IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 540 of 2020

BETWEEN:

[1] SCOTT ROBINSON
[2] VANESSA ROBINSON

Claimants

and

[1] THE ESTATE OF NOE SANDOVAL
[2] ROSALBA SANDOVAL

Defendants

Appearances:

Stacey N. Castillo for the Claimants
Monica Stuart and Francine Burns for the 1st Defendant
Karen Munnings for the 2nd Defendant

2023: November 7, 9
December 18
2004: January 4

DECISION

[1] **FARNESE, J.**: Scott and Vanessa Robinson hired Noe Sandoval to build a house on Caye Caulker and signed a contract to that effect. Mr. Sandoval died before the house was completed, which the Robinsons say resulted in the estate

abandoning the project. They hired another contractor to complete the project at a higher price. The Robinsons seek damages of BZ$168,110 they allege to have suffered because of the breach and for defective work. They also seek to recover, in addition or in the alternative, funds they allege they provided Mr. Sandoval through an account belonging to his wife, Mrs. Rosalba Sandoval, for work not completed on the house and damages for defective work.

[2] The 1st Defendant, represented in these proceedings by Ms. Norielli Sandoval, Mr. Sandoval's daughter, denies that they breached the contract and counterclaims for a declaration that she, on behalf of the estate, and the Robinsons agreed to a mutual release of their obligations under the construction contract. She also asks that a cement mixer belonging to her father and left at the construction site be returned to her or that she be awarded the value of the mixer. She counterclaims for damages for the mixer's wrongful detention.

[3] Mrs. Rosalba Sandoval denies that her husband abandoned the work and breached the contract. She also denies that his work was defective. She claims that although she owned the account through which her husband received payments from the Robinsons, she ought not be liable because she merely passed the money along to her husband. He left no balance in the account at his death.

[4] For the reasons outlined below I find that the Robinsons are entitled to be reimbursed BZ$2103 by the defendants for an overpayment for the partial construction of their home by Mr. Sandoval. I further find that the Robinsons wrongfully terminated their contract with the estate of Mr. Sandoval prior to the construction's completion. Therefore, they are not entitled to damages for defective works. Finally, I find that the cement mixer is property of the estate of Mr. Sandoval. The estate, however, has failed to prove that the mixer was wrongfully detained by the Robinsons.

Issues

[5] The claim and counterclaim raise the following issues:

a) Were the Robinsons entitled to treat the contract as repudiated after the death of Mr. Sandoval?

b) Are the Robinsons entitled to a remedy for any loss they experienced because the contract came to an end?

c) Did Noe Sandoval negligently and in breach of his contractual duty, perform defective work and use inferior and unsuitable materials?

d) Are the Robinsons liable for the cement mixer?

Analysis

Were the Robinsons entitled to treat the contract as repudiated after the death of Mr. Sandoval?

[6] Mr. Sandoval operated a construction company called Noe Sandoval Dezign and Construction although ownership of the company was solely in Mrs. Rosalba's name. Mrs. Rosalba testified that the company's registration and bank account were in her name because her husband did not have Belizean identification. But for her involvement in the company's banking, I have no evidence that Mrs. Rosalba had any involvement with the company's affairs generally or the Robinsons' contract.

[7] The Robinsons signed a contract, and subsequent addendums for a fence and a self-contained suite, with Mr. Sandoval and not Noe Sandoval Dezign and Construction. It is unlikely that the contract was drafted by an attorney because it lacks much of the usual contents of a construction contract. Consequently, the contract provides little assistance to the court in resolving this claim. The parties have made no provision in the contract for resolving disagreements or terminating the agreement to which the court can turn to determine the parties' intentions.

[8] It is unclear to me why the Robinsons have not pled that because they had a personal contract with Mr. Sandoval, performance by Mr. Sandoval became an impossibility. The court heard evidence that Mr. Sandoval was very engaged in the day-to-day construction activities of the project and was not a building contractor who left site management to his foreman. The Robinsons have also not pled that they ended the contract to mitigate their losses in anticipation of a breach by the estate when they learned from Ms. Norielli that the estate had no funds and no qualified person to replace Mr. Sandoval.

