

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES**

HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2005/0357

BETWEEN:

CHRISTINE PRINCE

Claimant

and

HOUSING AUTHORITY OF GRENADA

Defendant

Appearances:

Mrs. Celia Edwards, Q.C and Mr. Deloni Edwards for the Claimants

Ms. Daniella Williams-Mitchell and Ms. Dennies Burris for the Defendant

2014: November 25; 26;

December 16;

January 16;

2015: March 9.

JUDGMENT

- [1] **WALLBANK J [Ag]:** This is a claim by the Claimant, Ms. Prince, principally for damages for allegedly defective construction of the house the Defendant, the Housing Authority of Grenada (“the HAG” or “the Authority”) built for her, and for return of the Claimant’s title deeds from the Defendant as mortgagee. The Defendant denies defective construction

and counterclaims mainly for non-payment by Ms. Prince of monies payable pursuant to the terms of the mortgage.

- [2] Following three days of evidentiary hearing at trial, the Court conducted a site visit in the presence of the parties and their Legal Representatives on 16th January 2015. The parties subsequently filed written closing submissions.

The underlying factual matrix

- [3] The HAG operated a program whereby it would finance and construct homes at subsidized rates for people on modest incomes. In or around 1996 Ms. Prince, a Police Constable of the Royal Grenada Police Force, entered into discussions with the Authority to finance and construct a home for her on a plot of land that would be given to her by her uncle.
- [4] This was to be adjacent to her uncle's own land, on which he also intended to build a house.
- [5] After Ms. Prince was shown a number of homes built by the HAG, by late 1997 she and the HAG had agreed that the HAG would construct for her one of its model homes, a steel frame concrete two bedroom house for a total price of EC\$81,150.00 of which EC\$76,000.00 would be advanced by the HAG by way of a credit loan to Ms. Prince. The loan was to have been paid back by way of monthly instalments of EC\$734.00 over 20 years and the first instalment was to have been paid before the keys were handed over. Simple interest on the loan was to run at 10%. Ms. Prince was required to pay a deposit of EC\$5,150.00.
- [6] The HAG provided a letter of intent dated 22nd September 1997 to Ms. Prince, setting out essential terms, and specifying certain aspects which would be for Ms. Prince's own cost.
- [7] Amongst such terms was a requirement that Ms. Prince should deposit her original title deeds with the HAG for preparation of a mortgage in the HAG's favour.

- [8] Although insurance was not listed as one of the conditions of the loan, it was clearly expressed in writing that Ms. Prince would be required to insure the house throughout the term of the mortgage, with the HAG's interest noted on the policy.
- [9] Ms. Prince was required to bear the cost of sewer connection, less the cost of septic tank construction. She had indicated to the HAG that she intended to hook up her sewerage to her uncle's sewer system. In the event, her uncle never built his house, and never put in a sewerage system.
- [10] The HAG provided Ms. Prince with a floor plan. It appears that this plan showed a building constructed out of six inch blocks for the exterior walls and four inch blocks for the internal walls. At trial the HAG disclosed a different plan, which showed essentially the same house, but with all the walls, including the external walls, constructed out of four inch blocks. Neither of these copy plans were signed by Ms. Prince, so we cannot tell which of these plans Ms. Prince in fact approved.
- [11] At some point Ms. Prince attended the offices of the HAG and its lawyers and signed what she has described as a lot of paper. She claims that she could not read all of it, so asked the clerk to send her a copy, but that this was never done. Ms. Prince says that none of the Authority's staff explained any of the documents to her.
- [12] Ms. Prince also says that no one explained to her that one of the documents she was signing was a mortgage, but it must have been obvious to her that the HAG would require its loan to be secured on the property.
- [13] An unfortunate aspect of the matter is that the documentation before the Court is incomplete. There is, in particular, no set of construction drawings, signed or otherwise clearly agreed to by the Claimant.
- [14] Construction started in late 1997, with, the Claimant alleged but the Authority denied, a promised delivery date by April 1998. Ms. Prince proved to be right in this regard, as the HAG gave supplemental disclosure after the oral evidence given at trial, which included a

copy of a labour-only contract between the HAG and a contractor, one Mr. John Williams, dated 28th November 1997. This provided that Mr. Williams was to construct the house for a total labour cost of EC\$28,400.00. Construction was due to commence on 2nd December 1997 and complete on 30th April 1998 with a break from 5th December 1997 to 15th December 1997 due to a problem with the road leading to the site.

