

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2007/0347

BETWEEN

WENDELL WILLIAMS

and

SHARON WILLIAMS

CLAIMANTS

and

CORNELIUS ARTHAR RICHARDS

DEFENDANT

Appearances:

Mr. Jaundy Martin for the claimants.

Mr. Richard Williams and Mr. Sten Sargeant for the defendant.

2016: Feb. 04

Jul. 21

2017: Apr. 11

Oct. 26

JUDGMENT

BACKGROUND

[1] **Henry, J.:** The claimants in this case are husband and wife Wendell and Sharon Williams of Pembroke, Saint Vincent and the Grenadines. Mr. Williams is a native of Saint Vincent and his wife is British. They lived and worked in England for many years. In anticipation of their impending

retirement they decided to build a house at Pembroke. They held discussions with the husband's cousin Cornelius Arthar Richards, who is an architect, builder and project manager. Mr. Richards is also a native of Saint Vincent and the Grenadines and resided here at all material times. In due course, he drew the building plans for the Williams' retirement 4 bedroom home (with basement apartment) and undertook to carry out certain duties on their behalf in relation to the construction.

[2] Mr. and Mrs. Williams claimed that Mr. Richards agreed to build their house and was given a contract by them to do so. They alleged that Mr. Richards verbally undertook to complete the construction by March 2005. They averred that they varied the contract by extending the timeline for completion and that they provided additional funds to Mr. Richards for this purpose.

[3] Mr. and Mrs. Williams are seeking to recover special and general damages from Mr. Richards with interest and costs. They complained that he breached the contract in several respects including:

1. executing the work in a poor state of workmanship and contrary to the agreed specifications;
2. abandoning the construction before it was completed;
3. failing to account to them for the monies advanced to him; and
4. converting to his own use, the funds they had entrusted to him for the construction.

[4] Mr. Richards denied all liability and maintained that he merely agreed to assist the Williamses with the implementation of their project, as they advised him that they intended to construct the final stages of the building by self-help and 'do-it-yourself' efforts. He insisted that he agreed only to help them to supervise and manage the construction until they arrived in Saint Vincent. He denied entering into a contract with the Williamses, abandoning the project or that Mr. and Mrs. Williams suffered the losses alleged.

[5] He contended that the husband and wife are estopped from complaining about the work quality because they were present when most of it was being done and never complained. He alleged that the project could not be completed within the budgeted figure and that he encountered unavoidable delays attributable to inclement weather, shortage of materials, and the site's topographical features.

[6] Mr. Richards averred that he was not remunerated for supervising and managing the project and for tiling the house. He alleged that he cleared up outstanding accounts on Mr. and Mrs. Williams' behalf for materials used in the construction and he sought reimbursement of those amounts. He claimed further that he used his office to store their boxes which he alleged were lice infested. He pleaded that he suffered loss and damage and counterclaimed for damages for repairs and rental.

[7] He is seeking tiling fees, outstanding payments and compensation for project management and supervision services. Mr. Richards also claimed general damages with interest. Mr. and Mrs. Williams countered that Mr. Richards offered them the use of his office free of charge. They denied owing him for supervision and management duties and resisted his claim for damages. Both claims are dismissed for the reasons outlined in this judgment.

ISSUES

[8] The issues are:

1. Whether Mr. Richards had a contract to build the Williams' residence?
2. If so, whether Mr. Richards breached the contract?
3. Whether Mr. and Mrs. Williams' rented or damaged Mr. Richards' office or are indebted to him for the cost of materials?
4. To what remedies are Mr. and Mrs. Williams and/or Mr. Richards entitled?

ANALYSIS

Issue 1 - Did Mr. Richards have a contract to build the Williams' residence?

[9] Mr. and Mrs. Williams testified in similar terms through a joint witness statement and their oral testimony. Mr. Richards' account was diametrically opposed to theirs in most material respects. The parties were the only witnesses.

[10] Mr. and Mrs. Williams recounted that Mr. Richards told them that he was a building contractor trading as Amazon Home Services also known as Amazonia Home Services. Mr. Richards denied that he owned a company by or traded in the name of 'Amazon Homes'. He said that he merely used the name 'Amazon Home Services' as a design logo on technical drawings submitted to the authorities for approval.

- [11] Mr. and Mrs. Williams said that they committed their entire life savings and retirement benefits towards construction of their home on mainland Saint Vincent. To this end, they travelled to the state in 1997 and arranged to buy a parcel of land at Pembroke. They stated that after they returned to England, Mr. Richards concluded the purchase on their behalf. He acknowledged that he assisted them in securing the purchase and explained that he encountered many challenges and 'went all out for them'. The Williams' retirement home was built there.
- [12] Mr. Richards said that he first became acquainted with Mr. and Mrs. Williams in 1994 while he was studying at the University of Aberdeen in Scotland. He learnt then that he was related to Mr. Williams. He said that they developed a good relationship. He has since visited with the Williamses at their home in England about 5 times. He acknowledged that they in turn have stayed at his house in Frenches, Saint Vincent almost every year since 1996. Mr. and Mrs. Williams acknowledged this. They recalled that they did so habitually for about 6 to 8 weeks almost every year, presumably until the rift in their relationship which led to this claim.
- [13] They indicated that Mr. Richards visited them in England in 1998 at which time they discussed the construction of the house with him. They claimed that on his return to Saint Vincent, he caused plans to be drawn which he sent to them. According to them, they had already agreed to engage Mr. Richards as their contractor. For his part, Mr. Richards recalled that Mr. and Mrs. Williams asked his brother Stanley Richards to be their building contractor but that he declined. Mrs. Williams acknowledged that in 2003 they were considering asking Stanley to do the construction.
- [14] Mr. Williams accepted that they first asked Stanley Richards but because he was otherwise engaged on a project renovating the Post Office, he passed up the offer. Mr. Richards said that as a result the Williamses asked him (Cornelius Richards) to oversee the project for them until they came home, whereupon he became their agent.
- [15] Mr. Richards denied drawing or causing any set of plans to be drawn up in 1998 for the Williams' proposed residence. He explained that during their visit to the country that year, they had many discussions with him about their plans to build. He said that at their request, he produced concepts of various styles of houses for them to consider. This accords with the Williams' further account.

