

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-02414

BETWEEN

SUZANNE SHAFFER

Claimant

AND

ALL CLEAR CO. LIMITED

Defendant

Before the Honourable Mr. Justice V. Kokaram

Date of Delivery: Wednesday 7th February 2018

Appearances:

Mr. Neal Bisnath instructed by Ms. Lydia Mendonca for the Claimant

Ms. Sushma Gopeesingh for the Defendant

JUDGMENT

1. This is not a complicated case in law. Its complications really arise from human relationships. Ms. Suzanne Shaffer, the Claimant, and Mr. Anthony Salandy, a director of the Defendant, All Clear Co. Limited, were once close friends since they were teenagers. They now accuse each other of not telling the truth about their contractual relationship in a renovation project for Ms. Shaffer's townhouse. It is unfortunate that the parties were unable to resolve this matter amicably either through negotiations or mediation. While they were giving their testimonies in the witness box, I gathered from them a clear sense of frustration of their respective plights. Ms. Shaffer's townhouse since 2012 is in disrepair and uninhabitable and she is now out of pocket for the money needed to complete her renovation. Mr. Salandy having executed some of the renovation works for Ms. Shaffer is claiming to be out of pocket for his own personal funds he invested into the project. In deference to these two parties, I have simplified the

language of this judgment to make it more relevant to them and I address it directly to them both.

2. Ms. Shaffer and Mr. Salandy your claims are primarily both based on a breach of contract. Ms. Shaffer your claim also includes allegations of negligence but your attorneys have focused my attention primarily on your claim for damages for breach of contract. Of course Mr. Salandy you are not the Defendant but rather your company All Clear Co. Limited (All Clear). You are the director of both All Clear and Jalandy Designs Inc (Jalandy Designs) and you contend that the contract you made with Ms. Shaffer to renovate her home was not made on behalf of All Clear but Jalandy Designs or yourself. I will come to that in a moment. But for whatever hat you were wearing, both you and Ms. Shaffer agreed that her home would be renovated within a budget of \$300,000.00. That agreement was made orally around March 2012. Mr. Salandy, insofar as you claim that you submitted a contract to Ms. Shaffer under a Jalandy Designs' letterhead, that document was neither signed by you nor Ms. Shaffer. In any event the projected cost of the job stated in that letter was within the budget of \$300,000.00. Unusually, the letter is dated 29th March 2012 yet in your letter you state "*As per our mutual agreement we COMMENCED work on April 3rd 2012 with the installation of the waste bin and preliminary demolition*". There are other aspects of this letter which demonstrate that if this letter was truly your contract then even Jalandy Designs did not live up to the terms of the bargain such as the regular submission of invoices to Ms. Shaffer, submission of final invoices with purchase orders and so on. This casts doubt on whether the letter was ever given to Ms. Shaffer or was the subject of any discussion or agreement by both of you. I will deal with this later on in this judgment.
3. Ms. Shaffer you contend that you both agreed to complete the job in three months. Again this was an oral agreement. Mr. Salandy, even if your version is accepted that there was no such agreement, you do not explain how long the job will take to complete. Ms. Shaffer's witness, a quantity surveyor Mr. Clint Langton, has testified that based on what he has seen in the designs/drawings given to him, such a job can take between four (4) to twelve (12) months to complete. In fairness, knowing that the homeowner will be vacating her home for the job to be completed, the length of time to complete such a job is an extremely important matter that would have been agreed at the outset.

