[2020] JMCA Civ 22

JAMAICA

IN THE COURT OF APPEAL

PARISH COURT CIVIL APPEAL NO COA2019PCCV00008

BEFORE: **THE HON MR JUSTICE MORRISON P**
THE HON MR JUSTICE F WILLIAMS JA
THE HON MISS JUSTICE EDWARDS JA

BETWEEN **LOUISE ESTELLA CALDER-SCHWARTZ**
O/C LAISE CLAUDIA SCHWARTZ **APPELLANT**

AND **ERROL REID** **RESPONDENT**

Mr Robert Brown for the appellant

Respondent in person

22, 24 January and 10 June 2020

MORRISON P

[1] I have read, in draft, the judgment of Edwards JA and agree with her reasoning and conclusions. I wish to add nothing further.

F WILLIAMS JA

[2] I too have read, in draft, the judgment of Edwards JA, I agree and have nothing to add.

EDWARDS JA

Background

[3] The appellant, Louise Estella Calder-Schwartz o/c Laise Claudia Schwartz, (Mrs Schwartz), who happens to be 92 years old, had made a claim on an insurance company for damage done to a wall on her premises. An offer was made by the insurance company to settle the claim for $500,000.00, which would be increased by an additional sum if Mrs Schwartz could prove that the wall had been reinforced with steel.

[4] A chance meeting in a tailor's shop with the respondent, Mr Errol Reid (Mr Reid), who held himself out to be a contractor, resulted in a contract for Mr Reid to dig out sections of Mrs Schwartz's wall to expose the steel embedded therein. For this work Mr Reid charged $5,000.00. Mr Reid also took photographs and prepared a report for submission to the insurance company. Mr Reid did the work, submitted the report and photographs, and was paid as agreed.

[5] The dispute in this case is whether Mr Reid provided additional "consultancy work" based on an alleged agreement between himself and Mrs Schwartz that, on her behalf he would carry out all communication with the insurance company by any means necessary; keep in touch with the loss adjuster for the insurance company; attend hardware stores and check prices for materials and forward these prices to the loss adjuster; and meet with the loss adjuster to try to reach a reasonable price to rebuild the damaged parts of the wall. Mr Reid said there was such an agreement. Mrs Schwartz denied having any such agreement and refused to pay.

[6] Mr Reid filed a plaint in the Parish Court for the parish of Saint Mary on 4 September 2018, suing Mrs Schwartz for moneys due and owing pursuant to the alleged contract. In support of his claim to a 'consultancy' contract, Mr Reid produced a letter dated 10 August 2018, under the letter head of LR Building & Construction, and signed by someone named Louie Reid for and on the behalf LR Building & Construction. This letter, Mr Reid contended, outlined the scope of the agreed work at a price of between $60,000.00 and $85,000.00. Mr Reid also produced an invoice dated 21 August 2018, signed by Louie Reid for and on the behalf of LR Building & Construction, for work done valued at $69,955.00. This invoice was also written under the letterhead of L R Building & Construction.

[7] Mrs Schwartz's defence, as stated, was that she did not hire Mr Reid as a consultant in 2018 or ever at all. Further, that Mr Reid was never engaged to have discussions on her behalf with her insurance company, save in a very limited capacity.

[8] The case was heard on 29 January and 11 February 2019 by His Honour, Mr A Smith, who, having heard the evidence, gave judgment for Mr Reid in the sum of $69,955.00, plus costs of $2,016.00. Although the written judgment of the Parish Court Judge refers, in error, to a sum of $69,995.00, his endorsement of the order on the plaint does refer to judgment in the sum of $69,955.00, in keeping with the sum claimed in the plaint. Mrs Schwartz is appealing the judgment and orders of the Parish Court Judge.

The grounds of appeal

[9] Mrs Schwartz originally filed a single ground of appeal as follows:

> "(1) That the Verdict was manifestly unreasonable and cannot be supported by the evidence in that;
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> (a) The Learned Parish Judge failed to deal with the grave inconsistencies that arose on [Mr Reid's] case;
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> (b) That the Learned Parish judge dealt with the matter on an erroneous view of the facts;
>
> (c) The Learned Parish Judge applied the wrong standard of proof in determining the case."

[10] Mrs Schwartz subsequently filed supplemental grounds of appeal as follows:

> "(a) That the decision of the Learned Parish Judge was manifestly unreasonable and cannot be supported by the evidence for the following reasons:
>
> (i) That the Learned Parish Judge did not have sufficient regard to the uncontroverted evidence between the parties that the initial engagement of [Mr Reid] was to satisfy the Insurance Company that there was steel in the wall which presuppose [sic] that a claim had already been made by [Mrs Schwartz].
>
> (ii) That the Learned Parish Judge did not have sufficient regard to the uncontroverted evidence that the [Mr Reid] was interested in obtaining [a] contract to rebuild [the] wall.
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> (iii) That the Learned Parish Judge failed to appreciate the significance of the absence of a Letter of Authority from the [Mrs Schwartz] for the [Mr Reid] to conduct negotiations with an Insurance Company on behalf of [Mrs Schwartz].

(iv) That the Learned Parish Judge attached too much significance to whether [Mrs Schwartz] had a hearing impediment in the absence of medical evidence.

(v) That the Learned Parish Judge ignored or did not have sufficient regard to the fact that [Mrs Schwartz's] assertion that she had received an offer of Five Hundred Thousand Dollars ($500,000.00) from the Insurance Company prior to engaging [Mr Reid] was unchallenged by [Mr Reid].

(vi) The Learned Parish Judge fell into error in calling for Exhibit I and II and putting them into evidence albeit without objection without having any regard or sufficient regard to [Mrs Schwartz] position thereto and accepted same as reliable without taking into account that neither document was signed as received and dated by [Mrs Schwartz].

(b) That the Learned Parish Judge so misdirected himself it is respectfully submitted in relation to crucial pieces of the evidence that this Honourable Court would be justified in substituting its own analysis of the evidence and come to its own conclusion.

The findings of the Parish Court Judge

[11] The Parish Court Judge correctly stated the issue to be determined by him to be:

> "Whether there was a contract between the parties that the plaintiff should act as a consultant in relation to furthering business transactions with the defendant's insurance company giving him the right to now claim his fees of $69,995.00 [sic]."

[12] In summary, the Parish Court Judge found that, on a balance of probability, there was a binding contract between the parties based on what he found to be, the offer contained in Mr Reid's letter dated 10 August 2018, and the acceptance he found

in the words and conduct of Mrs Schwartz. He found that Mr Reid's letter set out the terms of the engagement, it had been given to Mrs Schwartz, and she had agreed to it by way of her clear assent and subsequent conduct. He also found that the letter contained all the essential terms of the contract, which were certain and not vague or ambiguous, "notwithstanding" the fact that the price quoted was within a range of prices. He also found that the qualifying condition in the terms, which stated that the fee would only be charged if Mr Reid was not given the job to rebuild the wall, aided in its certainty. He admitted Mr Reid's letter into evidence as exhibit 1.

[13] The Parish Court Judge also found that Mr Reid did carry out the contract and used his expertise, in furtherance of the contract, to cause her to benefit from a favourable pay-out from the insurance company. He found that Mr Reid did communicate with the insurance company on behalf of Mrs Schwartz, and likewise with the loss adjuster, until a settlement was reached. He found that Mr Reid did visit the insurance company with Mrs Schwartz and that he did visit Mrs Schwartz's property several times to obtain details for the insurance company. The Parish Court Judge also found that Mr Reid did visit several hardware stores and made checks for prices for materials and gave these prices to the loss adjuster. He also accepted that Mr Reid met with the loss adjuster and that he represented Mrs Schwartz at that meeting with a view to cause her to benefit by agreeing the most reasonable price to rebuild the wall. These findings he found to be in keeping with exhibit 2 (the invoice) and the oral evidence of Mr Reid as to what he did in fulfilment of the contract.

[14] In arriving at his conclusions, the Parish Court Judge reasoned that the work Mr Reid is claiming to have done, naturally flowed from Mrs Schwartz's invitation to her home for the first contract, 'chapter 1'. He also found that the first contract between the parties had been informal and had been honoured by both and that the lack of formality in this second arrangement, 'chapter 2', could not defeat the claim, as the law is clear that the lack thereof is not a basis on which an "otherwise believable claim could be denied".

