

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

CLAIM NO. AXAHCV 1999/0113

BETWEEN:

**KENNETH HARRIGAN
(dba HARRIGAN DEVELOPMENT)**

Claimant

and

ROBERT TWARON

Defendant

Appearances:

Mr. Clyde Williams and Ms. Ricki Camacho for the Claimants
Mr. John Carrington for the Defendant

2007: December 4, 12, 20;
2009: December 7.

Contract Law – written contract – building contract for labour only – entitlement to payment for extra works done – whether claimant prevented from completing work – whether there was an agreed time frame for completion of works – counter claim for damages for breach of contract – defective workmanship – remedial work – cost for remedying defective work – loss of rental income or loss of amenity in respect of property – whether there was substantial completion – claims for interest on claim and counterclaim.

The claimant, a building contractor entered into a written contract to construct a four bedroom dwelling house for the defendant. The house was stated to be 5228 square feet and a sum of US\$288,960.00 was agreed for the work and the terms of the contract being one of building and labour only with this note included, "Extra work will be at additional costs." Additional work was done as various open spaces were converted into bedrooms and baths as well as other changes made. The overall size of the building was increased to 6907 square feet. The claimant therefore claimed the sum of US\$308,676.35 being the difference of the overall cost and the original agreed cost which the claimant says he incurred on behalf of the defendant. The defendant contends that there was breach of contract with regards to failure to complete construction within the agreed time limit, defective work and loss of rental income from the property and generally inconvenience. The defendant also relies on the way in which the claimant pleaded his case, arguing that

it is a claim in debt only and he cannot therefore seek remuneration with regards to the extra work or on quantum merit basis as they are two distinct causes of action in for which relief has not been sought.

Held:

1. That there be judgment for the claimant in the sum of \$93,682.65. Based on the totality of the evidence, the contract was substantially performed by the claimant the repairs or omissions to be done being minor by comparison.

Dakin & Co. Ltd. v Lee [1916] 1 KB 566 and **Hoenig v Isaacs** [1952] 2 All ER 176 followed.

2. That there be judgment for Mr. Twaron on a part of his counterclaim in the sum of \$7,103.00 in respect of completion and remedial works.
3. Accordingly, the sum of \$93,682.65 to be paid to the claimant shall be reduced by the sum of \$7,103.00 payable to the defendant thereby arriving at a net sum of \$86,579.65 to be paid to the claimant by the defendant.
4. The claims for interest on the claim and counterclaim are dismissed.
5. The remaining claims in the counterclaim are dismissed.
6. Prescribed costs pursuant to CPR 65.5(2) and calculated in accordance with Appendix B on the sum of \$86,579.65 shall be paid to the claimant. By calculating the costs on the reduced sum, in my view, takes into account that item on which the defendant was successful on his counterclaim.
7. "...there is no longer a need for extensive pleadings... because witness statements are intended to serve the requirement of providing detail or particulars of the pleader's case. It is settled law that witness statements may now be used to supply details or particulars that under the former practice, were required to be contained in pleadings."

Eastern Caribbean Flour Mills v Boyea SVG No. 12 of 2007 unreported, followed.

JUDGMENT

- [1] **GEORGE-CREQUE, J.A.:** The Claimant, Kenneth Harrigan entered into a written contract on 12th August 1997, with the Defendant Robert Twaron, whereby Mr. Harrigan was to construct a four bedroom dwelling house for Mr. Twaron on land

at the Sea Rocks, Island Harbour, Anguilla. The square footage of the house was stated as 5228 square feet at a cost of US\$288,960.00. The building contract was a labour only contract and carried this note. ***“Extra work will be at additional costs.”*** There is a dispute as to the time frame within which the construction of the dwelling house was to be completed. As it turned out, additional works were done in that various open spaces were converted into bedrooms and baths. Also, the overall size of the house increased from 5228 square feet to 6907 square feet. Mr. Harrigan claims the sum of US\$308,676.35, being the difference between the original contract cost of \$288,960.00 and the overall cost of \$567,500.17 resulting from the changes he said were made by Mr. Twaron and which he says he advanced in the construction on behalf of Mr. Twaron¹. It is no longer disputed that extra works were performed. Thus the claim centres around the extra works and payment therefor. Even though the contract was for labour only, the parties operated on an arrangement whereby Mr. Harrigan would on occasion purchase some materials on behalf of Mr. Twaron and obtain payment later. In my view, it is this very loose arrangement which set the stage for the dispute which erupted later and the muddle in which both parties eventually found themselves.

