

IN THE SUPREME COURT OF BELIZE AD. 2010

CLAIM NO. 773 of 2010

BETWEEN:

HAVEN HOUSE

CLAIMANT

AND

THADEUS LESLIE

DEFENDANT

Before: Justice Minnet Hafiz-Bertram

Ms. Pricilla Banner of Courtenay Coye LLP for Claimant
Mr. Hubert Elrington S.C. for Defendant

J U D G M E N T

Introduction

1. This is a claim for damages for breach of contract for failure to complete construction services. The Claimant, Haven House is a non-profit company established under and pursuant to Chapter 50 of the Laws of Belize. The Defendant, Thadeus Leslie is a building contractor with over 20 years experience. Haven House claims that Mr. Leslie owes them \$23,209.00 for unfinished work.
2. The parties entered into an agreement dated 28th January, 2008 for renovation of a building on the Haven House property which was executed by Dorla Rosado, Executive Director for Haven House and

Mr. Leslie. The agreement was for a total amount of \$31,400.00 and works were to be completed in accordance with the agreed bill of quantities and a blue print (plan) which were prepared by Mr. Leslie.

3. There is no dispute that Mr. Leslie was paid the entire sum of \$31,400.00 for the construction services and that the works were incomplete. Mr. Leslie's defence is that he was prevented from completing the works by a severe flood which is an act of God. Haven House in reply stated that Mr. Leslie underestimated the costs of the works to be conducted.
4. The Claimant called two witnesses, Mrs. Dorla Rosado and Mrs. Dianne Haylock. Mr. Leslie gave evidence for the defence.
5. On 25th July, 2011, after witness statements were filed, at a pre-trial review hearing, Mr. Leslie was given permission to file affidavit evidence from a Meteorologist in Belize to address the issue of flooding in Belize and in particular, the Hattieville area where the Haven House property is located. Mr. Leslie did not file the affidavit from a meteorologist. Instead, Mr. Leslie swore to an affidavit dated 2nd November, 2011 and he exhibited what he calls a Meteorological report for the period May and June, 2008. He said that the report shows that Belize was affected by hurricane Arthur from 31st May to 2nd June, 2008 and during this period, up to three times the average rainfall fell in the Belize District. This unsigned report showing rainfall data in millimeters for 2008 was not signed by a meteorologist and did not address the issue of flooding in Hattieville. As such, on objections made by the Claimant, the affidavit evidence was struck out as being inadmissible hearsay.

6. The issues that arise for consideration are:
 1. Whether the renovation of the Haven House property was frustrated by a severe flood.
 2. Whether the failure to complete the project was caused by under estimation of the contract by the Defendant
 3. Whether the Defendant is liable to the Claimant for failure to complete the construction works on the Haven House property.
 4. If liable, the measure of damages.

Issue 1

Whether the renovation of the Haven House property was frustrated by a severe flood.

7. Mr. Leslie in his defence to the claim for damages for breach of contract stated that he was prevented from completing the works, by an act of God namely, a severe flood which inundated many parts of Belize, including the Haven House property which is located in Hattievilke. He said that the flood affected the country and the building site in the month of June 2008.
8. The Claimant in reply to the Defence accepted that there was heavy rains during that period which is usual for that time of the year but says that the weather did not damage the building to the extent that the Defendant could not have completed the work on the building.

Evidence

9. Mr. Leslie at paragraphs 9 and 10 of his witness statement said that his problem with the project for Haven House started when the final payment was held up for two weeks and the renovation ceased. However, he was still paying the watchman to protect the job site. He stated that he was given the funds after the two weeks delay but was unable to let the watchman remain at the project site because on that particular weekend, Belize had one of the biggest floods which made the site inaccessible for weeks. He further stated that the flood caused considerable damage to the structure and more damage was caused by looting. At paragraph 12 of his witness statement, Mr. Leslie said that he was unable to do anything by the time the flood waters receded as there was no street leading to the property and the open lot which was used became impassible whenever shower of rain fell.

