

IN THE SUPREME COURT OF BELIZE, A.D. 2008

ACTION NO. 363 OF 2003

SYDNEY RITCHIE

Plaintiff

BETWEEN AND

LOPEZ EQUIPMENT CO. LTD.

Defendant

—

BEFORE the Honourable Abdulai Conteh, Chief Justice.

Mr. E. Andrew Marshalleck and Mrs. Liesje Barrow Chung for the plaintiff.
Mr. Ellis Arnold S.C. for the defendant.

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JUDGMENT

Sometime between 2002 and 2003, the Government of Belize was executing some public works in Dangriga Town and on the Southern Highway. For Dangriga Town, the works involved laying a public drainage system, and on the Southern Highway, they involved laying culverts and bridges at Golden Stream and Deep River. The defendant, Lopez Construction Co. Ltd., was part of the construction team for these projects.

2. The defendant's engineer, a Mr. Daren Grant, engaged Mr. Sydney Ritchie, the claimant in these proceedings, to deliver materials consisting of sand, screen sand, gravel, bolas (large stones) and land fill materials to these work sites. The claimant said that the rates for the delivery of

materials at the various work sites were agreed upon with Mr. Grant as follows: delivery at \$180.00 per load with a truck load size of 15 cubic yards and \$500.00 per load for bolas delivered to Dangriga, at Golden Stream and Deep River, at \$600.00 per cubic yard, that is per truck load and \$800.00 per load of bolas delivered at Golden Stream and Deep River; for waste material dumped away from the work site at \$40.00 varying down to \$25.00 or \$15.00 per trip, depending on the distance the material was to be moved; the hiring of the loader was \$100.00 per hour; for the haulage of landfill material used to build up the approaches of the bridge in Dangriga Town, the price was \$100.00 per load.

3. All these rates, Mr. Ritchie testified, were verbally agreed upon with Mr. Grant, the defendant's engineer. From the evidence, things worked out well between the parties at the start. When the defendant needed the various materials, they would call Mr. Ritchie, who together with his drivers would do the delivery. And when materials were delivered way bills were issued which were signed by persons authorized to do so at the different sites. A way bill was also issued when the loader was used, stating that the work had been done.
4. After the delivery of materials and work done by the loader, Mr. Ritchie's wife would prepare invoices. At the beginning these invoices were paid by the defendant. But difficulties later arose with the invoices, Mr. Ritchie claimed, as the defendant was not paying them in full.
5. As a result Mr. Ritchie has brought these proceedings by a specially endorsed writ claiming against the defendant the sum of \$99,155.00 being the costs of materials sold and services rendered to it over the period of 25th April 2002 through to 25th June 2003. Particulars of the sum claimed were endorsed on the writ with the invoices.

6. The defendant for its part, did not essentially deny the claimant's case; it however denied that the selling price of the materials sold and delivered amounted to \$99,155.00. It averred as well that some of the charges in the invoices listed in the particulars of claim were inflated and or due for materials that were not delivered. The defendant instead stated that the agreed selling prices for the materials received amounted to \$52,543.84 and that this sum had been paid in full to the claimant.
7. I must say that on the prices of the materials, a considerable chink in the defendant's armour is that its engineer, Mr. Grant who had contracted with Mr. Richie on its behalf, was not called as a witness nor a request made to have his testimony, if needs be, be procured from abroad. There was simply no evidence from him.

The Evidence

8. The claimant, Mr. Ritchie, testified and was rigorously cross-examined by Mr. Ellis Arnold for the defendant. Mr. Ritchie testified as to the rates for the materials and services rendered to the defendant were agreed with Mr. Darren Grant of the defendant company. He further testified that whenever the defendant needed the materials they would contact him often through one Rachel Lucas, also of the defendant. He also testified that a Mr. Jose Melendez, who also worked for the defendant, would for most of the time requisition the loader when it was needed and he would go out to do with work and at the end a way bill would be signed as to the work done. At each work site, the procedure was the same, when materials were delivered, way bills were signed and each party would keep a copy. That is, the claimant's drivers who delivered the materials and the supervisor or person in charge at the work site where the materials were delivered. These included, according to Mr. Ritchie's testimony, Mr. Melendez, Mr. Noh, Mr. Dominguez and for some materials