[9] Instead, the Robinsons pled:

> 9. On the 19th November 2019, before the construction was completed, Mr. Sandoval passed away, and the work was abandoned, in breach of the contract.
>
> 10. By reason of the Defendants breach and repudiation of the Agreement…the Claimants were compelled to employ another contractor to complete the house and fence, and to remedy defective works done by Mr. Sandoval at a greatly increased cost.

Thus, the basis of the Robinsons' claim is Mr. Sandoval's abandonment of construction when he died was a repudiation of the contract.

[10] To support their claim, the Robinsons rely on Ms. Norielli's admission that work stopped when her father died in November 2019 and did not recommence until mid-December 2019. They would also like me to consider that the estate was incapable of completing the contract to the requisite standard because they did not have a qualified contractor identified to replace Mr. Sandoval and lacked funds and materials.

[11] I decline to consider whether the estate's alleged inability to complete the contract was a repudiation. The Supreme Court (Civil Procedure) Rules, 2005 (CPR) require that "all the facts on which the claimant relies" be included in the statement of claim.[1] The purpose of this rule is to allow a defendant to know the case they

[1] CPR 8.7(1).

must meet. The defendants were not alerted to the allegation that the estate's inability to perform the contract was in issue. Consequently, I will solely consider whether the contract was abandoned.

[12] I do not find that a delay of one month, at the most, constitutes abandonment in the circumstances. First, I do not find that time was of the essence in the contract. The contract only contained an estimated date for the final walkthrough. That the Robinsons did not treat this as a firm date for completion is reflected in a clause in the contract that provided for a bonus payment if the construction was complete and move-in ready by the estimated final walkthrough date.

[13] Mr. Sandoval's death was also unexpected and complicated by the fact that his death was by suicide. Ms. Norielli's testimony that she merely helped her dad when he was required to communicate in English and was not involved in the day-to-day operations of the business is supported by the content of the email communication between Ms. Norielli and the Robinsons. Thus, the estate would not have been prepared to take over Mr. Sandoval's business.

[14] Nonetheless, within a week of her father's death, Ms. Norielli spoke with Jairo Barrera. The Robinsons had requested that he begin supervising the existing crew to complete the construction. Shortly thereafter, Ms. Norielli met with the Robinsons where it was agreed that the project would continue. She also completed a walkthrough of the building site with Mr. Barrera. Thereafter, Ms. Norielli paid the crew and construction recommenced by mid-December.

[15] I also do not find the fact that the Robinsons, and not Ms. Norielli, initiated contact with Mr. Barrera significant. Where time is not of the essence, reasonable delays are not evidence of a breach.[2] Ms. Norielli had not yet buried her father when she first spoke to Mr. Barrera. The Robinsons' contract was also one of three building contracts Mr. Sandoval was performing when he died that Ms. Norielli had to attend to. Moreover, construction was suspended the day before Mr. Sandoval's

[2] Sutton-Herbert & Anor. v. Allie's Construction Company Limited Claim No. SKBHCV2015/0067 at para 16.

death because the water to the Robinsons' site was turned off and not restored until 4th December due to a billing issue. Therefore, I find no evidence that the contract was abandoned. The delay was reasonable in the circumstances. The Robinsons were not entitled to treat the contract as repudiated.

[16] If I am incorrect and the contract was repudiated, I find that the Robinsons were not allowed to terminate the contract when they did because they affirmed the contract when they met with Ms. Norielli and agreed to a course of action for her to complete the project. As outlined in the **Halsbury's Laws of England**:[3]

> When one party is entitled to terminate, he is required to take steps to exercise the right, and he may instead affirm the contract; in which case he will be confined to his remedy in damages, if any.