4. After four months, by a projected cost statement dated 13th July 2012, for the first time Mr. Salandy you submitted an account to Ms. Shaffer stating \$218,758.78 was expended. By that time you would have received \$207,000.00 from Ms. Shaffer with a final direct deposit of \$90,000.00 by 26th July 2012. In fact by May 2012 some \$147,000.00 was paid to you by Ms. Shaffer and there is no receipt issued nor description of what these sums were being paid for. The 13th July 2012 account which Mr Salandy describes as projected costs, shows that the budget would by then have been exceeded. Mr. Salandy is saying he always told Ms. Shaffer that the budget would be exceeded. Ms. Shaffer denies this. She says that Mr. Salandy always knew that her budget was \$300,000.00 and whatever changes were being made was within that budget. It is at the time when she first knew that the project was going to be beyond her projected cost, Ms. Shaffer says she terminated the agreement. Mr. Salandy says, however, that the work continued until October 2012.
5. In hindsight both of you will accept that your documentation is far from satisfactory. Rather, a great degree of trust and reliance was placed on each other as friends and on Mr. Salandy as a specialist in his area to guide and manage Ms. Shaffer's project. The problem you both have in this dispute is a lack of effective communication. Ms. Shaffer did not record anything in writing when she paid deposits to Mr. Salandy to make her position clear to him. Mr. Salandy did nothing to update her in writing within the first four months of the project while it was ongoing and he was expending her funds.
6. Neither of your attorneys have referred me to any case law mainly for the reason that the legal principles involved are well known. I would not burden this judgment with references to case law unless it is helpful to you both to understand the outcome. However, your attorneys recognise and have submitted that the outcome in this case depends on the Court's assessment of the facts; that is your respective version of the events and to determine which version is correct. They have identified the following four main issues to be determined:
 - (a) Was the contract to renovate the home made between Ms. Shaffer and Mr. Salandy acting for All Clear;
 - (b) Did the parties agree to a fixed sum contract of \$300,000.00 and to renovate the townhouse within three (3) months;

(c) What is the value of the completed works executed by All Clear;

(d) Is All Clear entitled to the recovery of sums that it expended on the project for which it has not been paid?

7. Ms. Shaffer and Mr. Salandy, a contract comes into being and can be enforced in our courts when there is an acceptance of an offer, there is an intention to create legal relations, consideration and there is certainty of terms of the contract. Our courts recognise that it is often the case for business people to record even the most important agreements in a crude or even superficial manner. It is however the duty of the Court to determine the contractual relations made by the parties, without of course making the contract for them.¹ To accomplish this task in cases where contracts are made orally or partly orally and partly in writing involves the Court examining the parties' conduct and the language of any contemporaneous documents that may exist.
8. A main contention raised by Mr. Salandy is that Ms. Shaffer knew all along during the project of its escalating costs and she knew that those costs were going beyond her original budget of \$300,000.00. The law recognises communication as important in creating binding contractual relations. Contractual terms are to be brought to the attention of the contracting parties and any variations must be agreed. The parties must be "ad idem" or in other words important terms are to be effectively communicated and there must be a meeting of the minds on those terms or consent. One party cannot unilaterally notify the other party of a change in the terms of a contract unless both parties agree.² You both have argued that your contracts are oral contracts which makes the task for this Court harder to determine what were your contractual terms and whether you both agreed to vary those terms or not. Ms. Shaffer's attorney at law has simplified the dispute by asking the Court to examine what was the work agreed to be performed and the value of the work actually executed. If there is a difference, then Ms. Shaffer should have a refund of her money.
9. Ms. Shaffer and Mr. Salandy, in making my findings of fact in this case, I will ultimately be letting you both know which of your version is more credible. If I accept one person's version it may give you the impression that the other person is not telling the truth or is "a liar" and

¹ Paragraph 2-100 Chitty on Contracts 27th Edition.

² **Morris v Baron** [1918] A.C. 1.

this I understand would be disappointing to that person. However, my task of determining the truth is relative to the facts that have been put before me. I was not with you during this project nor is there a video to rewind to re-examine every action you both took. My analysis comes five years after the fact. I must examine your testimony and cross reference them with your correspondence, documents, your pleadings and your answers given in the witness box. In this way, I determine internal and external inconsistencies. The greater the inconsistencies of one version the less credible it becomes. I must also examine the plausibility of your respective versions and motivations for those versions.³ Ms. Shaffer is entitled to succeed if her version is more probable than not, the correct one.