- [15] It appears that from the beginning the work was beset with wrangling. In particular there was considerable quarrelling about the position of the house. Ms. Prince says that the HAG had initially wanted to place the house too close to the road, while the HAG says that Ms. Prince had wanted the house moved back so as to have the possibility of constructing premises underneath the house, taking advantage of the steep incline there.
- [16] Probably the reasons for moving the house further back from the road were a combination of both.
- [17] Whilst the model of the house that Ms. Prince had chosen was conceived to stand on pillars no higher than four feet tall, the location necessitated pillars between approximately 15 to 20 feet tall.
- [18] There was no evidence that the foundations and support for the house were prepared by an engineer.
- [19] In or around September or October 1998, that is, some five or six months after the contractual due date, the HAG delivered the keys to Ms. Prince. She recounts that these were in fact the interior door keys, as the entrance door had no lock and had been secured only by a string and a piece of wire. The HAG denies this. Nothing much turns on this, except that, if the Claimant's version of this event were to be correct, this would be a further example of incomplete and slipshod work.
- [20] Prior to the keys being handed over, there was already correspondence between the parties concerning alleged defective construction. On the day when the keys were delivered, the HAG obtained Ms. Prince's signature to a document in which she confirmed,

in proforma terms, that she had inspected the house and that it was entirely to her satisfaction.

[21] Ms. Prince however alleges that she could not stay in the house because it was not safe. She recounts that whenever someone, even a child, climbed the stairs, the house shook and swayed. There was also no water, and no sewage connection, merely a shoot pipe which deposited human waste directly onto the ground.

[22] Ms. Prince alleged that the columns on which the house was built were so thin that the house would sway every time the wind blew.

[23] The Claimant alleged that:

- (a) cracks immediately developed in the walls;
- (b) four inch blocks had been used to construct the external walls;
- (c) there was no ring beam to hold the house together;
- (d) the rafters used were very small;
- (e) tiles were improperly set and grouted;
- (f) plumbing remedial work effected by the Authority resulted in different shades of tile colours being used;
- (g) a second set of steps, for which she had paid EC\$2,000.00 in addition to the agreed contract price, had not been built;
- (h) the set of steps that had been built was missing a bottom tread, such that one would have to jump from the bottom step to the ground.
- (i) some of the work was incomplete, such as paint-work in places.

[24] The Claimant avers that owing to the problems she did not authorize her employer to assign payments from her salary to the HAG, as would normally have been the means of repayment for the credit loan extended to her, and consequently she has not made any mortgage repayments.

- [25] In 1999, in view of Ms. Prince's complaints, the HAG commissioned an assessment of the house by a firm of surveyors, Messrs Joseph John & Associates Ltd. In a report dated 11th May 1999, some eight (8) months after Ms. Prince had moved in, the surveyor reported that the tiling had not been properly done, but otherwise found no significant defects for which the HAG, in his view, should take responsibility. He suggested that the alleged movement of the house could be cured by constructing a wall between the pillars at the back of the house.
- [26] The HAG's General Manager at the time, Mr. Prescott Swan, told Ms. Prince that the movements of the house that she was complaining about were merely the house settling. At trial the HAG also advanced a case that the movements, if any, were probably vibrations that travelled through the rock beneath the pillars due to blasting at a quarry not too far from the house.
- [27] Some three years later the HAG offered Ms. Prince compensation in the sum of EC\$370.00 for rectification works, as well as a waiver of accumulated interest. Ms. Prince did not accept this offer.
- [28] The HAG sought an additional EC\$6,000.00 for completing the sewerage connection, but Ms. Prince considered that the contract provided that if she had to connect to the sewer, the HAG would deduct the cost of constructing a septic tank.
- [29] Ms. Prince eventually installed a septic tank, but there is no direct evidence before the Court how much she paid for this.
- [30] She also constructed an apartment downstairs, which, she alleges, stopped the house moving.
- [31] The Claimant rented out the apartment at EC\$600.00 per month, although there is no evidence over what period of time.

