

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 536 OF 2004

BETWEEN:

JENNETHA LEWIS

Claimant

v

HARRIS DEANE

Defendant

Appearances: Mr. Jaundy Martin for the Claimant
Mr. Richard Williams for the Defendant

2006: November 6 and 28
2007: May 29

JUDGMENT

[1] **THOM, J:** This is claim for damages for breach of contract.

BACKGROUND

[2] The Claimant is a citizen of St. Vincent and the Grenadines who resides in the United Kingdom. The Defendant is a building contractor.

[3] In December 2001 the Claimant entered into an oral contract with the Defendant to repair her dwelling house at Queen Street, Georgetown. The parties agreed that the cost for labour would be \$17,000.00 and the Claimant would provide all materials required for the project.

[4] The Claimant in her statement of claim alleges that the Defendant was in breach of the contract in that he failed to complete the repairs on the completion date, the quality of work

was poor, it was not done in a workmanlike manner and the Defendant used her property for his own benefit.

- [5] The Defendant in his defence contends that he was not in breach of the contract. There was no fixed date for completion of the contract. The Claimant failed to provide the materials in a timely manner and materials from the property were disposed of by the Claimant's agent Mr. Vernon Lewis.
- [6] The Defendant counterclaimed for the sum of \$5,162.30 being the remainder of the contract price which was not paid to him.
- [7] The Claimant testified on her own behalf and called one witness Mr. Franklyn Browne a property valuation expert. The Defendant testified on his own behalf and called two witnesses being Ms. Vanda Tesheira and Mr. Raphael Williams.

EVIDENCE

JENNETHA LEWIS

- [8] Jennetha Lewis the Claimant testified that on the 16th Day of December 2001 she entered into an oral agreement with the Defendant to conduct repairs to her dwelling house at Queen Street Georgetown. The terms of the agreement were:
 - (a) \$17,000.00 for labour cost - \$8,000.00 to be paid at commencement and the remainder on completion of the project.
 - (b) The Claimant would provide all of the materials for the project.
 - (c) Completion date end of February 2002.
 - (d) Nature of repairs to be done:
 - (i) Raise and renovate roof.
 - (ii) Repair verandah.
 - (iii) Clear the yard of all debris and waste material.

The witness testified that she purchased materials on the 17th day of December 2001 and work on the house commenced on the 20th December 2001. She paid the Defendant the sum of \$8,000.00 on the said day that the work commenced. She returned to the United Kingdom in early 2002 and sent money to her cousin Vernon Lewis to purchase materials for the project. The project was not completed at the end of February 2002. The Defendant requested further payment of part of the \$9,000.00 and promised to complete the project in March, 2002. The Claimant paid the Defendant \$3,837.00. When the Claimant returned to St. Vincent and the Grenadines in August 2002 she observed that the project was incomplete and the work that was done was of a poor quality. The new walls were not level with the old walls, concrete had settled on the property and there was a large quantity of waste material and garbage on the property. She purchased materials and the Defendant inserted the balusters but did not complete the project. She retained other persons to complete the project and remedy the defects.

- [9] Under Cross-examination the Claimant agreed that the nature of the repairs to be done were the same as listed in paragraph 5 of the Defendants defence being: change the roof, nine doors, twelve windows, break out the porch wall and replace with railings and balusters and break off a piece of cantilever and put in an overhead beam in the kitchen and dining room. The witness agreed that the house was built in the 1960's and was in a dilapidated condition. She also agreed that she purchased the balusters in August 2002, when she returned to St. Vincent and the Grenadines in August 2002.

FRANKLYN BROWNE

- [10] Mr. Franklyn Browne a property valuation surveyor gave expert evidence. He testified that in November 2004 he examined the property and found that the masonry work was poorly done and needed to be remedied. The walls were not level and some were unpainted. The remedial work necessary was chipping off the walls and replastering them. The quality of work done on the doors and windows was satisfactory. He estimated the labour cost of the work on the building to be \$10,000.00.

