

IN THE SUPREME COURT OF BELIZE, A.D. 2001

(SUMMARY PROCEDURE)

ACTION NO. 24

	(MARIA HERNANDEZ	Plaintiff
	(
BETWEEN	(AND	
	(
	(
	(NEFTALI MARTINEZ	Defendant

BEFORE the Honourable Abdulai Conteh, Chief Justice.

Mr. Dons Waithe for the Plaintiff.
Defendant unrepresented and in person.

JUDGMENT

By a written agreement between the parties in this action dated 27 April 2000, the Plaintiff undertook to pay the sum of \$18,000.00 to the Defendant to construct a house for her at Lavender Street in the St. Martin de Porres area of Belize City. By the agreement, the Plaintiff paid on its signature the sum of \$9,000.00 as advance for the construction of the house.

2. The balance, that is the other \$9,000.00, was to be paid in two installments.
3. The Defendant evidently finished constructing the house but it was not to the Plaintiff's liking or satisfaction. Hence this action, in which the Plaintiff claims that in breach of the agreement, the Defendant failed to complete the house in accordance with the plans and specifications she supplied, and the Defendant had abandoned the construction of the house thereby leaving numerous faults to be corrected and a number of things to be completed.

4. The Plaintiff claims that as a result of this breach by the Defendant, she has been deprived of the use and enjoyment of a fully finished house and has been put to great inconvenience and has suffered loss and damage.
5. The Plaintiff particularized the special damages she alleged to have suffered as a result of the breach by non-completion of the construction of the house by the Defendant. She originally claimed the sum of \$5,219.75 in the specially endorsed writ dated 15th May 2001. But when the matter came up for hearing on 2nd July 2002, Mr. Dons Waithe the learned attorney for the Plaintiff applied for and was granted an amendment as the Defendant had no objection for the original sum of \$5,219.75 to be substituted by the sum of \$8,719.75. This additional \$3,500.00 was stated in the particulars of loss and damage as representing an extra \$800.00 to the price paid to the Defendant to purchase bathroom fixtures and \$2,000.00 being the difference between the value of the house as determined by Mr. H.C. Enriquez a valuator, who testified for the Plaintiff and the sum of \$700.00 being the cost of repairing the stairs not included in the original estimate of repairs.
6. Both the Plaintiff and the Defendant testified and they each called two witnesses; and a number of receipts were tendered as exhibits.
7. Having listened carefully to the parties and their witnesses I am satisfied that the Defendant did not construct the house to the satisfaction of the Plaintiff. I however, did not have the benefit of seeing the plans and specifications which the Plaintiff claims she supplied the Defendant according to which he should have constructed the house. But I am prepared to find, and I do find on the evidence that the house was not satisfactorily completed. This for example is borne out by **Exhibits HE 1 – 3**, photographs of the house taken by Mr. Enriquez.
8. As a result of this, I believe that the Plaintiff was put to some expense and bother to finish the house satisfactorily. I am not however convinced that all the extra sum of \$3,500.00 which the Plaintiff claimed on the amendment should be allowed. In particular, I do not see why the Defendant should be saddled with the sum of \$2,000.00 being the cost of the difference in the price of the house as valued by Mr. Enriquez. I will therefore allow the sums of \$800.00 for the purchase of bathroom fixture and \$700.00 for the costs of repairs of the stairs not originally included.

9. This therefore makes a total of \$1,500.00 additional to the sum of \$5,219.75 originally claimed by the Plaintiff, bringing the total to \$6,719.75.
10. However, on the evidence and having listened carefully to the parties, I am prepared to believe the Defendant when he testified that the Plaintiff only gave him \$6,000.00 of the balance of \$9,000.00 representing the price for the construction of the house in the total sum of \$18,000.00 according to the written agreement between them as contained in Exhibit M.H. 1. I am forced to this conclusion because when the Plaintiff paid the first \$9,000.00, she did so in the presence of witnesses such as Mrs. Sylvia Hulse J.P. and Librarian of the Supreme Court. I do not therefore accept the Plaintiff's version that she paid the other \$9,000.00 in cash to the Defendant. On balance I prefer the Defendant's version that he only received \$6,000.00 and notwithstanding repeated requests he never received the remaining \$3,000.00.
11. In the result therefore, I find that the Plaintiff has proved her claim but only to the extent of the sum of \$6,719.75 representing the extra costs of materials and labour necessary to complete the house satisfactorily.
12. Against this sum however I will set off the sum of \$3,000.00 which I find owing to the Defendant from the original contract price of \$18,000.00 for the construction of the house.
13. In the result I enter judgment for the Plaintiff for the sum of \$3,719.75.
14. In view of my finding on the balance owed to the Defendant it is only fair and reasonable if I award no costs for this action.

A. O. CONTEH
Chief Justice

DATED: 9th July, 2002.