- [2] Mr. Twaron has counterclaimed for damages for breach of contract for:
- (a) failure to complete construction within the agreed time scale or at all;
 - (b) defective work; and
 - (c) loss of rental income from the property and generally for inconvenience.
- [3] Mr. Carrington, counsel for Mr. Twaron, takes issue with the manner in which Mr. Harrigan has pleaded his case and contends that it is a claim in debt only and that Mr. Harrigan cannot now seek at trial to advance his claim on a quantum merit basis or for reasonable remuneration in respect of the extra works, as they amount to two distinct causes of action which have not been pleaded, nor such relief sought. He says that to do so now would be prejudicial to Mr. Twaron as he would be denied the ability to raise and explore a limitation defence where some of the

¹ In Cross examination however he accepted that this sum is incorrect.

facts may show that the breach occurred more than six (6) years ago. That part of the Pleading with which issue is taken is Mr. Harrigan's Statement of Claim in which he pleaded at Paragraph 8 thus:

"A balance of US\$308,676.35 remains outstanding to the Plaintiff, who advanced payment of the costs for the extra work for and on behalf of the Plaintiff

AND THE PLAINTIFF CLAIMS:

The payment of US\$308,676.35"

- [4] Counsel relies on the dictum of Barrow JA in the case of **Eastern Caribbean Flour Mills v Boyea**² where at paragraph 43 he said thus:

"The pleadings should make clear the general nature of the case." ... To let the other side know the case it has to meet and therefore to prevent surprise at the trial, the pleadings must contain the particulars necessary to serve that purpose."

- [5] I think it also useful to cite from the conclusion of the said Judgment where Barrow JA repeated the dictum of Saville J in **British Airways Pension Trustees Ltd. Sir Robert McAlpine & Sons Ltd**³... and echoed by Lord Hope of Craighead in **Three Rivers (No. 3)**:⁴

"The basic purpose of pleadings is to enable the opposing party to know what case is being made in sufficient detail to enable that party properly to prepare to answer it. To my mind it seems that in recent years there has been a tendency to forget this basic purpose and to seek particularization even when it is not really required. This is not only costly in itself, but is calculated to lead to delay and interlocutory battles in which the parties and the court pore over endless pages of pleadings to see whether or not a particular point has or has not been raised or answered when in truth each party knows perfectly well what case is being made by the other and is able properly to prepare to deal with it"

- [6] Barrow JA in the said **East Caribbean Flour Mills** case, under the general heading "witness statements", had this to say:

"...there is no longer a need for extensive pleadingsbecause witness statements are intended to serve the requirement of providing detail or particulars of the pleader's case. It is settled law that witness statements

² SVG CA 2007/12 (unreported)

³ (1994) 45 Con LR 1, CA

⁴ [2001] 2 All ER 513

may now be used to supply details or particulars that under the former practice, were required to be contained in pleadings.”

[7] It is clear throughout the pleadings and witness statement of Mr. Harrigan that what he asserts is that changes were made to the building from the original plans which involved additional work, enlarged the overall size of the building, resulted in delays and which increased the overall costs of the construction over and above the original cost. The Defendant in his amended defence admitted that additional works were done but says this was at an agreed additional cost of US\$11,300.00 in materials and labour.

