

IN THE SUPREME COURT OF BELIZE, A.D. 2001

ACTION NO. 384

DARRELL CARTER

Plaintiff

BETWEEN AND

PLEASURE ISLAND LIMITED

Defendant

—

BEFORE the Honourable Abdulai Conteh, Chief Justice.

Ms. Kadian Lewis for the plaintiff.
Mr. Hubert Elrington for the defendant.

—

JUDGMENT

Introduction

It is fair to say on the evidence in this case, that the relationship between the plaintiff, Mr. Darrell Carter and the defendant, Pleasure Island Ltd., unraveled over the need for an Environmental Impact Assessment plan (EIA).

2. The EIA is a requirement of the Environmental Protection Act (EPA) of Belize which stipulates that before certain proposed projects are

implemented, a study of their effects on the environment and any mitigation measures must be submitted to the Department of the Environment (DOE) of the Ministry of Natural Resources for consideration.

But this case is not about an EIA or the EPA.

3. The defendant is the owner of a parcel of land situate in Long Caye in Belize which it desired to sub-divide and sell into lots. On 16 October 2000, Mr. Wilfred P. Elrington S.C., the legal counsel for the defendant company, had a chance encounter with the plaintiff on the steps of the old Paslow Building in Belize City.

That encounter set in train the course of events which has given rise to this action. In particular that meeting led to the creation and production of the relationship between the parties in this case.

4. The important product of that meeting, an agreement in writing, signed by Mr. Wilfred Elrington on behalf of the defendant and by the plaintiff on his own account and behalf, is central to this case and its resolution.
5. I therefore set out in full, a transcription of this agreement, the original, which is accepted by both sides, was handwritten on what appears to be a page from a legal pad, and is contained in

document No. 1 of the plaintiff's list of documents. Its states as follows:

*“Belize
16/10/2000*

In consideration of Darrell Carter obtaining subdivision approval [Provisional and final] for Pleasure Island Limited in respect of its subdivision of Long Caye I, W.P. Elrington as attorney for Pleasure Island Limited undertake to liquidate the indebtedness of Darrell Carter to Anthony Griffith and to make available to the said Darrell Carter or his nominee six lots in the said subdivision.

(Sgd.) Darrell Carter (Sgd.) W.P. Elrington”

6. At the time of making this agreement Mr. Carter, the plaintiff, was indebted to a Mr. Anthony Griffith in the amount of \$18,000.00 pursuant to a judgment against him. In addition to paying off this sum on his behalf, the defendant undertook as well to let him have six lots in the proposed subdivision. All this was in consideration of Mr. Carter obtaining for the defendant provisional and final approval for the subdivision from the relevant authorities of the government.

The Plaintiff's case

7. Mr. Carter's claim is that the defendant engaged him to obtain provisional and final approval to subdivide its land on Long Caye and for this he would be compensated by defendant paying off his indebtedness pursuant to a judgment against him and that he would additionally be given six lots in the defendant's property.

According to Mr. Carter, the terms of his engagement were recorded in the written agreement signed between him and Mr. Wilfred Elrington for the defendant. I have referred to this agreement earlier and it was put in evidence. It is central to Mr. Carter's case as he contends that it contains all the terms of his engagement by the defendant.

Mr. Carter says that in pursuance of this agreement, he performed substantial services for the defendant with a view to obtaining the approval for the subdivision of the latter's land. His efforts in this regard he says included visiting and consulting with officials in the Ministry of Natural Resources, the Department of the Environment, having a meeting with the Prime Minister and meetings with and corresponding with the Deputy Prime Minister, who had responsibility for land. Mr. Carter also says that he presented to the Department of the Environment, in the process to get approval documentation which the defendant forwarded to him and advised

that it was the EIA for the project to be developed on its land in Long Caye.

Mr. Carter says that there was no time limit within which he was to have performed his engagement by the defendant and that in fact all the terms of his engagement were recorded in the written agreement between the parties.

