

COMMONWEALTH OF THE BAHAMAS

2016

IN THE SUPREME COURT

CLE/gen/001405

Common Law & Equity Division

B E T W E E N

RICHARD WELLS

Plaintiff

AND

GODFREY TURNQUEST

Defendant

Before The Hon. Mr. Justice Neil Brathwaite

Appearances: Norwood Rolle for the Plaintiff

Regina Bonaby for the Defendant

DECISION

1. By Specially Endorsed Writ of Summons filed 12th October 2016, the Plaintiff seeks the sum of \$128,000.00, interest, and costs based on the following claims in the Statement of Claim:

“1. The Plaintiff is an Attorney-at-Law with Chambers situate at No. 88 Dowdswell Street & Dunmore Lane, formerly situate at No. 9 Dunmore Lane, in the City of Nassau, on the Island of New Providence of the Commonwealth aforesaid.

2. By a contract made orally in or about 2006 and made between the Plaintiff and the Defendant, it was agreed that the Plaintiff would commence an action in the Supreme Court of the Commonwealth of The Bahamas and do all things necessary to the obtaining of a Certificate of Title ("Certificate") to several tracts of land; firstly, Three (3) tracts containing 77.14 acres and secondly, Four (4) tracts containing 9.687 acres - both situate in the Settlement of Deadman's Cay in the Island of Long Island.

3. It was an express or alternatively an implied term of the Agreement that the Defendant would pay the Plaintiff a reasonable sum for the work.

4. Further it was an implied term of the said Agreement that the said sum would be paid within a reasonable time after the completion of the work. The work was completed on or about the 16 May, 2014 but the Defendant, having paid a retainer of \$2,000.00, in breach of the Agreement failed and refused and continues to fail and refuse to pay the balance of the sum due in the amount of \$128,000.00.

5. The Plaintiff, by an Order of the Honourable Madam Justice Claire Hepburn dated the 16th May, 2014, obtained the grant of a Certificate, dated and filed the 23 May 2014, to the Defendant to the two (2) parcels of land referred to at para 2 herein.

PARTICULARS OF WORK DONE

To work done of which full particulars were delivered to the Defendant in the Statement of Account dated the 20th May, AD, 2014.”

2. In a defence filed 30 May 2019, the defendant made no admission of any oral contract, but stated the following at paragraph 2: The Defendant admits paragraph 4 of the Statement of Claim insofar that he paid the Plaintiff the requested retainer of \$2,000.00 along with disbursements associated with the quieting when requested but denies that he is in breach of an Agreement to pay the Plaintiff the balance of the sum of \$128,000.00. The Defendant further states that after paying the retainer, he inquired of the Plaintiff as to the cost of the action to which the Plaintiff failed to disclose, consequently, there were no discussions regarding any possible costs and therefore no sums are due and owing.
3. On the date set for trial of this matter, counsel for both parties accepted that there was no issue with respect to liability, and agreed that the court should determine the issue of quantum alone. Directions were then given, and the matter adjourned to 15th December 2021, and thence to 17th January 2022.

THE PLAINTIFF'S CASE

4. The Plaintiff is an Attorney-at-law, and was requested by the Defendant to provide legal services, which resulted in the commencement and conduct of Quieting Action—CLE/qui/01274 of 2007, which resulted in the obtaining of a Certificate of Title to several

tracts of land, namely three (3) tracts containing 77.714 acres and secondly, four (4) tracts containing 9.687 acres, all in the Settlement of Deadman's Cay, Long Island.

5. The Plaintiff accepts that no written and signed retainer agreement existed between the parties, but submits that legal services were provided to the Defendant in the Quieting Action, at the end of which the Certificate of Title was obtained, and a statement of account was submitted in the amount of One Hundred Thousand (\$100,000.00) dollars, which the Defendant refused to pay.
6. The Plaintiff suggests that the charges are based on the scale charges for Court work recommended by the Bahamas Bar Association, and rely in particular on page 2 which states as follows:

“Charging on the basis of expenditure of time only is an attraction which must be sternly resisted in cases where one or more of the factors set out below is or are present. In such circumstances the counsel and attorney is entitled to charge a premium not exceeding Two Hundred Percentum 200% of the aforementioned rates. The factors are as follows:

The complexity of the item or of the cause or matter in which it arises or the difficulty or novelty of the questions involved;

The skill specialized knowledge and relationship and responsibility required of and the time and labor expended by the Counsel or Attorney;

The number and importance of the documents however brief prepared or perused;

The place where and circumstances in which the business involved or any part thereof is transacted;

Where money or property is involved, its amount or value;

The importance of the cause or matter to the client;

The urgency of the cause or matter and its impact upon the practitioner's ability to undertake other work.”

7. Appendix II (page 8) item A reads as follows:

On a percentum or lump sum basis:

“In those cases where there is a liquidated demand or where the subject matter of the claim is ascertainable and can be calculated by reference to a

numerical formula, (eg land, personal property, shares in a company, settlement of claims, etc) as follows:

Up to \$100,000.00..... 10% of the amount claimed in the discretion of the attorney.

