

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

IN THE HIGH COURT OF JUSTICE

Claim No: ANUHCV2019/0198

BETWEEN:

YANNICK BEAZER

Claimant

and

BARBUDA COUNCIL

Defendant

Appearances:

Wendel Robinson, Counsel for the Claimant

Justin Simon QC, Counsel for the Defendant

2022: February 1st
March 1st; 31st
May 17th

DECISION

- [1] **GARDNER HIPPOLYTE, M.:** This is an assessment of damages for breach of contract pursuant to an agreement between the Claimant and the Defendant for a period of four (4) years.

Background

- [2] On the 1st December, 2017 the Claimant entered into an agreement with the Defendant to transport materials for the Defendant's works on a weekly basis. Additional services were also included verbally for the Defendant to do all tasks assigned. The terms of the contract are brief and are reproduced as follows:

**"CONTRACTUAL AGREEMENT BETWEEN THE BARBUDA COUNCIL AND MR.
YANNICK BEAZER OF CODRINGTON BARBUDA**

Scope of work: The transportation of Materials for the Barbuda Council Works Department on a weekly basis.

Such works to be carried out Mondays to Saturdays each week. The consideration for the performance of the service will be \$2,500.00 weekly over a six days work week.

The duration of this contractual agreement will be for four years in the first instant. These terms are mutually accepted and agreed by both parties.

For the Barbuda Council

ANNE BEAZER
K NEDD

Mr. Yannick Beazer

YANNICK BEAZER"

- [3] There is no date on the contract but the Claimant in examination-in-chief gave evidence that the contract commenced 1st December, 2017. Under cross examination the Claimant agreed the document was not dated and it did not have a commencement date. The fuel and maintenance of the truck was covered by the Claimant and the Barbuda Council organised a driver.
- [4] The Claimant's claim is that from 26th March, 2018 to 4th December, 2018 the Defendant failed to make payments to him totalling \$74,500.00 and that despite repeated requests no payments were made. Additionally on the 5th December, 2018 the Claimant's attorney wrote to the Defendant requesting said outstanding payments and return of the truck. The letter addressed to W. Burton indicates that as a result of the outstanding payments the Claimant **"indicated that he wish to cease all operations with the Council, thus bringing to an end on the basis of your breach for non-performance."** (My Emphasis)
- [5] The Defendant filed an acknowledgement of service but failed to file a defence and judgment was granted in default of defence on the 18th October, 2019 for the sum of \$74,500.00 and damages for breach to be assessed. The matter went to mediation and the Defendant agreed to pay \$76,511.23¹ and the damages for breach of contract was not resolved. At the hearings for the assessment of damages for the breach of contract the Court heard from the Claimant and Knacyntar Nedd.
- [6] The Claimant indicated that he entered into the agreement with the Barbuda Council to transport materials at the rate of \$2,500.00 a week. Barbuda had been "hit hard" by a hurricane in September of that year and the main reason for the contract was the removal of debris. The Claimant as a result of the agreement purchased a truck from Harney Motors and his repayments were \$1,350.00 for four years. He then had to renegotiate the payments to \$800.00 for 7 years when the contract with the Council was breached. The total amount to be expended in reference to the truck is \$67,200.00.
- [7] The Claimant states the total amount now due and owing to him under the contract is \$520,000.00. Having been paid one year of the contract, the balance the Claimant is now seeking is \$390,000.00.
- [8] The additional witness for the Claimant indicated that she was the Chair of the Barbuda Council and one of the signatories to the contract. That the main purpose of the contract was to dispose of waste, trees, debris and other bulk waste which was a result of hurricane Irma in 2017. Ms. Nedd confirmed that Mr. Beazer was hired for six days a week but sometimes worked seven and that his rate of pay was \$2,500.00. Additionally, she stated that the Claimant honoured his side of the agreement.
- [9] The Defendant had two witnesses and they were initially present when the case started but they were unavailable later in the day when the case was recalled on the 1st February, 2022 due to

¹ On the 1st February, 2022 the Claimant agreed under cross examination he had been paid this amount in full.

schedule commitments and technical difficulties. The hearing of their evidence was scheduled to the 1st March, 2022 and on this occasion the witnesses were not present and the Court choose to proceed without their evidence. Submissions were provided by both Parties.

