

Sub A - breach of contract - negligence - B hour to roof of plaintiffs dwelling - whether negligence - whether breach of contract - Liability Damages - quantum

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

No case referred to

IN COMMON LAW

SUIT NO. C.L. J095/90

✓comp

BETWEEN DALMA JAMES PLAINTIFFS  
AND ETHEL JAMES  
AND FOSTER'S TRUCKING AND DEFENDANT  
CONSTRUCTION CO. JAMAICA LTD.

Mr. Paul Dennis for the plaintiffs  
Mr. Leon Green for the defendant

PER JUDGES

July 1 and 2, 1992, and March 15, 1993

PANTON, J.

The roof of the plaintiffs' house was extensively damaged by a hurricane named Gilbert. The plaintiffs engaged the services of the defendant to re-roof the house. The arrangements were made between Dalma James on the part of the plaintiffs and Patrick Foster representing the defendant company. The roof had two levels: the higher level had been blown off during the hurricane whereas the lower level had a few spots that were leaking.

According to the plaintiff Dalma, the defendant - through Patrick Foster - advised him to re-roof the house. The defendant prepared an estimate of the replacement cost of the roof. This estimate is dated September, 1988. The work was done by the defendant, with completion having been effected by January, 1989. The cost to the plaintiffs was estimated at \$68,000.00. The plaintiffs have paid \$57,000.00 leaving an outstanding amount of \$11,000.00.

The plaintiffs are claiming that within a month after the defendant had completed the work the leaking resumed. According to the plaintiff Dalma, the leaking was extensive; it affected all areas of the house. The matter was reported to Patrick Foster who had himself undertaken the project. Efforts were made by Foster to correct the situation. Instead of getting better, things got worse. There was no longer a dripping of water into the house; the water now poured straight in. Further reports were made to Foster who followed up with further efforts at remedying the situation but all such efforts were in vain. Eventually, the lines of communication between the parties came to a halt.

The plaintiffs, obviously, could not live in their house in this condition. They sought the assistance of one Clarence Blackwood who did some repairs; also, some remedial work was done by B.W. Thompson and Associates. The work done by Messers Blackwood and B.W. Thompson and Associates is only a part of the corrective work that the plaintiffs say is needed. An estimate had earlier been done by Handel A. Bowen Associates of the cost of re-roofing. The plaintiffs were not in a position to do all that was necessary to correct the situation. They proceeded to do that which they were in a position to afford.

The plaintiffs have paid for the work that has been done and wish to proceed to do that which is still to be repaired. It is against this background that they have filed this action.

#### The pleadings

The plaintiffs and the defendant are agreed that there was a contract between them. However, whereas the plaintiffs say that it was a contract to replace the roof, the defendant is asserting that it was a contract to repair.

~~There is agreement between the parties that the defendant recommended the material~~  
that was used on the project.

The plaintiffs allege negligence on the part of the defendant in the manner in which the work was executed. They further say that "in breach of its contract the defendant carried out defective work using inferior and unsuitable materials so that the house was rendered unfit for habitation upon apparent completion."

The major complaint of the plaintiffs as to the quality of the defendant's work is that the sheeting was not laid evenly.

#### The evidence

Clarence Blackwood, a building contractor for approximately forty (40) years, gave evidence as to the condition of the roof after the defendant had repaired it and as to the work he himself did to correct the problems. He said that he had observed water settling on the sheets on the roof and that this was due to the fact that there were 'sinks' which facilitated the settling. The water, he said, was 'backing up underneath the laps of the sheets'. Blackwood had also noticed that 'stop leak' had been used to seal the laps, and that wherever that had been done there were cracks, and the water had reversed through the cracks at the laps and

entered the house. In addition to this, some of the laths on which the sheeting had been secured were 'hill and gully'. The fascia boards were also 'hill and gully'. The laths were 'lined up off the fascia'. Some sheetings, he said, had no fillets under them. Wherever there were no fillets, that section would show a depression if a nail was driven therein. Water settled in such areas.