delivered to Punta Gorda, Mr. Casimiro, signed the way bills. Mr. Ritchie further testified that he rendered to the defendant invoices for materials and work done for the defendant. These invoices were prepared by his wife (Mrs. Ritchie, who also testified). The invoices had way bills attached that were signed for the defendant by persons at the various work sites. He also testified that the invoices were prepared on the basis of the prices that had been agreed. He also testified that the defendant paid the invoices when he started to work, but there came a time when they were not being paid or not being paid in full. This, he said, was probably in February 2003. The partly paid invoices, he testified, caused him concern. Sometime in May 2003, he went to the defendant's office in Dangriga and spoke to Rachel Lucas. Ms. Lucas was evidently the accountant in the defendant's office. She was apprised of the mounting arrears by Mr. Ritchie who then asked for a statement of what was owed him at the point. Mr. Ritchie also testified that Ms. Lucas punched the computer and printed out a statement which was signed by her. This showed then that Mr. Ritchie was owed \$37,700.50. This statement was tendered in evidence as **Exhibit SR 1**. Mr. Ritchie further testified that this sum of \$37,700.50 was not paid despite efforts he made to collect: he went to defendant's office when it was time to pay (which was every two weeks) but he said, Ms. Lucas told him the cheque was already made out but the money had not been transferred from Belize City to Dangriga. He testified that he accepted this explanation and continued to work for the defendant. But there came a time, in early July 2003, when, he said, he had to stop working for the defendant. By then additional invoices had been issued for work done and materials supplied to the defendant.

9. Mr. Ritchie was, as I have said, rigorously cross-examined by Mr. Arnold for the defendant. I must say that I found Mr. Ritchie to be a frank and truthful witness. He admitted under cross-examination that soon after commencement of his engagement with the defendant, it provided fuel for

his trucks at less than the pump price. Then, he testified, there were no arrears owed by the defendant; though difficulties with payments later set in. Still, under cross-examination, he testified that sometime in May 2003, Mr. Grant for the defendant called him to bring all his invoices to settle his accounts, because the works were nearing completion. He testified to receiving a cheque for \$19,000.00 plus. He denied being told by Mr. Grant that the cost of his work from April to 23rd May 2003 was \$52,000.00. When shown two documents of receipt of payment, Mr. Ritchie stated that he recalled receiving \$15,000.00, but the other for \$17,953, was not his signature. He also stated under cross-examination that by end of May 2003, the Golden Stream and Deep River projects were not finished, although the drainage project in Dangriga Town was close to completion.

10. The second witness to testify for the claimant was Melida Ritchie, the wife of Mr. Ritchie. She testified that she did all the accounts pertaining to his work, such as making out invoices; and that she in fact prepared and made out the claimant's invoices in relation to his work for the defendant. She also testified as to the method of preparing invoices. They were hand-written and had attached to them the way bills in respect of the work done or materials supplied. She tendered in evidence as **Exhibit MR 1 (1 – 13)**, thirteen invoices. I should say here that none of these were in contention between the parties. But she also testified that the way bills attached to these invoices were signed by Mr. Casimiro, Mr. Joe Melendez, Mr. Dominguez and Mr. Noh. She further testified that the way bills were prepared by the claimant's drivers who would take them along on delivery of the materials and someone at the defendant's work site would sign for them. They would then be brought back to her to prepare the invoices; and that in the course of dealing with the way bills, she became familiar with the signatures of the persons who signed for the defendant. She further testified that the way bills were never disputed and

were accepted by the defendant. Importantly, for the issues between the parties in this case, she tendered as **Exhibit MR 2 (1 – 9)**, the invoices which are the subject of the claim in this case. She gave the numbers on these invoices and that they all had way bills attached; and stated that these were the outstanding invoices and the way bills attached to them were signed for the defendant by the same person who had signed on the way bills attached to the invoices in **Exhibit MR 1** and that she was familiar with the signatures. On an objection by Mr. Arnold for the defendant on this point, Mr. Andrew Marshalleck for the claimant, submitted that on the basis of sections 47(1) and (2) and 48 of the Evidence Act, the witness could testify as to her opinion as to who the signatories on the way bills were. I ruled that she could so testify. Mrs. Ritchie was taken through the invoices in **MR 2 (1 – 9)** individually and testified that none of them was included in **SR 1**. She also gave the date and amount of each invoice.