I do not accept that the Robinsons created a new contract when they spoke with and paid Mr. Barrera for his services. Mr. Barrera testified that he believed he was working on Ms. Norielli's project, he sought her approval before commencing work, visited the building site with her to plan the work to be done, and supervised her crew. Although the Robinsons paid Mr. Barrera directly, direct payment of some of the expenses, including labour, was not unprecedented. The contract provided for the Robinsons to directly pay for the piles to be constructed.

[17] According to **Chitty on Contracts**, an affirmation requires the party to have knowledge of the facts giving rise to the breach and the legal options available to them in response to the repudiation.[4] The affirmation can be express or implied but must be total.[5] I find these conditions have been met in this case.

[18] While the Robinsons' comfort level with Ms. Norielli's ability to complete their project changed, I do not find that the facts of the breach changed. The Robinsons knew that the project would require someone to replace Mr. Sandoval and Mr. Barrera was identified as that person. I also find that the financial situation left by Mr. Sandoval was also known. I was provided no reasonable explanation for why

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[3] Contract, Vol. 22 (2019) 5th Ed. at 344 "Right to Terminate Contract."
[4] Vol. 24, (2018) 33rd Ed. at 24-003 "Affirmation."
[5] Ibid.

the Robinsons discussed who would be responsible for paying the crew at the meeting where they affirmed the contract if Ms. Norielli had not discussed the financial situation. I also find that the Robinsons were aware of their legal right to terminate. Within weeks of their decision to affirm, the Robinsons terminated the contract. I was provided no evidence that they consulted a lawyer and now understood their rights. In fact, Mrs. Robinson testified that it was a decision they came to on their own. Finally, the affirmation was total. The construction was to pick-up where it was left off.

Are the Robinsons entitled to a remedy for any loss they experienced because the contract came to an end?

[19] The Robinsons have also asked the court for an accounting of moneys paid to Mrs. Rosalba and an order for payment of any sums found due with interest. Although I have found that the Robinsons wrongfully terminated the contract with the estate of Mr. Sandoval, a contractual breach does not disentitle a party from amounts owing to them. Damages for breach of contract have not been pled and where they are pled, the normal function of damages is compensatory. Damages aim "to compensate the true loss suffered by the innocent party and place him in the same position, so far as money can do it, as if the contract had been performed."[6] I have no evidence of what the defendants' loss is, if any, that would justify offsetting the Robinsons' overpayment.

[20] Instead, the 1st defendant asks for a declaration that Ms. Norielli, on behalf of the estate, and the Robinsons reached an agreement that both parties would be released from further obligations under the contract. I do not find that the parties agreed to release each other from their obligations under the contract. The Robinsons and Ms. Norielli met on 5th January 2020 and agreed that their working relationship would come to an end. They shook hands and went their separate

[6] Damages, Halsbury's Laws of England, Vol. 22 (2019) 5th Ed. at 499 "Compensatory function of damages for breach of contract" (footnotes excluded).

ways. The Robinsons wrote to Ms. Norielli the next day and proposed BZ$120,000 as reimbursement for the money they allege was overpaid for the project.

[21] I do not question the sincerity of Ms. Norielli's belief that she understood that the parties had agreed to release one another, but I do not find that the weight of evidence supports a finding that the Robinsons agreed to the release. The only other person at that meeting was Ms. Norielli's brother who did not testify. The Robinsons' conduct the day after the meeting contradicts any mutual agreement of release. I also find it highly unlikely that a reasonable person who believes BZ$120,000 is owed to them would abandon that claim.

[22] I also find the fact that the contract was with Mr. Sandoval and not Mrs. Rosalba not relevant to whether the Robinsons are entitled to an accounting of sums paid and value received. Mrs. Rosalba received the funds as agent for Mr. Sandoval. While Mrs. Rosalba says that the money was withdrawn at Mr. Sandoval's request, I have no evidence that those withdrawals were for the Robinsons' project. If the Robinsons prove that the money was received in her account, Mrs. Rosalba's testimony that she merely was a conduit for the transfers and had no idea why money was withdrawn does not relieve her from liability for the overpayment. Mrs. Rosalba must demonstrate that the money was used for the purpose it was received to avoid liability.

