

SAINT VINCENT AND THE GRENADINES

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

CIVIL CLAIM NO. 474 OF 2001

BETWEEN:

ADOLPH CHAMBERS

Claimant

AND

**GUS PASCAL
LUENDA PASCAL**

Defendants

Appearances:

Ms. Roxanne Knights for the Claimant

Ms. Kay Bacchus Browne for the Defendants

2003: December 9

2004: June 28

JUDGEMENT

[1] **BLENMAN, J:** This is a claim for money due and owing for work done in accordance with a construction contract together with a counterclaim on the basis of negligence.

[2] Mr. Adolph Chambers (Mr. Chambers) is a building contractor who resides at Villa in St. Vincent and the Grenadines. He contends that he signed a written agreement with Mr. Gus Pascal and Mrs. Luenda Pascal (the Pascals) to construct a two storey six bedroom building for them at Canouan at a cost of \$130,000. The mode of payment was written into the contract and he was provided with a plan which was modified to work.

- [3] During the course of the construction he had to make several changes based on the Pascal's instructions. This resulted in him having to do extra work for which he charged the Pascals the sum of \$20,000. Three weeks before completion of the entire job, with about a \$6,000 of work outstanding a dispute arose between the parties and he was not paid. He contends that the Pascals have also failed to pay him the sum of \$20,000 for the extra work he executed. He asserts that they owe him money for other extra he did such as installing other items on their property. He has filed a claim alleging that they owe him a total sum of \$36,500.00
- [4] The Pascals who reside at Canouan and are the owners of the building that was constructed deny that they owe Mr. Chambers any money whatsoever. They allege that at the time of signing the agreement they gave Mr. Chambers an original plan and informed him at the same time of the charges that had effected the plan. Shortly after an amended plan was made and given to him, Mr. Chambers assured them that there was no need to amend the plan yet again but that he could have worked with the original plan subject to the changes the Pascals desired. They contend that Mr. Chambers provided them with poor work and the only modification that was made to the plan came at his instance since he suggested to them that they should extend the water tank 4ft. outside of the building instead of putting the entire tank under the house. They deny that they owe him any additional money for the installation of the water tank since the parties agreed to construct the building which included the erection of two water tanks at a total cost of \$130,000.00 and he constructed only one tank and labour costs were saved as a result. They plead that Mr. Chambers did not complete the work he was paid to do and in some of the instances where he did the work it was of such a poor quality warranting their expenditure of additional sums in order to remedy it. In addition he failed to meet the agreed completion date since the work remain incomplete.
- [5] Accordingly they counterclaimed against Mr. Chambers but have not particularized their losses. Mr. Chambers denies that the Pascals have suffered loss.

- [6] The issue to be determined is whether the Pascals owe Mr. Chambers the sums he claims or whether it is Mr. Chambers who is indebted to the Pascals.
- [7] The parties and their witnesses gave opposing evidence even though for the most part there were no major disputes.
- [8] Mr. Chambers' evidence was that he entered into a written agreement with the Pascals to provide all of the labour necessary to construct their house at a total cost of \$130,000.00. Payment of his fees was to be effected by instalments in accordance with the contract, a sum of EC\$40,000 was to be paid by the Pascals as a down payment at the end of four weeks, at the end of the second four week period he was to have been paid a further sum of \$28,000 (for a period of two weeks) and thereafter he was to be paid the sum of \$6,000 at the end of two weeks). As part of the written agreement, the Pascals provided him with the ground and floor plans for the building and they purchased the materials abroad. On their return to Canouan and before he could have commenced working they made modifications to the plans. He advised them that they would incur extra costs for the changes they required and they agreed to pay extra for the changes which resulted in the use of extra labour.
- [9] The main changes the Pascals required of him included the removal of the porch and the extension of two bathrooms, and a storage room. Originally the parties agreed, that he would install 16 doors in the building, this was changed to 28. Based on their request he changed a bedroom on the ground floor to a store/boutique, installed an underground water tank which was not part of the original agreement. He modified the room and had to make further adjustments to facilitate their belated request for the installation of hot water. As a consequence, he charged the Pascals \$20,000 for the work which he completed and they agreed to pay. There was another building on the Pascal's land, based on their request; he fit a toilet seat, face basin and other items at a cost of \$850.00.

