

THE EASTERN CARRIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT

SKBHCV2020/0012

BETWEEN:

ALPHONSO WILLIAMS trading as WILLIAMS ELECTRICAL

Claimant

and

NUBIAN GREAux trading as NEW GENERATION ENGINEERING

Defendant

Appearances:

Mr. Leon Charles for the Claimant

Ms. Rénal Edwards with her Ms. Britany Osborne for the Defendant

2025: March 3,4 and 5;
May 20.

JUDGMENT

- [1] **GILL, J:** A business relationship, previously healthy, turned sour as an electrician moves the court seeking compensation for work done on a construction site pursuant to a subcontract between himself and the main contractor.
- [2] The claimant Alphonso Williams is a qualified, experienced electrician who operates his own business, Williams Electrical. The defendant Nubian Greaux is an electrical engineer who also owns a business, New Generation Engineering. The defendant engaged the services of the claimant on several projects before the one that is the subject of this claim.
- [3] In March 2017, the defendant, who was the electrical contractor for the proposed Multipurpose Training Centre at Lime Kiln, Basseterre, St. Kitts approached the

claimant to carry out some electrical work on the project. After some negotiations, the parties entered into a written agreement dated the 9th day of July 2017. It was agreed that the defendant would pay the claimant EC\$175,000.00 to provide services as an electrical subcontractor. This was a 'labour only' contract. It was further agreed that the defendant would provide all the material associated with the electrical work.

- [4] The work to be done by the claimant included roughing,¹ panels, wiring and finishing. It did not include any electrical work relating to data, door access, generator room, elevator or anything involving high voltage.
- [5] The defendant paid the claimant a mobilization fee of EC\$25,000.00 pursuant to the terms of the contract.
- [6] After working on the project for some time, by letter dated 30th April 2018, the defendant terminated the contract citing unscrupulous work ethics, unauthorized adjustments to the contract and breach of contract on the part of the claimant.
- [7] Being aggrieved, on 21st January 2020, the claimant filed a claim form and statement of claim alleging that the defendant wrongfully or unlawfully terminated his services and was therefore in breach of the contract. As a result, the claimant claimed that he suffered loss and damage, and seeks compensation for the value of the work completed pursuant to the contract, additional work he alleges he did at the defendant's request and loss of profit, amounting to \$156,950.00. In the alternative, the claimant claimed damages on a quantum meruit basis. He further claimed interest and costs.
- [8] The defendant filed a defence on 24th February 2020. The defendant admits that he terminated the contract but denies that the termination was unlawful. He denies that the claimant completed the work as claimed. He avers that the claimant completed only 10% of one stage of the work. Further, in his witness statement, he alleged that

¹ The correct term is "rough-in", which includes installing electrical conduits and boxes, but not the final fixtures. The word "roughing", used throughout these proceedings, is part of the accepted local vernacular.

the claimant refused to do corrective work, and he hired another electrician Leonard Watts to do corrective work. He contends that the mobilization fee he paid the claimant was sufficient to cover the work done, that the claimant is not entitled to any further payments and in fact, the claimant is indebted to him. The defendant did not file a counterclaim.

- [9] Case management and preliminary issues have reduced the claim to EC\$77,950.00, that is \$61,750 for the work completed under the contract plus \$16,200.00 for additional work done at the request of the defendant. At case management, the defendant was ordered to make an interim payment to the claimant in the sum of EC\$20,000.00. Taking into consideration the mobilization fee of \$25,000.00 the defendant paid him, the claimant is asking the court to award him the balance he claims is owing to him in the sum of \$32,950.00.
- [10] The evidence before the court came from the claimant, the defendant and two other witnesses.
- [11] In support of his claim for the sums owed to him, the claimant relies on the evidence of Basil Webbe, an electrician who was appointed an expert witness at case management. Interestingly, in addition, the claimant filed a witness summary for Basil Webbe as a witness for the claimant. Notwithstanding there were no questions put to the expert in accordance with Rule 32.8(1) of the Civil Procedure Rules (Revised Edition) 2023 and the case management order dated 28th September 2023, Mr. Webbe also gave evidence as a witness of fact and was cross-examined by learned counsel for the defendant at trial. The bodies of the expert report and Mr. Webbe's witness summary are identical. In effect, contrary to the submission of the claimant, the defendant has challenged Mr. Webbe's assessment of the work completed by the claimant and its value. In these circumstances where the expert, apart from his role in assisting the court in determining the value of the claimant's work, gave evidence on behalf of the claimant, the court must carefully consider what weight ought to be given to the expert witness report.

