THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 479 OF 2005

BETWEEN:

CAULDRIC FRASER

Claimant

V

ERIC AUDAIN
SIM ADAMS AUDAIN

Defendants

Appearances:

Mr. Jomo Thomas for the Claimant
Mr. Joseph Delves for the Defendants

2009: September 23
2012: December 10

JUDGMENT

[1] **BRUCE-LYLE, J:** -- This is a claim brought in contract by the Claimant for EC$96,911.78. The basis of this claim is a written contract dated May 26th 2005 entered into between the Claimant and the Defendants for the construction of a dwelling house at Lodge Village, St. Vincent by the Claimant for the Defendants. The contract sum for the construction was EC$362,476.82.

[2] On the 17th October 2005, the Defendants, according to the Claimant, stopped him from continuing building the house.

[3] The Claimant therefore claimed that the Defendants owe him money for work done up to his being stopped from continuing building the house and that he suffered loss and damages which he particularized as follows:-

(i) Payment for work done: EC$58,611.28.

(ii) Labor cost for 2 weeks: EC$7,300.50.

(iii) Loss of profit because of having to refuse other contracts: EC$30,000.00.

(iv) Cost of transporting water for 5 months: EC$1,000.00.

[4] The Defendants however, by their defence and counterclaim maintained that:

(i) The contract was both written and oral;

(ii) The (written) memorandum of agreement does not reflect the agreement between the parties;

(iii) That they asked the Claimant to leave but did not threaten or use violence in so doing as alleged by the Claimant;

(iv) That the request to the Claimant to leave came as a result of material and consistent breaches of the contract by the Claimant;

(v) That the Claimant's breaches included removing plywood from the worksite, failing to put in any plumbing inlets and charging $36,247.68 for mobilization which was not warranted;

(vi) That the Claimant listed amounts of and price for materials that were grossly inflated; for example the Claimant's estimate called for 60 sheets of 20-foot galvanize at $10,948.00, when the house only need 29 sheets at a cost of $4,830.00 in total.

The Defendants further maintained that the Claimant was the one who breached the contract.

ISSUES:

[5] (1) Whether there was a breach of contract.

(2) If there was a breach, who breached the contract?

(3) Who then is liable to pay damages?

These are the three main issues, which to my mind are necessary to resolve this case.

[6] It is trite law, that in interpreting contracts the Court tries to ascertain the intention of the parties. Generally, the Court is limited in the search for the intention to the consideration of the document itself:-

> "If there is one principle more clearly established than another in English Law it is surely this: It is for the Court to construe a written document. It is irrelevant and improper to ask what the parties, prior to the execution of the Instrument, intended or understood" – Per Cozens-Hardy MR in ***LOVELL & CHRISTMAS LTD v WALL*** (1911) 104 CT 85.

In the more recent case of ***PREMM v SIMMONDS*** (1971) 3 All E.R. 237, Lord Wilberforce gave the reason for not allowing recourse to the negotiations to establish intention. He said,

> "Such evidence is unhelpful, because only when the contract is finally made is there a consensus, and until that time the parties' respective intentions may change, or be refined. There can be no ignorance, therefore, that an intention appearing during negotiations has remained constant until the time of contracting. In those circumstances, it is thought safer to rely on the words of the document alone."

[7] The authorities are myriad in relation to the approach the Courts must use in interpreting commercial contracts as the one in issue in this case. Lord Diplock in the case of ***MAUNAI INVESTMENTS CO. LTD. v EAGLE LIFE ASSURANCE CO. LTD.*** (1997) AC 749 said:

> "In determining the meaning of the language of a commercial contract the law generally favours a commercially sensible construction. The reason for this approach is that a commercial construction is more likely to give effect to the intention of the parties. Words are therefore interpreted in the way in which a reasonable commercial person would construe them. And the standard of the reasonable commercial person is hostile to technical interpretations and undue emphasis on niceties of language."

[8] The Defendants in their case through their defence and counterclaim maintained that the contract was both written and oral, and that the written memorandum of agreement does not reflect the agreement between the parties. They also put forward that they did ask the Claimant to leave the construction site but did not threaten or use violence in so doing.

This to me is neither here nor there if they used threats or violence or not. The fact as I find it and admitted by them, is that they did ask the Claimant to leave the job.

[9] But the Defendants go further to say this was because of material and consistent breaches of the contract by the Claimant; which they say included removing plywood from the worksite, failing to put in any plumbing inlets and charging $36,247.68 for mobilization which was not warranted; and that the Claimant listed amounts of and price for materials that were grossly inflated. They gave as example that the Claimant's estimate called for 60 sheets of 20-foot galvanize at $10,948.00 when the house only needed 29 sheets at a total cost of $4,830.00. They steadfastly maintained that it was the Claimant who was in breach of the said contract.

[10] I have closely examined the evidence adduced by the Defendants in this case. I am not at all convinced. In applying the principles alluded to earlier in this judgment to the facts of this case as testified to by the Claimant on his own behalf and one other witness, and the evidence from the two defendants, it is pellucidly clear that the Claimant acted in keeping with the signed contract. There is no where in the Defendants' case where they complain of the quality of work of the Claimant. I am satisfied from the evidence that the Claimant in keeping with the signed contract performed quality work, acted in a workmanlike manner, remained on schedule to finish the house in the stipulated time, even as he made additions and adjustments as demanded by the Defendants.

