

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2018/CLE/gen/00165

BETWEEN

SHIRLEY ANN MERRIMAN-LARODA

Plaintiff

AND

DERECK PAUL
(t/a PNR STUDIPS AND DESIGN)

Defendant

Before Hon. Chief Justice Ian R. Winder

Appearances: Myra Russell for the Plaintiff
Keod Smith for the Defendant

13 September 2021, 8 April, 2022 2 May 2022, 1 August 2022, 23 October 2022

JUDGMENT

WINDER, CJ

This is a claim by the plaintiff (Laroda) alleging negligence and breach of contract by the defendant (Paul) in the preparation of architectural drawings and plans for the development of a "Bed and Breakfast".

1. The claim of Laroda is set out in her Amended Statement of Claim which provides:

1. At all material times, the Plaintiff was the owner of Lot A and Lot B, Tropical Gardens, in the Western District on the Island of New Providence one of the Islands of the Commonwealth of The Bahamas.

...

3. By an agreement in writing, dated the 1st June, 2016, and made between the Plaintiff and the Defendants, the following were, inter alia, express terms of the contract:

a) That the Plaintiff would enter into agreement with the Defendants for reward to act as Architects and agreed to design and prepare drawings showing and describing the work to be done for a Bed and Breakfast slated for Tropical Gardens on the divided Lot A and Lot B.

b) That the Architectural projected schedule was to be completed in five (5) phases as follows:

	PHASE	DESCRIPTION	TIMELINE
i..	PHASE-1	Land Use Preliminary Design	Satisfied
ii.	PHASE-2	Design Development	10-21 Working Days
iii.	PHASE-3	Construction Documents	3 Weeks
iv.	PHASE-4	Bidding Tender	To Be Determined
v.	PHASE-5	Construction Administration	To Be Determined

c) That the scope of work included the following:

- i. Produced related construction documents;
- ii. Electrical engineering construction drawing documents;
- iii. Plumbing construction drawing documents;
- iv. Structural (sic) drawings construction drawing documents; and
- v. HVAC construction drawing documents.

d) That the fee for the completion of the architectural drawing documents for submission to the Ministry of Works for building permit approval was to be Seven Thousand Five Hundred Dollars (\$7,500.00)

...

5. Pursuant to the contract aforesaid, the Defendants commenced work on or about 1st June, 2016, and purported to design and prepare contract drawings showing and describing the said works as instructed by the Plaintiff and proceeded as far as phase three (3) of the contract.
6. On or about the 2nd October, 2017, after a considerable delay in completing the said work for phase three (3) of the contract, the Plaintiff telephoned the Defendant to speak to the Defendants about the delay and to set a day and time to agree on a completed set of design work. The Defendant assured the Plaintiff that the work was completed according to the instructions she had given them and that a meeting to go over the completed work would not be a problem. The Defendant purported to set a date and time for the Defendant and the Plaintiff to meet to go over the said work the Defendant had completed.
7. On the 15th October, 2017, sometime in the afternoon, the Plaintiff met the Defendant running out the door of his place of business stating that he was going to print the said work for the Plaintiff. This caused further delay. Upon the Defendant return to the meeting, the Defendant produced a set of drawings showing and describing the said works for the Bed and Breakfast for the Plaintiff. The Plaintiff inspected the said work and discovered that the said work excluded a hard copy of the designs in respect of the electrical and plumbing engineering and contained many faults and errors from the Plaintiff's original instructions.

...

9. In breach of the said terms of the contract the Defendant:
 - a) Failed to use reasonable care and skill;
 - b) Failed to ensure that the said work was to be done in a workmanlike or professional manner with proper materials, so that the premises would be fit for use;
 - c) Failed to make any or any reasonable or regular or timely inspection or examination of the said works;
 - d) Failed to exercise any or any adequate supervision of the said works;

...

12. The Defendants, their servants or agents were negligent in the preparation of the said works and caused the loss and damage hereafter referred to.