[12] The defendant called the other electrician Leonard Watts in support of his contention that Mr. Watts was hired to do corrective and remedial work in relation to the claimant's work. In cross-examination, apart from some boxes that were left out, Mr. Watts' evidence is that when he worked on the site, his work was all new work.

[13] In fact, the defendant told the court that the work was not defective, but incomplete. He admitted that having worked with the claimant on projects before, the claimant does good work, and that he has the utmost respect for the claimant.

Issues

[14] There is no dispute that the contract was terminated by the defendant on 30th April 2018, or that the claimant is entitled to be compensated for the work done up to the termination. In narrowing the issues in this case, learned counsel for the parties agreed that whether the termination of the contract was lawful or unlawful, the claimant is so entitled. The dispute arises as to the amount of work the claimant completed and the value of that work. Therefore, notwithstanding the submissions of the parties on several other issues which the court has considered, the court must determine:

- 1) the nature and extent of the work done by the claimant pursuant to the contract;
- 2) the nature and extent of extra or additional work carried out by the claimant outside the scope of the contract at the request of the defendant; and
- 3) the value of the work carried out by the claimant up to the time of the termination of the contract.

The work done pursuant to the contract

[15] The claimant claims \$61,750.00 for work he contends he completed on the ground floor of the project pursuant to the contract at the time of his termination. In his witness statement, he particularised the work that he alleges was completed and valued at \$61,750.00 as follows:

- a) roughing in 338 lighting points;
- b) roughing in 472 outlet points;

- c) roughing in 125 switch points;
- d) roughing in 16 ac conduit for feeds;
- e) roughing in 25 door key pads
- f) roughing in 15 ground floor sleeves
- g) roughing in 109 data outlets (extra work)
- h) power supply stations for the workers on project (2) (on the ruling of the court on the defendant's application to strike, this item was struck out.)

[16] It is of note that on the evidence, as conceded by the claimant in cross-examination, his work started in September 2017 and not July as stated in his witness statement.

[17] In order to make a determination as to the amount owed to the claimant for work he completed, it is necessary to conduct an assessment item by item.

Roughing in 338 lighting points

[18] The defendant strenuously challenges the claimant's evidence that he completed 338 lighting points on the project. He contends that the claimant did not complete any lighting points at all. The defendant's evidence is that at the time of the claimant's termination, there was no ceiling and therefore it was impossible to install lighting points, as they had to be installed in the ceiling and not on the walls.

[19] Under detailed cross-examination, the claimant eventually admitted and agreed to the following:

- i) based on the plans, there were no lights/lighting points to be installed on the walls; all of the lights/lighting points were to be installed in the ceiling;
- ii) there was no epicore;² and hence no ceiling at the time the was terminated;
- iii) he could not commence work on lights/lighting points until the main contractor had completed the work on the walls and ceiling of the building;
- iv) the main contractor had not completed the work on the walls or the ceiling of the building;
- v) he did not do anything as it related to lighting points; and

² A composite metal deck used in construction. It incorporates a metal deck with a concrete topping and is used for floor slabs and roof structures – Urban Dictionary

vi) he did not complete 338 lighting points as claimed.

[20] On this evidence, the court is constrained to find that the claimant did not complete roughing in 338 lighting points as claimed.

Roughing in 472 outlet points and 125 switch points

[21] The evidence reveals that in order to complete the roughing in outlet points and switch points, plastering rings must be affixed to boxes that have been installed in the walls.

[22] The defendant's position on this point is twofold; (1) the claimant did not affix the plastering rings as required and (2) whilst the claimant did install some of the boxes, he did not install 472 outlet boxes and 125 switch boxes but installed 378 and 88 respectively.

