

IN THE SUPREME COURT OF BELIZE, A.D. 2009

CLAIM NO. 433 of 2007

CARLOS RAMIREZ

CLAIMANT

BETWEEN AND

MELVIN TYLER

DEFENDANT

Hearings

2009

24th April

28th May

5th June

25th June

29th June

Mr. Kareem Musa for the Claimant

Ms. Antoinette Moore for the defendant

LEGALL J.

JUDGMENT

By a written and signed agreement dated 28th April 2006, the defendant agreed that the claimant would construct and build a concrete house for the defendant at Manatee Bay Inn, Stann Creek District, Belize. The agreement provides that the size of the house was to be 1440 square feet

and the defendant agreed to pay the claimant \$253,200 Belize dollars or \$126,600.00 U.S, representing the cost to construct the house, including providing materials. According to the agreement, the house was to be completed in eight months from the date of the agreement.

The dimensions and structure of the concrete house were to be in accordance with the agreement and instructions to be given to the claimant by the defendant. The defendant lived, at the time of the agreement, in California U.S.A., and the parties had an arrangement, though this was not included in the written agreement, that the defendant would remit to the claimant monthly sums of money for purposes of constructing the house. The defendant would periodically leave the United States and visit the site of the construction of the house, to observe its progress and to give instructions to the claimant with respect to any changes from the original specifications of the house, that he would like implemented. On some occasions, the defendant and the claimant would communicate by telephone concerning these changes, and the additional costs that would be incurred as a consequence of the changes to the structure of the house.

The house was eventually completed; but there is disagreement as to the date of completion: the claimant's date is April 2007 and the defendant's date is 6th June, 2007. What is not in dispute, however, is that the defendant took up residence in the house in June 2007. The claimant explained that the house was completed in April 2007; but the defendant did not take up residence on the completion date, because he did not, at that time, according to the claimant, purchase household appliances.

As mentioned above, the agreement specified the construction cost of the house to be of \$253,200 Belize dollars. Both parties agreed that while the construction of the house was in progress, the defendant requested changes to the original specifications of the house, and there was also agreement to pay for some of the changes which would have resulted in an additional cost to the cost stated in the agreement. The major dispute between the parties, however, is the number of changes and the cost of most of them. The claimant's position is that the defendant agreed to fifteen changes to the original specifications of the house, and he also agreed to the resulting additional cost of construction of the house to the value of \$100,676. The fifteen changes are stated in paragraph 9 of the claimant's witness statement as follows:

- | | | | |
|-----|--|---|--------------------|
| (a) | Verandah extension | - | \$2,500.00 |
| (b) | Request that height of house be extended | - | \$3,000.00 |
| (c) | Running electrical downstairs | - | \$4,300.00 |
| (d) | Request for a tile design on verandah | - | \$5,500.00 |
| (e) | Lip around the house | - | \$4,000.00 |
| (f) | Request to make stairway bigger | - | \$1,800.00 |
| (g) | Request for walls to be higher | - | \$7,000.00 |
| (h) | Request for Mahogany frame with mirror | - | \$1,000.00 |
| (i) | Installation of security lights at each corner | - | \$3,600.00 |
| (j) | Change from regular zinc roof to industrial | - | \$7,000.00 |
| (k) | Gutters on roof | - | \$4,800.00 |
| (l) | T one 11 plywood for roof | - | \$6,800.00 |
| (m) | Request for stairway to be spiral not straight | - | \$2,300.00 |
| (n) | Construction of garage | - | \$29,576.00 |
| (o) | Change from chain link fence to wooden planks- | - | <u>\$17,500.00</u> |

Grand Total

- \$100,676.00

When this amount of \$100,676 is added to the original cost as stated in the agreement – \$253,200 – the total cost of constructing the house becomes \$353,876. The claimant stated that he received \$327,076.48 leaving a balance of \$26,799.52. The claim in this matter is for the said balance, plus interest and costs.

The defendant, on the other hand, admitted that he agreed to changes to the original specifications of the house, but denied the number and cost of the changes claimed by the claimant. The changes the defendant said in evidence he agreed to were:

- (a) fence of the building.
- (b) construction of a storage room and concrete flooring slabs for the parking of a car.
- (c) removal of observation deck from one part of the house to another part.
- (d) adjustment to the roof and walls of the house.
- (e) requested tile design on verandah and extension of verandah.
- (f) increase in the height of the house, and
- (g) electrical works downstairs of the building.

The defendant in his evidence did not state the cost of the above changes, except the change in relation to the roof which he said cost about \$2,300.

