SAINT CHRISTOPHER AND NEVIS

IN THE COURT OF APPEAL

CIVIL APPEAL NO.11 OF 2001

BETWEEN:

COLIN WALTERS

Appellant

and

[1] PETER CRANE
[2] EUGENIE CRANE

Respondents

Before:

The Hon. Sir Dennis Byron — Chief Justice
The Hon. Mr. Ephraim Georges — Justice of Appeal [Ag.]
The Hon. Mr. Adrian Saunders — Justice of Appeal [Ag.]

Appearances:

Mrs. J. Sutton-Daniel for the Appellant
Ms. A. Jarrett and Mrs. M. Walwyn for the Respondent

2003: January 29;
September 22.
2004: January 22 [Re-issued]

JUDGMENT

[1] SAUNDERS, J.A. [AG.]: The respondents in this matter, Mr. and Mrs. Crane, desired to build their retirement home in Nevis. They had previously lived in England. In 1994, in Nevis, they met Mr. Walters, the appellant, and engaged his services to produce architectural designs for the proposed house. The drawings were done by Mr. Walters and posted to the Cranes in England early in 1995. They liked them but they wanted some modifications made to the original plans. They made a list of these modifications and later that year, armed with that list, Mr. Crane returned to Nevis and held discussions with Mr. Walters. During the course of those discussions, the matter of the changes or alterations contained in the list was discussed.

[2] In April, 1997 the Cranes retained Mr. Walters to build their house. The agreed price for labour and materials was $585,000.00, a price which Mr. Walters says he gave to the Cranes in February (the record of appeal states 1999 but I believe it should be) 1997. It was also agreed that construction would take approximately eight months. By letter dated 13th April, 1997 Mr. Crane confirmed the price and authorised Mr. Walters to start work as soon as possible.

[3] While in England, Mr. Crane, an academic professor, kept in constant communication with Mr. Walters. At their request Mr. Walters sent the Cranes photographs of the progress of the works and the parties appeared to have had a relatively smooth working relationship.

[4] On 22nd June, 1997, Mr. Walters faxed the Cranes a Payment Schedule. In this document the construction was divided into various segments. Each segment was briefly described and the date and amount of funds to be remitted by the Cranes in respect of each segment was set out. The last payment of the total of $585,000.00, was supposed to have been remitted on 24th November, 1997 in respect of finishing work on the doors, windows, tiles, painting, electrical and plumbing fixtures etc. At the bottom of the Payment Schedule was a note stating, "All other extras will be treated as a retention fee, and must be under EC$58,000.00 and will become due three months after the completion date – 24th November, 1997". In his evidence in chief at the trial, Mr. Walters testified that "the note pertained to the extras, if any". He said that he sent the note because he was concerned at the rate of extras being requested by the Cranes. At this point he alleged that a rough estimate of extras already done amounted to over $20,000.00.

[5] Upon receiving the Payment Schedule, Mr. Crane replied by return fax of 10th July, 1997. Among other things, he queried the note concerning "extras" and demanded to know what extras he was already committed to apart from expenses pertaining

to a Jacuzzi. Mr. Walters did not immediately respond to this query in writing. Mr. Crane said that the builder responded by telephone indicating that the extras then due related to $7,100.00 for the Jacuzzi and monies for supplying electricity and water and for any planting that Mr. Walters was asked to do.

[6] The Cranes came to Nevis to reside permanently in September, 1997. They regularly visited the site. Mr. Crane claims that, despite conversations on site, Mr. Walters said nothing further to them about "extras". The parties continued to have a good relationship for a time. In November, 1997 Mr. Crane handed to Mr. Walters a long "list of errors, omissions and defects". A few days later Mr. Walters indicated that he was going to dismiss the crew. In a goodwill gesture, Mr. Crane bought drinks for the departing crew.

[7] The works were not yet complete at this time but the arrival of the Cranes' personal effects in Nevis was imminent. They wanted to store their belongings and move in as soon as possible. Mr. Crane expressed his concern to Mr. Walters about the state of the house moreso as the crew were being dismissed. After a week or two, work re-commenced on the house. The Cranes moved into the house on 9th December, 1997. It was in an unfinished state and both sides agree that the Cranes lived in great inconvenience. It is equally clear however that they chose to occupy the house in that condition so that their furniture, which had arrived, would not be left unattended.