10. In cross examination, Mr. Leslie testified that the damage to the building occurred in 2008. That he went to the site a week after the flood but, it was not accessible because the flood came up high enough to cover the floor of the building. He further testified that he remembered meeting with Mrs. Haylock and Mrs. Rosado after 2008. He was asked whether at that meeting he apologized for the non-completion of the works and Mr. Leslie replied that, *"I told them that I was sorry about the situation that occurred."* Mr. Leslie was then asked if he informed Mrs. Haylock and Mrs. Rosado that the building had sustained damage and he said, *"I think I did. I am not sure."*

11. Ms. Diane Haylock, who testified for the Claimant, in her witness statement at paragraphs 6, 7 and 8 stated that in 2009 the Board met with Mr. Leslie to resolve the failure by him to complete the works as they did not want the matter to go to court. At that meeting, Mr. Leslie apologized to the Board members for the delay in completion of the

works and he requested more time to do so. Further, Mr. Leslie did not tell the members of the Board that he was unable to complete the renovations because of some damage to the building caused by bad weather.

12. Mrs. Rosado in her witness statement confirmed the evidence of Ms. Haylock which is that in 2009, the Board of Directors of Haven House met with Mr. Leslie and at that meeting he apologized to the Board of Directors for not completing the works as promised and further, he was unable to complete the works because he underestimated the costs.
13. At paragraph 23 of her witness statement, Mrs. Rosado stated that she made periodic checks of the property during and after the rainy season to review Mr. Leslie's progress and she observed that the ground was muddy during the rainy season but did not find that the property was flooded at any time. Further, the house was in the same structural condition after the rainy season as it was before the rainy season.

Analysis of the evidence

14. Mr. Leslie's evidence that in June of 2008 there was a severe flood which affected some parts of Belize is truthful. The court takes judicial notice that during the said period Tropical Storm Arthur brought a lot of rain to Belize and there was a flash flood in the Southern part of the country. The question is whether this flood which occurred in the South affected the Haven House property in Hattievile. Haven House has accepted that there was a lot of rains during the rainy season but denied the property was flooded. I find the evidence of Mrs. Rosado to be credible that the Haven House property was not affected by the rains and that it was the ground that was muddy. I accept her evidence that after the rains the Haven House building was in the same condition as before the rain.

15. The evidence of both Mrs. Rosado and Mrs. Haylock, which I find credible, shows that in 2009 when the Board met with Mr. Leslie, he did not at anytime inform them about the flood. Instead, he told the Board that he had underestimated the cost of the project. Further, that his vehicle could not drive onto the property due to the mud caused by the rains in July. As such, he requested that the Board give him an extension of time of six months to finish the construction. On a balance of probabilities, I find that the renovation of the Haven House property was not frustrated by a severe flood.

Issue 2:

Whether the failure to complete the project was caused by under-estimation of the contract by the Defendant

16. The Claimants in their written submissions contended that the evidence proves that Mr. Leslie did not have sufficient funds to complete the works and therefore he abandoned the project. As shown above, Mrs. Dorla Rosado at paragraphs 16 and 17 of her witness statement states that in early 2009, Mr. Leslie met with the Board of Directors of Haven House to discuss the completion of the works and he told the Board that he was unable to do so as he had underestimated the costs. Further, that his vehicle could not drive onto the property due to the mud caused by the rains in July. As such, he requested that the Board give him an extension of time of six months to finish the construction.
17. Mr. Leslie's evidence at paragraph 11 shows that after he received the final payment which was two weeks late, he had no money to complete the project. He said the following:

11. *That I believe the two weeks delay in payment was the time period in which the job could have been completed to a satisfactory stage. This was a very slow period and I wasn't doing any work. The final payment was expended on cost of fuel, security and materials bought.*
18. In cross-examination, Mr. Leslie said that he used the last payment to pay bills which he incurred by purchasing materials on credit from Brothers' Habet. Further, that he had to make payment to the watchman. Mr. Leslie also testified that when he made his bid, he had not put in the cost of transportation and food for his workers.
19. In further cross-examination, when Mr. Leslie was asked whether he underestimated the cost of the construction to be done, he answered,
"Of course. Underestimate was an understatement because I was going to give so much of that back and pay back. I took materials from off a job. I had some lumber and I donated to that place and put in there. If you look at the size of the building and get an estimate on the work that was done you would see that it far exceeded the cost of that."

