SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.276 OF 1992

BETWEEN:

FRANCIS MAURICE

Plaintiff

and

BENOIT LERICE

Defendant

Appearances:

Mr. Martinus Jean Francois for the Plaintiff.
Mr. Alberton Richelieu for the Defendant.

2000: July 24
July 27

JUDGMENT

[1] HARIPRASHAD-CHARLES J: On 29th day of May 1992, the Plaintiff filed a Writ of Summons indorsed with Statement of Claim claiming:

(a) The sum of $151,015.00 being the outstanding amount owed to the Plaintiff under THE BUILDING CONTRACT and for THE INCREASED WORKS.

(b) The sum of $6, 540.80 being the cost of THE ITEMS SUPPLIED.

(c) The sum of $1,490.08 being the cost of THE TOOLS.

(d) The sum of $1,000.00 being the cost of the Evaluation report by the Quantity Surveyor, E. Desmond Sealy.

(e) General Damages for breach of contract.

(f) The Costs hereof.

[2] The Defendant entered an appearance on 19th day of June 1992 but did not serve and file a Defence. The Plaintiff then proceeded to enter Judgment in Default against the Defendant and on 24th day of August 1994, Judgment in Default was obtained against the Defendant of Special Damages of $160,045.88 and General Damages to be assessed and Costs.

[3] Subsequently, an application was made to set aside the aforesaid Judgment in Default and on 26th day of April 1995, Matthew J. [as he then was] ordered the following:

(1) That the Judgment granted herein and dated 24th day of August 1994 be set aside.

(2) That the Defendant be granted 14 days within which to file and serve his defence on the Plaintiff or his Solicitor.

(3) That Costs be Costs in the cause.

[4] A Defence was filed on 4th day of May 1995. In a nutshell, the Defendant denied the existence of a building contract between the parties and or any written contract of whatever nature signed between the parties.

[5] A request for hearing was filed on 18th day of February 2000.

[6] The matter came on for hearing on 24th day of July 2000. After a protracted start in order to facilitate the presence of the Defendant as well as his Counsel, the matter commenced later that said day. At the commencement, Mr. Richelieu appearing as Counsel for the Defendant intimated that he intended to make a preliminary submission on the pleadings and the Statement of Claim.

[7] The preliminary submission was heard and I reserved decision to 27th day of July 2000. I dismissed it and ordered that the matter be proceeded with. Counsel however, gave notice

of his intention to appeal the decision in Open Court and requested that the reasons be reduced to writing. I obliged.

[8] The preliminary issue that I had to determine was whether or not the pleadings disclose a sufficient cause of action in law.

LEGAL SUBMISSIONS

[9] Mr. Alberton Richelieu, appearing on behalf of the Defendant submitted that the pleadings and Statement of Claim do not disclose a sufficient cause of action in law. According to him, paragraph 2 of the Statement of Claim stipulated that the basis upon which the action was being pursued was by virtue of an oral agreement made on or about 6th day of September 1991 [hereinafter called THE BUILDING CONTRACT] and that the agreed total labour cost for the construction of THE DWELLING HOUSE in accordance with the building plan was $144,000.00.

[10] At paragraphs 10 and 11 of his Statement of Claim, the Plaintiff alleged that on or about the 6th day of September 1991, both himself and the Defendant agreed to reduce the terms and conditions of THE BUILDING CONTRACT into a written agreement [hereinafter called THE PROPOSED WRITTEN AGREEMENT]. The Plaintiff signed three copies of THE PROPOSED WRITTEN AGREEMENT before the Defendant's Solicitors on or about the12th day of September 1992 but the Defendant failed to sign the same.

[11] It is the contention of Counsel that the proposed written agreement has no force in law and that the Plaintiff is claiming the sum of $151,015.00 and other related expenses pursuant to an oral agreement.

[12] Mr. Richelieu submitted that the Defendant has denied the existence of that oral contract and in that regard, he referred to Article 1163 (2) of the Civil Code which states:

> " Proof may be by testimony:
>
> (2) In a matter in which the principal sum of money or value in question does not exceed forty-eight dollars."

[13] Counsel asserted that the only way the Plaintiff would be able to succeed in his pleadings was to show the existence of a written agreement as he, the Plaintiff cannot rely on a proposed written unsigned agreement. The Saint Lucian cases of Anthony Jn. Jules v Veronica Fletcher [Civil Suit No.40B of 1986] [unreported] and Sonia Girard v Vincent Doxerie [Civil Suit No. 408 of 1986] [unreported] were referred to support his assertion.

[14] In relation to paragraph 16 of the Statement of Claim, Learned Counsel contended that the signature appearing on the Building Plan is of no significance as it bears no linkage with the unsigned written agreement.

[15] In reply to the Defendant's case, Counsel for the Plaintiff, Mr. Martinus Francois submitted that the Plaintiff is not relying on an oral contract *per se* as the Plaintiff's claim falls also under Article 1163 (7) of the Civil Code which states as follows:

> "Proof may be by testimony:
>
> (7) In any case in which there is a commencement of proof in writing."

[16] Counsel contended that paragraph 16 of the Plaintiff's Statement of Claim is tantamount to an admission of a contract and referred to Articles 1172 and 1173 of the Civil Code and stated that the Plaintiff has documentary evidence in his possession that will prove an admission of a contract. As Counsel iterated, an admission is an exception to Article 1163 (2).

[17] Counsel referred to Article 1590 of the Civil Code and stated that it has to be read in conjunction with Article 1163. Article 1590 reads:

> 'When an architect or builder undertakes the construction of a building or other works by contract, upon a plan and specifications, at a fixed price, he cannot claim any additional sum upon the ground of a change from the plan and specifications, or of an increase in the labour and materials, unless such change or increase is authorized in writing, or admitted by the proprietor. If in either of the above cases,

> the additional sum has not been fixed by agreement, it shall be determined by proof of value."

[18] Mr. Francois argued that paragraph 3 of the Defendant's defence admits that there was a contract between the parties and it would be a travesty of justice if the Plaintiff was not given an opportunity to be heard.

CONCLUSION

[19] It is common ground that there was no written agreement between the parties.

[20] The authorities of Anthony Jn. Jules v Veronica Fletcher and Sonia Girard v Vincent Doxerie [supra] cited by Counsel for the Defendant are in my view distinguishable from the instant matter. In both cases, evidence was adduced on behalf of the Plaintiff and the Plaintiff had closed their respective case. In the instant matter, no evidence was adduced when the Court was called upon to adjudicate on a preliminary issue.

[21] In my opinion, this matter also calls for an interpretation of Article 1163 and in particular paragraphs (2) and (7). The essence of the Defendant's case was that since there was no written signed agreement and the subject matter is in excess of $48.00; there is no cause of action against the Defendant.

[22] Counsel for the Plaintiff sought to bring his case principally within Articles 1163 (7) and 1172 of the Code. He also alluded to paragraph 3 of the Defence.

[23] At the end of the day, I am more persuaded by the submissions advanced by Learned Counsel for the Plaintiff. At paragraph 3 of the Defence, the Defendant himself averred that:

> "The agreed price between the Plaintiff and the Defendant was $28,000.00 and the Plaintiff commenced the performance of his contract on that understanding.

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[24] I am also of the opinion that Article 1163(7) is applicable as there is evidence of a proposed written agreement which was only signed by the Plaintiff at the Offices of the Solicitors of the Defendant. I also feel that the preliminary submission was premature.

[25] In the premises, I dismissed the preliminary submission of Counsel for the Defendant and ordered that the substantive matter be proceeded with.

Indra Hariprashad-Charles
High Court Judge
18th day of September 2000