10. For the reasons that I have set out in this judgment, I answer the questions raised in the following manner:

- First the contracting parties are Ms. Shaffer and All Clear.
- Second, there was an agreement made for the renovations to be within the budget of \$300,000.00 within a reasonable period of time in this case three (3) months. There is no clear agreement of a variation of those terms.
- Third, the value of the works executed is \$128,735.00 and Ms. Shaffer has paid to All Clear \$297,000.00 which is an overpayment of \$168,265.00.
- Finally, All Clear is not entitled to any refund as I am not satisfied with the documentary evidence submitted by All Clear to demonstrate that it is so entitled to those funds.

11. My explanation for these conclusions is now set out below.

12. I turn to the first issue of determining who are the contracting parties. Mr. Salandy' s attorney is correct to submit that the burden lies on Ms. Shaffer to prove that she contracted with All Clear. I am satisfied that she has done so from the following documentary evidence. All cheques and payments were issued or made to All Clear. There is a receipt of a direct bank deposit to All Clear's account. The detailed schedule of works to complete the job was prepared

³ **The Attorney General v Anino Garcia** CA Civ. 86/2011, **Reid v Dowling Charles and Percival Bain** Privy Council Appeal No. 36 of 1987.

by All Clear⁴. Invoices issued to Ms. Shaffer were from All Clear. The designs although prepared by Jalandy Designs is issued with the email address info@allcleartnt.com. This is the paper trail, as it were, in relation to All Clear.

13. I have eliminated Jalandy Designs as the contracting party as there are no invoices or receipts issued by Jalandy Designs nor is there any letter of demand for payment by Jalandy Designs for services rendered. The only documentary evidence which relates to Jalandy Designs is an unsigned letter dated 29th March 2012 and the project designs which were prepared by Jalandy Designs. I am not satisfied that this letter was a contemporaneous document issued to Ms. Shaffer. If it was done as Mr. Salandy suggests because “friends and business don't mix”, I am at a loss to understand why the letter was not signed by either of them. Further, if the letter was issued it suggests that Jalandy Designs was intimately involved in the construction project. But Mr. Salandy you admitted in cross examination that Jalandy Designs did not do the construction work. Further, Jalandy Designs did not submit the projected costs, All Clear did. In addition, the letter acknowledges Ms. Shaffer’s first payment of cash in the sum of \$7,800.00 and indicated that her receipt is enclosed but there is no receipt. If indeed Jalandy Designs was involved, why then were payments being made to All Clear? If All Clear is a logistics company that does not get involved in construction then who did? Was it Mr. Salandy, All Clear or Jalandy Designs? Mr. Salandy you were unable to give an unequivocal answer in cross examination to that question. Further the March 2012 letter shows Jalandy Designs being very intimately involved in the construction project and listed a host of obligations to Ms. Shaffer, none of which was fulfilled by it.

14. I have eliminated you Mr. Salandy in your personal capacity as the contracting party. This was your assertion in your pre-action protocol letter. I acknowledge Mrs. Gillian Hislop’s contention that All Clear provided logistic support. However, I am satisfied that Mr. Salandy was acting for All Clear when he dealt with Ms. Shaffer for this project. Mr. Salandy was a director and shareholder of the company. The fact that Ms. Shaffer did not deal with Mrs. Hislop, a director of All Clear does not assist in determining who is the contracting party. Ms. Shaffer was equally dealing with Mr. Salandy who is also a director of All Clear. Further, the fact that All Clear’s profile seems to suggest that its niche was in offering administrative and

⁴ Exhibited “A.S.6” in the witness statement of Anthony Salandy filed 16th October 2017.

bulk logistical services is of no moment as it does not remove the fact that All Clear was being paid for the project and issuing projected costs for Ms. Shaffer.⁵ In any event there is no suggestion that such work was ultra vires our outside the scope of the powers of All Clear. Mr. Salandy claims to have spent his own funds in the project but seeks to recover it through All Clear and not himself personally. From this evidence, Mr. Salandy views All Clear as the contracting party.