[8] It is clear to me that the real issue in dispute has always been the costs of the additional works. I am quite satisfied that this is the claim that the Defendant knew he came to meet and prepared for and not one of mere indebtedness in which he now seeks to cast the claim. Of note is the fact that the parties jointly appointed an expert to carry out an inspection of the building. The expert’s report was seen by both sides and submitted to the court. In carrying out the task assigned the expert compared the actual building on the ground with the original plans and reported not only on whether the building was larger than as set out in the plans but generally reported as to whether works were completed as per the plans. One could hardly see the necessity for such a course if all that was being asserted was the collection of a debt. In my view, the real question in issue for the court’s determination, on Mr. Harrigan’s case is the costs of such additional works as proved to have been undertaken at the Defendant’s request over and above the works set out and covered in the original contract price. Mr. Twaron himself belatedly, in his amended defence, admitted that additional works were undertaken albeit that he considers that Mr. Harrigan has been fully paid for those works as well.

The issues

[9] The issues for determination to my mind are these:

- (a) The costs of additional works over and above the original contract price;
- (b) Whether there was an agreed time scale for completion and whether there was a failure to complete within that time scale or at all;
- (c) Whether there were defective works and whether Mr. Harrigan was prevented from completing or remedying them.
- (d) Whether Mr. Harrigan is liable for loss of rental income or loss of amenity in respect of the property.

The evidence on behalf of the claimant

[10] Mr. Harrigan says that after they had begun digging the foundation, they were stopped by Planning Department regarding the location of the building on the site. This caused a delay of some twenty (20) days and a decision to relocate the building. During this stoppage period three (3) persons had to remain on site to carry out directions. He said Mr. Twaron wanted to build as close as possible to the sea and the building plan did not specify building distances from the sea. Then he said Mr. Twaron requested a major change in the layout of the basement of the building. Instead of an open space as originally designed Mr. Twaron wanted three (3) bedrooms and two (2) bathrooms. To achieve this, the foundation had to be raised. Another major change he says was to the roof of the building. The original plan called for a concrete structure. Mr. Twaron wanted a wooden roof of Greenheart wood and concrete. This required higher walls to accommodate the hardwood rafters. There was also delay in obtaining the wood from Guyana and this caused delay in carrying out other works which could only be done once the house was water tight. He says Mr. Twaron also sought changes to the location of electrical boxes and switches after the piping had been laid. Mr. Twaron also requested construction of a swimming pool. There is no issue on this however, as it is common ground that this formed a separate contract.

[11] Mr. Harrigan stated that he paid for the wood, and paid several persons for tools, trucking, and equipment such as backhoes, jackhammers, and excavators but

produced no invoices, receipts or any documentary evidence in respect thereof. He also could not say how much he paid out in respect of such items. He engaged various other subcontractors such as a plumber, electrician and a builder but he could not recall how much he paid to each of those persons.

[12] He along with the assistance of one Peter Billington produced a final accounting in respect of the additional works in the sum of US\$280,834.89⁵. He accepted that there was some remedial works outstanding but says he was locked out of the property by Mr. Twaron which prevented him carrying out the remedial works. In cross examination however, he said that Mr. Twaron took the keys, moved into the house and so he never went back. He agreed that with the assistance of Mr. Billington he sent an email to Mr. Twaron stating the amount outstanding as \$229,742.79⁶ and as being a final account as at 9th April 1999.

[13] In respect of incomplete or remedial works he said:

- (a) that Mr. Twaron did not furnish all the light fixtures;
- (b) the closets were completed;
- (c) the door screens were not installed- this being done after painting;
- (d) the toilet was installed in the northwest bath but not the planter as he said due to changes made by Mr. Twaron in the fixtures as well as the installation of two windows the planter could not fit;
- (e) the positioning of the electric meter was not in the contract; he was not to do the meter base - this was ANGLEC;
- (f) that whatever Mr. Twaron brought from the US were installed.

[14] Mr. Harrigan also denied that he harassed any of Mr. Twaron's guests and said that he was unaware of his brother Frederick "Daddy" Harrigan harassing any such persons. He stated that when Mr. Twaron moved into the house he removed his name from the electricity account at ANGLEC which had been in his name

⁵ Marked as KH4 (bearing date December 9, 2000 on pgs 2-4)

⁶ See Core Bundle Part 3 Pg 18

during the construction period. He could not recall telling Mr. Twaron that he had taken that step.

