



FEDERATION OF SAINT CHRISTOPHER AND NEVIS
NEVIS CIRCUIT

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO NEVHCV2011/0008

BETWEEN:

CLAUDETTE BROOKES

Applicant/Claimant

AND

PATRICK WILLIAMS

Respondent/Defendant

Appearances

MR Perry Joseph holding for Ms Midge Morton for Applicant/Claimant
Mr Geoffrey Romany for the Respondent/Defendant

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2011: December 19
2012: March 8
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[1] **LANNS, M:** On 14th January 2011, Claudette Brookes issued a claim against Patrick Williams, alleging breach of an oral contract for the renovation of her dwelling house situate at Ramsbury Housing Development, Charlestown, on the island of Nevis.

[2] Ms Brookes pleaded that the nature of the work that Mr Williams was engaged to do included the following:

- (a) Lengthening the house eastward and westward;
- (b) Demolishing a 140 foot wall and erecting a 200 foot new wall;
- (c) Reconstructing the master bedroom to include a walk-in closet and an enclosed bathroom;
- (d) Extending bathrooms (1) and (3);
- (e) Adding a laundry and rebuilding the existing kitchen;
- (f) Retrofitting floor tiles where necessary and laying new ones;
- (g) Plastering and re-plastering the walls and floor where necessary;
- (h) Installing windows and doors;
- (i) Adding a new bathroom;

- (j) Removing the existing roof and raising the waist then reinstalling the roof;
- (k) Altering the electrical fixtures and fittings where necessary;

- [3] Ms Brookes alleged that having examined the site, Mr Williams represented to her that with the aid of one additional labourer he would be able to complete the entire project within two months at a total cost of \$EC33,269.36 inclusive of labour and material. He provided her with a written cost estimate of EC\$33,269.33 for the project to be undertaken by him.
- [4] Ms Brookes pleaded that being armed with the cost estimate, she sought and obtained financing from the Royal Bank (SKN) Ltd (RBTT) in the amount of EC\$100,000.00 for the purpose of carrying out renovation works on her house.
- [5] Mr Williams began renovation works in March 2010, and according to Ms Brookes, everything went well for about one month. Thereafter, Mr Williams absented himself continually from the work site to tend to other jobs. The progress of the work slowed and the house became uninhabitable. The roof was leaking, causing tiles to be lifting up.
- [6] Ms Brookes alleged that by May 2010, she had issued Cheques to Mr Williams for a sum in excess of \$21,500.00. Yet, Mr Williams had been presenting to Ms Brookes invoices for materials for which he had already been issued Cheques. When Ms Brookes refused to issue Cheques for materials which she asserted she had already paid for, Mr Williams left the work site and refused to return to complete the renovation works, despite a preaction protocol letter from her solicitors, which he ignored; Hence the suit.
- [7] Mr Williams failed to file an Acknowledgement of Service or Defence, and judgment in Default was entered up against him for damages to be assessed. This is the assessment. Before proceeding, it is worthy of note that Mr Williams sought unsuccessfully to set aside the default judgment. At the hearing of the application to set aside, Mr Williams acknowledged receipt of the preaction letter and service of process on him, but he indicated that he did not take them seriously. Alas, when he did in fact attempt to take them seriously, it was too late, and he could proffer no good explanation for not filing an Acknowledgement of Service or a Defence.

Issue

- [8] The main issue for determination is what quantum of damages is Ms Brookes entitled to recover?
- [9] This calls for a determination of three questions:-
- (i) What percentage of the project was completed at the time of breach of the contract?

- (ii) What was the amount of work left to be done?
- (iii) What was the sum (if any) spent on the completion of the renovations after the breach of the contract?

What amount of work was completed?

The evidence

- [10] Two affidavits were sworn to and filed in support of the assessment – one by Ms Brookes, and the other by her expert witness Mr J Michael Dore. Ms Brookes' affidavit reiterates allegations and averments in her Statement of Case. I need not reproduce it in its entirety. However, in paragraph 25 of her affidavit, Ms Brookes deposed that on June 20th 2010, she commissioned the services of Mr J Michael Dore, of Dore's Architectural and Evaluation Services to carry out an evaluation of the state of her house.
- [11] Mr Dore filed an affidavit in which he exhibited a document headed "Property Evaluation". Mr Dore deposed that he was instructed to quantify the work done and undone on Ms Brookes' property. In his Report, Mr Dore provided an estimate of the value of work completed and the estimated cost of unfinished work.

Work Completed

- [12] The work completed was not described in terms of a percentage, but rather a description of the work completed was given as follows:

"Description of Work Completed

1. The building was extended eastward and westward for about 45 feet respectively. Each respective internal wall was demolished;
2. The roofs were lifted from the existing buildings and waist height raised;
3. The prescribed internal walls were demolished and new ones erected and or changed;
4. A concrete roof was placed over the kitchen and the laundry areas and the eastern bedroom. This was to facilitate the continued use of the house during the construction;
5. The rafters for the new roof were placed and case, the plywood installed and the **lath** placed;
6. The original galvanize were recycled on to the new roof. However, the work is SHABBY and INCOMPLETE. The concrete roof over the kitchen is

constructed too high as a result, special attention must be paid to the formation of the valley in this area.”