- [16] Mr. and Mrs. Williams returned to Saint Vincent in 2003. It was on that occasion that they claimed he presented them with the final plans and they agreed to proceed with the building based on those drawings. However, under cross examination Mrs. Williams testified that in 2003, they spoke loosely about plans, ideas, number of bedrooms and bathrooms and the like and it was only in 2004 when they decided to build were those ideas 'firmed up'.
- [17] Mr. Richards accepted that it was in 2003 that he once again prepared a concept drawing showing two floors. He explained that he did this to enable Mr. and Mrs. Williams to decide where they wanted certain rooms to go. Based on this evidence, I accept that the drawings were substantially advanced in 2003.
- [18] Mr. Richards explained that he used the computer programme 'Chief Architect' which generated elevations automatically. He testified that he printed off the concept drawing and gave it to Mr. and Mrs. Williams so that they could take it to show their son and daughter in England. He stated that the drawing did not take the topography of the land into account.
- [19] At one point he was adamant that he did not finalize the drawings for the house. However, he subsequently acknowledged under cross-examination, that he finalized the drawings and submitted them to the Physical Planning Division in or about 2004. He indicated that they were approved on 10th May 2004, as reflected in the exhibit. This is not disputed by the Williamses.
- [20] When the plans were shown to him, Mr. Williams said that he recognized only the page which depicted the elevations¹ and further exclaimed that the house does not look like that. He said that he did not understand the plan marked 'approved 10/5/04'² and he explained that he is not a 'good reader' and therefore depends on his wife to do most things. He said at first that the house is different from the illustrations on the plan. He denied that the reason for the difference was because substantial changes were made to the house. When his attention was directed to other

¹ Page 96 of trial bundle 3.

² Page 92 of trial bundle 3.

drawings, he indicated that the first illustration³ on the 'as built details' page of the drawings, resembles his house.

[21] Mr. and Mrs. Williams averred that in 2003 when they were presented with the drawings, they held discussions with Mr. Richards regarding costing and were presented with a detailed estimate of the construction cost. They stated that based on the figures provided, the house was to be built at a total cost of \$380,244.06 which included a 5% contingency allowance. They produced a copy of the referenced undated estimate marked 'B'. They stated that it was specifically agreed that for that contract sum, Mr. Richards was to build for them, a finished house including external works such as landscaping (but exclusive of fencing).

[22] Mr. Williams stated that Mr. Richards had just completed construction of a house of similar size to theirs and gave them an estimate based on how much that other house cost. He recalled that Mr. Richards gave them a disk with the estimate and that his wife took it to work and had it printed. He and his wife testified that they contracted Mr. Richards to build their house at that cost and that he agreed to do so.

[23] Mr. Richards testified that in November 2003 he was in England at Mr. and Mrs. Williams' home when the subject of the construction came up. He said that he entered some figures into his computer for the 'projected materials and labour and the figure \$380,244.06 'came up' for the concept'. Mr. Richards said that he made it clear to them that the figure was not complete because the detailed drawings on which to base a final sum was not yet completed and several variables including site condition, that would influence foundation design and external works, were unknown. He added that he subsequently tweaked other versions of the concept and discussed those with Mr. and Mrs. Williams.

[24] Mr. Williams denied that the plans agreed in 2003 were varied with their consent. He explained that when Mr. Richards was preparing the estimate, he did indicate that he would include a nominal figure for the foundations and he therefore expected the \$362,000.00 contract sum to change. Under cross-examination he testified that Mr. Richards told him and his wife (while they were in

³ Page 103 of trial bundle 3, top left drawing.

England) that they could have an apartment in the downstairs. He retorted that he told Mr. Richards that he did not want an apartment because he did not want anyone living in his new house. He denied engaging Mr. Richards to draw a plan of basement. In any event, the final product includes a basement.

[25] Later in his testimony, Mr. Williams admitted that they subsequently had an agreement to have a basement apartment but he did not know how much it would cost. He expressed ignorance regarding the details. He acknowledged that he and Mrs. Williams asked Mr. Richards to make changes to the plan but he insisted that he never told them that it would cost extra money. My sole observation is that I find this assertion incredible.