Mr. Carter says that however, in a meeting with the defendant on 28 February 2001, he was informed that his services were no longer needed. This, he claims, was done without prior notice and that therefore his termination by the defendant was wrongful and unlawful. He accordingly, therefore, claims damages for unlawful termination, that is, for breach of contract or in the alternative, reasonable compensation on the basis of quantum meruit for the services he performed for the defendant. He also claims any further relief and costs.

The case for the Defendant

8. The defendant on the other hand says that its agreement with Mr. Carter was partly oral and partly written, and that further Mr. Carter had contracted to obtain the approval for the subdivision within 60 days of the 16th October 2001. That is, the date of the written

agreement, and that time was of the essence of the contract between it and Mr. Carter.

The defendant contends therefore that Mr. Carter failed to obtain the approval for the subdivision within the stipulated time and even with a reasonable extension of that time he could not do so.

Therefore, the defendant claims, Mr. Carter instead, was in breach of their agreement as he had wholly failed to obtain any of the approvals, provisional or final, for the subdivision of its property. Therefore, the defendant says as well that it was entitled to terminate Mr. Carter's engagement as it became evident that he was wholly incapable of influencing the approval process.

9. There was originally a counter-claim by the defendant, in the sum of \$1,844.67 representing advances to Mr. Carter to purchase a Xerox copier, Audiovox radio, one computer, power cable and one stereo receiver.

The counter-claim was not, in the event, pressed before the court, although Mr. Carter had in his Defence to Counterclaim pleaded essentially a set off for any sums due the defendant.

10. As the counterclaim was not, as I have said, pressed before me, I shall not pronounce on it in this judgment.

The issues between the parties

11. The issues between the parties are therefore, whether as Mr. Carter contends, that the terms of the contract between them were wholly and exclusively contained in their written agreement, or whether, as the defendant, Pleasure Island Ltd. contends, the terms of their contract were not wholly set out in the written agreement, but were partly written and partly oral; and that in any event, Mr. Carter wholly failed to obtain the necessary approval for subdividing its land even after a reasonable extension of time to do so.

12. In order to prove their respective contentions, both Mr. Carter and the defendant tendered witness statements. Witness statements were tendered for the defendant Pleasure Island Ltd. by Mr. Lawrence Schneider who testified as well that he was a former director of the defendant Company; by Mr. Jose Garcia who is in the business of preparing EIAs and in fact prepared one for the defendant. Mr. Wilfred Elrington also tendered a witness statement as well as testifying for the defendant. He, it was, who prepared the written agreement between the parties and signed it for and on behalf of the defendant. Mr. Carter in addition called Thomas Morrison to testify on his behalf as well. But I find his testimony of little or no relevance to the issues in this case.

13. I must say that I did not find the way both Ms. Kadian Lewis, the attorney for Mr. Carter and Mr. Hubert Elrington, the attorney for the defendant, presented their respective cases, helpful. They both, despite the efforts of the Court to restrain them, engaged in prolix and unnecessary cross-examination of witnesses. This resulted in extensive and, at times, irrelevant testimony which tended to confuse the issues in the case.

Determination

14. I find, from the pleadings in this case (it was instituted before the coming into effect of the Civil Procedure Rules, 2005, on 4th April 2005 which now provide for Statements of Case. That is both the Claim Form or Statement of Claim and Defence), the evidence, including both written documents tendered by the parties and the respective testimony of the witnesses, that the written agreement signed by Mr. Carter and Mr. Wilfred Elrington on 16th October 2000 contained all the necessary terms of their relationship.
15. I find and hold that the terms of the contract between them were reasonably clear admitting of no equivocation or the aid of parol or oral evidence to ascertain or make any clearer those terms: Mr. Carter was to obtain provisional and final approval for subdividing the defendant's land in Long Caye; in return the defendant was to settle or liquidate the indebtedness of Mr. Carter to one Anthony

Griffith, as well as granting Mr. Carter or his nominee six lots in the defendant's subdivision.

16. It is manifestly clear that from the express written contract between the parties, there was no provision, reference or even an allusion to the time within which Mr. Carter was to obtain the necessary approval for the subdivision on behalf of the defendant.

