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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT No. C.L. P043/1978

BETWEEN	MR. WILFORD F. GRAHAM	PLAINTIFF
AND	MR. & MRS. A. HINDS	DEFENDANTS

July 17th, 18, 1980
24th October, 1981

Mr. Shelton for Plaintiff
Mr. K.C. Burke, Dr. Edwards and Mr. Wilson for Defendants.

At the conclusion of the evidence and after hearing addresses from learned counsel for the defendants and for the plaintiff I entered judgment for the plaintiff and stated that the quantum thereof would have to await my perusal of the many pages of the notes of evidence taken herein. I propose at the same time to record my findings of fact.

This is an action brought by the plaintiff against the defendants for work done and materials provided for the defendants at their request. The allegation was that the said materials and labour were used in the construction of a dwelling house at lot 71 Siggany Drive in the parish of St. Andrww between the years 1970 and 1974. The total amount claimed for material and labour was $25,622.60 credit was given for $9,124.60 paid by the defendants leaving a balance of $16,498.06.

The defence and Counterclaim (so called in the pleadings filed) was a denial that there was any indebtedness to the plaintiff in the sum of $16,498.08 as claimed or at all.

The contention of the defendants was that there had been an oral agreement made in 1969 for the construction of a 3 bedroom dwelling house with usual appurtenances or a price of $3,500 and that the said structure would be completed in 3 months. The plaintiff failed to perform both in terms of agreed price or time of completion

Issues were also raised as to a written agreement which according to the defendants the plaintiff had agreed to have drawn up at the time of the oral arrangement; defendant asserted that the plaintiff had failed to provide any such written agreement; this however had no real relevance to the main issue involved, namely did the plaintiff provide the material and alabour claimed and if so what payments if any had been made to him for these services? Additionally the defendants claimed that as a result of failure and delay during the years 1970 - 1975 by the plaintiff in completing the structure a new arrangement was entered into with the plaintiff whereby he was to be paid a sum of $4567.67 in final settlement for all work done and material supplied. The payment in pursuance of the new arrangement was duly made and along with a pre-1974 payment of $4497.00 meant that in all the total payment to the plaintiff was $9364.67 a figure be it noted some $2364.67 in excess of the original contract price of $7000.00 which the defendants claimed was agreed on. The quantum of the final payment as set out in the defendant's pleadings was $4867.67 but evidence was led to the effect that the amount actually paid was $4567.67. There was no application to amend.

The areas in which there was no dispute should perhaps in the interest of clarity be set out first. The plaintiff is a contractor and builder of considerable experience. He was a long standing friend of both defendants and quite naturally it seems the defendants approached him for assistance and guidance when they decided to erect a dwelling house on Lot 71 Sirgany Drive aforementioned. This lot had not been completely paid for when the idea of building first occurred to the defendants. In a way this appears to be in keeping with their entire approach to the serious business of house building as it emerged from the evidence and I so found that they had not only in-sufficient monies in hand with which to complete the building but no satisfactory source from which such money would have been available during the course of construction - a term popularly known in the trade as "bridging finance."

I have already dealt briefly with the pleadings. In support of his case the plaintiff himself gave evidence and he called 2 witnesses.

I was impressed by the plaintiff's demeanour and regarded him as in the main a witness of truth. This I so found in spite of his omission to keep and supply the defendants with details and records of expenditure over the years the building was going up. Significantly no where in his defence has the male defendant indicated that he had made a request of the plaintiff for any details of expenditure. It appears that certainly at this stage there existed between plaintiff and defendants that mutual trust and confidence which the male defendant Hinds referred to when asked why no receipt was given for the initial payment of $1060. "I asked him for none. We were very good friends." I regarded plaintiff Graham as a witness of truth in spite too of his omission to supply Hinds with any written contract. The plaintiff admitted that from the outset Hinds was "asking me for a contract", but I accepted as reasonable and honest his explanation that I "don't make agreements unless party has enough money to finish the job.", and I had "no guarantee to pay me on completion." This finding that the plaintiff was a witness of truth naturally involves a total rejection of the defence as put in cross-examination that the plaintiff had ever made any promise to the effect that "$3,500 cost would be a wedding present and it (the building) would be done in 3 months." Strange indeed it would be for a rejected suitor to be making any such generous gift to the woman who rejected his proposal of marriage and to the man who subsequently made her his wife.