[8] Although the payment schedule required the Cranes to make the last instalment of the $585,000.00 (a payment of $67,000.00) on 24th November, 1997, the Cranes withheld that payment. On 17th January, 1998, Mr. Walters presented a demand to the Cranes in the form of a "Statement of Extras" containing 22 items totaling $71,234.41. Mr. Crane paid neither that sum nor the $58,000.00 agreed ceiling. Nor did he pay the $67,000.00 still due on the contract.

[9] Mr. Walters ceased work on the house on 31st January, 1998 when, he said, the house was substantially finished. He acknowledges two failings, namely, not completing the hurricane shutters for the house and not doing some remedial work on the opening between the living and dining rooms. He places a value of $3,700.00 and $750.00 respectively on the work left undone. He says that with the authorisation of the Cranes, he opened a line of credit at S. L. Horsford & Co. Ltd. so that he could credit supplies for the house. In his Statement of Claim he alleged that the Cranes should be responsible for liquidating the outstanding balance on that account but at the trial he withdrew that claim. He therefore sought to recover the balance of the contract price owed plus the extras incurred up to a total of $58,000.00 less the value of the work left undone.

[10] Mr. and Mrs. Crane took the view that on their contract with Mr. Walters, they owed the latter $67,000.00 plus $7,100.00 for the Jacuzzi and monies expended on the water connection, the approval of the plans, the improvement to the kitchen steps and the west terrace. The latter expenses are reflected in items 5, 8 and 9 of Mr. Walters' Statement of Extras.

[11] The Cranes justify their withholding of the sums they admit to be due on the contract on the basis of a counterclaim that they have made against Mr. Walters. They allege that Mr. Walters is in breach of contract in several respects. First they point to the lateness of completion and/or the failure to complete. They also claim damages for the great inconvenience in which they lived when they first moved into the house. They have also recited a litany of errors, omissions and defects that they say they had to make good. They presented bills and receipts showing the expense they allegedly incurred in remedying these defects. The exhibited bills amount to a total of $78,585.73 but there is a complicating factor regarding these bills. Hurricane Georges struck Nevis in October, 1998. The house suffered some damage and the Cranes would have had to incur some expense as a result of the damage. The bills exhibited are for goods and materials purchased both before and after the hurricane struck. The Cranes also hired the services of Morbry

Construction Company Limited to assess the cost of completing the house. In a report prepared on 28th December, 1998, that firm costed the remedial work at $43,988.98.

[12] Apart from Mr. Walters himself, only Mr. Livingstone Williams, a good friend of Mr. Walters, testified for the claimant. The evidence of this witness was to the effect that he had been to the house in the latter part of November, 1997 and had met with the Cranes who had expressed their utter delight with the house. The Cranes and Mr. Kennedy Bryan, a Director of Morby Construction, testified for the defendants.

[13] In a written judgment, the learned trial Judge dismissed the counterclaim of the Cranes and gave judgment for Mr. Walters in the full sum claimed of $125,000.00. The learned Judge seems to have been very favourably impressed with the evidence of the claimant and his witness and by contrast, the evidence of the Cranes and their witness was rejected. The Defendants have appealed the Judge's findings.

[14] Counsel for Mr. and Mrs. Crane listed over 40 grounds of appeal, most of them on the trial Judge's findings of facts. Many of these grounds overlap and where they do I shall treat together those that do. Some others are, in my respectful view, of too little significance to warrant any attention. Rather than examine each Ground separately, I have classified them under various broad heads. But before I look at these heads I think it is useful to allude to the principles upon which an appellate Court would interfere with the findings of fact of a trial Judge. These principles received the attention of this Court recently in Grenada Electricity Services Ltd. v Isaac Peters, Civil Appeal No. 10 of 2002 (Grenada). Writing the decision of the Court, the learned Chief Justice, Sir Dennis Byron, stated:

> "……..an appellate court will usually be reluctant to differ from the finding of a trial judge where his finding turned solely on the credibility of one or more of the witnesses. This however includes an important limitation and requires the court to draw a distinction between a finding of specific fact and finding of fact which in reality is an inference from facts specially

> found. To use different words the court must distinguish between the perception and evaluation of facts. It is in the finding of specific fact, or the perception of facts that the court is called on to decide on the basis of the credibility of witnesses. When this is the position, an appellate court must exercise caution and have a rational basis for differing with the trial judge who had the advantage of observing the witnesses in the process of giving the testimony. On the other hand the court may have to consider a situation where what is in dispute is the proper inference to be drawn from facts. In such cases the appellate court is generally in as good a position to draw inferences or to evaluate as the trial judge".

