

THE REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
(Sub Registry, San Fernando)**

CLAIM NO: CV2017-04202

BETWEEN

BRIAN MEHANDI

Claimant

AND

**DHAMENDRA SINGH TRADING AS
D. SINGH WOOD WORKS**

Defendant

Before the Honourable Madame Justice Quinlan-Williams

Appearances: Mr. Prem Persad-Maharaj instructed Cindy-Ann Dookeran
for the Claimant

Mr. Abdel Q. Mohammed instructed by Ms. Shabaana
Mohammed for the Defendant

Date: 14 April 2022

JUDGMENT

The Claims

1. By two written agreements dated the 25 September 2016, the defendant agreed to construct and install certain woodworks for the claimant. The claimant, at the time, was constructing his home at Lot No. 3 Ciperro Road, Borde Narve Village, San Fernando. The agreements were for the building

of kitchen cupboards (“the cupboard contract”) for \$75,000.00 and the laying of teak flooring (“the flooring contract”) for \$105,000.00. Both contracts were inclusive of labour and material. The completion dates stipulated in the said contracts were the 30 November 2016 in relation to the cupboard contract and the 30 December 2016 for the flooring contract.

2. The claimant claims that although he made payments pursuant to the cupboard and flooring contracts, the defendant failed, neglected and/or omitted to complete the works as stipulated in the contracts. The defendant only started laying the teak flooring in March 2017, and would often fail, neglect and/or omit to attend work.
3. On the 29 April 2017, the claimant expressed his dissatisfaction to the defendant regarding the progress and quality of the works. The claimant claims that the defendant breached the implied and/or expressed terms of the contracts when he conducted the works adopting poor workmanship and improper and unsuitable industrial standards and practice.
4. Consequently, the claimant has been constrained to undertake remedial works in relation to both the kitchen cupboards and the teak flooring. Moreover, the defendant’s delay has caused the claimant to incur further costs in bridging interest as it relates to the loan facility used to finance the said works.
5. Therefore, by claim form and statement of case filed on the 17 November 2017 the claimant claimed against the defendant:
 - A. Damages for breach of contract for building and/or construction works to premises at Lot No. 3 Ciperu Road, Borde Narve Village, San Fernando made on the 25 September 2016.

- B. The sum of \$155,000.00 being monies paid by the claimant to the defendant for the purchase/supply of building materials not supplied and or delivered by the defendant and/or for building and construction works that remain incomplete and shoddy at the said premises.
 - C. The sum of \$197,000.00 being the cost for remedial works for both the kitchen cupboard and teak flooring to the said dwelling house to be paid by the claimant.
 - D. The sum of \$30,750.00 being additional interest at the statutory rate of 12% on a bridging loan and incidental losses suffered by the claimant on account of the defendant's breach of contract.
 - E. Costs.
 - F. Statutory interest.
 - G. Such further and or other reliefs as deem fit by the court.
6. The defendant contends that he and the claimant agreed to delay the completion dates as stipulated in the cupboard and flooring contracts, as there were ongoing works by other contractors at the claimant's premises. The completion of those works were necessary for the defendant to commence kitchen cupboards and teak flooring.
7. The defendant further contends that despite completing all the works pursuant to the cupboard contract, the claimant completed payment approximately two weeks after the completion date, in breach of the said contract.
8. On the 29 April 2017, the remaining works to be done were the final sanding and application of clear stain to the floorboard. At that time, the claimant owed the defendant the outstanding balance of \$25,000.00. Although, the defendant received an oral assurance that a further

payment would be made on the 29 April 2017, no payment was forthcoming by the claimant. On the 2 May 2017, the claimant contacted the defendant by telephone informing that he had moved on, he got someone else to finish the flooring works and that the defendant should move on as well.

9. The defendant asserts that at no time did the claimant express his dissatisfaction with the progress and quality of the works. The defendant at all times performed his contractual obligations in a workman like manner with care and skill.

