

SAINT LUCIA
IN THE HIGH COURT OF JUSTICE

CLAIM NO: SLUHCV2010/0158

BETWEEN:

Eagles Inn Company Limited

Claimant

and

Herbert H Williams

Defendant

Appearances:

Ms. Leandra Verneuil of Counsel for the Claimant

Ms. Diana Thomas of Counsel for the Defendant

2011: November 22

2013: March 8

JUDGMENT

MASTER V. GEORGIS TAYLOR-ALEXANDER

Background facts

- [1] The facts in this case are undisputed. The claimant a locally incorporated company which acts in these proceedings through its managing director Dominic C Gatineau, entered into a contract with the defendant, an architect, for the design of a plan of condominium style structures as part of an Extension Development Project.
- [2] The defendant was required to provide complete architectural and engineer certified drawings for presentation to the Development Control Authority (DCA), so as to meet their standards of approval. The price agreed between the parties for the work was Sixty Four Thousand, Five Hundred Dollars (\$64,500.00). It was an express and /or implied term of the contract that time was of the essence as the as the project was undertaken as a world cup incentive project. Judicial notice is taken, that the world cup incentives were introduced to encourage increasing the available accommodation on the island during the hosting of the Cricket World Cup 2007.

- [3] The payment of the contract price was phased to coincidence with certain milestones. In order to meet the contract price the claimant secured an overdraft facility with a financial institution at a rate of 13% per annum.
- [4] In breach of the agreement between the parties the defendant on the 18th November 2005 misrepresented the stage of completeness of the drawings in order to procure the payment of the final tranche of the contract price of nineteen thousand three hundred and fifty dollars (\$19,350.00) and knowingly submitted incomplete drawings to the DCA. The DCA on the 18th December 2005 informed the claimant that the drawing were incomplete preventing its approval. The DCA subsequently agreed to accept the drawing based on the commitment of the defendant to provide in the following days, the corrected documents which the defendant submitted had been mistakenly put together. The defendant also promised the claimant that he would deliver the missing documents as soon as possible.
- [5] The defendant failed at all to deliver the missing drawings as promised, and despite numerous attempts by the claimant to contact the defendant including by letter dated the 18th January 2006, the defendant avoided the claimant's request and failed to deliver to the DCA the promised drawings, forcing the DCA to defer the application pending the provision of certain information outlined in its letter of the 11th April 2006 .
- [6] On the 10th May 2006 and in an effort to mitigate possible losses and to facilitate the claimant's timely completion of the project, the claimant wrote to the defendant requesting hard copies and compact disc copies of the plans of drawings. These were not provided.
- [7] The action of the defendant was in wilful breach of the agreement between the parties for which the claimant pleads he suffered loss and damage from the breach of contract and for financial deprivation.

The Proceedings

- [8] This claim was largely prosecuted by the claimant in person. The defendant was served with the claim on the 9th March 2010, and judgment in default of defence was entered on the 4th April 2011. On the 13th April 2011, being too little too late the defendant filed an acknowledgment of service, denying the claim as filed and intimating an intention to defend the claim.
- [9] An amended application for extension of time to file a defence was filed on the 9th June 2011 and was heard on the 19th September 2011, whereon the

court dismissed the application with costs to the claimant and directed the claimant to file an application for the assessment of damages. The defendant was granted the opportunity to file affidavit/s in response to the application.

- [10] The application with supporting affidavit was filed on the 20th October 2011 with receipts in support of special damages annexed. An affidavit in response was filed by the defendant on the 4th November 2011 and the assessment of damages proceeded on the 22nd on November 2011. ¹
- [11] The Court now proceeds to assess damages based on the claim filed, the application, the affidavit in support of assessment and the affidavit filed in response to the assessment.

The Award

- [12] By documents lodged with the court on various dates the latest of them being the 28th April 2011, the claimant acting in person abandoned its claim for non-pecuniary loss for breach of contract and deprivation of money in the sum of \$45,000.00, in favour of the claim for special damages. I later sought clarification from counsel for which I caused the legal clerk to enquire as to the focus of the claimant's application on the assessment of damages. The response received and the narrow approach of the affidavit in support of assessment assures me that the claimant has limited its claim to pecuniary losses for expenses it incurred and resulting from the breach.
- [13] The basic principle applicable to an assessment of damages where a contractor fails to complete are well settled and are contained in **Article 1004 of the Civil Code Cap 4.01 of the Revised Laws of Saint Lucia Section III "Damages for Non Fulfilment of Obligations."** (Civil Code) Which provides thus:-

"The damages due to the creditor are in general the amount of the loss that he has sustained and of the profit of which he has been deprived; subject to the exceptions and modifications contained in the following articles of this section."

