

IN THE SUPREME COURT OF BELIZE A.D. 2003

ACTION NO. 77/2003

Coram: Sam Lungole Awich in open court

Present: Mr. D. Waithe for the plaintiff, Ivor Sears

Ms. V. Flowers for the defendant, Roque Escalante

Mr. Waithe: I understand that Ms. Flowers would like to raise objection.

Ms. Flowers: I make preliminary application for order to dismiss. I refer to O. 17 r 7 read. Joinder by def is only when defendant claims indemnity from the third party here.

PW1: Ivor Sears sworn and states. My address is 30F Krooman Road, Western Highway. I am a welder. I work for myself. I do private contracts and general. I am familiar with Roque Escalante. I did work for him. I worked for Mr. Escalante on two other occasions beside the one in issue. I may not remember the dates. I started with work at Los Lagos - not last year or year before. We were there at inception of the project. The other occasion was in 2002.

For the Los Lagos, Mr. Roque came to my place and told me he had a job. I did not sign any agreement with him. Not with company. When I said I agree he took me to Los Lagos and showed me the job. I did the work. He came over and paid me in cash. He did not issue any voucher or something like that. The second job was refurbish basket ball court on Euphrates

Avenue, verbal. He showed me what he wanted me to do. I gave him a price. He paid me initial deposit. I did the job and he paid me in cash. No voucher. He did not indicate he was hiring me on behalf of a company. I don't know of any company.

On third occasion at the completion of the second job I asked him whether he had any other job to be done. He said nothing at the time but that he had something coming in Belmopan. He gave me an idea of the job to be done and asked me to give him a written quotation. This is the quotation.

Ms. Flowers: No objection.

Court: Copy sent to R.E. dated 4 June 2004 is received as exhibit P(IS)1

PW1: The letter read. Addressed to Mr. R.C.... Mr. Roque Escalante took the letter, we were standing at the gate of his house. He said the price was too steep and that he would like me to do only parts of the work. He asked for a better price. I reduced my price to \$750. He said make it around figure, \$700. I said boss you squeeze me. He said no, you will make something and I will make something. We agreed on that.

Mr. R. E. sent material to me. The man who brought it was one of those who worked with him. He said I was not to do anything with the material until R came.

Later in the day, R came and said we had to talk. He said as he say the thing, if he paid me that money he would not make much money. He asked me to make a final offer so that I make something and he make something. That he wouldn't pay more than \$500. We bargained. I tried to persuade me why I should get something more

and he the other side. We agreed on \$500. No amendment was done to the letter. There are some writing on the letter. I don't know about it. I did not make it. I did the job after struggle to get material.

During discussions Roque Escalante never told me he was acting for the company. Never showed me company letter. He knew where my work place was and my home.

I never received letter dated 5.3.2003 from Belize Dry Wall Co. The \$500 per unit total price was \$24,000.

I received some payments. I kept record.

Court:Ms. Flowers , any difficulty with the notes the witness said he made and wants to refresh his mind?

Ms. Flowers: No objection.

Court: Allowed.

PW1: I received initial payment of \$1000. I did not write date. It was a cheque. On the day material came he and given me \$500 in cash. This was in September 2002.

In September he came and said we were to go to Belmopan he would get material from Spanish Lookout. I asked him for money. He said why do you ask me for money, I don't even have money for gas. He gave me \$200 cash in Belize city. Then in Belmopan the same day he gave me \$700 in cash. Then next day he gave me \$1000 in cash in Belmopan. At the end of that week 7/9/2002 he gave me \$2000 in cash. The following week when we completed the job around Thursday, we returned but left tools in case there was anything Mr. Roque was not satisfied with. On Friday I went to Belmopan to get Roque to see the job and pay me. I was going to Belmopan and he

was coming this direction. We recognized each other. He said I was to proceed and wait for him at Barclays Bank, that he would not pay me all because the payment was to come from retainer.

I met him standing in a que. I got money and paid me \$3,000. He told me that as soon as the employer inspected the building they would pay him and he would pay me.

From that time I started to visit Roque at his home mainly on weekends. On 2 occasions he gave me \$500 each. No other payments after that. Total payment he made to me was close to \$10,000. I can't remember exactly.

When I made the claim I know that he had paid me about \$10,000. I know I have not missed out any substantial payment. On about 2 or 3 occasions we would stop at a restaurant. He would give me about \$100 so I could buy something for the boys.

The balance was approximately in excess of \$12,000. Yes I am owed about \$14,000.

On quite a few occasions I visited Mr. Escalante to ask him to pay me. No, he never told me about company. I know no company I was dealing with him.

No he never told me at all that work was incomplete. He indicated nothing. He inspected the job.

The first time I heard about company is when we first came to this courtroom. He had disagreement with electrical people. Nothing to do with me.

On one occasion he talked harsh that he received little money and he paid people. It was that time that I decided to come to Court. I obtain

\$2400 and interest.

I know I brought the right person to court. I don't even know who Belize Dry Wall is.

CROSSEXAMINATION

Q You said you did two jobs for Escalante prior to the present, did you know whether he had a company?

A I didn't know.

Q Did you see this card before, were you not given one of these cards?

A (saw it and said) this is the first time I have seen this card.

Q When you agreed to the 48 sections did you know where it was?

A Initially I did not know. I knew I would go to Belmopan. Mr. Roque was going to direct me.

Q So you agreed to do a job give after without seeing the place.

A I knew the units - 10x5 and 48 sections of them.

Q Your letter referred to work in Belmopan yet you have just said you did not know where the work was?

A I didn't know where in Belmopan.

Q When did you start to work?

A I started the work in September 2002.

Q When you visited the site could you say whether there were signs at the site.

A There were a couple of signs.

Q Wasn't there sign that Belize Dry Wall was contractor.

A I said there were signs, stop sign ... and a big signal. I did not pay much attention. I worked there for a week and a half. We got to work about 7:00

am and left about 6:30 pm. I had 2 people working with me.

Q You were to install 48 sections - what exactly did it entail?

A We were to install grill compressed 2 sections of steel pieces of metal welded may be 1 ft apart - on those very things.

Q Did you have to well tubing?

A They referred to as tubing they were 48 x 2 go with them.

Q How many pieces?

A I think there were 12 or 13 on each of the 96 pieces. Yes fabricating included welding.

Q Did you install the 48 sections?

A Yes ma'am. We were doing the work simultaneously. We completed on a Thursday - 11th or 12th of September, 2002.

Q I put it to you that you did not complete the installation>

A That is not true I put all the installation. There were 2 buildings. There were 2 storeys in each building. In each building I had to install 24 units. Yes on the lower and upper floor

Q How did you go about the work?

A There was a crane for lifting available. We found it there.

Q Is it not true that the crane was provided after you had failed to complete the work?

A That is not correct.

Q There is nothing in the agreement about the crane, you were to do installation?

A That is correct.

Q When you agreed to fabricate you agreed on time?