[15] On the issue of the credibility of the parties, the Parish Court Judge said he relied heavily on their demeanour, as the evidence was given. He found Mr Reid impressive, believable and non-evasive, whilst he found Mrs Schwartz unimpressive and "unbelievable in her account as much as it sought to deny the claim". He concluded that Mr Reid's account of their relationship was credible and that Mrs Schwartz's account was incredible. He also found that the sum claimed by Mr Reid was consistent with the terms of engagement, and that Mr Reid had carried out all the tasks as had been agreed under the contract. He concluded that there were no inconsistencies or discrepancies in Mr Reid's case which would undermine the substratum of the case and which would affect his findings.

Role of this court

[16] The question for determination is whether there exists any basis for this court to disturb the Parish Court Judge's decision based on his findings on purely factual issues, determined as a result of what and who he accepted as credible. Counsel for Mrs Schwartz says that this court ought to interfere based on the grounds filed. An

appellate court will not interfere unless it can be shown that the Parish Court Judge was plainly wrong, in that he misdirected himself on the law or misapplied the facts, or, on the basis that his decision was not justified on the evidence. It is inconsequential whether an appellate court would have come to a different conclusion on the evidence. What must be clearly demonstrated is that the judge had failed to make use of the advantage he had of seeing and hearing the witnesses (see the Board's decision in **Green v Green** [2003] UKPC 39).

[17] In **Central Mining and Excavating Ltd v Croswell and others** (1993) 30 JLR 503, Wolfe JA, as he then was, in explaining the approach the Court of Appeal should take in assessing findings of fact, said at pages 518 and 519 that:

> "The principles on which an appellate court will interfere with a finding of fact by a trial judge are well settled. The court will only do so if the judge has misdirected himself or if it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain the judge's conclusion. The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses. In such circumstances, the matter will then become at large for the appellate court. See **Watt (or Thomas) v. Thomas** [1947] 1 ALL E.R. 582. However, where it is not so much a question of the credibility of the witnesses, but the sole question is the proper inference to be drawn from specific facts, an appellate court is in a good position to evaluate the evidence as the trial judge and should form its own independent opinion, though it will give weight to the opinion of the trial judge. See **Benmax v. Austin Motor Co. Ltd.** [1955] 1 All E.R. 326; **Hicks v British Transport Commission** [1958] 2 All E. R. 39."

[18] In coming to a determination as to whether this is a proper case in which the decision of the Parish Court Judge ought to be disturbed, it is necessary to examine the various complaints made by Mrs Schwartz, in her grounds of appeal. There is some overlapping between the grounds filed, therefore, I will deal with those that may be addressed individually and the others will be grouped according to categories. I will begin with the appellant's complaint in grounds (a)(i) and (v).

Whether the Parish Court Judge did not give sufficient regard to the unchallenged evidence that (1) the initial engagement was to satisfy the insurance company that there was steel in the wall, which presupposed that a claim had already been made, and (2) whether the parish court judge ignored or did not have sufficient regard to the fact that the appellant had received an offer of $500,000.00 from the company prior to engaging the respondent- grounds (a)(i)and (v)

[19] Counsel Mr Robert Brown, on behalf of Mrs Schwartz, submitted that the uncontroverted evidence in the court below was that Mrs Schwartz had already made a claim on the insurance company before Mr Reid had been engaged by her to dig out the wall. He argued that the Parish Court Judge erred in failing to have regard to the fact that it was against the background of her claim that Mr Reid was initially hired to expose the steel in Mrs Schwartz wall. Counsel also argued that the Parish Court Judge ignored the fact that Mrs Schwartz already had an offer from the insurance company and, therefore, did not require Mr Reid to negotiate a settlement on her behalf.

[20] Mr Reid filed written submissions to this court on 2 December 2019. In it he submitted that the previous offer to Mrs Schwartz was $500,000.00 but with his intervention and communicating with the insurance company and the loss adjuster, the claim was settled for the sum of $680,000.00. He submitted that the agreement for the

payment of the increased sum was signed by Mrs Schwartz and the loss adjuster, in his presence. He contended that it was clear his services was engaged, otherwise, Mrs Schwartz would not have given him her personal details, as he did not know her before he did the work on her wall. He submitted that it was clear that she was embellishing her story in order to deceive the court and "rob" him of the fruit of his labour.

[21] I agree with counsel for Mrs Schwartz that the Parish Court Judge did not give sufficient regard to this uncontroverted evidence neither did he give any consideration to its possible significance.

[22] Mr Reid's evidence was that Mrs Schwartz had asked him to deal with the insurance company because she had made a claim but they were not paying her. However, Mrs Schwartz's evidence was that the insurance company had already made her an offer of $500,000.00, albeit based on the erroneous view that the wall had no steel in it. Mr Reid's initial engagement with Mrs Schwartz was to locate the steel in the wall. Mr Reid admitted this in his evidence. Mr Reid also admitted that he knew that a claim had already been made on the insurance company and that Mrs Schwartz had an offer. He maintained, however, that Mrs Schwartz had been asking for too much money from the insurance company and they had refused to pay.

[23] In the light of Mrs Schwartz's denial that she entered into a consultancy contract with Mr Reid, I agree with counsel for Mrs Schwartz that the Parish Court Judge ought to have considered whether it would have been necessary for Mrs Schwartz to engage Mr Reid to get the insurance company to pay her for the damage to the wall, where the

undisputed evidence is that there was an existing offer of $500,000.00, with a promise of an increase if there was steel in the wall.

[24] In accepting the evidence of Mr Reid that Mrs Schwartz engaged him to communicate with the insurance company for her to get paid, the Parish Court Judge completely ignored the unchallenged evidence that Mrs Schwartz already had a claim with the insurance company, and had been offered $500,000.00 in settlement, subject to an increase, if steel was found in the wall. Steel having been found in the wall and the report having been submitted with regard to it, in the light of Mrs Schwartz's denial of the existence of a contract, the Parish Court Judge ought to have resolved the questions whether, in those circumstances, it would have been necessary for anyone to further negotiate the claim on Mrs Schwartz's behalf and what value added Mr Reid would bring and did bring to the table, in a contract such as the one he claimed. In doing so the Parish Court Judge would also have been required to examine the terms of engagement he accepted into evidence, against the work Mr Reid claimed to have done, in the light of these unchallenged facts.

[25] The Parish Court Judge's finding that Mr Reid had "used his expertise…and caused her [Mrs Schwartz] to benefit from a favourable pay-out from the insurance company" was belied by these unchallenged facts, and the lack of any other evidence to substantiate this finding.

[26] Instead, the Parish Court Judge, erroneously, in my view, found that the second contract naturally flowed from the first, and it could only have been as a result of the

digging out of the wall to expose the steel, done by Mr Reid, why Mrs Schwartz invited him into her home and requested he did business with the insurance company on her behalf. Otherwise, the parish Court Judge concluded, it would have been tantamount to Mrs Schwartz "allowing a stranger into her house without an agreement on her part". He further concluded that Mrs Schwartz would not have invited Mr Reid into her home had she not agreed to a consultancy contract as claimed by Mr Reid.

[27] I am entirely uncertain as to how the Parish Court Judge could have determined that this was the inescapable inference to be drawn from the evidence. Even if he found that Mrs Schwartz had invited Mr Reid into her house it did not inevitably follow that his presence in her home, meant that she must have engaged him to do consultancy work for her.

[28] The evidence of Mrs Schwartz is that after Mr Reid followed her to the insurance company to hand over his report, he, thereafter, turned up at her home and offered to speak to the loss adjuster because he was the one who found the steel in the wall, and at the same time was seeking the job to rebuild the wall. For that she had to seek authorization from the insurance company and did so on the phone along with Mr Reid. The Parish Court Judge seemingly rejected this evidence, preferring to draw the inference, from his finding that Mrs Schwartz invited Mr Reid to her house, that her invitation into her home could only have been to give Mr Reid the work as her 'consultant', otherwise, he found, it would be tantamount to her inviting a stranger in her home. To my mind, however, this is not the sole or inevitable inference that could

be drawn from the fact of Mr Reid being at Mrs Schwartz home. In any event, the evidence given by Mr Reid himself, was that he was at Mrs Schwartz house when they entered into the agreement. He gave no evidence of how he came to be there. He said he left her home, went away and came back and presented her with the letter offering his services and she said yes. It raises the question why Mr Reid was at Mrs Schwartz house if there was not yet a contract for him to do consultancy work. He provided no answer to this in his evidence. The only answer to that question came from the evidence of Mrs Schwartz that he came and asked for the job to rebuild the wall and offered to speak to the loss adjuster since he was the one who found the steel. She, in turn, had to seek permission for him to do so.

[29] The Parish Court Judge, therefore, erred in failing to take into account these facts in assessing the credibility of the parties and in determining the ultimate question of whether a consultancy contract existed between the parties. These grounds have merit.

