

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L.N. 054/1982

BETWEEN NATIONAL SAFETY LIMITED PLAINTIFF
A N D JAMES GIBBS DEFENDANT

John Graham instructed by Myers Fletcher and Gordon, Manton and Hart for Plaintiff.

Earl Delisser for the Defendant.

Hearing on: March 19, 1985; July 1, 1985

Delivered on: July 30, 1985

JUDGMENT

BINGHAM J:

In this matter the Plaintiff's company claim against the defendant is not in dispute. Paragraph 1 of the Defence filed admits that the sum of \$26,280.26 as due and owing by the defendant to the Plaintiff's company. The defendant has, however, sought to set-off against this sum claimed the sum of \$17,809.00 as being due and owing to him for work done under various contracts of service between January 1980 and May 1981.

The particulars of Defence at paragraph 3 alleged the following sums as being due to the defendant.

1. Mutual Life Computer Room	\$2640
2. Alcan Jamaica Company Limited	\$ 360
3. Alcan Jamaica Company Limited Kirkfine	\$ 844
4. Jamaica Telephone Company Limited Spanish Town and Weymouth Drive	\$10000
5. Jamaica Telephone Company Limited Duke Street	\$ 700
6. Service Contracts	\$3265
	<u>\$17609</u>

The defendant if he was successful in establishing the sums claimed would have gone a far way towards considerably reducing the Plaintiff's claim.

In their reply, the Plaintiff's company joined issue with the defendant and deny paragraphs 2 and 3 of the Defence with reference to the particulars as set out in paragraph 3.

At the hearing of the summons for direction before the Master on 5th October, 1983 the following order was made inter alia,

"6. The defendant to deliver to the Plaintiff within 21 days further and better particulars of paragraph 3 of the Defence."

On 17th April, 1984, the following further and better particulars were supplied to the Plaintiff's Attorneys:-

1. Renovation of the Halon 1301 fire suppression system for Computer Room - Mutual Life.
2. Designed and engineered local application Carbon Dioxide fire suppression system for the Silver Spray.
3. Designed and engineered and co-ordinated for total renovation of Ansul Dry Chemical Hand System and duet range fire suppression system.
4. Designed, engineered and co-ordinated with Apex Consultants the automatic fire detection and alarms systems at Spanish Town and Weymouth Drive.
5. General repairs to existing "Kiddie" fire alarm systems.
6. General systems service work from January 1981 to May 1981.

Having regard to the amendments sought in relation to the Defence at the outset of the hearing, it is clear that what was intended in paragraph 6 of the particulars was to state January 1980 and not 1981.

When the pleadings are fully examined it becomes clear that the whole matter boils itself down to a determination as to whether in respect of the six items of which the defendant has alleged various sums as due and owing to him for work done on what is in effect a *quantum meruit* basis, whether any such sums are, if at all due and owing. Having regard to the particulars as set out at paragraph 3 of the Defence as well as the particulars supplied, it is further clear that in relation to at least three of the items claimed in the particulars, that is items 3, 5, and 6, there existed absolutely no basis for any such a claim.

On a full examination of the evidence in this matter, my task has been made even simpler due to the defendant's failure to establish what if any sums are due and owing under item 6 of the particulars as set out in the Defence. This relates to the claim for service work. Here, not only did the defendant fail to mention in his evidence one solitary sum as being due to him, but the evidence of the system was that the company would only honour claims for service work when an approved bill stating that the work was done was submitted from a particular customer verifying this to be so. The unchallenged evidence of the plaintiffs went towards establishing that a check of the company's records revealed no such outstanding sums due to the defendant.

With regards to item 3 relating to work allegedly done by the defendant at Alcan Kirkvine Works on a Kitchen System for which the sum of \$844 is claimed, this was also entirely groundless for the reasons that although the Plaintiff swore on oath that:

"the second project related to renovation of an Ansul Automan Dry Chemical Kitchen System. This was carried on at Alcan Kirkvine in Mandeville. I have with me the details of the cost of renovation. This work was done around the same period of late 1980 to early 1981. This job was estimated at \$8,001.00. I am claiming \$844.00. This job was left unfinished at the time. I stopped working for the company."

