IN THE SUPREME COURT
TURKS AND CAICOS ISLANDS
Appellate jurisdiction

Appeal number: CL-APM 10/10

BETWEEN

CHERYL HAMILTON

Appellant

AND

NEWTON STUBBS

Respondent

F Grant for appellant
O Smith for respondent

Hearing: 25 May 2011
Judgment: 20 July 2011

Judgment

[1] The respondent brought a claim for $10,000 in the Magistrates Court on Providenciales against the appellant for "Unpaid balance for work done – she never paid for the work that was done". The respondent is a contractor and the work was carried out in late 2006 and early 2007 on apartments owned by the appellant. The trial took place in 2009 and both parties gave evidence. The learned Chief Magistrate gave judgment to the respondent (plaintiff) in the sum of $7500 which, with court and attorney's costs, gave a total of $9,657.

[2] The appellant (defendant) appealed but, upon receipt of the Chief Magistrate's reasons for her decision, filed an amended notice of appeal:

1. That the learned Magistrate erred in law finding that there was no agreement between the parties.
2. The Magistrate erred in law finding that the appellant's belief that the respondent would do the work for free was unreasonable.
3. Having found that the appellant held the belief that the respondent would engage the work to have the privilege of moving his friends having an apartment in which to rent, the learned Judge erred in having applied the equitable remedy of quantum meruit as there was no assent of the parties.
4. The learned Judge erred in applying the remedy of quantum meruit.
5. Having applied the remedy of quantum meruit the Magistrate wrongly adopted the value of the services as submitted by respondent there was not exercise to see if it was reasonable in line with what is expected in quantum meruit judgment.

[3] After hearing the appeal, I reserved judgment but the file was then overlooked. I apologise for the delay this has caused.

[4] At the hearing of the appeal, Mr Smith for the respondent, raised the preliminary point that the appeal was out of time. He pointed out that the decision was given on 7 April 2010 and notice of appeal was filed on 13 April 2010. By section 163 of the Magistrates Court Ordinance, notice of

appeal must be served on the magistrate and the other party within five days and he suggested it was, therefore, out of time.

[5] By section 8 (d) of the Interpretation Ordinance:

> "(d) when an act or proceeding is directed or allowed to be done within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time."

Excluded days are Sundays or public holidays; section 8 (b). By section 8 (a):

> "(a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day which the event happens or the act or thing is done."

[6] 7 April 2010 was a Wednesday and, by paragraph (a), is excluded from the calculation of five days. Thursday to Saturday are included, Sunday is excluded and Monday and Tuesday included to make the five days. Thus it is clear that the notice of appeal filed on Tuesday 13th was in time.

[7] Mr Smith also told the Court that it was not served on him until some time later. If that is correct, the appeal would still be out of time but it is not sufficient to mention the fact from the bar table. As the party asserting the failure to serve in time, he should have served evidence of the date on which he received the notice of appeal. In the absence of evidence, I treat the appeal as having been made in time.

[8] In the Reasons for her decision, the Chief Magistrate set out the case in these terms:

> "It was not disputed that work was performed by plaintiff on apartments owned by defendant. It was also not disputed that defendant rented apartments to friends of plaintiff and was paid rental for said apartments. It was further not disputed that when these friends vacated the apartments, at defendant's request, no rent was due and owing by plaintiff on said apartments. What is disputed is that defendant was required to pay plaintiff for the work he did on her apartments."

[9] The Reasons then list the matters the court found to be established:

> "1. Plaintiff did tell defendant that he intended to charge her money for the work on the apartments. Court accepted plaintiff's explanation as to word "agreement" referred to in Plaintiff's Exhibit 1.
> 2. The rental of the apartments was not a quid pro quo for the work done, as plaintiff paid rent to defendant. This rent was not reduced and a refund was returned to plaintiff after occupants of rental units moved out early, when given notice.
> 3. Defendant may have believed the plaintiff would do work for nothing but this belief was not reasonable, given the extensive amount of work done by plaintiff.
> 4. In the absence of an ad idem agreement between plaintiff and defendant, there was no valid agreement but nevertheless the plaintiff was entitled to payment for the work done.
> 5. The equitable remedy of quantum meruit applied, and the value of the work done was due.
> 6. Defendant acknowledged that plaintiff did the work listed in plaintiff's Exhibit 1 but for 'painting#1'.
> 7. The cost of ' painting#1' was listed as $2500 on plaintiff's Exhibit 1.

The court then deducted $2500 from the amount claimed and gave judgement for $7500.

[10] Although the first two grounds suggest the magistrate erred in law, they are, in fact, simply challenges to the magistrate's findings of fact. It has been repeated in many cases that, as the trial court has the advantage of seeing and hearing the witnesses, an appellate court will only interfere with the magistrate's findings of fact if it cannot be supported by the evidence in the record.

[11] I have read the record of the evidence of both parties and is clear that it could support the magistrate's decisions and I see no reason to interfere on that ground.

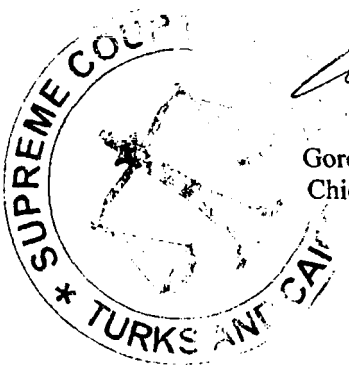
[12] The only remaining point is the question of whether the magistrate was correct to apply the remedy of quantum meruit. The contention made in appeal ground 3 that the magistrate found the appellant believed the respondent would do the work for the privilege of moving his friends into an apartment to rent is not supported, in my opinion, by paragraphs 2 and 3 of the magistrate's findings. Although the magistrate conceded that the appellant "may have believed" that the respondent would do the work for nothing, she found that the extent of the work did not support such a belief was reasonable. She went on therefore, in paragraph 4, to consider the case on the basis that there was no valid agreement and, from that, she considered quantum meruit.

[13] When a person renders services in the belief that there had been an agreement that he will be paid, as was found by the learned magistrate in paragraph 1, he may be entitled to a quantum meruit in terms of the work done. Although the magistrate appears to have acknowledged the possibility that the appellant may have believed the work would be done for nothing, the learned magistrate clearly accepted that the respondent told the appellant that he would charge for it, that the use of the apartments was not a quid pro quo and that he paid rent for the apartments. In those circumstances she was correct to apply the equitable remedy.

[14] The final point raised by the appellant challenges the magistrate's suggested failure to determine whether or not the charges were reasonable. It is correct that a court applying quantum meruit must only award a sum which is reasonable. In so doing, the court must consider the evidence available. The only evidence was that tendered by the respondent in his Exhibit 1.

[15] The appellant gave no evidence to contradict that and the magistrate was entitled to accept the figures provided by the respondent as an experienced contractor.

[16] The appeal is dismissed with costs to the respondent to be taxed if not agreed.



Gordon Ward
Chief Justice