[26] Under cross examination Mrs. Williams admitted that Mr. Richards gave them a revised estimate in 2004 which included lighting, bath, fixtures doors, locks etc. She accepted that once things had started and they 'heard about the excavation and things like that', they knew that 'things were going to cost more'. This supports Mr. Richards' claim. Mrs. Williams testified further that they revised the contract price up to \$492,000.00 in December 2004. She also indicated that Mr. Richards made a contract with them for between \$360,000 and \$492,000.00. Neither allegation was part of the Williams' pleaded case.

[27] Mrs. Williams subsequently acknowledged that they specifically pleaded that the contract was varied to \$497,000.00. One of the exhibited documents (an estimate) does show a total of \$362,000.00. However, the court is not sure which part of the Williams' claim this supports. It does not confirm their assertions regarding the original or revised contract sums. In addition, neither Mr. nor Mrs. Williams identified any revised estimate among the exhibits.

[28] Mr. Richards denied having any written or verbal agreement with Mr. and Mrs. Williams to construct their house. He was adamant that they never intended to get into any contractual arrangement of any kind and that he only agreed to assist Mr. and Mrs. Williams out of a sense of obligation because they were his family and they usually accommodated him as family whenever he travelled to England. He pointed out that he was not paid for any architectural services he provided and merely proffered knowledge and expertise freely to Mr. and Mrs. Williams because they were good to him while he was studying in Scotland.

[29] He testified that in addition to assisting Mr. and Mrs. Williams 'as family, it was discussed ... that some of the finishing works were to be done' by them. He explained that this was reflected in their casual conversations, such as the fact that Wendell and Sharon Williams had experience in doing home renovations. He indicated that it was on this basis that the three of them 'thought that it would be an excellent way to complete the finishing and build a stronger family relationship'.

[30] He described himself as a willing cousin assisting them with the construction in their absence. He denied that they ever expressed any interest in hiring him as a contractor. He stated that if he had engaged in a professional contract with Mr. and Mrs. Williams, it would have been set out in phases with disbursements based on completed works to match, as such contracts normally stipulate. Mrs. Williams insisted that the arrangement with Mr. Richards was not loose, especially not after large sums of money started changing hands. She conceded that it was the money that made the agreement serious.

[31] Mr. and Mrs. Williams indicated that the agreement was for construction to commence in April 2004 and to be completed by March 2005. They claimed that it was further agreed that they would pay Mr. Richards a deposit of \$200,000.00 at the commencement, which was intended to finance the construction up to installation of the roof. They indicated that they transferred those monies to him as agreed. No documentary evidence of such an agreement was forthcoming.

[32] By undated email Mrs. Williams undertook to send that sum to Mr. Richards. It appears to have been written sometime around April 2004 because Mr. Richards sent a response on 14th April 2004. In it, Mrs. Williams also referred to the preparation of a formal contract which was obviously not pursued. She stated:

'Hi Cornie,

Good to hear from you ... Thanks for the revised plan and we are both happy with the extended sizes of the rooms. We will now leave the rest to you the windows and French doors we have taken your advice and will go ahead with the ones from SVG but we will bring the front entrance door and the one above so as to match as your first advised. Wendell still feels that a retaining wall would be an additional safety feature even with the elevation, what's your advice?

On to the next subject, **In England it would be normal to draw up a contract for the project for tax etc as I have no knowledge of current SVG requirements/regulations again can you advise? I have a very good Solicitor who will do the paper work if necessary.**

I am making the necessary authority for you to collect 200,000 ec dollars from Barclays Bank in Halifax St to proceed with the "Manor" and then obviously the balance to complete. ...

Lots of love to everyone

Sharon xxxxxx' (Bold mine)

[33] Mrs. Williams recalled sending him that sum through First Caribbean Bank. Mr. Williams explained that Mr. Richards told him that that amount would take the house up to roof stage but would not be enough to finance the roof installation and he therefore took Mr. Richards at his word. He said that when he came to Saint Vincent in November 2004, Mr. Richards was nowhere near the roof. At that point he gave him another \$120,000.00.

[34] He and Mrs. Williams claimed further that the agreement was for the house to be up to roof stage by October 2004. They averred that it was mutually accepted that the house would not have been fully built in time for their retirement, and therefore Mr. Richards was required to construct a room in the incomplete house to accommodate them pending completion of construction.

[35] Mr. Richards admitted receiving \$200,000.00 from the Williamses for use in the construction. He said this was to be disbursed based on how much could be accomplished and that he was to simply request additional funds as needed. He reasoned that if it were otherwise, Mr. and Mrs. Williams would have shown a breakdown of the work by phases. He argued that there was no agreement akin to a building contract.

[36] It strikes me that Mr. Richards might be somewhat disingenuous because Mrs. Williams did ask him about the need for a contract which he told her was unnecessary. Conceivably, the reference to a contract could be interpreted as referring to a contract for him to function as their agent. He did

not allege that frontally in his defence but did so obliquely in his counterclaim. It is a reasonable inference. In the premises, the court must take note of it and conclude accordingly.

[37] Mr. Richards insisted that they had no such agreement for installment payments linked to stage completion of aspects of the construction. He reasoned that he could not have said in 1997, 1998, early 2003 or November 2003 as alleged, that the project would commence in April 2004, because no detailed plans had as yet been drawn up. This argument appears to comport with the acquiescence by the Williamses that they agreed to changes to the plan after being presented with the 2003 drawings. It is also borne out by Mrs. Williams' email (referenced earlier) which reflects that she was still approving changes to the design, at that time. I therefore accept Mr. Richards' account that it was in November of 2003 that he presented the Williamses with the referenced drawings.