- [32] On 7th September 2004, Hurricane Ivan struck Grenada. The apartment which the Claimant built underneath the house remained standing, but the house erected by the Authority was seriously damaged. The roof came off and the walls partially collapsed.
- [33] Ms. Prince obtained a damage repair estimate from one Berkeley's Construction Company. This estimated that repairs required to bring the construction up to the standard of the new building code would be \$122,000.00 as at 14th December 2004. This estimate was expressed to be on the basis that the roof, doors and windows, the electrics and the cupboards and closets were 100% damaged, the floor tiles 80% lifted due to water damage, the external walls 65% damaged, internal walls 40% damaged, plumbing 25% damaged, and that certain other works would also be required. The HAG did not challenge this assessment at the trial. Unfortunately, as the house was not insured at this time, no insurance assessor carried out an estimate. The HAG does not appear to have commissioned its own assessment, as it took the position that it was the natural disaster of Hurricane Ivan which was the cause of the damage, and not anything it had done or omitted to do.
- [34] Ms. Prince claimed to have lost belongings in the house worth an estimated \$57,300.00 as a result of the storm.
- [35] A further consequence of the damage to her house was that she was no longer able to rent out the apartment.
- [36] In addition to compensation, Ms. Prince seeks return from the HAG of the original title deeds to enable her to offer this as security to another lending institution to refinance.
- [37] During her oral evidence it became apparent that:
- (a) as she readily admitted, she lacks construction and technical knowledge; and
 - (b) her memory and understanding of the contractual matrix for the construction and mortgage were extremely blurred. The latter is perhaps not surprising, in that the events in question occurred approximately eighteen years ago. However, it is

evident that in particular, in relation to the “paperwork”, the Claimant was trusting and uncritical of what she was being required to sign, and did not pay great attention to it. She signed whatever she was required to, so it would appear, in order to get the house that she had set her sights on.

- (c) Ms. Prince had an exaggerated perception of her loss and of the underlying problems. An example was her assertion that the pillars on which the house stood were about 40 feet high. During the Court’s site visit, in the presence of the parties and their Counsel, measurements taken by the representative of the HAG showed the pillars to be only 15 to 20 feet in height. Another example is that of the value of the personal belongings Ms. Prince lost. Objectively considered, these appear hardly realistic, and Ms. Prince stated that these had been her own estimate, and they were not supported by receipts.
- (d) Although her perceptions were exaggerated, it is clear that she felt sufficiently sure that something was wrong with the house to pursue a complaint with the HAG about it, in a period shortly after it was built and well before Hurricane Ivan struck.

[38] It was put to the Claimant that she had chosen the HAG to build her house in the interests of economy. The Claimant denied this, and stated that she had chosen the HAG because she was on friendly terms with the then Manager, Mr. Denby de Freitas. This was probably the predominant reason.

[39] Ms. Prince gave evidence that prior to receiving the keys she had taken out an insurance policy, and had taken this to the Authority. No copy of this policy was disclosed in the proceedings. She stated that she had subsequently not renewed the policy, because she was so discontented with the standard of the house and the HAG’s lack of engagement to put matters right that she decided to put all her own obligations in relation to the mortgage on hold. Clearly Ms. Prince had not sought any professional advice in relation to any of these matters.

