SAINT LUCIA

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SLUHCV2009/0814

BETWEEN:

LISA ANDREW

Claimant

AND

MATTHEW NELSON

Defendant

Appearances:

Ms. Petra Nelson for the Claimant.
Mr. Kendall Gill for the Defendant.

2011: May 30th & 31st,
2013: May 2nd .

JUDGMENT

[1] **WILKINSON J.**: Ms. Andrew filed her claim form and statement of claim on September 25th 2009. Therein she alleged breach of a building contract to build a two (2) storey three (3) bedroom greenheart wooden house for the sum of $158,000.00 and entered into in or about May 2007, with Mr. Nelson, a building contractor. Mr. Nelson has admitted to the contract as described but alleges that the contract was amended and that by that amendment Ms. Andrew committed to provide materials over and above his list of materials which formed the basis of the original contract. She having failed to provide the additional materials he was unable able to complete construction of her house. He filed a counterclaim alleging that he lent Ms. Andrew $1,000.00 and that he paid $1,900.00 on her behalf for clearing of the building site; she has failed to repay him both sums. The relief sought by Ms. Andrew was:

i. $73,600.00 the cost of completion and remedying the defects to date.
ii. $2,150.00 the cost of valuations (this sum was amended to $4,500.00 in her witness statement).
iii. a refund of rent paid to date being the sum of $12,350.00 and continuing at the monthly rate of $650.00.
iv. general damages.
v. the costs hereof.
vi. further or other relief as to this Court seems fit.

[2] The relief sought by Mr. Nelson in his counterclaim was:

i. damages
ii. interest thereon.

Issues

1. Whether there was a breach of the building contract by either or both Parties.
2. Whether Ms. Andrew owes Mr. Nelson the sums of $1,000.00 for a loan and $1,900.00 being money expended to clear the building site.

Evidence

[3] Ms. Andrew an employee of Cable & Wireless St. Lucia Limited at the material time said that she had no building experience whatsoever and wholly depended on the expertise of Mr. Nelson. Mr. Nelson described himself as a building contractor with approximately twenty (20) years experience.

[4] At February 2002, Ms. Andrew decided to build a three (3) bedroom house and in pursuance of this she had house plans drawn at that time by a co-worker. Her plans did not come to fruition. At 2005, she visited Tortola in the British Virgin Islands and there on seeing a certain house which she loved, she decided to change her house plans somewhat.

[5] At 2007, once more she decided to build her house but needed financial assistance to do so and after inquiring about interest rates at the various commercial banks she found that RBTT Bank Caribbean Limited, though not her banker, offered her the best rate. She approached that Bank for financing, met and spoke with a loan officer, Mr. John Hercules in this connection. During the course of discussions, Mr. Hercules recommended Mr. Nelson as building contractor. Ms. Andrew relying on that information approached Mr. Nelson about building her house.

[6] Ms. Andrew and Mr. Nelson met and discussed her proposed three (3) bedroom house with reference to her plans. According to Ms. Andrew, she required the plans to be revised to the extent that the three (3) bedroom house was to be made smaller on the first floor by removal of the master bedroom and bathroom and they being elevated and relocated above the first floor for a two (2)-storey house - loft style. Mr. Nelson under cross-examination agreed that the original house plans were for a three (3) bedroom house and that elevation of the master bedroom and bathroom would make the building a two (2) storey building.

[7] Mr. Nelson prepared an estimate on a letterhead bearing the name "Total Furnishing, and Construction". The estimate broke down the construction into sub-headings; materials and labour costs were set out under these sub-headings. The sub-headings and costs were (a) "Foundation costs up to beams" – materials cost $13, 082.00, labour cost - $14,120.00, (b) "Greenheart material list" for a house measuring 43 feet by 33 feet 7 inches - $31,689.00, labour - $36,644.00, (c) "Other materials list for house interior use only" (set out were various materials of plywood and other wood, galvanise sheets) - $20,890.00, windows - $4,365.00, doors - $3,520.00, electrical - $8,000.00, and plumbing - $7,600.00 and (d) "Enclosing finishings" (septic tank, soak away, materials) and labour - $3,090.00, cupboards - $8,000.00 and painting - $7,000.00. The total estimated cost for building the house measuring 43 feet by 33 feet 7 inches was $158,000.00. Mr. Nelson in his witness statement said that it would take six (6) months to build the house.

