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

SAINT LUCIA

CLAIM NO. SLUHCV2003/0576

BETWEEN:

KEITH NOEL

Claimant

and

ROSS BOWRING

Defendant

Appearances :
Mr. A. St. Clair for Claimant
Mr. G. Williams for Defendant

2007: December 10;
2008: February 20.

JUDGMENT

[1] COTTLE, J.: The parties entered into a contract under which the Claimant was to build a house for the Defendant. The house was to be built at Escap in the Quarter of Micoud in St. Lucia.

[2] The agreed contract price was $570,610 including an agreed increase to cover the cost of constructing a swimming pool. Under the contract the works were to begin on 4th March, 2002 and to be completed by 4th December, 2002. Payment to the Claimant, was to be within 14 days of a certificate of work approved by the Defendant's engineer.

[3] On 8th November, 2002 the Defendant invoked Clause 22 (1) of the contract and forthwith determined the employment of the Claimant contractor.

[4] Clause 22 (i) provides for the Defendant to determine forthwith the contract:

> "if the contractor without reasonable cause fails to proceed diligence (sic) with the works or wholly suspends the carrying out of the works before completion."

[5] The Claimant issued a claim form seeking compensation for materials left on site and retained by the Defendant along with form work and temporary supports.

[6] He also claimed for the value of works completed as per the contract with the cost of agreed additional works already done. The Claimant wished to be compensated for his lost profit and the financing charges he incurred in completing the works to the date of termination.

[7] The Defendant counterclaimed for the cost incurred in completing the house and averred that it was because of the Claimant's refusal to provide certain material that the works became wholly suspended thereby entitling the Defendant to determine the contract.

The Evidence

[8] The Claimant swore that works began in March 2002 after the Defendant paid the mobilization fee. This was because changes had to be made in the foundation plans and the consequent excavation works. When the Claimant presented his first payment certificate the entire amount advanced as mobilization payment had been deducted. This was not the normal practice in St. Lucia as even the Defendant's expert engineer conceded. This shortfall caused the Claimant cash flow problems and caused him to incur finance charges as he obtained an overdraft to help him continue the works. Other payments were always late which exacerbated the difficulty the Claimant faced. He continued and when the parties met in October 2002 the Defendant was satisfied with the progress of the works.

According to the Claimant the 'bone of contention' had to do with the interpretation of the contract as far as it concerned the supply of certain articles, particularly fasteners for the clay roof tiles, hurricane shutters and 220 volt electrical panels. The Claimant felt that it was the duty of the Defendant to supply these while the Defendant considered the position to be otherwise.

[9] I pause here to note that the contract had been prepared by the Defendant's engineer, Mr. Dolcy, on behalf of the Defendant.

[10] When the works were stopped by the Defendant, the Claimant thought that the building was 75% to 80% complete. Other material evidence came from the Defendant and his engineer.

[11] The Defendant agreed that he determined the contract. He swears that by October 2002 the project was seriously behind schedule. The Claimant was refusing to supply the window shutters, fasteners for the roof tiles and 220 volt electrical panels. The contract provided for the contractor to provide some of the building materials and for the owner to supply other items.

[12] The Defendant took the position that if items did not specifically appear on the list of 'owner supplied' items that these were the responsibility of the Claimant, and as the Claimant was refusing to continue work on the roof until the tile fasteners were supplied, the Defendant determined the contract. He completed the works himself with the aid of subcontractors.

[13] The central issue thus is reduced to one question. Was the Defendant justified in his view that the works were not being proceeded with diligently or was the delay entirely the fault of the Claimant? The answer, of course depends on the contract.

[14] The contract is silent as to who was to supply the disputed items. The Court was greatly assisted by Mr. A. Dolcy the Defendant's engineer and drafter of the contract. In cross examination Mr. Dolcy concluded that the obligation to supply the items was that of the Defendant. I wholly agree with him. The contract merely required the Claimant to provide labour for the installation of the roof. The Defendant cannot fail to supply the needed fasteners for the clay tiles and then use this as an excuse to determine the contract.

[15] The Defendant was represented on the project by his engineer, who visited the site weekly. It is most strange that it is not until October that concerns are being raised by the Defendant about delays to the work schedule.

[16] In any event, it is clear that the reason this contract was determined is because the Claimant refused to supply the disputed items, and works especially on the roof could not proceed. By the time the works were suspended by the Defendant the Claimant had completed all works on the roof save for the installation of the roof tiles which had to await the arrival of fasteners which the Defendant was to supply.

[17] The Defendant also failed to pay the Claimant on presentation of a certificate of works approved by the Defendant's engineer. The Defendant says he withheld payment because there were areas of discrepancy. He also suggests that he did not pay as this would have been the last certificate and would not be paid until after the expiration of the relevant defects liability payment.

[18] Neither reason has merit. Upon the certification of his engineer it became the duty of the Defendant to pay the certificate. Had the contract not been prematurely and wrongly ended by the Defendant, there would have been other certificates subsequent to the unpaid one.

[19] The Defendant has offered no evidence to suggest that the sums claimed by the Claimant for the works carried out or the materials on site are in any way inflated. I am content to use them as a basis for the award.

[20] I find that the Claimant has proven his case and I award him damages as follows:-

(a)	Completed works as per contract as evidenced by the certificate of works	-	$82,000.00
(b)	Materials on site	-	$16,682.40
(c)	Form works & Supports	-	$ 3,376.00
(d)	New Works	-	$87,991.50

[21] I make no award for loss of profit or financing charges.

[22] I aim to compensate the Claimant on a quantum meruit basis for the work actually done plus the materials and supplies.

[23] The total award to the Claimant is thus $190,049.90.

[24] The counterclaim is dismissed as I have found it was the Defendant who prevented the Claimant from finishing the works.

[25] Interest is awarded to the Claimant at the rate of 6% per annum from the date of filing the claim until payment.

[26] The Defendant will pay the Claimant prescribed costs in the sum of $37,507.49.

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BRIAN S. COTTLE
HIGH COURT JUDGE