Michaelmas Term
[2025] UKPC 52
Privy Council Appeal No 0050 of 2024

JUDGMENT

Gordon Winter Company Ltd (Respondent) *v* NH International (Caribbean) Ltd (Appellant) (Trinidad and Tobago)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lord Briggs
Lord Burrows
Lord Richards

JUDGMENT GIVEN ON
30 October 2025

Heard on 9 October 2025

Appellant
Jason Mootoo SC
Rishi Narine
(Instructed by Ward Hadaway LLP (Newcastle))

Respondent
Ian L Benjamin SC
Keston McQuilkin
Tamilee Budhu
(Instructed by Budhu Law (Trinidad))

LORD BURROWS:

1. Introduction

1. This is a dispute, dating back to 2006, about piling work for the construction of a ten-storey Ministry of Education building. NH International (Caribbean) Ltd ("NH") (which is the defendant and the appellant) was the head-contractor and Gordon Winter Company Ltd ("GW") (which is the claimant and the respondent) was the sub-contractor providing the piling work. The piling work proved more difficult than foreseen because of the soil conditions at the site and this meant that the specifications for the piling work by GW had to be varied from those initially agreed. GW was paid for some of its piling work but was not paid anything after April 2006. In early June 2006, GW ceased work and left the site. NH engaged another contractor to complete the required piling work.

2. On 1 December 2006, GW brought proceedings seeking payment for the piling work, as varied, that it had carried out. That claim was pleaded as being for "damages … on a quantum meruit basis". As the claim denied that there was any relevant contract between GW and NH, it is clear – and is not in dispute – that that was a claim for a non-contractual quantum meruit based on unjust enrichment. For clarification of the distinction between a contractual quantum meruit and a quantum meruit that effects restitution of an unjust enrichment, see *Barton v Morris* [2023] UKSC 3; [2023] AC 684, para 204. NH counterclaimed for damages for breach of contract alleging that GW was in repudiatory breach of contract by refusing to carry on with the work and leaving the site.

2. The judgment at first instance

3. After a three-day trial in January 2017, Kangaloo J (in a written judgment which she dated 20 November 2017, CV2006-03875) held that there was a contract between NH and GW for the piling work that covered the required variations. Consequent on that finding, Kangaloo J held that GW's pleaded claim for a quantum meruit (based on unjust enrichment) could not succeed and that the claims were governed by the contract. Taking into account concessions made by NH as to certain payments that were owed to GW, Kangaloo J found that GW was contractually entitled to payment from NH of $1,017,777.58. On NH's counterclaim, she held that NH was entitled to damages of $2,061,053.23 for breach of contract by GW covering NH's additional costs in completing the piling and its loss caused by the delay.

3. The judgment of the Court of Appeal

4. GW appealed to the Court of Appeal against Kangaloo J's dismissal of its quantum meruit claim based on unjust enrichment and her decision on NH's counterclaim for damages for breach of contract. NH cross-appealed as to the sums awarded under the contract by Kangaloo J to GW.

5. The judgment of the Court of Appeal was given on 27 October 2023 by Rajkumar JA, with whom Bereaux and Mohammed JJA agreed: Civil Appeal No P-002 of 2018. In a carefully reasoned and detailed judgment, spanning 271 paragraphs, it was held as follows:

> (i) There was a contract between GW and NH for the piling work. That contract incorporated by reference the FIDIC 1999 standard terms (FIDIC is the International Federation of Consulting Engineers). See paras 7-8 (of the judgment).
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> (ii) The piling work required under the contract between GW and NH was varied (as evidenced, for example, by the instruction from Turner Alpha Ltd, the employer's project manager, on 13 February 2006 to alter the specification for the piles). The variations to the work were covered by the contract but no figures for the varied work were agreed. Nevertheless, in principle (and in any event, as the Board understands what Rajkumar JA was saying at para 9, by reason of clause 12.3 of FIDIC) a reasonable sum at market rates was to be paid. See paras 9 and 208. Clause 12.3 of FIDIC, which deals with how the contract price should be worked out, where not specified, including for variations to the work, reads as follows (in so far as relevant): "If no rates or prices are relevant for the derivation of a new rate or price, it shall be derived from the reasonable cost of executing the work, together with reasonable profit, taking account of any other relevant matters."
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> (iii) Although GW had not been paid after April 2006, despite work being done by GW under the varied specifications, GW did not use the procedures for termination under the contract when it left the site in June 2006. GW was therefore in repudiatory breach of contract for which NH was entitled to damages. See para 10. But not all the damages counterclaimed by NH, and awarded by Kangaloo J, could be recovered because, for example, the relevant losses had not all been proved to the required standard. Damages for delay were reduced to $350,000 and no damages were to be awarded for costs of completion. See para 16.
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> (iv) GW's claims for standby auguring, standby piling and standby static testing arose directly under the contract and were incidental to its performance. The Board

understands "standby" to mean that, putting to one side the installation of the piles, the delays caused by the variation of the specifications meant that GW had labour and machinery "standing by" but unused. GW was held to be contractually entitled to a reasonable sum for those three standby elements and the quantum was referred to a Master in Chambers for assessment. See paras 13 and 211. This part of the decision forms para 2 of the Court of Appeal's order dated 27 October 2023.

(v) In contrast, GW's claims for manufacturing standby and for storage of piles and other materials fell outside the contract and could only therefore be recovered as a quantum meruit based on unjust enrichment. But no enrichment to NH, as opposed to loss to GW, had been proved by GW. GW's unjust enrichment claim for a quantum meruit therefore failed. See para 12.

(vi) The other claims made by GW (referred to by Rajkumar JA as being set out in document 64 of GW's documents) and which, it would appear, were covered by the contract and were primarily claims for the production of piles, were to be assessed by a Master in so far as not agreed. See paras 17 and 207. This part of the decision forms para 6 of the Court of Appeal's order dated 27 October 2023.

4. This appeal

6. NH now appeals to the Judicial Committee of the Privy Council (having obtained permission to appeal from the Court of Appeal in a situation where NH appears to have a right of appeal). It appeals against the Court of Appeal's decision that GW is entitled to a contractual quantum meruit, to be assessed by the Master, in respect of those items set out in paras 2 and 6 of the Court of Appeal's order (see paras 3(iv) and 3(vi) above).

7. The essential submission of Jason Mootoo SC, on behalf of NH, is that a contractual quantum meruit, as opposed to an unjust enrichment quantum meruit, was not pleaded by GW and that GW's whole case, both at first instance and in the Court of Appeal, was directed to establishing that there was no contract between GW and NH or at least not a contract that covered the variation of the piling work done by GW. It was therefore unfair to NH, and deprived it of the opportunity to raise potential defences to a contractual quantum meruit, for the Court of Appeal to decide, in GW's favour, that GW was entitled to a contractual quantum meruit. Similarly it was now far too late and unfair to NH for the Board to uphold a contractual quantum meruit in favour of GW.

8. It can therefore be seen that what the Board has to decide on this appeal is very limited and does not raise matters of law of general public importance. For those reasons, a panel of three Justices (rather than the usual panel of five) was convened to hear the appeal in a short hearing lasting half a day.

9. It further follows that, despite the swathe of factual detail that was put before the Board, it would be inappropriate for the Board now to embark on anything approaching a factual enquiry. It must take the facts from the courts below (and the agreed facts) and is not in a position to go behind them. Rather the Board should confine itself to the issues encapsulated in Mr Mootoo's submissions set out in para 7 above.