From the evidence, Mr. Carter in fact bestirred himself and tried to get the approval for the subdivision. But he came up against the seemingly immovable object in the form of the necessary EIA for the project contemplated by the defendant. He, for example, made first contact with Ms. Malic Cardona in the Lands Department who told him to approach the Land Utilization Authority. An EIA, it was intimated to Mr. Carter, was necessary before consideration could be given to the request for subdividing the defendant's land. From the evidence, it appears that Mr. Carter was not knowledgeable about the need or requirements of an EIA. He said in evidence, that he obtained from the defendant a write-up or a policy presentation of its project which he said the defendant asked him to present to the authorities as the EIA for its project, but this was unavailing and could not pass muster as an EIA. In his exertions on behalf of the defendant, Mr. Carter organized a team of officials to visit the defendant's land.

On the ground, the practical and official position was that the request for approval to subdivide the defendant's land was not forthcoming without an EIA. But it is not in doubt, from the evidence, that Mr. Carter, as I have said, bestirred or exerted himself in an endeavour to get the necessary approval. He made several visits to officials in Belmopan towards this end; he sought audience with the Prime Minister, made representation to the Deputy Prime Minister and followed this up with a letter – see Document No. 4 of the Plaintiff's list of documents, letter dated 13 February 2001, from Mr. Carter to Hon. Minister of Natural Resources and Lands and a "To Whom it May Concern" letter dated 20th December 2000 from the Deputy Prime Minister – Document No. 5 in the defendant's list of documents.

17. From the evidence, I get the impression that Mr. Carter fancied himself as some kind of lobbyist with political clout to short-circuit the process of obtaining approval for the subdivision of the defendant's land. But the official position at least, at the level of the bureaucrats, was that a completed EIA was necessary before consideration could be given for approval for the subdivision: see the letter of 19th January 2001 from Mr. Ismael Fabro, the Chief Environmental Officer in the Department of the Environment to Mr. Carter – Document No. 7 in the plaintiff's list of documents.

18. The upshot of all this was mounting anxiety on the part of the defendant. The anxiety was understandable as some of its lots had been advertised on the Internet and deposits to purchase and inquiries were coming in – see letter dated 20th December 2000 from Larry Schneider for the defendant to Mr. Carter – Document No. 10 in the defendant’s list of documents.

19. Not able to get satisfaction, the defendant on 28th February 2001 informed Mr. Carter of the termination of his services. This was some four months after the contract between them, and evidently without any prior notice of intention to terminate. Certainly no notice of intention to terminate was averred or any evidence of it led before me.

Was time of the essence in the relationship between the parties?

20. It is the position that time in a contractual relationship can be made expressly or implicitly “of the essence” of that relationship. Thus, time is of the essence 1) where the parties have so expressly stipulated in their contract or 2) where the circumstances of the contract or the nature of its subject matter indicate a fixed date for its completion must be exactly complied with – see Chitty on Contracts, 27th Ed. Vol. 1, para. 21-012 at page 1030.

21. From the written agreement between the parties on procuring approval for the subdivision (Document No. 1 in the plaintiff's list of documents and Document No. 3 in the defendant's list) there is clearly no stipulation as to the time within which Mr. Carter should or must perform his obligation to obtain the necessary approval.

22. Also, from the evidence given at the trial, I find it difficult to find that on a balance of probability, that time, if any, was implicitly made a term of the contract between the parties. I find that the evidence for the defendant on the element of time as a term of the agreement undermines the defendant's case. Mr. Schneider said in cross-examination repeatedly that Mr. Carter had represented that he would obtain the approval within two weeks; whereas Mr. Wilfred Elrington, who himself wrote the agreement and is a Senior Counsel of some standing, said also, under cross-examination, that the time period was sixty days for obtaining the approval. The point was repeatedly and pointedly put to him why was this not incorporated in the written agreement. He could only respond that when he wrote the agreement he did not prepare it as if he was dealing with an attorney-client relationship. Mr. Elrington was adamant that a time period for obtaining the approval was in his words, "very specifically agreed upon". I am only left to wonder if this was so why was it not stated in the written agreement.