- [10] With about \$6,000 worth of work remaining to complete the job, the Pascals requested him to “put down” floor tiles. He refused to do so because it was not a part of the agreement and a dispute arose as a consequence.
- [11] Before the dispute arose, he was able to complete the remaining work on the building in time for the Canouan Regatta including the installation of windows. Due to the changes he took 35 weeks instead of the original 18 weeks to complete the building. Some time during his construction the Pascals cut out the area for the skylights after the building was completed and told him that they would purchase the window for the skylights in Miami. He was never provided with the windows to install. The Pascals went abroad yet again. About two months after the Pascals returned from Miami he visited them with a view to receiving from them the outstanding sum of \$20,000. However they have refused to pay him. He denies that his workmanship was poor to the contrary; the work was of such a high standard that it was published in a Newspaper in Saint Vincent and the Grenadines.
- [12] He claims \$20,000 for the modification of the building; \$850 for fitting the toilet set, face basin, \$10,000 for the installation of the water tank and sun deck and \$6,000 being the balance due on the original contract. A total sum of \$36,500.
- [13] During cross examination he maintained that the laying of the tiles was never a part of the original agreement. The house he completed for the Pascals was bigger than that contracted.
- [14] He admitted receiving a letter dated the 20th April 2001 from the Pascal’s lawyer but denied that it was as a result of receiving the letter that he filed the claim. He was adamant that during this construction of the building the claim went into extra work of which he notified the Pascals in a very timely manner. However, he did not make a claim of the Pascals for the \$20,000 before he received the letter

dated 20th April 2001 from their lawyer. In fact the first time he made a claim of the Pascals for the \$20,000 was when he received the letter from their lawyer complaining that he had failed to lay the tiles in accordance with their written agreement. Mr. Chambers stated that he did not claim for the cost of building the water tank originally even though he had carried out the work before the 20th April 2001. He conceded that in his estimate of materials required he had listed the tiles but was sure that there was no agreement that he would lay the tiles.

[15] During further vigorous cross examination he said that he built the sun deck and paid the workmen for the work they did in this regard but that his time book got misplaced. He denies that the building was incomplete when he handed over it to the Pascals. In fact he was surprised to learn that they incurred expenditure in remedying building and paint defects. He employed the best electrician to do his work namely Trotman and before them he had employed another electrician whom he did not pay since he had prevented him from completing the work. While he did not have any itemised cost of his claim, he emphasized that his entire claim was in relation to the work he did for the Pascals before receiving the letter of 20th April 2001.

[16] Mr. Solomon Sutherland who lives at Cedars in Saint Vincent and the Grenadines is a mason and carpenter. He stated that around October 2000 Mr. Chambers hired him to work on the Pascals building which had approximately 16 rooms upstairs and 6 downstairs and they were supposed to build a porch around the building. After they had completed a room, the Pascals requested that they extend the size of some of the rooms which they had completed; they had to break down some parts of the building in order to increase the size of at least two rooms. He worked on the construction of the underground water tank. The porch was supposed to be constructed from wood but the Pascals requested the use of bolsters which they did. Having worked on the building for approximately 9 months, on completion, it was beautiful.

