

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. Cv 2385 of 1995

Between

RANDAL SEETAL

PLAINTIFF

And

VINCENT FRANCIS

DEFENDANT

BEFORE THE HONOURABLE MR. JUSTICE STOLLMAYER

Appearances:

Mr. Y. Ahmed for the plaintiff

Mr. R Bartley for the defendant

JUDGMENT

These proceedings arise out of certain renovation and extension works which the defendant agreed to carry out at and upon the plaintiff's premises at 30 Gran Central Park, Endeavour, Chaguanas.

The plaintiff claims damages arising as a consequence of the alleged failure by the defendant to complete these works, either within the stipulated time or at all, and/or to complete them to the required standard. The defendant counterclaims for monies due to him for having carried certain items of work at the premises

which were in addition to, and not included in, those works which he had contracted to execute.

The issues can be summarised as follows. First, was all of the work to be done by the defendant embodied in the defendant's estimates of 21st October 1994 (Exhibit "RS1") and 1st December 1994 (Exhibit "RS2"), as well as the drawings and plaintiff's documents (Exhibits "RS3" to "RS11" inclusive. Second, if all of the work actually done is not fully set out in those exhibits, did the defendant carry out additional works at the request of the plaintiff and, if so, what were they, and to what payment is the defendant entitled for having carried out those works by way of damages in respect thereof. Third, were any of the works carried out by the defendant not executed in a proper and workmanlike manner and, if so, what were they, and to what sum is the plaintiff entitled by way of damages representing the proper or reasonable cost of remedying and/or completing any such defective or incomplete work.

A fourth issue arose on the evidence, namely whether there was a liability to Value Added Tax on the part of the defendant payment of which was evaded by agreement between the defendant and the plaintiff, but I dispose of this issue at this juncture by saying that in my view the evidence does not support a finding of this nature. The evidence is that the defendant contracted for himself, despite the estimates in question being printed on stationery of Ultimate Construction Services Limited. Also, there was no evidence to show that that this limited

liability company was either registered or registrable for the purposes of the Value Added Tax Act.

The circumstances in which the claim and counterclaim arise are that the plaintiff bought the subject premises in July 1994 having previously had discussions with the defendant about the construction and renovations he wished to have carried there. The plaintiff showed to the defendant certain depictions of what he wanted done the interior of the house and all of this resulted in the defendant submitting the estimate of 21st October 1994. This estimate, which epitomises brevity in so far as describing the work to be done is concerned, quotes a total of \$75,760.00 for the following:

1.	Concrete masonry works, Roofing and supply of water pump and heater	\$46,000.00
2.	Electrical - Materials and labour	\$ 3,560.00
3.	Joinery - Materials and Labour	\$16,000.00
4.	Welding and fabricating of spiral stairs and Burglarproofing	\$ 5,200.00
5.	Painting	\$ 5,000.00

Work began based on this estimate in the latter part of October 1994. It was not what might be called a "competitive tender". The plaintiff decided to use the defendant's services on the basis of past work done by the defendant for the plain-

tiff on his apartment and studio, and the defendant having said he was a specialist in his field of construction and that he used only "A"-class workers and "A"-grade materials.

As work progressed, the parties agreed on certain other works which were to be done in addition to those provided for in the estimate of 21st October 1994 which resulted in the defendant submitting the second estimate of 1st December 1994. This estimate is for \$109,720.00 and includes an indisputably new item of work: "tiling" at a price of \$2,980.00. The other items of work are described in precisely the same manner as the items in the first estimate but their cost now totals \$106,740.00, which represents an overall increase of \$30,980.00, and individual increases are reflected as follows; for concrete, masonry etc., of \$11,000.00 to \$57,000.00; for electrical, of \$4,200.00 to \$7,760.00; for joinery of \$3,420.00 to \$19,200.00; and for welding etc., of \$3,800.00 to \$9,000.00. Significantly, perhaps, this second estimate sets out for the first time an agreed date by which the works are to be completed that is, 12th December 1994. I will refer to this price of \$109,720.00 as the "contract sum".

The defendant continued working on the site until 23rd December 1994 when he stopped. At that time, as of 15th December 1994 to be precise, the plaintiff had paid a total of \$97,237.50 to the defendant, leaving a shortfall in payment of the contract sum of \$12,482.50. Also, there were certain items of the work which had not been completed, and there were certain items, either partially or wholly

completed, which the defendant had not completed in a proper and workmanlike manner. The plaintiff had complained to the defendant about this and had also complained to him about not being on the site to the extent which the defendant should have been. Most important of all, however, was that the completion date of 12th December had passed without the work having been completed. In the event, the plaintiff and the defendant went their separate ways on 23rd December 1994, with the plaintiff utilising the services of some of the defendant's workmen then on the site to complete the works.

The plaintiff claims to have actually spent \$25,818.92 on completing some of the work which the defendant should have done, and estimates that a further \$121,115.889 is required to remedy and complete all that which was to be done by the defendant. Particulars of the defective and/or incomplete work are set out at paragraph 16. of the statement of claim and are too lengthy to recount here. Indeed, I do not consider it to be necessary to do so. Particulars of the amounts already expended by the plaintiff, and those which he estimates need further be spent, are set out at paragraph 17. of the statement of claim. I should add that paragraph 17. also particularises as an expense "meals for workers 12/1/94 - 23/1/94 - \$800.00" and "damages to house while building - \$3,500.00"

The defendant counterclaims for \$33,870.00 as being the amount due to him for carrying out of work additional to those comprised in his two estimates. I will refer to these works as the "additional works". His evidence was that requests

for work not included in either of his estimates came from the plaintiff on an almost daily basis from the commencement of work in October. The counterclaim is for those items which were not included in the second estimate of 1st December 1994 because these requests came in too late to be included in the second estimate, or because they came in after it had been prepared.

