

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1999/C-175

BETWEEN C.D. ALEXANDER COMPANY REALTY LIMITED PLAINTIFF  
AND TAN-MARJ INVESTMENTS LIMITED DEFENDANT

Joseph Jarrett for Plaintiff instructed by Joseph Jarrett and Company.

Kevin Williams for Defendant instructed by Grant, Stewart, Phillips and Co.

**Heard: 19<sup>th</sup> February, 18<sup>th</sup>, 19<sup>th</sup> and 21<sup>st</sup> March 2003**

**McDonald J. (Ag.)**

The Plaintiff's claim is against the Defendant to recover the sum of \$149,500 inclusive of G.C.T. for unpaid appraisal fee in respect of an appraisal carried out at the Defendant's request "particulars of which have already been given by the Plaintiff to the Defendant and exceed three (3) folios."

Paragraph 3 of the particulars of the special endorsed writ reads: -

"That in or around May 1997 the Defendant entered into a contract with the Plaintiff for their services in carrying out an appraisal for land forming part of Mammee Bay in the parish of St. Ann. On completion of the appraisal the Defendant was sent an invoice dated May 29, 1997 for \$130,000 plus G.C.T. of \$19,500 making a total of \$149,500."

Paragraph 4 reads:

“That despite several demands for payment to the Defendant the debt has remained unpaid.”

The Defendant at paragraph 5 of the Defence avers that there was no agreement by the Defendant to enter into a contract with the Plaintiff for their services in carrying out an appraisal of the said land. Further that the agreement actually made between the Defendant and the Plaintiff's agent, servant and/or employee, Mr. Maitland, was that the Plaintiff would prepare and provide the Defendant with a written appraisal for the said land.

The Defendant at paragraph 6 of the Defence avers that the Plaintiff is not entitled to payment under the said contract as the Plaintiff has never provided or submitted to the Defendant a written appraisal pursuant to the conditions of the said contract, thereby failing to perform its said contractual obligations.

The Defendant at paragraph 7 of the Defence states that all that the Plaintiff had submitted to the Defendant up to and including the 8<sup>th</sup> July 1997 were two oral valuations. Further that the Defendant had a right to rescind the contract and refuse further performance on the 8<sup>th</sup> day of July 1997 as the said oral valuations were fundamentally defective, particulars of which have been pleaded.

### Case for the Plaintiff

The Plaintiff called two witnesses, Mr. Phillips and Mr. Maitland in support of their case.

Mr. Phillips, the current manager/director of the Plaintiff's company, told the Court that fees of \$149,000 inclusive of G.C.T. for valuation done in May 1997 are still outstanding to the Plaintiff from the Defendant.

Letter dated May 22, 1997 from the Defendant to Mr. J. Dolphy, C.D. Alexander and Company confirming their request for a valuation to be conducted at Mammee Bay Resorts Volume 1162, Folio 762 was admitted through Mr. Phillips as Exhibit I.

Mr. Maitland told the Court that he worked with the Plaintiff from October 1995 to August 1997 as Appraisal Manager. His duties were to manage the Appraisal Department, assign valuation work to the different appraisers, distribute the reports on completion and for the collection of fees. At the time he reported to Miss Breakenridge, the Managing Director.

He outlined the system in place at the company from receipt of a request for valuation to delivery of the signed report to the client.

In the instant case, Mr. Maitland stated that the request came in the form of a letter Exhibit I. On receipt of the letter he assigned the request to an appraiser by the name of Winston Ricketts.

To the best of his knowledge, Mr. Ricketts did the inspection about the 24<sup>th</sup> May 1997 and prepared a report and brought it for his vetting and signature.

Mr. Maitland testified to signing the valuation report as well as a cover letter. This report (Exhibit 3) was packaged in duplicate along with a green copy invoice (Exhibit 4) and office copy cover letter (Exhibit 2) dated 29<sup>th</sup> May 1997 for delivery to the client. He issued the report along with the cover letter and invoice for delivery on the 16<sup>th</sup> June 1997.

Mr. Maitland testified that the invoice was never paid during his tenure at the Plaintiff's company. He further stated that during his period of employment with the Plaintiff, he had never issued any oral reports or any indication of value orally. This was strictly forbidden and it was against company policy to give oral valuations to clients.

