law is one of correctness.”

[30] Unlike the reluctance of the appellate court to interfere with findings of fact, unless it can be said that the findings fall beyond the generous ambit within which reasonable judicial disagreement is possible so as to be clearly wrong, the appellate court has a “broad scope of review with respect to matters of law”.²⁰ SCASPA’s task therefore is to satisfy this Court that the learned judge’s interpretation of the contract was simply wrong and that this Court ought to give a different interpretation to it; an interpretation in line with that contended for by SCASPA.

[31] It is not in contention that the learned judge correctly stated the law relating to the interpretation of a contract. SCASPA contends however, that the learned judge erred in the application of these principles. The learned judge at paragraphs at 27-30 of her judgment cited the case of **Ocean Conversion BVI Limited v Attorney General**²¹ which contained a re-statement of the applicable principles as enunciated by Lord Hoffmann in **Investors Compensation Scheme Ltd. v West Bromwich Building Society**.²² The learned judge also made mention of the cases of **Rainy Sky SA and others v Kookmin Bank**²³ and **Al Sanea v Saad**

¹⁸ GDAHCVAP2012/0019 (delivered 12th October 2015, unreported), paragraph 24.

¹⁹ [2002] 2 SCR 235, paragraph 8.

²⁰ Ibid, paragraph 9.

²¹ BVIHCVAP2009/019 heard together with BVIHCVAP2009/0020 (delivered 18th April 2012 and corrected and re-issued 30th July 2012, unreported).

²² [1998] 1 All ER 98.

²³ [2011] UKSC 50.

Investments Co Ltd²⁴ as ‘authorities for the principle that it is not for the court to rewrite the parties’ bargain’.²⁵ I am satisfied that the learned judge correctly stated the applicable principles and cited relevant authorities on the point.

[32] Having considered the authorities and applicable principles, I turn now to the contract.

[33] SCASPA contends that the learned judge misconstrued the meaning of the phrase ‘completion of the pier construction project’ in clause 2.0 and suggests that on a proper interpretation, the completion of the pier construction project refers to when the ‘Cashman pier construction project’ came to an end.

[34] In order to ascertain what the parties intended by ‘completion of the pier construction project’, it is important to consider the contract in its entirety. Beginning with the preamble, it is clear that Mr. Dorsett entered into a contract with SCASPA and not Jay Cashman, Inc. Clause 1.0 provides context on what Mr. Dorsett was contracted to do. It reads:

“SCASPA hereby appoints EURICK DORSETT as Construction Manager to provide project management and consultancy services to SCASPA in relation to the development on (sic) a second cruise terminal at Port Zante, Bay Road, Basseterre, St.Kitts.”

The clause continues:

“The Construction Manager will be required to represent SCASPA in its dealings with Jay Cashman, Inc (the joint venture partner) and any other service providers or stakeholders, as directed, in relation to the said project.”

[35] The ‘said project’ refers to what was previously described in the same clause, that is, the development of the second cruise terminal at Port Zante. There was no

²⁴ [2012] EWCA Civ 313.

²⁵ Supra n.8, paragraph 30.

other pier or terminal contemplated by the contract other than the one slated for construction at Port Zante.

[36] The court will infer that the parties to a contract have used words which convey what they intend to be bound by. Had SCASPA intended for the 'pier construction project' to be linked only to Jay Cashman, Inc.'s involvement in the project, then it could simply have included a clause in the contract to this effect. Moreover, I reject SCASPA's argument that the MOU signed between Jay Cashman, Inc., SCASPA and the Federation, bears any weight on the construction and interpretation of the contract. The MOU makes no mention of SCASPA's contract with Mr. Dorsett. As stated by Thom JA in a recent judgment of this Court in the case of **Clement Donovan v Adina Whitrod et al**,²⁶ 'extrinsic evidence is not admissible to determine the intention of the parties', which intention Thom JA stated, 'is to be determined from the document itself when read in its entirety having regard to the factual matrix'. It is therefore impermissible to allow consideration of the MOU, which Mr. Dorsett was not a party to, to ascertain what was meant by the terms of the contract between Mr. Dorsett and SCASPA. 'Completion of the pier construction project', in the context of the contract, meant completion of the second cruise terminal at Port Zante and not the end of the agreement with Jay Cashman, Inc.

