

THE EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCv2012/0332

BETWEEN:

RUTHLYN MERRICK

Claimant

and

WESSON CHARLES

Defendant

Appearances:

Ms Kathleen Bennett of Lake & Kentish for the Claimant

Ms Saska Diamond Attorney for the Defendant

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2018: February 7
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JUDGMENT

- [1] **HENRY, J.:** The claimant (Mrs Merrick) seeks to recover the sum of \$45,394.22 allegedly withdrawn by the defendant (Mr. Charles) from her bank account without her permission.
- [2] Mrs Merrick pleads that in or around March 2009, she entered into an oral agreement with Mr. Charles for him to conduct renovations on her property at Jolly Harbour. Mrs Merrick gave Mr. Charles US\$5,110.00 (EC\$13,797.00) cash towards the said renovations. As Mrs Merrick resides overseas, Mr. Charles was also made a signatory to her bank account at RBTT Bank. The funds in the account were to be accessed for use in connection with the renovations. She alleges that there was a total of \$67,009.56 in the account before renovations began. Mr. Charles therefore had access to a total of \$80,806.56 to be applied to the renovations.

- [3] Mrs. Merrick further pleads that instead of renovating the Joly Harbour property, he carried out renovations to Ms Merrick's property at All Saints. At the conclusion, he provided her with a bundle of bills and receipts for authorised purchases totalling \$24,553.26. After renovations there remained in the bank account the sum of \$1,859.08, thereby creating a deficit of \$45,394.22. Mrs Merrick therefore claims the said sum plus interest.
- [4] In his defence, Mr. Charles denies that Mrs. Merrick or her agent ever handed to him personally or paid into his office US\$5,110.00 for the purpose of conducting work on her property at Jolly Harbour.
- [5] He states that in early 2009, Mrs Merrick took him to her property at All Saints and instructed him to conduct some work on the property. The cost of the said work was EC\$42,029.52 including labour costs of \$20,717.51. He states that a copy of the statement for work done was handed to Mrs Merrick and subsequently, the entire file was given to her agent Ms. Mourillon.
- [6] Further, between January 2006 and August 2007, Mrs Ruthlyn Merrick ordered goods and services through his business to the amount of EC\$19,035.78. The amount of EC\$14,956.51 (US\$5,610.00) was paid on account. The balance of EC\$4,079.27 was taken from Mrs. Merrick's account at RBTT. A copy of his statement was attached to his defence.
- [7] Also, Mrs. Merrick instructed him to conduct maintenance work on her property at Barnes Hill. The cost of the work was EC\$2,880.00. He states that a copy of the statement of works was handed to Mrs Merrick.
- [8] Additionally between August 2007 and August 2010, Ms Merrick ordered goods and services through his business to the amount of EC\$24,072.42. A statement was submitted to Ms. Merrick and the file with related receipts was given to her agent.
- [9] Lastly, in August 2006, Mrs Merrick asked him to be the caretaker of her property at Jolly Harbour. As caretaker he was required to maintain the property generally, do specific renovations from time to time and pay her recurrent bills such as electricity, telephone and cable. She opened an account at RBTT bank and made him a signatory. The starting balance on this account was EC\$6,824.00. Other deposits made through June 2009 brought the total to EC\$79,435.20. He was also holding US\$1,300.00 from rents received on her behalf. He admits that withdrawals were

made from the account to carry out the work as requested by Mrs Merrick at Jolly Harbour, All Saints and Barnes Hill. His statement was attached to his defence. He therefore denies that the sum claimed by Mrs Merrick is due and owing.

- [10] Mr. Charles also counterclaims for the sum of EC\$14,460.00 for caretaker services in relation to both the Jolly Harbour and Barnes Hill properties.
- [11] In her Reply Mrs Merrick joins issue with Mr Charles on his Defence. She contends that she was presented with several conflicting bills for the renovations. However, the receipts and bills submitted to her agent totalled EC\$24,553.26. She further contends that she was never presented with the bills appended to the Defence and Counterclaim before they were served on her in response to her claim. Mrs. Merrick denies that she ever ordered goods and services through Mr. Charles business to the value of \$19,035.78 as alleged and asserts that except for the cleaning of her Barnes Hill property, which she paid for in cash, she never requested that Mr. Charles carry out any other maintenance work on that property.
- [12] In her Defence to Counterclaim, Mrs. Merrick asserts that there was no agreement for compensation for his services. In any event, Mr. Charles claim for services in his counterclaim is statute-barred under the Limitation Act 1997.

The Evidence

- [13] The evidence is that Mrs. Merrick is the owner of three properties located at Jolly Harbour, All Saints and Barnes Hill (New Judges Hill). Mr. Charles is a builder and the owner of Caribbean Storm Shutters Co., Ltd as well as Chartech. It is undisputed that Mr. Charles agreed to be the caretaker for the property at Jolly Harbour. There was also an oral agreement between the parties for Mr. Charles to renovate her property at Jolly Harbour after the passage of Tropical Storm Omar. The evidence which the court accepts, is that in March 2009, the All Saints Property, a 2-bedroom wooden house, was in need of repairs. Mr. Charles agreed to provide her with an estimate to have the following work done.
- Painting
 - Constructing a small wash room;
 - Patching a hole in a bedroom wall;

- Changing the Kitchen sink;
- Repairing the Kitchen counter top;
- Change the bathroom faucet and Kitchen plumbing;
- Reconstructing the kitchen concrete steps; and
- Changing wooden storm shutters.