The Failure to Take Into Account Admissions by the Builder

[15] Counsel complained that in arriving at the judgment figure, the learned Judge merely and simplistically added together the admitted $67,000.00 due on the contract price and the $58,000.00 claimed as extras but failed to take account of certain allowances and admissions made, in the course of the trial, by Mr. Walters.

[16] This ground was conceded in principle by the respondents on the hearing of the appeal. On the pleadings themselves, and in his evidence at the trial, the builder admitted that work left undone with respect to the living room and the dining room and also the building of hurricane shutters were part of the contract and had not been completed by him. In his Reply Mr. Walters had placed a dollar value of $4,450.00 as the cost of completing these items.

[17] Counsel for the Cranes was dissatisfied with the amount being set off. She argued that the hurricane shutters were actually completed by the Cranes at a cost of $21,000.00 and that there were receipts placed in evidence to substantiate that figure. Counsel submitted that the setoff for the shutters should be $21,000.00 and not $3,750.00. The problem I have with counsel's argument is that no attempt was made at the trial, by the Cranes or their witness, to establish that the $21,000.00 allegedly spent by them on hurricane shutters represented the precise cost of what was not done by the builder. The burden of establishing the correctness and reasonableness of this figure of $21,000.00 lay on the Cranes and this they were obliged to do by showing that the number and quality of the shutters they

eventually built were what was reasonably contemplated, expressly or by implication, in the contract. It was not enough simply to exhibit the receipts showing this expenditure without making any effort to link those receipts to the works and specifically to the default of the builder. In the circumstances I would agree that the amount of the judgment debt should be reduced by only $4,450.00.

The Evidence of Livingstone Williams

[18] Under this head, the appellant submitted that the learned trial Judge was wrong to accept the evidence of Mr. Livingstone Williams who gave evidence on behalf of the claimant. Mr. Williams had testified that he and Mr. Walters are good friends and that some time in the latter part of November, 1997 Mr. Walters had carried him up to the building site where he was introduced to the Cranes who had then expressed their pleasure at the progress of the construction.

[19] For my part, I can find no sufficient basis to criticise the manner in which the learned trial Judge approached the evidence of this witness. Counsel complained that the Judge failed to consider that the witness had never before seen the Cranes but that is not the evidence. The witness did testify that he used to see the Cranes before November but that he had not previously spoken to them. Counsel also submitted that this witness's evidence should have been treated with caution because he admitted to being a close friend of Mr. Walters. Without more, I do not consider that the close friendship of the witness with the claimant was enough to cast doubt on his credibility. Moreover the witness never had an opportunity to answer this allegation of bias because it was never specifically put to him that his testimony was partial because of his friendship with Mr. Walters.

[20] It was also submitted that when Mr. Williams said he visited the house, the Cranes and Mr. Walters were not on good terms and that therefore there is little likelihood of Mr. Crane saying then the things he is alleged to have said. If there were a proper foundation for that inference I would regard the inference as being a

reasonable one to draw. My difficulty here however is twofold. Firstly, the evidence as to the exact time when Williams visited as compared with the time the relationship between builder and client broke down is somewhat sketchy. The latter half of November could mean the 16th or 17th. As to the time when the relationship soured, the best evidence I could find was from Mr. Crane who testified:

> "In November 1997 I spoke to plaintiff on certain items. I told him I had a paper list of errors, omissions and defects. It was a long list. He did not immediately set about to correct those defects and omissions. He dismissed the crew a few days later. He told me the crew were going and I got a few bottles of beer to say thank you. This was just to be polite. The work was not complete. I spoke to Mr. Walters about the crew leaving. I was concerned. I told him the house was not complete and the crew was leaving. I told him my effects were coming and we had to move in. He returned to work between the 24th November, 1997 and 17th January, 1998….."

In his cross-examination, he stated:

> "The workers told me they were going to be released on 28th November, 1997."

