

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCv2012/0647

BETWEEN:

LOREN STRAUN

Claimant

AND

**PAUL SMITH
T/A CARIBBEAN CONSTRUCTION**

Defendant

Appearances:

Mrs. Marcelle Watt for the Claimant

Mrs. Stacy Ann Richards- Anjo for the Defendant

2014: October 29
October 30
December 19

JUDGEMENT

- [1] **Cottle, J.:** The parties entered into 3 contracts. On 28th June, 2008 they agreed that the claimant would perform certain electrical works on the Reception building at a building development known as Tamarind Hill Development. On the same date by two further agreements the claimant

undertook to perform electrical works for building units known as Sea Ray 3 and 4 and Sea Ray 5 and 6 respectively.

- [2] The building contracts were expressed to be based on a bill of quantities provided by the claimant in which he set out the services to be performed by the claimant and the relevant unit prices attached to such services.
- [3] It was an express term that "payment is through completed work measurement against bill provided and attached. Re-measurement of the bill is expected and will be measured against price provided."
- [4] The claimant brought the instant claim averring breach of contract. In the statement of claim the claimant says that he agreed to provide electrical work for the reception building and Sea Ray 3 and 4 along with Sea Ray 5 and 6 at a total value of \$269,078.97. He received payment of \$167,844.00. He seeks to recover the balance of \$101,234.97.
- [5] A perusal of the pleadings reveals that the claimant says that he "installed all the electrical fittings for units 5 and 6 and that he "wired the reception building." The claimant does not say that he completed all of the electrical works that were covered under the three contracts.
- [6] The defendants say they paid the claimant \$114,826.00 for the work done on the reception building. They say on re-measurements they owe the claimant \$758.53 on this contract.
- [7] With regard for the contract for Sea Ray units 3 and 4, the contract price was \$55,960.00. The defendants say that only 33% of the work was done. They paid \$16,192.00. When they measured the work actually done and added a percentage to cover loss of profit on the work left undone the defendants, say they owe the claimant \$4,695.86 on this contract.
- [8] The third contract covered Sea Ray units 5 and 6. The defendants paid the claimant \$39,826.00. They say that having measured it against the bill provided the sum due to the claimant is

\$11,194.00. The defendants say they terminated the services of the claimant on or about the 8th March, 2012 because he failed to complete the works to the standard required.

The Evidence

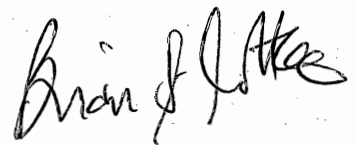
- [9] The claimant gave a witness statement. He called no other witnesses. He swore that he was contracted to carry out electrical works on Sea Ray units 3 and 4 for \$55,960.00. He completed some works. He was only paid \$16,192.00. Conspicuously in his evidence concerning units 5 and 6 he swears that he completed all the required works.
- [10] He also testified that he did wire the reception building and the A.W.O reception building. No pleading was made by the claimant that he was contracted to do any work in the A.W.O reception building.
- [11] For the defence Paul Smith and Richard Watson gave witness statements. Paul Smith gave evidence along the lines of his pleaded defence. Richard Watson says that he is a chartered surveyor and marine surveyor. He carried out the remeasurement exercise. This consisted of walking through the buildings and physically counting the number of electrical fittings installed by the claimant. He then multiplied these fittings by the unit prices provided by the claimant to determine the amount payable to the claimant.

The Legal Arguments

- [12] As I understand the claimant's position he disputes the existence of any re-measurement contract. He says the contracts were for a fixed amount and denies that any re-measurement exercise was ever carried out. He submitted invoices many of which were paid unchallenged. This, he says indicates that the contracts were for a fixed amount. In his closing submission counsel for the claimant argues that the claimant was prevented from completing the works by the defendant in breach of the contract. This factual argument was not fore shadowed by the claimant's pleadings. CPR 2000 part 8.7 requires a claimant to include in his statement of claim a statement of all the

facts on which the claimant relies. I therefore decline to consider this argument by the claimant along with the corollary point that the claimant was ready and willing to complete the exercise.

- [13] For the defendants the position is that on its face the contract was expressed to be re-measurable. The defendants stand ready to pay to the claimant all sums found due upon re-measurement.
- [14] After careful consideration of the evidence this court concludes that the contracts entered into by the parties are to be found expressed in the written documents. I accept that a re-measurement exercise was performed although the claimant did not attend at the entire exercise despite having been invited to do so.
- [15] Since the payment to the claimant is simply to be on the basis of the unit prices he has submitted and which the defendants accept, multiplied by a physical count of the electrical points completed by the claimant there can be no basis to suggest that the defendants have acted outside of the contractual provisions.
- [16] The claim for the breach of contract is dismissed. The claimant will pay to the defendants prescribed costs on the amount of \$101,234.97, the value of the claim. As the defendants accept that a sum of \$16,448.36 remains due to the claimant. It may be convenient for the parties to set off the sum due to the defendants as due on this claim against the funds due to the claimant for work done under the contracts. Any balance can then be paid to the claimant by the defendant.



Brian Cottle
High Court Judge