

**EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO ANUHCV2014/0463

JOSEPH JOHN

Claimant

and

**JUMBY BAY ISLAND COMPANY trading as
JUMBY BAY RESORT**

Defendant

Appearances:

Dr. Errol Cort and Mrs Sharon Cort-Thibou for the Claimant
Dr. David Dorset for the Defendant

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2016: June 22
2017: October 25
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JUDGMENT

[1] **LANNS, J. [AG]:** In this case, the claimant, Joseph John, (Dr John) a medical doctor and surgeon, seeks to recover the sum of US\$20,720.00 or its ECD equivalent of \$55,699.50 from the defendant, Jumby Bay Resort, an exclusive hotel resort (Jumby Bay), for medical and surgical services and medications provided to one, Christine Cook Repass (Mrs. Repass). Mr. Repass sustained injury to her wrist on the premises of the Jumby Bay. She was a guest there at the time.

[2] In answering the claim, Jumby Bay admitted engaging the services of Dr. John, and that it is obligated to pay for those services. However, it contended that it is only liable to pay a reasonable sum, and a reasonable sum in this case is EC\$20,469.99. The defendant further contended that the sum claimed is unreasonable and excessive in all of the circumstances, and more so in light of the cost of reconstructive surgery performed on Mrs. Repass.

Issues

[3] The claimant identified the issues as being:

- (a) Is the defendant in breach of the agreement made with the claimant?
- (b) Is the claimant entitled to recover the sum claimed?
- (c) Does the claimant have any obligation to treat with the defendant's insurers in relation to the recovery of the sum claimed

[4] The defendant on the other hand identified one issue: 'What sum is due to the claimant for services performed?'

[5] Ultimately, the main issues for determination are: whether the defendant engaged the services of the claimant; if so (b) whether the services were rendered; if so, (c) whether the defendant is liable to pay for the services rendered: (d) Is the sum claimed unreasonable; if so what is a reasonable sum?

Did Jumby Bay Engage the Services of Dr. John?

[6] There is no dispute that Jumby Bay engaged the services of Dr. John. In his witness statement Dr John stated that on or about 25th September 2012, Mr Trevor McDonald then Operations Manager at Jumby Bay presented Ms. Repass for medical treatment at his clinic, Medical Surgical Associates (MSA). He stated that for about 10 years prior to the treatment of Ms. Repass, Jumby Bay had referred over 100 patients to him for treatment. And it continues to refer patients to him. In its defence (paragraphs 3 -4), Jumby Bay concedes that Jumby Bay, through its employee Mr McDonald, presented Ms Repass at the clinic at MSA for medical treatment. This question is therefore answered affirmatively.

Did Dr. John Perform the Medical Services on Ms. Repass?

[7] Dr John states that he, along with his colleagues and staff at MSA treated Ms. Repass. According to Dr John, Mrs Repass sustained a splintered fracture of 3 bones in the wrist. Her condition required surgery, and anatomical reduction was performed on her on the 25th September 2012. She was treated in the clinic both pre and post operatively and discharged on 26th September 2013 with a further surgical consultation on 28th September 2012. The defendant does not deny any of these averments, and thus this question is also answered in the affirmative.

Is the Defendant Liable to Pay for the Services Rendered to Mrs. Repass?

[8] There is no dispute that Jumby Bay is obligated to pay Dr John for the medical services rendered to Mr Repass. Indeed, Jumby Bay so admits in its defence and submissions put forward on its behalf. In the circumstances, the court answers this question in the affirmative.

Is US\$16, 895 00 a Reasonable Sum for the Medical Services Rendered by MSA

[9] Jumby Bay has challenged the reasonableness of the sums claimed. It argues that neither the sum of US\$16,895.00 nor the discounted sum of US\$13,070.00 claimed by the claimant is a 'reasonable' sum. It is noteworthy at this juncture that at the trial, the claimant pointed out certain errors in the fees claimed for five items¹ whereupon it emerged that the correct total sum should be US\$16,895.00 instead of US\$20,720.00.

[10] Dr John gave evidence that in anticipation of prompt settlement, Jumby Bay was invoiced for US\$13,070.00. The claimant had gratuitously discounted the invoice from US\$16,895.00 to US\$13,070.00. Dr John gave evidence that Jumby Bay through its agent Mr McDonald, accepted the reasonableness of the invoice submitted by MSA, and gave an undertaking to settle promptly. Yet weeks passed, and the Bill was not settled. Several demands for payment were made orally and in writing. When prompt settlement of the discounted invoice was not forthcoming, Dr John instituted these proceedings seeking payment of the original amount of USD\$20,720.00, subsequently amended to US\$16,895.00.

