

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SUIT NO 9 OF 1991

BETWEEN

SECURE ST LUCIA LIMITED

Plaintiff

vs

B & D CONSTURCTION LTD

Defendant

Appearances:

Mr Dexter Theodore for Plaintiff

Mr. Peter Foster for Defendant

2000: March 27;
May 4th .

JUDGMENT

[1] **d’Auvergne J.** On the 11th day of January 1991 the Plaintiff filed a writ against the Defendant for money due to him from the Defendant for security guard services rendered to the Defendant at the latter’s request. He claimed \$16,020 for services rendered between the period April to June 1989 and for interest and costs.

[2] An appearance was entered by the Defendant on the 24th day of January 1991 and on the 2nd of August 1991 **Judgment in Default of Defence** was entered.

[3] Much correspondence passed between the parties including two summonses filed by the Defendant and served on the Plaintiff and eventually on the 11th of December 1991 the court ordered the following:

- (1) That Judgment entered herein on the 2nd day of August 1991 be set aside.
- (2) That the writ of Execution filed herein on the 3rd of October 1991 be withdrawn.
- (3) Cost of this application be costs in the cause.
- (4) That the Plaintiff do file and serve particulars of his Statement of Claim within fourteen (14) days from the date hereof, and
- (5) That the Defendant do file and serve his defence herein, within 14 days thereof.

This order was entered on the 31st of December 1991.

[4] The **Further and Better Particulars** disclosed that the Contract between the parties took place on the 5th of March 1989 for a twenty-four (24) hour Seven (7) days a week security guard service at the defendant's premises at Union in the quarter of Castries. The said service was to be performed in the following manner at the said premises, one man between the hours

of 6.00 p.m. to 6.00 a.m. two men and from 6.00 a.m. to 6.00 p.m. and the remuneration would be at the rate of \$4.50 per hour per man.

[5] The defence filed on the 14th January 1992 was a complete denial of the Plaintiff's claim in the **Statement of Claim and Further and Better Particulars.**

[6] A **Request for Hearing** was filed on the 14th of May 1992 and on the 10th of February 1994 a Defence (by order granting leave to file Defence) was filed and reads:

1. The Defendant denies that there was any or any oral contact between the Plaintiff and Defendant as alleged or at all.
2. If, which is not admitted, there was any or any contact between the Plaintiff and the Defendant, the Defendant will contend that the Plaintiff was in breach of their contractual obligations to properly guard the Defendant's premises at Union in that, on divers occasions the Plaintiff failed to provide the said security service by providing one man when two were required and on divers occasions providing no men.
3. Further and in breach of the Plaintiff's obligation to provide a proper and adequate security service, the Plaintiff negligently guarded the Plaintiff's said premises thereby causing them loss.

PARTIUCLARS OF NEGLIGENCE:

1. Failing to provide proper and or adequate security services;
2. Failing to provide competent and or a sufficient number of guards to secure the Defendant's premises.

PARTICULARS OF LOSS:

During the period when the Plaintiff was meant to guard the Defendant's premises, a part for a tractor namely the "Final Gear Drive", went missing at a cost of THIRTEEN THOUSAND DOLLARS (\$13,000.00). This part rendered the said tractor inoperable and the Defendant lost the benefit of the revenue to be derived from the use of the said tractor at ONE HUNDRED AND SIXTY-FIVE DOLLARS (\$165.00) an hour.

- 4, Save as herein before expressly admitted or not admitted, the Defendant denies each and every allegation contained in the Plaintiff's claim unless the same had been herein set out and specifically traversed.
5. The Defendant repeats paragraphs 1-4 herein of the Defence.
6. The Defendant is a Company engaged in the business of road building and heavy equipment rentals, with large compounds situate at Union, in the Quarter of Castries.
7. In the premises the Defendant has suffered loss and damage.

AND THE DEFENDANT COUNTERCLAIMS:-

1. Special damages of THIRTEEN THOUSAND DOLLARS (\$13,000.00).
2. General Damages
3. Costs hereof

[7] A reply and defence to Counterclaim were filed on the 24th of February 1994 and the matter came up for trial on the 7th of March 2000.

[8] On the said date Gabriel Jn Pierre in whose name the action was previously filed before the present Plaintiff was substituted gave evidence on behalf of the Plaintiff. He said that he was the Managing Director of the Plaintiff who supplies Security Services in the State of St. Lucia, that he was called in March 1989 by one Charles Daher and that he immediately went to Union quarter of Castries where he met and had a conversation with the said Charles Daher which resulted in his agreeing to supplying security services to the Defendant; that he supplied two men from 6.00 p.m. to 6.00 a.m. from that same day and one man from 6.00 a.m. to 6.00 p.m. till the 1st of June 1989 but was never paid though the rate of pay had been agreed upon by the Managing Director of the Defendant.

[9] At that juncture in the proceedings Learned Counsel for the Defendant submitted that the witness could not discuss rate of pay since the case was based on an oral agreement and therefore the amount must not exceed \$48.00 otherwise the application should be supported by documentary evidence. He supported this argument by quoting **Article 1163 of the Civil Code and St Lucia Case Suit 408 of 1986.**

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Learned Counsel for the Plaintiff argued that the objection was premature. He quoted Article 1163 but insisted that it merely requires documentary support.

In reply Learned Counsel for the Defendant re-iterated his objection. I ruled that the submission was premature and that the evidence should continue.