In excess of \$100,000.00..... 5% of the additional amount claim over and above \$100,000.00 in the discretion of the attorney

The above fees are cumulative

8. The Plaintiff calculates that the total size of the property in question amounts to 89.419 Acres, and has calculated the charges based on valuation certificates from the Department of Inland Revenue in relation to other property on Long Island. Based on those calculations, the Plaintiff extrapolates the price per square foot of those properties, then provides a calculation of the acreage price based on that square foot price, and estimates that the first property, which comprises 10,999 square feet, is valued at \$84,000.00 per acre, the second is valued at \$103,361.96 per acre, the third at \$90,529.25 per acre, and the fourth at \$44,971.38 per acre. The Plaintiff then derives an average price per acre of \$81,715.64, which is then multiplied by the total acreage of the land in question to derive a value of \$7,306,930.81.

9. The Plaintiff also refers to an appraisal report from the Defendant, which is included in the Bundle of Documents. In that report, the property is valued at \$12,000.00 per acre, for a total value of \$1,150,256.00.

10. The Plaintiff therefore calculates that, on the basis of the valuation in the Inland Revenue Certificates, he is entitled to the following fee:

$$10\% \times 100,000.00 = \$10,000.00$$

$$5\% \times \text{of the excess } 7,206,930.81 (7,206,930.81 - 100,000.00) = \$360,346.54$$

$$\text{Total} = \$370,346.54$$

11. The Plaintiff concedes that the majority of the land contained in the certificate is undeveloped and lacking the basic infrastructure and utilities, such as roads, electricity, water and telephones, and therefore suggests that the fee calculated based on the Inland Revenue Valuation could be discounted by fifty percent, resulting in an entitlement to a fee of approximately \$188,000.00.

12. On the basis of the Defendant's appraisal report, the calculated fee is:

$$10\% \times 100,000.00 = \$10,000.00$$

$$5\% \text{ of the excess } \$1,050,256.00 \text{ } (\$1,150,256.00 - \$100,000.00) = \\ \$50,012.08$$

$$\text{Total} = \$60,012.08$$

13. The Plaintiff relies on the cases of *Callenders & Co. v. Freeport Concrete Company Limited - [2010] 2 BHS J No. 142*, and also *Kellar & Anor v Williams [2004] UKPC 30* at paragraph 18, to support the contention that the law will imply an agreement to pay a reasonable rate on a quantum meruit basis, and submits that, in considering the advice as set out by the Bar Association, the fee of \$100,000.00 charged by the Plaintiff is reasonable.

THE DEFENDANT'S CASE

14. The Defence seeks to distinguish the cases of *Callenders v Freeport Concrete and Kellar & Anor v Williams*, on the basis that in the first case a retainer letter had been sent, which was not done in the instant case, and in *Kellar* the court noted that it was for the Registrar to tax the bill, which again was not done in this case. The Defendant suggests that the Plaintiff should have submitted an itemized Bill of Costs and had the same taxed by the Registrar, as opposed to initiating this writ action. They also note that the Certificates from Inland Revenue are in relation to other property, and submit that those documents are not properly before the court, and the values cannot be used in relation to the subject property.

DISCUSSION

15. In this case there is no dispute that an employment relationship existed, despite the fact that there was no signed retainer. There is therefore no question that fees are owed. The sole question is as to the amount owed.

16. The Plaintiff suggests that they are entitled to a fee on a quantum meruit basis. With the exception of the existence of a retainer agreement, a similar question arose in the case of *Callenders v Freeport Concrete*, cited by the Plaintiff. In addressing the issue, Evans J (as he then was), said the following:

“53. It is not disputed that the plaintiff provided the service - the opinion was delivered under cover of a letter dated 10 April 2006. However, there was no agreement as to the plaintiff's charges for such service. No doubt the plaintiff expected to have entered into a long-term relationship with the defendant, evidenced by the retainer letter. That did not materialize. There is also no suggestion that the service would have been provided gratuitously. Indeed, counsel for the plaintiff submits that there was an implied term of the agreement that the defendant would pay a reasonable price for the same and he contends that in the absence of agreement as to a price for its services, the plaintiff is entitled to be compensated on a quantum meruit basis. In support of that contention counsel for the plaintiff relies on the Scottish case of Avintair Ltd v Ryder Airline Services Ltd.

54. In that case, the judgment of the Court was delivered by the Lord President Hope in which he sets out the facts of the case as follows:

"The contract which the pursuers averred existed was one by which they undertook to expend time, work and their expertise, contacts and skill in introducing the defenders to Pakistan International Airways in order to enable them to obtain contracts for the repair work. This was to be a contract for services and the remuneration for it was to be by way of commission on the labour and material charges on the contract obtained. They aver that the work proceeded under the contract although the defendants had still not yet agreed the rate of commission which the pursuers were to be paid. The pursuers were still pressing for agreement on this matter when the defendants sent a facsimile message to them in which they purported to decline the pursuers' offer to work on their behalf. The pursuers' case is that by that stage there was already a contract between the parties under which they had provided services to the defendants. They contended that in the absence of an express agreement on the rate of remuneration, it was an implied term of the contract that they would be entitled to reasonable remuneration for acting on the defendants' behalf..