[11] Dr John is of the view that the sum claimed is a reasonable sum for the services rendered to Ms Repass. When asked by Dr Dorset whether he would accept that the agreement between him and Jumby Bay was that Jumby Bay would pay that which was reasonable, Dr John responded thus: "All my bills are reasonable." He said that Mr McDonald never said the bill was unreasonable when He explained that customarily, local patients pay at a different rate than international patients. He

¹ Items dated 25/ / 9/12 described as CBC with differential was reduced from USD\$90.00 to \$65.00; Item dated 25/9/12 described as SMA 20 was reduced from USD\$325.00 to \$275.00; Item dated 25/9/12 described as Surgeon Fee Clsd Anatomical Reduction was reduced from USD\$3,000.00 to USD\$2,600.00; Item dated 25/9/12 described as Room Fee was reduced from USD\$1800.00 to USD\$1600.00; Item dated 25/9/12 described as MSA Operating Room was reduced from US\$7,500.00 to US\$4,600.00

regarded Mrs. Repass as an international patient who was not ordinarily resident in Antigua, nor is she a citizen of Antigua.

- [12] Dr K. K. Singh, a consultant orthopaedic surgeon gave evidence on behalf of Dr John. He stated that he was one of the Associates of MSA. He was aware of the medical and surgical services provided to Ms Repass by MSA between 25th and 28th September 2012. He was one of the surgeons who performed the operation on Ms Repass. The operation was successful. There was no need for reconstructive surgery. There was some swelling but that was normal.
- [13] Dr Singh gave evidence that he had the opportunity to review the invoice to Jumby Bay in respect of the treatment provided to Ms Repass. It appeared to him that the invoice was reasonable and represented the usual undiscounted fees charged by MSA for the type of services rendered to Ms. Repass. According to Dr Singh, there is nothing strange about locals being charged in EC currency and foreigners (like tourists from the United States) charged in US currency. He agreed under cross examination that he had no training in billing.
- [14] Bryson's Insurance Agency got involved. The evidence is that in or around 11th January 2013, (more than three years after the invoice had been presented to Jumby Bay), Margery Parchment, Manager of Bryson's Insurance Agency wrote to Dr John indicating among other things that it was offering EC\$20,469.99 in "full and final settlement" of the Jumby Bay invoice, based on reasonable customary charges in Antigua. A cheque in the amount of EC\$20,469.99 accompanied the letter.
- [15] By letter dated 14th January 2013, Dr John responded to Ms Parchment's letter. He returned the cheque. He was not of the view that Ms Parchment could dictate the fees of MSA except there was a negotiated rate for NAGICO patients which fell under Bryson's umbrella. He emphasized that he did not have any contractual arrangement with Bryson in respect of the case to which the invoice related.
- [16] Jumby Bay filed a witness summary in respect of Ms. Margery Parchment. This was confirmed as her evidence in chief. In her witness statement, Ms Parchment identified herself as the Manager of Bryson's insurance, the local agent for NAGICO Insurance. She stated in essence that (a) NAGICO is the Jumby Bay insurers—not Mrs Repass' insurers; (b) Jumby Bay is the party liable to

pay the claim: (c) Dr John's clinic performed and provided services to Mrs. Repass: (d) Mrs. Repass returned to the USA on 28th September 2012 where she sought further medical attention, and had reconstructive surgery and paid medical fees; (e) The invoice from MSA was "well above what can be considered reasonable' (f) The insurer had determined that EC\$ 20,000 was a reasonable payment for the services rendered to Mrs. Repass.

[17] Ms. Parchment confirmed that the cheque sent to MSA was returned. She then went on to discuss Bryson's experience in settling claims for similar injuries. She made comparisons between similar services rendered by other surgeons and entities and customary charges associated therewith, and the charges proffered by MSA. In the end, Ms Parchment was brazen enough to state that she found it strange that an invoice of US\$13,070.00 issued by MSA was deemed reasonable by Dr John, and he (Dr John) still submits an invoice of US\$20,000.00 - an amount 60% higher than the US\$13,070.00, and then expects the same invoice to be reasonable.as well for the same services. Ms. Parchment was also brazen enough to opine that MSA's invoice of US\$13,070.00 is excessive. Ms. Parchment ended her witness statement by stating that "the Defendant is prepared to pay the sum of EC\$20,469.99 which sum she said 'is a reasonable amount for the services provided by MSA'"

[18] Under cross examination, Ms. Parchment told the court that her knowledge of medical/surgical billing is limited to that of local patients. She had no knowledge of billing as it relates to international patients receiving medical /surgical services in Antigua.

Findings on and Disposition of the issue of the Reasonableness or Unreasonableness of the Medical Fees

[19] Mr McDonald did not put in any witness statement. The effect is that Jumby Bay has led no evidence to disprove Dr. John's case that Jumby Bay, through its agent Mr Peter McDonald undertook to settle the invoice promptly, and that Jumby Bay was responsible for the payment of Mrs. Repass' medical expenses. No evidence was led to disprove Dr. John's case that Mr McDonald told him not send the invoice directly to Mrs. Repass; rather the invoice should be sent to Jumby Bay as Jumby Bay would be responsible for payment of the invoice for all medical and surgical expenses incurred by treatment of any condition related to the injury sustained at Jumby

Bay. Importantly, Jumby Bay has led no evidence to disprove Dr John's case that Mr McDonald or Jumby Bay itself did not say the invoice was unreasonable. Dr Cort relied on the case of **Lampleigh v Brathwaite** (1615) Hob 105 for the proposition that if the person at whose request the work is done subsequently promises a definite sum, as remuneration, then that sum becomes the contract sum. I can find no evidence of a promise of a definite sum being promised to be paid. Indeed, Dr. Cort in his submissions alluded to the fact that there was no agreement between him and Jumby Bay as to the costs of the services to be provided. In this situation, the law will imply reasonable costs.²

[20] Dr. Cort's alternative position was that Dr. John is entitled to receive the sum of US\$16,895.00 on a quantum meruit basis, being the amount of reasonable charges for the services rendered at the request of Jumby Bay.