15. The second issue requires the Court to make a finding on your terms of the contract. Ms. Shaffer says that Mr. Salandy represented to her that the repairs and renovations would be completed for \$300,000.00 within a three (3) month period. Mr. Salandy denies this. He says that he never told Ms. Shaffer that the work could be completed within three (3) months because that was a decision to be made by contractors and not him and his company.
16. Ms. Shaffer and Mr. Salandy at this stage I will examine some of the details of your dealings with one another on this project.
17. In or around the beginning of 2012, Ms. Shaffer met with Mr. Salandy on the site of her townhouse to discuss further repairs and renovations. Mr. Salandy had helped her some time ago with another project. Ms. Shaffer indicated that she could not afford to spend more than \$300,000.00 on the renovations and repairs since she was on a strict budget. Ms. Shaffer further contended that Mr. Salandy represented to her that the repairs and renovations would be completed for the price of \$300,000.00. She then entered into an oral agreement with All Clear through Mr. Salandy acting on its behalf to produce conceptual designs, drawings and plans and to carry out renovations to Ms. Shaffer's for the price of \$300,000.00.
18. The following are the works which Ms. Shaffer contends was agreed to be carried out which was not cross examined by attorney for Mr. Salandy:

Preliminaries: Labour and materials, plant and tools of trade scaffolding, site shed, lighting, water and transportation.

Demolition: Labour and tools of trade for the removal and cart away of roof sheeting, external windows and doors, internal walls and ceilings, electrical wiring including electrical sub

⁵ Exhibited "G.H.1" in the witness statement of Gillian Hislop filed 16th October 2017.

panel, plumbing fixtures and fittings in toilet and shower structure all cabinetry and kitchen cabinets and cupboards.

New Construction: *To provide all labour, materials, transport and tools of trade for;*

- a) The construction of rendered and painted walls with glazed tiling to bathrooms, suspended flooring sanded and finished, sand and finished timber staircase and floor, re-sheet floors where necessary with plycem, screed concrete floors and tile with ceramic tiles, construct concrete roof, timber roof framing, 26 gauge pre-painted corrugated galvanized roof covering including flashing and riding, timber framed windows timber panel entrance doors in metal frames inclusive ironmongery.*
- b) The construction of cabinetry to include fixtures and fittings for custom made kitchen, walk in clothes closet, built in closets, linen closets, bathroom vanities, decorative moulding to window frames.*
- c) The execution of ironmongery works to include wrought iron burglar proofing to all windows and doors, metal balustrading to staircase, wrought iron gate at service entrance.*
- d) The installations of new suspended ceilings complete with primer and paint throughout.*
- e) Roughing and installation of conduits, electrical wiring outlets installation of electrical fittings and fixtures throughout including the main panel and meter box.*
- f) Plumbing works to include hot and cold water pipes, waste pipes, drain and vents, all fixtures and fittings to include glazed china WC suites, vanity basins, face basin and shower mixers, bath tub, kitchen and laundry sinks.*
- g) External works concrete boundary wall with ironmongery and wrought iron gate rendered and painted. Ceramic tiles to concreted walkways and areas and driveways.*

19. At that initial stage Mr. Salandy although not admitting that they agreed on a timeframe, well knew Ms. Shaffer wanted to stay within a \$300,000.00 budget. According to Mr. Salandy he

suggested the following renovations they could do for that price and provided designs for same⁶:

- a) *Demolish cart away back terrace and re-design;*
- b) *Change back windows to doors/possible extension of bedroom two (2) and three (3);*
- c) *Change doors to bedrooms and bathrooms and refurbish main entrance door and relocate;*
- d) *Investigate the integrity of timber floors to main and first floor and as required, refurbish or replace;*
- e) *Change bedroom and linen cupboard units;*
- f) *Re-furbish kitchen and washroom area and relocate to new external platform;*
- g) *Extend Master bedroom to accommodate dressing area and relocate bathroom;*
- h) *Design and install new gypsum ceiling to ground floor and first floor for affected areas.*