[23] As a result, the court must decide what, if any, amount is owed to the Robinsons. They claim BZ$143,000 was received by Ms. Rosalba and is owed to them. The Robinsons have the burden to prove this amount.

[24] The parties agreed to BZ$361,400 as the contract price for a move-in ready, 1400 sq.ft home (plus 12x37 sq.ft veranda and 3-12x12 sq.ft rooms on the ground floor). The contract outlined a down payment of BZ$50,000 due upon the contract's signing, 5 separate payments of BZ$60,000 due upon the completion of various stages of construction, and a payment of BZ$11,400 due at the final walkthrough. The contract provided estimated dates for the subsequent payments and specified that the piles would be paid directly to the subcontractor.

[25] Two addendums were agreed to the initial contract. The first addendum was dated 29th October 2019 and added a 12x40 sq.ft "turnkey condo" to the ground floor for an additional BZ$60,000 without changing the schedule of payments. The second addendum was not dated, but the parties agree was drafted in September 2019. The parties agreed that a fence and gate would be constructed for BZ$30,000 and would be paid in two equal instalments of BZ$15,000. Construction on the fence would begin within one-week of receiving the first instalment and be completed within three-weeks, weather permitting.

[26] Therefore, the total contract price was BZ$451,400. The Robinsons argue they have provided evidence that they paid BZ$389,552.52 to the Noe Sandoval Dezign and Construction account. They offer 3 bank statements and a letter from Atlantic Bank purporting to outline all transfers to the account of Rosalba Sandoval t/a Noe Sandoval Dezign and Construction but listed as 'Third Party Internet Transfer' on the bank statements. The Atlantic Bank letter indicates the last 4 numbers of Mrs. Rosalba's account. The 4 numbers match the last 4 numbers of the account number for payments to be sent provided by Ms. Norielli in an email to the Robinsons dated 31st October 2018. I accept that the Atlantic Bank letter identifies all transfers from the Robinsons to Ms. Rosalba listed as 'Third Party Internet Transfers'.

[27] The defendants object to the bank statements' inclusion as evidence because it is not readily apparent that the statements are from the Atlantic Bank. I have decided to allow the bank statements to be entered as evidence because their form and content makes it readily apparent that they are bank statements from an account belonging to Vanessa Robinson. That the account is from Atlantic Bank is verified by comparing Atlantic Bank's letter outlining transfers from the Robinsons to Mrs. Rosalba to transfers found on the bank statements. The copies of the bank statements attached to Mr. Robinson's witness statement also match copies of the bank statements printed on Atlantic Bank's letterhead and signed and stamped by an authorized employee of the Atlantic Bank, which were provided during the disclosure stage of these proceedings.

[28] After reviewing the Robinson's evidence and submission, I find that the weight of evidence does not support the Robinsons' claim that they transferred BZ$389,552.52 to the Noe Sandoval Dezign and Construction account maintained by Mrs. Rosalba. The Robinsons testified that they made all payments through Atlantic Bank and ask this court to consider all transfers listed on the bank statements to 'Third Party Internet Transfers' and to 'NOE DEZIGN' as payments made pursuant to the contract. The total for the payments made to 'Third Party Internet Transfers' or to 'NOE DEZIGN' on the bank statements is BZ$279,752.52. The total of the transfers listed in the Atlantic Bank letter is BZ$184,000, however, transfers totally BZ$102,000 appear on both the Atlantic Bank letter and the bank statements.[7] Therefore, the Robinsons have only provided evidence that BZ$361,752.52 was transferred to either NOE DEZIGN or to a 'Third Party Internet Transfer'.

