

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2008 – 04486

Between

RENISON MOORE

ZILPAH MOORE

Claimants

And

ERROL ANTOINE

Defendant

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mrs Deborah Moore-Miggins for the Claimants

Ms Samantha Lawson for the Defendant

Date: 26 September 2016

Reasons (Edited Oral Judgment)

1. This case concerns the construction of a house for the claimants. The claimants were married. They have separated. The second defendant withdrew from the claim. At the trial, therefore, the claim concerned only the first claimant (claimant) and the defendant.

2. The defendant is a building contractor. It is not disputed that in February 2008 the defendant agreed to do certain phases of the construction of the house for the claimant. This was the foundation and ground floor; blocking up of four walls; and framing up of the roof. The labour cost agreed was \$55,000.00. It is not disputed that the defendant was paid \$51,000.00.
3. The claimant says the defendant did not construct the foundation and retaining walls with due care, skill and diligence or in a workmanlike manner.
4. In early June 2008 the claimant noticed the walls collapsing. The claimant asked for the return of the money paid to the defendant who has refused.
5. At issue is, what was the cause of the walls to collapse? Was it the lack of care, lack of proper process in construction and the lack of reinforcement of the walls as claimed by the claimant? Or was it that the claimant took it upon himself to have the person delivering the rotten rock for the foundation of the house to pack it in instead of the defendant, which then caused the wall to collapse?
6. The claimant replaced the defendant as the contractor with one Ash John Alexander. He gave evidence that he visited the job site about 12 June 2008. He saw two sides of wall collapsing. He was requested to repair and demolish the walls and to rebuild them.
7. He first removed earth and did demolition. He then reconstructed the walls and foundation. He removed the earth fill; removed the existing framework; set aside the reinforced beams and slabs for re-use; and demolished the existing block wall in the foundation where the failure occurred.
8. He then had to return the fill material and compact it; supply and lay 6' block wall to foundation with sand and cement mortar and he filled the cores with concrete and steel; he drilled into concrete slabs, beams and columns and set the bars and locked them. He says he was paid \$67,125.00 for the work he did.

9. He gave the following evidence in cross examination:

“Difference between cracked and collapsed wall. Some part of wall was on the ground. Part had split way. About 9 feet tall. About 10% of wall totally separated. I did not see any evidence of rectification work being done. I saw lack of steel work into the cores of the brick. Collapsing wall. I did not take photos. I commenced work around month end. Had to demolish and replace.”

10. This was important evidence from the claimant’s perspective. The claimant also put in photographs. These clearly showed the wall collapsing and showed breaks in the lining up of the foundation blocks. Whatever the cause, it is clear that what was done had to be replaced.

11. The real question is the cause. The claimant’s evidence is lack of proper work by the defendant. The defendant’s explanation is that the claimant took it upon himself to do the filling with the rotten rock which caused the walls to break.

12. The claimant also called a quantity surveyor, Richard Lorde. His evidence in his report which he adopted was that the retaining walls on the south and west elevation had cracked and toppled over. On investigation, the walls had no concrete filling in the cores and no or no adequate reinforcement through its full height. There were no signs of compaction of the earth fill. When a rod reinforcement bar was put in the cores of the existing block walls and measured, it was found that there was no concrete within the cores except partly along the low north wall and east retaining walls, which incidentally did not collapse. He recommended demolition works and rebuilding.

13. The claimant called a police officer Wayne Charles who served the defendant with the court documents. He gave evidence that when he went to see the defendant to give him the documents, he asked the defendant how a big contractor like him could build a retaining wall and allow it to collapse for lack of steel and concrete. The defendant replied that he was not the one who did it and he had to sub-contract the work because he had so many jobs at the time. He asked the defendant why he didn’t refuse the job outright and the defendant said nothing.