[37] Having found that Mr. Dorsett's contract for services was dependent on the completion of the construction of the pier at Port Zante and not on Jay Cashman, Inc.'s involvement in the pier construction project, I also find that Mr. Dorsett continued to be employed after 30th November 2014. I agree with the learned judge that the words in clause 2.0 are unambiguous and should be given their plain meaning. It was envisaged by the parties that the contract would come to an end on 30th November 2014, but this was subject to the phrase that followed: '...or at the completion of the pier construction project, whichever is later'. Therefore, as

²⁶ BVIHCVAP2020/0003 (delivered 4th June 2021, unreported) paragraph 26.

the construction had not been completed by 30th November 2014, Mr. Dorsett continued to be employed under the terms of the contract until such time as the construction of the pier was completed or the contract was otherwise terminated.

[38] The next question for the Court's determination is whether Mr. Dorsett was entitled to the payment of a professional fee after 30th November 2014, particularly for the period of February 2015 to July 2015.

[39] Mr. Dorsett attests in his witness statement that after Jay Cashman, Inc. pulled out, the nature of his services became more demanding and now included finding and brokering a deal with a new joint venture partner. He also says that he was requested to provide professional services in relation to issues at the Robert L. Bradshaw airport pending the brokering of a deal with a new joint venture partner. SCASPA however invites this Court to find that the services provided by Mr. Dorsett after the Jay Cashman, Inc. deal fell through were not within the scope of services contemplated by the contract because Mr. Dorsett's services under the contract were limited to dealings with Jay Cashman, Inc.

[40] I accept SCASPA's argument that the professional services Mr. Dorsett provided in relation to the Robert L. Bradshaw airport were additional services not within the contemplation of the contract, which concerned the construction of a pier. I do not however accept that finding and brokering a deal with a new joint venture partner to carry on the construction of the pier was outside the scope of the consultancy services which Mr. Dorsett was contracted to provide. Clause 1.0 of the contract outlined that the construction manager was required to represent SCASPA not only in its dealings with Jay Cashman, Inc., but also in its dealings with 'any other service providers or stakeholders, as directed, in relation to the said project.' Clause 2.0 goes on to describe Mr. Dorsett's scope of services to include 'professional consultancy services on all aspects of the project including costs, design, materials and engineering works.' While the goal of the pier construction

project was the completion of the physical construction of the second cruise terminal at Port Zante, the 'pier construction project' would naturally encompass preparatory works necessary to facilitate the construction of the pier. Indeed, it is to be noted that there was evidence before the court below that construction of the pier commenced 2 weeks before the start of the trial and that the preparatory work that had been done by Mr. Dorsett was being used in the construction.

[41] As to the non-submission of invoices, which counsel for SCASPA says is an indication that Mr. Dorsett was not entitled to be paid a professional fee after 30th November 2014, I find that there is nothing in the contract to suggest that this was a prerequisite for payment of the professional fees to Mr. Dorsett. Mr. Bass, who was the CEO of SCASPA at the material time, said in his witness statement that there was no obligation on Mr. Dorsett to submit invoices for payment.²⁷

[42] Accordingly, I am of the view that Mr. Dorsett was entitled to be paid after 30th November 2014 for his services directly relating to the construction of the pier which, after August 2014, included dealing with other potential joint venture partners with a view to finding and brokering a deal with a new joint venture partner.

[43] In so far as it relates to the termination of Mr. Dorsett's contract, the contract expressly provided four ways in which it could come to an end. The first two are found in clause 2.0, which states that the contract will end by a specified date or, alternatively, at the completion of the pier construction project, if later. Clause 4.3 specifies two other ways by which the contract may be ended: one is termination of the contract by SCASPA if Mr. Dorsett fails to competently perform his duties, and the other is termination of the contract by SCASPA if it determines that it is in its best interests to discontinue Mr. Dorsett's engagement. This latter mode of termination, however, attracts a termination fee of US\$48,000.00.

²⁷ Hearing Bundle Volume 1, Witness Statement of Jonathan Bass, page 310, paragraph 13.