- [40] The Claimant explained that the HAG, or its sub-contractor, returned to the house after the keys had been handed over to replace a water pipe in the bathroom wall that had been blocked with concrete during construction, and that it was on this occasion that tiles of a different shade of white were used to replace those that had been taken down for a new pipe to be inserted.
- [41] She explained further that it was only when she flushed the water closet that she witnessed the waste drop to the ground, as no sewer connection had been made prior to her moving in.
- [42] The HAG claims that it had provided some length of piping for such a connection. There seems to have been a misunderstanding between Ms. Prince and the HAG as to who would do the work of making the connection. It was however always clear that the Claimant was to bear the cost of a sewerage connection or a septic tank, and this was included in the amount of credit extended.
- [43] While clearly the HAG were sufficiently content with the work to allow the Claimant to move in, probably because the building was insured, including, as stipulated in the mortgage, against hurricanes, there was no evidence that the HAG had inspected the site at critical stages, nor indeed at any stage, during the construction.
- [44] There is also no evidence that the original concept for the house had been professionally adapted from a house on pillars of only four feet to one on pillars some 15 to 20 feet high.
- [45] A feature of the planning process appears to have been that whereas the model house had received Government Planning Department approval as a concept, no individual planning permission for the house in the Claimant's location was required, nor indeed sought.
- [46] It is probable therefore that no particular study or engineering plan had been made to ensure the house would be stable on higher pillars.

- [47] Ms. Prince gave evidence that part of the roof of the house had lifted off in a storm prior to Hurricane Ivan, and that she had had this repaired.
- [48] One area on which the Claimant was commendably and understandably clear was in relation to the day upon which Hurricane Ivan struck. She gave this evidence in response to rapid questions from the Bench which purposefully afforded no opportunity for Ms. Prince to think about her answers. She gave this evidence spontaneously, without affectation, and without a rehearsed script, and I accept all of it.
- [49] She gave evidence that she had had to leave her house in advance, with her police kit, to attend on duty at the Police Station for several days. In the early afternoon of 7th September 2004, at around 2 p.m., which was about six (6) years after Ms. Prince had moved in, Hurricane Ivan reached Grenada. She had had to deal with a potentially dangerous situation in which a number of school-boys had continued to play football in the sports ground in the early afternoon, having ignored the hurricane warnings. That afternoon, at around 2.30 p.m. a colleague informed her that her house had been destroyed. The Claimant was only able to return home about a week later, when she saw the wreckage. The hurricane left Grenada at some time in the night.
- [50] This account has the ring of truth about it. Whilst the information from a colleague that her house had been destroyed was hearsay, that fact has subsequently been clearly demonstrated as correct. What is not hearsay, but direct evidence from the Claimant, is the approximate time that the Claimant had received this information.
- [51] Whilst the Court takes due note of the obvious fact that hurricanes do not necessarily blow with constancy, in other words that stronger gusts might occur early on in a hurricane's passage, what is clear is that the house succumbed early on. It was not the case that the house resisted the forces of the wind for hours, finally succumbing to fatigue.
- [52] There was some uncertainty in the witness evidence whether Hurricane Ivan was a Category 3 or a Category 4 hurricane, but there was a general consensus that it was an

exceptional storm, which left some 90% of buildings in Grenada with various degrees of damage.

[53] Ms. Prince took a number of photographs of what she found upon her return, and, importantly, how she found it.

[54] The HAG's technical officer also claims to have taken photographs at some point after the storm, but unfortunately they were not disclosed.

[55] One of the photographs taken by Ms. Prince showed the following, without ambiguity:

- (a) a considerable length of a concrete ring-beam lying on the ground;
- (b) this ring-beam was of substantial, "poured concrete" construction;
- (c) however, it had fractured in at least two places;
- (d) it had cleanly dislodged from the block masonry wall upon which it had rested;
- (e) embedded in the ring-beam were rafters, which were still intact;
- (f) the rafters were tied directly into the ring-beam with overlying steel rods, cemented in to hold them down;
- (g) a quantity of T111 plywood sheeting bearing the marks of the rafters, spaced accordingly, indicating that these sheets had been part of the roof, dislocated from the rafters;
- (h) segments of the wall, which appeared to have broken into pieces comprising two or three rows of blocks apiece, about two or three blocks wide;
- (i) these segments were lying mainly within the ring beam, as if the wall had folded, like a concertina;
- (j) no steel reinforcement bars were visible, running through the blockwork or the ring beam, except for the bars which tied down the rafters. The apparent absence of reinforcement bars in the walls is particularly notable. There may have been some steel reinforcement in the ring beam, but this was not visible in the photograph, and it did not prevent the ring beam from breaking completely in places.