10. Accordingly, by defence and counterclaim filed on the 29 January 2018 the defendant counterclaimed against the claimant for:
 - A. The sum of twenty-five thousand dollars (\$25,000.00);
 - B. Further and/or alternatively, damages, including aggravated and/or exemplary damages for breach of contract;
 - C. Interest pursuant to Section 25 of the Supreme Court of Judicature Act Chapter 4:01 at the rate of five percent (5%) per annum from the 2nd of May 2017 to the 29th day of January 2018 in the sum of three hundred and eighteen dollars and forty-nine cents (\$318.49) and continuing thereafter at a daily rate of three dollars and forty-two cents (\$3.42);
 - D. Costs;
 - E. Such further orders and/or reliefs as to the Honourable Court may seem just.

The Issues

11. The claimant and defendant disagree as to the terms of the contractual agreements between them, and whether the other performed their

obligations under those contracts. The main issues for the court's determination therefore are:

- A. Did the defendant breach either the cupboard or flooring contracts, and if so, has the claimant proven damages? and
- B. Did the claimant breach the flooring contract, and if so, has the defendant proven damages?

The Evidence relating to the issues

12. The claimant, his father Heeralal Mehandi, Chartered Quantity Surveyor Willie Roopchan and the foreman employed with HM Contractors Lawrence Ramnarine testified on behalf of the claimant's case. The defendant was the sole witness to give evidence in support of his case.

- The claimant's evidence

13. In or around September 2016, the claimant visited the defendant at his woodwork shop to retain his services. The claimant indicated that he wanted someone with experience to do first class quality woodworks in respect of constructing kitchen cupboards and laying teak floors at his property. The claimant further explained that he needed the proposed works to be completed by December 2016, as he wanted to move into the property prior to his wedding on the 22 July 2017.

14. Additionally, the claimant apprised the defendant that the deadline provided was based on a bridging loan from Scotia Bank and when the works were completed, the loan would be converted to a home mortgage loan. This was very important to the claimant because it would enable him to start paying towards the principal sum loaned, which would lower the interest on the said loan.

15. On the same day, when the defendant visited the claimant's property to provide the estimate, the claimant detailed the specifications he wanted for the kitchen cupboards. Amongst other things, the claimant specified that the defendant was to install the glass on the doors of the cupboards. The defendant verbally indicated to the claimant that he would be able to have the kitchen cupboards completed by the 30 November 2016 and the teak flooring by the 30 December 2016.
16. Subsequently, the defendant provided an estimate of the cost for the said works and the claimant agreed to retain his services.
17. On the 25 September 2016, the defendant brought the two agreements that he had prepared. The claimant wrote in his contact details, dated the contracts and wrote in the deadline dates. Thereafter, the claimant and the defendant signed the two agreements. The claimant avers that although he provided the floor plan for his property at this meeting for the defendant to measure the square footage of the floor, the defendant returned to his property about a week later and physically measured the flooring.
18. It was agreed that the construction of the kitchen cupboards would cost \$75,000.00 inclusive of labour and materials. In accordance with the cupboard agreement the claimant made the following payments to the defendant:
 - i. By receipt dated the 28 September when the defendant commenced the works, the claimant made the initial down payment of \$35,000.00 to the defendant for the purchase of materials.

- ii. By receipt dated the 23 October 2016 the claimant made a further payment to the defendant in the sum of \$10,000.00 as the works to the kitchen cupboards progressed.
- iii. Although it was agreed that the final payment was to be made on the completion date scheduled for the 30 November 2016, by receipt dated the 9 February 2017 the claimant made the final payment of \$30,000.00 to the defendant.

19. The defendant built the kitchen cupboards at his work place and visited the claimant's property to install them when they were complete. The claimant asserts that at no time did he ask the defendant to suspend the installation of the kitchen cupboards. The kitchen tiles and backsplash had to be completed after the installation of the kitchen cupboards, as the tiles had to be cut around the cupboards. At that time, the painting and gypsum works and the installation of doors downstairs were completed. Although there were other construction works taking place, it was to the exterior of the claimant's property.

