

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO: 541 OF 2002

BETWEEN:

YVONNE LEWIS

Claimant

And

**ANSELM LEWIS
THERESA LEWIS**

Defendants

Appearances:

Mr Carl Glasgow for the Claimant

Mr Joseph Delves for the Defendant

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2004: May 26th

2005: January 21st, March 10th
November 15th
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JUDGMENT

- [1] **Blenman J:** This is a claim involving a dispute in relation to a building contract.
- [2] Ms Yvonne Lewis (Ms Lewis) is a national of St Vincent and the Grenadines who resided in England but has returned home. She seeks to recover damages against Mr Anselm Lewis and his wife Ms Theresa Lewis based on an alleged breach of a building contract by Mr Lewis the latter who is a building contractor of vast experience.
- [3] Ms Lewis was living in England and desired to build a house in St Vincent and the Grenadines to which live. She entered into a contract with the Mr Anselm Lewis for him to construct a house on land situate at Cane Hall in St Vincent and the Grenadines. The initial cost of constructing the house agreed to by the parties was \$242,050.21 and this sum was to cover both labour and materials. She provided the plans for the construction to Mr Anselm Lewis but they had to be modified since additional work was required to be

done. The parties agreed that she would pay Mr Anselm Lewis an additional sum of \$25,634.00, increasing the contract sum to \$267,685.21. They agreed that Mr Anselm Lewis would construct a building with a first floor consisting of three bedrooms, two bathrooms, a dining room, a living room, a kitchen, two porches and a carport. The ground floor would consist of an apartment that contained two bedrooms, a kitchen, two living rooms and a dining room. At the time of entering into the agreement, Ms Yvonne Lewis resided in England so she opened a joint bank account at Barclays Bank in St Vincent and the Grenadine with her brother-in-law Mr Samuel Lewis and transferred monies to that account in order for her brother-in-law to pay Mr Anselm Lewis.

- [4] She contends that Mr Anselm Lewis failed to complete the construction of her house in a timely manner and in accordance with the agreement. Instead, he requested extra payment in order to complete. She also purchased additional items either directly or advanced further sums to Mr Anselm Lewis in order to remedy defects to the house caused by him. As a consequence, she expended the total sum of \$488,007.05 in constructing the house but states that the actual construction cost is \$382,000.00
- [5] She seeks to obtain damages from Mr Anselm Lewis based on his alleged breach of contract. In addition, she seeks to recover the difference between the monies she expended and the actual cost of constructing the house.
- [6] Mr Anselm Lewis denies that he breached the agreement that he entered into with Ms Yvonne Lewis. He asserts that during construction of the house, Ms Lewis made substantial alterations to the initial plans, which they had agreed upon, and made several modifications to areas he had constructed thereby causing the cost of construction to increase significantly. As a consequence, he was required to make for example major change. The ground floor was altered to include a kitchen a bedroom and a living room. Ms Yvonne Lewis requested and he complied in placing a bath in each bedroom of the top floor, the material for the kitchen counters was changed, the roof was changed from a simple gable roof to hip and valley. Downstairs was modified from a one-bedroom apartment to two bedrooms and two laundry rooms were constructed instead of one.

- [7] The issues that arise for my determination are:
- (a) Whether Mr Anselm Lewis breached the agreement that he had with Ms Yvonne Lewis?
 - (b) If so, to what measure of damages is Ms Yvonne Lewis entitled?
- [8] The parties provided witness statements, which gave opposing accounts of what transpired. However, on the date of the trial, unfortunately Mr Anselm Lewis was absent without any explanation and his lawyer was unable to account for his absence. Accordingly, I am unable to attach any weight to Mr Anselm Lewis' witness statement since it was not tested by cross-examination. Rule 29.8 (1) (a) and (b) of CPR 2000 is very instructive on this point and it states as follows: -
- “If a party -
- (a) has served a witness statement or summary; and
 - (b) wishes to rely on the evidence of that witness; that party must call the witness to give evidence unless the court orders otherwise.”
- [9] Ms Yvonne Lewis and her brother-in-law Mr Samuel Lewis gave evidence which was vigorously tested by Learned Counsel Mr Delves for the Defendant with the intention of showing that Ms Yvonne Lewis was responsible, if at all, for the extra work that Mr Anselm Lewis was required to do and she should therefore bear the additional cost, if any. Counsel for Mr Anselm Lewis put Ms Yvonne Lewis to prove that she expended the sums of money as she claimed by causing the money to be given to Mr Anselm Lewis.
- [10] Mr Anselm Lewis built a retaining wall on the property which Ms Lewis said she did not request of Mr Anselm Lewis nor did she approve of. I do not accept her evidence on this point. I am convinced that she consented to his building of the retaining wall even though initially she did not request it. Ms Lewis denied that extra bathrooms were placed in the bedroom but maintained that even though the original agreement between the parties addressed the two bathrooms they had agreed to increase bathroom as part of the revised contract. She was adamant that Mr Anselm Lewis seeks to mislead me in stating that he

had an extra bathrooms installed in the top floor of her house or that he constructed two apartments downstairs. I have no contrary evidence on this issue and accept her evidence on this matter.

[11] She stated that he failed to construct the downstairs in accordance with their agreement. In fact most of the materials that she purchased to construct the downstairs building which include light fittings she could not utilize due to the unfinished state of downstairs.

[12] For the most part, I accept her evidence as being truthful despite the best effort of Counsel to challenge the veracity of her statements. Her evidence that emerged during cross-examination did not detract in the main from her original evidence. She maintained that while she was in England, she remitted moneys on a regular basis to the joint account held at Barclays Bank to pay Mr Anselm. She sent him money and after the sum of \$267,685.21 had been expended she said "*I was not worried at first because I knew that I had asked for some changes and that there would have been added to the cost.*" In view of this evidence, I have no difficulty in concluding that after the agreement was reached to construct the house at a cost of \$267,685.21. Ms Yvonne Lewis requested that changes be made which resulted in the increase in the cost of construction.