[11] A glance at the contract affords one a clear intention of the parties. The contract is couched in clear and simple language. Clause One of the contract called for the Claimant to "the reasonable satisfaction of the owners, well and properly carry out work ... to construct a dwelling house in accordance with the drawings and for the price of $362,486.82." Clause Four states that the contractor shall provide some materials and all labour at his own cost. Clause Six stated that all work shall be completed in a workmanship manner. Clause Seven stated that all charges orders shall be in writing and signed by both the owners and the contractor.

[12] There was no evidence adduced at trial that the Claimant was removed from the building site because he failed to work to the reasonable satisfaction of the Defendants. In fact, under cross-examination, both Defendants admitted that they had no problem with the quality of work performed by the Claimant. They never questioned his workmanship. The contract also called for the contractor to provide some materials and labour at his own cost. The Claimant explained that when he was removed from the job, the material or plywood which he took with him, as stated also by the Defendants, were those he had purchased and for which he had the right to take with him. In fact, the Defendants in their evidence have not satisfied me, and have been unable to say with precision that the Claimant took a quantity of material that was theirs and not the Claimant's.

[13] The area or issue in this case that to me is most important is Clause Seven of the Contract. This Clause demanded that all charge orders shall be in writing. There were never any written agreements to change anything agreed to in the contract. But from the evidence adduced in the case by both sides there was disagreement as to what materials the owners were to buy as per the contract. From the Claimant's evidence they agreed on tiles, toilet and other vanity fittings, while the Defendants from their evidence seemed intent on buying everything with the Claimant only supply labour.

[14] I remind myself from the myriad of authorities on point and as cited elsewhere in this judgment, that where there is disagreement the law allows for interpretation. So the question I ask myself in trying to resolve this issue as relating to Clause Seven is this – What did the parties intend when they contracted in Clause Four that the contractor shall provide some materials and all labour? The rule to answer this question is trite; in that where there is doubt the Court adopts the standard of the reasonable man.

[15] I accept, and adopt the Claimant's Learned Counsel's submission that the standard in the construction trade is for the contractor to buy all of the basic material necessary for completion of the house. The option is always open to the homeowners to decide on and even purchase other material, like toilets, paint quality, colour and faucets. I find it inconceivable and an imaginative stretch bordering on the ridiculous, for anyone to

conclude that a contractor will agree to build a house and give up the right to purchase material. I contend that it is within that very right to purchase labour and building materials that a contractor makes his profit.

[16] In this regard, I conclude that even if the most liberal interpretation is given to the contract, one would have to stretch credibility to conclude that the Claimant breached the contract in the clear circumstances of this case. I also conclude that having regard to the standard of reasonableness, the Claimant acted properly and that the demands and actions of the Defendants as per Clause Seven of the contract and also Clause Four were unreasonable in the circumstances.

[17] Did the Defendants asking the Claimant to leave the construction site not strike at the very root or essence of the contract? I would say, yes. It was arbitrary and without proper reason having regard to all the circumstances of the case as revealed by the evidence – ***FEDERAL COMMERCE v MOLENA ALPHA INC*** (1979) 1 AER at page 319.

[18] As stated earlier in this judgment and my analysis of the contract and the evidence before me, I reject the Defendants' case. Their position is an attempt to confuse the Court with figures and perceived discrepancies in prices of items purchased which have no basis as per the contract of agreement signed by themselves and the Claimant. The Defendants from the very beginning of the contract, refused to pay for mobilization costs, paid monies late, or paid monies which were less than the agreed installments. In clear violation of the contract, the Defendants demanded that they make all of the purchases for the materials to construct the house. They also made changes to the design of the original plan and additions, all of which the Claimant tried to fit into the contracted price as per the agreement. Subsequent to these disputes, the Defendants and or their agents stopped the Claimant from continuing construction on the 17th October 2005. Construction had commenced on or about 1st June 2005.

[19] Subsequent to all these developments the Defendants refused to pay monies owed to the Claimant, and the Claimant has to my mind suffered loss and damages as a result of the Defendants' actions.

CONCLUSION:

[20] In view of the above analysis of the case, and findings in relation to the issues to be determined, this court finds:-

(a) That there was a breach of contract;

(b) That the Defendants are liable for the breach of the contract in issue;

(c) That the Defendants are liable to pay damages for this breach.

ORDER:

[21] Having thus found, I dismiss the Defendants' case and counterclaim. As regards damages the Claimant demands nothing more than he is owed. **Cheshire, Fifoot and Furmston** 14th Edition at page 659 states:

> "Historically, it has been treated as clear in principle that which is to be recovered by way of damages is the loss which the Claimant has suffered, and not the profit which the defendant has made."

[22] Therefore, as per the Claimant's claim, I award the sum of $58,611.28 as payment for work done; labour costs for 2 weeks at $7,300.50, cost of transporting water for 5 months $1,000.00. I would also award the sum of $30,000.00 as loss of profit for having to refuse other contracts whilst on the Defendants' construction, a sum which I consider to be reasonable in the circumstances. I will also award costs in the sum of $8,000.00 to be paid to the Claimant.

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Justice Frederick V. Bruce-Lyle
HIGH COURT JUDGE