

THE COMMONWEALTH OF DOMINICA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 3 of 2003

BETWEEN:

MPG CONSTRUCTION

Appellant

and

DOMINICA SOCIAL SECURITY

Respondent

Before:

The Hon. Mr. Albert Redhead

Justice of Appeal

The Hon. Mr. Adrian D. Saunders

Justice of Appeal

The Hon. Mr. Brian Alleyne, SC

Justice of Appeal

Appearances:

Mr. Duncan Stowe for the Appellant

Mr. Gerald Burton for the Respondent

2003: November 12;

2004: January 26.

JUDGMENT

[1] **SAUNDERS, J.A.:** This appeal was heard and determined by us on 12th November, 2003. It was a decision from the learned Master made at a case management conference. The Master struck out the claimant's statement of claim as disclosing no reasonable cause of action. After hearing Counsel, we decided that the appeal should be allowed. We indicated that we would place our reasons in writing.

[2] The claimant, MPG, is a construction company. By its statement of claim, it alleged as follows: It had submitted a tender to the defendant for the construction of the Portsmouth Administrative Complex. Three pre-qualified contractors had been invited to tender. MPG was one of the three. Its tender complied with all the terms and conditions of the invitation. MPG's price for construction was the lowest of the three. In October, 1999 the defendant's

consultant recommended that the tender should be awarded to MPG. By letter dated 5th May, 2000 the defendant's Managing Director requested of MPG whether MPG would hold firm to its original tender price notwithstanding the delay since the submission of tenders. The Managing Director sought a response by 12th May, 2000. MPG replied on the 29th May, 2000 claiming that it had only that very day received a faxed copy of the defendant's letter of 5th May, 2000. MPG confirmed that it would hold firm to the original tender price. On 24th July, 2000 MPG was informed that the contract had been awarded to another contractor. Damages and other forms of relief were claimed. Those, then were the allegations in the Statement of Claim

[3] In light of this court's consolidated judgment in the cases of **Hector v. Joseph**¹ and **Antoine v. Antoine**², it is unnecessary to write at length. The same reasoning that was applied by us in those cases is relevant to this one. MPG's statement of claim disclosed triable issues and the Master was peremptorily wrong to strike out the statement of claim at the case management conference. Accordingly, this appeal must be allowed with costs to the appellant agreed in the sum of \$4,000.00.

Adrian Saunders
Justice of Appeal

I concur.

Albert Redhead
Justice of Appeal

I concur.

Brian Alleyne, SC
Justice of Appeal

¹ *Dominica Civil Appeal No. 6 of 2003*

² *Dominica Civil Appeal No. 8 of 2003*