Whether the Parish Court Judge failed to pay sufficient regard to the uncontroverted evidence that the respondent was interested in obtaining the contract to rebuild the wall - ground (a) (ii)

[30] No submission was made to this court on this ground.

[31] I am of the view that the Parish Court Judge failed to consider and appreciate the significance of the evidence of Mrs Schwartz that Mr Reid had asked to speak to the loss adjuster because he, Mr Reid, had been the one to find the steel and do the report on the wall, and further, that there was undisputed evidence that Mr Reid had it in his

contemplation that he was going to be the one to rebuild the wall. His evidence was that Mrs Schwartz had told him that she would give him the job of rebuilding the wall.

[32] It was, therefore, agreed by both sides that Mr Reid wanted the job of rebuilding the wall. In fact, Mr Reid claimed he was promised the job but this was denied by Mrs Schwartz. Mr Reid's evidence was that Mrs Schwartz told him that when her agreement with the insurance company was finalized she would give him the job to build the wall. Mrs Schwartz denied this; her evidence was that he was "down on me saying he wants to do the wall" but she told him her brother-in-law was already engaged to build the wall. Interestingly, although Mr Reid claimed to have been promised the job, his letter containing the alleged terms of the contract carried the qualification that if he was given the job of rebuilding the wall he would not charge any fees but, if not, then he would charge for his services. This would seem to suggest that, contrary to his oral evidence, there was no agreement for him to get the job to rebuild the wall, otherwise, this qualifying condition would not have been necessary.

[33] The uncontroverted evidence that Mr Reid wanted the job provided a plausible explanation as to why Mr Reid, as the person who exposed the steel, took the photographs, did the report and who wanted the contract to rebuild the relevant section of the wall, would have wished to be present when the loss adjuster came to examine the exposed steel in the wall. This was the explanation given by Mrs Schwartz as to why Mr Reid came to her house and why she sought permission for him to speak to the loss adjuster. It would also have been a plausible rebuttal to the assertion that the only

reason he was present at Mrs Schwartz's home was pursuant to an agreement for him to consult with the insurance company on Mrs Schwartz behalf. Whilst the Parish Court Judge would have been entitled to reject Mrs Schwartz's explanation and accept that of Mr Reid, he was duty bound to at least consider it, since it was raised on the evidence of Mrs Schwartz as part of her defence. The Parish Court Judge, however, having been totally influenced by his conclusion that this second contract naturally flowed from the first, that Mrs Schwartz invited Mr Reid to her house and would not have allowed a stranger to be present in her home if there had been no agreement, failed to consider the significance of Mr Reid's bid to be the one to rebuild the wall. In failing to do so he would have erred. There is merit in this ground of appeal.

Whether the Parish Court Judge failed to appreciate the significance of the absence of a letter of authority from the appellant for the respondent to conduct negotiations with the insurance company on her behalf – ground (a)(iii)

[34] Counsel Mr Brown was adamant in his submission that without a letter of authorization from Mrs Schwartz, Mr Reid's claim ought to have failed on that basis alone. This he contended, was because no stranger to the contract between the insurance company and Mrs Schwartz could negotiate on that contract without written authorization. This, he said, was proof that Mr Reid was not telling the truth.

[35] Mr Reid submitted to this court that, as far as he was aware, the law was that no third party could communicate with an insurance company, unless the policy holder gave full authorization to do so, "because of the Data Protection Act". He argued that

Mrs Schwartz provided him with full details for the insurance company so he could keep communicating with them until her claim was settled.

[36] The Parish Court Judge, in his reasons, accepted that Mr Reid had been authorized by Mrs Schwartz to speak to the insurance representative by telephone at her home, and that Mr Reid did in fact communicate with the insurance company on her behalf. He did not consider the absence of a letter of authority for Mr Reid to deal with the company, nor did he consider whether one would in fact have been required.

[37] Mrs Schwartz, by her own admission, did in fact allow Mr Reid to speak with the insurance company's representative on one occasion at her home, when, according to her, he wanted permission to speak with the loss adjustor. It is evident, therefore, that the insurance company did not require a letter of authority in that instance, where Mrs Schwartz gave her authorization orally. This fact significantly weakens the force of counsel's argument. Whether some type of written authorization would have been required for any further consultation would seem to me to depend on different variables, such as what exactly the third party was asked to do, whether the insured was present, as well as the policy of the particular institution involved.

[38] In the absence of legal authority or evidence of the policy of the insurance company in such matters it would be impossible to agree with counsel's submissions on this issue.

[39] It is, however, noteworthy that the aforementioned phone call was the only occasion, on the evidence, on which Mr Reid had any direct communication with the

insurance company. There was no evidence of any other attempts at communication with the insurance company by Mr Reid. Despite the submission of Mr Reid that full authorization was necessary for a third party to communicate with an insurance company on behalf of a policy holder, there is no evidence from him that he obtained any such full authorization, whether orally or in writing. There is evidence only of the one conversation with a "Mrs Palmer" from the insurance company, ostensibly to gain permission to speak with the loss adjuster, and there is only evidence of a single occasion on which Mr Reid communicated with the loss adjuster, that is, the day they went to Mrs Schwartz's home.

[40] Although there is no evidence, one way or the other, that written authority is necessary for a third party to communicate with an insurance company on behalf of a policy holder, it is clear that some form of authorization is required before any third party can do so. I agree with counsel for Mrs Schwartz that the Parish Court Judge did not consider whether Mr Reid had shown that he had been given full authority to do so outside of the limited authority it was showed that he received, which was to speak with the loss adjuster. There is some merit in this ground.

Whether the Parish Court Judge attached undue significance to the fact of the appellant's use of her hearing aid in the absence of medical evidence- ground (a) (iv)

[41] There was no submission on this ground.

[42] The Parish Court Judge did place a great deal of emphasis on the fact that Mrs Schwartz wore a hearing aid. In my view it was totally irrelevant to the issues to be

determined, and in no way ought to have affected the Parish Court Judge's view as to her credibility. She never claimed not to have heard anything Mr Reid said during their interactions, and she never claimed that an oral agreement was made but that she had heard it incorrectly and had agreed to something other than what was being claimed. Her defence was that she had no contract with Mr Reid for consultancy services, whether oral or written, and that she had never received any written terms of engagement, nor did she say yes to it.

[43] The fact that Mrs Schwartz wore a hearing aid, as she is entitled to do at 92 years old, should have been of no moment in the case. However, the Parish Court Judge seemed to have formed the view that she was using it to gain sympathy because "the theatrics was unbelievable". The fact that the wearing of a hearing aid by Mrs Schwartz resulted in what the Parish Court Judge termed as "theatrics" in court based on her counsel positioning himself to ensure she could hear him and her attempts to adjust her hearing aid to ensure she could hear, was also irrelevant to anything the Parish Court Judge had to decide. I am not certain how this ought to have affected her credibility.

[44] It seems, however, that the Parish Court Judge was not convinced that Mrs Schwartz had any difficulty hearing during the trial. But apart from declaring she was hard of hearing and wore a hearing aid, Mrs Schwartz, based on the transcript, did not complain of having difficulty hearing. The difficulty, from the Parish Court Judge's notes, was with her ability to adjust the levels of the hearing aid during her evidence in

chief, which resulted in intermittent, as he described in his notes, squeaking noises. This fact clearly impacted the Parish Court Judge's decision, as he asked several questions of Mr Reid as to whether her hearing had affected his business relations with her, several questions of Mrs Schwartz regarding her hearing and it spawned two long paragraphs in his judgment. He seemed to have concluded that she was acting and being deceptive.

[45] The Parish Court Judge was also influenced by the fact that there had been no issues with Mrs Schwartz hearing aid whilst Mr Reid was giving evidence, as she sat quietly next to her attorney-at-law. The issues arose when she took the stand to give her evidence in chief. However, Mrs Schwartz was represented by counsel, and, as the Parish Court Judge noted, during Mr Reid's evidence she sat quietly beside her attorney-at-law as she is entitled and required to do. Her attorney-at-law was the one cross examining Mr Reid not Mrs Schwartz. The imperative to have Mrs Schwartz hear properly only arose when she went into the witness box.

[46] I am not altogether certain that a person wearing a hearing aid needs to act hard of hearing, as it seems to me to follow that, if you must wear a hearing aid then, inferentially, something must be wrong with your hearing. Whilst the Parish Court Judge is entitled to comment on the demeanour of a witness and the way in which evidence was given by that particular witness, I do not believe that the fact that a witness is wearing a hearing aid, tells the court that she is indeed wearing one, and then appears to suffer an equipment failure with that hearing aid, could or should be a basis for a

court to find the witness not credible, in the absence of evidence, medical or otherwise, that the witness is faking an impediment. Therefore, even though the Parish Court Judge was entitled to determine which witness he found credible, to the extent that Mrs Schwartz hearing aid and her treatment with it affected the parish court judge's view of her credibility, "in so far as she denied the claim", he erred. This complaint has merit.