A No.

Q So you could have done it in 2 or 3 yrs.

A Would be ridiculous. We waited for materials and spent time.

Q You agreed to complete on 31.8.2002.

A I was given no time frame.

Q I put it to you that you failed to meet the date, time given to you by Belize Dry Wall?

A Maybe I failed to meet the deadline of Belize Dry Wall, but I did not fail to meet deadline of Mr. Escalante. There were other building. No I did not see one with the name of Belize Dry Wall on it. No, I never went in the building to receive payment.

Q I put it to you that you went into the building and got paid there?

A I never set foot in there. All payments were made outside any building. Yes I was paid \$1000 by cheque.

Q Is this the cheque on the back is your signature.

A Signature looks like mine.

Q Is there name of a company on the cheque?

A I cannot recognize. Yes there is a stamp - two stamps with effort says BYW.

Q Doesn't it look like Dry Wall?

A I cannot recognise.

Court:Cheque dated 14.6.2002 is marked ID1.

Q You also said you received \$500 - see this cheque. It was deposited to your account?

A Yes.

Q Was there a similar stamp?

A I don't recognise I know it is round

Court:Cheque dated 5.7.2002 marked ID2.

Q Is it not true that Mr. Escalante told you that you would be working for Belize Dry Wall company?

A That is not true.

Q You approached Mr. Escalante with respect to outstanding balance - where?

A At his home.

Q Did you visit his office?

A I never knew where his office was.

Q You visited his office at tourist office?

A I never visited Mr. Escalante office I don't know whether he has an office.

Q In March when you visited him and asked for more money did he not write to you a letter?

A I never received a letter.

Court: Shown a letter dated -

A No, I never received this letter it is the first time I see this letter.

Court: Letter dated March 5, 2003 addressed to Mr. Ivor Sears is marked ID3.

Q When you made the claim of \$12,000, you had already recorded the payment in your book?

A Yes. When I went to the attorney I did not have the notice book with me. Yes I had access.

Q Why did you not tell him that the sum owed was more than \$14,000.

A I gave an estimate of the claim.

Q I put to you that the figures you gave out of the notebook are not accurate?

A The figures are accurate.

Q You are mistaken about amount paid?

A No, I am not mistaken. I made the note immediately after payment.

Q I also put to you that you did not complete the work in time and that you

lagged behind and Mr. Escalante informed you?

A That is not true.

Q I put to you that Mr. Escalante told you that you needed additional workers to complete the work and you agreed.

A That is not true.

RE-EXAMINATION

Q Did you receive any accounting from Mr. Escalante showing balancing owed?

A No, sir.

Q Explain the crane?

A Question was how I would install rails at a place I had not seen. My answer was I had no idea crane would be necessary. We had no discussion about crane. My job was to fabricate and transport to Belmopan. I completed my work in time.

Q Did you visit Mr. Escalante at tourist village?

A No, I met him there more than one occasion. I was doing work for Mr. Feinstein. No I did not go to any office of his. By the time there were no offices there.

Q Did you enter any agreement with Belize Dry Wall?

A No.

Q The monies you said you received are all received?

A Yes.

Q Did Mr. Escalante take you to see job he said was incomplete?

A We were all there at the site. About incomplete job. I only heard it in court?

Court:Case adjourned to 2:00 pm today 26.5.2004.

Mr. Waithe: I apply for adjournment until tomorrow. I have a dental appointment.

Ms. Flowers: No objection.

Court: Case adjourned to tomorrow 27th May 2004 at 9:30am.

27th May 2004

Coram: Sam Lungole Awich in open court

Present: Mr. D. Waithe for the plaintiff

Ms. V. Flowers for the defendant.

PW2: Clinton Magdaleno sworn and states: I am police corporal 297 presently attached to Prosecution Branch, at Belize city. I know Mr. Escalante. I was on duty in police uniform on 13.8.2002 at Habet & Habet Regent Street West, Belize City. I arrested Mr. Hillary Sears. I informed him of his arrest. We discussed we then proceeded to Mr. Escalantes residence between miles 3 and 4 on the Western Highway. Mr. Escalante was not at home. We waited for about 10 minutes. He did not come. We proceeded towards Belize City. On the way Mr. Sears said Mr. Escalante vehicle had just gone past in the opposite direction. We turned and went back to Mr. Escalante's residence.

Mr. Escalante and Mr. Sears had conversation in my presence. Mr. Escalante told me to give Sears a break because Sears was doing work for Escalante. I told him I could not as I had a warrant for arrest of Mr. Sears.

Mr. Sears and I proceeded to Belize City. We left Mr. Escalante behind. Mr. Hillary Sears is the gentleman over there.

Court:Pointed at plaintiff.

Was there any discussion between Sears and Escalante about the sum of money owed to Mr. Sears by Mr. Escalante?

PW2: Yes. I cannot remember the figure it was in the thousands.

CROSSEXAMINATION

Ms. Flowers - I have no questions.

PW3: Raul Lopez sworn and states:

I live at No. 9 Dolphin Street, Belize City. I am welder. I know Mr. Ivor Sears. I work for him and also a friend of his family's. In July 2002 I worked for him.

Mostly at Belmopam on Mr. Roque's job. We did several works. We did tubing and welding - burglar bar. Was a lot, I really can't recall how many. We did them with Mr. Sears and we went and installed them - at University on two buildings.

Yes we had completed the job when we left. "Did you see Mr. Roque come to inspect the job - I went at the end of the job? No I never did see him.

Q When you left did you have to go back to finish the job?

A No when I left everything was finished, everything.

CROSSEXAMINATION

Q What were the burglar bars made of?

A Some were made of 3" tubing some were made with bigger.

Q What is tubing made of?

A Made of steel.

Q The entire made of steel?

A Yes. You mean the whole? We were only to make the steel. There was a board made of 2x6. It was to be put there by the one who built the building.

Q When you say "we" are you referring to some workers employed by Mr. Escalante's company workers?

A Yes.

Q When did you leave?

A We left about 8:30 pm. I really can't remember the date, no not the month.

Q That you assisted in welding and installation did you do other works?

A I did welding and Mr. Sears asked me to go and help with angle irons in the work being done by Mr. Roque.

Court: On which building?

A On the same building.

Q Do you know whether Mr. Roque was managing director of the company Dry Wall?

A No, I don't know.

RE-EXAMINATION

Mr. Waithe: No re-examination

That is the case for the plaintiff

Ms. Flowers: Defence calls Mr. Roque Escalante.

DW1: Roque Escalante sworn and states:

I live at 4 ½ miles Western Highway. I am a general contractor, business man. I am the owner & director of Belize Dry Wall. I manage the company. I studied in New Orleans. I had business as contractor in New Orleans for 15 yrs. I was the main contractor for Radisson, the hospital and Biltmore almost 100%. Yes I know Mr. Ivor Sears. He has worked for me personally and for my company including doing basketball. Personal work he put up, did basketball points - put up pipes and painted, did work at my residence, he did basketball fence on Euphrates Avenue. This was just before the election. I paid him cash from my pocket, had nothing to do with my business. Then he worked on insurance building on Barrack Road, Guardian Life Insurance. The work was for the company - Dry Wall.