14. The defendant's response in his evidence is that the scope of works changed; the claimant did not provide materials on time for site preparation and the decking; and failed to provide the materials such as cement, aggregate and rotten rock to complete the retaining wall and the foundation. He said the claimant was out of the jurisdiction at some point and did not provide materials during this time. He said he ceased work on 5 May 2008 because of this.
15. He then said that about 10 May 2008 the claimant came back to Tobago and contacted him and told him that another contractor had advised him to get 12 loads of rotten rock which he got and he poured this into the unfinished foundation without completion of the retaining walls thereby causing the retaining walls to crack.
16. The defendant said he was absent during the pouring of the rotten rock into the unfinished foundation and the walls were incomplete in that there was no compact cement within the walls.
17. The claimant then asked him to rectify the cracking wall which had started to collapse and he agreed to do it for \$48,000.00. He began rectification work from 7 June 2008 and had 75% completed it when the claimant served him with a letter to cease work on 11 June 2008. He said the wall collapsed because the claimant took it upon himself to pour and "ram" the rotten rock when he was not there. He said materials were not provided.
18. In support of his case he called two workers who worked with him. Their versions were in essentially similar terms to the defendant's version. They were cross-examined.
19. Sheldon Brebnor was the foreman and Leon Cordner was called also. It was put to Brebnor that there was delivery of cement and blocks in March and April. The receipts for these are in evidence. He said it was not enough. He noticed the filling from the highway when he happened to pass by because he was not on site when it happened.
20. Cordner gave similar evidence. The question was which version to believe on a balance of probabilities.

21. In the claimant's favour was the independent evidence of the quantity surveyor who examined the site and that of the new builder Mr Alexander who told us of his observations and what he had to do. I found his evidence to be clear and impressive.
22. I also find it strange that the claimant would hire the defendant to build the foundation at a cost of \$55,000.; pay him \$51,000.00 of this sum and then go out and get someone else to pour in the rotten rock at a time when the wall was not completed. These acts would have been part of the job required to be performed by the defendant. Why would the claimant pay the defendant for this and then get someone else to do it when the defendant was not even around stretches the bounds of incredulity.
23. I also found the police officer Mr Charles to be a convincing witness in recalling the admission made by the defendant that he was not on site.
24. The defendant and his witnesses all have an interest to serve. Mr Brebnor accepted that it would not have been the claimant's responsibility to spread out the materials. It would have been the claimant's responsibility to provide them but the defendant's workers would have to use the materials provided.
25. As I said, I found both Mr Lorde and Alexander to be helpful witnesses in terms of recording what they saw. The photographs also show something was clearly wrong with how the walls were constructed.
26. Based on the cross examination of the claimant, I do not find that he was tardy in the provision of materials. He has given evidence of materials being provided.
27. It also seems unlikely that he called on the defendant to do rectification works. He clearly was dissatisfied with the work done. Mr Alexander also saw no signs of rectification works being done.
28. The claimant was also categorical in stating that it was the defendant and his workmen who did the work.

29. Based on my acceptance of the evidence relating to who did the work, I find on a balance of probabilities that the defendant breached the agreement in failing to undertake work in a workmanlike manner which resulted in loss to the claimant. There is evidence also of lack of proper supervision in the execution of the works.
30. What follows is the proper measure of damages. The defendant was paid \$51,000. Mr Alexander says he was paid \$67,125.00 to do the work he did.
31. The evidence in my view was not sufficiently careful in terms of what the claimant had to expend because of the work done by the defendant. In his witness statement he claims \$93,143.60 as follows: \$6,000.00 to remove earth fill; \$8,000.00 to remove steel works, decking and foundation blocks; \$25,968.60 for materials; \$53,175.00 as labour cost.
32. For example, the receipts for materials did not add up to \$25,968.60. Some of the receipts were for early June before Mr Alexander was hired. Mr Alexander did not provide his paysheets from the beginning of July 2008 when the job was started on 30 June.
33. We also do not know, in any event, if Mr Alexander did only and exactly the work the defendant was required to do.
34. It may well be that the claimant expended the sums to Mr Alexander including for the removal of the fill and its replacement. There could also be overlap in respect of the materials as no doubt some of them would have been reused.
35. In the circumstances the better measure of damages would be the sum which is ascertainable and that is what was paid to the defendant. The defendant did not live up to his contractual obligation. The fair measure of damages proved in my view is what was paid to him. What was paid to the quantity surveyor was reasonable and has been proved.
36. There is judgment for the claimant against the defendant. The defendant is to pay the claimant the sum of \$53,000.00. Interest is to run at 3% per annum from the date of the

claim form, 13 November 2008 to present. Costs are awarded on the prescribed scale.
The defendant's counterclaim is dismissed.

Ronnie Boodoosingh

Judge