Whether the Parish Court Judge erred in calling for and admitting into evidence the letter of engagement (exhibit 1) and the invoice (exhibit 2), as well as in accepting those document as being reliable - ground (a)(vi)

[47] Counsel Mr Brown submitted that although no objection had been taken to the documents admitted as exhibits 1 and 2 going into evidence, it was the duty of the Parish Court Judge to make the proper use of those documents. He maintained that the Parish Court Judge was wrong to rely on them as there was no connection proved between those documents and Mrs Schwartz.

[48] Mr Reid maintained that the documents were tendered in evidence to prove his case and that they did provide proof of his claim. He submitted that he kept his part of the agreement and carried out all the duties agreed with Mrs Schwartz.

[49] It is clear from his written judgment that the Parish Court Judge placed a great deal of weight on the terms of engagement and the invoice written and produced by Mr Reid. In fact, the letter of engagement was integral to the parish court judge's finding that there had been a contract, as he found that it was the written offer made to Mrs Schwartz which she accepted verbally and by her conduct. There was no written acknowledgment by Mrs Schwartz, on the letter of engagement. The letter (exhibit 1),

however, in principle, was a self-serving and self-corroborating document, which, on the basic rules of evidence regarding consistent statements, ought to have carried little weight. The letter of engagement was not signed by Mrs Schwartz and nothing is written on it showing that she adopted it or its contents. A copy of it was not found to have been in her possession and she denied seeing it or agreeing to it. In that regard, its only value is as evidence of the consistency of the conduct of Mr Reid, as given in his evidence in the witness box. It was not, in and of itself, evidence of any fact in issue and could support his case only in so far as it was consistent with his oral evidence. Neither document could provide corroboration of the testimony of Mr Reid, as they did not come from an independent source. Although Mrs Schwartz did admit to being served a paper after she received payment from the insurance company, the invoice in court (exhibit 2) does not appear, from the transcript, to have been shown to her and there is no evidence that this invoice was the same one served on her by Mr Reid.

[50] Be that as it may, having admitted the documents into evidence, in my view, the Parish Court Judge erred in his treatment of them. Having accepted exhibit 1 as evidence of what Mr Reid said he offered to do, it was the duty of the court to examine the evidence to determine whether the oral evidence of the respondent was consistent with what he claimed had been agreed in exhibit 1. Having also accepted exhibit 2 into evidence, it was equally incumbent on the Parish Court Judge to examine each document to see if they were consistent with each other, and with the oral evidence of Mr Reid; and to the extent there existed any inconsistency, to examine how material

they were and any explanation, if any, given for the inconsistency. The Parish Court Judge did none of those things.

[51] Mr Reid's evidence was that, after the close of what the Parish Court Judge called 'chapter 1', Mrs Schwartz asked him to "liaise with the insurance company and do all the necessary communication to make sure that she can get paid at the end by the insurance company for her damaged wall". He said they were at her house and he left and returned with the letter outlining what his charges were going to be and she agreed. He said that at Mrs Schwartz house she gave him permission to speak on her behalf and they called the insurance company on his phone and he spoke to Mrs Palmer. He was asked if anything happened after he spoke to Mrs Palmer and his answer was that he met with the loss adjuster and Mrs Schwartz at her house and the loss adjuster asked him for the prices of the steel, cement and labour.

[52] This is how the Parish Court Judge recalled Mr Reid's evidence:

> "**He said by the following day (the day after they closed chapter 1) whilst at the defendant's home, he was asked by her to liaise with the insurance company and to do all the necessary communication so as to ensure that she can get paid by the insurance company for her damaged wall.** The plaintiff left the home of the defendant and returned with a letter on the said day which contained his offer for services since it stated the terms of his engagement (Exhibit 1). The plaintiff made his offer for services by handing Exhibit 1 to the defendant. The defendant upon getting this offer, told the plaintiff yes and gave him all the necessary information for her insurance company."

[53] The Parish Court Judge, therefore, accepted the terms of engagement (exhibit 1) as evidence of the terms of the offer of services made by Mr Reid to Mrs Schwartz. He found that Mrs Schwartz had orally and by her conduct accepted those written terms. It is clear from this that the contract the parish court judge found in existence was partly in writing in the offer made by Mr Reid, partly oral by Mrs Schwartz saying yes to it and partly by conduct by her giving him all the necessary information (page 26 of the record of proceedings).

[54] The salient terms of exhibit 1 was in the following vein:

> "1) We will carry out all communication with the insurance company by phone or any other ways necessary,
>
> 2) We will keep in touch with Mr Robinson the last [sic] adjuster for the insurance company [sic]
>
> 3) Attend hardware and check prices for materials and forward to the last [sic] adjuster [sic]
>
> 4) Meet with the last adjuster and try to reach a reasonable price to rebuild the necessary parts of the walls that need rebuilding."

[55] Mr Reid's evidence was that the basis of the contract was to liaise with the insurance company to make sure Mrs Schwartz got paid. He, however, failed to give any concrete evidence of the actions he took in conducting this 'liaison'. The evidence of Mrs Schwartz is that she spoke to the insurance company and gave the permission for Mr Reid to speak to them because he was the one who did the wall. She said he told them he wanted to be there when the loss adjuster came because he wanted to show him the wall. There was evidence, on both sides, of that one call to the insurance

company, where she allowed Mr Reid to speak to Mrs Palmer. That conversation, according to Mrs Schwartz, was because he wanted to be permitted to speak to the loss adjuster. Mr Reid gave no indication of what was said to Mrs Palmer. There was no further evidence from Mr Reid of any call made by him to or any other communication with the insurance company on behalf of Mrs Schwartz. After that call he met up with the loss adjuster at Mrs Schwartz's home.

[56] The totality of Mr Reid's evidence as to his consultancy work, were (a) the conversation with Mrs Palmer, (b) the meeting with the loss adjuster when he came to visit the site, and (c) the request from the loss adjuster for the prices of the steel, cement and labour (page 7 of the record of proceedings). Although Mr Reid gave evidence of this request, he gave no evidence of having gone to any hardware store and of having fulfilled the request, outside of what is contained in exhibit 2.

[57] Nevertheless, the parish court judge found (at page 32 of the transcript) that Mr Reid:

> '"did communicate with the insurance company on behalf of the defendant and likewise the loss adjustor', he did attend the hardware and made checks for prices and materials, he gave these prices to the loss adjustor and importantly that Mr Reid "represented the defendant in that meeting with a view to cause her to benefit by agreeing the most reasonable price to rebuild the wall based on the plaintiff's own stated experience in the construction industry."

[58] There was no evidence from Mr Reid to support these sweeping findings. Of all the work he said he was contracted to do (exhibit 1) and which should have formed the basis of his charges on the invoice (exhibit 2), the only evidence he gave was of

speaking to Mrs Palmer, meeting with the loss adjuster at Mrs Schwartz home, getting a request for prices, and agreeing with Mrs Schwartz and the loss adjuster a price that was reasonable (on pages 7 and 8 of the record of proceedings).

[59] The Parish Court Judge accepted that Mr Reid had "represented the defendant in that meeting [with the loss adjuster] with a view to cause her to benefit by agreeing the most reasonable price to rebuild the wall based on the plaintiff's own stated experience in the construction industry". However, there was no evidence of how Mr Reid "represented" Mrs Schwartz at the meeting with the loss adjuster, to secure "the most reasonable price". The Parish Court Judge simply reasoned "why then would the plaintiff be present at this meeting". He also failed to consider that there was no evidence of any subsequent negotiations with the insurance company, given that the price was agreed on the same day the loss adjuster visited Mrs Schwartz home. He also gave no consideration to Mr Reid's evidence that it was the loss adjuster who asked him to be present and picked him up at his home, although when quizzed further he added "and Mrs Schwartz".

[60] It was the duty of the Parish Court Judge, not only to determine whether, on the evidence, any of the work claimed by Mr Reid was carried out but equally important, to determine whether the documents he tendered into evidence were consistent with his oral evidence. On the evidence, there was no basis on which the Parish Court Judge could properly find that Mr Reid carried out work consistent with the terms of engagement and the invoice. That being so, there would have been no basis

for him to find that the conduct of Mr Reid, that is, 'the performance of the terms of the alleged contract', inferred that a contract had been agreed by the parties and carried out by Mr Reid "all as per exhibit 2".