In June 2002 - we asked Mr. Sears to give us quotation for work on two buildings that I contracted to do - was financed by World Bank.

Q What were the exact words used?

A First of all I never had him work on a large project. I sat with him and explained that my company had works two contracts - in disaster projects- and that if he was interested he could give the quotation.

Q What did he say?

A I showed him spears - drawing. He took always and come back. I would recognise the drawing.

Mr. Waithe: No objection. This is the drawing for the classroom. Yes I showed Mr. Sears there. Yes I gave him a copy. I tender.

Court: Drawing headed: Sun screen Detail for classroom building; dated by hand writing 10th May 2002, is received and marked exhibit D(RE)2.

PW2: Yes I showed him the original - we sat and wen over this drawing.

Court: You have anything to say about that?

Mr. Waithe: No, My Lord.

Court: Architectural drawing identified by writing. Based on original decision by ministry of works, & bearing name: Andrewin-Guerra Joint venture job No. 0300 - is marked ID4.

PW4: I showed the plan and gave Mr. Sears so that he could give me quotation.

He gave of him \$800 he was interested in doing the woodwork as well. I explained to him that I preferred not to give him the woodwork because my company had a deadline to hand over the work, I did not feel he could complete all these works in time. I asked him to go back and revise the quotation. He came back with \$750. I explain I could not get someone to do the other work for \$100 he was to go back and look at the figures again.

He returned with \$500, we both agreed. This was verbal. The initial figure was

written. Was there any amendment to the initial quotation - yes.

Q What amendment was made on the quotation?

PW1: The final figure - \$500. I did it in front of him. I signed the documentation.

The reason I sign was because if any happened to me he would be paid. Whoever supplied my company would be paid. I signed on behalf of the company. I was

suppose to supply the company whom I say I, mean the company. Mr. Sears was

to do the grill - sun screen the material. He would manufacture the steel tubing and instal onto the wall and instal the sun screen and weld.

Yes the materials were listed in the letter of quotation. Yes it was a greed that he would do fabrication installation and welding - not of the woodwork only the steel work.

Q Did you indicate to Mr. Sears the date line?

A Yes the deadline was the end of July.

Q Did he indicate whether he would meet the deadline.

A This is where we negotiated the work. We had a clause that \$500 would be deducted from my price.

Q Who were parties?

A Lup company, a German company Belize government and myself Belize Dry Wall company.

Q Do you remember the clause that deals with the issue of \$500?

A I couldn't remember the exact clause. The deduction of \$500 was per day - if we went over the completion day.

Q When did you provide material to Mr. Sears?

A In the middle of June.

Q Payment made to Mr. Sears?

A I think gave first payment was \$1,000 for two units that were completed. It

was by company cheque. This is the cheque. My signature and my company seal are on.

Court: Shown cheque which had been marked ID1

PW1: I tender the cheque.

Court: Belize Bank cheque No. 039713 dated 14.6.2001 earlier marked ID1 is received and marked exhibit D(RE)3.

PW1: Yes I paid him in respect of work he did. I paid him by another cheque my signature and my company seal. I tender.

Court: Belize Bank cheque No. 038940 dated 5.7.2002, earlier marked ID2 is received and marked exhibit D(RE)4.

PW1: Cheque was drawn on my company's account. The company is Belize Dry Wall.

DW1: The problem is the job was completed at end of 2002. I gave Mr. Usher my accountant. I don't have receipt acknowledgment of the payments. From my recollection Mr. Sears was paid about \$13000 - close to the \$14,000.

Q Did you have a system to pay subcontractors.

DW1 Our company would pay sub-contractors every 2 weeks. It would be for work completed. We would check his work and make a certificate and pay, my foreman makes the certificate - a daily report. The \$14,000 represented the work completed. The work was welding the brackets that would hold the board for the sun screen. Units installed were 14 at Belmopan at University buildings, first floor and second floor. The total price was \$24,000.

Q Could you tell the court whether he completed all the work?

A No, he did not. When we started receiving the welded units and we took to

Belmopan they would not match the board. He was aware. I told him he was going to fix them. Problem was he would not get to Belmopan until 11-11:30 am. I confronted him. He said "Boss I have to drop my 9 daughters off I can't get here any earlier", I could not wait on Mr. Sears, the deadline was coming quick. This was in July.

He did the . About 25% when I told him about the deadline, he said, "Boss we have to do what we have to do". I went and consulted Mr. Russell Bevan to assist is with welding and attaching and painting the remaining tubes that Mr. Sears was unable to finish. Mr. Sears was aware. I had told him about the \$500 per day they would deduct.

M/S Lupp wrote me a letter that 25% had been installed and that they were worried about the 75%. That was in August. I would recognise a copy of the letter. It was faxed to my office. Lupp has office at mile 35. They sent letters by fax. At this stage we had gone over the deadline. There was a clause that I could apply for extension. My company applied and was granted one month from end of July to end of August. I was the given additional 8 days. I could not exceed that. The building had to be handed over because of the celebration in September. Because of this I brought in people from my company. I hired a crane and we attached this job. We had our guys bothing and cutting tubes and welding. I had Midwest steel cut to size so we could speed up the process. We had parties painting the metals which should have been done by Mr. Sears. He came by and assisted us. H had two people.

Each girl was (10x14) ft and weighed about 900 lbs each.

No it was not possible for 3 people to do the work. Mr. Sears need minimum of 8 persons. We had to use in excess of 33 persons everyday.

We had record of it.

He completed the work on 8th September 2002. I never forget that date because we threw a big party. The additional costs would be probably \$14,000 to \$15,000.

One of the conditions was to paint a sign 4X8ft. The name of the project who was funding, who was done th project who were Belize Dry Wall Ltd. Letters were to be

We had 2 containers as our office. We had signs on the door of the office. It said Belize Dry Wall- was about 20X10 inches. Sign had to be there for the reason of Social Security and Income Tax. Mr. Sears entered the office on several occasions. He had to look at the drawings kept there. If he had a question he had to see he drawings and consult with me on the phone. I have business card. He was given the card long before when he first met me. When we negotiated the contract we were at home. The office of the company is at my home. I have apartment and several other offices.

Q After job was completed was any payment made to Mr. Sears?