Other works

- i) *Re-do electrical to include power outlet for A/C units to bedrooms and lounge;*
- j) *Supply and install new A/C units to three (3) bedrooms.*

20. The Court must assess the evidence to determine if there was an agreement to renovate the townhouse for a flat rate for a specified time and whether the parties agreed to a variation in price as the project evolved. I am satisfied from the evidence that Ms. Shaffer and Mr. Salandy did agree renovations to the townhouse be completed at a cost or budget of \$300,000.00 and within a reasonable period of time of three (3) months. It is unreasonable to expect Ms. Shaffer to have agreed to vacate her home for an indefinite period of time or that she would have not discussed this with Mr. Salandy or left this as an uncertainty. Further I am satisfied that she made it clear to Mr. Salandy she only had \$300,000.00 for the project. Mr. Salandy admits as much in his cross examination and examination in chief.

⁶ Exhibited "A.S.2" in the witness statement of Anthony Salandy filed 16th October 2017.

21. I am also satisfied that the project did evolve over time and that this was after discussions with Ms. Shaffer. However, what has not been established by Mr. Salandy is that Ms. Shaffer agreed to any cost increases. Ms. Shaffer did receive drawings during the course of the project. There is no evidence by you Mr. Salandy however, to demonstrate that you specifically brought to her attention the magnitude of the changes as it related to the cost of the project or of any variation or changes which would take the cost way beyond \$300,000.00 save for the belated cost projections issued months later. However, at that time Mr. Salandy, it was now too late in the day to now tell Ms. Shaffer “hold on, this is going to cost you double than what you expected.”
22. It is safe to conclude in this case that having no knowledge of construction or renovation Ms. Shaffer relied on the expertise of Mr. Salandy who led her to believe that the renovations could be completed for \$300,000.00. His first indication of exceeding that budget came in July 2012 but by then a significant amount of money would have been invested by Ms. Shaffer in the belief that the job would have been close to completion. Sadly it was not even close.
23. By 27th July 2012, Ms. Shaffer paid a total of \$297,000.00. Mr. Salandy indicated that by July 2012, the designs had changes to include:
- (i) *Change of the entire roof due to the age of the roof and its integrity;*
 - (ii) *Extension to bedroom 2 and 3;*
 - (iii) *New gypsum ceiling;*
 - (iv) *New Kitchen;*
 - (v) *Teak floors;*
 - (vi) *Tiling- parkway and walkway;*
 - (vii) *Additional decorative metal work to fence;*
 - (viii) *Additional doors and window-type introduced/requested in the design;*
 - (ix) *Plumbing had to be completely done over;*
 - (x) *Water tanks moved from ground level to elevated level to allow egress/additional walkway.*

24. That may be so but I am not satisfied from Mr. Salandy's evidence that Ms. Shaffer had agreed on any specific cost and time for such variations. I am not satisfied Mr. Salandy that your statement that you "constantly advised her" about escalating costs is sufficient to amount to an agreement to vary your contract. Further there is no documentary evidence to support this. The evidence demonstrates a deliberate effort by you Mr. Salandy in the initial stages if I accept your Jalandy 29th March 2012 letter, to keep costs within the budget of \$300,000.00. After those initial stages there is no evidence of a specific meeting or note of the discussion that this was going to go beyond budget. The only documents remotely suggesting escalating costs are your projected cost statements. However those statements covering the period August to October deal mainly with plumbing, electrical and ceiling costs. There is no specific mention of roof works as stated in your witness statement. It is more probably the case that it simply became an issue when you indicated to Ms. Shaffer of the great amount of money needed to complete the job.
25. It is more plausible that as a result, Ms. Shaffer was forced to stop works around July 2012.
26. Subsequently, of course, the roof had to be temporarily covered with tarpaulin and Ms. Shaffer paid the sums of \$964.50 and \$950.00 to do so. This, in my view, is not an acceptance by Ms. Shaffer of continued works but a necessary step to protect her exposed home. Mr. Salandy contends that it was agreed that until Ms. Shaffer obtained additional funds, the project would be stopped. While it is true that these friends would not have been in Court if Ms. Shaffer had obtained a loan, this does not mean that she had agreed to any variation. Had Ms. Shaffer obtained funding she then would have been in a position to negotiate and commit to an agreement to vary the contract.
27. I have taken into account the inconsistencies in both the testimony of Ms. Shaffer and Mr. Salandy. However the inconsistencies of Mr. Salandy's evidence are more material such as his account of giving Ms. Shaffer the letter, the projected costs and his ambivalence on who conducted the works.
28. I now consider the third issue. The third issue simplifies this dispute. I am aware that Ms. Shaffer is also claiming that Mr. Salandy on behalf of All Clear acted negligently.⁷ Certainly,