I have reviewed the evidence in detail and I am satisfied that as at 23rd December 1994 there was work yet to be completed, as well as work which required remediation. I am also satisfied that there were certain items of additional work which the plaintiff had requested of the defendant but which were not included in either of the two estimates or in the plaintiff's notes of the work which the defendant was to carry out (Exhibit "RS11"). I refer to the works described in these three documents as the "contract works". I am not satisfied, however, that either the plaintiff's claim or the defendant's counterclaim are to be met in full.

As to the plaintiff's claim, it is of interest to note that the contract, which expression I use for the purposes of this judgment to describe the items of work set out in the two estimates and Exhibit "RS11", was to executed for a total consideration of \$109,720,00 but the plaintiff now claims a total of \$146,334.81 to either or both remedy or complete the contract works. Further, certain individual items of work which the plaintiff claims are necessary are now estimated to cost very considerably in excess of what the contract provided for. The cupboards and the tiling work are examples of this. Also, there are items on

which the plaintiff claims at paragraph 16. of the statement of claim to have expended monies completing but which are also to be found in the "Estimated Costs". Examples of this are, again, cupboard and tiling work, as well as electrical work.

It is difficult, if not impossible, on the evidence before me to resolve with suitable precision the status and cost of each item of work claimed by the plaintiff as requiring completion, remediation, or both. The wording of the estimates is too general, the details of the drawings rendered by the plaintiff are too imprecise to enable a definitive finding to be made as to the issues of exactly what work was to be done by the defendant, let alone any additional work, or what the cost of each such item of the contract works was to be. Not even the plaintiff's notes of work to be done (Exhibit "RS11") or the viva voce evidence at the trial resolve this conundrum to a satisfactory degree. Nor is any greater degree of precision and definitiveness possible in so far as resolving the element of duplication in deciding what work done by the defendant requires remedying or completing, and to what extent this work is required, or the cost of remedying or completing each such item.

Turning for a moment to the cost associated with each such item by way of illustration and with respect to the plaintiff's claim for labour in the amount of \$7,650.00 to complete the contract works, I am satisfied that it is excessive and the amount to be awarded should be only \$3,000.00. The bills tendered in support

of the claims for materials do not always entirely support the claim made. Those, for example, in support of expenditure under the heading of "plumbing" total only \$3,348.70. The claim for meals supplied to workers must fail, as must the claim for damage to the house, neither having been in any way supported by the evidence. Matters such as these make it difficult to rely on the plaintiff's evidence.

On balance, I would assess special damages in an amount of \$21,058.50.

The "Estimated Costs" claimed by the plaintiff do not strictly fall to be classified as special damages but can in my view give some degree of guidance in attempting to arrive at an award in general damages. There is no doubt that the plaintiff suffered losses as a consequence of the defendant having breached the contract by his failure to complete the contract works in time and in a proper and workmanlike manner. The two principal claims, in terms of quantum, are the cupboard work and the tiling. I do not accept the estimated costs of these items as being definitive or final. Further, the descriptions of certain items suggest that the "Estimated Cost" is that of doing the work anew. That cannot be right. There is a value to be placed on the work already done, albeit incomplete or substandard, which must be taken into account, unless it is shown that a complete removal of what is already there is first required before construction of that particular item of work is commenced 'de novo'. That has not been shown to be the case here in respect of any item of the contract work.

On balance, and having regard to all these factors, I would assess general damages in an amount \$60,000.00.

Turning to the counterclaim, I find myself faced with similar difficulties as when looking at the plaintiff's claim, including the quality of the defendant's viva voce evidence but I have come to the following conclusions. First, I am satisfied that the building of a queen-size bed was not included in the contract work, nor was the fabricating and installing of french-style doors, nor extending the wall to partition the roof extension. These are relatively easy to determine. I am not satisfied, however, that the defendant would have carried out the cupboard work for which he claims, or that he supplied the pipes and fittings for the installation of the bathroom suite. I also find it improbable that, at such a late stage of the contract, the defendant would have expended \$8,200.00 on paint, as he claims, having already included almost precisely the very same sum in his second estimate of 1st December 1994.

In the circumstances, and on balance, I can do no better than assess the defendant's special damages at \$12,500.00.

There will therefore be judgment for the plaintiff on his claim. The defendant will pay to the plaintiff special damages in the amount of \$8,576.15, with interest thereon at the rate of 3% from 23rd December 1994 to the date of judgment. The

defendant will also pay to the plaintiff general damages in the amount of \$60,000.00, with interest thereon at the rate of 6% from 18th July 1995 (being the date of the issue of the writ of summons in these proceedings) to the date of judgment.

There will be judgment for the defendant on his counterclaim. The plaintiff will pay to the defendant special damages in the amount of \$12,500.00, with interest thereon at 3% per annum from 23rd December, 1994 to the date of judgment, such amount or amounts to be set off against or deducted from the amount or amounts due by the defendant to the plaintiff as ordered above.

The defendant will pay the costs of the plaintiff's claim. The plaintiff will pay the costs of the defendant's counterclaim.

There will be a stay of execution for 28 days.

Dated the 31st day of July, 1998.

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C.V.H. Stollmeyer
Judge