[13] Mr Anselm Lewis urged her to "send money fast to finish the entire house but as the amount grew larger she got concerned" and questioned Mr Anselm Lewis about the delay and the fact that it was taking so much money to build. He informed her that he had to build a retaining wall to keep out the water. Mr Anselm Lewis told her that the house was complete save for the downstairs and requested that she send him a further sum \$40,000.00 which she did through her brother and sister. This sum was deposited into the joint account from which Mr Samuel Lewis withdrew \$39,000.00 and paid Mr Anselm Lewis.

[14] To her surprise, on returning home she was greeted by an unfinished house. The ground floor was incomplete. She asked Mr Anselm the reason for his non-completion and he told her that the money was finished, whereupon she gave him an additional sum of money.

- [15] In all, she caused the sum of \$488,195.55 to be given to Mr Anselm Lewis. Learned Counsel sought to make much about the fact that she did not say that the payments were made to the Defendant. I have no difficulty in accepting her evidence in this regard. I find that she made the above stated payments to Mr Anselm Lewis.
- [16] During reexamination by Learned Counsel Mr Carl Glasgow, Ms Lewis maintained that she caused the total sum of \$488,195.00 to be forwarded to Mr Anselm Lewis.
- [17] Mr Samuel Lewis supported Ms Yvonne Lewis' evidence. He was cross-examined at length but stuck to his story. I have absolutely no reason to disbelieve him. I find him to be a simple and truthful gentleman who merely wished to tell exactly what he knew and to serve no one's interest. I therefore accept his evidence in so far as he confirmed that he made payments to Mr Anselm Lewis on behalf of his sister-in-law Ms Yvonne Lewis.
- [18] Mr Arthur Guy who is a qualified quantity surveyor provided evidence in this matter. He is of the view that the cost of construction for the work done by Mr Anselm Lewis was approximately \$382,000.00. His evidence was extremely helpful. Learned Counsel Mr Joseph Delves sought to discredit his evidence on the basis that his estimate is based on assumptions since he failed to conduct proper investigations. Counsel also put to the witness, I suppose based on instructions from his client that if there were delays in construction the cost would increase. Mr Guy agreed with Counsel's suggestion but hastened to add, and currently, so, that there was no known increase in the construction costs in the present matter. His evidence was not shaken even though it was tested at length.
- [19] I found Mr Guy to be a forthright and honest man. He is a credible witness whose evidence I accept without any reservation. He stated that he would give a 5 percent in margin for error. I am satisfied that he is a reliable witness.
- [20] In his defence, Mr Anselm Lewis' witness statement indicated that he received approximately \$3000,000.00 from Ms Yvonne Lewis. However, he did not present himself

in order for his evidence to be tested, neither was his attendance dispensed with. I can have no regard to his witness statement.

[21] Mr Kerwyn Morris filed a statement in support of Mr Anselm Lewis and he too did not attend the trial court. His evidence was therefore not tested and similarly I can attach no weight to his witness statement.

[22] I am mindful of the fact that in civil matters the burden of proof lies on the claimant. The standard of proof required of Ms Lewis is proof on a balance of probabilities. Ms Yvonne Lewis' task was rendered easier in this matter.

[23] The facts as I find them are as follows: On or around September 2000 Ms Yvonne Lewis entered into a contract with Mr Anselm Lewis to construct a three bedroom house at Cane Hall, St Vincent and the Grenadines at a cost of \$267,685.21. She required him to make changes during the construction phase of this house resulting in increase in the cost of construction. He assured her that the house was near completion when it was not.

[24] In total, Mr Anselm Lewis received the sum of \$488,195.55 from Ms Yvonne Lewis whereas the cost he incurred inclusive of his profit was \$382,800.00. I accept that she was forced to expend cash to remedy defects in the house but she did not prove to my satisfaction the amounts of moneys she expended in this regard. I have no difficulty in concluding that Mr Anselm Lewis breached his contract with Ms Yvonne Lewis when he failed to complete the construction of the house.

[25] Learned Counsel, Mr Carl Glasgow appearing on behalf of Ms Lewis referred me to the following cases which address the measure of damages for breach of contract **Mertens v. Homes Freeholds Co Ltd [1921] ALL ER 372; Norton Abbott Development Co. Ltd v. Stockman Bros [1931] 47 T.L.R 616**. I am of the view that the justice of this case demands that the measure of damages I should award must represent the difference between the sum of money Ms Yvonne Lewis expended and the actual cost of

construction. I must also make provision allowance for the 5 per cent margin of error in the construction cost.

[26] I have no evidence that Mrs Theresa Lewis entered into any agreement with Ms Yvonne Lewis. She is therefore not a proper party to this claim and should not have been joined in this claim.

[27] In conclusion, and for the reasons stated I find that Ms Yvonne Lewis has established her claim against Mr Anselm Lewis.

[28] Accordingly, I give judgment for Ms Yvonne Lewis against Mr Anselm Lewis for breach of contract. I award her damages in the sum of \$87,095 which represents the difference in the moneys she advanced to Mr Anselm Lewis and the cost of constructing the house making allowance for 5% margin of error. (\$488,195 minus \$401,100) I dismiss her case against Mrs Theresa Lewis and in the exercise of my discretion I do not award any costs to her.

[29] Due to the circumstances which are well known to all concerned, I must nevertheless express my regret for the delay in finalizing this judgment.

[30] I thank both counsel for their assistance.

Louise Esther Blenman
High Court Judge