

**EASTERN CARIBBEAN SUPREME COURT**

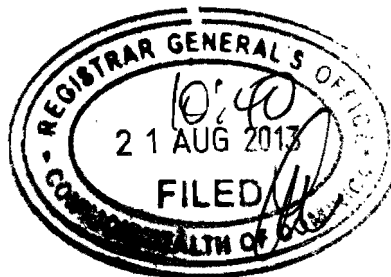
**IN THE HIGH COURT OF JUSTICE**

**(CIVIL)**

**COMMONWEALTH OF DOMINICA**

**DOMHCV2011/008**

**BETWEEN:**



**EDISON SAMPSON**

**Claimant**

**and**

**NICHOLSON JOHN CHARLES**

**Defendant**

**Before: The Hon. Justice Brian Cottle**

**Appearances:**

Mr. David Bruney for the Claimant

Mr. Rene Butcher and Steven Isidore for Defendant

**JUDGMENT**

[2013: April 16<sup>th</sup>, 25<sup>th</sup>, 26<sup>th</sup>]

[ August 21<sup>st</sup>]

- [1] **Cottle J:** The claimant and the defendant entered into a contract whereby the claimant agreed to build the defendant's house at Salisbury in Dominica. The contract was labour only. The building was to be completed within 8 months of the start date of 1<sup>st</sup> June 2010. On 2<sup>nd</sup> December 2010 the defendant took over construction. He hired the workmen who had been employed by the claimant on the work site to complete the project.

- [2] As at 2<sup>nd</sup> December 2010, the frame and upper floor of the building was complete in the main. The substructure and foundation were fully done. The roof covering, rain water pipes, and guttering were not yet done. The claimant brings the instant claim for breach of the building contract. Both parties agree that the defendant took over the building works on 2<sup>nd</sup> December 2010. The defendant says that the claimant abandoned the works and thereby repudiated the contract, whereupon he was compelled to take over and complete the building. The claimant says that the defendant ordered him off the work site in breach of the written contract. The dispute then is a simple contest of facts.

### The Evidence

- [3] In his witness statement, the claimant says that the defendant came to the work site on 1<sup>st</sup> December 2010 and ordered him to remove his tools and leave. No reason was given by the defendant for his attitude. The claimant says that at that stage the defendant had only paid him \$76,000.00, and realised that all of the major works had been done. The house could be completed at less cost if the claimant was dismissed.
- [4] Carl Staber gave evidence on behalf of the claimant. He too, says the defendant dismissed the claimant from the worksite on 1<sup>st</sup> December 2010. Two other workers also testified that the defendant fired the claimant. In his witness statement the defendant says that he left Dominica for the United States where he worked, on 14<sup>th</sup> November 2010. The works were then in an advanced state. The state of progress of the building works is confirmed by the report of Claxton Joseph who prepared an interim valuation report for the bank which was funding the project. The report is dated 20<sup>th</sup> November 2010.
- [5] Shortly after his return to the United States the defendant says he was contacted by the claimant's workers and told that their wages were not being paid. He was also informed by relatives in the area that the claimant had abandoned the works and was instead concentrating on building his own home. The defendant says he telephoned the claimant and brought the complaints to his attention. The claimant did not dispute the truth of the complaints. Further attempts to reach the claimant by telephone were unsuccessful. The defendant says he became worried and, as his employers were reluctant to give him leave so soon after his resumption of duties, he was forced to quit and return to Dominica on or about 2<sup>nd</sup> December 2010. He says he found his home in the same condition that he had left it some two weeks before. The claimant and his workers were not on the site.
- [6] The defendant says he contacted the workers of the claimant who confirmed that they had not been paid for the two weeks. The defendant paid the workers and took over control of the project. He counterclaims for damages arising from the breach of the building contract by the claimant.

[7] Given the opportunity to see and hear the witnesses on both sides, I prefer the evidence on behalf of the defendant. I am satisfied that the claimant abandoned the works. The progress report of Claxton Joseph indicates that little or nothing was done between 20<sup>th</sup> November 2010 and 2<sup>nd</sup> December 2010. This is not surprising when one considers that the builder's workmen were not paid for that period. I believe that the claimant ceased working on the defendant's project and chose to concentrate his efforts elsewhere. When he was cross examined he says that he was unaware that Claxton Joseph would visit the site and prepare interim progress reports to enable the bank to continue to advance funds for the building. Had he been on site he could hardly have failed to notice the visits of Mr. Joseph.

[8] Under clause 12.1 of the contract, a mechanism is set out which the parties could follow in the event of the abandonment of the works by the claimant. I reproduce the clause :-

***" if the contractor abandons the works, refuses or fails to comply with a valid instruction of the Employer or fails to proceed expeditiously and without delay, or is, despite a written complaint, in breach of the contract, the employer may give notice referring to the sub-clause and stating the default."***

***"if the contractor has taken all practicable steps to remedy the default within 14 days after the contractor receipt of the employer's notice, the employer may by a second notice given within a further 21 days, terminate the contract. The contractor shall then demobilize from the site leaving behind materials and plant and any contractor's equipment which the employer instructs in the second notice is to be used until the completion of works."***

The defendant did not avail himself of this procedure as he could have done. I have found that the claimant abandoned the works. In the circumstances it was open to the defendant to treat himself as discharged from all further obligations under the contract.

#### The Counterclaim

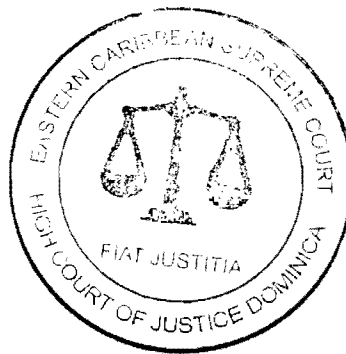
[9] In his witness statement the defendant says he paid the claimant \$99,783.43 under the contract. The claimant says it was \$76,000.00. When he was cross examined and the receipts showing payments were put to the claimant he agreed that there were receipts that his wife had signed on his behalf. I find the evidence of the defendant on this point to be more credible as well. At the trial, the defendant did not place much emphasis on the counterclaim. In his witness statement he sought to set out items of loss he says he suffered as a result of the claimant's breach of contract. He says the claimant failed to pay wages to his workmen in the sum of \$28,203.43.

[10] It is unclear why this sum should be recovered by the defendant. He says that he paid the workers a total of \$4,155.00. The defendant also swore in his witness statement that he had to replace the damaged roof and purchase additional material in the sum of \$24,907.84 to complete the house.

He was not challenged on these claims when cross examined. I therefore accept these items of damage as proven.

[11] The claim is dismissed and judgment is given for the defendant on the counterclaim for \$24,907.84 being the cost to repair the roof left incomplete by the claimant. I make no award for the wages said to be unpaid as the defendant has not shown any reason why the amount should be awarded as damages. The defendant also did not say that he incurred this expense. I find no causal connection between the claimant's repudiation of the contract and the defendant's decision to personally pay the workers' wages which were overdue. I decline to make any award under this head.

[12] The final order is for judgement for the defendant on the counterclaim. The claimant will pay to the defendant \$24,907.84 and prescribed costs of 15% of this sum.



Brian Cottle

High Court Judge