

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 102 of 2005

BETWEEN:

NORMA JARDINE

Claimant

v

EDGERTON RALPH MARS

Defendants

Appearances: Dr. Linton Lewis for the Claimant
Mr. Arthur Williams for the Defendant

2008: February 18
April 21

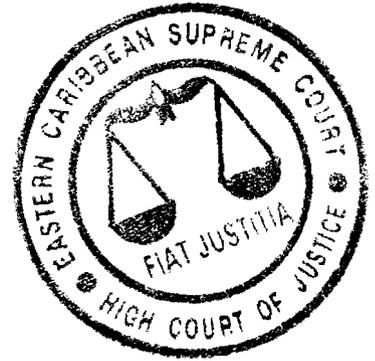
JUDGMENT

[1] **THOM, J:** This is a claim for damages for breach of contract.

BACKGROUND

[2] The Claimant is a citizen of Saint Vincent and the Grenadines who at all material times was resident in the United Kingdom. She is a nurse by profession. The Defendant is a citizen of Saint Vincent and the Grenadines. He is a building Contractor.

[3] On May 18, 2004 the Claimant and the Defendant entered into a contract for the Defendant to construct a dwelling house for the Claimant. It was agreed inter alia that the Defendant would provide the materials and labour. The contract price was \$452, q160.42. The sum of \$226,080.21 to be paid as a down payment and the remaining sum of



2004. During the latter part of December 2004 there was a disagreement between the parties and a new contractor was hired to complete the construction of the house.

[4] The claimant instituted these proceedings in which she alleged that the Defendant failed to construct the building in accordance with the design and there were defects in the construction of the building. She claimed inter alia damages for breach of contract or damages in negligence in the sum of \$45,649.50.

[5] The Defendant in his defence denied that he failed to construct the building in accordance with the design and that there were defects in the building. The Defendant alleged the land was too small for the design shown on the plan and the Claimant agreed to the alterations. The defendant in his counterclaim alleged that the claimant was in breach of the contract in that she stopped him from completing the construction of the building and he claimed inter alia damages for breach of contract.

[6] The Claimant testified on her own behalf and called four witness being her husband Trevor Steadman, Deirdre Millington-Myers, Norris Alwyn Lewis, and Edric Lewis. The Defendant testified on his own behalf and called no witnesses.

EVIDENCE

[7] The evidence led on behalf of the Claimant is that the Claimant is the owner of a parcel of land at Belvedere in the state of Saint Vincent and the Grenadines. On May 18, 2004 the Claimant and the Defendant entered into a written contract for the construction of a dwelling house on the said parcel of land. The contract provided inter alia for the construction of a dwelling house at Brighton. The house was to be constructed in accordance with the building plan dated March 8, 2004. The contract price was \$452,160.42. It was agreed that one half of the contract price would be paid at the commencement of the project. It was agreed orally that the house would be completed within six (6) months. The sum of \$226,080.21 was duly paid to the Defendant pursuant to the agreement. There were some problems getting electricity and water to the property. This construction commenced in July 2004. The Defendant informed the Claimant that the house would be completed by December 2004.

- [8] In November 2004, the Claimant visited Saint Vincent and the Grenadines and she visited the construction site with the Defendant. She found that the house was not near completion and the building did not look like the design on the plan. There were several defects in the building being some of the walls were not properly aligned, the building did not conform to the design drawings in that the rooms were not the same size as shown on the plan, the room for the study was not included even though it was shown on the plan, the rafters were in some areas 34"- 36" apart, the tie beams were not constructed as part of the foundation and some of the concrete walls were constructed without steel reinforcement.
- [9] Under cross-examination Norma Jardine admitted that she had originally agreed to build a house at Harmony Hall. The witness also stated that she had two plans. The plan approved for the land at Belvedere was not the same plan drawn for the land at Harmony Hall. The plan that was drawn for Harmony Hall was amended for the land at Belvedere. The witness denied that the Defendant discussed with her that the land at Belvedere was too small for the plan. The witness also denied that she agreed to changes to be made to the building because of the size of the land at Belvedere. She stated that the only change she requested was the addition of the electrical outlets in each room as suggested by her son. The witness also denied that she stopped the Defendant from doing further work on the building because her husband did not like the building.
- [10] Mr. Steadman agreed under cross-examination that he did not like the shape of the house. He also agreed that he wanted the house to have a shape that was to his liking. Part of the top of the house was demolished and redesigned to his liking.
- [11] The evidence on behalf of the Defendant is that on the 18th day of May, 2004 the Defendant entered into a contract with the Claimant to build a house at Belvedere. The Defendant agreed to the contract price and down payment as was stated by the Claimant. However, the Defendant testified that when the contract was signed there was no discussion about when the contract would be completed. The plan for the building was designed for a site at Harmony Hall. That site was not available and the Claimant decided to build at Belvedere. When an outline of the building was made it was discovered that the

