GRENADA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 5 OF 2003

BETWEEN:

UTILITY CONSTRUCTION AND MAINTENANCE CORPORATION

Appellant

and

GRENADA ELECTRICITY SERVICES LIMITED

Respondent

Before:

The Hon. Mr. Albert Redhead	Justice of Appeal
The Hon. Mr. Adrian Saunders	Justice of Appeal
The Hon. Mr. Ephraim Georges	Justice of Appeal [Ag.]

Appearances:

Dr. F. Alexis for the Appellant
Mr. D Mitchell for the Respondent

2003: July 8;
September 22.

JUDGMENT

[1] REDHEAD J.A: This appeal against the judgment of Barrow J. is based mainly on question of facts and inferences which the learned trial judge drew from facts.

[2] The appellant and the respondent entered into an oral contract. According to the appellant the terms of the contract provided that the appellant would remove vegetation around the respondent's electricity poles and transmission lines. The appellant alleges that it agreed with the respondent that the respondent would direct what areas to be worked and the respondent would pay bills within a reasonable interval at the rate of $450.00 per pole span and that it would pay bills within a reasonable time and that there was work for three months.

[3] In reliance on that agreement the appellant spent money and incurred debts in purchasing tools and equipments and rented a truck and another vehicle and also bought a motor vehicle. It hired thirty-six persons. All of those measures were put in place according to the appellant with a view to the performance of the contract.

[4] On the 14th January, 1997 the appellant commenced work and continued for about three weeks and thereafter the respondent suspended the work. As a result the appellant, through its manager made representations to the respondent with a view to having the work resumed. The appellant's solicitor also wrote to the respondent complaining that the respondent had breached the appellant's three months contract. The respondent refused to give work to the appellant.

[5] At the trial the respondent contended through their sole witness, Mr. Nigel Wardle, General Manager of the respondent, that the contract with the appellant was for one month.

[6] The learned trial judge in dismissing the appellant's claim said:

> "At the close of the hearing I had not formed even a preliminary view that one witness was being more truthful than the other. I remain of that disposition to the end. But while I believe that Mr. Henry was being truthful in that he testified as what he truthfully believed was agreed. I find it more probable that he and not Mr. Wardle was mistaken as to the period to which the defendants agreed. The finding determines the matter"

[7] Two grounds of appeal have been filed on behalf of the appellant.

(1) The decision of the learned trial judge is against the weight of the evidence

(2) The learned trial judge erred in law in failing to give any or any weight to the fact that in his witness statement Mr. Nigel Wardle, the sole witness for the respondent testified [sic] that it was mutually agreed by the

respondent and the appellant to try the appellant's services for one month. Whereas no such averment was made in any statement of case.

[8] Dr. Alexis, learned Counsel for the appellant, argued that the learned trial judge failed to draw 'manifestly proper inference of fact'. The finding of fact by the learned judge did not turn on the credibility of any witness according to Counsel.

[9] He contended that the finding of fact that the contract was for one month is unsupportable as the respondent never pleaded or asserted a one month contract.

[10] Learned Counsel submitted that having regard to the finding of the learned trial judge 'that this court is well placed as the trial judge to determine the proper inference to be drawn' without any equivocation, I accept this as good law. [See **White House v Jordon and another** 1981 1 AER 267].

[11] The learned trial judge at paragraph 8 of his judgment said among other things:-

> "It is convenient to turn at this stage to the claimant's evidence in Henry's witness statement that there would be a three month contract in the first instance after which there would be a one year contract"

[12] Learned Counsel argued that the learned trial judge was not only influenced by this evidence but his decision turned on it because the learned trial judge in his reasoning said:

> "Another thought raised by this evidence is that the arrangement as to the failure must have been indefinite or unsettled. Were it otherwise presumably the claimant would have claimed a breach of a three month contract also a breach of the agreement that there would be a one year contract."

[13] Learned Counsel for the appellant argued strenuously that was not the appellant's pleaded case. He contended that the appellant's pleaded case was a contract for three months. What the learned trial judge therefore had before him was whether there was a contract for three months as pleaded by the appellant or a contract for one month as pleaded by respondent.

[14] Dr. Alexis argued ed successfully, in my view, that the respondent having said in his witness' statement that the contract was for one month, was from the evidence unable to establish this.

[15] The principal witness of the respondent having testified that the contract "was as when required to do so by the defendant" had failed to establish that it was for one month duration.

[16] The trial judge opined that whether the contractual term was for a one month or three month duration the claimant was unable to establish its pleaded case that the contract with the appellant "was as when required to do so by the defendant." The principal and vital witness for the respondent having said that the contract was for one month when the discrepancy was pointed out to the witness, he said that he could not speak to the defence.

[17] I agree with learned Counsel for the appellant that what the learned trial judge had before him was the appellant's pleaded case which was a contract for three months and the respondent's denial that it was a contract for three months but a contract as and when required. The learned trial judge was therefore in error when he dismissed the appellant's claim.

[18] The appeal is therefore allowed. The case is remitted to the High Court for assessment by a High Court Judge or Master.

[19] Cost to the appellant in the sum of $9,333.00.

Albert J. Redhead
Justice of Appeal

I Concur

Adrian Saunders
Justice of Appeal

I Concur

Ephraim Georges
Justice of Appeal [Ag.]