[38] Mr. Richards responded to Mrs. Williams' email on 14th April 2004. He wrote:

'Hi Sharon,

I could not reply on the long weekend from the Office. Tanty is holding on but not doing so good. ... Glad you are satisfied with the new drawing. A retaining wall will be useful but may not be necessary before the construction begins. We will run it parallel with the construction of the Manor. The slope almost will allow for immediate construction with some excavation (sic). You will definitely benefit from a lower floor. Some useful space up the road.

It will not be necessary to do a contract here in SVG. However, if you are more comfortable with one, you can go ahead and prepare it. Sharon, Wendell, I love you very much and I have seen your labour in England and only want to make the best for your retirement.....Your money is safe with me. You know that. It is my duty to represent you in your absence and to ensure that you have full accountability for the project. You can follow the construction on line via photos and financial breakdown.

Time is slipping away to start. **I would wish to have the roof on before the onset of the August rains.**

I have already cleared the land (attached photos) and will be burning the bush this weekend. It was a fairly hard job with lots of nettles and thorns. I left all of the bigger trees to add to the landscaping. The crew I got to do it will clean, burn and buck up logs for EC\$1,200.00.

As soon as you give the green light I will do the excavation (sic) while awaiting the approval of the plan so that we can start right after.

The more I see the site, the eager I become to start. And boy, what a view!!! I sent a few photos so that you can see what I did so far.

Please call me at 528-6918 for a few brief moments.

Always....Cornie.' (Bold mine)

[39] Mrs. Williams testified that Mr. Richards told them that it is not necessary to have a contract in Saint Vincent. His email is pellucid in that respect. It also reflects that there was no set starting date for the construction. It also suggests that the deadline for getting the building up to 'roof-ready stage' was not agreed. By implication, it seems that the parties contemplated that the building would be ready to accommodate the roof sometime before August 2004. No specific time frame is recorded in the emails.

[40] However, Mr. Richards did express the hope that the roof would be on before the August rains. I make no finding that this 'suggestion' refers to a previous agreement to that effect. I find instead that there was no such agreement as to the date when the construction would reach that point.

[41] Further, the emails do not support the Williams' assertion that \$200,000.00 was to be advanced as a first deposit, followed by with one or more subsequent fixed stage payments. In fact, the parties were still discussing aspects of the construction and design including whether a retaining wall was advisable.

[42] Mrs. Williams testified Mr. Richards never told her what his role was going to be and only said:
'It is my duty to represent you in your absence and to ensure that you have full accountability for the project.'
This much appears from the April 14th email. If Mrs. Williams' statement is to be accepted, it belies the existence of a contract.

[43] Mrs. Williams explained that when she and her husband returned to Saint Vincent, Mr. Richards was still engaged in building the house. She stated that she and her husband were supposed to

bring certain materials and supplies from England including doors and toilets while Mr. Richards was to procure others in Saint Vincent, such as windows. She explained that the understanding was that they would source certain items in England to assist with the cost, however, she admitted that no deductions were made to the sums paid to Mr. Richards. She said that Mr. Richards told her that whatever savings they made would be split. It is not clear what this meant.

[44] Mr. Richards denied agreeing with the Williamses either verbally or in writing to any of the terms and conditions they have alleged. He specifically denied that they had an agreement that the:

1. total construction cost would be \$380,244.06 including contingencies;
2. he was to deliver a finished house including external works to include landscaping (but excluding fencing);
3. construction would commence in April 2004;
4. Williamses would pay him \$200,000.00 to commence construction;
5. building would be up to roof stage by October 2004, but without installation of the roof;
6. house would not be completed in time for the Williamses' retirement and that he would therefore make a room in the uncompleted house available for them to use as their residence and for storage of their belongings which was being shipped to the country; or
7. the house would be completed by March 2005.

[45] Under cross-examination Mr. Williams stated that Mr. Richards and his wife made the plans. He said that he does not know everything that went on because a lot of the times his wife held the discussions with Mr. Richards. However, he denied that Mrs. Williams held discussions with Mr. Richards about having 2 garages instead of 1. Mr. Williams explained that she does not like to drive in Saint Vincent and they only have one vehicle. Nonetheless, he admitted that while the house was being constructed, they made several changes to the inside of the house to some of the bedrooms by taking away the family room. They also extended the bedroom.

[46] He acknowledged that he did not hold a discussion with his wife and Mr. Richards about how much those changes would cost. He explained that most of the times the house is the lady's house so he 'leaves them to decide what is going on.' He admitted however that the cost bothered him. For her part, Mrs. Williams said that the only change she made to the plan when she arrived in Saint

Vincent was to extend a room 10 feet out because it was too small for what was intended. She explained that this was included in the revised estimate of \$497,000.00. She stated that as far as she was aware everything was accounted for in the revised estimates.

[47] Mr. Williams acknowledged that he is not a builder and knows nothing about building a house. With respect to his house in England, he stated that he got people to renovate it. He denied that he and his wife did that personally. He and Mrs. Williams said that they had no agreement with Mr. Richards to assist with the building or supervise the construction. Mr. Williams claimed that when he arrived to the state in November, he did not expect that the construction (which started in May) would have been finished. He explained that he initiated this claim because he spent a lot of money and he wanted to recoup it.

