

ANTIGUA AND BARBUDA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 8 OF 1998

BETWEEN:

PORT SERVICES LIMITED

Appellant

and

EUSTACE POTTER

Respondent

Before:

THE HON. MR. SATROHAN SINGH
THE HON. MR. ALBERT REDHEAD
THE HON. MR. ALBERT MATTHEW

JUSTICE OF APPEAL
JUSTICE OF APPEAL
JUSTICE OF APPEAL

Appearances:

Miss E. Ann Henry, Miss Lisa Velox with her for the Appellant
Mr. Lenworth Johnson for the Respondent

2000: February 7

JUDGMENT

- [1] **SINGH J.A.:** On Monday February 7, 2000, this Court orally allowed this appeal with costs to the appellant and set aside the judgment of **Allen J.** The respondent has asked that we reduce our reasons into writing. We oblige.
- [2] The nub of the appeal was whether there was a concluded agreement between parties as to the remuneration to be given to the respondent for whatever services he rendered to the appellant.
- [3] The appellant had employed the respondent as a consultant in a managerial position. The arrangement was that the respondent would enhance the business of the appellant by his

- own contributions financially and otherwise. The business failed and the respondent sued the appellant for \$60,000.00 for services rendered.
- [4] **Allen J** heard the matter and found in favour of the respondent for \$48,000.00. The appellant appealed.
- [5] The issues before us were (1) whether there was in existence a completed contract (2) whether the respondent rendered services and (3) whether there was agreement as to salary.
- [6] The respondent's claim was based on contract. He did not claim on a quantum meruit. He relied for proof of his claim on an unsigned document given to him by one Mikael on behalf of the appellant. The learned judge apparently accepted the document as evidencing the agreement between the two parties.
- [7] This unsigned document, relied on by the respondent to prove his claim and which was used by the trial judge as evidencing the agreement, in effect stated that the respondent would receive \$5,000.00 per month if there was success in the appellant's business under his management. Should the venture fail, there should be agreement between the parties as to what and how he should be paid. To quote from the agreement, the proviso says:
- "that payment of the said fee shall be contingent upon the company's ability to pay. If the company is unable to pay the fee in full it shall pay to the consultant an amount to be agreed between the consultant and the company. The balance shall be carried over to the following year and credited to the consultant."
- [8] It was accepted that the venture failed. In his judgment, the learned trial judge observed that the respondent did not live up to his promised expectations. It was also accepted that the respondent rendered services but that no agreement was reached as to the remuneration of the respondent for whatever services he may have rendered to the appellant, the venture having failed. Also, there was no claim of the respondent on a quantum meruit.
- [9] Given these circumstances, we concluded that the respondent failed evidentially to prove

his claim. We accordingly allowed the appeal with costs to the appellant in this Court and the Court below, to be taxed if not agreed.

Dated this 21st day of February 2000.

SATROHAN SINGH
Justice of Appeal

I concur

ALBERT REDHEAD
Justice of Appeal

I concur

ALBERT MATTHEW
Justice of Appeal