[56] The factual inferences the Court draws from the factors identified above are that:

- (a) the roof itself had been sufficiently strongly built to hold onto and lift the ring-beam off the wall on which it had rested;
- (b) the ring beam had not been tied, properly or perhaps at all, to the supporting wall;
- (c) such reinforcement as had been present within the ring beam was insufficiently connected to maintain the integrity of the beam as a ring, i.e. to have prevented it from fracturing;
- (d) the walls themselves lacked vertical reinforcement, such that, when the roof lifted and shifted, the wall broke and folded with the force.

[57] Support for these inferences comes from the evidence of Mr. John, the surveyor who initially viewed the Claimant's house on behalf of the Authority in 1999. Although his oral evidence did little to advance the matter beyond the content of his report made then, Mr. John did explain that the masonry railings on the veranda had not been tied to the columns, which presented a risk to health and safety should the railings collapse. Commensurate with other inadequate and slipshod work for which there was evidence, it is highly probable that such inadequacies also applied to the construction of the ring beam and the walls.

[58] The Court finds as a fact that the ring-beam and wall construction had not been properly carried out, and further that the roof failed, at least in part, at the roof/wall connection.

[59] Other photographs show bare rafters still in position in remaining sections of ring beam that had not come down. The roofing materials had been blown or sucked off there.

[60] Whilst the Court accepts that Hurricane Ivan was an exceptional storm in several respects, including its trajectory passing close to Grenada and in its strength, the deficiencies in the construction of the house, in particular in the ring beam construction and the apparently inadequate or non-existent connection between the ring beam and its supporting structure, were storing up trouble which inevitably would have manifested itself at some point.

- [61] The HAG has not proven to the satisfaction of the Court that it was the exceptional force of Hurricane Ivan that was the proximate cause of the damage to the house. It remains entirely possible that the defects in the ring beam construction permitted it to fail well before the full force of Hurricane Ivan reached the Claimant's house.
- [62] In signing the form required by the HAG prior to hand over of the keys confirming that Ms. Prince had inspected the house and that it was to her entire satisfaction, she could not at that point have carried out an inspection that would have disclosed latent defects in the construction. Consequently the Court sets no store by that form.
- [63] When Mr. Joseph John gave his oral evidence, he stood by his report of 11th May 1999 and maintained that none of the Claimant's complaints were structural problems. He admitted, though, in cross-examination that it had been impossible for him to tell at the time of his visit whether the ring beam had contained proper steel reinforcement.
- [64] Mr. John attributed the swaying sensation observed by the Claimant to the fact that her house is built on a type of rock that does not absorb vibrations. He stated that he advised her that enclosing the basement with walls would be a solution. This is significant as it shows that Mr. John did not discount the possibility that the house did move as the Claimant had said.
- [65] Mr. John gave evidence that Hurricane Ivan was a Category 4 hurricane, with 140 mph winds. He said he had obtained this information from weather reports. He agreed however that it might have been a Category 3 hurricane when it struck Grenada.
- [66] He had been granted sight of the HAG's file concerning the Claimant's house at the time of his inspection and report. However he did not see a set of drawings signed by Ms. Prince, nor a copy of her application to the HAG, nor a list of specifications signed by her. He admitted that he had been of the view that the house had been built according to specifications, of 4" blocks, because he had seen a plan provided by the HAG which had specified 4" blocks.