20. During the installation of the kitchen cupboards, the claimant noticed that the cupboards were of a sub-standard quality and expressed his dissatisfaction. However, the defendant assured the claimant that when the works were completed all the defects would be rectified.

21. The claimant also expressed his dissatisfaction with the defendant's failure to complete the cupboards on the scheduled completion date that was the 30 November 2016. On completion of the works in or around March 2017 the claimant noticed that the cupboards were of a substandard quality and contained the following defects:

- i. The doors of the cupboard were difficult to open and close due to its misalignment;

- ii. There were outstanding glasswork and molding to be done;
- iii. The teak wood used was of a low grade as white streaks on the wood showing its sap was visible; and
- iv. The putty to the cupboards was not properly applied, as there was visible cracking in its application.

22. When the claimant drew the defects to the defendant's attention, he requested an extension of time until April 2017 to complete and rectify the highlighted defects.

23. In relation to the flooring contract, it was agreed that the laying of the teak flooring would cost \$105,000.00 inclusive of material and labour. In accordance with the flooring contract, by receipt dated the 28 September 2016, the claimant made an initial down payment of \$60,000.00 to the defendant for the purchase of the teak. This payment was made due to the defendant's undertaking that he would commence the laying of the teak flooring on the 28 September 2016. However, the defendant failed to do so.

24. At the time the defendant was hired to lay the teak flooring, all the construction works to the interior of the claimant's property was completed, including the installation of the doors downstairs because the defendant would have had to cut around the outer edges of the floor. The interior of the claimant's property was clear and free of obstruction as most of the items were moved to the storage room. The installation of teak flooring was left for last to avoid damage.

25. Lawrence Ramnarine, one of the construction workers at the claimant's property indicated that there were no items in the downstairs area that would have prevented or cause a delay to the defendant in laying the teak

flooring. There were only small items such as buckets and boxes with electrical fittings that could have been easily removed. All the workers on the premises worked with each other and if there was anything that obstructed the defendant, he could have requested the assistance of the other workers in clearing any of the boxes, buckets or anything that he felt was preventing him from laying the teak flooring.

26. By late October 2016, the defendant had not commenced the laying of the teak flooring. The claimant reminded the defendant about the importance of completing the works on the 30 December 2016 as agreed and asked him to commence the works. In response, the defendant indicated that he was waiting on the teak, which the claimant found was unsatisfactory.

27. Despite the claimant's repeated pleas with the defendant to commence the works, the laying of the teak flooring eventually commenced in March 2017.

28. On the 18 April 2017, the defendant requested an additional sum of \$20,000.00 to cure the teak material and purchase more teak as his measurements were incorrect. The defendant further indicated that the delay in laying the teak flooring was also because the teak wood was green and had to be cured which involved spraying and waiting for it to dry. Subsequently, the claimant paid the \$20,000.00 to the defendant.

29. During the laying of the teak flooring the claimant's father Heeralal Mehandi visited the property and noticed that some of the teak board contained knots (dark spots) and sap. Despite the defendant's assurances that those boards would be changed, it was never done. Heeralal Mehandi also gave evidence that when the flooring works commenced, the defendant did not place the straps close enough on the sub floor nor did

he plaster it to ensure that when the teak flooring is laid, it would be firm and not squeak. When Heeralal Mehandi brought this to his attention, the defendant assured that the teak flooring would be firm, it would not squeak and would not be uneven.

30. On the 29 April 2017, the claimant expressed his dissatisfaction to the defendant about the progress of the teak flooring works and the inferior quality of works that had been completed thus far. The claimant told the defendant that the teak wood appeared to be of a low quality as the sap in the wood was visible. There were noticeable spaces between the joining of the pieces of wood and in the flooring itself which caused movement when walked on. The flooring was uneven and was not laid firmly which made it difficult to walk on. What is more is that the works were incomplete, as the defendant did not finish the sanding, levelling, sealing and vanishing of the flooring.