- [17] During cross examination he admitted to never having seen the plan not the written agreement between the parties rather he was working as a mason on the premises and took instructions from Mr. Chambers. While he does not possess any records of any of the adjustments the Pascals requested them to make he was sure that they requested Mr. Chambers to make changes to the Plan. They extended a bedroom and adjusted a window. He said we made some "slight adjustments" to the bedrooms.
- [18] Mr. Pascal testified on behalf of himself and his wife. His evidence is that they agreed with Mr. Chambers that he should construct a house at Grand Bay Canouan at a labour cost of \$130,000.00. They gave him a plan and expressly told him that the plan did not represent the exact building required. They state that it was an express term of the written contract that "the Contractor should comply with the owner in any changes which may occur at any time in the construction, without disagree up to any ideas in the said building".
- [19] However, Mr. Chambers failed to provide them with work of a good standard and did not supervise the work. They agree that certain changes were made during the course of construction (but say that they were minor) such as to extension of two bedrooms on the top floor and shifting of two windows. Instead of building two water tanks in accordance with the agreement, they built one and Mr. Chambers was able to save labour cost. Some major parts of the building, as agreed in the contract were not constructed. However Mr. Chambers unreasonably and without any cause refused to lay the tiles in accordance with their express agreement and requested extra payment to lay the tiles and they refused. Due to his breach, they withheld \$6,000.00 and used it to pay another tiler who had to be employed to complete the work, together with other workmen who they hired to make minor remedial changes to Mr. Chambers' work.
- [20] Mr. Pascal states that they requested Mr. Chambers to do some work on a little trailer house for which they paid him \$5,000, separately. The only main modification that was made after the construction commenced was based on Mr.

Chambers' suggestion that the water tank was built partly under the building instead of totally under it. He was adamant that he did not have any discussion with Mr. Chambers in relation to separate payment for the construction of the water tank and was sure that Mr. Chambers never requested him to pay an additional \$20,000.

[21] During cross examination Mr. Pascal stated that while the written agreement does not specifically mention the laying of tiles Mr. Chambers agreed to provide all of the labour needed. From the inception he and his wife discussed in detail with Mr. Chambers about the laying of the tiles. In fact in their original discussion they requested Mr. Chambers to provide them with an estimate of the quality of tiles they should purchase and he complied. Mr. Chambers gave them an estimate which indicated the quantity of tiles they should purchase. Due to his breach they withheld \$6,000.00. Mr. Chambers visited him claiming the \$6,000 which he had withheld and he refused to give it to him, whereupon Mr. Chambers told Mr. Pascal that he would hear from him.

[22] He agreed that they advertised the building in the newspapers as beautiful and they are still of that opinion. This does not detract from the fact that Mr. Chambers did not complete the building in accordance with the written agreement causing them to withhold the sum of \$6,000 for the unfinished work including electrical, plumbing, masonry, painting walks and doors that were improperly existed. They incurred costs in remedying these defects.

[23] Mrs. Luenda Pascal testified in similar vein to her husband. She maintained that Mr. Chambers never discussed any increase costs with herself and her husband. It was only after they retained the services of a lawyer to write to him about his incomplete work that he made claim for \$20,000. The work that he completed had defects and they had to pay other carpenters after Mr. Chambers had left the building to swing around some of the doors which he had built and pay other persons to repaint some areas. She too denied vehemently that they agreed to

pay Mr. Chambers \$20,000.00 for extra work since they did not request him to do extra work.

- [24] Mr. Chambers and his men left the property since December 2001 and she was sure that he had been paid the sum of \$5,000 for the separate work he did to the trailer house. There is no money outstanding to Mr. Chambers. She stated quite clearly that even though they were able to occupy the property after Mr. Chambers left it, it was not in a state of readiness. In fact, an emergency situation arose because Regatta was being held around the same time and the place was not in a state of readiness. They had to contract other persons to complete the work that Mr. Chambers left unfinished. The persons who occupied the house initially were sailors (and not guests) since they had no alternative accommodation.
- [25] Mr. Brian Caesar of Kearton's Village,Barrouallie testified in support of the Pascal's. He is a gardener and worked as a construction worker in Canouan on the Pascal's building. He was employed by Mr. Chambers. He says that he knew that Mr. Chambers was supposed to have laid the tiles since in 2001 he overheard Mr. Pascal ask Mr. Chambers whether the latter could lay the tiles himself or whether he needed to employ someone else to do it.
- [26] He was sure that when Mr. Chambers stopped working on the Pascals building it was incomplete. In addition the plumbing, painting and the door were improperly done by Mr. Chambers. Mr. Pascal was forced to retain the services of himself together with that of another person to repaint the building. At one stage Mr. Pascal assisted them with the painting.
- [27] In a civil action for money due and owing and a counterclaim for damages on the basis of negligence the onus is on the party asserting the affirmative to prove it on a balance of probabilities.

