THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 188 OF 2005

BETWEEN:

O'NEIL CRUICKSHANK

Claimant

V

ANDREA BURGIN

Defendant

Appearances:

Mr. Jaundy Martin for the Claimant
Mr. Arthur Williams for the Defendant

2006: January 25
2007: May 25

JUDGMENT

[1] **BRUCE-LYLE, J :--** The Claimant and the Defendant on the 8th of December 2003, entered into an agreement for the construction of the Defendant's dwelling house. The Claimant in the said agreement, agreed to provide the labour for the construction of the said dwelling house at Questelles for the sum of $40,000. The agreement specifically excluded labour for electricals and plumbing.

[2] The Defendant provided the Claimant with plans drawn by Debel Architectural and Construction Ltd. The plans referred to the upstairs portion of the home with the downstairs portion described as undeveloped. The plan therefore required that the Claimant adhere to the plans and specifications.

[3] This claim is as a result of the Defendant's alleged breach of contract. The Claimant contends that the Defendant breached the contract by summarily evicting the Claimant and his workers and therefore refusing to allow them to complete the works. The Claimant further alleges that the Defendant refused to pay the balance on the contract which amounts to $10,000 E.C. In the converse the Defendant contends that the Claimant walked off the job without completing the works.

[4] The issues arising for the determination by the Court are to my mind simple and amount to the following -

(a) Whether there was work remaining to be done and the nature and extent of such work;

(b) Whether there was a breach or repudiation of the contract and who was responsible;

(c) Whether damages ought to be awarded and the measure of such damages.

[5] The house plans show a three bedroom house with a kitchen, dining room, living room and two bathrooms. The living quarters are located upstairs and the downstairs portion was vacant and empty, as per the plan. It is not in dispute that the budget for the construction was very limited - $110,166.50. This the Defendant herself admitted in her evidence. Then there was also a 7 week delay when the contractor encountered rocks where he thought there would have been soil and had to employ the use of a compressor to dig the foundation. This was at a cost of $1,500. It is not in dispute that the Claimant did not charge the Defendant any extra for the seven additional weeks that he had to pay his workmen as a result. I got the distinct impression that the Claimant bent over backwards or went out of his way to assist the Defendant, and I shall refer to this again later on in this judgment.

[6] From the evidence adduced by both sides, I formed the opinion also that the whole project was plagued with problems, financial problems which affected the efficient delivery of materials and also on time payments to the Claimant by the Defendant. It is not in dispute that at one stage of the project the Defendant terminated the arrangements she had for the

delivery of materials which she had with Browne's Hardware Ltd and Alternative Hardware, and herself took charge of deliveries.

[7] It seems to me from the evidence that the breach must have occurred when there was some exchange between the parties on the 26th March 2004. At that point the Claimant was owed the last installment of $10,000 under the terms of the project. The Claimant alleges that the Defendant turned up at the construction site and began to make noise about some paint water left at the site. The Claimant's workmen it is alleged were also at the site. The Defendant requested that they leave the site and that she would finish the remaining work herself.

[8] According to the Claimant there was some minor works left to be finished and he informed the Defendant that he was willing to complete those minor works remaining. He, the Claimant alleges that the Defendant insisted that she would finish the remaining works herself and at this point she had the Claimant's tools strewn outside where she had put them with the explanation to the Court that she was cleaning the premises. The Claimant's point is that at this stage he had not yet handed over the house to the Defendant, and that he the Claimant had the responsibility of cleaning the premises as per the contract.

[9] These pertinent areas of the Claimant's case is supported by evidence from Tafoya Glasgow and Otis Cruickshank who testified as to the Defendant's conduct which according to the Claimant amounted to the repudiation of the contract and resulting in the Claimant suffering loss and damage.

[10] On the other hand the Defendant states her case as being that it was the Claimant who breached the contract by walking off the job. She further contended that the Claimant said that he was finished when in fact there was work for him to complete. Then in another turn in her defence she states that it was the workmen and not the Claimant who told her they had finished the work. There is no mention by her of any exchange between herself and the workmen and the fact that the tools were packed or strewn in the open yard.

[11] At this stage I can safely say that I find the Defendant's version of events to be unreliable having regard to the preponderance of the evidence. If I were to accept what the workmen are said to have told the Defendant, it is my view and I find that as a fact that the Defendant contracted with the Claimant and not his workmen. It was therefore the Claimant's responsibility to inform the Defendant that the works were completed and not the workmen. In any case I am more inclined to accept, having regard to the preponderance of the evidence and having regard also to the credibility of the versions put before me, that the Claimant's story makes more sense.

[12] I am more inclined to believe that the Defendant's placing of the tools in the yard with the attendant explanation that she was cleaning the building was evident of her intention to end the contractual relationship at that point. Why would she want to clean the premises when the contract specifically gave that obligation to the Claimant? Besides the premises had not yet been handed over to her.

[13] Again there is the evidence of the Claimant that despite this obvious and glaring conduct of the Defendant signifying repudiation of the contract, the Claimant sought dialogue with the Defendant with a view to finishing the job, and even attempted to do some cleaning of the premises to facilitate completion as per the contract so he could be paid the final installment of $10,000 E.C. All to no avail. It took from 7th May 2004 when the Claimant wrote to the Defendant through his solicitors to the 12th July 2004 for the Defendant to reply, also through her solicitors stating her position. It was at this stage that the Claimant decided to sue for damages and accepted the Defendant's repudiation of the contract.