31. In addition, the defendant frequently failed to show up to work on a regular basis and would attend work about twice per week at half-day intervals. Eventually, at the end of April 2017 the defendant failed to attend work without any explanation for his absence.

32. On the 1 and 2 May 2017, the claimant attempted to contact the defendant via telephone without success. On the 2 May 2017, after numerous unanswered calls from the defendant and as time was against the claimant, he was compelled to engage the services of another contractor to rectify the defective works and complete the kitchen cupboards and flooring works.

33. On the 9 June 2017 the Chartered Quantity Surveyor Willie Roopchan from WR Partnership Chartered Quantity Surveyors visited the claimant's property to inspect and conduct an assessment of the teak flooring and based on his expertise and experience he observed that:

- i. The finished floor creaked and sagged when walked on which suggested that the spacing of the supports under is too wide and/or the boards are not supported continuously by the sub floor under;
- ii. The boards were laid but joined instead of the normal tongued and grooved joints. The butt jointing results in each board moving independently with the adjacent boards and ultimately results in the separation of joint filler between the board and an uneven finish;
- iii. The floor boards contained an extraordinary amount of sap as is evident by the extensive amount of white in the finished floor.

34. Based on Mr. Roopchan's observations and the defects identified, he recommended that the boards had to be taken out to prepare the sub floor, which would ensure a continuous support under the new boards with a tongued and grooved joint. The removal of the existing boards would result in damage when the boards are separated at the points of fixing. Even if the boards are salvaged, there is a strong possibility that they would have to be cut to shorter lengths to avoid the damaged wood when the initial fixing occurred and when the sap was removed. The shorter boards would subsequently result in higher labour costs from increased joining in the floor. Therefore, Mr. Roopchan recommended that the best option would be to replace the floor with new Grade 1 boards.

35. Mr. Roopchan prepared a report dated the 27 June 2017 expressing his observations and provided an estimate of the costs for the remedial works. The cost to remove the existing boards was estimated at

\$18,000.00 and the supply and installation of the new Grade 1 boards with tongued and groove joints secretly nailed, sanded and finished with two coats of clear varnish was estimated at \$170,000.00.

36. According to the report provided, the remedial works were estimated to be a total cost \$188,000.00. At that time, the claimant was financially unable to conduct the recommended remedial works.

37. As such, the claimant engaged the services of another contractor Kavita and Kevin Woodworking Shop and Construction Company who provided an estimate for the remedial works in the sum of \$9,000.00 for the completion of the kitchen cupboards. In relation to the teak flooring, the contractor did temporary remedial works, which were less costly. These works involved the sanding and vanishing of the floor and drilling holes into the flooring, which were filled with foam to stabilize and even out the floor.

38. On the 1 June 2017, the claimant caused his attorney at law to issue a pre-action protocol letter requesting that the defendant pay damages for breach of contract and/or negligence for the defective, sub-standard and incomplete works together with statutory interest and legal costs.

- The defendant's evidence

39. It is not in dispute that the claimant and defendant entered into and signed the cupboard contract and the flooring contract on the 28 September 2016. Nor are the payments made and received by the parties on the various dates in dispute. However, the defendant asserts that there were no building plans provided as alleged by the claimant.

40. Pursuant to the contracts, it was initially agreed that the completion dates were the 30 November 2016 for the kitchen cupboards and the 30 December 2016 for the teak flooring. However, due to the ongoing works by other contractors at the claimant's property namely, painting and gypsum works and the installation of doors, the parties mutually agreed to delay the completion of both contracts. Those works had to first be completed before the defendant could properly install the kitchen cupboards and the teak flooring.
41. Due to the delay caused by the ongoing construction works, the defendant was only able to install the kitchen cupboards during the 12 to the 16 December 2016. After the installation of the kitchen cupboard doors and units, the claimant requested that the installation of the remaining cupboard hardware be suspended until he made the necessary arrangements with his other contractors for the completion of the kitchen tiles and backsplash.
42. On or around the 23 January 2017, based on the oral instructions of the claimant, the defendant resumed works on the kitchen cupboards, which was completed on the 27 January 2017. Two weeks later, the claimant completed payment for the kitchen cupboards after the completion date had already elapsed.
43. The defendant asserts that at no material time did the claimant indicate to him that there were defects in the cupboards, namely misaligned doors and poor quality of workmanship in the application of the putty to the cupboards. The defendant only knew this when he received the claimant's pre-action protocol letter, some six months later.