A Mr. Sears came to me on several occasions that he had problem with DFC. I explained to him that we spent money on the project. I explained to him that we need to sit down and work out money spent. He never came, instead his attorney wrote to me demanding payment. I called him on phone. He disappeared. Then later end of last year he came to me in tears, asked me to direct him to a good attorney- his son had been arrested for murder. I took out \$1000 cash. I explained that I was helping him with that money and that he needed to come and we sit down and explained where money was spent hiring additional workers and hiring crane. Up to today he has not come. He later approached me at tourist village and signed a document which said I

would not pay him until we have gone through the monies spent. I believed and know that I don't owe him any money. The document stated that we didn't owe him any money, but if he was unsure he would come and we go through money we had to pay to people to have the work completed. The document was prepared by me. No, I don't have it. I have been looking for it. I cannot find it. Then there was a letter I addressed to Mr. Sears. I explained I did not give him money and if he was unsure he could come and we go over payments. I handed the letter personally to him. It bears my signature.

Court:Letter shown to Mr. Waithe - who said no objection.

DW1: I tender the letter.

Court:Letter dated May 5, 2002 marked ID3 is received and marked exhibit
D(RE)5.

DW1:Mr. Sears did not write back.

Q Did he build the entire job?

A No, he did not. He probably did 40%. The 60% was done by company and Mr. Russell Bevans. I paid him by cheque \$800.

Court:Shown to Mr. Waithe who had no objection.

DW1: This is the cheque drawn on account of Belize Dry Wall Company. I hired crane. I also hired scaffolding from Vision Builders and paid \$6000.
I was given invoice.

Court:Invoice - shown to Mr. Waithe - no objection.

DW1: This is the invoice. I tender.

Court:Invoice from Vision Builders dated 10.9.2002 for \$6,800 is received as
exhibit D(RE)6.

Court:Case adjourned to 2:30 pm.

Court assembles as before

DW1: Yes, I made payments for the work to Mr. Russell Bevan and several workers. Mr. Delvaya Gonzales - was a welder. Mr. Delvaya was a site engineer. I couldn't operate without a site engineer. He was my company site engineer. I had to pay him an additional \$3,000. I used to pay him \$6000 per month. He had to stay on for additional 2 weeks for which I paid him \$3000.

The payees signed vouchers or invoices they presented.

Mr. Waithe: Says he had seen an invoice from Russell Bevan - invoice then shown to witness.

DW1: This invoice was from Mr. Bevan. It was for \$5800. It was for screens. He had already made the wooden frame. When he took it for instalment, the tubing could not watch. He had to do adjustment on the tubing. In all he was paid \$1400 for repairing the metal work done by Mr. Sear, \$975 for 13 me for the work to break and grind the area; then 9 sections at \$300 each which totaled \$2,700.

Mr. Waithe: No objection.

Court: Cash voucher dated August 13th 2002 for various sums totaling \$5,512.00 taken as exhibit D(RE)7

DW1: I would recognise cash voucher for payment to Mr. Gonzalez.

Mr. Waithe: No objection.

DW1: This is the cash voucher for \$2400. It was for welding the tubes that had not been finished by Mr. Sears.

Court: Cash voucher dated 16th August, 2002 for \$2400 received as exhibit D(RE)8.

DW1: Yes I recognise a cash voucher for Mr. Dol. It is for \$3000 which was for 2

weeks wages.

Mr. Waithe: No objection

Court: Cash voucher dated 30th August 2002 for \$3000 is received and marked exhibit D(RE)9. This one is pink, why is it not white like the others?

DW1: Sometimes we would run out of them and we would run to Angelus Press and get, white ones, green ones etc. I am familiar with Donald Mario. He is a welder. He also assisted us. He was paid for the work done. I received invoice from him and paid.

Mr. Waithe: No objection

DW1: This is the invoice. It has his signature on and I made sure I put mine. I tender.

Court: Invoice No. 05778, dated 30th October 2002, from Donaldo Mario for \$1120 is received and marked exhibit D(RE)10.

DW1: We always took pictures of the building.

Court: Pictures which had no dates on - rejected as irrelevant.

DW1: We would purchase materials and taken to his home. When we had problem of them not matching I said we would take materials to Belmopan. We had taken material twice to his home in Belize. About 40% of the material. He would ask for materials as he needed and would be delivered.

Q Was there a time when he asked for materials and was not delivered?

A We had 2 weeks delay because certain size were not available.

Q Did it affect his work?

A No, he could have gone to Belmopan and installed what he had to advance his work, he chose not to do that.

Q Was there any agreement to provide Mr. Sears with apart from the materials, anything like labour etc.

A No..(irrelevant matters)

The incident about which PW2 testified was this. Mr. Sears had been arrested for goods he took from Habet & Habet and did not pay. Mr. Sears brought the officer to my house that I would assist Mr. Sears. I told the officer that Mr. Sears had a contract with me for \$24,000. No I did not say I owed Mr. Sears any money.

Where the sun screen was concerned we lost money.

Apart from the penalty of \$500 per day if I defaulted I would never qualify - not pick up drawings. Would affect name of our company.

I gave Mr. Sears a business card - similar to this.

CROSS EXAMINATION

Q These vouchers and cheques were dated about same date when you paid Mr. Sears?

A No.

Q When was first payment made to Mr. Sears?

A In June 2002

Q Other payments came after that?

A Yes.

Q Did you made payments in August?

A Yes.

Q How is it that you can find proof of payment to others and you misplaced those for Mr. Sears?

A You will notice the voucher I picked from Mr. Delvan ... the cheque came

from the bank. I couldn't find the others from Mr. Sears - I found the cheques. Mr. Usher my accountant keeps the figures, not the cheque and vouchers. Yes I paid him about \$14,000.

Q You have proof of only \$2000. How much did you pay Mr. Bevan?

A About \$15,000. I had same problem I could not find all the vouchers.

Q All this was for Mr. Sears mistake?

A No, I showed you that there were payments for nails and things that were not relevant to Mr. Sears work.

Q How much was for Mr. Sears mistakes?

A About \$9000.

Q You gave Mr. Bevan \$2800 on July 19th what was that for?

A To assist us with the balance of sun screen that Mr. Sears did not done.

Q On 13th August (RE)7 there was \$1,400 - what for.

A It was to align louvers that would be a part payment. Yes that \$2800 July 19th had nothing to do with that. I had to give him that to assist with his workers. What is highlighted there. Mr. Sears was responsible for. He was to put paid on the metal.

Q Was Mr. Sears to do that?

A Yes.

Q Why did you not specify the name of payees.

A That is how it is done.

Q I suggest the payment was not for that is why you did not specify?

A No.

Q How many grills did he complete?

A About 12 for the bottom and probably ½ of upper.

Q How much did he complete?

A He did not complete the work. He did not instal. He completed probably 18 grills but he did not instal.

Q How was Mr. Sears to be paid?

A He had labour contract and he would be paid when he delivered.

Q How was he to be paid?

A As the job proceeded.

Q Who was to provide the certificate?

A My foreman. He would certify say he Sears completed 4 grills.

Q So you paid him before completion?

A He had to live, he had to be paid for % work. He would be paid every 2 weeks.

Q When was the last payment prior to March when you say he went and he got \$1000 at your home.

A In August. About 2300 that was in Belmopan. He signed a cash voucher.