10. The Board rejects the submissions of Mr Mootoo, on behalf of NH, for the following main reasons.

11. First, while it is correct that GW pleaded its claim for a quantum meruit in unjust enrichment and not in contract, it would here be mere formalism to regard that as ruling out the acceptance of a contractual quantum meruit. In particular, that is because the whole case that NH was putting forward in defence to that unjust enrichment claim was that there was a contract, covering the work done, between GW and NH. Indeed NH has itself recovered damages for breach of that contract. Moreover, Mr Mootoo did not suggest that the contractual quantum meruit would here produce a different sum than the unjust enrichment quantum meruit would have done. Having succeeded in that defence and counterclaim, NH cannot be allowed to complain that, if one follows through that contractual analysis, it leads to a recognition that GW is entitled to a contractual quantum meruit. Put another way, in a situation where it is accepted that work requested by NH has been done by GW, it cannot be legally correct that GW should fall between the two closely connected stools of unjust enrichment and contract so as to recover nothing for the work it has done.

12. In the hearing, Lord Richards asked Mr Mootoo what the position would have been if it had been indisputable that, if there were a contract, GW was entitled to a payment from NH under that contract. Would his pleading objection still pertain so that the contractual sum could not be awarded? Mr Mootoo submitted that the objection would still apply. That shows very clearly the arid formalism of, and the injustice produced by, the submission.

13. Secondly, there was no unfairness to NH because, by the time the case had reached the Court of Appeal, counsel for GW, Ian Benjamin SC, was indicating to the Court of Appeal that, if there were no unjust enrichment quantum meruit, GW had an alternative claim for a contractual quantum meruit. That that was so is recorded early on in his oral submissions to the Court of Appeal. The same point was repeated later on during the first morning by Mr Benjamin (in an appeal that lasted for several days) in response to questions or comments from Rajkumar JA. Moreover, on the face of it, there were no defences that could have been raised by NH to that contractual quantum meruit claim. One possibility aired by Mr Mootoo is that it might be said that, if there were to be a variation of the works and additional payment, a notice should have been given by GW to NH under clause 20.1 of the FIDIC standard terms. But it is hard to see any force in that submission given that there was no dispute that, even without a clause 20.1 notice

having been issued by NH, a variation of the work was required as evidenced by the letter of instruction dated 13 February 2006 from Turner Alpha Ltd, the employer's project manager. Put another way, it was clear from as early as February that GW and NH were not adhering to the procedural provisions in the standard FIDIC terms. That is further shown by the fact that the dispute resolution and arbitration provisions under clause 20 have not been complied with by the parties.

14. Thirdly, as a further variation of his central arguments, Mr Mootoo submitted that to allow GW's contractual quantum meruit claim would run counter to the law on election and/or cause of action estoppel. This is incorrect. As regards election, a party is entitled to bring a claim on alternative but inconsistent causes of action. What it cannot do is to succeed on both where they are inconsistent with each other. GW is not seeking to recover on both a contractual and an unjust enrichment quantum meruit. It accepts that its quantum meruit claim must be based on either contract or unjust enrichment, but not both; and while its primary case was that the quantum meruit was based on unjust enrichment, its alternative case as presented to the Court of Appeal was that the quantum meruit was contractual. And there is no possible cause of action estoppel here where both the judgments below have laid down, consistently with GW's alternative case, that there is a contract.

15. As a footnote, the Board also rejects Mr Mootoo's submission, rightly not pursued with much vigour, that if there were an express contractual term requiring payment of a reasonable sum (as there was in clause 12.3 of the FIDIC standard terms: see para 5(ii) above) that was, in any event, not covered by a claim for a contractual quantum meruit. The submission seemed to be that GW's contractual quantum meruit claim must depend on an implied term and not an express term. This only has to be stated to be rejected. A contractual quantum meruit may be expressly or impliedly provided for in the contract.

5. Conclusion

16. For all these reasons, the Court of Appeal was entitled to reach the decision it did as to GW's right to a contractual quantum meruit, to be assessed by the Master, in respect of those items set out in paras 2 and 6 of the Court of Appeal's order (see paras 3(iv) and 3(vi) above). NH's appeal is therefore dismissed.