44. In relation to the outstanding glasswork and moulding to be completed, the defendant avers that it was agreed that someone else was undertaking the supply and installation of the glasswork.
45. With respect to the teak flooring, at the end of October 2016, the defendant requested the claimant's permission to drop off the teak flooring board to his home in order to commence the flooring contract. However, due to the ongoing construction works and limited storage space at the claimant's property, the claimant asked the defendant to delay the commencement of the teak flooring.
46. On the 6 February 2017, the defendant commenced the installation of the teak flooring although there were still items on the floor that restricted his ability to install the flooring. Therefore, the defendant and his employees had to clear the work area to progress the works without delay.
47. In or around the third week of February 2017, the defendant completed the installation of the tongue and groove boards in the upstairs room and corridors. In accordance with the flooring contract, the defendant requested a further payment due to the works completed but no payment was forthcoming by the claimant.
48. In or around the end of February 2017, when the defendant proceeded to commence the flooring works to the downstairs of the claimant's property, there were dozens of tile boxes, paint buckets, construction lumber and other debris stored on the floor of the downstairs area. All the items had to be removed before the teak flooring could be installed.
49. When the flooring works to the downstairs area commenced, the claimant asked the defendant to stop the works as he was awaiting the installation of the downstairs doors from "QPSL", which was done on the or around

the 13 March 2017. Thereafter, the defendant resumed the flooring works. During this time, despite asking the claimant and his father for a down payment towards the balance of the sums due and owing, the claimant's father indicated that he would pay the defendant as soon as the works were progressing.

50. On the 29 March 2017, the installation of the teak flooring to the downstairs area was completed. After numerous attempts to obtain further payment, on the 18 April 2017, the defendant received part payment in the sum of \$20,000.00 from the claimant. Consequently, there remained an outstanding balance of \$25,000.00 due to the defendant pursuant to the flooring contract.

51. From the 26 to the 29 April 2017, the defendant and his employees belt-sanded the floor and applied wood putty on the flooring. The final sanding and the application of the clear stain on the floorboards were the remaining items of work to be done on the teak flooring. At this point, after requesting further payment and despite receiving an oral assurance that the claimant would make a further payment on the 29 April 2017, the defendant never received any payment as promised.

52. On the 2 May 2017, after several failed attempts by the defendant to contact the claimant via telephone, the claimant eventually contacted the defendant. The claimant told the defendant that he had moved on, he got someone else to finish the flooring and that the defendant should move on. Thereafter the claimant abruptly ended the telephone call. When the defendant called back the claimant to request the balance of the sums due and owing pursuant to the cupboard contract, as the works were substantially completed, the claimant reiterated that he moved on and so should the defendant.

53. The defendant asserts that at no point did the he adopt an unacceptable method of construction or demonstrate poor and shoddy workmanship, nor did the claimant express his dissatisfaction to the defendant about the progress and quality of the works as alleged on the 29 April 2017. During the progress of the works to the kitchen cupboards and teak flooring, the claimant and his father expressed their satisfaction of the works conducted. The defendant further states that it is wholly untrue that he would often fail, omit and/or neglect to attend work on a regular basis.

54. On the 12 January 2019, the parties in the presence of their attorneys at law conducted a site visit on the claimant's premises. Based on his visual inspection, the defendant avers that the teak flooring appeared to be varnished and sanded. As a result, the defendant is unaware whether the teak wood that was installed by him was tampered with.

55. Because of the claimant's termination of the flooring contract without a valid reason, the defendant was unable to complete the final works to the flooring. This caused the defendant to incur losses amounting to \$25,000.00, which was the balance owed to him pursuant to the flooring contract.