- [10] The thrust of the Defendant's argument is that the Claimant is under a duty to mitigate his losses. I will therefore consider the Claimant's duty to mitigate as proposed by the Defendant.

Claimant's Duty to Mitigate

- [11] The Claimant in his submissions has argued that the basic principle of a breach of contract is that the party who has suffered damage, must be placed back in the position he would have been in if the damage did not occur.² Additionally, the contract signed between the parties is a fixed contract for a period of four years with no termination clause. I agree with this position as it is a very simple fixed term contract with no termination clause.

- [12] The Defendant has placed reliance on the Claimant's duty to mitigate and argues that he should not be entitled to the damages he is seeking in the assessment. The Defendant in the alternative has argued that yes **"the law does not allow a plaintiff to recover damages to compensate him for loss which would not have been suffered if he had taken reasonable steps to mitigate his loss"**³ (My Emphasis), however this is a question of fact. Counsel for the Claimant further refers to Cheshire, Fifoot & Furmstones, Law of Contract 16th Edition at page 929, which says:-

"Whether the plaintiff has failed to take a reasonable opportunity of mitigation is a question of fact dependent upon the particular circumstances of each case and the burden of proving such failure rests upon the defendant."⁴

- [13] The Claimant under cross examination agreed that from 5th December, 2018 the truck was returned to him by the Barbuda Council and was parked in his yard. That he parked the vehicle and he would only use it for his personal business like going to the supermarket and picking up water at the port for his mother.
- [14] The Claimant stated the truck was not used for rental or business because he bought it for use with Barbuda Council and did not consider to use it for anything else. He also did not make any attempts to put it to use for something else as there was no other opportunity in Barbuda. Despite Queen's Counsel best efforts to assert under cross examination that the Claimant could have done business transactions with his vehicle for the three years to mitigate his losses, there is no evidence to suggest to the contrary.
- [15] The requirement in the law is that the Defendant has the burden to prove such a failure to mitigate. Whilst the Claimant did nothing but personal use with the vehicle there is no evidence to suggest that there were opportunities in Barbuda that the Claimant could have taken advantage of or did take advantage of and earned money as a result of the same.

- [16] Accordingly, the Claimant is entitled to the remaining amount under the fixed term contract.

² Cheshire, Fifoot & Furmstones, Law of Contract 16th Edition at page 902

³ Cheshire, Fifoot & Furmstones, Law of Contract 16th Edition at page 929 to 930 at Ft 137 – British Westinghouse Electric and Manufacturing Co v Underground Electric Rly Co of London [1912] AC 673 at 689.

⁴ Cheshire, Fifoot & Furmstones, Law of Contract 16th Edition at page 929 to 930 at Ft 138 – Payzu Ltd v Saunders [1919] 2 KB 581

Additional Claims

- [17] The Claimant's counsel also sought to claim an additional \$10,000.00 for the period 4th December to the end of the year. However, the contract was for the period 1st December – 30th November, 2021 and the amount \$10,000.00 is captured in the global sum \$390,000.00. Therefore, I find no merit in this component of the claim.
- [18] The Claimant's counsel in the submissions also sought to claim \$7,000 for the refinancing of the truck however no documents were submitted to substantiate the exact increased amount in the refinancing and accordingly, an amount will not be award for this head.

Conclusion

- [19] For the above-mentioned reasons the order of the Court is as follows:
1. The Claimant is awarded damages in the sum of \$390,000.00;
 2. The Claimant is awarded prejudgment interest at 2.5%;
 3. The Claimant is awarded interest at the rate of 5% from today's date until full payment;
 4. 60 % of Prescribed costs in accordance with CPR 65.5;
 5. The Claimant to draw file and serve the order.

CHARON GARDNER-HIPPOLYTE
High Court Master

BY THE COURT

REGISTRAR