Mr. Leslie was then asked if he is saying that he is an incompetent contractor and he answered, *"Yes. In that situation, I probably was incompetent."*

20. It is without a doubt, as shown by the evidence of Mr. Leslie, that he had underestimated the cost of the contract. The question that follows, is whether the underestimation of the contract is the cause of the non completion of the construction. In my view, paragraph 11 of Mr. Leslie's evidence clearly shows that he could not complete the project because

he spent the final payment for bills already incurred. Accordingly, I find that the failure to complete the renovations of the Haven House property was caused by an underestimation of the contract by Mr. Leslie causing him to abandon the project.

Issue 3:

Whether the Defendant is liable to the Claimant for failure to complete the construction works on the Haven House property.

21. The evidence proves that the failure to complete the works was caused by an underestimation of the contract by Mr. Leslie. This is not the fault of the Claimant as Mr. Leslie who is an experienced contractor for some twenty years, prepared the Bill of Quantities himself and gave Haven House a discount. Mrs. Rosado's evidence is that Haven House had only \$31,400.00 to spend and Mr. Leslie was asked by Mrs. Rosado what works he can do with that amount of finance. He thereafter went and prepared a Plan and a Bill of Quantities which amounted to the sum of \$32,357.63. At the bottom of the type written bill of quantities is a note which says, "*The contractor, Mr. Leslie has agreed to complete the job for \$31,400.00.*" See Exhibit D.R. "2" for the Bill of Quantities and Exhibit D.R. "3" for the Plan. Mr. Leslie confirms the evidence of Mrs. Rosado at paragraph 3 of his witness statement where he stated that he was asked to meet a certain price which was the amount he agreed to, as shown by the Bill of Quantities. Mr. Leslie, having agreed to do so, is legally required to do the renovations according to the plan and the bill of quantities which he prepared and signed. Since Mr. Leslie failed to complete the works in accordance with the Plan and Bill of Quantities, he breached the contract with Haven House. As such, he is liable to the Claimant for failure to complete the construction works on the Haven House property.

Issue 4:

What is the measure of damages?

22. Learned Counsel, Ms. Banner for the Claimant, relied on Chitty on Contracts, Vol II, para. 37-207 which states:

Where the contractor fails to build at all or in part, then the normal measure of damages is the cost to the employer of completing the building works in a reasonable manner less the contract price ... The employer may also ... recover in respect of increased costs arising through the delay in completion following the contractor's failure to build.

23. I am in agreement with the submissions of Claimant that they are entitled to the normal measure of damages as shown by Chitty on contracts above. Accordingly, I find that the Claimant is entitled to the normal measure of damages which is the cost of completing the works.

Assessment of Damages

24. Mr. Leslie during cross-examination admitted that he did not complete the following works:

1. No installation of shower, toilet and sink in the bathroom;
2. Plumbing not connected to septic tank;
3. No installation of cabinets and sink in the kitchen;
4. Back door not installed;
5. Exterior of house not painted;
6. No gate was placed for the fence.