[8] Ms. Andrew's says that the sum of $158,000.00 for materials and labour was the only money stated as required to complete her house and denies that there was any further oral agreement that she would provide any materials over and above Mr. Nelson's list.

[9] By letter dated July 6th 2007, the RBTT Bank Caribbean Limited informed Ms. Ms. Andrew that the Bank was prepared to grant her a loan of $234,000.00 for the purposes of debt consolidation, home construction, part purchase of vehicle and legal fees. The letter at the item "drawdown" said that the loan

would be issued in installments per the builder's estimate for each drawdown and provided that the previous disbursements had been properly expended on the project in accordance with the terms and conditions of the approval. Ms. Andrew signed the letter accepting the Bank's terms.

[10] To assure herself of with whom she was contracting, Ms. Andrew sought to view a house constructed by Mr. Nelson and he took her to see a greenheart wooden house that he had constructed. There is dispute between Ms. Andrew and Mr. Nelson as to whether this viewing was before Mr. Nelson started building Ms. Andrew's house or during the course of him building her house.

[11] According to Mr. Nelson, at June 19th 2007, (this being prior to bank financing being received), Ms. Andrew paid $10,000.00 into his bank account. All subsequent payments from the bank loan were made in the same manner to Mr. Nelson.

[12] Ms. Andrew visited the building site from time to time and according to her, she had some concerns about the building. In her inexperienced and layman's view the building was disorganized. She expressed her views to Mr. Nelson, he assured her that it would all come together after he had completed what needed to be done. Mr. Nelson admitted under cross-examination that while he was engaged with building Ms. Andrew's house he was also engaged in building other houses.

[13] Ms. Andrew received the gifts of a door and toilet bowl fixture, she delivered them to Mr. Nelson for use in her house.

[14] Between July 2007, and the end of October 2007, Ms. Andrew said that on trust she paid Mr. Nelson the sum of $154,000.00. At the end of October 2007, the house was incomplete. All building ceased and at November 2007, Mr. Nelson delivered the key for the house to Ms. Andrew. There is dispute as to whether the key was voluntarily returned by Mr. Nelson or demanded by Ms. Andrew.

[15] According to Ms. Andrew, Mr. Nelson told her at October 2007, that there was no money left to complete the house and asked her to "bear patience" with

him. He told her that several persons owed him money and that as soon as he got paid he would complete her house.

[16] There followed several telephone calls over several months between Ms. Andrew and Mr. Nelson and at some point he stopped answering his telephone when she called. Ms. Andrew's mother and brother became involved in the dispute on her behalf. Mr. Nelson said that he stopped answering Ms. Andrew's telephone calls because of threats made to him by Ms. Andrew and her mother. Ms. Andrew located another telephone number which she thought could lead to contact with Mr. Nelson, it was his mother's. She spoke with his mother.

[17] Being very frustrated Ms. Andrew retained the services of an attorney-at-law to write to Mr. Nelson. At May 7th 2010, some 21/2 years after Mr. Nelson ceased building Ms. Andrew's house, and the suit filed, Mr. Nelson's attorney-at-law wrote via email to Ms. Andrew's attorney-at-law apparently attaching a list of materials needed to complete the house (list not disclosed to court), and stating that Mr. Nelson would cover all labour cost or in the alternative Mr. Nelson would complete the house for a payment of $15,000.00, which was to be paid in full before commencement of any work. There was a promise to complete the house within one (1) month.

[18] Ms. Andrew up to the date of trial continues to pay mortgage for a house that she cannot live in as there is no useful plumbing, electricity, toilet and bathroom facilities and she continues to pay rent at the rate of $650.00 per month for a residence to live in. Mr. Nelson's actions she said have caused her to suffer mentally, emotionally, financially and physically.