[61] Mr Reid's oral evidence was also not consistent with his own written terms of reference which formed his offer nor with his invoice. With respect to the invoice, which was admitted into evidence as exhibit 2, Mr Reid claimed he did the work itemized therein and claimed for payment. His visit to the insurance broker in Ocho Rios with Mrs Schwartz to hand over the photographs he took and the report he prepared, was claimed in that invoice, as part of the consultancy work. He had, however, already been paid for his work under the first contract or 'chapter 1' (see page 6 of the record of proceedings) and the visit to the insurance company was before he was engaged in 'chapter 2'. It is clear, on the evidence, that when he accompanied the Mrs Schwartz to the broker, there had been, as yet, no alleged discussion for him to 'liaison' with the insurance company, so that that visit could not have formed part of the contract in what the Parish Court Judge termed as 'chapter 2'.

[62] It is also clear on the evidence that the authorization for him to speak to the insurance company in the person of Mrs Palmer, given whilst he was at Mrs Schwartz's home, was simply for him to get permission from Mrs Palmer for him to speak to the loss adjuster. It could not, therefore, form part of his service to "communicate with insurance company until agreed settlement". There is no evidence he did anything else

with any personnel at the insurance company apart from Mrs Palmer, pursuant to any consultancy contract.

[63] The Parish Court Judge, therefore, erred in failing to properly assess the impact of exhibits 1 and 2 on the oral evidence at trial, and in accepting them as reliable and supportive of Mr Reid's claim. This ground would, therefore, succeed.

Whether the Parish Court Judge failed to resolve the grave inconsistencies on the respondent's case ground (1) (a)

[64] No submission was made on this ground.

[65] There were major inconsistencies in the evidence of Mr Reid which were not resolved or even considered by the Parish Court Judge. Mr Reid's evidence as to the amount of time he spent carrying out the alleged consultancy contract is inconsistent. On the one hand, Mr Reid's evidence was that he first visited the home of Mrs Schwartz in August 2018. His response on being asked by the court when it was he last returned to the property was: "say I went on Monday; I went back on Tuesday". However, what the Parish Court Judge clearly failed to consider, was the fact that Mr Reid has claimed compensation for several visits to Mrs Schwartz's home to get details for the insurance company, which was not consistent with his answer to the court.

[66] The Parish Court Judge also failed to consider that Mr Reid's invoice was inconsistent with his evidence in the witness box and also with his terms of engagement. If his answer to the Parish Court Judge was correct with regard to the number of times he visited Mrs Schwartz home, it would be totally inconsistent with the

rest of his evidence. The date on exhibit 1 is 10 August 2018, the date on exhibit 2 is 21 August 2018, however, in exhibit 2 (the invoice) he claims for payment for "three weeks running around petrol and time". Also, according to the transcript, his evidence as to when he gave Mrs Schwartz his invoice was that he did so in early 2018, although this may have been an error, as the Parish Court Judge's recollection, in his written judgment, is that Mr Reid's evidence was that it was in September.

[67] Mr Reid's evidence in chief was that after Mrs Schwartz paid him for digging out the wall they closed that chapter. What followed was this:

> "Mrs Schwartz then asked me to liaise with the insurance company and do all the necessary communication to make sure that she can get paid at the end by the insurance company for her damage wall.
>
> She gave me all the information for her insurance company. We sat at her house and we called the insurance company on my phone. She gave me authorization to speak on her behalf. I did speak on her behalf that day by phone to one Mrs Palmer.
>
> I met up with a loss adjuster Mr Robinson. Mr. Robinson in the presence of Mrs Schwartz asked me to give him the prices of the steel, just the upright steel, cement and the blocks are going to be a separate price. So he just wanted the two (2) stuff – price of the steel and the cement and the labour
>
> We, myself, Mrs Schwartz and Mr Robinson finally came to an agreement for a total of six hundred and eighty thousand dollars ($680,000.00)."

[68] Mr Reid then said that prior to this, he had informed Mrs Schwartz of the charges for his consultancy fee, "the day or the day after we concluded the payment of the five

thousand dollars". He also said in his evidence in chief that after Mrs Schwartz agreed to his price for his services and gave him all the information:

> "And that's where we are at because the insurance company represented by Mr. Robinson, the loss adjuster was present at Mrs. Schwartz house with myself and Mrs. Schwartz – we all agreed to the price and that it is reasonable."

[69] He also said that it was the loss adjuster who picked him up and took him to Mrs Schwartz's house. Mrs Schwartz confirmed that Mr Reid came with the loss adjuster and that this was the day after Mr Reid spoke to Ms Palmer. So that although Mr Reid gave no concrete evidence as to the time he spent carrying out the alleged consultancy contract, the evidence, from both sides, suggest that at the most, only a day had passed between when Mr Reid said they entered into the contract and he spoke to Mrs Palmer at Mrs Schwartz home and the visit of the loss adjuster.

[70] Also of significance, is the fact that between 10 August 2018, when the so-called terms of engagement was done, and 21 August 2018 when the invoice was done, is only 11 days, yet, Mr Reid claimed in the invoice for payment for three weeks. Furthermore, there is no indication in the invoice of what the running around entailed or what it was intended to or did achieve.

[71] Although Mr Reid did not definitively state how soon after his conversation with Mrs Palmer he met with the loss adjuster at Mrs Schwartz home, based on his narrative, it is consistent with the evidence of Mrs Schwartz that the loss adjuster came the day after she spoke with the insurance company. That means Mr Reid's evidence that he

spent three weeks running around to hardware stores to compare prices, pursuant to his consultancy contract with Mrs Schwartz, was not true and was contradicted by not only Mrs Schwartz evidence but his own oral evidence and his own invoice.

[72] There being no evidence of any other occasion of any meeting or conversation with the loss adjuster other than on the day they met and travelled to Mrs Schwartz's home, it is clear then that no visit to hardware stores could have been made before that day, and there is no evidence from Mr Reid when he did so. That is also inconsistent with Mr Reid's account of running around for three weeks, making several visits to get the prices of steel, cement and blocks. It was also inconsistent with his invoice which indicated a period of 11 days between the date of the contract and the submission of the invoice for work done.

[73] These were inherent contradictions in Mr Reid's case going directly to the root of his claim to a contract, and which may have affected his credibility but which were not considered and dealt with by the Parish Court Judge.

[74] Furthermore, the letter of engagement had a pricing within a range of $60,000.00 - $85,000.00. Mr Reid claimed for $69,955.00. When asked in cross examination how he arrived at the sum claimed, Mr Reid said he calculated the time spent, the phone calls he made, the cost of transportation and wear and tear on his vehicle, as well as the insurance, licensing and fitness costs. However, Mr Reid gave not one scintilla of evidence regarding the details of these calls and to whom they were made, to where he travelled and how often, what he did, and the amount of time he

spent doing it. There was no evidence as to how he calculated the wear and tear on his vehicle, and why it would have been reasonable for him to charge Mrs Schwartz for the cost of insurance, fitness and licensing for his car.

[75] Mr Reid's terms of engagement stated that he could only give the final costing for his services after the final settlement with the insurance company, which seems to suggest that the cost would be based on the settlement sum. However, this pricing formula was inconsistent with his oral evidence, which was basically that the claim was based on actual expenditure. Further, his evidence of this expenditure was not in line with the items listed in the invoice.

[76] This is his evidence with regard to the figure in his claim:

> "Question: How did you arrive at that figure?
>
> Answer: I calculate the time that I spent, the phone calls I made - mobile phone to call landline, transportation costs.
>
> Question: You had your own vehicle then?
>
> Answer: Yes
>
> Question: So it is based on the usage of your vehicle?
>
> Answer: I have to licence and insure it, fitness it, wear and tear it, it is not for free.
>
> Question: How many hours were you claiming?
>
> Question: I haven't got that calculation with me.
>
> Question: What was your hourly rate?
>
> Answer: I don't work on an hourly rate I work on the time I put in.

Question: How did you calculate your phone calls?

Answer: I calculate the cards I bought.

Question: How many cards did you buy?

Answer: I don't have that cost with me sir but I came to my figure and I know what I come to.

Question: How did you calculate your transportation?

Answer: Petrol and daily use of car.

Question: But you don't have it written down?

Answer: No."

[77] The terms of engagement relied on by the Parish Court Judge as evidence of the offer in contract that was valid and certain, has in it a formula for pricing which was dependent on the "final settlement" with the insurance company. Based on the fact that it had a range of $60,000.00-$85,000.00, it is not clear on what basis it would become fixed. Was it to have been a percentage of the settlement? The figure claimed, by my calculation, is just a bit more than 10% of the settlement sum.