¹ At a hearing subsequent to the hearing on assessment the court had informed counsel for the parties that it had intended to place limited reliance on the affidavit evidence of the defendant filed in response to the assessment, on the authority of CPR 2000 Rule 10.2 (4) and Rule 16. I have since reconsidered my position given the recently issued decision of the Court of Appeal in George Blaze v Bernard La Mothe, HCVAP2012/004, although the decision not yet issued has not yet directed the extent to which the defendant can be a participant in the process.

This principle is also helpfully summarized by the learned authors of **Keating's Building Contracts**. Generally, the party who sustains the loss by reason of breach of contract is to be placed, so far as money can do it, in the same situation as if his or her rights had been observed.

[14] The claimant claims the following pecuniary loss flowing from the non fulfilment by the defendant of his obligations:—

(a) **Payments made for the Plan of Drawings:-**

It is pleaded at paragraphs 5-9 of the statement of claim that the claimant paid the defendant a total of \$45,150.00 for the plan of drawings. The defendant admitted as much in his affidavit in response to the request for assessment. This sum being unchallenged and supported by receipts is allowed.

(b) **Pre Action Letters:-**

The claim filed pleads for loss and damage suffered for failure to give timely delivery or delivery at all of the plan of drawings. It is not unreasonable that a claimant who is anxious to receive the promised work and who has not got performance, to endeavour to demand performance. The letters on record and exhibited to the affidavit of Dominic Gatineau filed on the 29th July 2011 sought to do precisely that.

I am satisfied that exhibits **DG4** and **DG5** support letters written to the defendant by attorneys for the claimant demanding the contracted work and totalling \$272.00. Additionally the claimant had cause to write the defendant as well and there is a claim for delivery services of these letters, all totalling \$672.00. Had the defendant complied with his contractual obligations, issuing these letters would have been unnecessary. This is a cost incurred as a result of the breach and is allowed in the sum of \$672.00.

(c) **Other Expenses**

(i) I am satisfied that the expenses incurred in the purchase of health forms, the fire service surveys and re-inspection are all expenses associated with the preparation and approval of building plans and in my view are allowable expenses. I therefore award for these expenses the sum of \$606.00.

- (ii) A claim was made for professional services rendered in furtherance of the project. The claimant seeks the recovery of the sum of \$5000.00 being monies paid to Stewart and Associates for the preparation of a draft loan proposal for the condominium project, and for obtaining the bill of quantities associated with the plan costed at \$13,780.00 These claim are supported.

Articles 1004-1006 of the Civil Code refers to foreseeable damage or damages that might have been foreseeable at the time of contracting as the basis for an award. This position differs from the common law provisions which allows for remedies alternative to the normal measure of damages to be recoverable. As such, expenses rendered futile as a result of the breach has come into its own right as an allowable head of damage. This flexibility has yet to be a feature of our legislated provisions.

In any event, I am satisfied that the defendant was well aware of the general intention of the claimant and that it is foreseeable that a project of this magnitude would have required loan financing and assistance from an accountant and other professionals as prudent expenses to get the project underway. If the defendant's delay halted the timely progress of this project, and or rendered this is expense futile, it is in my view recoverable loss.

The difficulty I face is to determine whether it is recoverable loss in this case. The pleadings do not advise whether the project was ultimately completed or whether it was forced to stop. If the project was completed, these expenses could not be reflected as futile. In any event because I am forced to speculate I am satisfied that these expenses do not justify an award for special damages.

- [15] On the sums claimed by the claimant, I have found the special damages due to the claimant to be \$ 46,428.00 and I so award.

Interest

- [16] On the sums found due, I award pre-judgment interest on special damages at the rate of 3% from the date when formal demand was made being the 11th April 2006 to the date of judgment, and post judgment interest at the rate of 6% per annum from the date of judgment and continuing to the date of payment in full.

Summary and Order

- [17] The claimant is awarded special damages for breach of contract in the sum of \$46,428.00, interest to the date of judgment being 4th April, 2011, in the sum of \$6,612.19 and prescribed costs on the sum of \$53,040.19, being \$4,773.62.

V. Georgis Taylor-Alexander
High Court Master