[19] Mr. Nelson says that he was only paid $141,314.00 on his estimate of $158,000.00. He added that his estimate of $158,000.00 did not include the changes which Ms. Andrew sought to her original plans and which changes he set out in plans drawn by him. Ms. Andrew he said, had agreed to provide him with additional materials to facilitate building the changes that she was seeking to her original plans. It was also agreed that Ms. Andrew would be responsible for clearing the building site.

[20] Ms. Andrew having failed to clear the building site Mr. Nelson said she agreed that if he cleared it, she would repay him the money spent to do so. He had it cleared on her behalf and claimed $1,900.00 from her, she refused pay him this money.

[21] Mr. Nelson said that during the course of construction while he was going around purchasing materials for building the house, he discovered that BRAWO was selling manufactured board, a substitute he could use instead of drywall at a huge discount. This he said would be money saved on the building costs. He contacted Ms. Andrew, informed her of the sale and she gave her approval for purchase of the alternative material, manufactured board.

[22] Mr. Nelson said that aside from Ms. Andrew not buying the materials for him to complete the house, he was not responsible for a number of matters cited in Mr. Dolcy's report. Firstly, the door which Ms. Andrew delivered to him for installation in the house was defective. He installed the door as the front door and had planned to carry out the necessary repairs to make it acceptable. In relation to the steps leading up to the front door, the crack seen was brought about by the earthquake in 2007. He therefore, does not accept any responsibility for these defects.

[23] Mr. Nelson also said that early in the construction he lent Ms. Andrew $1,000.00 which she never repaid. As a result of Ms. Andrew's failure to repay the $1,000.00 he lost confidence in continuing the building after money had run out by using his own money.

[24] Under cross-examination Mr. Nelson admitted that the house he built was smaller than 43 feet by 33 feet 7 inches or 1,478 square feet and that it was 198 square feet smaller.

[25] Under cross-examination Mr. Nelson admitted that notwithstanding that he alleged that Ms. Andrew was to buy additional materials to accommodate the changes which she sought to her original plans, he never provided her with a list of the materials required.

[26] Under cross-examination Mr. Nelson also admitted that the electrical works were not completed but insisted that he had purchased the materials for the electrical works; he admitted that the plumbing works, bedroom and bathroom cupboards, septic tank, steps for entry to the house and roof were all not completed.

[27] Ms. Andrew retained the services of three (3) experts, Mr. Charles Heywood, a qualified quantity surveyor, Ms. Sylvia A King, a qualified quantity surveyor, and Mr. Adrian M. Dolcy a qualified civil and structural engineer to prepare reports on the building. The reports varied in the format somewhat. The total cost stated for the three (3) reports was $4,500.00.

[28] The Court is afraid that in relation to Ms. King's report it was not able to distinguish costs to correct defects from costs to complete. In relation to Mr. Heywood's report, he describes the purpose of the report as being in order to assess the open market value for bank purposes. The Court is afraid that once again this report does not assist the Court as the Court is not concerned with a sale of Ms. Andrew's property but rather with an assessment of the house as it stood when building works were shut down, defective work, matters partially completed and or not constructed or installed at all and the costs to complete. The Court finds support for its position in **Mertens v. Home Freeholds Co.** [1921] 2 K.B. 526 C.A. at p. 534 where Lord Sterndale M.R. said:

> "They [the Divisional Court] have treated the contract as if it were one for the sale of goods and have held the measure of damages is the difference between the market price of the day of what the plaintiff ought to have had and what he got. In my humble opinion that is an entirely wrong way of looking at the contract. There is no contract to deliver goods, and there is no market price for a roofed house."

The Court finds that Mr. Dolcy's report which states as it purpose being to assess the works carried out and which quantifies and cost the incomplete works and list the defective works with cost for correction, is the only report that assist the Court.

[29] Mr. Dolcy visited the building site and partially constructed house on March 19th 2009, that is approximately 11/2 years after construction had ceased.

There were no building plans made available to him. According to him, the house was in his estimation (sixty-five) 65 percent complete. He found a two (2) storey timber structure, rectangular in shape with a reinforced concrete column-beam frame. On the lower level he found two (2) bedrooms, kitchen, living and dining room and on the upper level he found the master bedroom and bathroom. The superstructure was constructed of timber floors and walls. He said that the indication was that Mr. Nelson was to construct a house of 43 feet by 33 feet 7 inches for an area of 1478 square feet but on measuring he found that the total floor space of the building was 1280 square feet.