[21] The second issue is that the evidence given by Livingstone Williams was never challenged by either of the Cranes when it was their turn to give evidence. They had an opportunity to rebut his testimony but did not do so. In my view therefore the trial Judge was entitled to accept as true the testimony of this witness. Moreover, that evidence was supported by the revelation that the Cranes were at one point so pleased with the manner in which construction was progressing that they were minded to take photographs of the house and produce a brochure for the builder to advertise his services. These grounds of appeal therefore fail.

The Builder's Claim for Insuring the Property

[22] Item 7, of the 22 areas claimed by Mr. Walters as extras for which he should be paid by the Cranes, is a claim for insurance on the house during the course of construction. Mr. Walters claimed in evidence that,

> "I do not remember when they asked me to insure the building. But they requested it. I mentioned it to them that if some damage occurred to the building they would – So it was in their interest to insure the building. I discussed with them the name of the insurers and the amount involved, they went to same insurers to seek further insurance on the building. I do not remember the date I insured the house. I do not have the receipt".

Mr. Crane's evidence is that "insurance was never mentioned until 17th January, 1998, when he showed me the certificate". Later, in cross-examination he said,

> "I did see the certificate of insurance to my house. It is possible I might have it. He gave me it in January, 1998 and not September 1997 when I came to Nevis. I did not ask him why he insured the property. I did not feel it was a benefit to me to have my property insured. I did not go to the Insurance Company to have my coverage extended. None of the companies satisfied me, so I did not insure my property".

The learned trial Judge had these two versions before him and he elected to believe the builder's. I cannot see on what basis I should hold that his conclusion was not merited.

Did the Price of $585,000.00 Factor in the Discussed Modifications?

[23] These grounds of appeal touch upon a crucial finding of fact that was made and needs to be dealt with at some length. The question is whether the price of $585,000.00 for the house did or did not already factor in the list of amendments and modifications that was sent to the builder in the letter of April, 1997. The thrust of the case for the Cranes is that this list was prepared and discussed in 1995 and that there had been agreement that, save for the costs of purchasing and installing the Jacuzzi, all the items on the list had been taken into account in arriving at the $585,000.00 figure. The Cranes went further and stated that prior to the builder taking the matters on this list into account, he had actually quoted them a figure of $478,000 for the house.

[24] In his evidence, Mr. Walters referred to "….a list of amendments we discussed at our last meeting in Nevis. This meeting was in 1995……." He went on to state however that Mr. Crane

> "..did not give me specific details on those amendments. He did mention that he was not ready to start construction until 5 to 10 years. Upon that I indicated to him that it is best we deal with amendments just before construction began".

Had the evidence stopped there, I would have understood it better because the impression given is that *the list* of amendments was discussed but that he had told Mr. Crane to defer any decision on them until construction was about to start. There immediately followed however, the following:

> "At the time I gave him the price of construction at $585,000.00, he did not give me a list of amendments then. The price of $585,000.00 did not factor in these amendments. Therefore in this letter [i.e. Mr. Crane's of 13th April, 1997] when the 1st defendant [Mr. Crane] speaks of $585,000.00, *it was prior to receiving and (sic) amendments*. In 13th April, 1997 letter, it was the first time I was receiving any specific information about these amendments" (my emphasis).

The impression being given here is that Mr. Walters is denying receiving information about these amendments prior to 13th April, 1997. That is in contrast with what was said before. In cross-examination, where a further opportunity was given to clarify this issue this is what he said

> "I recall having a conversation with the Cranes at Mrs. Crane's mother's house at Government Road. This was in 1995. ……The plans had been drawn and submitted by that time. The conversation about the changes or modifications started. I suggested to them that if they were not as yet ready to start construction as they had indicated, that they leave it until we were about to start construction. *First defendant did not mention about the list of amendments to me at that time*. I do not recall giving them a figure of $475,000.00 if I followed the plan. I must have given them a figure pertaining to my fees as an architect. I do not agree that I gave them a figure. I had discussions with them before 13th April, 1997. They called me back and said they had agreed on the figure of $585,000.00 and they would further confirm in writing. I did not discuss with the Cranes after receiving his list of amendments that those would be extras. Some of them were on the list of drawings.
>
> There were no amendments made to the drawings. I received $87,000.00 from one defendant to start the work. I had already mention that the list he