As the evidence emerged, however, the tender submitted by the defendant through the Plaintiff's company was not accepted by Alcan and in accordance with what it is admitted by the defendant was the established practice of the Plaintiff's company, there was no charge made to Alcan for the preliminary work done.

The final matter which may also be easily disposed of relates to the work done at the Duke Street Exchange of Jamaica Telephone Company Limited (Item 5). The defendant's claim here is for \$700.00. He has admitted under cross examination to receiving an advance of \$816.00 on this job. In this regard therefore, contrary to there being any sum due to the defendant, he actually owes the Company \$116.00.

This leaves therefore for consideration three items

namely:-

1. The Mutual Life Project.
2. The Jamaica Telephone Company Limited Projects at Weymouth Drive and Spanish Town.
3. The Alcan Jamaica Project Silver Spray.

In respect of all these projects the Plaintiff although alleging in their reply a complete denial of any sum as due and owing have not during the hearing sought to deny that the defendant did in fact do some work on these projects for which some remuneration ought to be made to him. However, in relation to items 1 and 2 supra the sums mentioned by Mr. Julian Templar the Managing Director of the Plaintiff's Company and who was at all material times in this position and who had an intimate working knowledge of the defendant's input in all of these projects is far less than that being claimed by the defendant. It is therefore necessary to examine the evidence available in some detail in determining the extent of the defendant's involvement in each of these projects and using the pricing formula as stated by the defendant which system has not been challenged by the Plaintiff in seeking to arrive at what one would regard as being a fair and reasonable award of compensation to the defendant.

The Mutual Life Project

The defendant's account was that he was concerned with carrying out all the preliminary work on this project including the inspection of the Computer Room. The general renovation was scheduled after the preliminary work was completed. This required the defendant to inspect the piping system to ensure that they were clear. He had also to trouble shoot the "Kiddie" M.A. 2400 controls and field wiring. The Halon system had been discharged when he inspected it but it could not function totally in the manner required. Under cross examination it was suggested to the defendant that he only received instructions to remove three Halon cylinders and have them recharged which would entail these cylinders being shipped abroad to Miami, Florida, U.S.A. to the company's agents there for recharging to be done.

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The defendant while admitting that this was a part of his instructions, is saying that before the cylinders were removed the cause of the discharge had to be identified. This would seem to be both logical and reasonable. He did not agree with the evidence of Mr. Templar that the cause for the discharge had already been identified over a year before.

The total estimated cost of this project was \$22,707.80 and the defendant is claiming the sum of \$2640 or just about 11% of the total contract price for the job. He stated that he worked on this project from late in 1980 until early in 1981. Mr. Julian Templar is of the opinion that a reasonable remuneration for this job ought to be \$150. He bases his opinion on the fact that all the defendant did was to remove three cylinders and take them to the Wharf for shipment abroad.

I am of the view that Templar's approach is one which seeks to downgrade the quality and kind of services that the defendant was offering to the Plaintiff's company. Here was a man who on the evidence of Templar was an highly skilled electrician (a grade A electrician) when he came to work for the Plaintiff's company in 1975. His work performance did not go unnoticed and was so well considered by Management that he was selected to be trained abroad in order to render him more efficient in the particular field that the Plaintiff's company was engaged in. His job designation of Systems Supervisor meant that he did all the preliminary work on projects and was therefore responsible for the preparation and submission of all estimates for tenders which resulted in a successful tender being made for this job. Templar's evidence tends to attach no regard to this fact but to view the defendant's services on this project as little more than a semi-skilled labourer fit only for the removal of cylinders similar to those used for domestic cooking.

The weight of the evidence however, suggest that the defendant had already terminated his services with the Plaintiff's company when the actual renovation work was carried out.

I would regard the preliminary work as being about 50% of the total labour costs, the other half I would relate to installation and renovation costs. Based upon the defendant's formula of being entitled to one third (1/3) of the total labour costs, I would therefore award him 1/3 of \$2362.50 (this sum being one half (1/2) of \$4725.00 - the total labour costs on the project) - vide Ex. 5. He recovers therefore \$787.50 under this head.