Plastering rings

[23] In his witness statement, the claimant gave evidence that he saw another electrical contractor putting on plastering rings. In cross-examination, he accepted that he did not complete the roughing work for the switches and the outlets as he did not affix the plastering rings.

[24] Under cross-examination, it was put to the claimant that it was therefore incorrect for him to state in his witness statement that he completed the roughing work for outlets and switches. The claimant then stated that he put on some plastering rings and that it was only the plastering rings for the data outlets that the new electrical contractor installed.

[25] The defendant asks the court to disbelieve the claimant's evidence that he put on some plastering rings, as the claimant did not put this evidence in his witness statement, nor did he offer this evidence when he was initially confronted on cross-examination.

Number of outlets and switch points

[26] The claimant's evidence is that he counted the outlets and switch points on a

walkthrough and did not merely use the amount that was on the plans. Learned counsel for the defendant put to him that only 378 outlet points were installed in the first floor to date. The claimant answered that he did not know. He further admitted that he did not know whether there were only 88 switch points. However, he maintained that whatever he is claiming is the number of switch points, meaning that the number he stated in his witness statement is correct.

[27] This testimony reveals that the claimant is not certain of the number of outlets and switch points that he installed.

[28] Further, the defendant disclosed a letter from Warren Thompson, the project manager, that there were a number of points being electrical boxes, data points and keyless entry system points missing from the walls.

[29] On the evidence, I find that the claimant did not complete the roughing work for the outlets and switches and that he did not install the numbers as claimed, but only as contended by the defendant.

Roughing in 16 ac conduit for feeds

[30] The defendant asserts that there was no work done on the air conditioning for the simple reason that the air conditioning units were to be stored on the roof and as there had been no work on the roof as yet, there was no work done in relation to the air conditioning units.

[31] The claimant accepted in cross-examination that the air conditioning units were to be installed on the roof of the building, and that at the time of his termination, the second floor and hence the roof had not been built as yet. However, he maintained that he completed the roughing work for the air conditioning feeds, that he put in all the pipes for the air conditioning units up to the ceiling.

[32] The defendant asks the court to find that the claimant did not work on the air conditioning feeds as he did not have the means to do so. Even if the court were to believe that the claimant carried out some work on the air conditioning conduit feeds, the defendant submits that this work was not completed because by the claimant's

own admission, the main contractor had not finished the work on the walls and the ceiling nor was the epicore installed at the time that he was terminated.

- [33] I do not find favour with this submission by the defendant. On this aspect of his claim, the claimant is seeking payment for the completion of the roughing on the bottom floor of the project. He demonstrated to the court how this could be done up to the ceiling. Notwithstanding the omission by the main contractor, he completed the work up to the ceiling on the ground floor. Therefore, I rule that the claimant is entitled to payment for completing this work on the bottom floor.

Roughing in 25 door key pads

- [34] This item involves double counting on the claimant's part. His evidence reveals that this item is the same as he claims as extra work namely 'key lock entries roughing'. Accordingly, I will deal with this item in the category of extra work.

Roughing in 15 ground floor sleeves

- [35] This item is also double counted, claimed as both work done pursuant to the contract and extra work. I will deal with this item as extra work.

Roughing in 109 data outlets (extra work)

- [36] In a bit of confusion, in his witness statement, the claimant lists this item as work done pursuant to the agreement, and lists 71 (15 plus 56) data points with the items for extra work. Under cross-examination as to double counting, the claimant stated that it was the expert witness who did the calculations and "Mr. Webbe may have committed an error in the figures". In the circumstances, I will treat with the claim for data outlets in the category of extra work.

- [37] Compensation claimed for double counted items should be deducted from the amount claimed for work done under the contract.

Extra/additional work done by the claimant at the request of the defendant

- [38] The claim in relation to extra work at paragraph 18 of the claimant's witness statement was included in the defendant's strike out application, as inconsistent with the facts pleaded in the statement of claim and/or constituting an attempt to change

the claimant's case and/or to introduce new factual claims not made out in the statement of claim.