Harmony Hall. That site was not available and the Claimant decided to build at Belvedere. When an outline of the building was made it was discovered that the design was too large for the site at Belvedere. The Defendant testified that he discussed the alteration of the building with the Claimant and the Claimant told him to take whatever steps were necessary. It was necessary to reduce the porch by five feet. It was also necessary to change the location of one bathroom. The Claimant visited the site on about three (3) occasions while the building was being constructed and she made no complaints except that she requested four (4) electrical outlets in each room instead of two (2).

[12] The Claimant never complained of any defects in the construction. Apart from the alterations agreed being the reduction of the porch, the shifting of a bathroom and the study had to be placed on the lower floor, the building was constructed in accordance with the design. The walls and columns were not crooked. He had no knowledge of any defects in the building. On or about December 28, 2004 the Claimant told him to stop working on the building. In January 2005 he met with the Claimant and Mr. Steadman at the site. The Claimant requested bills from him and the remaining money from the down payment. Mr. Steadman was very abusive. Later in January 2005 he observed workmen working on the building. The front and back walls of the top of the building were demolished. The roof was taken off.

[13] Under cross examination the Defendant denied that he told the Claimant that the house would be completed in six (6) months. He agreed that he did not use all of the down payment and he did not return the difference to the Claimant. While the Defendant insisted that the plan was drawn for the site at Harmony Hall, he agreed that the plan he exhibited was approved for Belvedere. The Defendant agreed that the columns were not tied but explained that that would have been done when work commenced on the lower floor. The Claimant told him to commence construction of the upper floor first.

ISSUES

[14] The issues for the court to determine are:

(1) Whether the manner in which the construction work was carried out by the Defendant amounted to a breach of contract.

(2) Whether the Claimant by securing the services of other workmen to complete the construction of the house was in breach of contract.

SUBMISSIONS

- [15] Learned Counsel for the Claimant submitted that the evidence clearly showed that the Defendant agreed that he had \$49,567.06 for the Claimant which he did not pay over to her. The plan was approved for construction of a house at Belvedere and not at Harmony Hall. The Defendant did not build the house according to the plan. The Defendant had a duty to exercise reasonable skill and care in the construction of the house, this he failed to do. Learned Counsel referred the Court to several cases including **Chin keow v Government of Malaysia [1967] / WLR and Greaves and Co (Contractors Ltd. V Baynham Meilke and Partners [1975] BAER P.99.**
- [16] Learned Counsel further submitted that the Defendant in refusing to communicate with the Claimant and to continue work on the house amounted non-performance of the contract on his part, this went to the root of the contract and amounted to a repudiation breach of the contract. The Claimant was therefore entitled to treat the contract as being at an end. Learned Counsel referred the Court to the cases of **Photo Productions Ltd v Securior Transport Ltd. 1980 AR 827 at 849; Fercometal v Mediterranean Shipping [1989]AC 788 AT 805.**
- [17] Learned Counsel for the Defendant submitted that the plan of the house was drawn for a parcel of land at Harmony Hall. The land at Belvedere was too small for the building. Learned Counsel urged the Court to accept the evidence of the Defendant that the alterations were approved by the Claimant. The Claimant's husband did not like the design hence the house was demolished in part and built in accordance with a new design. The Claimant breached the contract when she stopped the Defendant from completing the building. The Defendant is entitled to damages and costs.

FINDINGS OF FACTS.

[18] Having reviewed the evidence I found the Claimant and her witnesses to be reliable witnesses. They were candid with their answers under cross-examination. They were not contradicted in any material way. I did not find the Defendant to be a reliable witness. It was quite apparent under cross-examination that the Defendant had difficulty reading a building plan. When shown a picture of a portion of the building he had constructed, the Defendant had difficulty relating the picture to the drawing on the plan. Also pictures tendered in evidence showed that portions of the construction were different from the drawings.