He recalled that there was a meeting between Miss Breakenridge and someone from the Defendant's company, as the client was dissatisfied with the market value appraised. Further that there was no change in the valuation report he signed off on as a result of the meeting.

In cross-examination Mr. Maitland stated that he did not recall having any conversation with Mr. Shirley indicating that there was a change in the valuation report and stating that it was out of his hands. Neither did he

recall getting an oral directive from Mr. Shirley to cancel the valuation report. He also had no knowledge as to whether Mr. Shirley gave Mr. Ricketts an oral directive to cancel the valuation report if the figure was going to change from Twelve Million Dollars per acre to Six Million Dollars per acre.

### Case for the Defendant

Mr. Lyttleton Shirley, owner and C.E.O. of the Defendant's company testified that the Plaintiff's company had on several occasions done valuations for his company. Mr. John Dolphy and Mr. Winston Ricketts were the two individuals in particular with whom he had dealt with. He would normally call one of them and request his desire to have a particular property valued. They would proceed to do so and then he would follow up by formally making the request in writing to the office.

He would normally visit the property with either of these gentlemen and conclude a valuation in discussion with them. They would then put it in writing to him formally. He testified that in his dealing with the Plaintiff he has never signed on any standard form contract with them.

In the instant case, Mr. Shirley stated that in or about May 1997, he made an oral request of either Mr. Dolphy or Mr. Ricketts for a valuation of

the property at Mammee Bay and followed this up by a formal letter of request.

He said that in or about 22<sup>nd</sup> May 1997, himself and Mr. Ricketts met on the said land and Mr. Ricketts orally communicated to him a valuation figure or estimate of what the land was valued of Twelve Million Jamaican Dollars per acre. The following morning he again spoke to Mr. Ricketts and there was no change in the figure.

Mr. Shelly told the Court that Mr. Ricketts concluded that the value discussed with him was in line with the value of properties in the area and that he would formalize his valuation in writing to him. He claims that he received no formal written valuation report from Mr. Ricketts.

On his return to Kingston from St. Ann he had two telephone conversations with Mr. Ricketts concerning the valuation of the land. In the first, Mr. Ricketts indicated to him that he had a problem with his superiors, who instructed him that the value of the property was too high. He stated that he was not in agreement, but could not do anything, as he was not the person who signed off on the valuation. He told him that he would recommend some adjustment and get back to him.

In the second conversation, Mr. Ricketts told him that Mr. Maitland and the Managing Director were adamant that he should value the land at

Six Million per acre. Mr. Shirley said that he told Mr. Ricketts that they appeared to be unaware of value of land in Ocho Rios and having not visited the property could not give a sound valuation, and that he was asking that the valuation report be cancelled forthwith.

Mr. Shirley told the Court that after Mr. Ricketts returned to office he had a telephone conversation with Mr. Maitland, who phoned to query his cancellation of the valuation report.

He also testified to meeting Miss Breakenridge at his office several weeks after he had discussion with Mr. Maitland concerning the valuation he had cancelled. He stated that at this meeting he had a first hand glance of the valuation which Miss Breakenridge took to the meeting.

He stated that he received a copy of the invoice (Exhibit 4) in 1999 from the Plaintiff's attorney-at-law which he passed on to his attorneys. Further, he received no letter from the Plaintiff or any representative in respect of the amount quoted in Exhibit 4.

Mr. Shirley maintained that he owes the Plaintiff no money whatsoever for valuation report for the said property in Mammee Bay.

In cross-examination, Mr. Shirley stated that it was his understanding that Mr. Ricketts and himself had concluded on the value of the property

while Mr. Ricketts was in Ocho Rios and his report was just “the administrative formality of the document.”

It was also his understanding that Mr. Ricketts would complete the report on returning to Kingston, i.e., he would put into writing the value he had stated to him. Further he had no knowledge that the formal report would depend on Mr. Ricketts’ supervisors signing off on it, and that had never been the case.