- [67] He stated that the steps of the house went down to the ground level.
- [68] He agreed that it would not be acceptable for a stairway to move when someone ascends them.
- [69] He agreed that it is not acceptable to deliver a house without provision for removal of human waste.
- [70] He explained that he had advised that efforts should be made to prevent cracks developing in the railings of the veranda to prevent a danger to people if the veranda rail should move away.
- [71] From the Court's site visit, it was clear that this veranda was some 15 to 20 feet above the ground below, so with a considerable drop.
- [72] The HAG called Mr. Mark Paul, a technical officer employed by the Authority, as a witness.
- [73] Mr. Paul gave evidence that the house had a ring-beam but he did not say whether it included a tied steel cage, and that the Claimant's house used 4-inch blocks and 2-by-4 inch rafters. He stated that these are widely used in low cost housing in Grenada.
- [74] Mr. Paul's evidence was of extremely limited value, his stock reply to most questions being that he did not know the answer as he was not involved when the house was agreed upon and built.
- [75] He did however inspect the house after the passage of Hurricane Ivan. If he checked the construction method of the ring beam, and whether the walls had been reinforced with steel and the steel properly tied together, he did not give evidence of this.
- [76] The Defence called Ms. Dawn Williams, an employee of its solicitors, Messrs Danny Williams & Co. to give evidence that the Claimant executed the mortgage at their offices,

not those of the HAG as the Claimant had stated. Ms Williams' evidence was not challenged by the Claimant.

[77] The HAG called Mr. Jacob Victor, an accountant employed by the Authority. Mr. Victor gave evidence that the Claimant has paid no money towards repayment of the loan provided to her, and that interest of 10% per annum pro rata has continued to accrue at a daily rate of EC\$20.82.

[78] He was asked whether the Claimant had been credited with the cost of installing a septic tank. He stated that he could not recall.

[79] He was however clear that no deduction had been made from the purchase price charged to the Claimant for this item.

[80] The HAG called Mr. Lennox Taylor, its Senior Building Inspector. Mr. Taylor holds a Masters' Degree in Architecture, from Rostov in the former USSR.

[81] He gave evidence that planning approval for the house had not been obtained, because the HAG was not required to submit plans for approval for individual houses. The HAG would obtain approval for a conceptual house. Once such conceptual plans were approved, the Physical Planning Department would not supervise the construction.

[82] He explained that because the HAG is a statutory body, it is exempt from lodging foundation plans for governmental approval for individual houses.

[83] In response to direct questioning from the Court, he gave evidence that the purpose of a ring beam is to hold the ends of the rafters to the walls so that the walls do not open.

[84] The ring beam, he said, should also be tied with steel reinforcement bars at the corners or edges of windows and door openings. In most case, he said, the steel bars would run through the cavities in the concrete blocks.

- [85] Mr. Taylor was unable to say how long a house of the type built for the Claimant was designed to withstand elevated wind speeds, nor of what speeds, nor what the average maximum wind strength profile is for Grenada.
- [86] Mr. Taylor observed that the Claimant's house is located on a hill that is at the junction of several valleys and thus that that house would have been more exposed to the hurricane winds than another house not located on such a hill.
- [87] It was apparent from the Court's site visit, which was on a calm day, that the Claimant's house is in an exposed position on top of a hill. Even on such a day, blustery eddies of wind buffeted about the stairs and verandah of the house, creating a perception (probably incorrect) that the house was moving.
- [88] The HAG called as a witness Mr. Prescott Swan, the HAG's General Manager who succeeded Mr. de Freitas, and who had oversight of the HAG during most of the material times.
- [89] Mr Swan was employed by the Authority in 1998. He was therefore not directly familiar with events in 1997, but he was of subsequent events. Nonetheless, apparently from his study of the Claimant's file, he gives evidence in considerable detail of events before he joined the Authority.
- [90] One such piece of information is that the Claimant wanted the house to be higher than the four foot high pillars that the Authority would have provided because she wanted to put a "downstairs" on the house in the future and she wanted the house to be further back in her lot.
- [91] This is supported by a letter dated 30th December 1997 from the Claimant, received by the HAG on 5th January 1998.