[19] I do not believe the Defendant's testimony that the plan was designed for Harmony Hall and that it was too big for the land at Belvedere. The plan showed it was approved for Belvedere. The site plan that was exhibited showed that the land was not too small for the house. The evidence shows that the completed house though different in design is not smaller than the drawing on the plan dated 8th March 2004 and which was approved by the Physical Planning Authority on April 14, 2004.

[20] I found the following facts:

- (a) That the claimant and the Defendant entered into a written contract where the Defendant undertook to construct a dwelling house for the Claimant in accordance with the construction drawings dated 8th March 2004.
- (b) Pursuant to the contract the sum of \$226,080.21 was paid by the Claimant to the Defendant.
- (c) The value of the works completed by the Defendant amounted to \$176,513.15. The remaining sum of \$49,567.06 was not repaid to the Claimant. This evidence was not challenged. The Defendant admitted under cross-examination that he had in his possession the said sum of \$49,567.06 for the Claimant, and that the Claimant had requested to be repaid the said sum. Under re-examination the Defendant testified that he intends to give the money to the Claimant.

- (d) The defendant did not construct the house in accordance with the drawings on the plan. The Defendant agreed there was no room for a study on the upper level as shown on the plan, a bathroom had to be shifted, the porch was five (5) feet smaller. I do not believe the Defendant's testimony that the Claimant agreed to the alterations.
- (e) I believe the testimony of the Claimant and her witnesses in relation to the defective works that was seen on the building.
- (f) I also found that the Claimant's husband Mr. Trevor Steadman did not like the design of the upper level that was constructed by the Defendant and as a result the top of the building was substantially demolished.
- (g) While I found that there were defects in the construction no evidence was led which showed that the defects could not be corrected without substantial demolition of the upper level including the roof and that a new design had to be put in place.

LAW

[21] I agree with the submission of Learned Counsel for the Claimant that where there is a contract for the construction of a building and for the contractor to provide the material that it is an implied term of such a contract that the building works would be carried out in a good and workman like manner and that good and proper materials would be used. **Hancock and Others v B.W Brazier (Anerley) Ltd [1966] 2 AER 901.** While in **Hancock's Case** the contract was to purchase a house from a builder who contracted to build it. I find the position to be the same where as in this case a person enters into a contract with a building contractor for the contractor to build a house for him.

[22] In Halsbury **Laws of England 4th Edition VOLUME 4** the Learned Authors in dealing with what amounts to repudiation of a contract stated at para 1238 as follows:

"When a breach amounts to a repudiation of the contract. A single breach which goes to the root of the contract will entitle the

innocent party to elect to treat the contract as at an end. Whether the breach does go to the root of the contract depends both upon the construction of the contract and upon the gravity of the consequences of the breach”.

[23] It was an express term of the contract that the Defendant would construct the home in accordance with the drawings on the plan dated 8th March 2004. I find that it was an implied term of the contract that the Defendant would have carried out the construction works in a good and workmanlike manner and that the Defendant would use good and proper materials.

[24] In view of my findings above that the portion of the building constructed by the Defendant was not constructed in accordance with the drawings on the plan dated 8th March and approved on April 14, 2004 and also the defects in the construction works, I find that the Claimant has proved a balance of probabilities that the Defendant failed to construct the dwelling house in accordance with the drawings on that plan and that portions of the construction works were defective. The breach by the Defendant went to the root of the contract and the Claimant was entitled to treat the contract as at an end. The Claimant having used a new design to complete the top of the house she is not entitled to damages for the cost of the new construction, but to the cost of remedying the defects.

COUNTER CLAIM

[25] As stated earlier I did not find the Defendant to be a reliable witness. I found the Claimant and her witnesses to be credible witnesses. I find that the Defendant failed to prove on a balance of probabilities that the Claimant was in breach of the contract as alleged by him.

[26] Judgment is entered for the Claimant. The Counterclaim is dismissed.

[27] It is ordered that:

- (1) The Defendant shall repay the Claimant the sum of \$49,567.06 within ten (10) days.

- (2) The Defendant shall pay the Claimant interest on the said sum of \$49,567.06 at the rate of 5% per annum commencing from the date of the issue of the Claim being the 25th day of February 2005 to the date of payment.
- (3) Damages for breach of contract to be assessed and costs to be prescribed costs.

A handwritten signature in black ink, appearing to read 'Gertel Thom', is written over a horizontal dotted line.

Gertel Thom

High Court Judge