[11] Under cross-examination the witness testified that his valuation did not include installation of any beam. There were some unfinished works being the straightening of the walls and painting. It would be an implied term of the contract to repair which includes changing of a roof to ensure that the old walls and the new walls are even.

HARRIS DEANE

[12] The Defendant testified that in December 2001 he entered into an oral contract with the Claimant to perform certain repairs on a house owned by the Claimant. The building was in a dilapidated state. Repairs were to be done to the house not to the yard. The contract price was agreed at \$17,000.00; \$8,500.00 to be paid at commencement and \$8,500.00 when the Claimant returned to the United Kingdom. No completion date was agreed. On 20th December the Claimant paid him \$8,000.00. He received a further payment of \$3,837.70 in April, 2002. He did the repairs as agreed. The old walls on the house were twisted. He tried to straighten the walls but was unsuccessful in getting all of them straightened. When he reached the final stages of the repairs the balusters were not available. The project could not be completed until the balusters were provided. The balusters were provided when the Claimant returned to St. Vincent and the Grenadines and the project was completed. On the day of completion, the Claimant who was at her neighbour's house told him to leave the key in the door and that she would see him the next day. The following day he visited the Claimant and she refused to see him or pay him the balance of the contract price being \$5,162.30. The old materials were disposed of by the Claimant's agent Mr. Vernon Lewis. He did not permit anyone to stay in the Claimant's house.

[13] Under cross-examination the witness reiterated that he did not agree to complete the repairs by February 2002. He looked at the building and he made the estimate for the materials. He agreed that the Claimant requested him to save the galvanise for her. The only material required to complete the project was the balusters. The work was completed when the Claimant provided the balusters. There was no agreement to straighten the walls. He did not know the walls could be straightened. He did not include a price to straighten the walls in the contract price. Some walls could not be level. He tried his best

to straighten the walls. There was no agreement to clear the yard. He cleared the house. In reexamination he stated he did not know the walls were twisted.

VANDA TESHEIRA AND RAPHAEL WILLIAMS

[14] The two witnesses for the Defendant Ms. Vanda Tesheira who live next door to the Claimant's house and Raphael Williams an employee of the Defendant both testified that Mr. Vernon Lewis disposed of the old materials from the house. Ms. Tesheira testified that Mr. Lewis gave her two old doors, while other neighbours were given old materials by Mr. Lewis. Mr. Williams testified that Mr. Lewis gave old galvanise and wood from the roof to one "Mice" who he knew to be a relative of Mr. Lewis. Mr. Williams further testified that the project was completed when the Claimant purchased the balusters. He tried to straighten the walls but was unsuccessful.

ISSUES

[15] The issues to be determined by the Court are:

- (i) The terms of the contract.
- (ii) Whether the Defendant breached the contract.

FINDINGS

[16] What were the terms of the Contract? The parties agreed that the contract was an oral contract it was made in December 2001. They are also in agreement on the nature of the repairs, the contract price and that the materials were to be provided by the Claimant. The areas of disagreement are:

- (i) Whether a completion date was agreed
- (ii) The manner of payment of the contract price
- (iii) Whether the Defendant was required to clear the yard after the project was completed.

[17] Having seen and heard the witnesses I found the testimony of the Claimant to be more reliable than that of the Defendant. The Claimant was forthright in her answers and she

was not contradicted under cross-examination. I found the Defendant to be evasive in his answers under cross-examination and there were inconsistencies in his testimony such as the manner of payment of the contract price and the state of the walls.

[18] Was a completion date agreed? I believe the testimony of the Claimant that when they discussed the terms of the contract in December 2001 they agreed that completion date would be end of February 2002. This meant the project would have lasted approximately two months. The Defendant stated that six persons worked with him on the project.

