TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. Cv 383 OF 1998

BETWEEN

LIFE TIME ROOFING LTD.
PLAINTIFF

AND

HOUSING AND INVESTMENTS (TRINIDAD) LTD.
DEFENDANT

Before The Honourable Mr. Justice Stollmeyer

Appearances:

Mr. R. Nanga for the Plaintiff
Mrs. R. van Lare for the Defendant

JUDGMENT

The Plaintiff claims in breach of contract for the sum of $18,656.80 being the balance due on two invoices dated 4th August, 1995 and 20th November, 1996 for $35,661.76 and $404.98 respectively, two amounts totalling $17,409.94 having been received on account of these invoices. These invoices represent the price of roofing materials allegedly sold and delivered to the Defendant.

The Defendant denies liability for the sum claimed on the ground that the Plaintiff never sold or agreed to sell any roofing materials to the Defendant and that this amount is in fact due to the Plaintiff by a third party.

The Facts

On 14th May 1995 Geoffrey Clarke entered into a contract with the Defendant for the construction of a residence at Lot 104, Columbus Boulevard, Westmoorings. That contract is in the standard form of building contract issued by the Trinidad and Tobago Institute of Architects and by its terms Thomas A. McCartney was to be the Architect. I refer to Mr. Clarke and Mr. McCartney as "the Owner" and "the Architect" respectively.

The contract provided, inter alia, for the construction of a roof which was to comprise four concrete areas and a timber frame which was to be covered by galvanised sheeting manufactured by Colour Clad Ltd. The cost of this sheeting was $17,500.00 and having been purchased, was to be installed by the Defendant, obviously at an additional cost for labour and doubtlessly whatever other materials may have been required for the installation. The cost of these materials and the labour for installation were included in the contract and the amount of $17,500.00 was paid to the Defendant on 15th March, 1995.

Sometime in March 1995 the Architect made contact with the Plaintiff as a result of which the Plaintiff supplied three proposals for the supply and installation of roofing materials to this residence. All of these proposals are dated 20th March, 1995.

Subsequently, during the month of June 1995, the Architect indicated to the Plaintiff that one of these proposals was acceptable and requested a revised estimate reflecting a discount, or allowance, of 2.5% of the cost originally estimated. This allowance is one which is usually made in the construction

industry where a main contractor is appointed, the allowance or discount being given by a nominated sub-contractor. It is also reflected in Condition 27 (a) of the contract between the Owner and the Defendant. A revised estimate dated the 21st June, 1995 reflecting this discount was prepared and sent to the Architect. It is the only revision or change to the estimate of 20th March 1995. Both the original estimate and the revised estimate name the Architect as the "Client" and show the "Project" as being "Geoffrey Clarke: Lot #104, Columbus Blvd, West Moorings" and bear the following annotations:

> *" (i) (……….)*
> *"(ii) the above estimation is subject to our Terms & Conditions of Contract [overleaf]".*
>
> *Upon acceptance please sign and return one copy along with your 80% deposit in order that we may begin processing your material".*

The estimate was for $34,819.88.

At this stage the Plaintiff, although aware that there was a main contractor, did not know its identity. Mrs. Deborah Costelloe, a director of the Plaintiff with14 years experience in its business of supplying and installing roofs for buildings in this country, says that she would have been aware of the identity of the Owner from the information contained on the drawings submitted to the Plaintiff to enable the proposals to be prepared, but was unaware of the identity of the party who would be responsible for paying the Plaintiff. It is in these circumstances that the revised estimate was sent to the Architect with him being named as the client.

At some time towards the end of June 1995 the Architect had certain discussions with Mr. Michael Deosaran, managing director of the Defendant with 30 years experience as a building contractor. As a result of those discussions the Defendant (through Mr. Deosaran who was its only witness) acknowledges that

the original contract was varied in so far as the Colour Clad galvanised sheeting was no longer to be used, and that this part of the roofing work under the contract was to be performed by the Plaintiff who was to supply and install its own roofing material. Mr. Deosaran's understanding was that this part of the contract had been withdrawn from the Defendant and, as far as he was concerned, this aspect of the contract had been passed directly to the Plaintiff by the Architect. His further understanding, following his discussions with the Architect, was that he was to pay to the Plaintiff the $17,500.00 which the Defendant had already received under the contract; receive the Plaintiff's roofing material on site and give the Plaintiff access to the site. This was obviously for the purpose of the Plaintiff installing the roofing material. The Defendant agreed to do this and in fact subsequently did so, save that it paid to the Plaintiff a total of $17,409.94. Mr. Deosaran was unable to say why this amount was paid, only that it was calculated by the Architect and that the difference of $90.06 was to be held in escrow. That amount, however, cannot by any stretch of mathematics be the 5% retention fee which would be provided for in the contract, as Mr. Deosaran sought to suggest. The amount of $17,409.94, however, is exactly 50% of the price quoted in the revised estimate.