sent was extras. I told the defendants that on the phone. Between the 13th April, 1997 and 10th July, 1997 I received payments…….On 22nd June, 1997 I sent a letter to 1st defendant about all other extras. I had already discussed extras since April, 1997. The letter he sent to me of 10th July, 1997 confused me. He communicated to me mostly in writing. I spoke to him on the phone and told him that all I had already done were extras and that I could not foresee any other extras since he was the one making the requests. I believe I told him [i.e. Mr. Crane] about the Extras and then "other Extras". The "other Extras" differed from "the Extras", because every time Mr. Crane wrote to me he was making new requests. *I agree some were part of the contract price…."* (My emphasis)

[25] Mr. Crane's evidence on the issue was

"I came to Nevis between July/August 1995. I had discussions with the plaintiff while I was there. When I received the drawings I agreed them in broad – Most of them. I phoned plaintiff to tell him that I liked them but that there were details and some omissions. I informed him in a telephone conversation that when we arrived in the summer I would bring a list of those that I would like to discuss with him. I did so. We met on a day between July and August. Substantive discussions were on the verandah of my mother-in-law…..The outcome of the discussions was that the plaintiff agreed to the majority of my requests. He disagreed with a couple and on one item which was air-conditioning in the master bedroom, he took me to Four Seasons……There was no discussion on price for any other item except the AC. The purpose was to amend the architectural drawings. In mid February 1997 I contacted the plaintiff to ask him to build the house for me and to give me a price for the construction. He gave me the price of $585,000.00. Because I specifically asked him, my understanding was that this price included the agreed amendments to the architectural drawings. The original figures quoted by the plaintiff in 1994/95 was $478,000.00 if he were to build it at that time, excluding the amendments.

After we discussed the amendments the figure changed to $585,000.00. I agreed the price of $585,000.00. Originally the agreement was verbal. Very shortly after we thought of having a Jacuzzi. I asked how much it would cost as an extra. He told me. I agreed to pay it. By faxed letter I agreed to pay $585,000.00 for the house according to the architectural drawings and although I do not say it in the letter, it must have been fully understood by the plaintiff that it included the amendments as discussed and agreed, but excluding $7100 for the Jacuzzi. Shown Exh. C.W.5. These include the letter signifying my acceptance of the price of $585,000.00. A few days earlier in a phone conversation with plaintiff he told me that he had misplaced his copy of the list of amendments which I gave him in 1995. I had that in my computer. I added to it the Jacuzzi,

> already discussed, and I sent him that list together with the letter of acceptance…"

[26] The learned trial Judge again chose to believe the builder's testimony but no specific reason was given for so doing. In examining this entire matter however, there are a number of unchallenged facts from which certain inferences can be drawn. The weight of the evidence suggests that the parties did discuss amendments and modifications in 1995. While Mr. Crane distinctly recalls being given a construction price of $478,000.00 as per the plan, Mr. Walters does not recall so doing. In April, 1997 at the latest, Mr. Walters would have received the list of amendments. Between then and January, 1998 Mr. Walters did not quantify and communicate the cost of these modifications. In June 1997 Mr. Walters sent Mr. Crane a Payment Schedule confirming the cost of the house at $585,000.00 and stating that *all other* extras will be treated as a retention fee and must be under $58,000.00.

[27] Given the above as the factual premise upon which the learned trial Judge was required to make an important finding of fact, this Court is in as good a position as the trial Judge to evaluate the evidence. In my respectful view, even if one were to disregard Mr. Walters' equivocations and memory lapse, the evidence leans more to the version of events given by Mr. Crane. The actions of the parties at the time also support this view. In this regard one looks at Mr. Crane's response of 10th July, 1997 to the written note about extras –

> "Could you explain the clause concerning 'extras'. In particular, what extras are we currently committed to (I know about the $7,100 for the Jacuzzi) but what other extras do you foresee?"

Perhaps to explain his failure to give an equally forthright reply to Mr. Crane, under cross-examination, Mr. Walters stated that this letter "confused" him but frankly, I cannot see what was so confusing about Mr. Crane's query. In all the circumstances I would respectfully differ from the learned trial Judge and find that the price of $585,000.00 took into account the modifications that were discussed

by the parties in 1995 and that these modifications were contained in the list prepared by Mr. Crane.