[21] Dr. Cort submitted that once Jumby Bay received the invoice for services rendered, it accepted the reasonableness of the sum thereon and agreed to pay same. No authority was cited for this proposition. His further submissions is that the billing in relation to Mrs. Repass was fair and reasonable and was consistent with previous billings known of and accepted by Dr John

[22] Dr. Dorset's position is that the liability of Jumby Bay is limited to that which is reasonable. Both parties agree that Dr. John should be paid on a quantum meruit basis. This is Dr Cort's alternative position, which I accept. What therefore is the quantum of the quantum meruit? Dr Cort submitted that US\$16, 895.00 is a fair and reasonable amount to be paid on a quantum meruit basis by Jumby Bay. Dr. Dorset on the other hand agrees with the figure of EC\$20,000.00 suggested and offered by the Bryson insurers, who apparently came into the picture when asked by the Jumby Bay to settle the invoice., and took the position that the invoice was unreasonable and excessive, and went on to make a counter offer to Dr John, who had no dealings with Bryson's insurance in this particular matter.

[23] My comment in this regard, if comment were necessary is that the court is not of the view that it should attach any weight to the suggestion by Bryson insurers because the agreement for payment was undertaken between Dr. John and Jumby Bay. Bryson was not privy to any agreement

² Chitty on Contracts, 26th dition (1989) paragraph 2145, pp 1407 to 1408

between Dr Cort and Jumby Bay. Dr John did not treat with Bryson in relation to payment for services rendered to Mrs. Repass. And I do not agree that Bryson can dictate to Dr. John as to what is a reasonable fee for the medical /surgical services provided by MSA. I therefore reject the suggestion as put forward by Ms. Parchment.

[24] That having been said, Dorset submits that the liability of Jumby Bay to pay does not arise in contract; rather it arises because of what in law is termed as an unjust enrichment obtained by Jumby Bay at the expense of Dr John. Relying on the dicta of Arden LJ in the case of **Benedetti v Sawris** [2010] EWCA Civ 1427 at paragraph [2], Dr Dorset submits that the wrong is reversed by an award of quantum meruit, and the enrichment is to be valued at the time when it was received, 'tested by the price which reasonable person in the defendant's position would have had to pay'.

[25] I note that the bill from MSA shows the amount billed is less than what Dr John says is the real/total costs of the services rendered. In other words, Jumby Bay was not billed the actual cost of the medical services. The bill tendered to Jumby Bay was US\$13,070.00. But evidently, Dr John has effectively in his pleadings/particulars withdrawn the discount applied. I am not satisfied, based on the evidence proffered by Dr John, that withdrawal of the discount was part of the undertaking given by Jumby Bay through Mr McDonald. In light of this, I do not see the basis for the withdrawal of the discount. I consider that the sum of US\$13, 070. 00 is a reasonable sum. I propose to enter judgment for that sum.

Conclusion

[26] It is ordered that

[1] There shall be judgment for the claimant in the sum of US\$13,070.00; or the EC\$ equivalent.

[2] The defendant Jumby Bay do pay to the claimant Dr. Joseph John the sum of US\$13, 070.00 or its EC\$ equivalent, being reasonable costs of medical/surgical services rendered to Mrs. Christine Crook Repass during the period 25th to 28th September 2012.

[2] The defendant Jumby Bay do pay to the claimant Dr Joseph John pre-judgment interest on the said sum at the rate of 5% per annum from the date of service of the claim (9th September 2013) to 31st March 2017,(to take account of the delay in delivery of this judgment).

[3] The judgment attracts post judgment interest at the statutory rate of 5% per annum from the date of its delivery.

[4] Success was divided, but the claimant prevailed predominantly over; the defendant. So the defendant will pay 60% of the prescribed costs of the claimant, or such lower costs as may be agreed between the parties.

[27] Last, but by no means least, I think an apology is in order for the delay in delivery of this judgment, which apology I now proffer. Despite my best efforts, I was unable to complete the judgment in the prescribed timetable. It is to be noted however, (but not meant to be an excuse) that although the trial concluded on 22nd June 2016, and the closing submissions ordered to be filed within 21 days thereof, the closing submissions were only filed in August and December 2016 and were passed to the judge on 26th September 2016 and 14th December 2016 respectively.

[28] Nonetheless, I thank counsel for their helpful and well written submissions.

Pearletta E. Lanns
High Court Judge [Ag]

By the Court

Registrar