The Lord Ordinary rejected the pursuers' argument that, in the absence of an agreement to fix the rate of remuneration, they were entitled to rely upon

an implied term as the basis for their claim. He did so because it appears from the pursuers' averments that the parties were from the start actively negotiating as to what was a reasonable rate of remuneration. In his view, there would have been no need for the proposals and counter-proposals during the course of these negotiations, if they were intending to enter into a contract with an implied term to this effect. Thus the parties' attempts to reach agreement on the point excluded the possibility of a term to that effect being implied into the contract and, as there was no concluded agreement on the point, there was no contract in reliance upon which the pursuers could enforce a right to payment."

55. In their Lordships' opinion:

"... this approach does not take sufficient account of the fact that the pursuers' case is that they have already rendered the services for which they claim payment. They seek to rely on the implied term because there was no agreed rate of commission for these services in circumstances in which it cannot be presumed that they were provided gratuitously. The fact that the parties were in negotiation about this matter is not inconsistent with the pursuers' reliance upon the implied term as there was no agreement. The purpose of the implied term is to provide a basis for payment where there is no agreed rate for this in circumstances where, according to the ordinary rule, the person who has provided goods or services is entitled to be paid something for what he has done. The reason why the contract made no express provision for payment is not important. What matters is that goods or services were provided which ought to be paid for. In such circumstances a claim may be based either on recompense or implied contract, and where the work done under a contract as is averred in this case, the appropriate claim is on implied contract on the principle of quantum meruit.

56. In their Lordships view, "a claim for quantum meruit may be measured by the ordinary or market rate of payment for the goods or services, but the circumstances may be such that there is no ordinary or market rate. In that case, the best one can do is seek to show by other evidence what is reasonable."

57. In this case, it is clear on the evidence, that the arrangement between the parties for the provision of an opinion on the Issues was an informal one. The plaintiff is a firm of attorneys; the defendant is an established business within the Grand Bahama community. Their principals obviously know each other and I do not believe that Mr Babak would have sought the services of the plaintiff through its managing partner, Mr Smith, expecting those services to be rendered gratuitously. The fact that the cost of those services was not agreed or even discussed, does not, in my view, prevent the plaintiff from charging a reasonable sum or relieve the defendant of its responsibility to pay for the service sought and rendered. In such circumstances the law will imply an agreement to pay a reasonable rate. See *Avintair and Lord Atkin in Way v Latilla*¹⁴:


"But, while there is, therefore, no concluded contract as to the remuneration, it is plain that there existed between the parties a contract of employment under which Mr Way was engaged to do work for Mr Latilla in circumstances which clearly indicated that the work was not to be gratuitous. Mr Way therefore is entitled to a reasonable remuneration on the implied contract to pay him quantum meruit."

58. In the circumstances of this case, it seems to me that the plaintiff, having performed the work requested by the defendant, is entitled to a quantum meruit payment for its services in providing the opinion sought by the defendant on the Issues and I so hold."

17. The Defendant does not contend that there was any expectation that the work be done free of charge, despite the fact that the Plaintiff and Defendant were well acquainted for many years. Indeed, the evidence is that the Defendant paid an initial retainer of \$2,000.00. The Defendant simply contends that a Bill of Costs should have been presented, and the costs taxed. While a bill could have been presented, the suggestion that the costs should have been taxed is, in my view, misconceived, as such a process relates to situations where costs are being paid by an opposing party, as opposed to fees being paid by a client to his own attorney. I therefore accept that the Plaintiff is entitled to fees on a quantum meruit basis.

18. Having concluded that the Plaintiff is entitled to his fees on a quantum meruit basis, it is my view that the guidance provided by the Bar Association is helpful. However, in applying that guidance, it is my view that the valuations provided by Inland Revenue in relation to other properties in the Certificates referenced by the Plaintiff cannot be applied in this case, as there is no information provided to support any comparison with the subject property. I also find it exceedingly curious that the Plaintiff suggests that a discount of fifty percent would be appropriate because of the undeveloped nature of the property, but only applies that discount to the fees calculated on the basis of the much higher value derived from the average prices in the Inland Revenue Tax Certificates.
19. In my view, reliance on the appraisal provided by the Defendant is appropriate, as that appraisal actually relates to the subject property. In applying the guidance provided by the Bar Association to that valuation, and noting the calculations provided by the Plaintiff, it is my view that the calculated fee of \$60,012.08 is appropriate on a quantum meruit basis. From that amount, the retainer of \$2,000.00 paid by the Defendant must be deducted. I therefore find for the Plaintiff and order that the Defendant pay the sum of \$58,012.08 to the Plaintiff.
20. While the usual rule is that costs follow the event, I note that in commencing this action the Plaintiff sought the sum of \$128,000.00. In submissions, counsel submitted that the sum of \$100,000.00 being sought was not unreasonable, and in any event the Court has found that a sum which is less than half the amount initially sought is appropriate in this case. In these circumstances, I am of the view that it is appropriate to depart from the usual rule relating to costs. I therefore award the Plaintiff fifty percent of his costs.

Dated this 29th day of August A.D., 2023



Neil Brathwaite

Justice