[15] With regard to the completion time for construction, Mr. Harrigan stated they were hoping to have the house completed and ready for December 1998, and that they agreed orally to have the house constructed within 18 months. He says that he completed it within that time frame but that there was a delay of about three (3) months in respect of the wooden roof.

[16] Keithley Richardson, a witness for Mr. Harrigan, stated that he was the person who actually built Mr. Twaron's house. He said no time frame for completion was told to him by Mr. Harrigan. He confirmed that additional works was carried out on the house. In respect of additional works regarding the basement he charged US\$8,000.00. For the extra work involved in making the extra bedrooms and bathrooms he charged US\$12,000.00. With regard to the roof change, an additional US\$10,000.00 was charged.⁷ He stated that the final price for tiling the house (which involved additional tiling) was \$15,000.00. He was unable to say however, what was the initial price tag in respect of the tiling less the additions. He submitted amended invoices in respect of his work to Mr. Harrigan and was paid by him. He said he was not aware of complaints by Mr. Twaron in respect of incomplete or defective works and that had anyone told him of complaints he would have been the one to fix them. He was later employed by Mr. Twaron after he had finished his contract with Mr. Harrigan to tile the pool deck.

[17] Mr. Rollie Harrigan was the subcontractor for the electrical works on the house. He spoke of the additional electrical works entailed in converting the open spaces into bedrooms and baths, of relocating outlets and installation of additional outlets, boxes and switches and the work involved in relocating the panel box from one wall (as originally planned) to another. His witness statement is devoid of prices charged for those additional works. In the supplemental bundle 3 at pages 17 and

⁷ Paras. 5, 6 and 9 witness statement -Keithley Richardson

18 are two statements of account both dated 18/10/98, in the sums of \$2,385.00 and \$1,395.00 respectively describing additional electrical related works. He stated that he wired the house in accordance with the national code and was not made aware that the wiring failed and equipment damaged. He also constructed the meter base which was some distance from the entrance. The plan however, did not specify a location for the meter base.

- [18] The supplemental bundle also contains two statements of account (at pages 12 and 13) in respect of extra works done in respect of plumbing in the sums of \$4,500.00 and \$1,000.00 respectively from one Russell Webster. He was not called as a witness.

The Evidence on behalf of the Defendant

- [19] Mr. Twaron gave evidence on his own behalf. In his witness statement he said:
- (a) He purchased the land for around \$100,000.00.
 - (b) The agreed budget for finishing the house was to be no more than about \$320,000.00 to \$330,000.00.
 - (c) He advanced cheques to Mr. Harrigan plus paid shipping for building materials in a total sum of \$527,000.00.
 - (d) Construction was projected to take twelve (12) months finishing in April 1998.
 - (e) In November/December 1998, Mr. Harrigan gave him the keys to the house and stated that he had no more money, he wanted to move on, there would be no problems.
 - (f) He had not been back on the job since October 1998, after installing some ceiling fans and some light fixtures.
 - (g) There was finishing to be done such as fitting electrical cover plates, completing painting, rectifying plumbing leaks, correcting light installations, doors, and tiling around the pool.

- (h) The closets were never completed, some light fixtures not installed, gas line and service line not the right size, electric meter not in the right location, door knobs and hinges not rust resistant.
- (i) Some of these matters were rectified by engaging others.
- (j) He agreed to some additional works being carried out and not shown on the drawings which included some works to the lower level, addition of a swimming pool and a garage. In respect of the lower level it was agreed that this work would cost about \$8,000.00 plus about \$3,000.00 to cover the cost of blocks, cement and labour.

[20] In amplification of his witness statement he said:

- (a) Mr. Harrigan never presented him with invoices in respect of sums paid by Mr. Harrigan on his behalf;
- (b) that he asked Mr. Harrigan to pay the architect.