11. Mrs. Ritchie was also rigorously cross-examined by Mr. Arnold for the defendant. I must say again, that on the whole, I found her a credible and convincing witness. She stated under cross-examination that she prepared all the invoices for the claimant that were sent to the defendant. Mr. Arnold tried to draw her on differential in prices for some of the materials, and certain documents were put to her. I find however that none of those referred to the invoices in **Exhibit MR 2 (1 – 9)**, the subject of the claim in this case. She however admitted, still under cross-examination, that not all of the way bills attached to some of the invoices were signed by the persons she had said signed way bills for the defendant. And to Mr. Arnold's suggestion that one of the signatories, a Mr. P. Cal, was not authorized, she replied that she would not know. Mr. Marshalleck in re-examination sought to rehabilitate her testimony as to some of the way bills that were not signed. And she admitted that these were however paid by the defendant.

12. The third and final witness for the claimant was Mr. Pete Avilez. He said in evidence that he worked for the claimant for about a little over a year, from about November 2002. He testified that he was at the time a dump truck driver for the claimant and delivered materials for him in Dangriga Town, in the villages and also on projects in Golden Stream and Deep River; and that he recalled transporting sand and gravel from Dangriga Town and also transported stones used for the construction of bridges and culverts and bolas that were used as foundation for the approaches to bridges and used as walls to border creeks against erosion. Mr. Avilez also recalled that it was late June or early July 2003, that he stopped hauling materials to Golden Stream and Deep River. He testified as well that an account was kept of the materials he and other drivers of the claimant delivered at the work sites as the supervisors there would sign off on the way bills. He recalled knowing one Mr. Dominguez, Mr. Gonzalez and “a local Indian guy called Mr. Noh” and one Mr. Cal and George Dominguez. He was shown some way bills on which he recognized the signatures of Mr. Noh, Mr. George Dominguez and Mr. Cal. Under cross-examination by Mr. Arnold for the defendant, Mr. Avilez said that he was not certain if it was up to the end of June or early part of July 2003 that he hauled materials for; and when it was suggested to him that the projects had been completed by end of May, he replied that this was not so.

13. The only witness to testify for the defendant was Mr. Wilhelm Lopez, a contractor and director of the defendant company and its managing director. He testified that Mr. Darren Grant was the project engineer for the defendant with whom the rates for the jobs were agreed with the claimant, but that he was not certain as to the rates. He also testified that the defendant offered to provide the claimant with fuel and that the costs would be deducted from his payments. Mr. Lopez tendered in evidence documents stating the dates of substantial completion of the Dangriga project (**Exhibit WL 1**), Deep River and Golden Stream projects.

However importantly for the issues in contention between the parties, Mr. Lopez testified as a result of a meeting between Mr. Grant and Mr. Ritchie (the claimant) in the defendant's Dangriga Town office, all matters relating to the pricing of the materials and the fuel account were resolved and a final payment was agreed and that the final figure agreed upon was paid to Ritchie in the sum of \$19,860.00. Mr. Lopez tendered **Exhibit WL – 4** as representing this payment. He also testified to other payments to Mr. Ritchie and he tendered receipts of payment for \$15,000.00 and \$17,000.00 (**WL 6 and 7**). I should state here that Mr. Marshalleck for the claimant had no objections to these receipts as he stated that his client accepted these and they were not disputed.

14. Under cross-examination by Mr. Marshalleck for the claimant, Mr. Lopez was shown **Exhibit MR 2** (the invoices in dispute in this case) and invited to look at the way bills attached to them, and when asked if they signatures on them were forgeries, he replied that he did not know but admitted knowing Messrs. Noh, Dominguez, Melendez, as authorized to sign for the defendant. But he denied that Mr. Gonzalez was authorized and that Mr. Cal was also not authorised. He denied knowing these two persons. When questioned however about his company's (the defendant) records he said they were in Dangriga with the accountant but he did not think it was appropriate that the accountant should have been called as a witness. He also testified that Mr. Grant was in England and the defendant's accountant was in his office in the King's Park area of Belize City.