- [92] The increase in height of the pillars appears to have led to more wrangling between the Claimant and the Defendant in relation to extra costs.
- [93] Mr. Swan gave evidence that the Claimant was informed in a letter dated 22nd September 1997 that the building had to be insured for at least replacement value with the Authority's interest noted upon the policy. Moreover by Clause 5(c) of the mortgage, the Claimant covenanted to insure the building to the full insurable value thereof, including against hurricanes.
- [94] He gave evidence that the HAG had no engineer working on this project.
- [95] He confirmed that the HAG had obtained approval from the Physical Planning Department for the general house model but not for the Claimant's specific house, although he had not seen a document evidencing this.
- [96] Mr. Swan asserted that the Claimant had submitted a signed application for her house, and that it was in the HAG's files.
- [97] He admitted that he had not seen a copy of a floor plan signed by the Claimant, but stated that he expected that it should be in the HAG's file, which had been sent to its solicitors.
- [98] Mr. Swan considered that Mr. John must have been mistaken in his evidence that no signed floor plan had been on the HAG's files.
- [99] When asked how much had been deducted from the purchase price on account of the cost of installing a septic tank, Mr. Swan stated that he could not remember the exact figure but estimated that it would have been about \$6,000.00.
- [100] He stated that the last treader of the steps was resting on the ground but that the Claimant had asked for a platform to be added at the bottom of the steps, which was not in the plans.

[101] Mr. Swan was apparently unaware of the rectification works that were required to by-pass water pipes that had become blocked with concrete.

[102] In his view provision of septic tank or sewerage connection was for the Claimant's account, that is, that the HAG would not be required to do any of this work.

[103] Mr. Swan was clearly a person of strong views who was capable of firmly advocating the HAG's position.

[104] Mr. John's opinion was in the Court's view more balanced, although he had been engaged by the HAG and to a considerable extent appeared to be protecting its interests.

[105] This is not to say that the Court considered either of them to be untruthful witnesses. On areas of conflicting testimony, such as in relation to the availability of plans and other contractual documentation signed by the Claimant, the Court prefers the evidence of Mr. John as (a) he recalls not having seen any such documentation in the HAG's file, well before the matter was placed in the hands of the HAG's solicitors and (b) the Court considers it a virtual impossibility that the HAG's solicitors should not have disclosed such documentation had it been provided to them, as Mr. Swan suggested.

Discussion

[106] Having considered the totality of the evidence, a number of considerations appear to me to stand out.

[107] First, it is clear that the HAG had taken a disinterested approach to the construction of Ms. Prince's house. This had been left to the contractor without any, or any significant, supervision.

[108] Secondly, the construction took almost twice as long as contracted for, with there being no evidence that the labour-only price was adjusted for this. Consequently, the contractor

was evidently in a great hurry to finish and leave the site. Various finishing aspects were left undone, such as completion of painting. Other aspects were done with such haste that they were done badly, and not checked or rectified before the keys were handed over. Examples of this appear to have been the blocking of water pipes with concrete and poor tiling. A more serious example, and one which would remain hidden, was a failure properly to reinforce and tie in the walls and the ring beam. The failure to tie in the verandah masonry was subsequently picked up, presumable because it was more apparent.

[109] Both Mr. John and Mr. Swan were prepared, contemporaneously, to countenance as plausible Ms. Prince's complaints that the house was moving. They did not rule this out.

[110] Regardless of their, and Ms. Prince's, perceptions, none of which are ultimately determinative, the photographic evidence taken in the immediate aftermath of Hurricane Ivan appears to show, on a balance of probabilities, that the walls and ring beam were not properly reinforced, or at all. They should have been, irrespective whether or not a storm of the magnitude of Hurricane Ivan should arrive or not.

[111] It is also probable that the cost of installation of the septic tank was about \$6,000.00 and that Ms. Prince had not been credited with this amount. The correct interpretation of the contract was that the HAG should have done the work of installing a septic tank or ensuring a sewerage main connection, but at the Claimant's expense.

[112] I also accept that Ms. Prince had paid an additional \$2,000.00 for a second set of stairs, but that this work was never done.

[113] Due to insufficiency of evidence and information before the Court, I am unable to make any findings concerning the Claimant's alleged loss of rental income and her alleged loss of personal belongings.

