The Educator

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Contract Law – as it was then, and now

In the recent St. Christopher & Nevis High Court case of ***Hastings Daniel et al v. Deon Daniel et al*** [2019], The Hon. Mde. Justice Lorraine Williams provided a succinct review of the law of contract.

The Claim

The claim against the first Defendant Deon Daniel is for the sum of EC$1,377,961.88 which represents the cost of services provided by the Claimants for and on behalf of the Defendants between April 2011 to March 2013 for which the Defendants promised to pay and have refused to do so. The Claimants contend that the parties had a binding contract in relation to the valuation of 24.3675 acres of land located at Pinney's Estate, Nevis, because the parties intended for the Claimants to prepare and the Defendants to use to their benefit the said valuation in consideration of the sum to be paid. The Claimants further contend that they prepared and delivered to the defendants who used the said valuation to their benefit.

After various transactions, on the 30th October 2013, the first Claimant wrote to the first Defendant with reference to the settlement agreement and requested payment. The Defendants have refused to honour the agreement and the Claimants are requesting payment of the agreed sum.

The elements to a legally binding contract

The Hon. Mde. Justice Williams wrote that the elements to a legally binding contract according to **Chitty on Contracts** Volume I, is that there must be an:

1) **Offer** which is defined as an expression of willingness to contract made with the intention that it is to become binding on the person making it, as soon as it is accepted by the person to whom it is addressed.

2) **Acceptance** which is defined as a final and unqualified expression of assent to the terms of the offer.

   Williams J: noted that when parties carry on lengthy negotiations it may be hard to say exactly when an offer has been made and accepted. As negotiations progress, each party may make concessions or new demands and the parties may in the end disagree as to whether they have ever agreed at all. In such cases, the Court must:

   > look at the whole correspondence, and decide whether on its true construction, the parties had agreed to the same terms.

> If so there is a contract even though both parties or one of them had reservations, not expressed in the correspondence, the court will be particularly anxious to hold that continuing negotiations have resulted in a contract, where the performance which was the subject matter of the negotiations, has actually been rendered.

3) An offer may be accepted by conduct. But conduct will only amount to acceptance if it is clear that the offeree did the act with the intention of accepting the offer.

4) A communication may fail to take effect as an acceptance because it attempts to vary the terms of the offer.

The Court noted that statements which are not intended to vary the terms of the offer or to add new terms do not vitiate the acceptance, even where they do not precisely match the words of the offer1. If the new term merely expresses what would otherwise be implied, it does not destroy the effectiveness of the acceptance. Nor will it have this effect if it is merely a declaration by the acceptor that he is prepared to grant some indulgence to the Offeror.

> The test in each case is whether the Offeror reasonably regarded the purported acceptance as "introducing a new term" into the bargain and not as a clear acceptance of the offer.

Acceptance must be communicated

The general rule, Williams J; noted, is that an acceptance must be communicated to the Offeror. The main reason for the rule is that it could cause hardship to the Offeror to be bound without knowing that his offer had been accepted.

So long as the Offeror knows of the acceptance, there can be a contract even though the acceptance was not brought to his notice by the Offeree.

Consideration

After the offer is made and accepted there must be consideration. Consideration concentrates on the requirement that "something of value" in the eyes of the law must be given. In the case of ***Carlill vs Carbolic Smoke Ball Co*** Bowen L.J defined consideration as:

> "*Any act of the plaintiff from which the defendant derives a benefit or advantage or any labour, detriment, or inconvenience sustained by the plaintiff, provided such act is performed or such inconvenience suffered by the plaintiff with the consent either expressed or implied of the defendant.*"

He said further in the dicta that:

> "*Inconvenience sustained by one party at the request of the other is enough to create a consideration.*"

Intention of creating legal relations

The Court note that in ***R vs Civil Service Board of Appeal*** [1988] it was held that an agreement, though supported by consideration was not binding as a contract, because it was made without any intention of creating legal relations.

In deciding cases of contractual intention, the Courts normally apply an objective test which merely prevents a party from relying on his uncommunicated belief as to the binding force of the agreement.

> Where such a belief is expressed in the documents, it must be a question of construction of the documents as a whole what effect is to be given to such a statement.

Williams J: referred to the case of ***Mamidoil-Jetoil Greek Petroleum Co. SA vs Okta Crude Oil Refinery Ad*** [2001], where Lord Rix held that it is a "well recognized principle of contract law that an agreement between two parties to enter into an agreement in which some critical part of the contract matter is left undetermined is no contract at all".

Lord Rix also went on to reference the case of ***Hillas and Co Ltd vs Arcos Ltd*** [1932] and said further that such a finding that it is **not** a contract should not be hastily made and though it may be the proper conclusion, it is necessary to exclude as impossible all reasonable meanings which would give certainty to the words.

In her reasoning, while dismissing the claim because there was no contract, The Hon. Mde. Justice Lorraine Williams said:

> In the case at Bar, the settlement Agreement dated 11th September 2013 leaves the time for payment by the Defendants as uncertain. I do not accept the premise of the Claimants that the court must look at all reasonable meanings which would give certainty to the words. The wording of the agreement dated 11th September 2013, in my considered opinion is plain and unambiguous and the letter of the 30th October 2013 does not appear to have the approval or consent of the Defendants to bring certainty to the agreement. The date for payment of the agreed sum according to that letter was to be no later than the 15th December 2013.
> …
>
> This unilateral variation of the Agreement or forbearance at Common Law by the Claimant while not contractually binding may have certain limited legal effects. The Law is clear that the question whether a subsequent agreement amounted to a contractual variation or to forbearance depends on the intention of the parties. However, Equity has developed a more satisfactory approach to the problem by concentrating, not on the intention of the party granting the variation, but on the conduct of that party and on its effect on the position of the other party.

Mediation

The Hon. Mde. Justice Lorraine Williams concluded by saying:

> I would strongly recommend that the parties pursue a negotiated settlement of this matter through mediation as originally recommended by this Court.

Takeaway:

As it was then, the Law of Contract is the same today.

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