The Builder's Claim for Extras

[28] Under these heads, complaint is made about the extras claimed by the builder. Counsel also submitted that the learned trial Judge wrongly or unreasonably regarded many of Mr. Crane's letters to the builder as requests for extra work. At paragraph 17 of the judgment, the Judge stated

> "The long and short of the letters tendered in evidence as a bundle and marked exhibit CW5 was that as work progressed the first defendant especially would write and request additional changes which were not on the original plan. My impression formed of this behaviour was of one who clearly had not made up his mind as to what kind of house he exactly wanted – a difficult customer to say the least. It is inconceivable to expect that all changes as requested by the first defendant as the construction progressed, to be incorporated into the original price of $585,000.00 considering that they were substantial changes in or amendments to the original plan".

[29] I have already addressed this criticism in part by finding that the 1995 list of modifications were not intended to have been regarded as extras but were taken into account in determining the contract price. I have also examined the letters written by the first defendant. It is quite apparent that Mr. Crane not only took an extremely keen interest in what was being done and how it was being done. He also offered his own extensive suggestions on these matters. If any of these suggestions were going to incur extra cost then it was the duty of the builder, before implementing the suggestions, to bring to Mr. Crane's attention not only that extra costs were going to be involved but also the extent of the additional costs. The onus was on the builder to establish that he had informed Mr. Crane or that Mr. Crane should have known that additional labour or material costs would be incurred. See: Nurse v Campbell (1966) 10 W.I.R. 139 and Carlton Construction Ltd. v Lennox Taylor & Noelina Taylor Suit No. 264 of 1996 (St. Vincent & the Grenadines).

[30] The same general principle must apply to the many extras claimed by Mr. Walters. It seems to me that even where an owner makes a suggestion to a builder that would entail extra costs, the builder should specifically draw this fact to the owner's attention and obtain the owner's consent nonetheless to proceed to execute the extra works in view of the added costs. It is unreasonable for the builder quietly to incur these extra costs and then *ex post facto* present the owner with a huge bill which the owner may have never anticipated was being incurred. Mr. Walters cannot therefore recover for the extras he has claimed save those where there was agreement between the parties. In this regard, in the skeleton submissions, counsel for the Cranes conceded the following: $7,100.00 for the Jacuzzi; $300.00 for water; $300.00 for Plans; $687.50 for a Fan light; $40.00 for flood lights; $625.00 for Linen closet; and $2,650.00 for kitchen steps.

Did the Cranes meet the agreed payment schedule?

[31] Counsel complained about certain findings of fact, adverse to the Cranes, as regards the time when payments were made to the builder. Counsel provided this Court with a schedule showing when the payments were actually made. This schedule was not placed before the learned Judge and really represents fresh evidence. This Court cannot receive fresh evidence in this manner. What was before the trial Judge was Mr. Walters' testimony that a certain payment was a week and a half late. The trial Judge chose to believe that statement and on the material before him at the time he was entitled to make that finding. Little turns on this finding however.

Did the builder substantially complete the house?

[32] The several Grounds under this broad head addressed the question as to whether the builder had or had not substantially completed the house when he ceased work on it in January, 1998. The Judge accepted the claimant's testimony that save for the hurricane shutters, the space between the living and dining room, and

the walkway around the house, Mr. Walters had completed the contract. Counsel for the Cranes argues that the bundle of exhibited receipts provided solid evidence of the vast amount of work that was done by the Cranes in order to make good what should have been done by Mr. Walters.

[33] The learned trial Judge dismissed these receipts on the sweeping but erroneous premise that most of them were dated after the passage of Hurricane Georges and therefore could well have been in respect of remedial work as a result of storm damage. In point of fact, most of the receipts pre-dated the hurricane. However, as I have stated before, it was not enough merely to throw these receipts at the Court without providing solid oral evidence specifically linking them to the actual work that was done. In the absence of such evidence the Judge would have been entitled to place little value on these receipts as evidence of work undone by Mr. Walters.

