

GRENADA

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)

Claim No. GDAHCV 1997/0024

BETWEEN:

SEPTIMUS WILLIAMS

Claimant

and

EDGAR FLEMING

Defendant

Appearances:

Mrs. Wardally-Beaumont for the Claimant

Mr. Prime and Ms. Gellineau for the Defendant

2004: March 23, April 1

2005: February 24

JUDGMENT

- [1] BELLE, J.: The parties in this case agreed that the Claimant is the owner of a house at Mount Fendue, St. Patrick's which was constructed by the Defendant under the terms of a written contract dated 1st December 1993, made between the Claimant and his wife on the one part and the Defendant on the other. It was agreed that the house would be built for the sum of \$260,000.00. This sum was to be disbursed in four payments. However it is my view that the dispute, which gave rise to this claim, was over the execution of a verbal agreement, which followed the contract for the construction of the house. I come to this conclusion based on the Claimant's Statement of Claim and the emphases placed therein on the "additional work" which was to be done by the defendant when the construction of the house had drawn to substantial completion.

- [2] Based on the Claimant's witness statement and the oral evidence he gave under cross - examination it was clear that the claim did not relate to any of the stipulations of that written contract but to the verbal agreements which followed commencing with the addition of the downstairs toilet. The Claimant says he paid the defendant \$1500.00 for this job. The Claimant also stated that while in England he telephoned Mr. Edgar Fleming and asked him to do some additional work. He said he sent \$18,500.00 to Mr. Fleming for this additional work. This was done some time after June 1994 when he returned to England from Grenada and discovered that his wife really intended to divorce him. He says he also later paid the defendant an additional \$5000.00 He did this in spite of the fact that a number of items on the house were left unfinished. He described the additional work as paving under the house and around the house and building a fence around the house. He had paid the defendant a total sum of \$23,000.00 to complete this additional work.
- [3] Mr. Edgar Fleming the defendant was not able to give evidence in the case having missed the opportunity to file a witness statement after the Case Management order was given. Counsel for the Defendant missed a second opportunity to remedy this situation at the time of Pre-trial Review. This placed the Claimant at a disadvantage of having declared his hand in full while the Defendant without attempting to make an application to avoid sanction filed a witness statement out of time. The sanction of the Court was that the Defendant would not be permitted to rely on that witness statement or give oral evidence. The Defendant also withdrew his Counterclaim. However the Defendant's counsel cross - examined the Claimant at length.
- [4] During the process of the cross-examination it appeared at times the Claimant was becoming confused and he indeed fell ill on the first day of cross examination. However, the Court was never confused, and the picture which appeared seemed quite clear. The Claimant had taken steps to remedy some of the incomplete work and therefore to mitigate his loss. He also made additions to the building contract.
- [5] It is admitted by the Claimant that the Defendant did additional work to the value of \$11,950.00. Defence counsel has urged upon the Court that since the individual who did

this work was not cross-examined the figure should be ignored. The parties did not agree to the estimate, which was done by CAPECO an independent engineering and Construction Company. However this estimate was sufficient to support the claim by the Defendant that he had done some work. In my view the Claimant sought to bring to light the true picture and the Defendant failed in any way to assist the court in estimating the value of work done other than the position, which had been asserted in his withdrawn counterclaim. This assertion was that he had done additional work to the tune of \$33,798.00 but this would have had to be strictly proven and that was not done. I therefore have no difficulty accepting the Claimant's estimate of the value of the additional work done by the Defendant.

[5] I conclude that on a balance of probabilities the Claimant paid the Defendant for work, which he only partially did. If indeed it is true that the cost of the work exceeded the sum paid by the claimant, why was the Defendant unable to itemize the costs and declare it for all to see? It is possible that he may have wanted more money, but the fact is that he did not complete the work but had accepted money for the work and indeed did work for the value of approximately half of what he had been paid.

[6] I have no difficulty with any legal rule, which states that a builder should be paid for his work even if he has not completed the job; see **H. Dakin & Co. Limited v Lee [1916] 1 KB 566**. Conversely the employer should be able to deduct from the contract sum the amount that the builder is not entitled to. In this case there is evidence that the Claimant benefited from the work done by the Defendant. However the only evidence of the value of the additional work was that provided by the Claimant. The Defendant failed to assist the Court in this regard. I believe that the best way in which justice can be done in this case is to award Mr. Williams the difference between the sum he paid Edgar Fleming for the additional work (\$23,000.00) and the value of the work, which Mr. Fleming did (\$11,950.00) according to the valuation, which Mr. Williams commissioned.

- [7] After embarking on the aforementioned exercise the court calculated the difference between the value of the work done by the Defendant and the money paid to him to do the additional work to be the sum of \$11,050.00.
- [8] The Claimant had stated in his witness statement that he paid Mr. Vaughn Monroe \$25,000.00 to complete the incomplete additional work. I do not consider that Mr. Williams has provided sufficient evidence to establish the reason why a job which he had paid Edgar Fleming \$23,000.00 to complete and of which he had completed some work to the value of \$11,950.00 should later cost \$25,000.00 to complete. It seems to me that there must have been even more work added to the prior work, which the Defendant had agreed to do or there had been a substantial undervaluation of the work in the first place.
- [9] Clearly this could have been Mr. Vaughn Munroe's fair assessment of the value of the work, which was to be done. However we would have to hear from Mr. Munroe how he arrived at this figure and compare the scope of his work with that covered by the verbal agreement with the Defendant otherwise this contract with Vaughn Munroe would make a mockery of the prior agreement to do the job for \$23,000.00. There therefore can be no additional damages awarded to the Claimant based on Mr. Vaughn's Munroe's bill. The court accordingly orders the Defendant to pay the said sum of \$11,050.00 as damages to Mr. Williams with interest calculated at the rate of 6% from the date of the claim to the date of trial and 4% from the date of trial to the date of payment. The defendant is also to pay the claimant's costs in accordance with Part 65 of the CPR 2000 and the Master's Order of 10th February 2003.

Francis H V Belle
High Court Judge