

IN THE SUPREME COURT OF BELIZE, A.D. 2010

CLAIM NO. 373 of 2006

**WINSOM WINSOM
MARLENE SULKER**

CLAIMANTS

AND

WILLIAM BUTCHER

DEFENDANT

Hearings

2010

6th May

28th May

18th June

25th June

Mrs. Tricia Pitts-Anderson for the Claimants.

Mr. Oswald Twist for the Defendant.

LEGALL J.

JUDGMENT

1. In the beautiful and green Cayo District in the West of Belize is the village of Santa Elena. There is a road covered with pebbles, stone and sand which runs in a slight elevation above Santa Elena to the

sparsely populated village of Custo Rey in Monkey Falls. Nestled about a mile along the road, among large trees is a piece of land, with a house thereon, situated at the edge, but at a lower level, of the road. The land and the house are owned by the claimants. Prior to building the house, the land was vacant and the claimants intended to construct a house thereon.

2. The defendant carried on the business of a hotel and a restaurant called the Aguada Hotel situate at Santa Elena. The No. 1 claimant knew the defendant by her visits to the restaurant to partake in the delicacies on sale. In January 2005, the said claimant met the defendant at the restaurant and expressed to him her need to have a house built on the then empty land. The defendant said he was a builder contractor and had built, according to him, the said Aguada Hotel. After discussing the construction of the house with the defendant, the parties orally agreed that the defendant would construct or build the house.
3. A first plan of the intended house was presented to the defendant. This plan was not tendered in evidence. There was a second plan of the house which was tendered in evidence as Exhibit W.B. 1, but this is more of a rough drawing, rather than a plan; and the defendant has rightly pointed out that one may be able to build a house on the basis of this second plan or drawing only that it would take “much imagination.” There was a third plan of the house from which the defendant said he constructed the building, but this third plan was misplaced and not tendered in evidence. In the end there is no proper

documentary evidence of the dimensions, shape and structure of the house agreed by the parties to built.

4. The parties agreed though that the cost to build the house was \$75,000.00 BZD and they agreed that the claimants would pay the costs in four installments of \$18,750.00 each at several stages of the construction as follows: (1) foundation floors and walls; (2), rafters and roof; (3), rafters, electrical, plumbing, doors and windows; and (4), internal finish, completing two bedrooms, two bathrooms, painting.

5. The claimants paid the first installment on 24th March, 2005 and the three other installments on the 19th April, 2005, 11th May, 2005; 8th June, 2005 thereby paying the defendant the full agreed price of \$75,000.00. There is no evidence as to the date the defendant began construction of the house, but it is unlikely that he began prior to the date of the first installment. It was orally agreed by the claimants and the defendant that the house would be completed by July 2005. The defendant did not complete the house on the date he agreed to. Up to August 2005, the house was not completed. On 5th August, 2005, the claimants and defendant signed a document entitled “Contract.” The document signed by both parties states:

“CONTRACT

This is a contract with Mr. Bill Butcher,
General Contractor from Santa Elena,
Winsom Winsom, and Marlene Sulker of
Cristo Rey Village, Cayo.

Mr. Bill Butcher agrees house in Cristo Rey that is “turn key” ready at the price of \$75,000.00 BZE. Inclusive

The grounds around the house should be leveled to allow easy entry as well as making it unlikely for erosion to damage the walls or foundation of the house.

Mr. Bill Butcher agrees to repair any structural, electrical, woodworking or plumbing problems that may arise from construction workmanship up to the end of August 2006.

Bill Butcher
Winsom Winsom
Marlene Sulker
Dated 5 August, 2005”

6. By February 2006 the house was not completed, but was such that the claimants could move in, and they did so. While the claimants were occupying the house, the defendant continued working on the house, by working on the plumbing, the soak away for the septic tank and drains. There is no evidence of the date the defendant completed the construction of the house. Having moved in the house the claimant states that she found problems. She said that when rain fell water pooled around the foundation of the building; that there were several cracks in the interior and exterior walls of the house, some of these cracks went right through some of the walls. There were, according to the claimant, cracks in the tiles and concrete floor of the house. Some of the cracks were widening. Moreover, the claimant states that the defendant did not, as agreed, build a sunken tub in the house, a sunken court yard with steps down and a “turn key” ready house.

