RADIUS BIN YUYOI@LIM HOCK SON ....Appellant/Defendant

AND

IQMAL ELECTRICAL CONTRACTOR .....Respondent/Plaintiff

(Court of Appeal of Brunei Darussalam)
(Civil Appeal No. 4 of 2018)

Before: Burrell P, Seagroatt and Lunn JJ A.
21st November 2018

Headnote: Binding effect of "settlement agreement"

Appellant in person
Mr. Mathew Chiew Siew Koun (Messrs. MCSK Advocates & Solicitors) for Respondent

Burrell, P.:

This appeal stems from a claim made by Iqmal Electrical Contractor, the original plaintiff, for payment for work done and materials supplied under a sub-contract with the original defendant in the claim, Radius bin Yuyoi@Lim Hock Son, in a total amount of $177,361.68. The claim may be sub-divided into two amounts as follows: $81,093 being, it is claimed, the amount of invoices submitted for work done prior to 31st July 2015 and $96,278.68 being the value of invoices submitted for work done after that date.

The history of the court proceedings maybe stated briefly as follows. A default judgment in the sum of $177,371.68 was obtained on 10th December 2015. The defendant (Radius) successfully applied to the Registrar 6 months later, to have the default judgment set aside. The Learned Registrar was persuaded that there was a dispute concerning the quantum of the second sum of $96,278.68.

There is no issue that the first amount of $81,093 has now been paid by installments following a 'settlement agreement' to which we shall refer shortly.

The plaintiff (Iqmal) appealed the setting aside of the default judgment to a judge in chambers, Judge Zubaidah, who, on 6th March 2018, in a written judgment restored the default judgment. The defendant (Radius) now appeals to this court that the judge's decision was wrong and that the default judgment should be set aside again.

This appeal turns on the validity and effect of a single document referred to as the 'Settlement Agreement' (the "agreement"). It is dated 25th November 2015 and signed by both of the parties in this appeal.

In the preamble to the agreement the defendant acknowledges that he is indebted to the plaintiff in the sum of $177,371.68 for electrical services and that legal proceedings

have been commenced against him for that sum and that a proposal has been made to settle the indebtedness by installments. The document then goes on the state that it is agreed that the plaintiff accepts the installment plan provided that:-

a) The defendant consents to judgment being entered for the debt and
b) The plaintiff will not enforce the judgment provided the installments are paid on time.

The agreement concludes that the plaintiff may enforce the judgment in the event that the defendant failed to comply with any of the agreed conditions.

For clarity it is worth noting at this stage that the defendant, by condition (a) consented to the judgment being "entered" immediately and by condition (b) it was agreed and understood by both parties that the judgment could only be "enforced" following a breach of the condition. It could not be clearer.

It is an agreed fact that, by 7 installments, the defendant paid those invoices dated prior to 31st July 2015 in the sum of $81,093.

The defendant's first summons in chambers seeking an order to set aside the judgment is dated 30th May 2016, 6 months after the settlement agreement. During that period the defendant had failed to keep up the payments in accordance with the agreed installment plan. His first statement of defence is dated 25th October 2016. This written defence makes no reference at all to the settlement agreement. In broad terms it raises issues which the defendant, Radius, has tried to argue, in a blinkered way, ever since. The arguments run on the basis that the settlement agreement does not exist. For example, that rates and prices for certain works had not been agreed and were in dispute, that there was no "back to back" arrangement for payments, that there had been ongoing negotiations about payment, that works carried out after the expiry of the sub-contract should be paid on a quantum merit basis and so on.

More recently, the defendant's submissions to the judge in chambers and to this court that the judgment in default be set aside again simply contends that the disputes over quantum in the relation to the outstanding amount of $96,278.68 have merit on the facts. Although the defendant does not specifically say so, the submissions (throughout) amount to an argument that the settlement agreement be ignored and the litigation should proceed as an assessment on quantum as if the settlement agreement had never been made. The first acknowledgment of the existence of the settlement agreement is in the Grounds of Appeal to this court. That is not surprising as the Intermediate Judge in her clear and correct ruling explained why it was a valid and binding document. The Grounds of Appeal submit that it was not binding because it was "without prejudice" and was therefore "inadmissible". The remaining grounds all deal with the factual disputes concerning the quantum, the method of calculation and subsequent negotiations in relation to the outstanding balance.

In support of her finding that the settlement agreement was a legally binding document which, in effect, nullifies any possibility of there being any triable issue she noted:-

(i) it was signed by both parties.
(ii) it was unambiguous and clearly was intended to bind both parties.

(iii) there was no lack of clarity or certainty as to the amounts claimed and agreed, for the post 31st July 2015 invoices.
(iv) there was no substance or merit in the argument advanced on the defendant's behalf that the *"suit should have been discontinued"* after the first installment pursuant to the agreement had been paid.

Such an argument at (iv) above, is not even ingenious. The plaintiff had agreed not to *enforce* the judgment whilst the conditions were being met. Prior to the settlement agreement the plaintiff had indicated that the writ could be discontinued if the debt was paid satisfactorily. It wasn't and the settlement agreement for installment payments was then made. The agreement gave the defendant time to pay, not time to argue.

Order

The appeal is dismissed and the judgment in default remains.

The Intermediate Court Judge's order, including her order as to costs stands. The costs of the appeal shall be to the Respondent to be taxed if not agreed.

Burrell, P.

Seagroatt, J.A. **Lunn, J.A**