[14] The Defendant, who gave evidence on her own behalf tendered a report from one Mr. Arthur L. Guy a Quantity Surveyor, that spoke of the works remaining to be done on the Defendant's premises. This report was commissioned by the Defendant. The interesting thing about this report is that it includes or mentions areas of work not contracted for between the parties. These include electrical installations, plumbing disposal installation, kitchen cupboards, septic tank and soak away, walkway and drains. Interestingly again, in

her testimony the Defendant admitted that the Claimant had built a driveway that was not part of the plans supplied.

[15] I have looked at Part 32.6(1), (2), (3), (4), (5), (6) of the Civil Procedure Rules 2000; the Defendant is in breach of each of these rules. Even though the document of Arthur L. Guy was allowed in evidence the Court is at liberty to attach the necessary weight it deems fit to it. In this case I attach very little weight to the report. If anything else it rather assists the Claimant's case when he says there was very little work left to be completed as per the contract. I had cause to observe the Defendant when she gave evidence. This was because the case revolved to a great extent on credibility. I found the Defendant's evidence to be unconvincing and I place more reliance on the Claimant's evidence.

[16] I accept the Claimant's contention that there was indeed work left to be done as per the contract. These were in the nature of minor masonry works and painting, and also the cleaning of the yard. As I said before I place very little reliance on the report of Arthur L. Guy for the reasons mentioned earlier in this judgment. It is of no help in determining what was left to be done by way of works. I therefore accept the Claimant's contention as to the nature of works left to be completed.

[17] In the Law of Contract a breach occurs when a party repudiates or fails to perform an obligation imposed by a contract. In this instant case the breach on the part of the Defendant occurred when she refused to permit the Claimant to complete the outstanding works and then denied the Claimant and his workmen access to the site. Then the Defendant compounded the breach by refusing to pay the Claimant the outstanding contractual sum of $10,000 E.C. This is all supported by the Claimant's evidence which as I indicated earlier I am more inclined to rely on.

[18] It is not now for the Defendant to speculate or be allowed to speculate as to what work the Claimant would or would not have done had the Defendant not repudiated the contract. The repudiation by the Defendant is a sufficiently definitive act for the Court to adjudicate

upon, having regard to the fact that the claim is on for full damages rather than on a quantum meruit basis.

[19] Counsel for the Claimant has cited the case of ***Harold Wood Brick Co v Ferris*** [1935] 2 K.B. 198 at 205:6 and the dictum of Greer L.J. contained therein. The principle of law stated in this case is that repudiation occurs when a party indicates by words or conduct that he is unable or unwilling to perform his side of the contract. In such a case the innocent party may treat himself as no longer bound by the contract by accepting the repudiation and suing for damages. I agree entirely with the case cited and its relevance to this instant case.

[20] On looking at the evidence, I am in no doubt that the Claimant did not immediately accept the breach, but tried to get the Defendant to allow him to perform the contract so that he could receive the final installment of $10,000 to pay his workers. It is particularly interesting that it is not in dispute that the Claimant even offered to dig the septic tank although it was not obligated as part of the contract. The Defendant however maintained that it was part of the contract. I have looked at the contract marked Ex. A.B. 1 and am satisfied that the digging of the septic tank falls outside the contract. The long and short of this is that the Defendant refused the Claimant to perform and he was forced to accept the repudiation of the contract. The Claimant at no time delivered up possession of the construction to the Defendant as mandated by the contract. The Defendant rather took possession of the site.

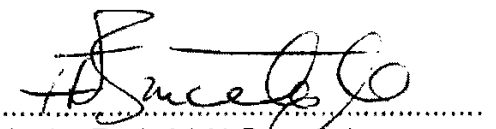
[21] It is accepted law that the defaulting party, in a case as this, where there has been a clear repudiation of the contract, must pay damages for the breach. Therefore I am of the view, and do hold that the Defendant must pay damages and the Claimant is entitled to damages from the Defendant for the said breach of the contract. The object of this is to put the Claimant in the position that he would have been in had the contract not been breached.

[22] The case of ***Hadley v Baxendale*** establishes the measure of damages in breach of contract cases. It posits two limbs which the Court must consider. The first limb deals with losses arising naturally from the breach and the second limb deals with what is reasonably in the contemplation of both parties. In this case, Counsel for the Claimant submits that the two limbs apply. I agree, as in assessing damages in contract, it is well-established that the contract is terminated not from the beginning of the contract but only as regards the future. The loss therefore, which naturally arises and which is reasonably in the contemplation of both parties is the amount of $10,000.

[23] It is important to note that this contract is not an entire contract, as that term is understood to mean. This is a divisible contract and as such payment is made in four installments of $10,000; the final $10,000 being upon completion of the contract.

[24] I hold therefore that in this case, the weight of the evidence is on the side of the Claimant, who has brought witnesses in support of his contention that the Defendant breached the contract. These witnesses provided details and specified in clear terms in what manner the Defendant breached the contract. The Claimant is saying that there was a repudiation resulting in a breach of the contract. I believe his side of the story. I hold therefore, based on the preponderance of the evidence adduced by the Claimant as against that of the Defendant, and on a balance of probabilities that the Claimant has proven his case.

[25] Therefore on the basis of the rule in Hadley v Baxendale the Claimant is entitled to full damages in the amount of $10,000 with interest from 26th March 2004 (date of the breach) at 5% per annum plus costs to be paid by the Defendant in the sum of $3,000. In this regard the Defendant's case is dismissed.



Justice Frederick V. Bruce-Lyle
HIGH COURT JUDGE