[21] Mr. Twaron also led much evidence in relation to several receipts and invoices dealing with the purchase of materials and their shipment as well as payments made or funds sent to Mr. Harrigan. What is not clear from those documents or the written or oral evidence is whether such payments relate to the additional works or to the overall construction in general of the house. As such, I derive little or no assistance from them save to show that Mr. Twaron paid for and furnished the bulk of the materials.

[22] He also produced various photographs taken by him showing works which he said were incomplete or otherwise defective. Some of these bore a date in 2002, and some 2003, some four (4) to five (5) years, after Mr. Harrigan left the site.

[23] In his witness statement he spoke of having paid various persons to complete or remedy various works. He stated⁸ that he paid:

- (a) one Karl Smith \$2,500.00 to release water and repair the leaking walls

⁸ Witness statement of Robert Twaron, para. 19

- (b) one Jim Lewis \$800.00 to fix the plumbing,
- (c) one "Bear" Gumbs \$2,500.00 to complete the closets and other finishing work;
- (d) one "Jadl" \$603.00 to correct wiring in the pool pump motors, and
- (e) one "Keith" over \$700.00 to tile the pool area, install mirrors, towel rails and light fixtures.

He did not point to any specific documentary evidence supporting these claims. These sums amount to \$7,103.00.

[24] It bears note that Mr. Twaron in his original defence filed in December 2001, denied that any extra works had been requested or carried out. However, it is only in his amended defence filed over three years later and after the expert's survey was submitted showing the additional area, and after the filing and exchange of witness statements that he finally acknowledged that he agreed to some additional works, but says such works was "at an agreed additional cost of no more than US\$11,300.00 in materials and labour"⁹.

[25] Also worthy of note is the fact that Mr. Twaron claimed in paragraph 4 of his witness statement that he purchased the land for around \$100,000.00 when in fact he stated in his Land Holding Licence Application, and which he accepted as being true, that the purchase price was \$70,000.00. I also add that Mr. Twaron's general demeanor in the witness box did not inspire confidence. Mr. Harrigan impressed me as being more truthful than Mr. Twaron despite being unable to say with any certainty the amount due to him. I consider that this stemmed more from the fact that he relied on other persons to carry out the works. Accordingly, I do not consider Mr. Twaron to be a credible witness and where there is any conflict between the evidence of Mr. Harrigan and that of Mr. Twaron, I accept the evidence of Mr. Harrigan.

⁹ See: para. 4 of Amended Statement of Claim.

[26] Mr. Nowell Rogers, a structural engineer, was jointly appointed as an expert to examine and report on the general state of the building. In carrying out his inspection he measured the area of the actual building against the proposed building specified in the drawings and found a difference or discrepancy of 1695 square feet in excess in respect of the actual building, as compared to the proposed building. These measurements are accepted by the parties. The expert also gave a costing for constructing the additional areas based on a unit price (per square foot) of US\$150.00 using his experience and knowledge of costing in the construction industry. On this basis, he arrived at a 'total discrepancy cost' of \$254,250.00. The labour costs were then calculated on the basis of 42% of the 'total discrepancy cost' at \$106,785.00. Save for setting out the additional labour costs for the barrel tiles covering the roof, he did no costings in respect of remedial works or works found not to be in accordance with the plans.

Factual findings

[27] It being common ground that additional works were carried out, I consider that Mr. Twaron is obliged to pay Mr. Harrigan for the extra works in accordance with the terms of the original contract which clearly stated that extra works will be at extra costs. This is not an easy task given that the evidence in this regard is in many respects lacking, even on Mr. Harrigan's own computation. The court however, must do what it can with the material before it to find a way out of the maze.

[28] Mr. Harrigan's claim form gives the sum as \$280,834.89 which is the sum set out in exhibit KH4 being a detailed listing of additional works, prepared by Mr. Billington, dated 9th December 2000, on behalf of Harrigan Real Estate. No further details are given about Mr. Billington and his involvement or connection with the project. He was not called as a witness. His statement of claim says the balance outstanding to him is \$308,676.35. However at page 18 of the bundle there is reference to a final account submitted on 9th April 1999, stating the amount as

\$229,742.79. These discrepancies have not been explained. It therefore begs the question as to whether any of these figures are reliable.