Q Your company doesn't have record for that project?

A Nor for that project. After that I went to fo 6 projects.

Q I read from letter from Lup about delay there were 7 items- the screen was only one?

A Yes. The screen was a major item of defect.

Q Does the letter say it is a mayor defect?

A No.

Q You said you have a crane- this letter says you used our crane?

A Lupp is a German Co. it would never let you have anything free.

Q If Mr. Sears did not bring you to could would you sue him?

A No.

Q When you hired Mr. Sears, Mr. Sears was still working?

A Yes.

Q For a month?

A Mr. Sears would pop in about 11 o'clock.

Q You did not terminate the contract when he was not performing?

A Yes.

Q When?

A On 15th August.

Q When did Mr. Bevan start welding?

A Towards the end of August.

Q You had some people work along side Mr. Sears?

A Yes at one point.

Q Did you ask him to stop.

A I did not allow him to work.

Q He may have assisted in installing - about 20 he had 2 men and assisting 33 men. He was working for you not for himself.

A He had serious problem.

Q Did you pay him?

A No, I did not, he owed us.

Q Why would he work?

A He tried to soften us.

Q When did you prepare the letter dated March 15th.

A Probably the day before I sit in my office and work later.

Q So you prepared the letter before he came?

A He had come several times earlier asking me to write a letter to DFC. I thought about it and decided to write. He came the later part of 2003 that he had been arrested- he asked me even to show a good attorney.

Q How much of the grill had been made?

A 25%. He had some stuff cut up. He was suppose to do the metal work, paint it, attack to the wood part and instal.

Q He had to wait for the wood parts.

A It was there long before left on site.

Q This voucher paying Mr. Bevan was for wooden part not metal work?

A You are wrong. It says 14 louvers, he had to do the frames to fit the louvers.

Q You did not specify because you were paying him for the woodwork. Mr. Sears said he never collected money from your office?

A He was lying.

Q You were not lying when you couldn't find voucher?

A I knew he was lying.

Q You said Mr. Mario worked for you left the country?

A And came back that is why he made invoice late.

Q That is a common practice. Your company does not record every transaction?

A It is a common thing in Belize.

Q You were willing to excuse Mr. Sears fro \$10,000.

A I would have not gone to get the money from him knowing he couldn't pay me.

Q The \$1000 you gave M. Sears in March was it a gift?

A Yes you could say it is a gift. I wanted him to come to me so that I could show to him that I didn't owe him. Yes was clear to my mind that I did not owe him.

Q How much did you spend in total on this project?

A Probably \$30,000 to 31,000 probably more. The bill of quantity was \$25,000

per building for labour and material. The total sum was \$50,000 that left me with 26000 to purchase material. Mr. Sears contract was \$24,000.

Q You aid Belize Company are one?

A I am the owner of Belize Dry Wall Company. It doesn't matter whether it is me or Belize Dry Wall.

Q If M. Sears deals with you he deals with the company?

A Yes.

Q How long has your company operated?

A Since 1989.

Q And has no personalized cheque with its name printed?

A No. I never even knew we have to do that.

Q So your company deals mainly in cash?

A In some projects such as in Belmopan where we had to employ the people in the surrounding area mostly Latinos who do not have drivers license and have problem cashing cheque, we pay them cash.

No Mr. Sears did not sign the amendment of \$500.

The metal had to be fitted on the wood work and would be lifted and fitted.

He had to guide at the top and bottom. It was impossible to do that with only 3 people. I visited the site every two days.

Q Did you pay the penalty?

A No - because of the extension clause. We completed on 8th September. The opening was th 10th.

Mr. Del V was to stop work at end of August. I needed him there. His contract was to end at end of July. We did not need him for the 8 days in September. He worked for 1 more month, but I paid him for 1/2. That was because he was something else.

The failure to meet the deadline was Mr. Sears fault because we could not complete the other works because of Mr. Sears work.

Q You didn't find it strange that he knew he had not completed the work yet came to ask you for money.

A No. Mr. Sears had serious problems.

Q This invoice from Vision is –

A We rented a whole lot of scaffolding. I had to make a note so as to know how many were for which project.

Q Prior to this job how much work did he do for you?

A Four of them.

Q And completed?

A Yes that is why I gave him a chance for the Belmopan job.

Q And you paid him?

A I might have owed him \$100 here and there and I paid him.

Q Where did Sears sign the letter that you did not owe him?

A Right in front of the old market. Yes I can't find it. I think Mr. Sears had a copy. I am sure he would say he never got it.

Q You want to avoid paying Mr. Sears so you fabricated that he never completed. Would Mr. Sears also sign the certificate?

A No. He would agree with inspector. He would walk around with.

Q My instruction is that there never were inspection he would come and only get paid, it was informal arrangement?

A The instruction was wrong.

Q The contract was partly oral and partly written.

A The only part not written the \$500.

Q The part that there would be inspection was not part of the contract?

A That is formally of payment not the contract.

Q Read out what Mr. Sears testified about various payment is that true?

A No, I never paid him in that name. I never heard him mention the \$500 cheque there. We kept the record up to a certain time, if no body made claim we discarded the record. This is 2004.

Q You said he kept coming to you since?

A Yes, he came asking me for help.

Q Attorney sent a letter of demand?

A Yes, but then you never took step.

Q The letter informed you that if you did not pay you would be sued?

A I called you and we spoke. I told you he did not complete work and you said you would get back to me.

Q You did not. Did you discuss with Mr. Sears that if he did not complete in time he would cause you a great deal of loss?

A Yes, I have already said so.

Q And that you will deduct from his pay? I mean at the time of the contract.

A No, I never thought he would not finish in time. Yes material was supplied in time. Yes there was delay for a week, but he had some other work.

Q Mr. Bevans came into the work in middle of August. He had 6 men. How many of your?

A I would have to go into the record. We brought them in. Not those working for me.

Q Did he complete 40% of work he was supposed to do?

A He did 40%.

Q So \$1400 is 40%?

A No- we had to pay him sometimes he would need money-advance. Yes I

would take it out of next certificate. It is not unusual

Q If you have idea about construction work, people ask for advance - you take it from the pay?

A No I never got opportunity to deduct from him. Probably in August I advanced I can't recall how many times I advanced money.

Q If you had to pay him for the exact amount he received?

A If I didn't have to advance I would pay no more than \$11,000 there about. That is the value of the work. I would now estimate. I agree 40% is \$. That is what I estimate I would have to go to the book.

Q So it can be more?

A No.

Court:Case adjourned to 9th July 2004.

15th October, 2004 (last day in court was 27th May, 2004)

RW1: ROQUE ESCALANTE - re-sworn

Mr. Waithe cross examines

Q Initial agreement was for \$500 for each section?

A Beginning was \$700 but we settle for \$500. Yes if he completed he work he would have been paid \$24,000.