[39] At paragraph 17 of the witness statement, the claimant averred that on or about 15th November 2017, the defendant requested that he did extra work for the data system and keypad/sleeves on the project site. The defendant did not give him a change order but told him to do so. He indicated to the defendant that this would amount to additional works for which he should be paid. The claimant carried out the additional works in accordance with the instructions of the defendant. In commenting on this evidence, the defendant testified that it was correct. Given this admission by the defendant, I will not strike out paragraph 18 of the claimant's witness statement.

[40] At paragraph 18, the claimant states that the sum owed to him for extra work is \$16,800.00 (this sum appears to be an error as the amount sought is \$16,200.00), broken down as follows:

- a) Key Lock Entries Roughing 25 x 150 per point = EC\$4,375.00
- b) Sleeves for access 15 x 175 per sleeve = EC\$2,625.00
- c) Extra Data Points 15 x 150 per point = EC\$2,250.00
- d) Data points that were not in the contractual scope of work 56 x 175 per point = EC\$9,800.00.

I note that the items listed add up to more than the amount the claimant seeks.

Key lock entries roughing/roughing in 25 door key pads

[41] It should be noted that there is an error in the calculation of the sum claimed for this item. The defendant points out that 25 x 150 equates to \$3,750.00 and not \$4,375.00.

[42] Whereas the defendant's evidence is that the claimant did some work on the keypad systems but that the work was incomplete, by letter dated 16th April 2018, he agreed to pay the claimant the sum of \$3,750.00 for the work the claimant did on the said key pad systems. On this evidence, I find that the claimant is owed \$3,750.00 under this head.

Sleeves for access/roughing in 15 ground floor sleeves

- [43] Notwithstanding the absence of this item in the claimant's pleadings, at trial, the defendant admitted that he requested of the claimant to do installation work for the keypad/sleeves. Further, by the letter dated 16th April 2018, the defendant offered to pay the claimant \$50.00 per sleeve, giving a total of \$600.00. Therefore, in my view, the claimant is entitled to be paid for this extra work in the sum of \$600.00.

Data points (extra data points/data points not included in the contractual scope of works/roughing in 109 data outlets)

- [44] The claimant makes this claim although he stated that the contract did not include any electrical work relating to data, that data was not within his scope of work. On the other hand, the defendant contends that this was included in the roughing work, as data outlets and electrical outlets are not separated in roughing work, that all of the boxes are installed by the electrician whether or not they were electrical boxes or data boxes. Specialised technicians would then pull the wires for data and install the faces on the outlet boxes.
- [45] The defendant further contends that the data work was done by Leonard Watts. Counsel for the claimant put to the defendant that the work done by Mr. Watts related to data and that it was outside the scope of the claimant's contract. The defendant accepted that the work done by Mr. Watts was data work but did not accept that it was outside the scope of the claimant's contract.
- [46] Correspondence between the parties is noteworthy. In a letter dated 1st March 2018, the claimant requested of the defendant \$61,750.00 for work completed. The claimant reported the extra work that had been done by him up to that point as only "25 door readers and 15 access sleeves". He did not include data points. In his next letter dated 5th April 2018, he made a claim for 15 data points at \$150.00 per point.
- [47] The defendant challenged this claim in his letter dated 16th April 2018. The defendant pointed out to the claimant that there were no additional electrical points and only one new data point.

[48] In one letter dated 23rd April 2018, notwithstanding his admission that he did not do any further work on the project after February 2018, the claimant increased the number of data outlets that he allegedly installed from 15 to 56. The value of the work also increased from \$150 per outlet to \$175 per outlet.

[49] In another letter also dated 23rd April 2018, the claimant did not include a claim for work done on data points. His explanation for this was that the data points were “so much money so he didn’t put them in as completed although he did the work”. He stated that he left out the claim for data from his correspondence because he felt that if he left out certain things, he would be paid by the defendant.

[50] The defendant submits that this evidence is preposterous and incredible. I agree. The claimant accepted on cross-examination that given the defendant’s position in the 16th April letter, it was prudent for him, the claimant, to reinforce in writing that he did extra work on data points, not omit it in the hopes of receiving payment. In the circumstances, I do not accept the claimant’s “strategy” to receive payment for data points.