[48] It seems to me that much of the discussions regarding changes to the design and the progress of the construction took place between Mrs. Williams and Mr. Richards. In fact, the email correspondence was between them. It seemed that Mr. Williams played a secondary role and allowed his wife to be at the forefront of the negotiations with Mr. Richards. He admitted that he did not know all that they discussed and I accept his testimony on that score. He was a very frank and forthright witness.

[49] To my mind, the disconnect between aspects of his testimony and Mrs. Williams' on critical areas of their claim, is perhaps attributable to his admitted 'hands-off' approach to what transpired during the discussions between Mr. Richards and his wife. It appears that he was blind-sided by the resultant increasing costs of construction which in my estimation were occasioned in part by the not insignificant adjustments to the design and layout of the house which Mrs. Williams requested before and after the plan was approved and after construction had started.

[50] For example, I note that one change called for the extension of a room by 10 feet. Conceivably, that would have necessitated adjustments not only to that area of the house but would probably have had a 'knock-on' effect on other areas. No evidence was presented to support or rebut such a theory and I make no finding on it one way or another. Suffice it to say, that it appears that Mr. Williams did not at all times have the full picture of what was being undertaken by Mr. Richards with Mrs. Williams' concurrence and behest.

- [51] Mr. and Mrs. Williams conceded that they knew that there was a shortage of steel, galvanize and other building materials when the house was being built. Mr. Williams admitted that he expected that shortage to affect the price. Mr. Richards testified about the extended shortage of certain materials and said that no new figures were calculated based on those adjustments. It is not clear if those variables were factored into the revised estimates described by Mr. and Mrs. Williams.
- [52] The parties attempted to resolve their differences amicably before approaching the court. Mr. Williams explained that Mr. Richards asked him to get a Quantity Surveyor and he therefore contacted Arthur Guy to survey the house. He was told that the house was 80% complete and Mr. Guy indicated that it would cost \$4,000.00 for a full survey. Mrs. Williams corroborated that account. Mr. Williams explained that at first, Mr. Richards agreed to pay for the services of the Quantity Surveyor but changed his mind.
- [53] Mr. Williams said he was not going to spend money he did not have to get such a survey. He admitted that the Quantity Surveyor gave him a summary of his findings which he gave to his lawyer. He stated that he does not know why it did not form part of the case. Mrs. Williams indicated that they have not had a valuation of the property.
- [54] Mr. Williams explained that the Quantity Surveyor was employed to advise them how much work was left to be done. He conceded that perhaps the easiest way to bring resolution in this dispute would have been to employ a Quantity Surveyor to value the construction. He accepted that if he knew that all of his money was spent on the house he would not be in court. Neither party has provided any or any adequate evidence which would enable the court to make a finding about the sum expended on achieving 80% completion which the parties have accepted to be the stage at which Mr. Richards left the project. Such details would have assisted the court.
- [55] Mr. Richards submitted that the Williamses did not plead whether the agreement was oral, written, or partly oral/partly written. He contended that the court should have regard to what he described

as the 'restatement'⁴ of the court's approach where a litigant asserts the existence of a contract. He cited Liverpool JA in **Boggess and Another v Badder Hassan**⁵ where he opined:

'Business men often record the most important agreements in crude and summary fashion; ... It is accordingly the duty of the court to construe such documents fairly and broadly, without being too astute or subtle in finding defects; but, on the contrary, the court should seek to apply the old maxim of English law, *verba ita sunt intelligenda magis valeat quam pereat*. That maxim, ... does not mean that the court is to make a contract for the parties, or to go outside the words they have used, except in so far as there are appropriate implications of law'.⁶

[56] Mr. Richards argued that the lynchpin of the Williams' case appears to have centered on their pleading that amongst other purported terms of the agreement:

'8 (a) That the Defendant was to deliver a finished house including external works such as landscaping but not fencing'; and;

'25 From this point, in breach of the agreement the Defendant abandoned the construction project and failed to complete the work he agreed to and was paid to perform. The Defendant never accounted for the monies advanced to him or showed how it was spent'.⁶

[57] He contended that if the Williamses are asserting they had an agreement with him to construct their home, they could only be asserting at law that they had a building contract. He submitted that the learned authors of **Halsbury's Laws of England**⁷ illustrate that building contracts are of a unique form of contract categorized into the following types: "Lump sum", "entire", "measure and value", "cost plus", "term" and, "design and build" or "turnkey". He reasoned that the evidence must be such that the court must be able to decipher which type of building contract was agreed. Mr.

⁴ Citing Lord Wright in *Hillas & Co Ltd v Arcos Ltd* (1932) 147 LT 503 at page 514.

⁵ (1991) 46 WIR 72, at pp. 85 c – d.

⁶ As outlined in their statement of case.

⁷ Vol. 6 (2011 Reissue) at para. 209.

Richards contended that this is not a case of an agreement founded on simple contract or for the sale of goods or delivery of a service.

[58] He submitted that on the other hand, since he maintained that there was no agreement in law, the court must examine the principles of contract law to determine if all the necessary ingredients were ever present. He contended that of paramount importance is the classic statement of Lord Justice Denning in the case of **Combe v Combe**⁸ that:

‘The doctrine of consideration is too firmly fixed to be overthrown by a side-wind. Its ill effects ... remains a cardinal necessity of the formation of a contract...’⁹.