⁷ Paragraph 22A of the Amended Statement of Case filed 1st December 2016.

from what I have already determined she has demonstrated that she relied on his skill and expertise. However, simply put once it is determined that pursuant to their agreement, All Clear was paid a sum of money to conduct certain renovations, if the value of the renovations executed is less than the sum paid, Ms. Shaffer is entitled to a refund. Ms. Shaffer retained the services of I.T Mc Leod Partnership Limited, Chartered Quantity Surveyors Construction and Cost Economists to value the completed works carried out by All Clear and provide an estimate as to the cost to complete the works. The report dated 8th August 2013, indicated that the value of the work done was \$128,735.00 and the value of to complete the work is \$573,834.00.

29. The attorney for the Defendant stated that little weight is to be placed on the surveyor's report. I agree that he is not an expert under Part 33 of the Civil Proceeding Rules 1998 as amended (CPR) and the Court would approach his evidence with extreme caution. However, it is the only evidence submitted of the value of the work and Mr. Langton stood up very well under cross examination. Mr. Salandy himself in his witness statement made no mention nor criticism of the value of the work ascribed in that report. It is safe to conclude based on the report that the work executed by All Clear was far less than the sum received and there is no explanation by anyone for the variance. I had pointed to the fact that perhaps the valuer did not take into account the administrative costs of the job, however even so it would not account for the dramatic variance between the value of the work and the sums received by All Clear.
30. I now turn to the final issue of the counter claim of All Clear. Mr. Salandy contends that Ms. Shaffer still owes All Clear the sum of \$34,763.78.
31. All Clear's counter claim must fail for the following reasons. First there is a lack of documentation from Mr. Salandy to demonstrate what was the true cost of the work executed by All Clear in the sum of \$387,422.48. Second, Mr. Salandy claims to have expended his personal funds and not that of All Clear. Third, the independent evidence of the quantity surveyor puts the value of the work at \$128,735.00. Fourth, Mr. Salandy himself in viewing that document does not himself dispute the amount found in the quantity surveyor's report. Even in his defence at paragraph 23 he does not deny the conclusion of the value of the work done. He only takes issue with the value of the work to be executed.
32. For these reasons, I have found in favour of Ms. Shaffer and she would be entitled to be paid the sum of \$168,265.00.

33. It is, I am sure, a bitter pill to swallow that for whatever is left of the friendship, Ms. Shaffer and Mr. Salandy would have to settle for the order being made by the Court. The award made by no means renovates Ms. Shaffer's home to the state that she had first imagined. She would have to make adjustments. For Mr. Salandy as All Clear he would have to make a payment to Ms. Shaffer in circumstances where he began the project by helping a friend. To both of you this dispute may be more than just money. There is anguish, hurt feelings, remorse perhaps bitterness. Your litigation emerged from the broken pieces of your friendship but it is up to you to determine whether you will allow this litigation to leave your friendship in ruins. I do not know the projected cost to renovate your friendship but I wonder if your memories of your decades old friendship can help you in that project.

Vasheist Kokaram
Judge