[51] On the evidence before the court, I am of the view that the claimant has not met his burden of proof in relation to data points. Therefore, the claim for same, whether as extra work or work pursuant to the contract, is denied.

The value of the work done by the claimant

[52] The claimant claims \$61,750.00 for work done pursuant to the contract. He relies on the evidence of the expert Basil Webbe. In Mr. Webbe’s assessment, the amount claimed was a reasonable value of the work completed. At paragraph 8 of his expert report and witness summary, Mr. Webbe explains how costing for electrical work is done. He states as follows:

“In terms of the costing of the electrical work to be done, I proceeded on the well-established basis that every electrical work to be done on a project has an associate cost. For example, there is a unit cost for electrical work connected to outlets, switches, panels and lighting points. Cost is normally determined by a point system. All electricians use the point system. If an outlet has to be installed – an outlet is considered an electrical point. A switch is a switch point. A lighting fixture is considered a lighting point. The

value of each point is determined by general market price. The point system used for this project was EC\$200.00 per point."

- [53] The defendant submits that the claimant is not entitled to \$61,750.00 as the claimant included in this sum claims for work that he did not do at all, claims for completion of work that he commenced but did not complete, and work that he has also claimed as extra work.
- [54] The defendant further submits that the court is handicapped in determining the quantum to which the claimant is entitled on account of the nature of the evidence before the court. In this regard, the defendant submits, among other things, the following:
- a) although the claimant particularised the areas of work that he allegedly completed, he did not particularise the value of the work done in each area. For example, he alleges that he completed 472 outlet points but does not say whether the cost is either in a lumpsum or on a per point basis.
 - b) The evidence of Basil Webbe does not assist the case in this regard. First, Mr. Webbe makes a bald statement that "a further \$61,750.00 was due and owing to Mr. Williams up to the roughing stage". Mr. Webbe, however, did not provide any evidence as to how he came to this conclusion. He also did not provide a breakdown of the \$61,750.00.
 - c) In his written evidence, Mr. Webbe also stated that costs are normally determined on a per point system and that the cost for this project was \$200.00 per point. This evidence is inconsistent with Mr. Webbe's own evidence as well as the documentation before the court. The contract sum in this matter was not arrived at on a per point basis but was a lump sum contract. The agreed sum of \$175,000.00 was not arrived at using the point system. The sum of \$61,750.00 which is being claimed is not divisible by \$200.00. \$61,750.00 divided by \$200.00 equals 308.75.
 - d) The court therefore has no evidence before it from the claimant from which it

can calculate the value of the work which it finds was completed by the claimant. Based on the defendant's assessment of the work done, the claimant was entitled to a further \$9,500.00 at the end of the project (inclusive of payment for the additional work which was done) which would have resulted in the claimant receiving a total of \$34,500.00.

- e) The defendant's evidence was that since the stage payments were not separated per floor, both parties proposed an allocation which would see the stage payments being split into floors. The defendant did not agree with the claimant's proposal for the payment of \$61,750.00 upon completion of the first floor roughing and submitted a proposal for the payment of \$40,000.00 of the first floor roughing.
- f) Given the evidence that the claimant did not complete the first floor roughing, he is not entitled to either \$61,750.00 or \$40,000.00. He has, however, received a total of \$45,000.00, an overpayment by \$10,500.00 of the \$34,500.00 that the defendant estimates that the work was valued at.

Extra Work

- [55] The claimant is seeking \$16,200.00 for the extra/additional work the defendant requested him to do outside the scope of the contract.
- [56] The defendant accepts that \$3,750.00 was owed to the claimant for extra work on the keypad systems, and submits that this is the only claim for extra work that the claimant would have been entitled to recover on this claim had he not been paid an interim payment. Given that the interim payment has been made, the defendant submits that the claimant is not entitled to an order for work done on the key pad systems.

Decision on value of the work done

- [57] The claimant is asking the court to enter judgment for him in the sum of \$32,950.00, that is, \$77,950.00 (\$61,750.00 for work done pursuant to the contract plus \$16,200.00 for extra work done outside the scope of the contract at the defendant's

request) less the mobilization fee of \$25,000.00 paid, and the interim payment of \$20,000.00.

