SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. 272 of 1992

BETWEEN:

FRANCIS MAURICE

Claimant

and

BENOIT LERICHE

Defendant

Appearances:

Mr. Alvin St. Clair for the Claimant
Mr. Alberton Richelieu for the Defendant.

2002: May 27, 28
July 01

BUILDING CONTRACT...NOT SIGNED BY ONE PARTY...IS CONTRACT ENFORCEABLE...ARTICLE 1163 OF CIVIL CODE ...WHETHER THERE WAS A SUPERVISORY CONTRACT OR A BUILDING CONTRACT... AGENCY...NON EST FACTUM RULE...THE EFFECT OF SECTION 1590 OF THE CIVIL CODE (QUANTUM MERUIT PRINCIPLE)

JUDGMENT

1. HARIPRASHAD-CHARLES J: On 1st day of July 2002, I delivered a two-page written decision in this matter and indicated that in the event of an appeal, the reasons for my decision would be reduced to writing. The following represents my reasoned judgment.

2. The Claimant is a building contractor. The Defendant is a farmer. By oral agreement made between the Claimant and the Defendant on or about 6th day of September 1991, the

Defendant contracted the Claimant to construct for him a one-storey reinforced concrete dwelling house comprising of four two-bedroom apartments at Mongiraud in the Quarter of Gros Islet (hereinafter referred to as THE BUILDING CONTRACT).

3. By the terms of THE BUILDING CONTRACT, the Claimant agreed to carry out the works upon the site for the Defendant according to Building Plan No. 486/89 approved by the Development Control Authority for a total LABOUR price of $144,000.00 to be completed in 9 months. It was also a term of THE BUILDING CONTRACT that the Defendant may employ someone of his choice to be THE SUPERVISOR to supervise the carrying out of the works and in particular to approve the standards of workmanship.

4. On or about the 6th day of September 1991, the Claimant and the Defendant agreed to reduce the terms and conditions of THE BUILDING CONTRACT into a written agreement. The Defendant's solicitors, Messrs. Deterville, John & Company prepared the agreement. On or about the 11th day of September 1991, the Claimant proceeded to the Defendant's solicitors, and was handed an agreement (hereinafter called THE PROPOSED WRITTEN AGREEMENT). THE PROPOSED WRITTEN AGREEMENT contained the terms and conditions of THE BUILDING CONTRACT as outlined aforesaid with some additions thereto which were made by the Defendant.

5. On the 12th day of September 1992, the Claimant signed three copies of THE PROPOSED WRITTEN AGREEMENT before the Defendant's solicitors and left the copies thereof for the Defendant's signature. The Claimant was assured that the Defendant would come to sign THE PROPOSED WRITTEN AGREEMENT. The Defendant never signed the same.

6. The Claimant commenced construction of the dwelling house on or about the 9th day of September 1991. On the 12th day of September 1991 the Defendant verbally requested the Claimant to do modifications to Building Plan No. 486/89. The said modifications entailed increased works (hereinafter referred to as THE INCREASED WORKS). It was agreed that the Defendant would pay for THE INCREASED WORKS, which sum was to be mutually agreed upon by the parties.

7. On the said 12th day of September 1991, Charles Leriche, the son of the Defendant, acting as agent for the Defendant affixed his signature to Building Plan No. 486/89 signifying consent to THE INCREASED WORKS.

8. Besides being a contractor, the Claimant was a well-known National cricketer. He was selected to represent Saint Lucia in cricket overseas. He informed the Defendant of his intention to be out of Saint Lucia from the 29th day of January to the 3rd day of February 1992. The Claimant left his foreman, Mr. Jacob Pascal to oversee and supervise construction of the dwelling house. The Defendant consented to this arrangement. Mr. Pascal was no stranger to the site as he was there from the very inception. The Claimant instructed the Defendant to pay Mr. Pascal on his behalf and Mr. Pascal would in turn, pay the workers.