[29] The expert, as I have said, found an additional square footage of 1695 and applied a unit value of \$150.00. KH4 however, shows an additional square footage of 1706 to the building to which a unit value of \$55.67 was applied, arriving at a total value of \$94,973.02. Taking the contract price in respect of the proposed building at \$288,960.00 based on 5228 square feet, this gives a unit value of \$55.27. This figure bears some resemblance to the unit value applied in KH4. This, in my view, lends force to Defence counsel's argument that the expert applied a unit value different from that operating and agreed under the contract. Indeed KH4 bears this out.

[30] In an effort to resolve these conflicting sums and bases, I consider that the most appropriate course is to apply the unit value applicable to the contract, to the additional acreage as found by the expert and accepted by the parties. In so doing, I arrive at the sum of \$93,682.65. I am minded to award this sum to Mr. Harrigan.

The counterclaim

[31] Mr. Twaron however, complains that Mr. Harrigan did not complete all the works. Mr. Harrigan tacitly accepts this when he said that Mr. Twaron had changed the locks to the house which prevented him from completing all the works. Mr. Twaron also says that some of the work was defective. I do accept that a few matters were not completed, such as some light fixtures, some electrical outlet coverings, some painting and installation of the screens. Mr. Harrigan acknowledges this. I also find that some remedial work was necessary. The expert noted these matters in his report. It was not challenged that the persons who Mr. Twaron said he engaged to do such works had not been so engaged notwithstanding the lack of documentary evidence save for Mr. Twaron's own notations. Further, Mr. Harrigan accepted that he made no effort to regain access

to the property after the keys were turned over, or after the locks had been changed. Accordingly, I am minded to accept that Mr. Twaron did employ persons to carry out those works which he specified in his witness statement.

- [32] Counsel for Mr. Harrigan urges on the court that Mr. Harrigan substantially completed the works and therefore ought to be paid the balance due as claimed under the contract in accordance with the principle laid down in such authorities as **H Dakin & Co v Lee**¹⁰ and **Hoenig v Isaacs**.¹¹ In **Hoenig** Lord Denning had this to say:

“When a contract provides for a specific sum to be paid on completion of specified work, the courts lean against a construction of the contract which would deprive the contractor of any payment at all simply because there are defects or omissions. The promise to complete the work is therefore construed as a term of the contract, but not as a condition. It is not every breach of that term which absolves the employer from his promise to pay the price, but only a breach which goes to the root of the matter such as an abandonment of the work when it is only half done. Unless the breach goes to the root of the matter the employer cannot resist payment of the price. He must pay it and bring a cross claim for the defects and omissions or alternatively set them up in diminution of the price.”

This principle was followed in our jurisdiction in the case of **Nathaniel Ward v Ronald Cozier and Anr**¹² by Bruce-Lyle J in St. Christopher and Nevis.

- [33] In my view, the principle is a very sound one and accords with commonsense. It is one rightly apt to the circumstances of this case and I adopt it. I have no hesitation, based on the totality of the evidence in this case, that the contract was substantially performed by Mr. Harrigan and that the repairs or omissions to be done were minor by comparison. I do not accept that he was prevented by Mr. Twaron from completing the remaining items of work. Accordingly, the sum of \$93,682.65 which I consider to be due to Mr. Harrigan from Mr. Twaron, should be reduced by the sum of \$7,103.00 (being the total of the sums paid out by Mr. Twaron) for remedial and completion works done by Mr. Twaron.