Jamaica Telephone Company Projects at Weymouth Drive and Spanish Town

The defendant is claiming a total of \$10,000 as being the sum due to him in respect of both these projects. His evidence is that he was responsible for designing and engineering the new "Kiddie" Fire System for both projects. This entailed site meetings with architects and consultants to co-ordinate and detail the lay out on the site of the Fire Components, offered as well as to finalise with the consultants the final approval of the layout drawing showing the components. Further he had to co-ordinate on site location of the fire alarm components against electrical contractors components. To overall a detailed co-ordination of the "Kiddie" E.P.S. components. It has been suggested to the defendant that this was the nature and extent of the work which he had been engaged to carry out on this project. The preliminary work was successfully carried through by him to the stage that based upon the estimates prepared by him a successful tender was submitted for this project. Mr. Templar has admitted that he had very little working knowledge of electrical systems hence his company obtaining the services of the defendant who Templar on his own admission knew as someone skilled in the particular area in which the company was engaged. Templar has said that he knew the defendant to have been previously engaged in the installation of Fire Alarm Equipment for a company to which the Plaintiff's company sold such equipment.

I would attribute the entire engineering aspect of these two projects to the defendant's skill and expertise. I do not find as a fact, however, that he actually prepared the drawings as Mr. Delisser sought to contend but I am of the opinion that the drawings although done by Mr. Templar were the ideas of the defendant. As exhibit 2 presents a breakdown of the costing on this project which shows that the total labour costs was \$10,123.10 of which installation

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accounts for \$8,615.40e and engineering \$1,507.70e. Mr. Templar has said that the defendant did not actually take part in the installation of the two systems which I have found were designed by the defendant. Although Mr. Delisser spent much time in challenging the authorship of the drawings - Exhibit 3 and 4 in seeking to attribute the credit for their preparations to the defendant, Templar's evidence as to the inactivity of the defendant in the actual installation work due to his departure from the company, was allowed to go unchallenged. I accept Templar's evidence that this was the position.

I would accordingly award the entire sum of \$1,507.70e to the defendant as he was in my opinion solely responsible for the engineering aspect of these two projects.

Alcan Silver Spray

This leaves the matter of the Alcan Silver Spray. This is a relatively small claim of \$360 in respect of a Silver Spray Motor Launch Carbon Dioxide Fire Suppression System. The defendant lays claim to designing a New Kiddie 100lbs. capacity system. This job entailed the defendant travelling to Port Esquivel on several occasions to run a number of tests on the existing systems and then to finally prepare layout drawings for that system. He successfully tendered for that job and the total estimated labour costs was \$3,694.26e. The defendant took ^{NO} part in the installation of this system. His claim covers approximately 10% of the total estimated labour costs.

Mr. Templar has again sought to relegate the defendant's input into this project to that of his merely copying a drawing based on a design to be found in the installation manual. In this regard, however, he admitted that the defendant actually commenced the installation work but was prevented from completing it when his services to the company were terminated.

Mrs. Mary Angela Templar, a Director of the Plaintiff company and one who has access to the company's records in her evidence said that no tender was received from the defendant. A bill seeking an advance (Ex. 1) was submitted by him, but this was queried by her and never paid. Her evidence would therefore be in conflict with that of Mr. Templar. If no tender was submitted for this project/8

for formal approval, that being the normal practice; it seems somewhat strange to me that the defendant was allowed to actually commence the installation work as Mr. Templar has testified.

The amount of \$360 charged does not, however, seem exorbitant in the circumstances and this sum is allowed.

This means that out of the total of \$17,809 claimed by way of set-off the defendant succeeds to the extent of \$2,655.20s.

Judgment is therefore entered for Plaintiff for \$15,153.80s with costs to be taxed and if not agreed.

Interest awarded on Judgment ^{at 12 1/2%} from 1st November, 1981 to 30th July, 1981.

D. O. Bingham
Puisne Judge