Determination

15. This was the essence of the evidence in this case. I must confess that some of the testimonies by the witnesses were rambling in parts and not

all of them were germane to the issues joined between the parties as disclosed in their respective pleadings.

16. The nub of the claimant's case was that as a result of the agreement between him and Mr. Grant for the defendant, he agreed to do work and deliver materials to the three work sites the defendant had projects; and he gave particulars of the invoices that remained outstanding for payment in the total sum of \$99,155.00 as stated in **Exhibit MR 2 (1 – 9)**.
17. The defendant for its part admitted in its Defence that the claimant sold and delivered materials to it during the period 25th April 2002 through to 25th June 2003. It however denied that the selling price of these materials amounted to the sum of \$99,155.00. It further averred that some of the charges on the invoices listed in the particulars of claim were inflated and or are for materials that were never delivered to the defendant. I must however point out that the defendant singularly failed to particularize the prices it stated were inflated or the materials it claimed were not delivered. The defendant further averred that the agreed selling prices for the materials amounted to \$52,543.84 and that this sum was paid in full to the defendant.
18. I had earlier stated that the absence of Mr. Darren Grant or any testimony from him, was a chink in the armour of the defendant. In my view, this must be so for the simple reason that it was Mr. Grant who negotiated and agreed the prices with Mr. Ritchie. Therefore in the absence of any countervailing evidence from Mr. Grant, I must accept Mr. Ritchie's and Mrs. Ritchie's testimony on this. I find both these witnesses credible and convincing.
19. Another serious chink in the defendant's armour in my view is the inexplicable absence of any testimony from its accountant who should

record invoices and payments made to the claimant. All I am left with in this case are, in my view, the unavailing attempts through skilful cross-examination by Mr. Arnold for the defendant to shake the testimony of the witnesses for the claimant. I however found them credible and accept their evidence. No attempt was made to contradict the testimony of the claimant for example, by calling any of the supervisors at the defendant's work sites such as Messrs. Melendez, Dominguez or Noh, as to the short or non-delivery of materials or work by the claimant at these sites.

20. The claimant for his part put in evidence **Exhibit MR 2** which contains particulars of his claim on the several invoices he claimed were outstanding. On the state of the evidence in this case, I find nothing from the defendant to refute the claimant's case. Apart from some ingenuous questioning and suggestions by Mr. Arnold for the defendant, I am unable to find anything in the case that would show the claimant's case is not credible. I find no evidence to support payment by the defendant of any of the nine invoices the claimant claimed to be outstanding. In fact when the claimant received payment he candidly admitted this. There is nothing to undermine any of the claimant's invoices and the way bills attached to them. I find on a balance of probabilities, the claimant case is proved.

21. Finally, with regard to the issues joined between the parties relating to non-delivery and inflated prices of the materials supplied by the claimant, I find no evidence from the defendant. Its learned attorney tried to elicit answers from the claimant's witnesses suggestive of inflated prices because some of the invoices had amounts for some materials lesser than what the claimant had testified. But this was explained away satisfactorily in my view when Mrs. Ritchie answered that this was so as the claimant had gone in to negotiate more favourable terms for the prices of the materials with Mr. Grant, the defendant's engineer for the projects. I therefore find the allegation of inflated prices not made out. The court

regrettably did not have the benefit of any testimony from Mr. Grant. Mr. Lopez for the defendant, however, testified that the prices were negotiated and agreed with Mr. Grant. I believe the testimony for the claimant that the prices were agreed with Mr. Grant.

22. On the issue of the non-delivery of materials, again, I find no evidence to contradict what the claimant's invoices in **Exhibit MR 2** show. The defendant's supervisors at the various work sites could have been called to shed light on this issue. The court was not afforded the benefit of their testimony. I therefore am unable to find the case for non-delivery of materials sustainable. In the circumstances, the invoices speak for themselves.
23. Accordingly, I enter judgment for the claimant in the sum of \$99,155.00 as due and owed to him by the defendant. This sum is to bear interest at the rate of 6% per annum from 25th April 2003 through to 1st June 2004.

A. O. CONTEH
Chief Justice

DATED: 8th May 2008.