The law

56. The claimant and defendant agree that the dispute revolves around the law of contract and if either of them have breached the cupboard and flooring contracts. The claimant relied on the case of *Horace Reid v Dowling Charles and Percival Bain* PC No. 36 of 1987 and its application in CV 2006-01661 *Winston Mc Laren v Daniel Dickey*. The positions of the

claimant and defendant are diverse and the impression that the witnesses and their evidence on the court is an important feature in finding the facts.

57. A contract is an agreement between parties that is enforceable because it constitutes the following provisions:

- (1) there must be an agreement between separate and existing parties;
- (2) those parties must intend to create legal relations as a consequence of their agreement; and
- (3) the promises made by each party must be supported by consideration, or by some other factor which the law considers sufficient.¹

58. The parties agree that they signed a contract on the 25 September 2016. The claimant however asserts that they agreed to certain specifics, which were not reduced into writing, but which should be imported into the contract and bind the parties.² With respect to both contracts, the claimants say that the defendant was contracted to supply and use Grade 1 teak. Regarding the cupboard contract, the claimant says that glass and handles were to be provided by the defendant.

59. A court will only import a term into the contract by fact, if it: is reasonable and equitable; is necessary to give business efficacy to the contract (no term will be implied if the contract is effective without it); is capable of clear express; and is not contradictory of any express provision of term of the contract.³ The questions for this court is whether it can be imported

¹ Halsbury's Law of England. Volume 22 (2) (2019)

² Halsbury's Law of England. Volume 22 (2) (2019), paragraph 163

³ Halsbury's Law of England. Volume 22 (2) (2019), paragraph 166

into the terms of the contract that Grade 1 teak was a term of the contract and that the cupboard doors were to be completed with handles and glass.

60. The defendant says that the completion dates in the two contracts, were varied by agreement between the parties. The changes came about as a result of delays caused by works being carried out. The claimant says that they never agreed to the change of the completion dates and he also denies that there were any delays occasioned by other works.

61. Where there is a failure to fulfill a contractual obligation, the innocent party is at least entitled to damages.⁴ Whether or not he is also entitled to terminate the contract depends on a number of factors, including whether the breach is substantial.⁵ Where the innocent party knows of the breach ahead of time he may instead affirm the contract and seek damages.⁶ The court has to consider what effect, if any the variance between the contractual dates for completion of the contracts and the actual dates of “completion” have on the claimant’s rights under the two contracts.

62. The claimant also complained about the quality of works done by the defendant. Where a contractor contracts to do works, a warrant of fitness is implied (unless displaced by expressed terms). The implied warranties are: that the material used in the works and the completed works themselves will be reasonably fit for the purpose for which they were required; that the materials used will be of good quality; and that the work will be carried out in a good and workmanlike manner.⁷ The claimant say that these implied warranties have not been fulfilled by the defendant.

⁴ Halsbury’s Law of England. Volume 22 (2) (2019), paragraph 334

⁵ Halsbury’s Law of England. Volume 22 (2) (2019), paragraph 334

⁶ Halsbury’s Law of England. Volume 22 (2) (2019), paragraph 334

⁷ Halsbury’s Law of England. Volume 6 (2018), paragraph 274

Findings of fact and analysis

63. The court finds as a fact that the terms of the contract were reduced into writing. The defendant admitted in cross-examination that he wrote in the completion dates into both contracts; the defendant admitted this under cross-examination. Neither the claimant nor the defendant changed those dates in writing.
64. Regarding the cupboard contract, the court is satisfied that the defendant did not deliver the contracts within the agreed time. The claimant knew this and he continued to engage the defendant to fulfilling the obligations under the contract. The claimant paid the defendant the final payment for the cupboard on the 9 February 2017, more than two months after the cupboards were due to be completed.
65. The court did not accept the defendant's evidence that the delay was caused by the claimant's other contractors. The claimant's father is an experienced contractor and the house he was building was his son's home. The court does not accept that the claimant's father would allow or permit the defendant to enter a construction site to do woodworks if it was not safe or conducive for those works to be done. According to the claimant's father, even before the contracts were signed, he showed the defendant the quality of the teak works in his home and expressed that he had expectations for a high quality and standard of woodwork.
66. The court believes that on the issue of delay alone, the claimant might have been entitled to terminate the contract, but he choose to affirm it and allow the defendant to perform the obligations under the contract.

