

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.15 OF 2002

BETWEEN:

BENOIT LERICHE

Appellant

and

FRANCIS MAURICE

Respondent

Before:

The Hon. Mr. Albert Redhead
The Hon. Mr. Adrian Saunders
The Hon. Mr. Ephraim Georges

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Kenneth Foster, QC for the Appellant
Mr. Alvin St. Clair for the Respondent

2003: May 16;
2004: August 12.

JUDGMENT

[1] **SAUNDERS, J.A.:** This appeal was heard and an oral judgment delivered on 16th May, 2003. The appeal and the counter-appeal were both dismissed. These are our written reasons.

[2] Mr. Maurice is a building contractor who was retained by Mr. Leriche in connection with the construction of a dwelling house at Morne Giraud. There is common ground between the parties of an oral agreement existing between them in relation to this building. The parties differed considerably over the terms of the admitted oral agreement.

- [3] Mr. Maurice alleged that he was employed under a labour contract while Mr. Leriche alleged that the contract agreed was for mere supervision. Mr. Maurice further alleged that it was agreed that the oral agreement should be reduced to writing for signature. Further, in accordance with the terms of the oral agreement he (Mr. Maurice) commenced construction of the house on or about 9th September, 1991.
- [4] On 11th September, 1991, Mr. Maurice attended at the chambers of Mr. Leriche's solicitors. Mr. Maurice states that he was handed a written agreement that contained the terms of the original oral agreement (i.e. the agreement for a labour contract) along with some additions made to the same by Mr. Leriche. This written agreement was prepared by Mr. Leriche's lawyers. On 12th September, 1991, Mr. Maurice signed three copies of this written agreement and left these copies with Mr. Leriche's lawyers for Mr. Leriche's signature. Mr. Leriche never signed the document.
- [5] On the 12th September, 1991, Mr. Leriche requested modifications to the building plan. These modifications entailed increased works over and above the original scope of works. Mr. Maurice alleged that it was further orally agreed that he would be paid for the increased works an additional amount over and beyond the originally agreed sum. Mr. Leriche's son, Charles Leriche, signed the building plan to signify his father's consent to the increased works. Further, alleges Mr. Maurice, on 26th February, 1992, Mr. Maurice, Mr. Leriche, the latter's wife and daughter all signed a letter to the Development Control Authority (DCA). This letter referred to "a labour contract undertaking the construction of a building at Morne Giraud as per approved plan by the above authority No. 486/89 belonging to Mr. & Mrs. Benoit Leriche".
- [6] Mr. Maurice continued his work on the house but towards the end of January, 1992, he had to leave St. Lucia to represent the country at cricket. On his return he discovered that Mr. Leriche had, contrary to the agreement, paid the workers

directly. Mr. Maurice received no further payments although he continued to supply his services up to 18th March, 1992 at which time he was asked by Mr. Leriche to leave the building site.

[7] Mr. Maurice engaged a Valuer and Quantity Surveyor, a Mr. Sealy, to view and value the work he had undertaken on the dwelling house. Mr. Sealy found the value of the works to be \$196,600.00. Mr. Maurice therefore brought this action to recover that sum less the sum of \$43,500.00 previously paid to him.

[8] The matter was tried before Harisprashad-Charles, J. in two stages. It came before her on July 24th 2000 on the hearing of a preliminary submission. Mr. Leriche's Counsel argued that the statement of claim did not disclose a cause of action because St. Lucia's Civil Code, Article 1163(2), only permitted proof by testimony in a matter in which the principal sum of money in question did not exceed \$48.00. The cases of **Anthony Jn. Jules v. Veronica Fletcher**¹ and **Girard v. Doxerie**² were cited. The learned Judge agreed with Counsel for Mr. Maurice that the relevant provision in the Code was Article 1163(7) and not Article 1163(2). Article 1163(7) stated that proof may be by testimony in cases where there is a commencement of proof in writing. The learned Judge also found that an admission provided an exception to the operation of Article 1163(2) and that Mr. Leriche in his pleadings had admitted that a contract had existed between himself and Mr. Maurice. For all these reasons the Judge overruled the preliminary submission. Mr. Leriche's lawyers appealed that ruling but by consent the appeal was withdrawn and the parties were given leave to file amended pleadings.

[9] The matter came up again for trial on May, 27th 2002 before the same Judge. The only amendment made by Mr. Maurice's lawyers was a new paragraph alleging that the written contract provided proof of commencement in writing and that the letter to the DCA, signed by Mr. Leriche, was an extra-judicial admission of the

¹ Saint Lucia High Court Civil Suit No. 40B of 1986 (unreported)

² Saint Lucia High Court Civil Suit No. 408 of 1986 (unreported)

existence of a labour contract. In response to this pleading, Mr. Leriche pleaded that the letter to the DCA was not in fact signed as alleged by him, his wife or his daughter.

[10] At the trial the Judge believed the testimony offered by Mr. Maurice and his witnesses. All the allegations recited above were accepted. Specifically, the Judge found that the agreement between the parties was for a labour contract; that Charles Leriche acted throughout as agent for his father; and that Mr. Leriche and his wife and daughter did indeed sign the DCA letter. The learned Judge had harsh words for the evidence of Mr. Leriche and his witnesses. She found them “to be witnesses of untruth”. She rejected their testimony and gave judgment for Mr. Maurice in the sum claimed. She did not award Mr. Maurice any pre-judgment interest on the sum claimed. Mr. Leriche appealed the judgment. Mr. Maurice cross-appealed against the Judge’s refusal to award pre-judgment interest.

[11] Mr. Leriche’s grounds of appeal were that a) the Judge was wrong to find a contract of labour as distinct from a contract of mere supervision; b) the decision is against the weight of the evidence; and c) the Judge erred “in finding that there was a contract for labour of an oral agreement between [the parties] for the construction of a dwelling house”.

[12] The grounds of appeal all concern issues of fact. The first two are matters of pure and direct fact. The reluctance of appellate Courts to overturn findings of fact by trial Judges is well known³. Suffice it to say that there was ample material here for the Judge to have arrived at her findings of fact and there is no basis for this Court to interfere with those findings. Up to January, 1992 it is undeniable that the workers were paid by Mr. Maurice and that Mr. Maurice was in turn paid \$43,500.00 in pursuance of the labour contract.

³ See for example *Sumair Singh v. Chase Amanhattan Bank* 45 W.I.R. 220

[13] Regarding the third ground of appeal, having found that Mr. Leriche had signed the DCA letter, the trial Judge was entitled to draw the inference that the reference in that letter to a labour contract could only have been a reference to the agreement pleaded and testified to by Mr. Maurice. That letter provided commencement of proof in writing in keeping with Article 1163(7) in that it gave credit to Mr. Maurice's testimony that a labour contract did exist between himself and Mr. Maurice.

[14] As to the cross-appeal, there was in the claimant's pleadings, a claim for "Interest" but this was not particularised in any way. No basis was provided for claiming it nor was there any suggestion made to the Judge as to the rate that should be applied and the reasons for applying such rate. Judging from the skeleton argument filed by Mr. Leriche's lawyers, the Judge was never addressed on this issue. The learned Judge rightly in our view simply ignored the issue.

[15] In the above circumstances we dismissed both the appeal and the cross-appeal and ordered that Mr. Leriche pay costs in the sum of \$1,500.00.

Adrian Saunders
Justice of Appeal

I concur.

Albert Redhead
Justice of Appeal

I concur.

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