25. Mr. Leslie also admitted that he did not purchase the washer, stove, refrigerator, dining table with four chairs, three dressers, bunk beds and mattress. (See page 126 of the transcript).
26. Learned Counsel, Ms. Pricilla Banner submitted that Mr. Leslie failed to perform the obligations under the contract which he entered into with Haven House and as such should compensate them for the cost of completing the works. Learned Counsel submitted that the unchallenged evidence of the Claimant is that the sum of \$23,209.00 was needed for the completion of the works, at the time of the filing of the claim. Dorla Rosado at paragraph 54 of her witness statement said that as a result of Mr. Leslie's breach of contract with Haven House, they retained the services of another contractor who indicated that it will cost \$23,209.00 to complete the work which Mr. Leslie failed to do and make the necessary repairs. See Exhibit D.R "9" for a copy of the estimate given by Kenrick Jones.
27. The evidence shows that Mr. Jones did not complete the construction on Haven House. He provided only an estimate to finish the works. He was not called to give evidence and so he could not have been cross-examined on the preparation of the estimate. A perusal of the estimate shows that Mr. Jones did not state the quantity of materials to be purchased. Further, it seems as though that he lumped the cost of materials with the cost of labour. I am not satisfied with this estimate which shows that it would have cost \$23,209.00 to complete the project.
28. Learned Counsel, Ms. Banner further submitted that a rough estimate of the work left undone by Mr. Leslie by a mere calculation of the materials and labour stated on the Bill of Quantities is approximately \$14,000.00. See calculation on page 8 of her written submissions.

29. The Bill of Quantities is in three parts. The first part dated 28th January, 2008 is for \$ 15,235.68 and this includes labour and material. The second part for \$1,131.00 concerns works for a house in Vista Del Mar which has nothing to do with the Haven House renovations. The third part dated 15th November, 2007 has two sections. The first section is for a total of \$ 11,893.95 which includes labour and materials. The second section is for furniture for a total of \$ 4,107.00. The total of all three parts of the Bill of Quantities is for \$ 32,357.63. Mr. Leslie then gave the Claimant a discount and agreed to do all the works, which includes the Vista Del Mar renovations, for a total of \$31,400.00. The Bill of Quantities which has a break down of materials and labour pose some difficulty in getting an accurate value of the work left undone. For instance, in relation to the labour for the addition of the house which was not done by Mr. Leslie, the court does not have the evidence as to the value of that work. The court therefore, cannot accept the estimated figure of \$14,000.00 put forward by the Claimant.

Receipts for \$20,000

30. In cross-examination, Mr. Leslie testified that before he received the last payment he gave Mrs. Rosado receipts for the works already completed. He said: ***"I gave her receipts and stuff for the first \$20,000. because she would not give the remaining moneys unless those were submitted ... They would not have given me anymore moneys. .. They were receipts for the labour and the materials for that building."***
31. I accept Mr. Leslie's evidence that the receipts given to Mrs. Rosado were for materials and labour for the Haven House renovations. Since the contract was for \$31,500.00 and the evidence is that \$20,000 was spent on labour and materials for work already done, it means, by deduction that 11,500.00 is for works not completed. I find that the

Claimant is entitled to the sum of \$ 11,500.00 as damages for the works that were not completed by Mr. Leslie on the Haven House property in accordance with the Plan and the Bill of Quantities.

32. **Conclusion**

The findings of the court are:

The Defendant has failed to prove that the Haven House Project was frustrated by a severe flood.

The failure to complete the renovations of the Haven House property was caused by an underestimation of the contract by Mr. Leslie causing him to abandon the project.

Since Mr. Leslie failed to complete the works in accordance with the Plan and Bill of Quantities, he breached the contract with Haven House. As such, he is liable to the Claimant for failure to complete the construction works on the Haven House property.

The Claimant is entitled to the normal measure of damages which is the cost of completing the works.

The Claimant is entitled to the sum of \$ 11,500.00 as damages for the works that were not completed by the Defendant on the Haven House property in accordance with the Plan and the Bill of Quantities.

33. Accordingly, the following order is made:

Order

The Claimant is awarded the sum of \$11,500.00 as damages for breach of contract for failure to complete construction services on the Haven House property.

Interest is awarded at six per cent per annum pursuant to section 166 of the Supreme Court of Judicature Act, Chapter 91.

Fixed Costs is awarded to the Claimant in the sum of \$ 2,025.00

Dated this 5th day of June, 2012

.....

Minnet Hafiz-Bertram
Supreme Court Judge