The Architect did not issue any written instructions for this variation. Further, there was no written appointment of the Plaintiff as a nominated sub-contractor.

It is at this stage that there is a divergence in the accounts of the events which next took place.

Mrs. Costelloe says in her evidence that the revised estimate was accepted and returned to the Plaintiff. Also, she says, a deposit of $15,000.00 was paid. As a consequence of this, the required materials for the work to be done were then requisitioned from the Plaintiff's production department, the materials were delivered to the site and the job was thereafter completed within about ten days. A further payment of about $2,400.00 was received later in July.

In cross-examination, Mrs. Costelloe said that she could not say when the job was completed. Having consulted her file, with leave, she testified that the requisition to the Plaintiff's production department was dated 3rd July 1995. She then agreed that the first payment was received on 6th July 1995 and the second payment on 10th July 1995. They were by cheques, which Mr. Deosaran says were left at the Defendant's front office for collection by Michael Abraham, a sales representative of the Plaintiff. She also conceded in cross-examination that she could not say where or when the estimate was signed on behalf of the Defendant (it is not in issue that it was signed) and conceded further that it could have been signed on the day when the materials were delivered to the site of the project. It should be noted that there was no delivery slip or delivery note in evidence relating to delivery of materials to the site.

This evidence must be regarded in the light of the revised estimate requiring payment of a deposit upon acceptance of an estimate, and Mrs. Costelloe's evidence that for the Plaintiff to proceed with work on a project it required acceptance of a proposal and payment of an initial deposit. This latter evidence was supported by that of Mr. Kazim Boodoo, who was at that time the Plaintiff's sales manager. Mrs. Costelloe was clear and firm in her evidence that she regarded receipt of the signed revised estimate and the deposit as the Defendant's acceptance of the Plaintiff's quotation.

Mr. Deosaran on the other hand, says that this revised estimate was signed on the day when the materials were delivered to the site, which was around 5th July 1995.

It is clear, therefore, that the Plaintiff did not receive payment of any deposit prior to commencing work on the project by way of requisitioning the required materials from its production department. Further, on a balance of probabilities, I have come to the conclusion that these materials were requisitioned without the Plaintiff having received a signed acceptance of the revised estimate.

The revised estimate, however, bears no notation that Mr. Deosaran signed it as having merely received the roofing materials. Mr. Deosaran's signature, over the Defendant's stamp, clearly appears in the space provided for acceptance by the person receiving the revised estimate. There is no effort, no attempt, to indicate anything other than an unreserved acceptance of the revised estimate.

This is clearly contradictory of the Defendant's pleading and Mr. Deosaran's evidence that the arrangements for the Plaintiff's to supply and install roofing material was a matter directly between the Architect and the Plaintiff. It is contradictory of the evidence that he signed the revised estimate merely as acknowledging receipt of the materials on site.

It is also contradictory of his very clear evidence both in evidence in chief and cross-examination, despite there being no such plea in the defence, that the Plaintiff was a nominated sub-contractor and that it was so nominated by the Architect. He gave this evidence based on his 30 years of experience in the building industry. His further evidence was that a nominated sub-contractor is paid only if the Architect certifies both that the work has been carried out properly and that payment is to be made. He also went on to say later in cross-examination that it is normal for an Architect "to employ a sub-contractor. It happens in the specialist trades". In my view he used the word "employ" on this occasion to convey the impression that the Architect had in this instance employed the Plaintiff directly or on behalf of the Owner, and that this arrangement had nothing to do with the Defendant's contract with the Owner, or the Defendant's obligations under that contract. He also said in evidence that he saw no documentation relating to the project involving the Plaintiff before signing the revised estimate and had not met or spoken with anyone on behalf of the Plaintiff up to that time.