[30] Mr. Dolcy divided his observations into categories of (a) work not commenced, (b) work incomplete or partially complete and (c) defective works. He set out the remedial actions required and costs estimated to address the defective works and costs to complete the incomplete or partially completed works.

[31] According to Mr. Dolcy the following matters remained incomplete or were not commenced at all:

<u>Not commenced</u>

i. guttering and downpipes for roofing;
ii. floor finishing tiling and varnishing of floors
iii. installation of kitchen cupboards and bedroom closets
iv. access to master bedroom
v. 2 door(s) and door stops
vi. site works – grading, drainage, walkway

<u>Partially completed</u>

i. drywall installation – 70 percent
ii. wall finish of sanding and painting – 30 percent
iii. plumbing – 30 percent
iv. electrical installation – 40 percent
v. balcony in master bedroom – 50 percent
vi. stair railing – 40 percent
vii. fascia boards
viii. construction of septic tank and soak away

[32] As to the defective works, Mr. Dolcy's general observation was that in many instances the poor work would require the removal and reinstatement of the

specific aspect of the works using materials of an acceptable standard. The defective works and comments were:

Defective works

i. poor concrete work - at the column and beam joints there were honeycombs and paper in the concrete;
ii. setting out levels - the reinforced concrete beam is not level and there is a space between the floor boards and the beam;
iii. structural ties – the floor joists are not fixed to the supporting beams i.e. the building is not fixed to the foundation;
iv. floors – there are spaces between the floor boards on both the main floor and the master bedroom floor. These spaces are a result of poor workmanship and the use of inferior materials;
v. walls – there are spaces between the external timber wall boards; outside the building can be seen easily from the inside through these spaces; these spaces are a result of poor workmanship and the use of inferior material;
vi. doors – the external main entrance door has splits in the boards with spaces where the outside can be seen;
vii. windows – there are large spaces between the windows and the walls; these spaces are due to poor installation of the windows and poor workmanship of the drywall and timber walls;
viii. joints – there is general poor workmanship in the timber joints throughout the building;
ix. master bedroom floor joists – the joists supporting the master bedroom floor has deflected. This is due to the inadequate depth of the joist for the span of the floor (2" x 6" joist spanning 14.5 feet);
x. use of inferior material – chipboard is used in some areas instead of drywall. Chipboard is not suitable for these works as it deteriorates when subjected to moisture;
xi. roof – hurricane straps have not been adequately and sufficiently placed in to secure the roof structure from hurricane force winds; space blocks for bat proofing have not been installed; timber works roof structure is also poorly carried out;
xii. damp/moisture – damp is noticeable in 2 areas, this is due to the intrusion of water from poor jointing work.

[33] His extensive list of the works needed to be carried out to remedy the defective works with a costs breakdown for each aspect had an estimated total costs of $29,500.00; a similar list of the works needed to be carried out to complete the incomplete works was also provided, the estimated total costs was $44,100.00. The total of both costs was $73, 600.00. He estimated that it would take approximately eight (8) weeks to correct the defective works and complete the house.

Law

[34] On the matter of the general requirements and obligations for contracts at Saint Lucia, the Court refers to the following articles of the Civil Code:

> 917. Obligations arise from contracts, quasi-contracts, delicts and quasi-delicts, and also from other sources specified in Chapter Fourth of this Book.
>
> He who is subject to the obligations, contract, quasi-contract, delict, and quasi-delict is explained in article 1.
>
> 985. Every person capable of discerning right from wrong is responsible for damage caused either by his act, imprudence, neglect or want of skill, and he is not relievable from obligations thus arising.
>
> 986. He is responsible for damage caused not only by himself, but by persons under his control and by things under his care.
>
> ...
>
> Masters and employers are responsible for damage caused by their servants and workmen in the performance of the work for which they are employed.
>
> 996. Every obligation renders the debtor liable in damages for breach or non-fulfilment of it.
>
> 998. The creditor may without prejudice to his claim for damages, obtain the undoing at the debtor's expense of what has been done in a breach of the obligation, if the nature of the case permit.
>
> 1001. Damages are not due for non-fulfilment of an obligation until there has been default under some one of the provisions of the preceding section. But he who does what he is bound not to do incurs by the mere doing liability to damages, and is thus deemed to be in default.
>
> 1002. The debtor, though in good faith, is liable to damages in all cases in which he fails to establish that the non-fulfilment of an obligation proceeds from a cause which cannot be imputed to him.
>
> 1004. **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. (My emphasis)
>
> 1005. The debtor is liable only for the damages which have been foreseen or might have been foreseen at the time of contracting the obligation, when his non-fulfilment of it is not accompanied by fraud.