9. On his return to Saint Lucia, the Claimant was informed that the Defendant had directly paid the Claimant's workers. The Claimant informed the Defendant that since he had breached the terms of the contract, he would refer the matter to his solicitors. On the 11th day of February 1992, the Claimant engaged Mr. Desmond Sealy, a Quantity Surveyor to view and value the exact amount of work done. In his oral testimony before the Court, Mr. Sealy quantified the work done on the dwelling house to be $111,100.00.

10. By letter dated the 13th day of March 1992, the Defendant through the Claimant's solicitors requested the payment of outstanding monies due and owing to the Claimant under THE BUILDING CONTRACT and for THE INCREASED WORKS.

11. The Defendant did not respond to the demand letter from the Claimant's solicitors. The relationship became strained. Nevertheless, the Claimant pressed on with construction works on the said dwelling house. A month later, the Claimant had still not received the arrears owed as well as payment for the work that was being done. In fact, the Defendant had completely stopped all payments to the Claimant. So, once again, on the 18th day of March 1992, he engaged the services of Mr. Desmond Sealy to quantify and evaluate the exact amount of work done. After the Defendant learnt that Mr. Sealy was on site, the

Defendant asked the Claimant to leave the premises. At that stage, the Claimant reminded the Defendant that he was in breach of THE PROPOSED AGREEMENT. The Claimant also reminded the Defendant of the arrears owing to him and his intention to take his tools and materials that he had provided with his own funds whereupon the Defendant responded:

> "Boy, you are a stupid little boy. Leriche never signed no building contract with you, neither do I owe you any money. Get out of my premises. Do not take nothing from here, that you and your lawyer will send me a bill for your materials and tools."

12. On the 23rd day of March 1992, a second letter was sent to the Defendant. This letter requested the Defendant to give reasons why the Claimant was asked to cease work. The letter also requested payment of work agreed upon as quantified by Mr. Desmond Sealy. The Defendant never responded to the letters.

13. As a consequence, the Claimant instituted the present proceedings against the Defendant claiming the following:

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

    (b) The sum of $6,540.80 being the cost of items supplied as particularized.

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

    (d) The sum of $1,000.00 being the cost of the Evaluation Report by the Quantity Surveyor.

    (e) General Damages for breach of contract.

    (f) Costs.

14. On 22nd day of June 1992, Messrs. Deterville, John & Company filed an entry of appearance for the Defendant. No defence having been filed, the Claimant moved the Court to enter judgment in default of defence against the Defendant. Judgment in default of defence was accordingly entered on the 24th day of August 1994. A Summons to assess

damages was filed on the 2nd day of February 1995. While the said Summons to assess damages was pending, the Defendant applied to set aside the default judgment and to extend time to file and serve Defence. A Judge in Chambers granted the order sought by the Defendant and the matter proceeded to trial. A preliminary issue to determine whether or not the pleadings disclosed a sufficient cause of action surfaced on the date of trial. I dismissed the preliminary issue and ordered that the substantive matter be proceeded with. An appeal against my written decision was filed. On the date of hearing, a consent order was entered into and the said appeal was withdrawn. By virtue of the said order of court dated the 21st day of May 2001, the Claimant was given two weeks to file and serve amended Statement of Claim and the Defendant was at liberty to file and serve amended Defence within two weeks thereafter.

15. The gist of the Defendant's amended defence is that there was no building contract between himself and the Claimant nor any written contract of whatsoever nature signed between the parties. The Defendant alleges that the contract was a supervisory one. He admitted that there was discussion between him and the Claimant about the construction of a dwelling house at Mongiraud but that the price asked by the Claimant was so high that it was not within his means to pay. In the end, there was an agreement that the Claimant would supervise the construction of the building from the floor to the ring beam not excluding the roof for a price of $28,000.00 and that thereafter, the Defendant who was himself a builder would allocate various parts of the building to other persons to construct under his supervision.