[59] Mr. Richards also cited in support, the case of **Tweddle v Atkinson**⁹ in which he submitted, Justices Wightman, Crompton and Blackburn enunciated the principle that ‘consideration must move from the promisor to the promisee’ for there to be a valid contract. He argued that the Barbadian case of **Smith v Mottley**¹⁰ is also instructive. The latter case he submitted, ‘exemplifies the feature of our Caribbean civilization where persons ... who are skilled workers often assist their relatives living abroad in building their retirement homes in the islands.’

[60] Mr. Richards submitted that Mr. Williams said that Mr. Richards gave them the cost for the house in Saint Vincent while Mrs. Sharon Williams had a different account, glossing over much of the detail and claiming that Mr. Richards gave them an estimate when he passed through on his way to Rome. Mr. Richards argued that in contrast, he explained that this was only to provide an indication as to the expected cost of constructing a house on the two-floor concept that he had drawn earlier in 2003.

[61] He contended that he elaborated further and pointed out that the figure of \$380,244.06 was based on projected figures of materials and labour based on the concept drawing. He submitted that he was not challenged on his statements when he made it clear to the Williamses that this figure was not complete, because detailed drawings on which to base a final figure were not yet completed

⁸ [1951] 1 All ER 767 at pp.770 F.

⁹ [1861-73] All ER Rep. 369 at pp. 370 – I, 371 – A, B & C.

¹⁰ (1993) 48 WIR 20.

and that several variables, primarily site condition would influence foundation design, or that external works were unknown. He contended that his testimony was detailed and forthright.

[62] Mr. Richards submitted that Mr. Williams buttressed his contention by:

1. stating that Mr. Richards came to see them on his way to Rome, and gave his wife a disc from which she printed out the estimate; and
2. accepting in cross-examination that he expected the estimate to change when Mr. Richards told him about the elevation on informing him of the estimate

[63] Mr. Richards argued that he must be seen as credible especially when he testified that he provided Mr. and Mrs. Williams with other tweaked versions of the concept, without the figure being recalculated. He pointed out that while he was being cross-examined, the Williamses never challenged his account that they promised do some of the finishing work. Although they did not do so while he was being cross-examined, they both denied this under cross-examination. There was therefore no need for them to ask him about it again. In any event, I accept Mr. Richards' testimony regarding the timeline on which the plans were presented to the Williamses.

[64] Mr. Richards asked the court to accept his account that the sum of \$380,244.06 was never a definite and settled figure because Mr. Williams expected the estimate to change, and he expected price increases in relation to the foundation, and shortages of galvanize and cement; while his wife conceded that "we" knew that it would cost more than the \$497,000.00. Based on the evidence, I find Mr. Richards' testimony on this score to be more credible than the Williamses. I find that the purported construction price was not settled at \$380,244.06 when the earthworks started and was not agreed as the full and final construction figure.

[65] Mr. Richards submitted that on the authority of the **Boggess** case⁶, the terms of the purported agreement is vague, unclear and indefinite. He argued that the court is literally being asked by the Williamses to make a contract for them. He contended that their premise could only be that all the terms were concluded in November of 2003.

[66] He invited the court to make a series of findings of fact and/or law, namely that:

1. There was no consideration at law for the preparation of the architectural drawings or supervision of the project. There is no evidence whatsoever as to precisely how much Mr.

Richards received for his work. The Williamses are seemingly making a veiled claim that Mr. Richards' remuneration was included in the cost of \$380,244.06. There is nothing in the estimate that point to this directly and nothing was said or communicated to him to this effect as in the **Smith v Mottley**¹¹ case, where the 'contractor' was told to pay himself out of the monies sent to him.

2. The Williamses intended to contract with another party and that his (Cornelius Richards') email of 14th April 2004 makes it clear that his involvement was to only represent them until they came home, to account for the monies sent and offer his services free, to draw the plans.
3. After he withdrew from the project, the Williamses carried the project from 80% completion to full 100%; as they had promise they would do in any event and were quite capable of supervising the workmen, purchasing materials, and devising worksheets to tally wages and pay them out.
4. There was no agreement in November 2003 of a term that the work would commence in April 2004. There were no approved plans in November 2003 so that construction could start in April 2004. The evidence from the email dated 14th April 2004 is that Mr. Richards was awaiting the "*green light*" from Sharon to commence.
5. There was no agreement in November 2003 as a term, that the deposit was to be EC\$200,000.00. The evidence from the email plainly shows that it was Sharon who indicated to Mr. Richards that she was sending that sum; not that she was sending 'the' sum as previously agreed; and the figure of \$200,000.00 was not sent as part of some pre-structured payment arrangement.
6. There was no agreement in November 2003 as a term, that the house would be up to roof stage by October 2004; in the email dated 14th April 2004, Mr. Richards expressed his wish to Sharon that he could get the roof completed before the rains in August and no mention of October whatsoever is evident.

7. The arrangements between the parties are inconsistent with the various types of building contracts. The fact that Sharon is indicating in emails that she and her husband will purchase in and bring from the UK, their own personal choice of windows, doors, locks, and lights etc. points away from him (Mr. Richards) contracting to build a 'complete' house as pleaded.