[78] In cross examination, Mr Reid agreed that he did not tell her how much he would charge for telephone calls because, he said, he had not made the calls yet. He also did not tell her how much he would charge for driving around because he could not, as he put it, "predict something I haven't done yet". He also could not tell her how he arrived at his professional charges because he did not yet complete the work. It begs the question, therefore, how would he then have known that all that work would result in a figure anywhere from $60,000.00 to $85,000.00? The Parish Court Judge did

not consider this very obvious and pertinent question which arose on the evidence. The Parish Court Judge was, therefore, in error when he found that the contract was certain because the pricing was based on a range, when Mr Reid's oral evidence showed that it was based on assertions of 'actual' expenditure, which was not proved on the evidence. Furthermore, the Parish Court Judge did not resolve the inconsistencies on pricing between the terms of engagement which he accepted as proof of the offer of the contract, and the oral evidence of Mr Reid, which he also accepted as proof.

[79] In his invoice Mr Reid claimed to have visited Mrs Schwartz's property several times to obtain details for the insurance company. However, his oral evidence, supported by the evidence of Mrs Schwartz, was that, with regard to 'chapter 2', he would have visited Mrs Schwartz's home twice, first on "Tuesday", having gone there for 'chapter 1' on "Monday", and secondly, on the day the loss adjuster came. That would have been in keeping with his further evidence which showed that he went to her home the day he spoke with Mrs Palmer from the insurance company and the day he went with the loss adjuster. That would also have been in keeping with Mrs Schwartz evidence that after Mr Reid spoke to the insurance company, the following day he came with the loss adjuster. There was, therefore, no evidence to support his claim that he went to Mrs Schwartz home several times to obtain details for the insurance company.

[80] These inconsistencies were material, going to the root of Mr Reid's claim that he had a contract with Mrs Schwartz and the Parish Court Judge fell into error when he

found that there were "no inconsistencies or discrepancies within the case of the plaintiff that would undermine the substratum of the case and [which] would affects [sic] the Court's finding". Perhaps if he had considered them, they may have affected his finding. There is merit in this ground.

Whether the Parish Court Judge dealt with the matter on an erroneous view of the facts – ground (1)(b);

Whether the Parish Court Judge so misdirected himself on crucial pieces of evidence that this court must interfere- ground (b)

[81] No submission was made on these grounds.

[82] These grounds require an examination to be done of several crucial pieces of evidence and the manner in which the Parish Court Judge treated with each of them. In addition to my findings above as to the errors made by the Parish Court Judge in his treatment of the uncontroverted evidence regarding the existence of the insurance claim and the previous offer, the fact that Mr Reid was interested in the contract to rebuild the wall, the letter of engagement and invoice, and the inconsistencies and discrepancies in the oral and written evidence of Mr Reid, I also consider the following errors made by the Parish Court Judge in treating with some of the facts in this case.

[83] Mrs Schwartz gave evidence that Mr Reid came to her house the day after she met him, worked on her wall and left. A few days after that she saw him and he told her the report was ready and he had it in his possession. He offered to take it to the insurance company himself to prove the steel was in the wall. They both went to the

insurance company. This is supported by the evidence of the respondent himself whose evidence in chief was that:

> "I arranged with Mrs Schwartz to return to the property with a jack hammer which is a heavy duty drill which I will use to dig out sections of the wall to expose the steel in the wall. Returned to the property and dug out the wall, expose the steels, take photographs, write a report and accompanied Mrs Schwartz to the insurance company ….
>
> I charged Mrs $5,000.00 to do that part of the work. She paid and I gave her a receipt."

[84] In his own words the digging out of the wall, the taking of photographs, the preparation of the report and the visit to the insurance company (broker) to hand it over was all done in "chapter 1". He said, "we closed that chapter". Why then does the visit to the insurance company with Mrs Schwartz appear in the invoice for chapter 2? This was not considered or explored by the Parish Court Judge. Instead, he found that Mr Reid did visit the insurance company with Mrs Schwartz when considering whether a consultancy agreement existed. This was an error on the part of the Parish Court Judge, as this visit was done pursuant to the first contract, 'chapter 1' and before any alleged engagement for 'consultancy services' in 'chapter 2'. There is no evidence from Mr Reid that he visited the insurance company at any time, thereafter.

[85] There is also the question, which has not been answered in the evidence of Mr Reid, of what further information he needed to obtain or which was necessary to forward to the insurance company, having already dug out the wall, exposed the steel, taken the pictures and submitted a report, and bearing in mind that a claim had already

been made and was being processed. Inferentially, there could have been nothing else required, other than for the loss adjuster to come and verify the state of the wall, himself. On Mr Reid's evidence no account was given as to what these details that he needed to visit Mrs Schwartz's home "several times" to obtain were. The only detail he actually mentioned was given to him by Mrs Schwartz was the policy number. The Parish Court Judge did not seem to be bothered by this lack of evidence.

[86] Mr Reid placed a great deal of weight on his having been given Mrs Schwartz's insurance details and being present when the loss adjuster came, in order to prove that he had a contract with Mrs Schwartz. He said it at page 7, then again at page 8 and again at page 10 of the record of proceedings. As I have already stated, the Parish Court Judge failed to consider this evidence against the background that Mr Reid had already done a report on Mrs Schwartz's wall for submission to the insurance company in support of her claim, and that the said report, in all probability, would require details of the name and address of the policy holder and the likely the policy number, in order to identify which claim it was in regards to. The Parish Court Judge also accepted, as credible, Mr Reid's evidence that he would not have taken her policy information if she had not agreed to his terms. However, he failed to consider that Mr Reid taking her policy information could not be conclusive proof that there was a contract because of his report on "chapter 1" and more importantly because of the paucity of evidence regarding his use of the policy information in conducting any of the "consultancy" services.

[87] As said before, Mr Reid gave no evidence of any contact with the insurance company outside of the call to Mrs Palmer in the presence of Mrs Schwartz. His only evidence of any conversation with the loss adjuster was on the day of the visit to the home of Mrs Schwartz to examine the wall. For neither of these two incidents would Mr Reid have required Mrs Schwartz's policy information. He certainly would not have needed it to go to the hardware store to compare prices. In any event, why would it require several visits to obtain insurance details?

[88] The Parish Court Judge also took the view that there was no other explanation for Mr Reid's presence at Mrs Schwartz home the day the loss adjuster came other than that it was pursuant to the "consultancy" contract. In doing so, he failed to consider the explanation given by Mrs Schwartz. It seems to me, based on her explanation, that it would not have been unusual for Mr Reid to be present when the loss adjuster came, having been the one who had exposed the steel, and he being desirous of doing the work to reconstruct the wall. Mrs Schwartz said he told her that is why he wanted to be there. Mr Reid himself told the court the loss adjuster asked him to be there. The Parish Court Judge did not consider this when he asked himself the question "why else would he be present" and found that he was there pursuant to a contract. In asking himself that question, it is clear he only considered one possibility and gave no thought to the possibility raised by the evidence of Mrs Schwartz and the evidence given by Mr Reid himself when he admitted that the loss adjuster asked him to be there. It is quite possible he may have still dismissed the explanation given by Mrs Schwartz but it is his duty to at least consider it before dismissing it.

[89] The Parish Court Judge also found that Mr Reid did all the work set out in his terms and in his invoice but there was no evidence from which he could have arrived at that conclusion. The only concrete evidence of any work done pursuant to this alleged "consultancy contract", given by Mr Reid, was the fact that he accompanied the loss adjuster to Mrs Schwartz home. His mere presence, which outside of the contents of exhibit 1 and 2 was the only evidence of anything done by him, was, however, not sufficient for the Parish Court Judge to find that there was a contract to pay him $60,000.00-$80,000.00 for a consultancy liaison fee.

[90] There were also findings made by the Parish Court Judge which were not in keeping with the evidence. His finding that Mr Reid did communicate with the insurance company for the benefit of Mrs Schwartz until a settlement was reached is not supported by the evidence. There is not one scintilla of evidence to support this finding. The only evidence of contact with the insurance company from Mr Reid was the one call by Mrs Schwartz, in his presence, to speak with the insurance company. She said it was because he wanted to be present when the loss adjuster came. He gave no evidence of what his objective in speaking with Mrs Palmer was. The only evidence of the objective came from Mrs Schwartz. There is absolutely no evidence of any communication with the insurance company that involved settlement discussions.

[91] The Parish Court Judge's finding that Mr Reid visited the property several times to obtain details for the insurance company is also unsupported by the evidence and is, therefore, unsustainable. Mr Reid's own evidence is that he visited Mrs Schwartz's home

only two times for "chapter 2". The first was the day of the agreement and the second was the day he visited with the loss adjuster. This is supported by the evidence of Mrs Schwartz.