[114] I am unable to decide on the incomplete evidence before the Court whether or not the Claimant had contracted for a house built with 6-inch or 4-inch blocks, and what finishing

she had elected for her cabinets. This case turns, in my view, on whether what was built had been built properly, and it is clear to me that it had not.

[115] Regrettably for both Ms. Prince and the HAG, neither ensured that the house should remain insured.

[116] Regardless of the defects in the construction, Ms. Prince had the benefit of the house for a number of years before Hurricane Ivan, and then again after it when it had been repaired. Also, it was not totally destroyed by Hurricane Ivan. It is right that she should pay the HAG for the benefit of the credit loan that she has been enjoying. Conversely it would not be right for the HAG to be deprived of the value of the money it had credited to Ms. Prince.

[117] On the other hand, the HAG must in all fairness bear the cost of rectifying the damage to the house which the Court finds was caused by insufficient and/or defective reinforcement. It would not be right for Ms. Prince to be unable to recover the undisputed cost of repairing the house due to the defective structural work effected by the HAG's contractor or its subcontractors.

[118] Consequently, the financial result that is most appropriate, all the facts considered, in my view, is as follows:

- a. Ms Prince owes the HAG a sum of EC\$76,000.00 by way of principal loaned, together with 10% interest per annum, pro rata, from 2nd December 1997 (the date construction was scheduled to start) to the date of this judgment;
- b. Less EC\$6,000.00 for the cost of installation of a septic tank;
- c. Less EC\$2,000.00 advanced by Ms Prince for a second set of steps that were not built;
- d. Less EC\$122,000.00 being undisputed costs of repairs.

[119] If I have performed the arithmetic correctly (EC\$76,000 +(EC\$7,600 x 17 years) – EC\$6,000 – EC\$2,000 – EC\$122,000), as at 2nd December 2014 the amount owing by Ms. Prince to the HAG was EC\$75,200.00. Interest at EC\$20.82 per day from 3rd December

2014 until the date of this judgment is to be added. From the date of this judgment the HAG will be entitled to interest at the statutory interest rate (if any).

[120] The effect of this judgment is to convert the parties' rights and obligations from contractual rights and obligations to those established by this judgment. I have carefully considered whether a different date should be appropriate, given the effect upon interest. However I have come to the conclusion that it was always open to the Claimant – and indeed it would have been prudent of her to have done so – to make payments on account of her contractual obligations to pay off the credit loan and its interest, rather than to presume (incorrectly as it now turns out) that her own obligations had come to an end even before they had begun.

[121] In my view the Claimant's decision not to pay the mortgage and not to keep the house insured were as a result of an unwise view of her situation, and due to a failure to seek proper legal advice. I do not find that she acted with the type of bad faith that equity would consider as giving her "unclean hands". As this judgment, and various means of enforcement attaching to it, give the HAG sufficient security there is no need, in my estimation, for the HAG any longer to retain the property deeds. It would also be fair to permit the Claimant to have an opportunity to raise the necessary funds from a lending institution in order to pay off the amounts that the Court has now found she owes the HAG. Accordingly the Court also orders the HAG to return the property deeds to the Claimant forthwith.

[122] In relation to the costs of these proceedings, it is fair to say that there have been no winners. The problems were caused by regrettable acts and omissions on both sides, brought into stark focus by Hurricane Ivan. Consequently, there will be no order as to costs.

Order

[123] The Order of the Court therefore is as follows:

1. The Claimant shall pay the Respondent the sum of EC\$75,200.00, together with interest at EC\$20.82 per day from 3rd December 2014 until the date of this judgment;
2. The Claimant shall also pay the Respondent such interest upon the aforesaid judgment debt as is prescribed by statute until satisfaction of the debt;
3. The Respondent shall forthwith return to the Claimant the Deeds to the Claimant's house which has been the subject of these proceedings;
4. There is no order as to costs.

[124] Finally, the Court expresses its gratitude to Learned Counsel for all parties for the assistance they have rendered the Court.



Gerhard Wallbank
High Court Judge (Ag.)