- [14] Mrs Merrick's evidence confirms that Mr. Charles made all the repairs in keeping with the above. With regard to the shutters, Mr. Charles replaced the wooden shutters on the house with metal shutters from his company, Caribbean Storm Shutter Co., at a cost of \$11,337.60. He had not been given instructions to install metal shutters. Mrs Marrick's evidence is that there were only 2 wooden shutters that were damaged and in need of repair/replacement.
- [15] Mr. Charles also claimed to be the caretaker for the Barnes Hill property. Mrs Merrick denies same and insists there was a one-time request for him to provide cleaning at the premises. The receipts bear this out. The only receipts tendered in evidence in respect of the Barnes Hill property are in regard to Backhoe Services.
- [16] The real dispute centers around the cost of the repairs carried out at the Jolly Harbour and All Saints properties. It is alleged that there is a lack of corresponding receipts and invoices to support the monies withdrawn from the chequing account at RBTT Bank.
- [17] Upon inquiry by Mrs. Merrick, Mr. Charles provided copies of all the receipts and invoices in respect of the work done. Those documents are exhibited as RM-2 at pages 121 to 176. It was submitted that those documents total \$35,926.86.
- [18] Notwithstanding the receipts and invoices forwarded to Mrs. Merrick, Mr. Charles attached to his Defence statements indicating that the amount expended on the properties amounted to \$88,017.73. By the time he filed his witness statement, different statements were attached showing the amount expended to be \$82,167.35.
- [19] On cross-examination, the differences in the figures were put to him. He agreed that the figures filed with his Defence are different from those filed with his witness statement. It was put to him that these new figures are overstated. He responded that he wouldn't know if they are overstated,

because he relies on his Office Assistant. He also stated that he cannot say that the documents before the court are accurate because, again, he depends on his Office Assistant.

- [20] The Office Assistant, Aldiene Payne-Samuel, gave evidence. Her witness statement consisted of four short paragraphs. She confirmed that the exhibits referred to by Mr. Charles were prepared and/or kept by her. She then states that at the trial she will refer to and explain all transactions and related documents as prepared or kept by her on the instructions of her Principal for their full terms and effect. At the trial she failed to do so. Her evidence therefore takes Mr. Charles' case no further.

Discussion and Conclusion

- [21] Mr. Charles admitted that the documents exhibited at pages 121 to 176 of the trial bundle are those provided to Mrs Merrick prior to litigation. The court finds the statements exhibited to Mr. Charles' Defence and Witness Statement wholly unreliable. Therefore the court will rely on the documents provided to Mrs Merrick prior to litigation and which are exhibited at pages 121 to 176.

- [22] Several discrepancies were noted in the invoices and other documents submitted:

- The invoice from Caribbean Storm Shutters Company Ltd in respect of the Metal Shutters showed a cost of \$11,239.20, yet the amount paid for said shutters was \$11,373.60 a difference of \$134.40 unaccounted for;
- Cheques paid to Chartech particularly (#005324, #005326, #005336, #005339, #005315) do not match any dates and or amounts for the invoices provided. These cheques total \$21,854.04;
- Cheque paid to Caribbean Storm Shutter for \$1,000.00 cheque #005347 dated the 24th July, 2009, however only one invoice was provided from the company for metal shutters (i.e. see pg. 118).

Upon a careful review, the valid receipts and invoices totaled XCD \$43,468.67 as opposed to the sum of \$35,926.86 claimed by Mrs Merrick.

- [23] From the relationship that existed between the parties, it is clear that Mr. Charles owed to Mrs. Merrick certain duties. Mr. Charles had a duty to keep full and complete records and to provide

same to Mrs. Merrick. From the records presented by him, there are cheques written against the account of Mrs Merrick for which there are no invoices or other documentary support.

[24] Counsel for Mrs. Merrick submits that she ought to be reimbursed for the cost of the metal shutters. She promptly requested that he remove the shutters and reimburse her but he has failed to do so. However, no claim for reimbursement of the cost of the metal shutters was pleaded in the Claim Form or Statement of claim

[25] The court finds that the permission given to Mr. Charles to withdraw funds from the account of Mrs Merrick was very specific. The purpose was in regard to carrying out authorised renovations to her properties at All Saints and Jolly Harbour and the payment of recurrent bills in respect of the Jolly Harbour property. Withdrawals by Mr. Charles to meet other alleged liabilities were outside the scope of the permission granted and would have required separate permission. No such permission has been proven by Mr. Charles in respect of goods and services allegedly ordered through Mr. Charles other businesses.

[26] The documents show that Mr Charles expended \$43,468.67 on the properties. He had at his disposal the sum of \$80,806.56. Therefore there ought to have been remaining in the account at RBTT the sum of \$37,337.89. There was a total of \$10,859.08. Therefore there was a deficit of \$32,609.59.

The Counterclaim

[27] The counterclaim was withdrawn prior to trial.

[28] Accordingly judgment is granted in favour of the claimant, Ruthlyn Merrick, in the sum of EC\$32,609.59. Cost to the Claimant to be prescribed cost, if not agreed.

Clare Henry
High Court Judge

By the Court

Registrar