23. I am therefore unable to find or hold that in the circumstances or the nature of the contract between the parties in this case, they implicitly made time of the essence of their contract.

This, of course, is not to say that Mr. Carter could have taken all the time in the world and at his own leisure, if you will, to obtain the approval for the subdivision he had contracted to procure.

Time as a factor (although not specifically provided for in their written contract) in the circumstances of this case, in my view, would depend on what period or time was reasonably feasible to allow Mr. Carter to obtain the approval. Was Mr. Carter guilty of undue delay in obtaining the necessary approval for the defendant to subdivide the land? The contract between the parties was executed on 16th October 2000 and was terminated on 28th February 2001, some four months later. It is in evidence, particularly the testimony of Mr. Jose Garcia, that ordinarily it would take six months to two years to complete an EIA which must ground an application for subdivisional approval such as the one sought by the defendant in this case. I do not therefore think that it was right for the defendant to terminate Mr. Carter's engagement some four months after its inception and without prior notice.

The whole process of obtaining approval for subdividing the defendant's land came unstuck, from the evidence, because of the

absence of a completed EIA for the project to the satisfaction of the relevant officials.

In my view, it was not so much the importance of time, whether expressly or implicitly made a term of the contract, which I find it was not, that unraveled the relationship between the parties and led the defendant to unlawfully terminate Mr. Carter's contract, as the unavailability of a completed EIA. But Mr. Carter was not engaged to provide an EIA and even his attempts to press the defendant's write-up on their project as an EIA could not move the relevant officials.

Conclusion

24. I find therefore that the defendant improperly and without notice, breached its contract with Mr. Carter.

Mr. Carter therefore claims damages for the unlawful termination of his contract or in the alternative reasonable compensation on the basis of quantum meruit for services performed by him.

In the circumstances of this case, I am of the view that an award on the basis of quantum meruit would be a more equitable basis to compensate Mr. Carter. That is, what he deserves on the facts of the case as a whole than just simply an award of damages simpliciter for breach of contract. There is no doubt that Mr.

Carter devoted time, energy and expenses and exerted himself in an endeavour to obtain the approval for the defendant.

If the contract between the parties had been allowed to run its course although no time was stipulated for this; and an acceptable EIA had been presented to the relevant officials, no doubt, Mr. Carter would have received the benefit of having his indebtedness in the sum of \$18,000.00 pursuant to a judgment against him, paid off by the defendant plus the grant to him of six lots in the defendant's property. Mr. Schneider testified that one of the small lots on the defendant's land was selling for \$13,000.00 per lot. On the other side with a completed EIA acceptable to the authorities, and from the evidence, by Mr. Carter's exertions, the approval to subdivide the defendant's land would have been obtained. But all this was rendered academic by the defendant's improper termination of Mr. Carter's contract.

I therefore conclude that on a quantum meruit basis, it is reasonable to award Mr. Carter the sum of \$31,938.00 for the breach of his contract by the defendant. Ms. Lewis for Mr. Carter in her written submission estimated as per Documents Nos. 2, 3, 4, 5, 7, 8, 9 and 10 of the plaintiff's list of documents that an award of \$31,938.00 (covering 91 hours put in by Mr. Carter at \$300.00 per

hour plus \$3.00 per mile for 1,546 miles), would be reasonable on a quantum meruit basis.

I agree. I award interest at the rate of 6% on this sum of \$31,938.00 from 1st March 2001 to 31st January 2002 when the Statement of Claim in this action was filed.

I also award the costs of these proceedings in the amount of \$15,000.00 to Mr. Carter.

Accordingly, I enter judgment for the plaintiff, Mr. Carter, in the sum of \$31,938.00 plus interest thereon at 6% for the period stated and costs in the amount of \$15,000.00.

A. O. CONTEH
Chief Justice

DATED: 22nd March 2006.