

COMMONWEALTH OF DOMINICA

DOMHCV2005/0221

BETWEEN:

ISRAEL PAUL

Claimant

and

JULIA THOMAS

Defendants

JOHN THOMAS

Before: The Hon. Justice Brian Cottle

Appearances:

Mr. Alick Lawrence for Claimant

Mrs. Zena Dyer for Defendants

[2010: October 13<sup>th</sup>]

[2011: March 28<sup>th</sup>]

## JUDGMENT

[1] **COTTLE J:** The Claimant brought suit to recover the balance due under a building contract. The claimant is a building contractor. The defendants engaged him to construct their home. Before the home was complete the

- claimant stopped work. He says the defendants denied him access to the worksite and engaged other workmen to complete the building.
- [2] The defendants say the claimant abandoned the job when it turned out to be beyond him. They counterclaim for the cost of repairing defective works by the claimant and completing the house.
- [3] The claim is for \$42,600.00. The sum is said to be \$41,000.00 unpaid under the contract and an additional \$1,600.00 for rental of plywood. The counterclaim is for \$60,000.00 labour cost.
- [4] The building contract is dated 15<sup>th</sup> February 2002. The claimant undertook to furnish all labour and perform all the required works for a contract sum of \$255,000.00. The defendants were to supply all material.
- [5] From the pleadings it appeared that the claimant is saying that he was paid \$214,000.00 of the contract price. In the amended defence and counterclaim the defendants say they paid the claimant \$228,479.00 of the agreed contract price. They say the incurred an additional \$60,000.00 in labour costs to complete the works did also spent more than \$57,000.00 in associated expenses to complete the house.
- [6] In his witness statement the claimant says he was paid \$228,000.00 but that he was also entitled to \$3,000.00 for rental of plywood and 12,000.00 for additional works executed. This evidence is at odds with his pleadings. No claim for extra work was made in the pleadings. When cross examined he admits being paid \$228,479.00.
- [7] This minor difference between his witness statement and the amount admitted on cross examination is of no moment but it is to be noted that the claim for additional works is novel and the amount claimed for rental of plywood has all but doubled but the amount pleaded in the claim form of \$42,600.00 is almost the same total he arrives at in his witness statement of \$42,000.00.
- [8] The result of the unfortunate impression that the claimant made on the court is that he has failed to prove his case. His is the only evidence for the

claimant. The inconsistencies identified above lead the court to conclude that he is not to be relied upon.

- [9] I now turn to examine the counterclaim. The defendants gave evidence. They also called Jeff Letang and Eugene Royer as witnesses. Mr. Letang testified that he was called in by the parties to remedy the defective plumbing works done by the claimant. He was paid by the defendants. He adds that despite the fact that the claimant knew him and would see him regularly, the claimant never enquired of him as to his progress. I have no reason not to accept Mr. Letang's evidence. He had no interest to serve.
- [10] From Mr. Letang's evidence I am able to infer that the parties both felt that the claimant's labour contract was at an end. As far as the defendants were concerned they had paid him for what work he had done and they were content to let matters lie.
- [11] The evidence of Eugene Royer is of little assistance. Mr. Royer is a chartered architect. The defendants commissioned him to inspect and prepare a report. Unfortunately he was instructed two years after the fact. The building had long been completed. His report is based largely on what has been told to him by the defendants.
- [12] At the end of the day I was not persuaded that the defendants had led sufficient evidence to substantiate the counterclaim. The counterclaim appeared to be very much of an afterthought and only a reaction to the claim having been made.
- [13] In this straight contest of facts neither side has discharged the evidential burden
- [14] The counterclaim is dismissed as well. In the circumstances of this case I consider it would be just to have each party bear their own cost. I so order

Justice Brian Cottle  
High Court Judge