Though the defendant in his evidence does not give a monetary cost of all the changes he agreed to, he states that he paid the claimant \$327,076.48 for the construction of the house. He said he paid \$74,076.00 over and above the amount stated in the agreement dated 28th April, 2006. This amount is not really accurate when the contract cost price is subtracted from the amount paid. The alleged overpayment should be \$73,876.48. The claimant agreed he received the amount of \$327,076.48 from the defendant. But the defendant states that the alleged excess amount according to him, of \$74,076.00, was paid to the claimant because of a computer error, not because of any agreed changes to the structure of the house. In other words, the defendant is saying that he, by a computer error, overpaid to the claimant \$74,076.00 for the construction of the house. He has counterclaimed for this alleged excess amount against the claimant.

In relation to the computer error, the defendant did not say the circumstances that caused it, or whether he told the claimant about it. I have seen the defendant give his evidence. I have observed his demeanour. I do not believe his evidence of overpayment because of a computer error. Moreover, the defendant admitted and agreed to changes in the structure of the house, which were not included in the original contract to build the house; but yet he is relying on the contract amount, even though the changes involved additional work by the claimant and additional expenditure. I do not believe it was overpayment because of computer error. I believe the amount of \$73,876.48 allegedly overpaid, was payment by the defendant for the changes to the original structural specifications of the house.

But a decision has to be made as to the extent of the changes agreed by the parties to the original structural specifications of the house. As mentioned above, the claimant is claiming fifteen changes and the cost of the changes. Whereas the defendant is saying he did not agree to all those changes nor the cost attached to all of them. It is a question of fact. It is a question of whom to believe. The burden is on the claimant to prove the case on a balance of probability.

The defendant claimed in his witness statement and in his evidence that the work on the house was not done, in some instances, to the standard he required; and he had to pay other workers to correct the claimant's work. He said he had to pay \$20,000 for materials and doing over work not properly done by the claimant. He said he spent a further \$4,700 to provide insulation for the roof of the house as the claimant failed to install the insulation. He further said that he had to pay \$1,000 for a kitchen counter that the claimant failed to supply. He also claimed that the re-wiring of the house was not well done.

He called a witness Victor Aguirre who testified of poor painting by the claimant. This witness also testified to certain repairs he made to the house; but did not give the cost of the repairs. The claimant did say he painted the house and this is accepted by the defendant. But was it painted to the required quality? The claimant did not give evidence as to the quality of the painting. The witness for the defence said it was not to the required standard and that he repainted the house. The claimant testified that the defendant did not request that the roof be insulated. He said the house did not need insulation because it was not air-conditioned. The claimant also

testified that the house did not need re-wiring, nor was there any agreement for the construction of a kitchen island counter. I believe the evidence of the claimant. I do not believe the evidence of the defendant about the \$20,000 expenditure. The defendant's credibility in my view was seriously shaken in this case when he testified to over payment of \$74,076.00 due to computer error.

There are certain admissions by the claimant which must be considered. The claimant admitted in cross-examination that he listed the cost of item (c) in paragraph 9 of his witness statement as \$4,300, but he said the defendant agreed the item would cost \$2,400, – a difference of \$1,900. The claimant also admitted that he made mistakes in relation to the screen for two doors and he said the cost of correcting the mistake was about \$60.00.

I accept the evidence of Victor Aguirre that he painted the outside of the house. I accept the cost of the painting as \$3,500. The amount of \$1,900 in relation to the said item (c) above; the \$60 for the screens for the doors and the \$3,500 as the cost of painting the outside of the house, amount to a total of \$5,460. Having seen the witnesses gave their evidence and observed their demeanour and having considered all the evidence, I believe the evidence of the claimant that he constructed the house according to the agreement and implemented the changes mentioned in paragraph 9 of his witness statement referred to above with the agreement of the defendant. I believe that the defendant agreed to the cost of the changes, including the \$2,400 for item (c) above. I therefore rule that the amount of \$5,460 is to be deducted from the amount claimed by the claimant. The claim is for

\$26,799.52. From this sum, the amount of \$5,460 is deducted leaving a balance of \$21,339.52. As I said above, I do not believe the evidence of the defendant that he overpaid the claimant \$74,076.00 because of a computer error. I therefore make the following orders.

1. Judgment for the Claimant against the Defendant in the sum of \$21,339.52.
2. Interest on \$21,339.52 in the amount of 6% per annum from 25th September, 2007 to date of judgment.
3. Cost to the claimant in the sum of \$3,000.00
4. The counterclaim in this matter is dismissed.

OSWELL LEGALL
JUDGE
29th June, 2009