> 1584. If the workman furnish the materials, and the work is to be perfected and delivered as a whole, at a fixed price, the loss of property, in any manner whatsoever, before delivery, falls upon himself, unless the loss is caused by the fault of the owner or the owner has failed to receive the property due in time.
>
> 1590. When an architect or builder undertakes the construction of a building or other works by contract, upon a plan and specifications, at a fixed price, he cannot claim any additional sum upon the ground of a change from the plan and specifications, or of an increase in the labour and materials, **unless such change or increase is authorized in writing, or admitted by the proprietor. If in either of the above cases, the additional sum has not been fixed by agreement, it shall be determined by proof of value.** (My emphasis)

[35] In **Merton v. Home Freeholds Co.** [1921] 2 K.B. 526 the Court also found assistance on actual damages measurement. There at p.535-536 Lord Sterndale M.R said:

> "the building owner must set to work to build his house at a reasonable time and in a reasonable manner, and is not entitled to delay for several years and then, if prices have gone up, charge the defaulting builder with the increased price."

Findings and analysis:

[36] In passing comment it appears that the Bank failed to comply with its own stipulated drawdown conditions and to which if perhaps there had been compliance, this suit might well have been averted.

[37] The Civil Code clearly sets out the burdens and liabilities of Parties.

[38] As with Mr. Dolcy, there were no plans disclosed to the Court by either Ms. Andrew or Mr. Nelson. The whereabouts of the plans were unknown to either Ms. Andrew or Mr. Nelson.

[39] There was disclosed to the Court, Mr. Nelson's list of materials and labour costs required for building a house measuring, according to his own estimate 43 feet by 33 feet 7 inches (or 1478 square feet according to Mr. Dolcy) at an estimated price of $158,000.00. As the Court understands from both Parties this estimated cost became the basis of what evolved to be a partly written and partly oral contract for building the house. Ms. Andrew used this estimate to secure financing from the Bank for the building of her house.

[40] Mr. Nelson said that the partly written, partly oral contract was orally amended to accommodate changes that Ms. Andrew made to her original plans and that it was orally agreed that she would provide additional materials. It is the Court's view that Mr. Nelson having admitted under cross-examination that he did not give Ms. Andrew a list of the additional materials to purchase this belied the alleged amendment to the partly oral, partly written contract for a complete house at $158,000.00. Article 1590 puts the burden to prove such amendment on Mr. Nelson. The Court finds and holds that there was no amendment to the partly written, partly oral contract for the building of a two (2) storey three (3) bedroom house for the sum of $158,000.00.

[41] Clearly from Mr. Dolcy's report it appears that Ms. Andrew's apprehension and concerns were not unwarranted after all and rather justified. There was much that was not correctly done and much to be done.

[42] The Court having found that there was only a partly written and partly oral contract for the sum of $158,000.00 to construct a two (2) storey three (3) bedroom house and having reviewed Mr. Dolcy's report finds that Mr. Nelson failed to carry out his obligations under the contract and is therefore subject to the provisions of the Civil Code for such failure.

[43] On reviewing Mr. Nelson's estimate, the Court found it to be specific as to the break-down of the materials and labour which were to be covered by the sum of $158,000.00. The list of materials which was broken down into four (4) categories of (a) "Foundation Cost up to the Beams", (b) Greenheart Material List for House Measuring 43' 0" x 33'7" and Costs", (c) "Other Materials List for House Interior use only", and (d) "Enclosing Finishing. The items did not include (a) clearing of the land in preparation for building, and (b) guttering or down pipes (although they are generally deemed to be part a roofing system). That being the case, the Court is not prepared to accept that the clearing of the building site was part of the contract between Ms. Andrew and Mr. Nelson.

