

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 4/1996

**COR: THE HON MR JUSTICE RATTRAY, PRESIDENT
THE HON MR JUSTICE PATTERSON, J A
THE HON MR JUSTICE HARRISON, J A (AG.)**

BETWEEN	AIRPORTS AUTHORITY OF JAMAICA	APPELLANT
AND	F.R.E.M. LIMITED	RESPONDENT

**Dennis Goffe, Q.C. & Suzan McGhie-Sang instructed by Myers, Fletcher & Gordon
for Appellant**

**Miss Nancy Anderson & Mrs. Patricia Roberts-Brown instructed by Crafton S. Miller
& Co. for Respondents**

21st May, 1996

RATTRAY, P

We have not been assisted by a glimpse of any insight into the reasoning through which the learned trial judge arrived at his decision since the judgment discloses no rationale. The contractual relationship was entered into between the parties by way of a written contractual document. The plaintiff F.R.E.M. Ltd contended at the trial that there was an implied term of the contract which was, it appears from the submissions of counsel, that there was a reasonable expectation that the plaintiff should do all the repairs required to be done to the defendant's fire equipment. Such an implied term was indeed never pleaded and should have been if it was being relied upon. The plaintiff did plead, which is denied, that there was a course of conduct of the

defendant established under the agreement as well as a previous agreement in writing of 12th January 1986 between the parties.

The particulars of this course of conduct as pleaded in paragraph 5 of the statement of claim are as follows:

"5. In so far as the course of conduct, this consisted of or is to be inferred from the following :

(a) The Plaintiff submitted monthly reports disclosing repairs, maintenance or other work to be carried out, and the Defendant requested the Plaintiff to carry-out the necessary repairs, maintenance or other work, and the Plaintiff duly carried out the said work.

(b) The Defendant well knows that the Plaintiff has a highly qualified Managing Director with particular expertise in this area and in the maintenance of this equipment, and it is able to import the type of vehicles needed for serving the airports, as well as parts for these vehicles, and the Defendant therefore relied on the Plaintiff to supply vehicles and parts, as well as to maintain and repair them."

It seems to us that what is pleaded here, is the procedure followed during the currency of the previous contract and does not itself form part of the terms and conditions of the present contract. A court will only imply terms not in the contract which are obviously necessary to give efficacy to the contract. Furthermore, a court cannot imply terms that are contrary to the express terms of the contract.

In so far as it is submitted that the written contract and/or by implication and/or by course of conduct confers upon the plaintiff the right to be given all the work of the defendant, this exclusivity is rebutted by the terms of the contract which in express words reads as follows:

"It is hereby agreed that:

1. The Contractor shall be retained by the Authority to provide specialist services at short notice at any time requested by the authority in respect of any or all rescue and fire fighting vehicles and equipment at both International Airports."

The use of the term "any or all" means that the defendant may require the plaintiff to do all the work or any of the work that the defendant wishes to have performed. The authority to carry out the work has to be activated by the request of the defendant.

The facts as evidenced before the court and the interpretation of the contract do not impose upon the appellant the obligations claimed. There is therefore no basis upon which the learned trial judge could have found in favour of the respondent.

In these circumstances therefore, despite the valiant efforts of Miss Anderson, the appeal is allowed, the judgment of the learned trial judge in the Supreme Court is set aside and judgment is entered for the defendant/appellant with costs to be agreed or taxed both in the court below and in the these proceedings before the court of Appeal.