It is not in issue that the Plaintiff supplied the roofing materials and installed them. The work was completed in perhaps within 10 days of being started.

After completion of the roof, it became apparent that some of the ridge caps used had become damaged. Mr. Deosaran says that the replacement of these items was requested by Mr. Charles, an employee of the Architect. When asked if he was aware that the damage was done after the roof had been installed, he responded "yes. By Joe Charles".

> "*Question:* *He told you of the damage.*
> *Answer:* *He told me damaged portions installed"*

Mr. Deosaran then denies that he authorised the repairs to be carried out.

From Mr. Deosaran's evidence, Mr. Charles supervised the installation of the roofing materials by the Plaintiff.

Mrs. Costelloe cannot recall who asked that these ridge caps be replaced but thought it most likely to have been the Defendant and not the Architect.

It would seem to me more probable that Mr. Charles would bring this damage to the attention of Mr. Deosaran on behalf of the Architect, and both request and authorise the replacement. It would appear to me also more probable that Mr. Charles would make this request of the Defendant, who was the main contractor, in the usual course of events.

The Defendant in its re-amended defence treats the replacement of the ridge caps as part of the contract when at paragraph 10 it says "By invoice dated 20th March 1995 the Plaintiff provided an estimate of the costs of the roofing materials and by invoices dated the 4th day of August, 1995 and 4th day of September, 1995 the Plaintiff requested payment of the balance due from the Architect". The Defendant does not therefore draw a distinction between the two events of supply and installation and this serves to confirm my conclusion that the damage to the ridge caps occurred after installation had been completed of the original roof.

The work to be carried out under the revised estimate having been completed, the Plaintiff then issued an invoice of 4th August, 1995. This invoice contains several differences when compared to the revised estimate: no "barge board" covers were used; a lesser number of ridge units were used; but there were increases in the numbers of parapet walls and drip edges. This resulted in the invoice being for $35,661.76 instead of the amount of $34,819.88 set out in the revised estimate. There is no evidence as to whether any variations were requested to the work set out in the revised estimated and, if so, who requested them and when.

It is to also be noted that the invoice of 4th August, 1995 addressed to the Defendant shows a deposit paid of $17,409.94, leaving a balance due of $18,251.82. The invoice addressed to the Architect of the same date reflects a deposit paid of only $15,000.00 and a balance due of $20,661.76, although the total amount of the invoice is also stated to be $35,661.76.

These two invoices are in evidence: the one addressed to the Defendant is Exhibit "A4"; and the other is addressed to the Architect is Exhibit "C1".

Thereafter the Plaintiff billed out an amount of $404.98 for replacement of the damaged items. In this respect, there are two invoices in evidence both dated September 4th 1995 and "Revised November 20th 1995". One is addressed to the Defendant, (Exhibit "A7") and the other to the Architect (Exhibit "B2").

Thereafter, there followed efforts by the Plaintiff, and Mrs. Costelloe in particular, to collect from the Defendant the final amount due to the Plaintiff.

Needless to say, they were unsuccessful. Her evidence is that the Defendant told her she should seek payment of the August 4th 1995 invoice from the Architect and that on this basis she initially sent it to the Architect. It is her experience that, although not usual, payment can be obtained direct from the owner if the main contractor so agrees. Then, however, the Architect told her she should seek

payment of this invoice from the Defendant. The invoice of September 4th 1995, however, was sent initially to the Defendant.

Given the evidence of Mrs. Costelloe it would also appear more probable to me that these invoices of August 4th, 1995 and September 4th 1995 (it is not in issue as to whether these are the correct dates of the invoices) were subsequently addressed to both the Defendant and the Architect because the Plaintiff, or perhaps, rather, Mrs. Costelloe, was very firmly of the view that the Plaintiff was owed this money by one or the other of them. Having been told by each of them that she should seek payment from the other, the invoices were addressed or re-addressed accordingly. As far as the Plaintiff was concerned, it had agreed with the Defendant to supply and install the roofing materials but it really did not matter to the Plaintiff who paid the invoices. Mrs. Costelloe was firm in her evidence that on 21st June 1995 she was certain that the Architect would not pay the Plaintiff and that payment would come from the main contractor, given the discount of 2.5% in the revised estimate, although she did not then know the identity of the main contractor. By early July at the latest she would have known the identity of the main contractor. I accept this evidence.