[44] Mr. Nelson has said that the clearing of the construction site cost him $1,900.00 however, he has not produced an iota of proof to support his claim. The Court does believe that the building site would have had to be cleared before building commenced, this is a norm. According to Mr. Dolcy's report the land is gently sloping to the north and Mr. Nelson appears to agree with this description as he said the land 'was not too sloping.' It therefore appears that the land would not have been hard or difficult to clear. The Court will therefore award Mr. Nelson a nominal sum of $1,000.00 for clearing of the building site.

[45] Ms. Andrew said that she paid Mr. Nelson a total of $154,000.00, leaving a deficit or shortfall of $4,000.00 against the $158,000.00 however, not a single document was disclosed in support. Mr. Nelson said that he received $141,314.00 of the $158,000.00 thus leaving a deficit or shortfall of $16,686.00. Once again, not a single document was disclosed in support. The Court was not informed by either Ms. Andrew or Mr. Nelson as how the money was disbursed i.e. whether in tranches on satisfaction that certain terms and conditions had been met or otherwise; it was clearly not per the Bank's drawdown terms. The net difference between the payments stated to have been made is $12, 686.00. The Court reverts to this sum later in its award.

[46] In assessing the damages to be awarded to the Court, the starting point is assessing what the smaller house ought to on an average have cost at completion since Mr. Nelson did not construct a house measuring 43 feet by 33 feet 7 inches or 1478 square feet but rather he constructed a smaller house measuring 1,280 square feet, a net difference of 198 square feet. No explanation was given by Mr. Nelson as to why he constructed a smaller house than that set out in his estimate. The sum of $158,000.00 divided by 1478 square feet gives an estimated building cost of $106.90 per square foot. Applying this rate of $106.90 to the smaller size of 1280 square feet gives an estimated building cost of $136,832.00. It therefore appears to the Court that on his estimate, Mr. Nelson having built Ms. Andrew a smaller house he owes a credit on the estimate of $21,168.00. The Court therefore finds and holds that Mr. Nelson on his estimate owes Ms. Andrew a credit of $21,168.00.

[47] Mr. Nelson said that with Ms. Andrew's authority he purchased at BRAWO at a huge discount manufactured board, described by Mr. Dolcy as chipboard, to use instead of drywall. There was no evidence from Mr. Nelson as to how much this alternate material would save Ms. Andrew in costs and reduce the estimated contract price of $158,000.00. It appears that Mr. Nelson would owe Ms. Andrew a credit against the estimated contract price of $158,000.00. The Court from Mr. Nelson's estimate was unclear of what description covered the drywall that he had initially proposed. The Court being unclear awards a nominal sum of $500.00 for the "huge" savings since it was Mr. Nelson's evidence that he bought the hugely discounted material as an alternative to the drywall called for in the contract.

[48] Mr. Nelson has admitted that he did not complete the electrical works, plumbing works, internal partitions, the cupboards of the bedrooms, bathrooms and kitchen, the septic tank, the external steps, and the roof. For these matters the Court will adopt and does adopt Mr. Dolcy's estimates of costs to correct the defective works and works needed to complete Ms. Andrew's house.

[49] While the Court has been able to conclude from the evidence that Ms. Andrew was not in a financial position to complete the house within a reasonable time, she has however not informed the Court as to why it took her approximately two (2) years after work ceased on her house to commence this suit. The Court relying on **Mertens v. Home Freeholds Co.** 2 [1921] 2 K.B. 526 C.A. believes that it has no choice but to discount the costs set out in Mr. Dolcy's report for correcting the defective work and for completing the works. The Court will discount those costs by five (5) percent to cover any increase in the prices of materials and labour which most likely would have occurred during Ms. Andrew's delay.

