

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO.935 OF 1998

BETWEEN:

ATHANESE NICHOLAS

Claimant

and

JOHN BAPTISTE ALEXANDER

Defendant

Appearances:

Mrs. Wauneen Louis-Harris for the Claimant

Mrs. Veronica Barnard for the Defendant

2004: July 8;
August 8;
September 22, 27;
2005: March 29.

JUDGMENT

- [1] **HARIPRASHAD-CHARLES, J:** The claimant, Athanese Nicholas claims the sum of \$69,880.00 from the defendant, John Baptiste Alexander as the balance due and owing to him for construction work which he allegedly completed on Mr. Alexander's property at Cap Estate.

The Facts

- [2] Mr. Alexander is a 70 years old retiree. He lived and worked in the United Kingdom for many years. Following his retirement, he moved to Saint Lucia with the intention of spending the twilight years of his life here. He wanted to build his own home. He needed a contractor to do it. He knew the late Mr. Ryan Giraudy, the architect who had designed his house. Mr. Giraudy introduced him to Mr. Nicholas, a qualified Physical Planner who is

also a contractor engaged in the construction business. They talked about construction of the house.

- [3] On 31st January 1997, the parties entered into an agreement in which Mr. Nicholas undertook to construct the house at Cap Estate for Mr. Alexander. The house was to be constructed according to approved building drawings No. 419/96 for the price of \$455,000.00. It was agreed that Mr. Nicholas would provide materials and labour and at the completion of each phase, he will present to Mr. Alexander a certificate evidencing the completion of that phase. Mr. Alexander would in turn pay him.
- [4] On 2nd February 1997, Mr. Nicholas commenced work on the house. According to the agreement, the house was to be completed within 8 months; that is, by 30th September 1997. In the interim, Mr. Alexander leased an apartment from Mrs. Biddy McNamara of Tropical Villas for eight (8) months at a monthly rental of US\$700.00.
- [5] The house was not ready for occupancy by 30th September. Upon further discussions, Mr. Nicholas assured Mr. Alexander that the house would be ready by the end of November. They agreed that, in the event of it not being ready on that date, a section of the house would be completed so that Mr. Alexander could move in. As a result, Mr. Alexander sought an extension of the lease agreement for another two months.
- [6] During the intervening period, problems started brewing up. On 17th November 1997, Mr. Nicholas submitted an invoice to Mr. Alexander for the sum of \$33,250.00. Upon scrutinizing the invoice, Mr. Alexander informed Mr. Nicholas that he would not pay unless the work was done according to the plan and agreement. As a result, work on the house came to a standstill. On 28th November, Mr. Nicholas invited Ms. Margaret-Ann Charles, a Quantity Surveyor to prepare a report on the amount of work done on the house. She opined that 95% of the construction works was completed. Mr. Alexander was not present when Ms. Charles allegedly visited the house to compile her report.

[7] On or about 4th December 1997 Mr. Alexander requested Mr. Nicholas to leave the site. About 2 weeks later, Mr. Alexander employed other workers to complete the unfinished work. About six months later, Mr. Nicholas sought legal advice as to the alleged outstanding balance. His solicitor, Mr. Callistus Vern Gill wrote to Mr. Alexander stating that he (Mr. Alexander) terminated the contractual agreement entered into on 31st January 1997 without completing payment due to Mr. Nicholas. Mr. Gill notified Mr. Alexander that he still owed his client the sum of \$67,880.00. Mr. Alexander did not respond. As a result, these proceedings have been instituted against Mr. Alexander to recover the alleged outstanding balance.

Was the house 95% complete?

[8] Mrs. Louis-Harris appearing as Counsel for Mr. Nicholas submitted that there are three (3) legal issues to be determined by the Court. But, in my opinion, there is only one issue to be considered which is purely factual: whether the house was 95% complete when work came to a standstill?

[9] Mrs. Louis-Harris submitted that the house was 95% complete when work came to a halt and that only finishing touches had remained to be done. Mr. Nicholas alleged that the work outstanding was as follows: (1) all installation of fixtures including plumbing fixtures and fittings (2) 85% of doors (3) tiling to patio and bathroom and (4) installation of electrical fittings.

[10] Mr. Nicholas brought Ms. Charles to support his allegation. Ms. Charles claimed that she visited the site on 28th November 1997 and found that the house was 95% complete. Ms. Charles was subject to rigorous cross-examination by Mrs. Barnard, Counsel for Mr. Alexander.

[11] Under cross-examination, it became apparent that Ms. Charles may not have visited the premises or if she did, she did not properly inspect it. She provided the Court with a valuation but her estimates were more or less guesstimates. She took no measurements and she provided a plethora of wrong information to the court. In short, I find her evidence

to be bereft of truth and unreliable. Clearly, she was a self-serving witness. She was an employee of Mr. Nicholas. He paid her for her services. She however contradicted her own testimony when she deposed that there were lots of unfinished works to be done including the kitchen cupboards, the counter top, the bar, the doors, windows, plumbing and electrical works, shutters and arches to windows, tiles in patio and bathroom, painting and many more.

- [12] On a balance of probabilities, I found Mr. Alexander to be a more truthful and candid witness. Difficulties arose after he queried an invoice. After all, he was paying promptly and regularly. By 5th November, he had already paid amounts totaling \$377,700.00. Mr. Alexander testified that after he queried the invoice and proclaimed that no further payment would be made unless the work was done according to the plan and agreement, Mr. Nicholas became very upset and stopped all construction work in November. This bit of evidence sounds more plausible than that advanced by Mr. Nicholas. Furthermore, if work continued until 4th December, why would Ms. Charles inspect the site on 28th November?
- [13] As Mrs. Barnard rightly pointed out, if 95% of the work was done, why would Mr. Alexander expend \$100,000.00 when only about \$22,750.00 would have been required to complete the job? Mr. Alexander produced many invoices that he expended approximately \$100,000.00 to complete the work which was left undone by Mr. Nicholas. Learned Counsel for Mr. Nicholas did not dispute that such sum was expended but she proffered, in my view, a weak explanation that Mr. Alexander chose to expend more money than he had originally budgeted to complete the project.
- [14] Mr. Nicholas placed great emphasis on certain variations which he claimed he did. In his testimony, he did not detail any of these variations. Mr. Alexander however offered some explanation. He stated that the variation included the addition of 110-volt electricity and some changes to the roof and windows. In lieu thereof, Mr. Nicholas was to forego the shutters and arches in order to save time.

[15] I do not believe Mr. Nicholas and Ms. Charles when they deposed that the house was 95% complete when work stopped. Had it been, I do not think Mr. Alexander would have sought alternative accommodation at Club St. Lucia when he could have lived in his own house. In addition, there is sufficient documentary evidence to show that Mr. Alexander expended monies to store his furniture and household appliances. But I pause to observe that the accommodation and storage expenses incurred by Mr. Alexander are not issues before the court as leave to file a counterclaim was refused.

[16] In my judgment, Mr. Nicholas was in breach of the contract as he failed to deliver a complete house within the stipulated time. Time was of the essence. He particularized two reasons for the delay (i) the difficulty in sourcing the particular roofing material from Antigua and (ii) variations in the original plan and agreement. Yet, he provided no documentary evidence to support his claim.

[17] I will therefore dismiss his claim. He will have to pay Costs to Mr. Alexander in the sum of \$5,000.00.

Indra Hariprashad-Charles
High Court Judge