[10] The witness continued his evidence in chief, he said that the agreed rate was \$5.00 per hour and that he provided security personnel for three months and never received any payment despite various requests. He then exhibited three documents, his letter to The Manager of Equipment and Technical Services Ltd at Union (a company he said was based about 100 yards from where he “was guarding” which operated heavy equipment, a reply written on B & D Construction Ltd. letterhead from the Managing Director Charles Daher and thirdly a letter from the Defendant’s Counsel seeking clarification of facts in the Statement of Claim.

[11] The second mentioned document is hereby reproduced verbatim.

Monday June 11, 1990

Mr. Dexter V.O. Theodore
7 High Street
P O box 629
Castries.

Dear Sir:

We are in receipt of your letter 5th June, 1990 in relation to monies owed to Secure St. Lucia Limited.

We have time and time again verbally informed Mr. Pierre from Secure St. Lucia Limited that until proper clarification and accountability of the parts missing during their tenure of service to B & D Construction Limited is settled we will not be entertaining any payments to them.

Further we have evidence and witnesses for a counter charge in relation to numerous reports of dereliction of duty by Secure St. Lucia which we intend to pursue if the need arises.

However, we are open to discussions on a mutual arrangement for parts stolen during their tenure viz a viz the amount claimed by Secure St. Lucia Limited.

We anticipate future discussions on this subject and look forward to an early settlement of this matter.

Yours faithfully
B & D CONSTURCTION LIMITED

.....
Charles Daher
MANAGING DIRECTOR

[12] The Cross Examination of that witness showed that the Plaintiff had just started out in business when he worked for the Defendant, that it was a

long time ago, and though the witness was sure that it was at the rate of \$5.00 per hour for three months and that though he had not breached the Contract he was unable to tender any written evidence of the facts stated. He stressed that the only complaint brought to his attention was a lost battery which was eventually retrieved; that he was certain that he had contracted with Charles Daher who was the Managing Director of Equipment of Technical Services Ltd. but agreed that he had no evidence to rely on, but his words.

[13] At the close of the case for the Plaintiff Learned Counsel for the Defendant submitted that he stood on his submission and gave various reasons, Firstly that the rate per hour in the **Further and Better Particulars** filed 7th of January 1992 stated \$4.50 per hour yet in evidence Plaintiff said it was \$5.00 per hour. He said that the Plaintiff could not remember the names of the guards, the times or months they worked infact the Plaintiff was totally unprepared and that the evidence produced was poor and therefore the case was not established. He quoted once more the St Lucian Case of **Sonia Girard vs Vincent Doxierie**.

[14] Learned Counsel for the Plaintiff commented on the absence of the Defendant and the defence he instructed his Counsel to file into Court.

[15] He urged the Court to accept the letter from Charles Daher dated 11th June 1990 as written evidence that the Plaintiff had a Contract with Charles Daher and that the Plaintiff provided the services requested of him for the period and at the rate stated in his evidence. He said that the letter was an admission of debt.

Learned Counsel for the Defendant replied by reminding the Court that it was not a Court of sympathy.

[16] **Conclusion**

Section 1163 of the Civil Code of St Lucia provides:

Proof may be by testimony:

1. Of all facts concerning commercial affairs;
2. In a matter in which the principal sum of money or value in question does not exceed forty-eight dollars;
3. In a case in which real property is held by permission of the proprietor without lease, as provided in the Book respecting *Lease and Hire*;
4. In case of deposit or bailment under pressing necessity or deposit made by a traveler in an inn, and in other cases of a like nature;
5. In the case of an obligation arising from a quasi-contract, delict, or quasi-delict, and in all other cases in which proof in writing cannot be procured;

6. In any case in which the proof in writing has been lost by unforeseen accident, or is in the possession of the adverse party or of a third person without collusion of the claimant, and cannot be produced;
 7. In any case in which there is a commencement of proof in writing. In all other matters proof must be by writing or by the oath of the adverse party.
- The whole, nevertheless, being subject to the exceptions and limitations specially declared in this section, and to the provisions contained in article 1590.

- [17] In my judgment this case falls under **Article 1163 (7)**
- “In any case in which there is a commencement of proof in writing.” The St Lucia **Case Suit 408 of 1986 Sonia Girard vs Vincent Doxerie** does not assist the present case.
- In **Price v Neault 1889 AC Page 110 at Page 114 Second paragraph** where commencement of proof was held to be some written evidence which lends probability to the matter sought to be proved.
- [19] As I see it paragraph two of the letter dated 11th June 1990 from Charles Daher Managing Director of the Defendant is indeed a writing which lends probability to the Plaintiff’s case.

The Defendant has stood on his submission and has given no evidence nor has any one given evidence on his behalf.

[20] Despite the poor quality of the evidence given by the Plaintiff, I accept his evidence that he provided a Security Service to the Defendant in the form of 36 man-hour a day from 5th March to the 1st of June 1989. By simple mathematics he provided service from the evening of 5th of March to the morning of the 1st of June 1989 at 6.00 a.m.

Two men from the evening of 5th March 1989 which amounts to 24 hours.

26 days in March 1989 at 36 hours.

30 days in April at 36 hours

31 days in May at 36 hours which ended at 6.00 a.m. 1st June. Total amount of hours worked is 3,156.

[21] I will take the amount of \$4.50 as stated in the **Further and Better Particulars** of 7th January 1992 when the amount would have been fresher in the Plaintiff's mind. The total of 3,156 hours multiplied by \$4.50 should be \$14,202.00.

[22] I therefore give judgment for the Plaintiff in that sum.

[23] **My order is therefore as follows:**

That the Defendant do pay to the Plaintiff the sum of \$14,202.00.

Interest at 6% from the date of judgment to the date of payment.

Costs to be agreed or otherwise taxed.

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Suzie d'Auvergne
High Court Judge