Eventually, on 8th November, 1995 Mr. Deosaran was visited in his office by a group of debt collectors who showed to him their authority to collect outstanding monies due to the Plaintiff and copies of invoices in respect of the outstanding amounts addressed both to the Defendant and to the Architect. Mr. Deosaran's evidence is that prior to this, no one from the Plaintiff had been in contact with him about payment of outstanding invoices.

Mr. Deosaran obviously took exception to the presence of the debt collectors, but more so to the their identity. He sought to give the impression that he felt intimidated, if not by them then by the organisation of which they were members. There was a discussion in his office as a consequence of which he wrote a letter to the Architect dated 9th November, 1995 which says, in part "please use this letter

to pay to Lifetime Ltd. their balance of $17,250.00 and deduct same from our account". This is clearly not the balance claimed by the Plaintiff, even in relation to the original work set out in the revised estimate, much less under the invoice of 4th August, either separately or taken together with the invoice of 4th September for replacement of the damaged ridge caps. Here again, Mr. Deosaran contradicts his own evidence that the Defendant owed no monies to the Plaintiff.

It is to be recalled, however, that the Defendant's contract with the Owner initially provided for all the roof work, both materials and labour. The former was priced at $17,500.00 and this amount was paid to the Defendant for payment onwards to Colour Clad Ltd. The contract would have provided also for the cost of installation being paid to the Defendant, which would no longer be the case after the Plaintiff was contracted to supply and install roofing materials. Consequently, a further part of the sum originally payable by the Owner under the contract would also no longer be payable to the Defendant, being the cost of labour etc. for the installation of the roofing material. This amount of $17,250.00 is referred to in a letter from the Architect to the Plaintiff of 22nd November 1995. This letter sets out, in part, that this amount is the additional amount quoted by the Defendant *"to allow for the roofing system to be governed by the terms of the contract"*. From this, it would be reasonable to infer that this additional amount would be all that the Owner would be required to pay to the Defendant to have the roofing part of the contract completed.

Mr. Deosaran made no enquiries of the Plaintiff after the debt collectors' visit to him despite being concerned as to why he was being asked for payment. He chose to report their visit to the police, however, because "you don't treat with those people lightly".

There must have been, of necessity at least, prior contact, communication, between the Plaintiff and the Defendant. The roofing could not have been installed without this. There is nothing to suggest that prior to this there was any

disagreement between them. I therefore find it strange, improbable, that Mr. Deosaran would not contact someone at the Plaintiff company to at least ask why it had taken this step against the Defendant totally out of the blue.

I also find it improbable that he subsequently refused to attend the meeting suggested by Mrs. Costelloe in her letter to Architect of 18th November 1995 and copied to the Defendant, on the basis that he had no dealings with the Plaintiff "and was not about to enter into any discussions with them". He had, after all, said that he regarded the Plaintiff as a nominated sub-contractor and there must have been, as I have said, contact between them.

I also find it even more improbable that there had been no previous contact with the Defendant by the Plaintiff about the outstanding invoices, as Mr. Deosaran would seem to suggest. There was a great deal of contention concerning invoices being issued to both the Defendant and to the Architect. I find it improbable that the Plaintiff would sit back and do nothing about having its invoices of 4th August, 1995 and 4th September, 1995 paid, whether they were initially addressed to the Defendant or to the Architect. I therefore accept Mrs. Costelloe's evidence that the payment of these invoices was a matter which had been discussed between the Plaintiff and the Defendant, as well as being between the Plaintiff and the Architect. I accept that she spoke to someone within the Defendant company, even if it was not to Mr. Deosaran as she says she did, but which he denies.

There is another aspect to this unpaid balance. It emerged in cross-examination of Mr. Deosaran that he had received a copy of a letter written by the Architect to the Plaintiff of 22nd November 1995 which made him angry. His reaction to the letter was because in it the Architect told the Plaintiff that it had to look to the Defendant for payment of the outstanding invoices. There was then a long discussion between the Architect and the Mr. Deosaran about this matter. Mr. Deosaran's evidence is that the meeting followed the letter, but the letter refers to

a meeting between them of the previous day. Further, and perhaps more to the point, the Defendant claims that it is still owed an amount of $51,527.00 under its contract with the Owner. Mr. Deosaran became noticeably upset when giving this evidence. It is obvious that he considers himself hard done by as a consequence of not being paid this final amount by the Owner, and he resented the Plaintiff seeking payment from the Defendant. It would appear to me probable that payment of the Plaintiff's invoices, or, rather, their non payment, became caught up in the dispute between the Architect and the Defendant over payment of the final sum which the Defendant claimed it was owed under the contract. Mr. Deosaran's evidence and demeanour suggests to me that he adopted the attitude of not paying the Plaintiff if the Defendant was owed money by the Owner.