It was suggested to him that any oral valuation report which was given by Mr. Ricketts was unauthorized. He replied as follows: -

“In doing business with Mr. Ricketts in period during which I have contracted him or C.D. Alexander, Mr. Ricketts would give me an oral value and when in my business – it’s all about expediency he would always give me an oral value and conclude it with a written document – that is what I know.”

Mr. Shirley denied receiving any letter from Miss Breakenridge after the meeting with her. He said that it was possible that the meeting with her could have taken place on 8<sup>th</sup> July 1997. He denied that when he met with her he already had a copy of the valuation report, and he denied the suggestion that they went through this report together at the meeting.

Written submissions were presented by both Counsel supplemented by brief oral submissions.

Was there a contract between the Plaintiff and the Defendant for the valuation of the Mammee Bay property

On the evidence there is no dispute between the parties that the Defendant requested the Plaintiff to do an appraisal of its Mammee Bay property. Both agree that Exhibit I confirms the written request.

I find that appraisals are done in writing, not orally and ought to be done in a professional manner.

I accept the evidence of Mr. Phillips that overtime clients develop a relationship with an individual appraiser and address their requests to that individual, but that the contract is with C.D. Alexander Realty Company Limited and not the individual.

I also accept his evidence that valuations have to be supported by market evidence and his explanation that although the Plaintiff takes photographs of all properties valued and even though the Appraisal Manager might not do an actual site inspection, he would be guided by the appraisers' notes, photographs and market evidence, this he said is standard procedure in the industry.

I also accept Mr. Maitland's evidence that the appraiser would be required to visit the site, do an inspection and a survey of the property and prepare a report.

I concur with the view expressed in Halsbury's Laws of England – Building Contracts, Architects, Engineers, Valuers and Surveyors at paragraph 3 which reads: -

“Valuation is not an exact science, but rather a matter of opinion on which competent valuers may reach different conclusions..... A valuer is accordingly not guilty of negligence merely because another valuer produces a different answer, nor because his valuation turns out to be wrong.”

In this case, I find that the Defendant was not in agreement with the value placed on his land and that this brought about the dispute which gave rise to this Court action.

Mr. Shirley agreed with the suggestion that it would be correct to say that there would be no talk of cancellation if the property had been given the value he claimed Mr. Ricketts gave him, i.e., \$12 Million per acre while in St. Ann.

There is no doubt in my mind that the Defendant engaged the services of the Plaintiff's company to carry out an appraisal of the value of the said property.

Was there performance of the contract by the Plaintiff

I find as a fact that Mr. Ricketts did inspect the said property on 24<sup>th</sup> May 1997 and as the report states, related market research and analyses were completed subsequently. This is unchallenged.

I find that the Plaintiff's company did prepare the appraisal. I accept the evidence of Mr. Maitland that he did sign off on the appraisal which was entered into evidence as Exhibit 3.

Mr. Shirley contends that he did not receive the appraisal and cover letter which Mr. Maitland says he issued for delivery on 16<sup>th</sup> June 1997.

I accept the evidence of the Plaintiff that the appraisal was sent out to the Defendant and so find although the Defendant stated that he did not receive it.

I also find that the appraisal was available for delivery even if not delivered. In other words, even if the Defendant did not receive the appraisal, I find that it was available to him for his use.

#### Was there a cancellation of the contract

I do not accept Mr. Shirley's evidence that he communicated the withdrawal of his request to the Plaintiff.

It is undisputed that an inspection of the property was carried out and any views expressed then by the servant or agent of the Plaintiff could not bind the Plaintiff in the preparation of their appraisal. In order to arrive at a considered valuation, a visit to the site is not the only criteria used to arrive at an appraisal, there are many other factors that a competent valuator must

take into account before arriving at a conclusion as to the appraised value of a property.

It is unthinkable that any oral views expressed as a result of a mere site inspection and any value of properties in the area expressed by Mr. Ricketts could be considered as the professional appraisal expected of the Plaintiff's company.

I find as a fact that there was no cancellation of the contract prior to its performance; and that demand was made on the Defendant for this outstanding amount which is due and owing.

Judgment for the Plaintiff in the sum of \$149,500 together with interest at the rate of 6% until judgment.

Costs to the Plaintiff to be agreed or taxed.