

IN THE SUPREME COURT OF BELIZE, A.D. 1999

ACTION NO. 51 OF 1999

BETWEEN (YUSEPH BELISLE PLAINTIFF
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(AND
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(KENRICK JONES DEFENDANT

Before the Hon. Justice T.J. Gonzalez

Mr. Jeremy Courtney for the plaintiff
Mr. Dean Barrow for the defendant

JUDGMENT

In this action the plaintiff, Yuseph Belisle, is claiming payments from Kenrick Jones based on three oral agreements: The first agreement was entered either in the month of October or in the month of December, 1998. This agreement was for the construction of a hand rail for the Immigration Department at Santa Elena in the Corozal District. The second oral agreement between the plaintiff and the defendant was entered into in early January of 1999, and this agreement was for the construction of pipes on the top of the Educational Centre in the town of Corozal, together with the construction of a flag pole and two gates. In both agreements there was no

stipulation as to cost of the works when completed. The third oral agreement between plaintiff and defendant was entered into it appears, before the first project began. This was in respect to the sale of a vehicle, namely, a red pick up truck for \$2,500.00. Ownership of the vehicle was never transferred to the plaintiff, and after sometime the plaintiff returned the vehicle to the defendant.

In deciding this case, naturally the court must look to the evidence of the plaintiff and defendant, as neither of them called any witness or witnesses in this case. The evidence of the plaintiff, Yuseph Belisle, is that in December just before Christmas, the defendant, Kenrick Jones, offered him a job to build a hand rail for the Immigration Department at Santa Elena in the Corozal District. There was no agreement as to the cost of the work when completed. However on completion of the work at Santa Elena, the plaintiff presented a bill of cost to the defendant for the construction of the hand rail. The cost was in the sum of \$5,130.00. The defendant refused to accept the bill of cost as he claimed that the Ministry of Works had not paid him.

In January of 1999, the defendant offered another job to the plaintiff namely, to weld pipes on the top of a fence surrounding the Educational Centre to form a rail, and also to construct two gates and a flag pole. This job was to be done in Corozal Town. In this second oral agreement,

according to the plaintiff, there was no stipulation as to the cost of the work when it was completed. In respect to this agreement the defendant gave the plaintiff \$100.00 on three different occasions for fuel and for other expenses, and \$500.00 when they were under a shed. On completion of both jobs, the plaintiff prepared cost invoices and presented it to the defendant who refused to accept it as he claimed he had not been paid by Public Works. According to the plaintiff, at no time the defendant told him that the work he had done was unsatisfactory. The defendant has not paid the plaintiff for any of the two works. Sometime before the first project began, the plaintiff and the defendant entered into a third agreement for the sale of a vehicle, a red pick up truck for a price of \$2,500.00. This money was to be deducted on completion of the work. In connection with the sale of the vehicle the plaintiff paid \$410.00 to the defendant who subsequently refused to pass ownership of the vehicle to the plaintiff with the result that the plaintiff had to return the vehicle. The plaintiff alleges breach of the three agreements and consequently, the recovery of monies for work performed under the first two oral contract and the return of \$410.00 deposited towards the sale of the vehicle.

It appears from the defendant's evidence that though the defendant accepts that he entered into the three agreements with the plaintiff, he takes

issue with the performance of the works, and the cost of labour. In respect to the sale of the vehicle the defendant disputes having accepted part payment for the vehicle in the sum of \$410.00.

The defendant's evidence, in relation to the agreement to construct the hand rail at Santa Elena, which is the subject matter of the first contract, is that the plaintiff only performed 35% of the work at the time he quitted the job, and the work was poorly done, with the result that the defendant had to complete the work and do remedial work.

Regarding the second agreement to do work at the Educational Centre in Corozal Town, the plaintiff again did not complete the work. He only tacked about 60 to 61 pipes and welded about 22 pipes. The defendant in his evidence further stated that he did tell the plaintiff that he and his inspectors were not satisfied with the plaintiff's performance in relation to the work he had done, but the plaintiff denies this portion of the defendant's evidence. After the plaintiff left the job, the defendant had to finish and do remedial work on both works the plaintiff was engaged to do as it had been rejected by Public Works.

According to the defendant, he advanced \$700.00 to the plaintiff on one occasion and \$500.00 on another occasion. The defendant denies owing the plaintiff \$5,130.00, \$4,000.00 and \$410.00 as part payment for the vehicle.

Concerning the third agreement the defendant admitted that he sold the vehicle to the plaintiff for a price of \$2,250.00, which sum of money was the same as the estimated cost of the second job the plaintiff was to do at Corozal Town for the Educational Centre. In this regard the defendant said in his testimony, “Because the estimate of the work was \$2,250.00, I decided to give him the truck for the job. He took possession of the tuck.” The plaintiff took possession of the vehicle, and although there was a “miss” in the carburetor, the plaintiff drove the vehicle several times. The plaintiff returned the vehicle to the defendant on a Saturday afternoon, but it was in a worse working condition, and the plaintiff was forced to scrap the vehicle.

In deciding this case much depends on which of the two parties to this action the court believes, and to what extent if any. This is so because, as I have indicated, neither side called any witness or witnesses. Reliance, therefore, must be placed on plaintiff and defendant demeanour as they testified in the witness stand, and the cross-examination of them.