Blackwood was of the view that to avoid the leaks the roof needed proper alignment. The laths had not been properly aligned and this had resulted in depression which caused water to settle.

Patrick Foster testified on behalf of the defendant. He is a quantity surveyor employed to the defendant company. He has ten (10) years in the construction field and has executed several projects. He said that he was responsible for the repairs to the roof and that he had done work on it two or three times previously. He said that he expected the house to leak after he had done the work in question, and that he had told the plaintiff Dalma of that situation. This expectation was due to two factors according to the witness:

- (a) the pitch of the roof; and
- (b) the failure of the plaintiffs to make the house vacant so that the roof could be properly aligned.

This witness admitted that the defendant company did make attempts to remedy the leaks by using sealing material but that those efforts were unsuccessful, as water remained in pools on the roof because of the flatness and the depressions.

#### Findings and conclusion

The witness Blackwood impressed me considerably. He clearly possessed the technical know-how to enable him to say with clarity, assurance and conviction what was the reason for the leaks and to give an opinion on the quality of the work that had been done earlier by the defendant. I accept his evidence unhesitatingly. The evidence of the witness Foster had the opposite effect. Foster was haughty in his demeanour. He also showed a lack of serious concern for the plight of the plaintiffs. Of course, his attitude is not necessarily a reflection on the relative strength or weakness of the legal position of the parties. In this instance, I found that his haughtiness was a cover for his relative lack of expertise in the field of roofing, and for the shoddy workmanship of the defendant. There is little wonder that the lines of communication between him and the plaintiffs suffered such a great strain.

It is quite clear to me that the problems with the roof had nothing significant to do with the quality of the material that the defendant recommended; rather, the cause was the faulty and negligent manner in which the defendant did the work that it had contracted to do.

In view of my findings judgment is being entered in favour of the plaintiffs.

#### Damages

The claim, as amended, is for a total of \$74,456.00 made up as follows:

"(a) estimated costs at 28/3/90 of replacing new roof completely	-	\$69,556.00
(b) damage to clothing	-	2,500.00
(c) loss of income from rent at \$200.00 per month for twelve months	-	2,400.00
Total	-	74,456.00".

In my judgment, the damages claimed for loss of income from rent are too remote. There is no evidence to indicate that the defendant ought to have realized that its breach of contract, in negligently performing the repairs, would probably lead to this loss sustained by the plaintiffs. In relation to the damage to clothing, the evidence of the first named plaintiff was to this effect: "We have lost clothes from the leaks. Those clothes are valued at about \$2,000.00 going by their cost". This evidence of loss is most unsatisfactory. The Court has not been told the type of clothes, the manner of loss, or the reason for not storing them in that area of the house that was not leaking. This part of the claim is accordingly denied.

This leaves for consideration the sum claimed for replacing the roof. In relation to this, learned attorney-at-law, Mr. Green, has submitted that there is no attempt to show that exhibit three is a genuine estimate, and has urged the Court to ignore it. He has submitted that the Court should award as damages only that sum that has been paid to Mr. Blackwood plus the cost of materials actually purchased by the plaintiffs for use by Mr. Blackwood.

To agree with Mr. Green would, in my view, be totally wrong. The plaintiffs ought to be put in the position in which they would have been if the work had been properly done in the first place by the defendant. That position requires a roof without leaks over their heads. It is not to be forgotten that they have already paid \$57,500.00 for the shoddy work that was done.

I see nothing wrong with exhibit three which is an estimate from Handel A. Bowen Associates, Building Economists and Quantity Surveyors. During the evidence of the plaintiff Dalma James, exhibit three was admitted by consent. It is too late for it to be challenged during a closing address.

Judgment is entered in favour of the plaintiffs for \$69,556.00 plus interest at 15% from June 4, 1990, to the date of payment. The costs of these proceedings are to be the plaintiffs' and they are to be taxed if they are not agreed.