[92] Further, there was no evidence of what details he claimed were required and collected to be given to the insurance company after the report on the wall had been completed. This aspect of the 'consultancy' work remained unproven at the end of the case.

[93] He also found that Mr Reid had attended the hardware stores and had given the prices to the loss adjuster and met with him with a view to Mrs Schwartz getting paid. However, the only evidence from Mr Reid, in this regard, is that the loss adjuster asked him to give him the prices of the steel, cement and labour whilst they were at Mrs Schwartz's house. He did not give evidence of actually giving the information to the loss adjuster or of attending any hardware store before or during this meeting to get this information.

[94] The Parish Court Judge not only found that Mrs Schwartz's actions in authorizing Mr Reid to speak to Mrs Palmer and loss adjuster and in permitting him to be present in her home when the loss adjuster came were evidence of her clear acceptance of Mr Reid's offer of services but he also found that Mr Reid used his expertise and in furtherance of their contract caused Mrs Schwartz to benefit from a favourable payment from the insurance company. There is absolutely no evidence to support such a finding. I have already shown that the only evidence of what the call to Mrs Palmer was

about came from Mrs Schwartz. I have also already pointed out that Mr Reid gave no evidence of using his expertise to cause Mrs Schwartz to benefit from a favourable payment.

[95] The Parish Court Judge ultimately concluded that "all the actions that [Mr Reid] took subsequent to [Mrs Schwartz] agreement to Exhibit 1 were meant to finalize a reasonable price with the loss adjuster and ultimately the insurance company". However, there was no basis for such a finding as no evidence was given by Mr Reid of any action taken to finalize the price with the loss adjuster or the insurance company.

[96] The evidence before the court with regard to the payment by the insurance company is that the loss adjuster came to Mrs Schwartz's home and on the same day signed off on the amount Mrs Schwartz would receive, there being proof of steel being in the wall. The evidence, therefore, is that the insurance company paid out on a policy that they were contractually bound to pay on and that they had already agreed to pay on before Mr Reid came into the picture. This is inclusive of an additional amount which they had committed to pay, subject to proof that there was steel in the wall. The only concrete evidence of Mr Reid's involvement in and influence on the process, is in the fact that it was he who exposed the steel in the wall and did the report.

[97] To succeed in his claim Mr Reid would have had to show that there was a contract and in pursuance of that contract he did work which, in some way, influenced the amount by which the settlement was increased. There is no evidence at all that the settlement sum was influenced by anything Mr Reid did or said other than his digging

out the wall, exposing the steel and providing a report, for which he was previously paid. The fact that he was present when the loss adjuster arrived to inspect the wall can in no way point to an inevitable conclusion that this was pursuant to a 'consultancy' contract, nor is there any evidence of anything he did or said to the loss adjuster or to the insurance company that indicated this was so, or which influenced the amount approved by the insurance company. Mr Reid himself gave no evidence of any words or actions emanating from him which could have had that effect except for his vague claim that "we all agreed to the price and that it is reasonable".

[98] The evidence from Mrs Schwartz is that the loss adjuster came the day after the conversation with Mrs Palmer. This is supported by evidence from Mr Reid. The day the loss adjuster came Mrs Schwartz signed off on the settlement and the loss adjuster left. The insurance company gave her $180,000.00 over and above the original offer of $500,000.00, based on the proof that steel was in the wall. She said it was after that that Mr Reid served her a paper containing things that they had not spoken about, having insisted that he wanted the job, and her having told him he could not get it.

[99] It was curious too, that although the Parish Court Judge found that they had concluded 'chapter 1', which was a separate contract, he took the view that in order to determine whether there was a contract in 'chapter 2', he had to have regard to 'chapter 1'. He found that it was due to 'chapter 1' that Mrs Schwartz invited Mr Reid to her house and asked him to consult with the insurance company on her behalf. However, there is no evidence that Mrs Schwartz invited Mr Reid to her house. On her

evidence, he invited himself over. On his evidence he gave no explanation as to how he came to have turned up at her house. Therefore, there was no basis for the Parish Court Judge to find that it was due to the work of Mr Reid in 'chapter 1' that he was invited to Mrs Schwartz home for her to request he do business on her behalf. It is true that they were at her house when the call to the insurance company was made, but the only explanation as to why he was there in the first place, came from her, yet the Parish Court Judge rejected it for evidence of an "invitation" which did not exist.

[100] The Parish Court Judge also seemed to have misdirected himself on crucial pieces of the evidence. Most significantly, he took the view that Mrs Schwartz's evidence was not credible as it would amount to her inviting and allowing a stranger into her home without an agreement. He much preferred the "context" provided by Mr Reid and his "subsequent conduct", finding it a more "logical and credible account". However, the evidence of both Mr Reid and Mrs Schwartz is that Mr Reid first worked on her wall, at a time when she had just recently met him. The wall is at her home. She allowed him to accompany her to the insurance company, even though it was not part of his remit to dig out the wall and expose the steel. During that time he was asking for the job to rebuild the wall. Her evidence is that he turned up at her home asking to be present when the loss adjuster came. He wanted to speak to the loss adjuster since he was the one who had located the steel in the wall but informed her that she would have to give permission for him to speak to the loss adjuster. It was in that context that she allowed him in her home to speak on the phone to the insurance company to gain

permission for him to speak to the loss adjuster who was coming to the property to look at the wall himself.

[101] Mr Reid, as said before, gave no explanation as to how he came to be at Mrs Schwartz's home. His evidence is that they were already at Mrs Schwartz house when the agreement was struck. This was also what was recollected of the evidence by the Parish Court Judge. Therefore, the Parish Court Judge misdirected himself and came to an erroneous conclusion from the evidence when he found that Mrs Schwartz invited Mr Reid to her house pursuant to the "consultancy contract" and that otherwise it would mean she allowed a stranger into her house without a contract.

[102] The relationship between Mrs Schwartz and Mr Reid was the same on either of their account. The only disagreement between the two is whether they had a consultancy contract. The Parish Court Judge was, therefore, wrong to determine that because of the fact that they were strangers, the context provided by Mr Reid of how he came to be at her house provided a more logical and credible account and that Mrs Schwartz account would amount to her allowing a stranger in her home.

[103] Mrs Schwartz's account is the only one which provided a context as to how Mr Reid came to be in her home. In his examination in chief Mr Reid did not indicate how he came to be at Mrs Schwartz home. Mrs Schwartz's evidence is that he came there uninvited asking for the job to build the wall and to be present when the loss adjuster came. There was no evidence from Mr Reid to the contrary. Mr Reid gave no evidence

as to why he went to Mrs Schwartz's home. Therefore, her evidence as to why he came remained unchallenged.

[104] I am not certain what was so strange or incredible about her account, but the Parish Court Judge found it so. Certainly, at the time when Mrs Schwartz and Mr Reid were on the phone to the insurance company, based on the above narrative, he was no longer a complete stranger to her. Furthermore, if Mr Reid was to be viewed as a stranger to Mrs Schwartz, on either of their account he would still be a stranger, as the fact of having a consultancy contract with her would not have made Mr Reid any less of a stranger. The Parish Court Judge's finding on Mrs Schwartz credibility, in this regard, is irrational.

[105] I also find that the Parish Court Judge's approach to the nature of the contract between the parties was contradictory and inconsistent, as, on the one hand, he claimed the arrangement was informal, as there was no formal agreement and no formality in the agreement, but at the same time, he accepted that Mr Reid's offer was contained in a formal written document which Mrs Schwartz accepted orally and by conduct. Mr Reid's evidence, which the Parish Court Judge found impressive, was that "I believe in black and white, never tells lie. Shakespeare tells you that the pen is mightier than the sword". Yet the Parish Court Judge failed to question why, with that attitude, and having taken the time to write a clear formal offer of his so called "terms of engagement", Mr Reid never ensured that Mrs Schwartz gave him a written acceptance or acknowledged her acceptance on his written offer.

[106] The Parish Court Judge also found that the lack of formality in the alleged contract should not 'deficit' the claim as it was an oral contract and the law was "trite on oral contracts". After referencing the fact that the earlier contract between the two was informal in nature, the Parish Court Judge said this:

> "It is unclear now as to why so much emphasis is being placed on the lack of formality in this disputed contract. The defendant may be labouring under a misapprehension of the law believing that the lack of a formally signed document by herself and the plaintiff would have been sufficient to defeat the claim and further seeking to forfeit her commitment under the oral contract by now holding out in defence that there was no signed agreement..."

