

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN  
CAUSE NO: 617/96



BETWEEN : MR..ROGER CRIBB PLAINTIFF

AND : MR. PENDENNIS KEED DEFENDANT

APPEARANCES:

Clyde H. Allen for Plaintiff  
Shaun McCann for Defendant

April 10, 11 1997

PATTERSON J. (Actg.) IN CHAMBERS.

JUDGMENT

This is an application by the defendant for summary judgment in terms of GCR O 14 r 12. The application is made by summons, supported by an affidavit, seeking an order that the plaintiff's claim be dismissed and that judgment be entered for the defendant, on the ground that the plaintiff's claim has no prospect of success. Simply put, the defendant's contention is that the plaintiff's claim is against the wrong person.



By a specially indorsed writ of summons issued on the 15th November, 1996 and served on the 26th December, 1996, but which was amended and re-dated the 27th January, 1997, the plaintiff claimed against the defendant damages for breach of contract. The plaintiff alleged in his statement of claim that by an oral agreement made between the defendant and himself, he agreed to carry out works for the preparation and finishing of the eastern block of buildings at Caribbean Paradise Apartments, Grand Cayman. That “contract was later confirmed in writing and evidenced by a letter dated 25th September, 1995 (“ letter”) and signed only by the Defendant”. The terms of the contract, as set out in the letter, were fully recited. Para. 3 of the said statement of claim, asserted that “Pursuant to the contract, the plaintiff completed the work as specified”.

The plaintiff further alleged that by a second oral agreement between the defendant and himself, he agreed with the defendant to carry out similar works on the middle block of the said apartment building. The terms of the second oral agreement were the same as those set out in the letter, “and referred to at paragraph 2 above”. He stated that after he had completed half the work on the middle block, the defendant stopped him from continuing with the job.

The plaintiff further alleged that the defendant paid him only a part of the contract money, but “ in breach of the contract and the oral agreement has failed and/or refused to pay the balance of fees”---

The defendant filed his statement of Defence to the amended claim on 4th February, 1977. It clearly stated the point contended for by the defendant as follows:-

“1. As to the Plaintiff’s amended statement of claim filed herein the Defendant denies that there exists any contract between the Plaintiff and himself personally.

Furthermore, the Defendant says that any such contract as evidenced by a certain letter dated 25th September 1995 referred to in paragraph 1 of the amended statement of claim, and the alleged second oral agreement referred to in paragraph 4 of the said amended statement of claim was a contract and oral agreement respectively between the Plaintiff and a separate third party entity namely P & M Services, Ltd.

2. In the premises, the Defendant says that the Plaintiff is not entitled to the relief claimed in this action”.

Coupled with the defence is the application for summary judgment. The rule (O 14 r 12), so I understand, has been introduced in this jurisdiction quite recently, and seems to be peculiar to this jurisdiction. The scope of the rule appears quite wide. Counsel for the plaintiff concedes that its application could extend to a case where the plaintiff sues the wrong defendant, but he contends that in the circumstances of the instant case, the evidence is insufficient for the determination of the order sought.

The defendant relies on his affidavit verifying the facts pleaded in his statement of defence. He depones that he is the managing director of P & M Services Ltd, a company duly incorporated under the provisions of the Companies Law (Revised) and engaged in the maintenance of buildings. He admits negotiating with the plaintiff, but asserts that it was to the knowledge of the plaintiff that he was doing so on behalf of P& M Services Ltd (“the company”). This is how paragraph 4 of his affidavit reads:-

“ 4. At all material times, during the negotiations I had with Mr. Cribb prior to the company engaging his services and throughout the undertaking of his works, he knew that I was the managing director of the company and was acting on its behalf in contracting with him, and that the works being done by him were as a sub-contractor to the company”.

In support, he exhibits a number of documents. The first is the letter referred to in the statement of claim. It is written on the letter head of the Company, which states in bold letters - “P & M SERVICES, LTD,” and underneath that - “Building and Electrical Contractors”. The letter is addressed to “Roger Cribb, Tropical Painting Services”. It is headed “RE: CARIBBEAN PARADISE APARTMENTS - EAST BLOCK PAINTING”. This is how it commences:- “With reference to our conversation, we are requesting you: -” (emphasis supplied). The scope of work set out in the statement of claim is exactly what is in the letter. The letter ends in these words:- “Please sign a copy of this agreement to signify your acceptance and we look forward to a successful project”. It is signed by “Pen Reed - Managing Director” (emphasis supplied).

I agree with the defendant’s submission that the letter is clear evidence that the contract was between the plaintiff and the company and not Mr. Reed in his personal capacity. It seems quite clear to me that the letter plainly shows that the contract was between the plaintiff and P & M Services Ltd. The plaintiff in his pleadings placed great reliance on the letter and expressly stated that “he will refer as may be necessary for its full terms, meaning and effect”. I hold that the “full terms , meaning and effect” of the letter unequivocally point to a contract between the plaintiff and the company.