The expert witness Mr. Franklyn Browne who I found to be a reliable witness, his testimony was not contradicted under cross-examination testified that with six persons working on the project it would take approximately one month to complete. I do not believe the testimony of the Defendant that the Claimant agreed to pay him all of the contract price and there was no agreement when the project would be completed.

[19] In relation to the manner of payment, I believe the testimony of the Claimant that the parties agreed that she would pay the Defendant \$8,000.00 at the commencement of the project and the remainder on the completion of the project. The Defendant's testimony on this issue was inconsistent. In his evidence-in-chief he stated that \$8,500 was to be paid at commencement and the remainder when the Claimant returned to the United Kingdom. When the Defendant was cross-examined he agreed that he remainder was to be paid when the repairs were completed.

[20] In relation to the clearing of the yard I note in the Claimant's statement of claim when the terms of the contract were outlined no mention was made trade of clearing of the yard. In outlining the nature of the breach, the Claimant pleaded inter alia that the work was of a poor quality and was not executed in a workmanlike manner and in the particulars the Claimant mentions the concrete and other materials that were left in the yard. Clearing of the yard is not a term that would be implied in a contract of this nature. I find that there was no agreement to clear the yard after the repairs were completed.

[21] Did the Defendant breach the terms of the contract in the manner alleged by the Claimant?
The Claimant alleges that the Defendant was in breach of the contract as follows:

- (a) The project was not completed by the completion date
- (b) Poor quality of work
- (c) The Defendant used her property for his personal benefit.

[22] In relation to the completion date I find that the project was not completed on the completion date because the Claimant failed to provide all of the materials before the completion date. The Claimant in her testimony agreed that the balusters were not provided until August 2002 when she returned to St. Vincent and the Grenadines. It was not possible for the project to be completed without the balusters. It was the duty of the Claimant pursuant to the terms of the contract to provide all of the materials for the project and the Claimant failed to do so prior to the completion date.

[23] In relation to use of the Claimant's property, I find that the Claimant did not lead any evidence to prove that the Defendant used her property for his personal benefit. The Claimant exhibited receipts showing that the Defendant sold cement to one Mr. Glasgow. I believe the testimony of Defendant that when the cement was sold no work was being done on the house since the balusters were not available and the cement was deteriorating. The Defendant exhibited receipts showing that he repurchased the cement. The Defendant's witnesses both testified that Mr. Lewis the Claimant's agent disposed of the old materials. This was not contradicted.

[24] In relation to the quality of the work, the Defendant does not dispute that the old walls are not level with the new walls. His testimony is that he tried but was unable to make them level. The expert witness Mr. Browne exhibited photographs showing the uneven walls and the unpainted area. Mr. Browne testified that where a roof is being replaced it is inevitable that finishing work would have to be done that is straightening of walls. This evidence of the expert witness was not contradicted. Further the Defendant testified that the house was a dilapidated house. He knew the house to be an abandoned house since he was a boy going to school. He examined the house and made an estimate of the

materials required for the project. He knew the nature of repairs that was agreed to included raising and renovating the roof. In examining the house the Defendant would have seen the old roof and the state of the walls. I accept the testimony of the expert witness that the quality of the masonry work was poor and that the remedial work necessary was chipping and replastering of the walls. I find that in this respect the Defendant was in breach of the contract.

[25] It is not disputed that the sum of \$5,126.30 of the contract price was not paid to the Defendant.

[26] I find that the Claimant is entitled to damages for the Defendant's breach of contract being the cost of the remedial work to fix the uneven walls that is the chipping and replastering of the walls. There is no evidence that the house was not habitable or the Claimant suffered any loss as a result of the poor quality of the work.

[27] Judgment is entered for the Claimant. Damages and costs to be assessed. On the assessment of damages regard must be taken of the fact that the sum of \$5,126.30 being part of the contract price was not paid to the Defendant. If the damages assessed are less than the sum of \$5,126.30 the remainder must be paid to the Defendant.

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Gertel Thom
HIGH COURT JUDGE