16. There are several issues to be determined namely:

    (a) Whether or not THE PROPOSED WRITTEN AGREEMENT signed only by the Claimant is enforceable?

    (b) Whether the contract was a supervisory contract or a building contract?

    (c) Whether Charles Leriche was acting as agent for the Defendant?

    (d) Whether the written agreement dated the 26th day of February 1992 falls within the *non est factum* rule?

(e) Whether Section 1163 (1) of the Civil Code of Saint Lucia is applicable?

(f) The effect of Section 1590 of the Civil Code of Saint Lucia.

(a) THE PROPOSED WRITTEN AGREEMENT

17. As Counsel for the Claimant, Mr. St. Clair rightly pointed out in his skeleton arguments filed on the 25th day of April 2002, this issue was actively canvassed before me on the 24th day of July 2000 when I was called upon to adjudicate on a preliminary issue of whether or not the pleadings disclose a reasonable or sufficient cause of action. I delivered a written judgment on the 27th day of July 2000 dismissing the preliminary issue and ordering that the substantive matter be proceeded with. At the conclusion of this trial on the 28th day of May 2002, I reached the same conclusion as I did on the 24th day of July 2000. THE PROPOSED WRITTEN AGREEMENT was prepared by the Defendant's solicitors in accordance with the Defendant's instructions. On the 12th day of September 1992, the Claimant signed three copies of THE PROPOSED WRITTEN AGREEMENT before the Defendant's solicitors and left the copies thereof for the Defendant's signature. It was unfortunate that he did not demand a signed copy before he commenced the actual job. It was not until problems began to surface, that the Claimant realized that the Defendant was not a signatory to THE PROPOSED WRITTEN AGREEMENT. But, in my opinion, the Defendant was well aware of the contents of the contract. His son, Charles Leriche signed on his behalf for some additional work to be done on the said dwelling house. Then there was the letter dated the 26th day of February 1992 written to the Development Control Authority and signed by the Claimant, the Defendant, his wife and his daughter.

18. I do not believe the Defendant that they could not agree on the terms of the agreement in the presence of Mr. Nicholas John and they were sent away but they orally agreed that the Claimant would supervise the construction of the dwelling house up to a particular stage of construction. Why then were those terms not reduced to writing? This brings me to the other issue: Whether the contract was a supervisory contract or a building contract?

(b) NATURE OF CONTRACT

19. The terms of THE BUILDING CONTRACT clearly spelt out that the Claimant agreed to carry out the works upon the site for the Defendant according to Building Plan No. 486/89 approved by the Development Control Authority for a total LABOUR price of $144,000.00 to be completed in 9 months. It was also a term of THE BUILDING CONTRACT that the Defendant may employ someone of his choice to be THE SUPERVISOR to supervise the carrying out of the works and in particular to approve the standards of workmanship. It is therefore obvious that the agreement between the parties was for labour and not limited to supervision.

20. In addition, the Claimant paid the labourers whom he employed. This was evident by the abundance of payroll record book and cheques. The Defendant paid to the Claimant an aggregate of $43,500.00 and this assertion was supported by documentary evidence. So, to say that there was an oral agreement for an agreed price of $28,000.00 between himself and the Claimant whereby the Claimant would supervise the construction of the building from floor to the ring beam not excluding the roof and that thereafter the Defendant would allocate various parts of the buildings to other persons to construct under his supervision is fallacious as the Claimant received $43,500.00. Importantly, there was an annotation on the receipts showing a balance owed by the Defendant to the Claimant every time a payment was received.

21. The Defendant has not produced an iota of evidence to show that he paid the labourers who were employed on the construction site. All that he was able to produce to the court was an abundance of invoices to demonstrate that he purchased building materials.

22. In the light of the evidence, I conclude that the contract was one for labour and was not limited to a supervisory contract.

(c) WAS CHARLES LERICHE THE AGENT OF THE DEFENDANT?