In so far as Mr. Deosaran's letter of 9th November, 1995 to the Architect is concerned, there is no evidence before me as to why it does not authorise payment of the entire balance due to the Plaintiff, nor is there any evidence before me that he was in any way obliged or coerced into writing this letter, despite him seeking to convey the impression that he felt somehow intimidated. It was not pleaded that the letter was signed in any such circumstances, nor was it put to the Plaintiff's witnesses that this was so. Nor, for that matter, is there any evidence that he sought to disavow or withdraw it subsequently. In circumstances, I would find it more probable that this is an acknowledgement of liability on the part of the Defendant, in whatever the correct amount may have been. Further, and although it is not pleaded by the Defendant, it seeks to raise as a defence that it is not liable to pay any monies to the Plaintiff because the contract provides for payment being made by a sub-contractor only after certification by an Architect, and that no such certification was forthcoming in the present instance.

It is in this setting that Mrs. Costelloe came to write her letter to the Architect of 18th November, 1995. The Defendant places great emphasis upon this letter reflecting the Plaintiff's uncertainty as to the party with whom it had contracted. Given the circumstances prevailing at the time, however, I find it understandable

that Mrs. Costelloe would literally throw her hands up in despair and say that there should be a meeting between all concerned to decide once and for all which party is liable to pay the outstanding monies to the Plaintiff. I accept that this is what happened. It is also worthy of note that the letter is copied to Michael Abraham, who Mr. Deosaran says in essence had nothing to do with the roofing aspect of the project, and that it also refers to Mr. Deosaran as the "main contractor". I do not regard this letter as being definitive that the Plaintiff did not even at that stage know the identity of the party with whom it had contracted, as has been submitted on behalf of the Defendant. Mrs. Costelloe's further, and equally firm, evidence is that when she wrote this letter she was certain the main contractor would pay the Plaintiff's invoices. It, the letter, is an expression of frustration and a call for payment.

There is also in evidence the Architect's letter to Mrs. Costelloe of 22nd November, 1995 to which I have already referred. This letter was included in the bundle filed by the Plaintiff but was not initially part of the Agreed Bundle because of the Defendant's objection to it being included. However, during the course of the trial and the examination in chief of Mr. Deosaran, Mrs. van Lare sought to have it admitted. There was no objection from Mr. Nanga on behalf of the Plaintiff and it was therefore admitted into evidence.

It would have been of great assistance to this Court had the Architect given evidence at the trial. For whatever reason, however, he did not do so and his letter presents certain difficulties, particularly with respect to the weight which should be attached to it. In her closing submissions Mrs. van Lare pointed out that the final paragraph on the first page says that "….your quotation dated August 4th 1995 does not match any…" of the proposals which the Plaintiff had submitted in March 1995. That, of course, is correct save that the document of August 4th 1995 is a final invoice and not a quotation. Mrs. van Lare also submitted that paragraph 3. at page 2 is totally incorrect where it states "The Contractor quoted the sum of an additional $17,250.00 Vat Inclusive to allow for

this roofing system to be governed by the terms of the Contract", but I have already dealt with this part of the letter. She further submitted that paragraph 4. at page 3 was also incorrect given Mr. Deosaran's evidence of there still being an amount of $51,527.00 still being owed to the Defendant under the contract and that he had received no additional monies whatever towards the cost of supplying and installing the roofing. Mr. Deosaran not having said in his evidence that the amount owed for the roofing was in addition to the $51,527.00 it is reasonable to infer that it was a part of the latter sum, but this letter does not allow me to come to any definitive conclusion as to what sums were in fact paid by the Owner to the Defendant. The Architect not having been called to give evidence and subjected to cross-examination on the contents of this letter, I am not minded to give its contents any great weight. It is, however, supportive of the Plaintiff's case to some extent, and more so than it is supportive of the Defendant's case.