Q Your letter exhibit P(RE)5 - you told Mr. Sears you would not make further payment to date he paid in excess of \$13,000, so your view was that \$13,000 was enough for the work done.

A Yes.

Q How did you arrive at conclusion that the work done was worth only \$13,000, did inspector inspect the work.

A I inspected the work. Also my foreman inspected the work. We costed what it would cost to complete the work left. That is how -

Q Did you get an independent contractor to assess the work left.

A No, we got several contractors. Yes initially was only Mr. Sears to do the job.

Q Did you give Mr. Sears notice in writing that he had failed to complete the job?

A Verbally yes.

Q This letter (RE)5 says you will not pay for work done on sun screen...

A Yes, that I would not make any further payment for sun screens.

Q It means you had paid him before?

A No. I had paid him as we went along that means ..

Ms. Flowers: The letter is dated 5.3.2003 the work had concluded.

Court:

A When I wrote that letter Mr. Sears would come to my office and ask for more money when he had failed to conclude the job. The job had finished we had hired other people to finish the job.

Q Were you telling him you would not pay him more money for work already done?

A No.

Q So he was asking you for work he had not done?

A He asked me to pay...

Q He believed he completed the job?

A He believed he had completed the job, I would imagine so, that is why he brought me here.

Q How much work was left - had he completed.

A He had pieces of work here and there. There were works not done well. We had to hire other people to correct the job and complete.

Q Was Mr. Sears responsible for building louvers?

A No.

Q Is voucher dated 13th August 2002 for total \$5512 was it for payment for work Mr. Sears was to do?

A As you notice there is ... This is for iron work Mr. Sears did and was adjusting. Another did the wooden louvers. Mr. Sears was to instal into the woodwork. He did not do that and his work could not fit. I paid the other for that work of Sears.

Q It says louvers?

A That was for installing \$300 each.

- Q Read Mr. Sears letter dated 4.6.2002 there is no louvers?
- A Yes - one cannot work without the other he was to instal into.
- Q Mr. Sears was to fit his metal pipes into wooden louvers made by someone else and instal - if you read it says install there?
- A Yes he had to do the work Mr. Sears was to do.
- Q You paid him for his work he did not do and for work Mr. Sears did not do?
- A No we paid him for the work Mr. Sears had not done.
- Q So you had to pay for all the 48 units?
- A No some of them worked that is why we paid him \$13,000. That is why said we paid %.
- Q I suggest that Mr. Sears completed his contractual obligation?
- A It is wrong, ridiculous.
- Q I say that he all the time dealt with you not with a company called Dry Wall.
- A He got paid by cheque of the company you know?
- Q Most of the payments were in cash payments?
- A That is not true.
- Q Even payments made to Mr. Bevan was by cash and were by you not by Belize Dry Wall.
- A When we make payment you hire about 300 people. We prepare payroll. Some we pay by cash and others by cheque.
- Q Payments came from you not from Belize Dry Wall.
- A Belize Dry Wall paid. I own Belize Dry Wall.
- Q You did not pay people to complete Mr. Sears work?
- A I did you can see there - (in exhibits)
- Q All agreements to complete the work were verbal not in writing?

A Some verbal some in writing. Some works were short work. Written, probably I didn't make written contracts but there are receipts. I did not have time to make written contracts. There were many people to engage, it would cost me time I had to meet deadline.

Q Your version is a fabrication?

A Your suggestion is totally wrong.

Q not true that you have Sears \$1000 gift, it was for work?

A It is wrong. Let me explain (cut short)

RE-EXAMINATION BY MS. FLOWERS

Q You said you gave \$1000 gift why?

A Mr. Sears came to me at Tourist Village that DFC was taking his house for debt. That time he had not taken me to court. He use to do odd jobs for me. I would recover from the job, but recover once he took me to Court that money was gone, it became a gift.

Q At the time you gave him that money was he working for you?

A No, I had already finished the work in Belmopan.

Q Would you have given him other jobs?

A Yes, I had jobs. Whenever I needed welding would have given to him.

Q When you inspected Mr. Sears work and found faults did you inform him?

A Yes, several times had the anality. He would say he would take care of it. It came to a point he could not. The foreman who also inspected the work was Mr. Durant. He took daily notes and we would have meeting every Wednesday.

Court:Mr. Sears was a sub-contractor.

A Yes.

Q To you?

A To my company.

Court: In regard to your work (main contractor) who would inspect your work?

Mr. Phillip Andrewin he was the Government and World Bank consultant.

Both counsel: No questions arising from that.

Court: 2:05 pm court assembled

Coram: Sam Lungole Awich

Present: Ms. V. Flowers

Absent: Mr. D. Waithe for the

DW1: CESEAR GIRON sworn and states:

I live at San Martin Belmopan. I work in construction. I am a driver. Now I work for vision builders. I have been working in construction for about 7 yrs. I trained at Belmopan Comprehensive School for 4 yrs. I obtained Technical Diploma.

In July 2002 I was working for Belize Dry Wall Company. I worked from January 2002 to September 2002. I was a foreman supervising.

In July 2002 we were working at UB since building doing sun screens. I worked on the job from start to end of construction period.

As supervisor I used to make sure everything was going on well.

Recondev hours worked we had to check workers time. We had to check contractors work to ensure it was accurate.

Ivor Sears was one of Mr. Escalante's welders working as a sub contractor. He started more or less in June or July I am not too sure.

He was to manufacture the metal parts of the sun screens and to install them. There were two buildings. He was to metal sun screen the metal part along with the wooden part. The total he was to instal was 48- 24 for each building. 12 for downstairs and 12 upstairs.

I cannot say he completed his work because we had to do them. We had to make adjustments. We hd to bolt on brackets, 8 brackets onto the wall. We also had to break up some parts of the sun screens and re-weld them. Some of the parts were not aligned to the wooden components so we had to break them. Mr. Sears had made those not properly aligned.

Yes some people assisted us. We brought Mr. Bevan to re-align them then we brought welders to reweld them. Then we used some of our company's workers to install them. We also used crane to lift at about 20ft. We used welders to cap-up so that water would not get in. I am not sure about the period we did the work, I think between August and September when we realized we were behind time.

Louvers were the wood part. When you look at the sun screen there is wood behind the top and the bottom. We had to put them together on the ground, the reason is that the tubing was where it was to be bolted.

I have some photos here.

Ms. Flowers: I won't pursue that.

We used about 15 workers to install the lower part - the ground level where we can reach by hand. We had to use crane for the upper level. We had to raise the sun screens for about 20ft to install.

The brackets which were not properly aligned were on the tubing. They would not match the wooden parts to align we had to cut the tubing and

cover cut so that water does not go into the tubing.

I would recognise the record of hours work; By my handwriting I had to include how many workers everyday and on what job it was. The report was done for Mr. Valdez. He was Lupps foreman. One copy would go to Mr. Escalante one to Valdez and one to us - us meaning supervisors or foreman for Belize Dry Wall. That was done daily.