[50] The Court believes that the same principle applies in relation to the claim for a refund of rent paid. The delay in filing the suit is a consideration for the Court in assessing how much rent Ms. Andrew should be refunded. The Court believes that it would have been reasonable to have expected Ms. Nelson to have filed suit within one (1) year after Mr. Andrew ceased building her house.

She will therefore be and is awarded one (1) year's rent at the rate of $650.00 per month for a total sum of $7,800.00.

[51] There was no receipt for the fee paid for Mr. Dolcy's report disclosed to the Court and so the Court will award a nominal sum of $1,500.00. There shall be no award for the two (2) additional reports which were of no assistance to the Court.

[52] The Court is now still left in summing up with the net difference of $12,686.00 this being between what Ms. Andrew said she paid and what Mr. Nelson said he received. Since there was not an iota of evidence from either Party, the Court believes that the best that it can do is to the split the difference equally for a sum of $6,343.00 and assign this sum as unpaid by Ms. Andrew after all there was the burden on her to prove her case and the payments she alleged that she made is part of that case.

[53] Bearing in mind the Court's findings above and being guided by Mr. Dolcy's report the Court makes the following awards to Ms. Andrew:

i. a credit of $21,168.00 is awarded against the sum of $158,000.00 to Ms. Andrew there being a smaller house built but from this award is to be deducted $6,343.00 leaving a net credit and sum payable by way of refund $14,825.00;
ii. the sum of $29,500.00 less 5 percent for a sum of $28,025.00 for the carrying out of remedial works;
iii. the sum of $37,600.00 (there being deducted from the estimated $44,100.00 the sum of $3,500.00 the costs for guttering and downward pipes and $3,000.00 for site works of grading and site drainage and walkway) less 5 percent for a sum of $35,720.00 is awarded for completion of the works;
iv. the sum of $500.00 for savings on purchase of manufactured wood as an alternative to drywall
v. rent of at the monthly rate of $650.00 for 1 year for the sum of $7,800.00 is awarded;
vi. the sum of $1,500.00 for cost of Mr. Adrian Dolcy's report;
vii. prescribed costs.

[54] In relation to Mr. Nelson's claim of $1,000.00 for a loan that he alleges he made to Ms. Andrew, Mr. Nelson has not provided any evidence to support the existence of this loan. There was not money by way of cash or cheque delivered to Ms. Andrew and as such, the Court believes that if Mr. Nelson did

give Ms. Andrew credit by way of a loan, he ought to be able to say at least to what use he put the money on Ms. Andrew's behalf. There being no evidence by way of documents or otherwise, the Court is not prepared to award any sum for the alleged loan.

[55] Mr. Nelson is awarded $1,000.00 as a nominal sum for clearing of the building site.

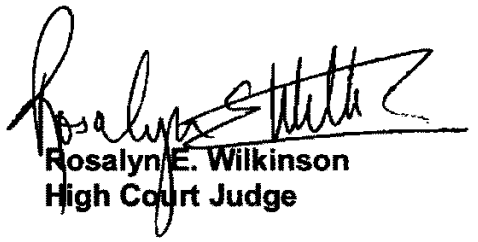
[56] Finally, the Court sincerely apologizes for its delay in delivering its judgment.

[57] Court's order:

(1) Mr. Nelson is to pay Ms. Andrew on or before July 31st 2013, the following sums:

- **i.** The sum of $14, 825.00 by way of refund against the estimated building cost of $158,000.00.
- **ii.** The sum of $28,025.00 for the carrying out of remedial works.
- **iii.** The sum of $35,720.00 for the carrying out of completion works.
- **iv.** The sum of $500.00 for the savings on purchase of the manufactured wood as an alternative for drywall.
- **v.** The sum of $7,800.00 for rent for 1 year.
- **vi.** The sum of $1,500.00 for cost of Mr. Adrian Dolcy's report;
- **vii.** Interest is awarded at the rate of six (6) percent on all sums awarded from September 29th 2009.
- **viii.** Prescribed costs.

(2) Ms. Andrew is to pay Mr. Nelson $1,000.00 for clearing the building site and this sum is to be set-off against the sums due to be paid by Mr. Nelson.



Rosalyn E. Wilkinson
High Court Judge