[67] Mr. Richards argued that the evidence and relevant law overwhelmingly point away from there being a contract. He contended that 'without the crucial element of consideration settled, there can never be in law a valid contract'. He cited in support, the case of **Combe v Combe**⁹. Mr. Richards submitted further that even if Mr. and Mrs. Williams seek to rely on estoppel, they cannot use it as the basis of a cause of action but only as a defence.

[68] He argued that past consideration is no consideration. In this regard, he contended that the Mr. Williams' evidence that he 'took care of Mr. Richards when he was in Scotland in 1995 and he did not expect him to charge him' amounts to an assertion of past consideration. Mr. Richards submitted that anything done by Mr. Williams in 1995 would fail the test set out by Lord Scarman in **Pau On and Others v Lau Yiu and Another**¹¹ where he stated:

'An act done before the giving of a promise to make a payment or to have confer some benefit can sometimes be consideration for the promise. The act must be done at the promisor's request, the parties must have understood that the act was to be remunerated either by payment or the conferment of some other benefit, and payment or conferment of a benefit must have been legally enforceable had been promised in advance.'

[69] This is indeed a correct statement of the applicable principle. However, Mr. and Mrs. Williams have made no such assertion. The evidence does not support a finding of past consideration and I therefore rule that it is not established in the instant case.

[70] Mr. Richards submitted that all three elements are absent in this case. He argued that there is no evidence that Mr. Richards requested Mr. Williams take care of him in 1995; no evidence that it was understood between the parties at that time that Mr. Williams was to be paid, or that in future Mr. Richards would have conferred a benefit on the Williamses by drawing the plans for his house

¹¹ [1979] 3 All ER 65 at pp.74 *b – c*, citing *Lampleigh v Brathwait* (1615) Hob 105, and *Re Casey's Patents, Stewart v Casey* [1892] 1 Ch 104 at 115 – 116.

for free; or be contracted to do the construction in some 9-10 years later. Mr. Richards argued further that by virtue of the absence of the first two conditions, there would not be any legally enforceable promise.

[71] He submitted that there was no consideration moving from the Williamses as promisors to him as promise, for the purported contract price of \$380,244.06 to construct the house. He argued further that on the application of **Tweddle v Atkinson**, no consideration moved from the Williamses to him therefore no action in the law of contract is sustainable. He pointed out that the Williams' case is not grounded alternatively on proprietary estoppel. I agree that Mr. and Mrs. Williams have not pleaded or supplied evidence which could support a finding of proprietary estoppel. It does not arise and I make no finding on that area of law.

[72] Mr. Richards contended that the further advance of \$104,755.94 did not offer any consideration to him nor did it confer any benefit on him which would amount to consideration to enforce a legally binding contract. He highlighted the Williams' claim that the contract price moved from \$380,244.06 to \$497,000.00 in January of 2005 when they went through a 'revised plan' with him in order to get the house finished by August 2005; and paid him \$100,000.00 on 10th February 2005, and \$85,000.00 on 11th March 2005, 'in a desperate bid to see the completion of our home and to move out of the Defendant's house as soon as possible'. Mr. Richards argued that this would amount to a variation of the 'contract', if one existed.

[73] He reasoned that the question that arises is whether the agreement to pay the additional \$104,755.94 to ensure performance of existing contractual duty provided sufficient consideration for the payment of the additional sum. He submitted that the legal position was outlined by Russel LJ in **Williams v Roffey Bros & Nicholls (Contractors) Ltd**¹² where he said:

'A gratuitous promise, pure and simple, remains unenforceable unless given under seal. But where ... a party undertakes to make a payment because by doing so it will gain an advantage arising out of the continuing relationship with the promise, the new bargain will not fail for want of consideration.'

¹² [1990] 1 All ER 512 at pp.524 g-h.

[74] Mr. Richards contended the facts disclose that he has not entered into a contract to do the work for payment; that there is no assertion that the Williamses expressed any fear during the construction that he would not complete the project; that there was no unequivocal promise by the Williamses for an additional payment to him to complete the house on time; that the Williamses received no benefit from the house being finished at any time, nor did they obviate any penalty or suffer any damages under any obligation to a third party; that the Williamses wanting to move out of his home into their own as soon as possible does not amount to economic duress; and that there was not as a result of the foregoing, any benefit capable of being consideration at law to 'further legally bound the contract'.

[75] Mr. Richards maintained that Mr. and Mrs. Williams' case fails the common law test in **Jones v Padavatton**¹³ as applied in **Smith v Mottley**¹¹. He argued that the surrounding facts and circumstances including the Williams' many visits to Saint Vincent where they stayed at his home; the plethora of emails; and the email of 14th April 2004 lead to the irresistible conclusion that the parties never intended to have a legal relations. He submitted that he was clearly offering his kind and gratuitous expertise. Mr. and Mrs. Williams made no legal submissions on this or any other aspect of the case.

[76] Learned counsel Mr. Richard Williams and Mr. Sten Sargeant have correctly articulated the legal principles which arise for consideration. In its simplest description, the law requires the existence of three main elements for the creation of a valid contract.¹⁴ Firstly, the parties 'must intend to enter into legal relations'¹⁴; secondly there must be an offer by one side which is unequivocally accepted by the other side; and thirdly the contract must be made under seal or 'be supported by consideration'¹⁴. A contract may be formal (i.e. be under seal or be a specialty contract) or informal otherwise referred to as simple contracts.¹⁵

¹³ [1969] 2 All E.R. 616.