- [28] Let me at the outset state that on the close of evidence, I directed the parties to provide me with written closing arguments. Mr. Adolph Chambers has not provided any submission to assist me in my analysis of the evidence. I have received closing submissions on behalf of the Pascals.
- [29] I have reviewed the evidence and I am more persuaded by the Pascals' evidence than that of Mr. Chambers. I am of the view that the parties entered into the agreement with the clear understanding that Mr. Chambers would lay the tiles in the property as part of the job he was contracted for by the Pascals. The laying of the tiles was a part of the agreement and it is for this reason he provided the Pascals with the estimate for them to purchase the tiles. While it is clear that some adjustments to the plans were made at the Pascals' request, I have no doubt that when the parties entered into the written agreement, the Pascals told Mr. Chambers that the plans provided did not reflect the exact building they required and Mr. Chambers agreed to having changes effected to the plan.
- [30] It seems clear to me that some changes were made along the way but I am not persuaded by Mr. Chambers that they were major as he would have me believe. This is supported by the evidence of Mr. Solomon Sutherland.
- [31] I found Mrs. Pascal's evidence very helpful. She was an honest and forthright lady who provided the court with much of the details in relation to dates etc. She like her husband proved to be very credible witnesses. I also believe the Pascals when they say that as part of the original agreement, Mr. Chambers was supposed to have constructed two water tanks. However he persuaded them to build one and to place it a little under the building.
- [32] I cannot say that for the most part, that I believe Mr. Chambers whose evidence left much for me to desire. It is passing strange that he admitted to not having made any claims to the Pascals for the \$20,000 of the extra work before the date

of their letter to him namely 20th April 2001. The question to be asked is why didn't he immediately seek to recover this sum.

[33] I do not believe Mr. Chambers when he said that he was not paid for the extra work he did on the trailer house. I felt that he has introduced this sum for which he received payment from the Chambers out of pique. He simply did not include it originally and I will not permit him to do so now I am convinced that he was paid the extra \$5,000 by the Pascals for that work.

[34] Mr. Chambers' main witness Mr. Sutherland's evidence was unhelpful since he conceded that he was not present when the agreement between the parties was made, neither did he ever see the plan. He was however sure that there were "slight adjustments." It is very plausible that the slight adjustments could not result in such significant increases in labour cost as Mr. Chambers is claiming. If at all they may be consistent with the saving of labour costs as argued on behalf of the Pascals. Mr. Pascal stated that Chambers visited the Pascals to ask for the \$6,000 which they had withheld and Mr. Pascal refused to pay him until he finished the work. Mr. Chambers then told them that they will hear from him. This is consistent with the inference and my findings of fact that they did not owe Mr. Chambers \$20,000 as he would have me believe.

[35] The Pascals produced receipts to show they incurred various costs, in remedying Mr. Chamber's unfinished work and I have no reason to disbelieve them. However, they have not itemized their losses neither have they addressed me on the quantum of damages I should award on the basis of Mr. Chambers negligence.

[36] In the circumstances, I find that Mr. Chambers has failed to discharge the burden of proof which rests on him to show on a balance of probabilities that the Pascals owe him the moneys he claims. Meanwhile the Pascals have satisfied me on a

balance of probabilities that there were some aspects of Mr. Chambers' work which were not properly completed or completed at all.

[37] I therefore find that Mr. Chambers was negligent in the performance of his duties as a Contractor. I will dismiss Mr. Adolph Chambers claim against the Pascals and enter judgment for them against him on their counterclaim. It is usual to award a successful party damages. However, in the interest of justice I must take into account that the Pascals have withheld the sum of \$6,000 from the contract price from Mr. Chambers. In the exercise of my discretion, I will award them nominal damages since they have failed to particularize the loss they have suffered.

[38] There will be judgment on the counterclaim in favour of Mr. Gus Pascal and Mrs. Luella Pascal against Mr. Adolph Chambers in the sum of \$3,000 together with costs in the sum of \$4,000 as agreed by the parties. Mr. Adolph Chambers' claim against Mr. Gus Pascal and Ms. Luenda Pascal is hereby dismissed.

Louise Esther Blenman
High Court Judge