7. The claimants, because of the problems of construction, brought a claim, as amended, against the defendant for damages for breach of contract, special damages in the amount of \$66,400.00; interest, costs and other reliefs. The particulars of the special damages, as stated in the amended statement of claim, are stated as follows:

PARTICULARS

Estimated Cost of repairing defects of Faulty Construction	\$62,500.00
Cost of Installation of Sunken bathtub which The Defendant failed to install	\$ 1,800.00
Rental Cost incurred during the period Of delayed completion from July 2005 to February 2006	<u>\$ 2,100.00</u>
TOTAL	\$66,400.00

8. The claim for \$2,100.00 was for rental of alternative accommodation of \$300.00 per month for 7 months to February 2006 which the claimants said they paid because the defendant did not complete the house as agreed on July 2005. In order to prove the defects, the written opinions of two persons, namely Noel Harvey, Housing and Planning Officer, and Robert Allen, were disclosed; but these persons were not called to give evidence nor were they deemed experts by the court. Another witness, Dwayne Thurton, gave evidence and was deemed an expert by the court and prepared a report which was tendered in evidence. He gave evidence that he inspected the house

on two occasions – on 15th March, 2009 and 10th May, 2009. He gave, in his report, the defects he found and the cost of repairing the defects as follows:

COST TO REPAIR DEFECTS

The following includes estimated costs to repair the listed defects as observed by the author and are based on the assumption that works would be done by a small contractor similar to the original builder.

1. Repair floor cracks	\$ 400.00
2. Remove and replace damaged floor tiles	\$ 200.00
3. Complete repairs to wall cracks and repainting	\$2,200.00
4. Re-routing discharge lines from washing machine	\$ 700.00
5. Repairs to ceiling, fascia and door lining	<u>\$ 800.00</u>
Total Estimated Cost of Repairs	<u>\$4,300.00</u>

9. The report is dated 9th July, 2009. He testified that the total estimated cost of repairs would be higher at the date he testified 25th May, 2010 than at the date of the Report; but how much higher was not given in evidence.

10. The defendant testified that due to bad weather and scarcity of materials, he could not meet the agreed date for completion of the

- house. He said the original plan had no provision for a sunken court yard which the claimant alleged was not built. He said that the claimant got a well built house and that the claimant offered him an additional \$3,000.00 as gratitude for the good work he did. The claimant disputed this, and said that because the defendant was continuously complaining about costs, she gave him \$3,000.00 to construct or repair a roof over a building in the yard.
11. In relation to the claimant's allegation that he did not build the sunken tub, he said that he was told to build the tub after he had already cast the concrete floor in the bathroom. He said he tried to make the change, but before he could do so the claimant hired someone else to build it. The claimant said she paid \$1,800.00 to a contractor to fix the tub which she said was not properly done by the defendant.
 12. The court visited the scene on 15th May, 2010 and saw the house. The claimant pointed out cracks in the walls and flooring. The claimants at present reside in the house which seems a sturdy concrete structure. The expert witness has testified that the sum of \$75,000.00 is much less than what the building is valued. The expert has testified that the cracks on the house are not so serious as to affect the integrity of the building as a whole, and the cracks could be repaired to address the problem. He also testified that cracks could appear from settlement of a building, that is to say, the building having been built goes down in the earth a little – settle – and that all buildings settle at some time.

13. He estimated in his report the replacement cost of the building as at 2006 was \$99,510.00. But he, as shown above, testified that \$75,000.00 is much less than the value of the building and that his estimate of \$99,510.00 is at the bottom of the value spectrum.
14. With respect to the time at which a building of the type, he inspected, would take to be built, the expert said that “a building of the type constructed by a relatively small builder can be expected to be executed within a six to seven month period. It is apparent, however, that the low bid price may have influenced the builder’s cash flow and therefore delivery time.”
15. I saw the expert give his evidence and I am impressed and believe his evidence. I accept his evidence as to the defects found by him and the cost of repairing the defects which he estimated at \$4,300.00. I also accept his evidence as to the period of time to build the type of house that was built. I accept that the defendant agreed to build the tub, and I believe the claimant that she spent \$1,800.00 to rectify problems with the sunken tub which was not properly built by the defendant. I hold that there was an agreement that the house was to be completed by July 2005; and the defendant breached that agreement. I accept the evidence of the claimant that as a result of the breach, she suffered special damage in the sum of \$2,100.00 as rent she paid for other accommodation for the period July 2005 to February 2006.
16. I grant the claimant damages in the amount of \$4,300.00 for breach of contract. Special damages of \$2,100.00 for rental for the period July

2005 to February 2006, and \$1,800.00 with respect to the sunken tub in the bathroom making a total of \$8,200.00.

17. I therefore make the following orders:

- (1). The defendant shall pay to the claimants the sum of \$8,200.00 as general and special damages for breach of contract.
- (2). The defendant shall pay interest to the claimants on the said sum of \$8,200.00 at the rate of 6% per annum commencing from 28th May, 2007 until the sum is fully paid.
- (3). The defendant shall pay costs to the claimants, to be agreed or taxed.

Oswell Legall
JUDGE OF THE SUPREME COURT
25th June, 2010