The Plaintiff's claim is clearly and simply as against to the Defendant for a balance due on goods sold and delivered. The Defendant, quite apart from denying liability for this amount or any amount at all, pleads that the Plaintiff contracted with the Architect. This is the essence of paragraph 10 of the Re-amended Defence.

It is clear from the evidence that the Plaintiff knew all along that Mr. McCartney was in fact the Architect on the project and that the house was being built for Mr. Clarke.

Equally clearly, the Plaintiff knew that there was a main contractor. This may not have been known at the time when the original proposals were being prepared in March 1995 but from the evidence it is clear that the existence of a main contractor, if not the actual identity, was known to the Plaintiff at the time when the revised estimate was prepared and dated June 21st, 1995.

Even if the Plaintiff was unaware of the existence of a written contract, or any contract at all, or the terms of any contract as between the Owner and the Defendant, it is clear that the Plaintiff was dealing only with the Architect on behalf of the Owner. The Plaintiff was certain that it was to be paid by the main contractor, and not by the Architect.

In those circumstances it is not reasonable, it is not probable, to conclude that the Plaintiff was contracting with the Architect in his personal capacity. In the normal course of events no contractual relationship arises as between an architect and a sub-contractor (see *Emden's Building Contracts and Practice* 8th Ed. p. 359) and no unusual circumstances have been shown to have arisen in the present case.

"*If an architect directly orders goods from a specialist supplier or sub-contractor, without going via the main contractor, it is a question of fact whether the Architect is personally liable or whether he is the agent of…… owner ……or the builder…….” (s*ee *Emden's* p. 360). In the instant case the Defendant pleads that the Architect contracted for himself with the Plaintiff. On the facts this is not so. The Architect did not enter into contract direct with the Plaintiff, nor did he do so on behalf of the Owner. He not did not issue any order or instruction direct to the Plaintiff.

Condition 27 (f) of the contract provides that nothing contained in the *"….Conditions shall render the [Owner] in any way liable to any nominated sub-contractor”*.

It is clear to me that the Defendant's plea of the Plaintiff having contracted with the Architect must fail.

Similarly, the Defendant's suggestion, it not having been pleaded, that the Plaintiff may have contracted direct with the Owner cannot be maintained particularly in the light of Mr. Deosaran's specific and very clear evidence that the

Plaintiff was in his view a nominated sub-contractor. If the Defendant were relying upon the provisions of the contract, and the Plaintiff's appointment of a nominated sub-contractor as a defence upon which it could rely for not paying the balance due to the Plaintiff, then it is necessary for the Defendant to prove the Plaintiff agreed to be bound to the terms of that very contract. *"Knowledge of the terms of a principal contract is, however, not sufficient to prove that the sub-contractor agreed with the principal contractor to be bound by the terms of the contract. Thus, if the contractor properly completes his part of the work, his right to payment would not depend on the certification of the Architect, notwithstanding that it is or may be a condition precedent to payment of the principal contractor"* (see *Emden's* at page 362).

The Plaintiff was not, however, aware of the terms of that contract. It had not seen this contract, and had made no enquiry as to whether one existed. Mrs. Costelloe said she did not consider it relevant. Indeed, she did not enquire as to the relationship of the Plaintiff vis-a-vis the Owner, or of the latter with the Defendant.

The Plaintiff does not, however, plead that it is a nominated sub-contractor. It pleads that it contracted directly with the Defendant and is consequently required to show that a contract between them came into existence either expressly or impliedly.

At the heart of determining this issue is the revised estimate of 21st June, 1995 which Mr. Deosaran signed on behalf of the Defendant. It is clear from the evidence that the Defendant did not negotiate directly with the Plaintiff and that the supply and installation of the roof by the Plaintiff was a matter which had been first discussed between the Architect and the Plaintiff in March 1995.