23. Charles Leriche is the son of the Defendant, Benoit Leriche. He was engaged in the purchase of all materials for the construction of the said dwelling house. He paid the Claimant the fortnightly payments as agreed, albeit irregularly.

24. It was abundantly clear from the evidence that the Defendant was more interested in farming. It was also clear that his son, Charles represented the Defendant on site at all times when the Defendant was not present.

25. Was Charles Leriche the agent of his father, the Defendant? Article 1601 of the Civil Code states as follows:

> "Agency is a contract by which a person, called the principal, commits a lawful business to the management of another, called the agent, who by his acceptance binds himself to perform it."

26. Under oath, Charles Leriche testified that he never affixed his signature to the Building Plan No.486/89 and that he never acted as agent for his father. A closer examination of his signature reveals that the signature on Building Plan No. 486/89 is identical with the witness' signature. So, Charles Leriche lied when he said that he never affixed his signature to the said Building Plan and he lied when he said that he was not his father's agent. And I so find.

(d) THE NON EST FACTUM RULE

27. Mr. Richelieu for the Defendant submitted that the written agreement found in a letter dated the 26th day of February 1992 to the Development Control Authority falls within the *non est factum* rule having regard to the fact that Flavia Vilina Honora nee Leriche was deceived into believing that she was signing a letter to the Development Control Authority for the purposes of being granted permission for a shop to provide amenities for the workers on site. When questioned by the Court as to what force was administered to her

by the Claimant so that she could have forged the document in her parents' name, she said:

> "Mr. Maurice asked me that my dad and mum should sign but I signed. That's the force I am talking about?

28. I was able to observe the general demeanour of the witness. I found her to be lying and I rejected her evidence in its entirety. In my firm view, the *non est factum* rule has no applicability in the instant matter.

(e) SECTION 1163 OF THE CIVIL CODE

29. The Defendant contended that THE PROPOSED WRITTEN AGREEMENT has no force in law and that the Claimant is claiming, inter alia, the sum of $151,015.00 pursuant to an oral agreement. It is my considered opinion that this issue was adequately dealt with in paragraphs 12 to 18 of my judgment dated the 27th day of July 2000.

(f) SECTION 1590 OF THE CIVIL CODE (QUANTUM MERUIT PRINCIPLE)

30. The Defendant was well aware that he did not sign THE PROPOSED WRITTEN AGREEMENT and he tried to use it to his advantage. But, Section 1590 of the Civil Code provides some assistance. It states as follows:

> "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."

31. The Claimant engaged the services of a Qualified Valuer and Quantity Surveyor, Mr. Desmond Sealy to visit the locus in quo in order to prepare a labour only value of work carried out up to the 11th day of February 1992. Mr. Sealy, a Quantity Surveyor for the past

30 years valued the work as of that date as $154,400.00. On the 17th day of March 1992, he was again employed by the Claimant to prepare a labour only valuation of works carried out to that date. It totaled $196,600.00. Their reports remained substantially uncontradicted and I accept the evidence of Mr. Sealy.

32. Several other issues were raised. I did not consider them to be significant and consequently did not warrant further consideration.

33. On the totality of the evidence, the evidence of the Claimant is preferred to that of the Defendant. I found the Defendant and his witnesses to be witnesses of untruth and reject their evidence. The submissions of Counsel for the Claimant are indeed more compelling.

CONCLUSION

34. That there will be Judgment for the Claimant in the following terms:
    (1) The sum of $151,015.00 being the outstanding amount owed to the Claimant under the BUILDING CONTRACT representing the difference between the labour value of the works undertaken minus the amount already paid.
    (2) The sum of $1,490.08 being the cost of the Tools.
    (3) Interest at a rate of 6% per annum form the date of judgment to the date of payment.
    (4) Costs of $15,000.00 to the Claimant to be paid by 31st day of December 2002.

INDRA HARIPRASHAD-CHARLES
HIGH COURT JUDGE
14th day of February 2003.