[29] I am not satisfied, however, that all transfers listed as 'Third Party Internet Transfers' were sent to Mrs. Rosalba's account. The Atlantic Bank changed how they described transfers on their bank statements in March 2019. As a result, Mrs. Robinson asked for the letter from Atlantic Bank which listed all online third-party transfers to Mrs. Rosalba after the format for listing transfers changed. The total of the transfers listed in the Atlantic Bank letter is BZ$184,000. When the amount paid to NOE DEZIGN (BZ$150,552.52) is added to the amount in the Atlantic Bank letter (BZ$184,000), the total is BZ$334,552.52. The difference between the total amount of transfers from the Robinsons' account and the total amount verified as having been transferred to Mrs. Rosalba's account is BZ$27,200. The Atlantic Bank letter is dated 11th November 2022. Had the additional BZ$27,200 transfers been to Mrs. Rosalba's account, they would have been included in the letter. While it is undisputed that two BZ$500 transfers on the 9th and 19th December 2019, listed as 'Third Party Internet Transfers' were sent to Mr. Barrera, the

[7] Not all transactions appear on both the bank statements and the Atlantic Bank letter because not all bank statements for the relevant period were submitted as evidence.

Robinsons have failed to prove the remaining $26,200 was transferred to Mrs. Rosalba as claimed.

[30] To understand this discrepancy between the amount claimed by the Robinsons and the amount I have identified as transferred to Mrs. Rosalba, I have reviewed the limited email correspondence submitted by both parties into evidence to determine what payments were made when and for what purpose. What becomes clear is that payments were loosely made in accordance with the payment schedule outlined in the contract. The Robinsons have failed to provide any particulars of transfers they have made to third-parties, other than Mr. Barrera, that may justify their inclusion in the amount claimed even though those transfers were not sent to Mrs. Rosalba.

[31] I find the Robinsons paid the initial payment of BZ$50,000 in two transfers: BZ$20,000 (26th November 2018) and BZ$30,000 (8th February 2019). In between those dates are two transfers of BZ$11,276.26 each or BZ$22,552.52. The weight of evidence supports a finding that these payments were for the piles even though the contract specified that the Robinsons would directly pay M&M for the piles. As per the contract, these payments were in addition to the contracted price for the house's construction. They must be deducted from what the Robinsons paid under the contract. An email from 9th May 2019 from Ms. Norielli to Mr. Robinson seeking confirmation for when the third BZ$60,000 payment would be made outlines the record of transfers received to that date. She states those funds are "apart from the money that was sent for M&M piles place." Mr. Carleton Young, the court's expert valuator, also values the piles as BZ$22,552 and excludes that amount from the contract value. He cites an invoice for the piles. Which was not submitted into evidence. The Robinsons have proven they transferred the initial BZ$50,000 payment to Mrs. Rosalba as of February 2019.

[32] In the same email, Ms. Norielli explains that the first BZ$60,000 payment was paid in two instalments: BZ$58,000 (13th March 2019) and BZ$2,000 (5th May 2019). The second BZ$60,000 payment was paid in four instalments: BZ$20,000 (1st

March 2019) and four BZ$10,000 (24th, 29th, 30th March and 2nd May 2019). These transfers are verified in both the bank records and email correspondence with Mr. Robinson on 30th April 2019 through 2nd May 2019. Ms. Norielli's email of 9th May 2019 follows an email from Mr. Robinson on 5th May 2019 where he declares they are all caught up on payments and requests a breakdown of all payments received into Mrs. Rosalba's account. The Robinsons have proven they transferred an additional BZ$120,000 to Mrs. Rosalba as of May 2019.

[33] Mr. Robinson responds to the 9th May email questioning why a further payment was requested as his records show that BZ$171,276 was transferred, which is almost 50% of the cost of construction yet he did not believe that 50% of the construction had been completed. He stated that the amount was in addition to a payment to Rapidito. Rapiditio sells construction materials, but no record of the amount paid to Rapidito was provided to the court. Therefore, the amount paid towards Rapidito has not been proven and cannot be included in the total amount paid towards the contract.