The defendant did not stop there. He exhibits three cheques drawn on the company's account and paid by the bank to the plaintiff "Roger Cribb". The cheques are clearly printed with the company's name, address and telephone number at the top of each and they all bear the account number, "6490", and are signed by "P. Reed". They are endorsed by Roger Cribb and cashed on September 29, 1995, October 6, 1995 and October 13, 1995. Counsel for the defendant submits that this is further proof that the plaintiff knew that he was working for and being paid by the Company and not Mr. Reed personally. The case of Bondina Ltd v Rollaway Shower Blinds Ltd and Others [1968] 1 All ER 564, which counsel referred to, is quite instructive. The headnote reads as follows:-

"A company director who signs a cheque printed with the company's name and account number thereby adopts all the printing and writing on the cheque, i.e. not merely the writing designating the payee and the amount for which the cheque is drawn (if that has been written out for him and not written by himself) but also the printing of the company's name and the printing of the numbers which designate the company's account, so that the cheque is deemed to be drawn on the company's account and the person signing the cheque not rendered personally liable on it merely because he has placed his signature on it".

Dillon L.J. summed up the position, which is apposite to the instant case, in these words (p. 566): "It shows plainly, as I construe it, looking no further than the form of the cheque itself, that the drawer of the cheque was the company and not Mr. Ward or Mr. McMahon" (the directors who signed the cheque). The letter which the plaintiff is relying on discloses a similar position. Both the letter and the cheques point inexorably to a dealing between the plaintiff and the company and not Mr. Reed personally.

There is further evidence in support of the defendant's contention that the plaintiff knew that the contract was between the company and himself and not Mr. Reed. The copy of a written complaint made by the plaintiff to the Trade and Labour Office on the 6th December, 1995, clearly bears out the point. The complainant's statement reads, inter alia, as follows:-

“ I was contracted by Mr. Reed, Managing Director of P & M Services Ltd to do a painting job at Caribbean Paradise Apartments as per contract attached”--

The complaint, signed by Roger Cribb the complainant, was sent by the Director of Labour with a covering letter to “The operator - P & M Services Ltd”. on the 7th December, 1995.

It is noteworthy that a letter of demand prior to suit was sent by the plaintiff's Barristers & Attorneys-at-Law, Brooks & Brooks, addressed to, “ Mr. Pendennis Reed, P & M Services Ltd, Building and Electrical Contractors, P.O. Box 1831 G.T. Grand Cayman B.W.I.” Beyond question, they must have been acting on instructions to send such a letter to the company.

If it appear from the terms of the contract that the Director contracted on behalf of the company, then he cannot be held liable. In my judgment the overwhelming evidence makes it crystal clear that the contract was between the plaintiff and the company and not Pendennis Reed personally, and accordingly the plaintiff's claim against Mr. Reed

has no prospect of success. Under the provisions of O. 14 r 13, it was open to the plaintiff to show cause against the defendant's application by either filing and serving a reply or filing, and serving an affidavit in reply. The plaintiff did not avail himself of either course. When the summons came on for hearing, counsel applied for an adjournment so as to enable him to take further instructions from his client and if need be, to show cause against the defendant's application. The application for an adjournment was strongly resisted by counsel for the defendant. He pointed to the fact that from as far back as the 16th January 1997 he had apprised the defendant's Attorneys-at-Law of his contention, and further, the defence, the summons and affidavit had been served on the defendant's Attorneys-at-Law as far back as early March, giving them ample time to prepare. I refused the application for the adjournment.

Counsel for the plaintiff, quite undaunted by the refusal of his application for adjournment, argues that O. 14 r 12 proceedings are not appropriate in this case. He expresses the view that the issue raised in the defence and the summons could not be dealt with in a short time, hence he says O.14 proceedings are not appropriate. He argues further that the evidence is not sufficient to support the defendant's application. His final submission is this:-

“ The issue to be determined by the Court is whether the defendant permitted the impression to be created that he is somehow assuming personal responsibility for the performance of the contract. The defendant will continue to be liable even after discovery of agency of the other party, unless the plaintiff makes an unequivocal election to look to the principal alone. The Court must take into

account the overall circumstances of the case and in particular the manner in which the contract was signed”.

It is his view that on the facts of this case, the plaintiff has a proper prospect of success.

In my view, as I have said earlier on, the scope of O 14 r 12 appears to be very wide. It gives to a defendant the right to terminate proceedings against him in a summary manner by showing that the plaintiff's claim has no prospect of success. If the defendant is able to show that the plaintiff's case is clearly unsustainable, then he will be entitled to judgment without the necessity of a possible long drawn out trial. If the issue raised by the defence is shown to be sufficient to finally determine the action in his favour without a full scale trial, then in my view, an O 14 r 12 application is appropriate. These are but examples of the scope of the rule and are by no means exhaustive. The application of this procedure not only saves costs but it saves the time of the Court.

In my view, the defendant is entitled to the order sought. Accordingly, the judgment of the Court is as follows:-

The plaintiff's claim is dismissed and Judgment is entered for the defendant no order as to costs .

Dated this 24<sup>th</sup> day of April, 1997

  
(Actg) Judge of the Grand Court

