

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CLAIM NO. 4 OF 2004
BETWEEN:



SYLVANUS LESLIE

Claimant

V

BRIAN CULLEN

Defendant

Appearances:

Dr. Godwin Friday for the Claimant
Mr. J.O.R. Martin for the Defendant

2008: April 14;
May 9.

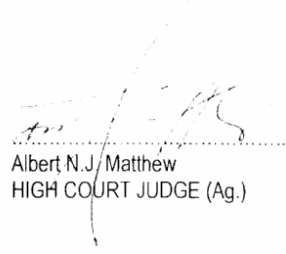
JUDGMENT

- [1] **MATTHEW J. (Ag.):** On January 6, 2004 the Claimant filed a claim against the Defendant seeking the following:
- (a) U.S. \$20,000 or its equivalent in E.C. Dollars;
 - (b) Interest at the rate of 10 per cent from December 2002 until payment;
 - (c) Damages; and
 - (d) Costs.
- [2] In his accompanying statement of claim the Claimant alleged that he supervised the construction of the Defendant's home at Camel, Bequia in the State of Saint Vincent and the Grenadines and there was an oral agreement between the Parties in or about April 2001 that the Defendant would pay the Claimant 10 per cent of the cost of construction for the supervision fee.

- [3] The Claimant alleged that the total cost of construction was U.S. \$200,000 and the Defendant had refused to pay the supervision fee.
- [4] The Defendant filed acknowledgment of service on January 22, 2004 and his defence on April 28, 2004. In his defence the Defendant stated that the common understanding was that the construction costs of \$200,000 included the supervision fee which was agreed at 10 per cent of the estimate which is the standard business practice.
- [5] The Defendant denied that there was any agreement for the Claimant to be paid his fees after the construction was complete.
- [6] A case management order was made on June 29, 2004 and the matter was set down for trial on February 2, 2005.
- [7] At the trial the Claimant gave evidence and called his wife, Rhonda Leslie, as his only witness. The Defendant gave evidence but did not call any witnesses.
- [8] The evidence of Rhonda was to show that to some extent the families of the Claimant and the Defendant socialized and this was advanced by the Claimant to show the reason why the terms of the agreement were not formalized into writing.
- [9] As Rhonda stated upon cross-examination, "I was not involved in the construction of the house."
- [10] The evidence of the Claimant and the Defendant disclosed that there was agreement between the Parties on the cost of construction of the house for U.S. \$200,000 and that there would be remuneration for supervision at 10 per cent. Where the Parties disagreed is that according to the Claimant his supervision fee was 10 per cent of the U.S. \$200,000; and according to the Defendant the 10 per cent was inclusive of the amount of U.S. \$200,000.

- [11] I do not believe the Claimant that he told the Defendant he would take his fee after the construction of the house was finished. Neither do I believe the Defendant that he told the Claimant he must remove the 10 per cent of the supervision fee from the job for monies given to him. In my judgment the Parties never specifically agreed on that.
- [12] The Defendant said it was the standard practice that the supervision fees are included in the estimate. I was not shown any evidence of such a standard practice.
- [13] I do not think that the Claimant who is not really in the construction field would have contemplated that in providing the estimates of construction to the Defendant he should have included his supervision fee and I see no reason why the Defendant should have thought that to be the case.
- [14] It is true the Claimant did not provide bills of construction to the Defendant who did not request any. The Defendant as well provided the money to the Claimant in different ways; large amounts of U.S. notes, drafts, post etc. without requesting receipts from the Claimant.
- [15] The Claimant has stated that he received the full amount of U.S. \$200,000 from the Defendant which he used for the construction of the house but he did not keep any money for supervision. I think there is a burden on the Claimant to show that the money he received was all spent on the construction.
- [16] The Claimant has not discharged that burden which he could have done by providing some indication of his expenditure to show an approximation of the U.S. \$200,000. He could have also provided a valuation of the house at the time of construction. The Defendant still met other bills over the agreed amount, for example, when he paid Coreas Hazells Inc. an amount of \$4,231.90 which was not disputed. He said there were other payments.

- [17] I believe the Defendant has paid in all an amount more than the actual cost of construction of the house and any such excess must go towards the Claimant's supervision fees.
- [18] Doing the best I can and without authenticated accounts, I am of the view that the Claimant would be additionally adequately compensated if I ordered the Defendant to pay him an amount of U.S. \$10,000 plus costs in the amount of E.C. \$4,000. I do so order.



Albert N.J. Matthew
HIGH COURT JUDGE (Ag.)