[34] No further email communication between the parties in response to Mr. Robinson's question about the stage of construction was provided to the court. The bank records show, however, that BZ$10,000 was transferred on 24th May 2019 as the first instalment of the third BZ$60,000 payment thereby indicating that the Robinsons received a satisfactory response to their query. When the amount transferred for M&M is deducted, the bank records show transfers totalling BZ$170,000 on 24th May 2019.[8] This amount is equivalent to the initial payment and the first two BZ$60,000 payments plus one BZ$10,000 instalment towards the third BZ$60,000 payment.

[35] On 25th June 2019 Mr. Robinson responds to an email from Ms. Norielli stating that he will make a payment of BZ$10,000 the next day. Further emails in the days that followed show that the payment was delayed while money was

[8] This total adds further support for the finding that the two payments of BZ$11, 276.26 were intended for M&M.

transferred into the Robinsons' account. The bank records outline that the balance of the third BZ$60,000 payment and the first instalment of the fourth BZ$60,000 payment was paid in two BZ$10,000 transfers on each of 1st July 2019, 5th July 2019, and 17th August 2019. The Robinsons then made one BZ$4,000 transfer on 9th August 2019, two BZ$3,000 transfers on 19th August 2019, and two BZ$10,000 transfers on the 22nd and 23rd of August 2019 towards the fourth instalment of BZ$60,000. The Robinsons have proven they transferred an additional BZ$100,000 in instalment payments to Mrs. Rosalba by the end of August 2019.

[36] The remaining payments to Mrs. Rosalba not yet accounted for are a BZ$2,000 payment made on 8th August 2019 and four BZ$10,000 payments on 2nd, 3rd, and 21st October 2019 and 7th November 2019. As per the addendum signed in September 2019 for the construction of the fence, BZ$15,000 was due a week before construction was to begin. There is no dispute that construction on the fence had begun, so BZ$15,000 of those transfers cannot be counted towards the fourth BZ$60,000 payment. The transfer is properly considered a payment under the fence addendum.

[37] It is not clear to me that the BZ$10,000 payment made on 7th November 2019 ought to be considered an instalment of a BZ$60,000 payment either. The addendum for the turnkey condo was signed on 29th October 2019 but did not address a payment schedule. Ms. Norielli testified that the Robinsons wished to move into the condo before construction on the rest of the house was complete. Mrs. Robinson did not deny making this request but testified that they did not intend for that request to be fulfilled at the expense of the normal progress of the rest of construction. While I appreciate the sincerity of this intention, I am at a loss to see how the condo could be completed *before* the rest of construction without it being given priority.

[38] Mr. Abimael Riveroll who worked on the construction testified that the request for a turnkey condo also required the plumbing and electrical fittings to be relocated. The turnkey condo was budgeted at BZ$60,000, approximately 1/6 of the cost of

the entire project. In each of his other two contracts Mr. Sandoval specified an initial payment, including for the fence which was budgeted at half the cost. I find the failure to Include an initial payment in the addendum was an oversight. In the absence of any clear evidence of the intended purpose of the 7th November 2019 transfer, I decline to find that the transfer was an instalment of a BZ$60,000 payment. I find it unreasonable and not consistent with normal construction practices for a builder to front the costs of materials for a project of that size. The Robinsons have proven they transferred an additional BZ$17,000 in instalment payments, BZ$15,000 as an initial payment for the fence by the end, and BZ$10,000 as an initial payment for the turnkey condo. They also proved that Ms. Norielli agreed that the Robinsons would directly pay Mr. Barrera BZ$1,000

[39] Consequently, I find that the Robinsons have proven they transferred BZ$313,000 to Mrs. Rosalba for the contract. This amount equals the total amount transferred from the Robinsons for construction and verified as follows:

- BZ$361,752.52 Total amount of transfers listed in bank records (Atlantic Bank letter and bank statements with duplicate entries removed).
- Subtract BZ$26,200 Unproven "Third Party Internet Transfers" claimed as made to Mrs. Rosalba as per the contract, but unproven.
- Subtract BZ$22,552.52 paid to Mrs. Rosalba to pay M&M for piles.