[34] It was also argued that if one accepted that the house was completed in January, 1998, then the builder was in breach of contract because it had been previously agreed that the house would be completed on 24th November, 1997. The contract between the parties made no provision for liquidated damaged. The Cranes moved into the house in December, 1997 and so would have occasioned no loss of use. It is difficult to envisage what damages they would therefore have suffered by reason of the late completion. Certainly no evidence was led as to any such damage. In these circumstances none can be recovered for this breach.

The Path Around the House and the Backup Generator

[35] This Ground concerns expenditure on a path around the house and a backup generator. Both of these items were on the list of modifications that I have found were agreed to by Mr. Walters and incorporated into the contract price. There is no evidence as to what proportion of the contract sum was to be allocated to these

items. Indeed, at the trial Mr. Walters regarded them as extras, a view with which I disagree.

[36] In their counterclaim the Cranes claimed the sums of $15,000.00 and $17,500.00 respectively for these two items. But here again, absolutely no oral evidence was adduced to support these figures. A claimant who seeks a money judgment for damages in his favour must provide the Court with cogent evidence to support and quantify the loss or damage and not leave the Court to speculate as to these matters. Nor is it sufficient, as mentioned earlier, to simply exhibit receipts with no oral evidence to link the receipts to the loss or damage. In these circumstances I can give only what I consider to be a nominal sum of $10,000.00 in respect of these items.

Alleged Cost Saving Suggestions by the Cranes

[37] During the course of construction, as a consequence of the ongoing dialogue between the Cranes and the builder, numerous suggestions were made and accepted regarding small alterations to the Architectural Plans. Some of these suggestions may have had a beneficial effect on the time or labour or materials expended on the construction. Counsel now submits that the learned trial Judge failed to take due regard of "the many cost savings" that the builder had thereby made. This Ground cannot succeed because none of this was ever put to Mr. Walters. He was never asked in cross-examination whether the alleged suggestions actually saved costs at all. The trial Judge was therefore entitled to ignore these alleged cost saving measures.

The Cranes' Claim for Damages for Stress

[38] This Ground had to do with the trial Judge's dismissal of the Cranes' counterclaim for damages for stress and inconvenience. Counsel argued that the Cranes had a legitimate expectation that after expending such substantial sums on their

retirement home they would be able to move into the same without all the stress and frustrations they experienced. Counsel relied on Perr v Sidney Phillips & Sons (1982) 3 A.E.R. 705 and Bliss v South East Thames Regional Health Authority (1987) 1 CR 700.

[39] First of all, the attempt to import into the area of private law the public law concept of legitimate expectation is mistaken. That aside however, the plain facts are that the house should have been completed by 24th November, 1997 but it wasn't. The trial Judge accepted that by the end of January, 1998 it was substantially completed. The builder himself acknowledged that the Cranes lived in a state of inconvenience when they moved in. I agree that for the period between 24th November, 1997 and 31st January, 1998, on the principle enunciated in Watts v Morrow (1991) 4 A.E.R. 937, the Cranes would be entitled to general damages for this inconvenience. I would award them a sum of $1,000.00. Claims by Mrs. Crane that she developed high blood pressure as a result of the inconvenience were not accepted by the learned trial Judge and there is no basis for this Court to interfere with that finding.

Conclusion

[40] In all the circumstances I would give judgment for Mr. Walters as follows:

	Balance due on the contract	$67,000.00
	for the Jacuzzi	$ 7,100.00
	for water	$ 300.00
	for Plans	$ 300.00
	for a Fan light	$ 687.50
	for flood lights	$ 40.00
	for Linen closet	$ 625.00
	for kitchen steps	$ 2,650.00
	Total due to the builder	**$78,702.50**
Less	$4,450.00 - As per Para 17 above	
Less	$10,000.00 – As per Para 35 above	
Less	$ 1,000.00 – As per Para 38 above	$15,450.00
	Net due to Mr. Walters	**$63,252.50**

[41] By virtue of Part 65.5 of the Rules of the Supreme Court, Mr. Walters would be entitled to costs in the sum of $27,750.00 in the Court below but the Cranes would be entitled to set off against that $10,200.00 being their costs on this appeal. In the result, the Cranes will pay costs of $17,550.00 to Mr. Walters.

Adrian D. Saunders
Justice of Appeal [Ag.]

I concur.

[Sgd.]
Sir Dennis Byron
Chief Justice

I concur.

[Sgd].
Ephraim Georges
Justice of Appeal [Ag.]