

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SUIT NO.: 1061 of 1996

BETWEEN

CHARLES SAYERS
SHERRY SAYERS

Plaintiffs

and

WILLIAM FRANCOIS
CLARA FRANCOIS

Defendants

Appearances

Mr. W. Hinkson for the Plaintiffs

Mr. K. Monplaisir, Q.C. for the Defendants

2001: September 25, 27
October 4

JUDGMENT

[1] Saunders J: The parties to this matter are two married couples. Some time in 1994, the first plaintiff learned that the defendants had for sale a concrete dwelling house situate at Corinth, Gros Islet. The first plaintiff went to see the house. He had a good look in and around it. He subsequently carried his wife, the second plaintiff, and other relatives, to look at the home. The plaintiffs were satisfied with what they saw. They agreed to purchase the house. On the 10th August, 1994 they executed a deed of sale with the defendants for the same. The agreed purchase price was EC\$205,000.00.

[2] Before the sale was effected, a Mr. Desmond Sealey, on behalf of the plaintiffs' mortgagees, carried out a professional inspection of the premises. Mr. Sealey is a Valuer and Quantity Surveyor. His written reports are before me but he was not called as a witness and hence not cross-examined at the trial. Mr. Sealey's first report is dated 11th

May, 1994. In that report he described the condition of the building as “well maintained”. He concluded that its design was “satisfactory” and he valued it at \$201,000.00.

- [3] Shortly after purchasing their home the plaintiffs began noticing hairline cracks along the walls. As time progressed, these cracks became worse. The concrete beams were affected. The first plaintiff complained to the second defendant but nothing was done. When the plaintiffs noticed the deterioration, they approached their financiers in an effort to borrow further monies so as to effect necessary repairs.
- [4] Mr. Sealey was called into action to make another inspection. His second report, dated 9th August, 1996, varies markedly from his first. In it he described “structural cracks both horizontal and vertical at certain sections of the building, some more pronounced on beams and columns”. While he did not find the building to be then unsafe, he warned that the condition of the cracks was likely to worsen with time. He assessed the value of the building at \$175,000.00. In other words, the building had significantly depreciated in value over the two years since his previous inspection.
- [5] Mr. Sealey was unequivocal in placing the blame for the deteriorating condition of the house. He cited, “poor workmanship, eg. failing to sit columns on solid base. Underdesign of structural members. Use of rusting reinforcement materials”. He suggested a remedial plan of action at a cost estimated at \$25,000.00.
- [6] The following year, 1997, the building was assessed by a Mr. Neville Trim, a Chartered Quantity Surveyor. Mr. Trim was presumably acting for the St. Lucia Mortgage Finance Company Ltd. as his Report, dated 15th July, 1997, was addressed to them. By that Report, Mr. Trim valued the building at \$172,000.00 and placed the “cost of essential repairs” at \$20,000.00.
- [7] The plaintiffs were unable to make any repairs to their home, essential or otherwise. They say, and I have no reason to disbelieve them, that they were already stretched to the limit financially. They could not afford the consequential increase in their mortgage repayments

that effecting repairs would have entailed. The conditions at their home have since worsened. They now claim that the structure is “swaying”. They have instituted these proceedings against the defendants for damages.

[8] By way of defence, the defendants denied that the building exhibited the cracks and defects alleged. However, save for the allegation of swaying, the defendants can be taken to have abandoned that denial. The evidence, even from their own expert, pointed conclusively towards a substantiation of the allegations of serious defects in the structure and the causes of those defects.

[9] The defendants also alleged that they ought not to be held liable because the plaintiffs had fully inspected the property before they bought the same. Finally, the defendants seek to shift the blame for the defects onto their builder whom they state was an independent contractor.

[10] I cannot accept any of these defences. In the first case, the defects in question here are of a latent variety. The plaintiffs could not have known of them before the defects had manifested themselves. Section 1434 of the Civil Code, Chapter 242 of the Laws of Saint Lucia clearly fixes the defendants with liability in these circumstances. The section states:

“The seller is responsible for latent defects even when they were not known to him unless otherwise stipulated”.

There can be no suggestion that in the contractual relationship between these two parties there was any stipulation releasing the defendants from such liability.

[11] Section 1432 of the Civil Code emphasises the warranty against latent defects given to the buyer by the seller and gives examples of various bases upon which the warranty may be invoked. That section states:

“The seller is bound to warrant the buyer against such latent defects in the thing sold, and its accessories, as render it unfit for the use for which it was intended; or so diminish its usefulness that the buyer would not have bought it, or would not have given so large a price, if he had known them”.

It seems to me that the last part of this section is perfectly applicable to these proceedings.

- [12] As to the allegation that it is their builder and not they who should be held liable, the defendants gave evidence that the house was built by one Tony Wilson and that the plans were drawn by a gentleman working in the Planning Department. I was not entirely surprised that the defendants were unable to recall the name of the latter individual.
- [13] This court was not at all impressed with the testimony and position of the defendants on this aspect of their case. On the pleadings, the defendants admitted that the house was built by them. The second defendant in her witness statement states, "We built this house in 1989..." Neither the defendants' pleadings nor their witness statements makes reference to an independent contractor. When pressed on the matter of the building of the house, the answers given by the second defendant were not only sketchy and unconvincing but also supported the notion that the defendants supervised the construction themselves.
- [14] In my judgment the defendants are responsible for the latent defects in the house. They employed unprofessional builders and draughtsmen. They used or acquiesced in the use of sub-standard reinforcement materials. Their level of supervision of the construction was poor. At the end of the day, they secured for themselves an overly generous profit by passing off to the unsuspecting plaintiffs a structure that depreciated in value with each passing day. I don't for a minute believe that the plaintiffs would have paid so large a price (higher than the apparent market value according to Mr. Sealey's estimate) if they had known the true condition of this house.
- [15] I do not find it productive to engage the experts who testified at the trial on the issue of whether or not the building in its current form is "swaying". As stated earlier, these gentlemen both agree on the basic nature of the problem and on the fact that remedial works can right the situation.

[16] There are several angles from which I can approach an assessment of the damages I should award the plaintiffs. Counsel have in their speeches stressed the cost of the remedial works. Several estimates have been put into evidence. They range from \$12,678.75, suggested by the defendants' expert, to \$49,556.43, suggested by the plaintiffs' expert. While not disregarding the evidence as to the cost of remedial work on the building, I would prefer to address the matter from the standpoint of section 1436 of the Civil Code.

[17] Section 1436 states:

"The buyer has the option of returning the thing and recovering the price, or of keeping the thing and recovering a part of the price according to an estimation of its value".

I believe that the just thing to do would be to order the defendants to repay to the plaintiffs a part of the purchase price. In determining the amount they should repay I take into account the various valuations of the house in and subsequent to 1994. I also have regard to the fact that the building is steadily depreciating in value while the defendants must have been able in the mean time to profit from the large price that was paid to them. In 1996 Mr. Sealey found that the building was worth some \$30,000.00 less than the sum that was paid for it. The evidence leads me to conclude that the difference now is even greater.

[18] In all the circumstances I would enter judgment for the plaintiffs in the sum of \$35,000.00 with costs in the sum of \$7,000.00. It is so ordered.

Adrian D. Saunders
High Court Judge