The defendant, in an effort to show that the reason he did not pay the plaintiff for the works which the plaintiff said he had performed, said in cross-examination that the works performed by the plaintiff was not to the specification of the Public Works Department, and referred to the name of one Mr. Alberto Rosado. This Mr. Alberto Rosado could have

substantiated the defendant's evidence but nonetheless the defendant failed to call him as a witness, and gave no explanation for not doing so. In the cross-examination of the plaintiff, it was suggested to him that one Mr. Young had told him of the unsatisfactory state of the work he had performed, and though the plaintiff denied this suggestion, the defendant did not call Mr. Young as a witness in an effort to contradict the plaintiff.

The defendant also testified in his evidence-in-chief that he had to do remedial work on the two job which the plaintiff had done but apart from saying this, the defendant again did not call any witness or witnesses to court to support his testimony in this regard. Surely, it would have been relatively easy for him to bring to the court, say, a worker or someone who knew that the defendant had done remedial work. In any event the defendant did not provide the court with or explanation for not calling a witness in this regard. In the circumstances I find it difficult to accept the defendant's testimony relative to his allegation regarding the plaintiff's poor and incomplete performance of the works. Conversely, I am satisfied and feel convinced that the plaintiff is a witness of the truth and so I accept his evidence almost *In Toto*, and I have come to the conclusion that he has proved his case, namely, that he had performed his work in a workman like manner in respect of the two agreements. And that the plaintiff ought to be paid \$5,130.00 on

the first agreement to construct the hand rail. And \$4,000.00 for the work he had done at the Educational Centre in Corozal Town. Both sums being the plaintiff's bill of cost for two jobs which he had completed.

In respect to the third agreement concerning the red pickup truck, the plaintiff's evidence is that he paid \$410.00 to the plaintiff as part payment for the vehicle which was not in a good working condition at the time. When the vehicle was handed over to the plaintiff, the defendant did not pass ownership of it to the plaintiff and refused to do so. Since the defendant was reluctant to pass ownership of the vehicle to the plaintiff, the plaintiff decided to return the vehicle to the defendant.

The defendant's evidence on the other hand is that he handed over the pickup truck to the plaintiff, which was not in a good working condition at the time for \$2,250.00, and this sum was more than the estimated cost of the job. The plaintiff took the truck, and towed it to Corozal Town as the carburetor was not functioning. Although the defendant said that the vehicle was not in a working condition, he contended in his evidence that the plaintiff drove the pickup truck several times. The defendant's evidence disclosed that the plaintiff eventually returned the truck to him by his gate on a Sunday afternoon with portion of the engine not working. In his own words he said, "The head was loose; the starter was in the back of the pan.

The carburetor was loose, with two screws sticking out of the hole.” The defendant nevertheless took possession of the vehicle.

In respect to the sale of the pickup truck, the evidence shows both parties agree that there was an oral agreement for the sale by the defendant of the vehicle, and the purchase of it by the plaintiff. The evidence also indicates that the plaintiff took possession of the vehicle which was not in a working condition at the time. There is no disagreement that the vehicle was returned to the defendant and that he accepted it, though the defendant claimed it was in a worse condition than when he had handed it over to the plaintiff.

However, the plaintiff’s position is that when he returned the truck to the defendant, it was in a better condition than when the defendant had given it to him. The defendant’s evidence further discloses that he owes the plaintiff \$410.00, but that this money was to be paid to the plaintiff for something else. In the defendant’s own words, “To fix a gate for me which I did not pay him because it cannot open from the day he had built it.” In the cross-examination of the plaintiff no mention was ever made of this \$410.00 in connection with any gate.

When I recall the demeanour of the plaintiff and defendant and consider how the defendant testified in respect to the gate and the \$410.00, and the fact that no issue was taken of the \$410.00 in cross-examination, I feel

persuaded to accept the plaintiff's evidence that indeed he did advanced \$410.00 to the defendant, as he had testified, as part payment for the vehicle. And, as the defendant accepted the return of the vehicle and the key to it, it is my view that it is only fair that he should return the \$410.00 to the plaintiff.

The defendant's evidence disclosed that he advanced \$700.00 to the plaintiff at his home at one time and on another occasion he sent \$500.00 to him. He did this as he said the plaintiff is not a big welder, and the plaintiff needed the money. This evidence was never challenged by the plaintiff, and I am therefore persuaded to believe this portion of the defendant's evidence, and conclude that the defendant did advance these monies to the plaintiff. These sums of money must, therefore, be deducted from the monies I found the plaintiff is entitled to.

In conclusion the finding of the court is that the plaintiff is to be paid \$5,130.00 for the works done at Santa Elena and \$4,000.00 for the works done in Corozal Town both places in the Corozal District, and \$410.00 which the plaintiff advanced to the defendant towards the purchase of the vehicle, minus, the sums of \$700.00 and \$500.00. This \$500.00 the plaintiff admits the defendant advanced to him plus the three advances of \$100.00 for fuel which adds up to \$300.00. All these sums of money adds

up to a total of \$1,500.0. When \$1,500.00 is deducted from \$9,540.00, the defendant is entitled to be paid \$8,040.00 plus interest of 6% from date of judgment. Cost to the plaintiff to be agreed or taxed.

Judgment accordingly.

Dated this 9th day of June, 2008.

T.J. GONZALEZ
SUPREME COURT JUSTICE