¹⁴ Chitty on Contracts, 24th Ed. Para. 2.

¹⁵ Chitty on Contracts; para. 11.

- [77] In deciding whether Mr. and Mrs. Williams made an offer to Mr. Richards which he accepted, the court has to examine the whole course of their dealings and negotiations to determine if they concluded a binding agreement and if so what were its terms.¹⁶ Mr. and Mrs. Williams' collective and individual testimonies were fraught with difficulty in this regard. They contradicted themselves on significant aspects of what the purported contract entailed, including with respect to the contract price and the specifications for the building. The emails and other documentation did not assist them.
- [78] Moreover, Mr. Richards' version was so far removed from their account that it is impossible for the court to conclude what were the precise terms of the offer which Mr. Richards allegedly accepted. It appears from the course of their dealings that the relationship was fluid and the obligations on both sides appeared to mirror the informality which pervaded their interactions. Mr. and Mrs. Williams were very trusting and entered into negotiations with a relative with whom they admittedly enjoyed a good relationship. Both parties would perhaps have been best served by having a formal contract drawn up.
- [79] I am convinced that Mr. and Mrs. Williams wanted to contract Mr. Richards to build their house, after Stanley Richards indicated that he was unavailable. However, I am not satisfied that Mr. and Mrs. Williams made a clear offer to Mr. Cornelius Richards for the construction of their retirement home which he accepted unequivocally.
- [80] Furthermore, there is no satisfactory evidence of consideration passing from Mr. and Mrs. Williams to Mr. Richards for those purposes. Mr. and Mrs. Williams' account regarding the formation of a contract with Mr. Richards was disjointed, inconsistent in parts and not cohesive. Their testimony regarding the contract sum of \$362,000.00 and initial down payment of \$200,000.00 although consistent, could not be reconciled with the documentary evidence or with their subsequent inconsistent and unsubstantiated accounts of variations of \$492,000.00 or \$497,000.00 as the contract sum. Their pleadings contained no reference to the former sum and their testimony did not establish that a variation to the latter amount.

¹⁶ Chitty on Contracts; para. 52.

[81] It was impossible to discern a credible, coherent meeting of the minds between them and Mr. Richards in respect of what if anything, was agreed. It is clear that they had discussions about engaging Mr. Richards to build their home. However, those discussions are not adequately or sufficiently outlined in their testimony in a form which would permit this court to conclude that they had a binding contract with Mr. Richards, whereby he agreed to construct their house for a set price, agreed consideration, within a set timeframe and based on fixed or discernible specifications.

[82] The Williams' testimony including the emails between the parties suggests that Mr. and Mrs. Williams had the intention to create a formal contract with Mr. Richards and were content with even an informal contract. Mr. Richards was obviously of a different mindset. It is clear to me that there was no meeting of the minds, sufficient to translate the Williams' best intentions into such a binding contract.

[83] Applying the applicable legal principles to the factual findings, I have no hesitation in holding that Mr. Richards did not enter into a contract with Mr. and Mrs. Williams to construct their house for the contractual sum of \$380,244.06, inclusive of \$18,106.86 representing the 5% contingency sum or the pleaded revised sum of \$497,000.00. There is no satisfactory evidence of either. Mr. and Mrs. Williams have failed to establish their case on a balance of probabilities. Their claim is accordingly dismissed.

Issue No. 2 – Did Mr. Richards breach the contract?

[84] In light of the foregoing findings, it is not necessary to consider whether Mr. Richards breached any such contract. There being no contract between the parties, I find that Mr. Williams did not breach any contract with Mr. and Mrs. Williams in connection with the construction of their home at Pembroke.

Issue No. 3 - Did Mr. and Mrs. Williams' rent or damage Mr. Richards' office or are they indebted to him for the cost of materials?

[85] Mr. Richards adduced no evidence in support of his ancillary claim for rental for office space, termite damage to office, tiling project management or outstanding payments on Mr. and Mrs. Williams' behalf. He has therefore failed to prove his claim. It is accordingly dismissed.

Issue No. 4 - To what remedies are Mr. and Mrs. Williams and/or Mr. Richards entitled?

[86] None of the parties made out his or her claim against the other. In the circumstances, it is not necessary to make any monetary or other award. Accordingly, each party will be required to bear his or her own costs.

ORDER

[87] It is declared and ordered:

1. Wendell Williams' and Sharon Williams' claim against Cornelius Richards is dismissed.
2. Cornelius Richards' ancillary claim against Mr. and Mrs. Williams is dismissed.
3. Each party shall pay his or her own costs.

[88] I am grateful to learned counsel for the defendant for his written submissions. I must however apologize to the parties for the delay in finalizing the judgment. It was unavoidable and is regretted. The judgment in this matter has taken several months to complete for a number of reasons, including:

1. The trial spanned two and a half years;
2. The pleadings, witness statements and documentary exhibits were not available electronically;
and
3. Inexplicably, the claimants filed no written submissions, skeleton arguments or list of authorities.

**Esco L. Henry
HIGH COURT JUDGE**

By the Court

Registrar