[107] To my mind, however, he failed to comprehend that Mrs Schwartz stated defence was not based on the lack of formality. It was a blanket denial that Mr Reid had been engaged as her consultant. The issue of formality was raised by Mr Reid himself in his examination in chief and in cross examination. It was Mr Reid who claimed to have drafted the terms of the contract in a written letter. Mrs Schwartz was, therefore, entitled to challenge the fact that there was nothing in writing signed by her, since Mr Reid had made a formal offer in writing and claimed in his evidence, that "the pen was mightier than the sword". If that was his attitude and posture, the question which arises was why then did he not insist on the same formality with regard to the acceptance of his detailed written offer? The Parish Court Judge clearly misdirected himself when he said that it was "unclear now as to why so much emphasis is being placed on the lack of formality in this disputed contract". Mrs Schwartz was entitled to make that challenge to his evidence. I conclude, therefore, that on this aspect of the

case the Parish Court Judge took the wrong approach to the evidence and in doing so failed to ask himself the correct question.

[108] In finding that the sum claimed was within the range stipulated in the offer letter, and, therefore, ought to be paid, the Parish Court Judge erred, since the pricing formula in the terms of reference, exhibit 1, on which the claim was said to be based, was entirely different from the pricing formula in the evidence given by Mr Reid with regards to the price of the contract. The sum claimed was a specific sum of $69,955.00 and there was absolutely no evidence as to how this was arrived at. The Parish Court Judge simply accepted the sum due was proved because it happened to "fall within the range".

[109] The Parish Court Judge also failed to appreciate that although Mr Reid claimed to have met with the loss adjuster and persuaded him to an agreement of $680,000.00 for the replacement of the wall, the only evidence of a meeting given by Mr Reid was on the day the loss adjuster came to Mrs Schwartz's house to view the wall himself. There is no evidence given by Mr Reid of any other meeting or any other conversation with the loss adjuster except on that day. It was on that day he said the loss adjuster asked for the prices but there was no evidence from Mr Reid that he gave him those prices or when or how he obtained those prices to give the loss adjuster, if indeed he did.

[110] Although he said that he visited hardware stores to get the prices of steel and cement, there is no evidence when this was done or how many stores he visited between the date of the contract and the next day when the loss adjuster came to Mrs

Schwartz's home. The Parish Court Judge made no finding as to when he found this work was done. In his invoice Mr Reid claimed he spent three weeks running around. But as I have already shown there were only 11 days between the alleged offer letter and the invoice for services rendered. There is also no evidence from Mr Reid how he influenced the loss adjuster to agree the figure he did. He merely said he and Mrs Schwartz and the loss adjuster "agreed" a price. There was no evidence what his contribution to this agreement was.

[111] The evidence of Mrs Schwartz is that on the day the loss adjuster visited her home they signed off on the payment. Furthermore, that evidence is supported by the evidence of Mr Reid. It is clear, therefore, that Mr Reid could have done nothing at that meeting to influence that payment. Mr Reid was engaged to expose steel in Mrs Schwartz's wall and the report was filed precisely so that the insurance company would increase its offer. Mr Reid's evidence is that the loss adjuster asked him to be there as well as Mrs Schwartz and there is no allegation the loss adjuster was a party to any contract with Mr Reid. It is entirely unclear, therefore, on what basis the Parish Court Judge came to the conclusion that Mr Reid used his expertise and caused her to benefit from a favourable pay-out.

[112] One bit of evidence put forward by Mr Reid in proof of his claim and which the Parish Court Judge accepted as conduct by Mrs Schwartz showing acceptance of the offer for services, was the fact that Mrs Schwartz gave him all her insurance details in order that he could consult with the insurance company on her behalf. However, in

accepting this evidence as proof the Parish Court Judge failed to consider the fact that Mr Reid referred only to the policy number and that he had already submitted a report on the wall to the insurance company under his first contract with Mrs Schwartz. The probability that Mr Reid would, in all likelihood, have been given some details of the policy for the purpose of the report on the steel in the wall, so that the insurance company could identify which claim the report was in support of, did not seem to occur to the Parish Court Judge. Against the background of Mr Reid's preparation and submission of a report to the insurance company on Mrs Schwartz's behalf in "chapter 1", the Parish Court Judge ought to have considered whether Mr Reid's claim that he got the insurance information in order to conduct his consultancy contract might have been at best contrived, and at worst a down right fabrication. This, in the light of the fact that there was no evidence from Mr Reid that he used the insurance information he claimed he was given, to do anything at all.

[113] These grounds have merit.

Whether the Parish Court Judge applied the wrong standard of proof in determining the case – ground 1(c)

[114] Counsel Mr Brown submitted that although the Parish Court Judge correctly stated what the applicable standard of proof in this case was, he erred in improperly applying it, which resulted in him coming to the incorrect decision.

[115] Mr Reid contended that he had successfully proven his case to the requisite standard by providing the court with the written documents he served on Mrs Schwartz. He submitted that the letter outlining the services he had provided to Mrs Schwartz was

in very clear terms. He further submitted that the Parish Court Judge had "pondered gingerly" the evidence provided to him in writing and orally before coming to the right decision. He maintained that his evidence in writing and orally was "overwhelming" and that the Parish Court Judge had made no errors.

[116] The Parish Court Judge was correct that the standard of proof applicable to this case is the civil standard. The standard of proof is whether on a balance of probabilities it is more probable that the allegations are true than not true. Although the Parish Court Judge correctly stated the standard of proof, to my mind, he improperly applied it. Mr Reid had the burden to prove that the facts he relied on were more probably true than not, and not merely that they are more probable than the explanation advanced by the other side (see Murphy on Evidence at page 80-81). This cannot be based on demeanour alone, particularly where the findings of fact do not accord with the evidence in the case.

[117] Even if the Parish Court Judge found that Mrs Schwartz's defence to the claim was not credible, this did not allow him to find that Mr Reid's case was true without a thorough examination of the facts he relied on to prove his case. The burden of proof was on Mr Reid, who had asserted he had a contract, to prove the existence of the contract, his due performance of that contract according to its terms, the breach of it by the other party, and the loss suffered. Although the Parish Court Judge, having rejected Mrs Schwartz's case, claimed to have gone back to Mr Reid's case, he failed to conduct a proper assessment of the claim, to determine whether Mr Reid was telling

the truth. It was not enough for him to find that the "context" provided by Mr Reid was more "logical" and "credible", he was also required to do the assessment necessary to determine whether it was true.

[118] This ground succeeds.

Conclusion and disposition

[119] I have asked myself the question whether the Parish Court Judge was plainly wrong in his findings and can only conclude that he was indeed so. I am of the firm view that the Parish Court Judge misused the advantage of seeing and hearing the witnesses, and as such his decision should be reversed. The Parish Court Judge failed to assess Mr Reid's oral evidence against the documents he relied on to substantiate his claim, and failed to consider, assess and reconcile the grave inconsistencies inherent therein, before coming to the conclusion that Mr Reid was a credible witness. He also failed to reconcile inconsistencies in Mr Reid's evidence which went to the root of his claim. The Parish Court Judge also made findings of facts which was either contradicted by other proven evidence or which had no evidence to support such a finding and, therefore, fell into error. He also took an erroneous view of some facts in issue and misdirected himself on crucial pieces of evidence.

[120] I bear in mind that where a decision of a judge is based on his findings of facts and the view that he takes of the witnesses, it should not be interfered with by the appellate court unless it is:

> "affected by material inconsistencies and inaccuracies or he may be shown to have failed to appreciate the weight or bearing of circumstances admitted or proved or otherwise to have gone plainly wrong." (**Harracksingh v Attorney General of Trinidad and Tobago and another** [2004] UKPC 3 at paragraph 11, relying on Watt or Thomas v Thomas [1947] AC 484, [1947] 1 All ER 582, at page 491)

[121] I find it to be so in this case. The Parish Court Judge plainly erred and his decision is unreasonable in so far as it is not supported by the evidence. I take the view that the appeal ought to be allowed, the decision of the Parish Court Judge be set aside, and judgment be entered for the appellant Mrs Schwartz, with costs of $50,0000 both here and in the court below.

MORRISON P

ORDER

(1) The appeal is allowed.

(2) The judgment and orders of his Honour Mr Alwayne Smith, Parish Court Judge for the parish of Saint Mary, made on 11 February 2019 is hereby set aside.

(3) Judgment is entered for the appellant Louise Estella Calder-Schwartz o/c Laise Claudia Schwartz.

(4) Costs of $50,000.00 to the appellant Louise Estella Calder-Schwartz o/c Laise Claudia Schwartz, both here and in the court below.