[58] There is no breakdown (as admitted by Mr. Webbe) of the \$61,750.00 claimed in the evidence. Similarly, however, the defendant has not provided the court with any cogent evidence as to how he came by the assessment of the work done by the claimant under the contract as \$34,500.00. In his professional judgment, he states that the claimant completed only 10% of the first phase of the work but, as pointed out by learned counsel for the claimant, the defendant provided no calculations or papers or explanation in support of his position.

[59] The claimant is entitled to payment for extra work as follows:

Key lock entries roughing/roughing in 25 door key pads - \$3,750.00 plus sleeves for access - \$600.00. The total for extra work is \$4,350.00.

The defendant concedes the \$3,750.00 only.

[60] Mr. Webbe's evidence is that the point system used for this project was \$200.00 per point. However, this does not assist the court given the sum of \$61,750.00 claimed for work done under the contract. For instance, using the \$200.00 per point system, the claim for 338 lighting points (which is disallowed) amounts to \$67,600.00 which alone surpasses the claim for \$61,750.00. At trial, Mr. Webbe agreed that on the documentation, one cannot calculate per point.

[61] Further, the items determined as double counted and to be deducted from work done pursuant to the contract are:

- i. roughing in 25 door key pads
- ii. roughing in 109 data outlets

[62] The defendant has conceded and I have determined that the claimant is entitled to \$3,750.00 for the 25 door key pads under extra work so that sum is to be deducted, bearing in mind the claimant listed the sum as \$4,375.00. More confusion arises in respect of the data outlets. I have determined that the claimant is not entitled to payment for 71 data outlets. That involves a deduction of \$12,050.00 (\$2,250.00

+ \$9,800.00). There is no indication as to how the item of 'roughing in 109 data outlets' was treated in terms of arriving at a claim. Was a point system used? If so, was \$200.00 or \$175.00 or \$150.00 per point used? Whether or not a point system was used, what is the sum to be deducted? This untenable situation is coupled with the fact that the claimant attributes the double counting and calculation error to Mr. Webbe. In light of the evidence before the court, I place no weight on Mr. Webbe's valuation of the work done by the claimant.

[63] In these circumstances, I am of the view that there is no reliable evidence on which the court can determine the value of the work done by the claimant up to the time of termination of the contract. Given the nature of the evidence, save for an additional sum of \$600.00 (sleeves for access), the court is constrained to accept the defendant's assessment, notwithstanding his failure to demonstrate to the court by cogent evidence his conclusion on the value of the work completed. The assessment of the defendant amounts to a concession that the claimant is entitled to payment for the work done up to the termination. Whereas I determined earlier that the claimant is entitled to payment for the work done in relation to 'roughing in 16 ac conduit for feeds', I am unable to place a value to this work or any other work completed under the contract, such as some of the roughing work for the outlets and switches.

[64] For these reasons, I find that the value of the work done by the claimant up to the termination of the contract is \$35,100.00 (\$34,500.00 + \$600.00). He was already paid the mobilization fee of \$25,000.00 and an interim award of \$20,000.00. Therefore, there is an overpayment of \$9,900.00 for which learned counsel for the defendant requests repayment in accordance with Rule 17.7(2)(b) of the Civil Procedure Rules (Revised Edition) 2023. I will grant that request.

Costs

[65] The general rule is that the court must order the unsuccessful party to pay the costs of the successful party.³ In making the order for the interim payment, the learned

³ CPR 64.6(1)

master ordered that costs be in the cause. Notwithstanding this court's order for the claimant to repay part of the interim payment, the claimant was forced to file his claim to recover the sum owing to him. In these circumstances, I will order that each party bears his own costs.

Order

[66] Based on the foregoing, it is hereby ordered as follows:

- 1) The claimant shall repay the defendant part of the interim payment in the sum of \$9,900.00.
- 2) The claimant shall pay costs awarded at case management to the defendant in the sum of \$750.00.
- 3) Save for the costs ordered in paragraph 2, each party shall bear his own costs.

Tamara Gill
High Court Judge



By the Court


Registrar