What amount of work was left to be done

[13] I reproduce Mr Dore's account of the work left to be done:

“Description of Incomplete Work

1. The block work of the main wall on the interior
2. The Plastering of the interior and exterior
3. The installation of the galvanize and capping on the roof
4. The proper installation of the windows and doors
5. The formation of the walk in closet and second bathroom
6. The retrofitting of the floor tiles
7. The building of the cupboard and cabinets
8. The electrical pipes, wiring and fixtures installation
9. The completion of plumbing pipes and fixtures
10. Painting
11. The front step.”

[14] In commenting on the renovation works generally, Mr Dore stated that the construction practices employed on the building were below average. According to him, everywhere signals gloom and despair. The building has been transformed from a well maintained home to a home of despondency. I take it that Mr Dore had been to the house before the renovation works commenced. Mr Dore continued “Because the roof is left incomplete, everywhere leaks, thus leaving the inside smelling muggy and awful. This is very unhealthy for the inhabitants who continue to occupy the dwelling during the construction.”

What is the sum actually spent on completion of the renovation

[15] The Court has not been told whether Ms Brookes has already completed the work left undone. I take it that she has not since no receipts or bills have been submitted showing any expense incurred in that regard. If in fact remedial works have been done, it would have been useful for the purposes of this assessment, to know exactly what amount was expended, since the figures submitted by Mr Dore for cost of the work left to be done were only estimates. If in fact remedial works cost more or less, then in my opinion, that is a factor to be taken into account in the assessment of damages. In the absence of any evidence in this regard, the court does its best with what it has.

Valuations

[16] In Mr Dore's opinion, based on the scope of the work agreed to be done, the cost to effect the works should have been in the region of EC\$166, 154.41, and not EC\$33,269.36. He estimated the cost of the work done at \$85,000.00; and he places a value of the work left undone at \$81,154.41. The obvious inference is that the estimate provided by Mr Williams

was unrealistically low. It is obvious too, that at the time worked ceased, the value of work done had exceeded the contract price/estimated cost.

- [17] The court has before it Exhibit "JMD 1" being the Property Valuation Report and a detailed "Estimate of Cost to Construct Building for Claudette Brookes". Photographs of the house taken by Mr Dore also appear as part of the Exhibit. The estimate exhibited by Mr Dore is in relation to the scope of the work that Mr Williams was contracted to do. It is dated 21st June 2010. The gap between Mr Dore's estimate and Mr Williams' estimate is very wide indeed.

Finding as to cost of work to be completed

- [18] The evidence in support of the assessment stands uncontroverted, and the court has no reason to doubt the evaluation report and the Estimate submitted by Mr Dore. The Report makes a strong case for the inference that the cost estimate provided by Mr Williams was unrealistic, given the scope of the work to be done. The court accepts Mr Dore's Report and the Estimate submitted as reliable. I therefore assess the projected cost of completing the renovations on Ms Brookes' dwelling house in the amount of \$81,000.00.

Extreme Expense; Inconvenience; and Mental Stress

- [19] In paragraph 29 of her Statement of Case, Ms Brookes alleged that not only has she suffered loss and damage but that she has been put to "extreme expense" and inconvenience.
- [20] I take it that the extreme expense has to do with the costs associated with having to retain counsel, and having a professional valuator /appraiser assess the work done and left to be done. Ms Brookes pleaded that she accepted the estimate as given to her. So obviously she took the view that it was a reasonable estimate and that she was impliedly assuming some of the risks that the final price would exceed the estimate. Had she sought a second opinion, it might have revealed the gross underestimation of the cost of carrying out the renovation works. But she is not to be punished for that failure. She has a judgment in her favour. Having said that, if I were permitted to say so at this stage, I would be inclined to add that I fail to understand how the Bank came to approve a one page vague estimate without the name or signature of Mr Williams on it.
- [21] In relation to the issue of inconvenience, I have no doubt that Ms Brookes had been put to great inconvenience. Counsel submitted that in light of the inconvenience caused as a direct consequence of the breach of contract, Ms Brookes ought to be awarded a sum of \$2500.00 as non pecuniary loss and for stress.
- [22] In support of this submission, counsel relied on the case of **Colin Walters v Peter Crane and Eugenie Crane**, Nevis Civil Appeal No 11 of 2001, and quoted Saunders, JA as saying at paragraph 39:

"The plain facts are that the house should have been completed by 24th November 1997, but it wasn't. The trial judge accepted that by the end of January 1998, it was substantially completed. The builder himself acknowledged that the Cranes lived in a state of inconvenience when they moved in. I agree that for the period between 24th November 1997 and 31st January, 1998 on the principle enunciated in **Watts v Morrow** (1991) 4 A.E.R, 937, the Cranes would be entitled to general damages for this inconvenience. I would award the sum of \$1000.00.

[23] On the basis of the **Colin Walters** case, I award Ms Brookes the sum of \$2500.00 as general damages for inconvenience. I make no award for stress. There is no basis for it.

CONCLUSION

[24] In all the foregoing premises, I give judgment for Ms Brookes as follows:

Cost of completion of renovation works	\$ 81,000.00
General damages for Inconvenience	\$ <u>2,500.00</u>
Total	\$ 83,500.00

INTEREST

[25] By virtue of the Judgments Act, the judgment attracts interest at the rate of five percent per annum.

COSTS

[26] Ms Brookes is awarded prescribed costs in the sum \$7,515.00..

[27] Counsel for the Claimant has furnished me with helpful submissions and authorities. I am grateful for her assistance.


Pearletta E. Lanns
Master