[40] In Mr. Young's expert opinion, the incomplete property was valued at BZ$303,552, including BZ$20,000 for the plans and permits, when the contract was terminated. Mr. Young, however, was not given the addendums so did not include them in the valuation of the property although he noted that the fence was being constructed. The addendums' exclusion is significant because Mr. Young determined the value of the work done using the contract payment schedule as a percentage of the total contract value. The Robinsons have, therefore, paid BZ$9,448 more than the property they received at the end of the contract based on the initial contract. But that valuation did not consider additional expenditures for work on the addendums.

[41] I must, therefore, decide whether the additional money paid is in fact an overpayment or ought to be attributed to the contract value in the addendums. I note that I have already attributed BZ$25,000 to the addendums thereby reducing the amount paid on the initial contract. Thus, the actual amount paid by the Robinsons for the initial contract was BZ$288,000 leaving an overpayment of BZ$15,552 based on Mr. Young's value.

[42] I found that the Robinsons paid BZ$15,000 towards the total of BZ$30,000 for the fence. The wood sections between the cement pillars and a gate needed to be constructed when the contract ended. In the absence of any evidence to the contrary, I find that it is reasonable to conclude from the photos and testimony that the fence was half constructed when the contract was terminated. Therefore, no balance is owing to the Robinsons from moneys paid for the fence.

[43] I also found that the Robinsons paid BZ$10,000 of BZ$60,000 towards the turnkey condo. I have no evidence as to how much of a faster pace the turnkey condo was being built than the rest of the project because of the Robinsons' request to move in before construction was complete. Nonetheless, the evidence supports a finding that its completion had not surpassed the rate of completion of the rest of the build or Mr. Young would have commented as such in his report.

[44] Mr. Young's report provides a useful guide to determine the value of the work done under the turnkey condo addendum. The turnkey addendum was signed after the Robinsons had made some, but not all instalments towards the fourth BZ$60,000 payment. Mr. Young's expert report indicates that all the work expected to be completed before the third BZ$60,000 payment was due had been completed. While there may have been some interior walls changed to accommodate the turnkey condo, prior to the fourth BZ$60,000 payment, most payments went to structural features that would not have been altered by the turnkey condo. Thus, I find it reasonable to conclude that the contract value for the addendum did not factor in costs for work already completed and paid for by the Robinsons. I find it reasonable to conclude that the contract value for the turnkey condo addendum

focused on the same items listed in the initial contract as expected to be completed before the fourth and fifth BZ$60,000 payments, plus an equivalent holdback for the final walkthrough.

[45] The fourth BZ$60,000 instalment was to be paid after ceilings and roofing was complete. Mr. Young found 80% of that work had been completed. The fifth BZ$60,000 payment was for finishing work and Mr. Young found only 5% was completed. When combined, the turnkey condo was 42.5% complete as each instalment was given equal weight in the initial contract.

[46] The holdback was approximately 1/7th of the contract value in the initial contract. Therefore, BZ$4,285 is deducted from the turnkey condos' contract price of BZ$60,000 as the holdback, leaving BZ$55,175. If 42.5% of the turnkey condo was complete, the value of the turnkey condo when the contract was terminated was BZ$23,449.38. The Robinsons have only paid BZ$10,000, leaving a shortfall of BZ$13,449.

[47] When the shortfall from the turnkey condo is deducted from overpayment of the initial contract, the Defendants jointly owe BZ$2,103 to the Robinsons.

Did Noe Sandoval negligently and in breach of his contractual duty, perform defective work and use inferior and unsuitable materials?

[48] The Robinsons seek to recover BZ$22,110 for money they paid to Mr. Armando Graniel for works completed by Mr. Sandoval Mr. Graniel alleges were required to be repaired or redone when he took over the construction project. Mr. Graniel testified that the sceptic system and part of the roof were not properly constructed, arches in doorways were not symmetrical, and the fence was not levelled and plastered.