¹⁰ (1916) 1KB 566

¹¹ [1952] 2 All ER 176

¹² Civil Suit No. 6 of 1997 (St. Christopher & Nevis – unreported)

- [34] Apart from the claim for defective or incomplete works, Mr. Twaron also claimed that he suffered a loss of rental income due to the delay in completion and also that his house guests were harassed by Mr. Harrigan's brother. No evidence was led in respect of loss of rental income. The building contract was executed on 12th August 1997. Mr. Richardson the subcontractor in his witness statement¹³ speaks of excavating the ground for the foundation in September 1997. Mr. Twaron says in his evidence that work commenced sometime around February 1997. Mr. Harrigan says in his evidence that the time for completion was to be 18 months. Mr. Harrigan ceased works sometime in November/December 1998.
- [35] It is not seriously disputed that delays were encountered due to changes and additions to the plan. There is no evidence of any agreement as to a revised time frame for completion and therefore the highest that the matter can be put is that Mr. Harrigan was required to complete the house and the additions within a reasonable time. By November/December 1998, it was substantially completed save for a few matters. I do not consider the period September 1997 to November 1998, as unreasonable given the delays encountered which I accept were a direct result of the changes made by Mr. Twaron. Accordingly, I do not find that Mr. Twaron is entitled to any sum for loss of rental income. In any event, no such loss was proved.
- [36] With regard to the lack of an electrical inspection certificate Mr. Twaron says that electricity was turned off from about 1999, until 2001, and he was not sure why it was switched off in the first place. This, he said, caused him to incur hotel expenses when he visited Anguilla during that period. Counsel urges the court to award him the sum of \$6,000.00 under the general heading of loss of amenity in this regard. Mr. Rollie Harrigan who was the electrician stated that he may have filled out the form for an electrical inspection to occur sometime in 1998. Mr. Harrigan says he was not responsible for obtaining the electrical inspection certificate.

¹³ WS – Keithley Richardson paras. 2 and 3 Core Bundle Part 2

[37] What is clear is that an electrical connection was made to the house at the request of Mr. Harrigan for construction purposes which remained intact during the construction. But after Mr. Twaron took possession and occupation of the house Mr. Harrigan brought that arrangement to an end. There is no evidence that the house did not pass electrical inspection due to faulty or incomplete works which prevented a connection to the house being effected for occupancy purposes. The reasonable inference to draw is that Mr. Twaron did not take the necessary steps as owner, to connect the supply of electricity to his house. Accordingly, I do not consider that Mr. Harrigan is liable to make good such hotel expenses as may have been incurred by Mr. Twaron. In any event there was no documentary evidence substantiating this claim. For this reason also, I do not consider that an award should be made for loss of amenity.

Interest

[38] The parties have each claimed interest in respect of their claims. Counsel for Mr. Twaron pointed out that Mr. Harrigan's claim for interest must fail as it runs afoul of CPR 8.6(4). This rule, in essence, says that a claim for interest (which must be expressly pleaded) must set out the basis of entitlement, the rate and the period for which it is claimed. Further, as counsel for Mr. Twaron also pointed out, no evidence was lead in relation thereto. I dare say that Mr. Twaron's claim for interest suffers the same fate for similar reasons. Accordingly, I make no award for interest on either party's claim.

Conclusion

[39] For the reasons given, I make the following orders:

- (1) That there be judgment for Mr. Harrigan in the sum of \$93,682.65.
- (2) That there be judgment for Mr. Twaron on a part of his counterclaim in the sum of \$7,103.00 in respect of completion and remedial works.
- (3) Accordingly, the sum of \$93,682.65 to be paid to Mr. Harrigan shall be reduced by the sum of \$7,103.00 thereby arriving at a net sum of \$86,579.65 to be paid to Mr. Harrigan by Mr. Twaron.

- (4) The claims for interest on the claim and counterclaim are dismissed.
- (5) The remaining claims in the counterclaim are dismissed.
- (6) Prescribed costs pursuant to CPR 65.5(2) and calculated in accordance with Appendix B on the sum of \$86,579.65 shall be paid to the Claimant. By calculating the costs on the reduced sum, in my view, takes into account that item on which the Defendant was successful on his counterclaim.

[40] Finally, I am grateful to counsel for their invaluable assistance.


Janice M. George-Creque
High Court Judge