67. Similarly, regarding the flooring contract, the court is satisfied that on the issue of delay, the claimant chose to allow the defendant to perform the obligations under the contract. When teak works to the floor commenced in March 2017, the defendant had already gone beyond the contractual time for completing those works.
68. On the issue about whether the defendant agreed to provide Grade 1 teak, the court is not satisfied that this is a term that can be implied in the contract.
69. I do not find it to be reasonable and equitable to imply the quality of the wood as a term of the contract. I am assuming the quality of the wood would affect the price as well as the length of time to complete the project. Further, the claimant's father said he saw the wood when it came; he saw the quality and the amount of sap. The claimant's father said that he made sure the defendant choose what was suitable from among the planks of teak on site. If this was a term of the contract, as per the discussion of the parties, the court feels sure that the claimant and his father would have stopped the defendant from working with teak they seem sure was not Grade 1.
70. The contracts are complete without any reference to the quality of the teak and therefore it is not necessary for Grade 1 to be included as a term of the contract to give business efficacy to the contract. Further, given the claimant's and his father's evidence about what they expected, had they wanted to include Grade 1 as a term of the contracts those were clear words that were open to be expressed in the contracts.

71. The court is not satisfied therefore, that it should imported into the terms of the contract that Grade 1 teak was to be used for either the cupboard contract or the flooring contract.
72. Regarding the quality of works, the court will consider firstly the cupboards. The claimant complains that the cupboards were of a “sub-standard quality”⁸. This included the misalignment of doors, outstanding glassworks and moulding as well as a low grade of teak and the putty was not properly applied. The claimant produced an estimate from a company to the tune of \$9,000.00 to complete the moulding, the removal and replacement of hinges, to realign doors and to complete glass works.
73. The defendant denies that works were incomplete on the cupboards; he however, admits that the glass was not installed. The court believes that the reference in the contract to kitchen cupboards must be complete kitchen cupboards including moulding and glass. Based on the defendant’s admission the court accepts the claimant’s evidence that the works outlined in the estimate from Kavita & Kevin Woodworking Shop and Construction Company were incomplete. Further, the court accepts that the costs to complete those works were as estimated.
74. The court notes that in the face of the pre-action protocol letter complaining about the defect to the kitchen cupboards, the defendant remained silent.
75. Secondly, regarding the quality of works on the teak floors the court considered the report from the Chartered Quantity Surveyor Mr. Willie Roopchan. Mr. Roopchan a Chartered Quantity Surveyor for over 35 years

⁸ Claimant’s witness statement, paragraph 12.6

gave an estimate for taking up the existing teak flooring and replacing it using Grade 1 teak.

76. Mr. Roopchan visited the property on 9 June 2017, he inspected and conducted an assessment of the teak floors. Mr. Roopchan detailed his observations at paragraph 5 of his witness statement. Mr. Roopchan noted that the floors creaked and sagged when walked upon, that the boards were joined instead of the normal tongue and groove joints and that there was an extraordinary amount of sap as evidenced in the amount of white in the finished wood.

77. Without more, the creaking, sagging of the floor and the movement in the teak floors might have led this court to make a finding that the materials used were not fit for the purpose, that the materials were not of good quality and the work carried out was not good and not in a workmanlike manner. However, there was more to be considered.

78. The court already found that the contract did not include that Grade 1 teak was to be used.

79. Significantly, Mr. Roopchan and the claimant's evidence is that he (Mr. Roopchan) was not provided all the available and relevant material for the purpose of his examination and report. Mr. Roopchan was not provided with contract for the wood flooring.