[44] SCASPA submits that to give the plain and ordinary meaning to ‘the completion of the pier construction project’ in clause 2.0 would lead to an absurdity if, as happened in this case, the construction of the pier never began. This, SCASPA submits, would mean that Mr. Dorsett would essentially be engaged and remunerated for a task that could not be completed.

[45] I do not consider though that this would put SCASPA in an untenable position. The fact is that SCASPA would have contracted the services of Mr. Dorsett to provide construction management services on a project which never commenced. If that state of affairs was brought about by Mr. Dorsett’s incompetence, then SCASPA could invoke clause 4.3.1 and terminate the contract on that basis. If, however, construction of the pier never commenced, through no fault of Mr. Dorsett, then why should he be left holding ‘the empty bag’? SCASPA would simply have to terminate the contract by invoking clause 4.3.2 and pay the price of US\$48,000.00, which they stipulated in their contract should be paid to Mr. Dorsett in such an eventuality. If the view is taken that this latter option may appear to be unfair to SCASPA, one only needs to bear in mind that this is the contract that SCASPA entered into, and it is not for the court to seek to rescue it from the consequences of its unfair bargain.

[46] In the case of **Attorney General of Belize and others v Belize Telecom Ltd and another**,²⁸ a decision of the Privy Council, Lord Hoffman at paragraph 16 said this:

“The court has no power to improve upon the instrument which it is called upon to construe, whether it be a contract, a statute or articles of association. It cannot introduce terms to make it fairer or more reasonable. It is concerned only to discover what the instrument means.”

[47] I therefore find no merit in Mr. Byron’s argument that it would be absurd for Mr. Dorsett to be compensated for a task that had not been completed. There was no evidence to suggest that the failure to commence construction was

²⁸ [2009] 1 WLR 1988.

Mr. Dorsett's fault. He was contracted to provide consultancy services in relation to the pier construction project and he did so. SCASPA cannot now call upon this Court to rescue it from the consequences of an agreement into which it freely entered. In any event, there was evidence before the Court that construction of the pier commenced two weeks before the start of trial and the work that Mr. Dorsett had done was being used in the construction.

[48] As to the question of when Mr. Dorsett's contract was determined, I refer to the letter of 20th July 2015 from SCASPA's acting CEO, Mr. Marcellus Phillip, to Mr. Dorsett. Although the word 'termination' was not expressly used in the letter, SCASPA conveyed in no uncertain terms that it was of the view that Mr. Dorsett's engagement had come to an end on 30th November 2014 and that Mr. Dorsett had not acted on behalf of SCASPA since that date. This was reiterated by another letter from SCASPA to Mr. Dorsett dated 28th August 2015. Additionally, Mr. Dorsett was ordered to immediately 'suspend' all activities in which he acted or purported to act for SCASPA. If, therefore, Mr. Dorsett was informed by SCASPA's CEO that he was no longer required to act on behalf of SCASPA and that his contract had ended on 30th November 2014, then SCASPA had obviously terminated his contract. I find though that Mr. Dorsett's contract was terminated, not on 30th November 2014 as the CEO said in his letter, but on the date of the CEO's letter, which was 20th July 2015.

[49] In the premises, I find no merit in grounds 1 to 3 of SCASPA's grounds of appeal.

[50] In relation to grounds 4 to 9 of SCASPA's grounds of appeal, I do not consider it necessary to address them having regard to my findings above. I say only that I do not find that the learned judge misconstrued SCASPA's case in such a way so as to be plainly wrong and warranting interference by this Court.

Conclusion

- [51] For the foregoing reasons, I am satisfied that the interpretation of the contract by the learned judge was in line with the applicable principles and was correct. I am also satisfied that the learned judge did not misconstrue SCASPA's case and that she was not plainly wrong in the conclusions at which she arrived. I accordingly dismiss the appeal and affirm the orders made by the learned judge on 10th July 2018.
- [52] Costs are awarded to the respondent to be assessed by a judge or master of the High Court, if not agreed by the parties within 21 days. The assessed costs shall not exceed two-thirds of the costs awarded in the court below.

I concur.

Gertel Thom

Justice of Appeal

I concur.

Gerard St. C. Farara

Justice of Appeal [Ag.]

By the Court

Chief Registrar