[49] Having wrongfully terminated the contract, the Robinsons are precluded from claiming damages for defective works.[9] If the contract had not been wrongfully

[9] Graham v. Wierum (dba Prime Builders), Claim No. 306 of 2012 at para 110.

terminated, Mr. Sandoval would have been required to complete the build to the proper standard. As outlined in **HDK Limited & Anor v Sunshine Ventures & Anor:**[10]

> The client under a building contract is not at liberty to complain prior to alleged completion of all the works that some part of it is defective. It is well established that *"snagging"*, as it is called, is the final stage of a building project before completion, and that it is at that stage that minor disconformities are remedied. Thus, as it seems to me, wrongful determination [sic] of the contracts...provided a complete answer to the claims…in respect of incomplete or allegedly defective work.

While I accept that the identified works had not yet met the standard expected, the estate of Mr. Sandoval ought to have been given the opportunity to remedy any minor defects before the contract was concluded.

[50] I am not persuaded that any of the defects were major. I have no evidence that the flaws in the arches and fence were structural rather than aesthetic defects. While there is no dispute that the sceptic system was located higher than the toilet and would not function as is because water does not run uphill, the sceptic system was not completed. I am not convinced that the slope of the pipe could not be sunk in such a way that the slope of the water's flow would not be corrected.

[51] I am also not prepared to accept Mr. Graniel's decision to replace the roof as necessary and, therefore, amounting to a major defect. The undisputed evidence of Ms. Norielli and Mr. Riveroll is that the design of the roof and the materials used changed multiple times during the build at the Robinsons' request resulting in roof materials being installed and removed. Mr. Graniel testified that he replaced the roof because "he did not want his name on it." I was not clear whether the defects were the result of the multiple changes, whether repair was possible, or whether the roof that was finally installed conformed to the original design agreed to in the contract.

[10] [2009] EWHC 2866 (QB) at para 125.

Are the Robinsons liable for the cement mixer?

[52] I find that the weight of evidence supports a finding that the cement mixer was more likely than not Mr. Sandoval's property. Mr. Riveroll testified that he saw the cement mixer used on multiple construction projects. I also find that Ms. Norielli would be aware of equipment purchases because she assisted her father in buying materials, equipment, and paying invoices. The mixer was also used being used by Mr. Sandoval's crew on the Robinsons' property.

[53] While Ms. Norielli has proven on a balance of probabilities that the cement mixer was Mr. Sandoval's property, her pleadings claim an action in detinue and not conversion. I find this decision is fatal to her claim.

[54] As outlined in **Johnson-Dennie v Transport Inspector Emmanuel *et al*** conversion is: [11]

> … an act or complex series of acts of which, willful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it.

Detinue is defined as concerning:[12]

> …the wrongful interference with the goods of another and "... accrues from the date of the wrongful refusal to deliver up the goods of another on demand."

[55] In relation to the cement mixer, Ms. Norielli asks the court for:

a) A declaration that Mr. Noe Sandoval is the owner of a cement mixer that is in the Claimants' possession;

b) An order for the delivery up of the cement mixer or alternatively, the value of the cement mixer; and,

c) Damages for wrongful detention of the cement mixer.

Thus, the basis of the claim is clearly the ongoing detention of the cement mixer.

[11] [2020] JMSC Civ 112 at para 24.
[12] Ibid. at para 15.

[56] Ms. Norielli has provided no evidence that the property remains in the Robinsons' possession. Ms. Norielli's evidence is that she sent Mr. Samuel Yam and Mr. Barrera to the property for the mixer. The Robinsons do not deny initially refusing to return the mixer. The Robinsons, however, testified that the cement mixer was ultimately taken from the property by Mr. Yam after other members of Ms. Norielli's crew confirmed he was the owner. With no evidence that the mixer is in the Robinsons' custody, Ms. Norielli's claim fails.

Disposition

[57] It is hereby ordered that:

a) The defendants pay to the Claimants BZ$2,103 with 6% interest per annum pursuant to section 176 of the Senior Courts Act, 2022;

b) The estate of Mr. Noe Sandoval is entitled to a declaration that the cement mixer is their property;

c) Each party shall bear their own costs.

Patricia Farnese
High Court Judge