DW2: I see these paper 4 of them. They are the ones I prepared. They are from 2-5th of September 2002. I prepared them. I recognise my handwriting. I tender.

Mr. Waithe: Were is the original?

DW2: The original was given to Mr. Valdez - we kept a copy.

Mr. Waithe: No, I did not pursue that objection anymore.

Court: 4 reports of Belize Drywall Co. dated

02/9/2002

03/9/2002

04/9/2002

05/9/2002

taken and marked exhibit D(CG)11, D(CG)12, D9CG)13 and D(CG)14.

DW2: These reports refer to the sun screens. The report of 2/9/2002 read... we were working on sun screen and install brackets. We had 23 workmen on site building one. Yes is the building on which Mr. Sears was to instal sun screen. There were our (Belize Drywall) workers. Yes, it was addressed to Mr. Valdez. I think Mr. Valdez signed. We usually took to him, he signed and gave back to me. Report of 3/9/2002 was about sun screen when crane was used to

instal. We installed brackets and at task is welding. It means we put it on crane and while on top we welded the sun screen onto brackets onto the wall. Yes I noted various workers, 5 welders, so that work could be done quickly. There were 38 workers on the site. No, not all worked on the sun screens. If you noticed I had extra 5 men. Those are the extras I had to get to work on the sun screens.

On 5/9/2002 we had 5 welders we had to double to do the work done quickly. I had 2 guys painting the sun screen before installing. On 4th we finished building one. We had 44 men not including crane operator.

On 5/9/2002 we used - we were installing sun screen on upper part of building 2. There were no painters. Already done. We had 3 welders. This was last part of the job. We had total of 32 men. We had group of helpers about 12 to move the screens to the crane. The sun screens were installed to the upper part of building. Yes report was addressed to Mr. Valdez of Lupps.

I am not quite sure when everything in regard to sun screen was finished. It was after 5th may be 7th I am not sure.

I recorded only workers of Drywall. Mr. Bevans also worked on. He did adjustment also used helpers. The adjustments were at where lumber was to be bolted - did not match so had to remove. Mr. Bevan gave us a laid in cutting tubing. The tubing had been larger about 15

ft and they were to get with 14 ft so we had to cut them to use.

Lupps was the main contractor for both buildings, Belize Drywall was subcontractor. Yes, Mr. Sears would be a sub-contractor. Mr. Lupps was the project manager or foreman of Lupps. He was always checking our work pointing out what was not right and pushing us to meet time.

CROSSEXAMINATION BY MR. WAITHE

Q Were you responsible for supervising Mr. Sears work also?

A I was responsible to inspect the work to ensure that the work was done accurately according to plan shown to us.

Q Are you a welder and fabricator?

A Not really, but for everything I had a plan against which we checked.

Q When was Mr. Sears to start the work?

A I am not sure.

Q When to end his work?

A I don't remember it is a long time. We had a deadline.

Q You prepared daily report like this for Mr. Sears work?

A No.

Q Who determined that the tubing could not fit in the lumber?

A Mr. Bevan and myself. Yes Mr. Bevan was the one who made the wood. Mr. Valdez was also there. Every evening Mr. Escalante came and checked to make sure everything was right. We had a plan.

Q Maybe the woodwork was wrong?

A If woodwork was wrong it would not fit in the column.

- Q If woodwork was wrong and metal work was correct you would have to break?
- A The woodwork was right.
- Q Who checked?
- A Myself and Mr. Escalante. If anything was wrong I called Mr. Escalante not Mr. Sears.
- Q Did you know that there was arrangement that Mr. Sears make the tubing in Belize and transport to Belmopan?
- A I did not know that. No Mr. Escalante did not tell me that. Our driver transported to the cite.
- Q When you checked Mr. Sears was not present?
- A No.
- Q Do you know when material was taken to Mr. Sears?
- A I am not sure.
- Q Do you know whether on time?
- A I am not sure. I was foreman on cite.
- Q What was agreed price for Mr. Sears work?
- A I am not sure that was between Mr. Escalante and Sears.
- Q How many men were used to complete Mr. Sears work?
- A 15 men.
- Q For how many days?
- A I am not sure.
- Q What were these workers welders or helpers?
- A Helpers.
- Q 22 workers on 2/9/2002 whose workers?
- A 15 were Mr. Bevan's workers. They were day workers.

Q On 2/9/2002 he had no workers on cite?

A I can't recall.

Q On 22nd Mr. Bevans paid 15 helpers and you paid 7?

A Yes. We paid about 3 I can't remember exactly how many he had. If he had 15 we paid the difference.

Q Did Mr. Bevans bring welders?

A No, Mr. Escalante did.

Q How much money was paid to Mr. Bevans for the extra work he had to do?

A Mr. Escalante used to deal with that.

Q How many extra hours? (Did not wait for answer)

A When it came to money side I didn't deal with that. Mr. Escalante dealt with the record. No, I did not take record for Mr. Bevan's work.

Q On 2nd September there were no welders?

A No.

Q What was done on 2nd ?

A Explained as before cut, drill, install-

Q Your 3 workmen were not the only workmen on cite?

A Were more.

Q The crane was not brought specifically for installation?

A Was on cite already but not that we could use it.

Q So Mr. Sears would have to find a crane?

A Not really. He could use a different way.

Q All the helpers worked on sun screen whole day?

A Mostly because sun screen was the last thing. Some did painting, installing.

Q Tasking for 5th included painting?

A That was a report of what was going on the job cite?

Q You said you only recorded Belize Drywall work?

A Yes. On 5th work on building one had finished.

Q But written - paint building one?

A It would be like touching up. I can't call which worker did it.

Q Mr. Escalante did not tell you Mr. Sears work?

A No. I had to check what he had done to see if it was right.

Q Did you check his work when he started?

A No he did not do it on cite. I checked when he brought the work on cite.

Q So you knew what he was to do?

A Yes.

Q Who told you?

A Mr. Escalante.

Q But you had said you did not know?

A The way you ask is kind of confusing.

Q You did these reports everyday?

A Yes.

Q Was Mr. Sears at cite?

A Sometimes yes he would do some work.

Q When he came would he leave before you?

A I was the last everyday.

Q How much of his work did he complete?

A He did not complete. Some he welded.

Q Did he complete?

A Not complete. We welded some and the painting he did not do and we had to install.

Q Did you know the work Mr. Sears had to do in totality?

A Yes he was to manufacture and install sun screens.

Q How much manufacturing and installation did he do?

A I would say less then ½ if you leave it to me. All installation we did.

Q Of the manufacturing you did a substantial part also?

A Yes.

Q What was the greater part manufacturing or installing.

A To me installation because with 2 persons he couldn't do it.

Q All the time he came only with one worker?

A One day he came with two, on another with one.

Q Did you fabricate any sun screen in entirety?

A No. The frame is the lumber 5 ft in height. Mr. Sears had to weld ears on the frame.

Q He built all?