By the end of June 1995, however, matters had progressed. A revised estimate had been prepared by the Plaintiff at the Architect's request reflecting a discount

of 2.5%. This was because of the known existence of a main contractor. The Architect had discussed with the Defendant the variation of the contract and the introduction of the Plaintiff to both supply and install material for the roof instead of the material being supplied by Colour Clad Ltd. and installed by the Defendant. It was agreed between the Architect and the Defendant that this would be done. The Defendant agreed that it would receive the Plaintiff's materials on site, which was only reasonable in the light of the Defendant having possession of the premises, and that the Plaintiff would be given access to the site, which was also reasonable given that the Plaintiff was to install the materials. Mr. Deosaran says that the Architect instructed him to sign as having received the materials. I do not see anything unusual in that being done, given that neither the Architect, the Plaintiff nor the Defendant would wish to have any dispute arise as to what materials were actually put on site. There is no issue that Mr. Deosaran signed the revised estimate on behalf of the Defendant. The issue is whether he signed it merely as acknowledging receipt of the materials or whether he signed it as accepting the Plaintiff as the specialist in the trade for the supply and installation of that part of the roof. I will return to this.

The Plaintiff issued invoices addressed to the Defendant both for work done under the original contract and for work necessitated by the damage to the roof after installation had been completed.

The issue of invoices addressed to the Architect came about in my view as a consequence of the Plaintiff being shuttled from pillar to post, but more particularly because the Defendant said to the Plaintiff that it did not consider itself responsible for payment of the invoices when approached for payment. When the collectors visited Mr. Deosaran requiring payment of the outstanding invoices he wrote to the Architect authorising payment of monies direct to the Defendant.

The Defendant bases its case to a considerable extent on there being no intention to create legal relations with the Plaintiff. *"The onus of proving that there was no such intention "is on the party who asserts that no legal effect is intended, and the onus is a heavy one". Where such evidence is adduced, the Courts normally apply an objective test…….the Courts also attach weight to the importance of the agreement to the parties, and to the fact that one of them has acted on reliance on it"* (see *Chitty on Contracts* 25th Ed. Vol. 1 para. 123).

The revised estimate as signed by Mr. Deosaran on behalf of the Defendant makes absolutely no mention of it being confined or restricted to acknowledging the receipt of the materials which it lists. On the face of this document, there is a clear and unequivocal acceptance of an estimate by the Defendant despite the fact that it is not the party to whom the revised estimate is addressed. The Defendant does not purport on the face of the document to accept it on behalf of anyone else.

It is then returned to the Plaintiff in precisely that condition, having been signed around 5th July, 1995. The Defendant then makes a payment of $15,000.00 to the Plaintiff by a cheque dated 6th July, 1995 and a further payment of $2,409.94 four days later. The Defendant is unable to explain why this precise sum was paid to the Plaintiff save that it was on the instructions of the Architect, but I do not think it mere coincidence that it represent precisely 50% of the price set out in the revised estimate.

It is obvious that the Plaintiff relied on this document and the payment of $17,409.94 in performing its obligations to supply and install the roof, even if they were received after the materials were delivered to the site. I accept that prior to delivery of the materials on site Mrs. Costelloe spoke with someone within the Defendant company, if not Mr. Deosaran, so as to arrange for delivery of the materials to site and for payment of a deposit. The former makes straight forward common sense because there is no point delivering material to site if it is not yet required, and the latter was a matter of company policy and a requirement

set out in the revised estimate. Mr. Deosaran says that he does not know and has never spoken to Mrs. Costelloe, Mr. Boodoo or Mr. Abraham, yet he says that he left the cheques for $15,000.00 and $2,409.94 for collection by Mr. Abraham. Both Mrs. Costelloe and Mr. Boodoo say they spoke with Mr. Deosaran at various times. I find it more probable that they did in fact do so as they say.

Viewed objectively and in the round, I have come to the conclusion that the Plaintiff intended to enter into a contract with the Defendant. I have also come to the conclusion that the Defendant has failed to discharge the onus of proving that there was no intention on its part to create legal relations with the Plaintiff.

I have come to the further conclusion that there was a binding contract between the Plaintiff and the Defendant. I have also come to the conclusion that the Plaintiff performed its obligations under the terms of that contract and that there is an amount due and owing to the Plaintiff by the Defendant.

There will therefore be judgment for the Plaintiff. The Defendant is to pay to the Plaintiff the sum of $18,656.80 together with interest thereon at 6% from 20th November 1995 to judgment.

The Defendant will also pay the Plaintiff's costs of the action.

28th March, 2002.

C.V.H. Stollmeyer
Judge.

Addendum: After delivery of judgment, Mrs. van Lare applied for a stay of execution for 6 weeks. Mr. Nanga did not object and I granted same.