The other witnesses testified for the plaintiff one David Norris an expatriate chartered quantity surveyor whose evidence as an expert I accepted, and one Dudley Renniki a mason/tiler who actually did work on the building at 71 Sirgany Drive. In accepting Norris' evidence as an expert one is not unmindful of the admitted fact that he was not in Jamaica during the relevant years 1970 to 1974, but Norris (and this was not challenged) has "been privy to indices compared by quantity surveyors" and his opinions were based "on what I have read since I came to Jamaica." Here again the witness qualifications and his demeanour compelled me to accept his evidence as reliable, and certainly, on a balance of probability Norris' evidence was preferred to that of the "expert" called by the defence one Percival Rochester who I will deal with in due course. Norris'

evidence (again not challenged) was that there were considerable variations from the original plan and it was his view that

> "in 1974 without the grill work $2,365.00 would be my opinion of the concrete work if done as a variation to a contract rather than as a new job."

Last witness for the plaintiff was his mason/tiler Dudley Renaiki the effect of whose evidence was to establish that work on 71 Sirgany Drive was intermident and spasmodic and this I find as a fact was attributable to a failure by the defendants to provide the plaintiff with funds to procede with their building. Indeed Altimont Hinds in his evidence in chief said that after a long delay "as soon as he (the defendant) obtained a loan from him Credit Union and handed $1,000.00 to the plaintiff the latter kept his promise and sent labour the following week."

Turning now to the defence let me state from the outset that both defendants failed to impress me as witnesses of truth. In particular the Defence and Counter claim as filed stated at paragraph 6 that "the defendants arrived at an arrangement with the plaintiff that the plaintiff would be paid the final sum of $4,867.67 in settlement of all work done and material supplied by the plaintiff." In fact Altimont Hinds swore in evidence in chief that such an arrangement was made by him alone with the plaintiff and it was "behind my wife back." After becoming disgusted with the plaintiff's failure to complete Hinds bought coloured zinc, says he, and had the Koolvent people install the roof. Neither a receipt nor Koolvant material purchased nor an explanation for its absence nor any evidence from Koolvent was adduced. Yet Hinds says "I have no receipt but you can contact Koolvent." One would have thought that Hinds would have been only too glad to have contacted Koolvent himself, particularly as the plaintiff said that he had put on the roof and limited Koolvent participation in the structure to "Koolvent was put on the front by some firm." Indeed on all issues in relation to the building Hinds failed to call one single witness to confirm what he was alleging in particular the issue as to who installed the burglar bars. The son employed to Sang's Engineering Works may have made the grill but if he also installed them should he not have been brought to court to either prove the plaintiff a liar or at least to cast some doubt upon his credibility? Further on in his evidence the defendant stated that he had "paid a mason to put on grill."

The female defendant Arnet Hinds was similarly unimpressive. The effect of her evidence that without any plan or without any measurements a figure of $3,500 was agreed on is incapable of belief particularly as in her answer to me the witness stated that "if we had got a house half the size I would say it too small." Her use of the word "frontage" when she admits that she does not know the meaning of that word is not without significance.

Percival Rochester, the "expert" who cannot read a plan, and who does not build by plan was the last witness for the defence. As soon as he appreciated how serious a short coming this was, he changed and said "I can read a plan." When asked to read Exhibit (1) the plan used on this project he found "this not bright enough for my eye." Of equal significance was his statement that on his visit to the site he found the building "cracked like meshwire" and that the sand used was sea sand. Although the plaintiff witness David Norris had sworn that "the Standard of finish was good, well above average" it was never put to him in cross examination that there were any cracks in the walls, and indeed neither defendant made any complaint as to the quality of the plaintiff's work.

On the above findings it is clear that I rejected the defence as to there having been an agreed price of $3,500. I found that on the defendants enquiry as to the approximate cost he was told $5 - $6 per square foot. I entered judgement for the plaintiff accordingly and now make an award for the outstanding balance for work done and materials supplied as follows:-

Material and labour for 1812 sq. ft. at $5 ($10) per sq. ft.	$18120.00
Cost of Drawings Complete	120.00
K.S.A.C. fees	23.00
Installing burglar bars, building columns and fence, driveway and kerb walls completing ground work and removing earth from site	1148.00

The last amount of $1148 is made up as follows:

kerb wall	$196.00
Blocks (350)	66.50
Cutting driveway	84.00
Screen "	47.00
Casting "	441.00
5 columns complete	180.00
Remove earth	134.00

The following items were not allowed

Paint fence $93.00 (no evidence led)

Install burglar bars and paint $205.00 (not quantified)

Contractors profit and supervision $269.50 (I find that this was not intended in the original agreement)

Total allowed	$19411.50
Less amount paid by defendant	$ 9124.60
	$10286.90

I therefore enter judgement for the Plaintiff for $10286.90 or costs to be agreed or taxed.

T.N.Theobalds

Judge.