A Yes, 48 in all.

Q He built all the 48?

A I would say 47 because he was given one as sample. Our driver brought to cite.

Q How many days before 2/9/2002 did you work on Mr. Sears work?

A I am not quite sure whether long before but before. I know we started on brackets before the sun screen were there. We were behind time.

Q On 13/8/ or in month of August was Mr. Bevans helping you on the work?

A I don't remember.

Q Do you remember when Mr. Bevans came on cite?

A I know he came long before Mr. Escalante brought him. I listed the helpers because they were day workers. I am not sure how much Mr. Escalante paid them.

Q Did you get the hours welders work?

A No. Mr. Escalante dealt with them.

Q So nobody supervised them?

A I would show them the work to start. Mr. Escalante would come and discuss with them pay. One was Paulino, another was... came with equipment.

Q When Sears came would he inquire who had done his work?

A No. As I remember only once he said he was sorry he had not come.

Q Did you complain to him?

A No. Unless rocky.

Q How many of the 47 did you have to cut and reweld?

A All of them we had to measure and cut.

Q When you checked did you have the samples?

A The sample worked. The measurements.

Q I suggested that Mr. Sears completed what he was supposed to do under the contract he had with Mr. Escalante.

A No.

Q I suggest that any delay was because he had problems and because he did not get materials in time?

A About material I am not sure, that was for Mr Escalante he had sample.

Q If there was any adjustment needed, it was because the woodwork was not done properly?

A No. If it was not we would have dismantled and adjusted also.

Q If he did not complete he did substantial part of the job?

A Yes.

Q More than \$13,000 of work?

A I am not sure about costs.

Q I suggest he did the work according to the specification?

A If it was that the woodwork should have been wrong also.

Q I suggest Mr. Bevans was paid for work he was contacted to do not extra work?

A Well he should have been said nobody would do the work for free - apart from his work.

RE-EXAMINATION

Q These specifications did they have to relate to widows?

A Not really - but between the columns. If not according to specification would not be centered between the columns.

Q Was there error in the wooden framing?

A No.

Q That Sears did substantial part and also less than half what did you mean?

A He did less than 1/2.

Q Did Bevans assist in installation of sun screen?

A He did.

Q What kind of workers were in the report?

A Daily workers, helpers paid by day not contract work.

Ms. Flowers: No more witness. That is the case for the defence.

Court: Case adjourned to Monday 18/10/2004 at 1:30 pm for submission.

Each counsel will take no more than 20 minutes.

Monday 18th October 2004

Supreme Court of Belize

Action 77/2003

Coram: Sam Lungole Awich in open court

Present: Ms. Flowers for plaintiff

Mr. D. Waithe

Court:Submission

Ms. Flowers:

The plaintiffs claim is based on agreement 2002. The plaintiff would fabricate install and paint 48 grill works for 48 sun screen for \$500 per screen and total \$24,000.

Plaintiff says he fully completed his work but not fully paid. Seeks \$12,000.

Plaintiff evidence.

Defence case:

Admits contract

- denies it was between himself personally and plaintiff
- that contract was between Belize Dry Wall and plaintiff
- defendant owns Belize Dry Wall

Defendant's evidence

- Belize Drywall was a subcontractor to contract between Lupps and Government of Belize. Was to construct 2 buildings at UB in Belmopan.
- Lupps subcontracted
- Fabrication, installation and painting sun screen
- plaintiff had work for defendant and Belize Dry Wall Ltd. before.
- Large signs 4X8 and in the office. Several names Belize Dry Wall was

also on the sign board. Plaintiff visited on several occasions. Action brought in name of wrong defendant. Be dismissed.

In the alternative:

- that plaintiff not entitled to any further sum of money
- contract terminated when plaintiff failed to completely fulfill his obligation under the contract:-

The evidence is

- contract partly oral and written
- written was the quotation P(RS)1
- oral included fundamental term that plaintiff would complete by 31.7.2003.
- that 2 weeks before the deadline the plaintiff had failed to complete. Realized that plaintiff would not be able to meet deadline spoke to plaintiff and informed that defendant would take over the task.
- plaintiff responded by saying: “do what you have to do boss”. I submit terminated and communicated.
- also inferrable conduct of plaintiff. No evidence that he made any attempt to get additional assistants or hire any equipment to assist in meeting the deadline in 2 weeks.

Defendant that in completing the task: to

- he obtained services of Bevans
- used employees of Belize Dry Wall Ltd.

And therefore additional expenses.

Plaintiff claimed he completed his task but the evidence is from defendant that defendant completed the work. Mr. Ceasar Peron testified and exhibited reports. Reports showed-

- payments to Mr. Bevans

- made to Mr. Devalier.

Plaintiff own witness said “we did some of the work with Mr. Sears “ and that persons who assisted included workers of Mr. Escalante.

Also letter of defendant to plaintiff that he would not make more payment.

Defendant had to pay substantial sum for work plaintiff had failed to complete.

Defendant admitted that plaintiff did some of the work.

He would have been subjected to penalty of \$500 per day for everyday after deadline.

Plaintiff adequately compensated for work he did before the contract was terminated.

Defendant submits that it was reasonable for him to take over given that it was only 2 weeks left and the number of the screens the work involved and defendant had only 2 workers made.

Plaintiff has not been completely honest. Attempting to obtain benefit to which he is not entitled. Eg evidence about diary to show he received only \$10,000.

Mr. Waithe:

The issues:

- (1) whether there was a contract between plaintiff and defendant
- (2) was it performed
- (3) partially performed
- (4) Plaintiff paid?

Letter P(IS)1 is evidence of the contract letter addressed to Mr. Escalante personally. Mr. Escalante could have informed plaintiff it was Belize Dry

Wall Ltd.

Then Mr. Escalante treated with plaintiff - negotiated price and finally agreed on \$500 per screen.

Submits on 4.6.2002 binding contract between Escalante and plaintiff.

There was no evidence of time limit. He gave one month extension in August then 8 more days extension.

Escalante provided material. If Sears did not complete Mr. Escalante would have asked back material delivered.

After Sears had been fired Ms. Sears came back to site to work. Then gave \$1000 as a gift.

Why did defendant not bring Mr. Bevan and Mr. Devalier to say what they were paid for. Bevan had been hired anyway to do woodwork.

That he spent \$10,000 to \$15,000 which he has not counterclaim.

The worth or work of Mr. Sears was inconsistently given by Mr. Escalante. Plaintiff entitled to the amount he has proved - \$14,000 despite the amount in statement of claim \$13,000.

Belize Dry Wall Ltd. contract with Lupps is not relevant to decide that Belize Dry Wall is the contractor with plaintiff.

His letter referred to I not Belize Dry Wall Ltd.

No evidence of termination at all.

Crane was at site before, it belonged to Lupp.

Plaintiff entitled to judgment.

Court: Judgment reserved to Monday 1st November, 2004 at 2:30 pm.