80. Of greater importance is that Mr. Roopchan was not made aware of an important intervening event. The claimant's evidence is that he had a contractor drill holes in the teak flooring and some kind of foam material was injected. The claimant's evidence is that this was to provide a temporary fix.

81. There is no evidence from the contractor who provided the temporary fix. There is no evidence about the nature of the temporary fix and if the drilling of holes and the chemical or other composition of the foam can and did affect the quality of the teak floors. There is also no evidence that from Mr. Roopchan or the contractor who did the temporary fix, about the state of the floors before the holes were drilled and the foam injected into the floors.
82. The evidence does not allow the court to make a finding of fact that Mr. Roopchan's observations and findings were a result, in whole or in part, of the defendant's poor workmanship and the quality of the wood or the contractor who performed the temporary fix. If the findings were partly the result of the defendant's poor workmanship, what part is attributable to the defendant?
83. Additionally, there is no evidence about "sap", its meaning and impact on the quality of the wood. There is also no evidence about the type of installation of teak that should be performed on the subfloor as the defendant found it. Nor is there any evidence about the quality of teak and what should be used for different jobs. The court opines that these are matters that required evidence which could have assisted a court in making findings about what is expected of a contractor hired to build cupboards and install teak floors.
84. The defendant raised other issues such as the claimant not adducing photographs, the claimant annexing the defendant's photographs, not annexing the floor plans and whether Mr. Roopchan knew the claimant before. Those were not material to the court's findings.

85. Having found that the defendant did not fulfill his contractual obligations with respect to the completion time for both the cupboards and the floors, the court has to decide whether the claimant is entitled to damages.
86. The claimant has alleged that he paid additional interest charges on his bridging loan for the months the January to April 2017, because he was not able to convert his bridging loan to a mortgage. The claimant alleges that the mortgage attracted a lower rate of interest.
87. While the claimant pleaded and testified about the delays in the cupboards and floors, he also gave evidence that there were other works going on outside. There is no evidence when those other works were completed. Therefore, the court cannot find that if there was a delay in transitioning from a bridging loan to a mortgage that it was attributable to the delays occasioned by the defendant. Further, there is no evidence about the differential amount on interest between the bridging loan and the mortgage.
88. On the defendant's counterclaim, the court is not satisfied that any sums are due and owing. The defendant's evidence is that he did not complete the job and there were still outstanding works to be done. The court does not believe the defendant when he testified that the claimant stopped him from completing the job. The claimant's account has been clear that he made all efforts to have the contract performed; he paid an additional sum of \$20,000.00 to purchase more teak, he wanted to convert the bridging loan to a mortgage and he wanted to move into his home before his wedding. In all those circumstances, and even being dissatisfied with the defendant's works, the claimant tried to have him complete the job.

89. There is no evidence that the works left outstanding by the defendant were less than \$25,000.00.

Disposition

90. On the claimant's claim, judgment is entered for the claimant with respect to breach of the contract for the construction and installation of teak cupboards:

- A. The defendant shall pay the claimant damages in the sum of Nine Thousand dollars (\$9,000.00); and
- B. The defendant shall pay the claimant interest at the rate of 2 percent from the date of filing (the 17 November 2017) to date of judgment (14 April 2022) in the sum of \$975.00.

91. On the issue of costs, the court considered that the claimant was successful in proving certain aspects of the claim. The claimant might not have pursued some aspects of the claim had the defendant responded to the claimant's pre-action protocol letter. As such, the court will reduce the amount of costs payable by the claimant because of those two factors. The claimant shall pay the defendant's costs on the claim at the rate of 35% of the prescribed costs calculated on the unsuccessful claim of \$188,000.00. The costs recoverable is the sum of \$13,020.00.

92. The defendant's counterclaim is dismissed. The defendant shall pay the claimant's costs on the counterclaim, as prescribed on \$25,000.00 in the sum of \$7,500.00.

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Justice Avason Quinlan-Williams

JRC: Romela Ramberran