PARTICULARS OF NEGLIGENCE

- a) Failing to use reasonable care and skill;
- b) Failing to provide a hard copy of the electrical plans;
- c) Failing to provide a hard copy of the plumbing plans;
- d) Failing to use the correct color on the walls outside of the building on the first-floor plan of the Bed and Breakfast;

...

13. By reason of the matters (sic) aforesaid; the Plaintiff has suffered loss and damage.

2. The Defence of Paul is set out in his Defence and Counterclaim, which provides:
7. Save that the Defendant emphatically states there was no delay by or due to the Defendant with respect to any of Phases as contracted by the Defendant, paragraph 6 of the Plaintiff's Statement of Claim is not admitted and the Plaintiff is put to strict proof of what she pleads therein.
8. Save that the Defendant contends that as paragraph 7 of the Plaintiff's Statement of Claim address evidence to which he cannot plead, the Defendant asseverate that all work completed under each Phase of the contract was sent to the Plaintiff via email at kandymammy96@aol.com, the Plaintiff is put to strict proof of what she pleads therein.
9. Save that the Defendant asseverates that he, at all material times, carried out the tasks specified under each and every heading to the standard as is required in the profession of architectural drawers and designers, paragraphs 8 and 9 of the Plaintiff's Statement of Claim are not admitted and the Plaintiff is put to strict proof of what she pleads therein.
- ...
11. Save that paragraph 4 of the Defence hereof is repeated here and it is denied that any of the completed Phases omitted designed drawings in respect of the electrical and plumbing or had any faults or errors in them as pleaded in paragraphs 11 and 12 of the Plaintiff's Statement of Claim, or at all, the said paragraphs 11 and 12 are not admitted and the Plaintiff is put to strict proof of each and every matter that is pleaded therein.

...

COUNTERCLAIM

14. The Defendant by the Original Action (*hereinafter referred to as "the Plaintiff to the Counterclaim"*) repeats paragraph 1 to 13 above as though they form a part of this Counterclaim.
- ...
17. As is stated on the face of the said contract which fact was always accepted by the Defendant to the Counterclaim, Mr. Larry Forbes, B. Arch was the Architect of Records for the said contract between the Plaintiff to the Counterclaim and the Defendant to the Counterclaim, with the Plaintiff to the Counterclaim being the Project Designer.
- ...
19. The completion of the final approval of the design works came at the end of Item "A" of the "Scope of Work" which falls under subheading "II Architectural & Engineering Outline Drawing Documents" of the said Contract reference in paragraphs 4 and 15 above.
20. The Defendant to the Counterclaim made a number of revisions to the designs after the time designated time for completion which called for the further alterations to the MEP rises required for the said Bed & Breakfast to be submitted to the Ministry of Public Works for the permitting process to be conducted after the Defendant to the Counterclaim would have paid the

statutory amounts to the Plaintiff to the Counterclaim as disbursements for this stage to be completed.

...

21. In breach of contract, the Defendant to the Counterclaim refused to pay the Plaintiff to the Counterclaim for:
 - 21.1 the revisions she directed the Plaintiff to the Counterclaim to effect to the designs of the said Bed & Breakfast; and
 - 21.2 the necessary adjustments owing by the Defendant to the Counterclaim to the Plaintiff to the Counterclaim for the additional MEP costs for revisions and changes for which the Plaintiff to the Counterclaim had undertaken with said professional that he would ensure payment was forthcoming; and
 - 21.3 overall architectural designed to the Registered Architectural; and
 - 21.4 two quotes for the construction of the Bed & Breakfast project which would have fallen in Phase 4 under the said contract.
22. By reason of the aforesaid, the Plaintiff to the Counterclaim has suffered losses and damages.

PARTICULARS OF LOSS & DAMAGE

The Plaintiff to the Counterclaim:-

- 22.1 conducted and was not paid for revisions to the designs and drawing at the instance of and directions of the in the amount of \$41,661.96; and
- 22.2 undertook to cause the necessary adjustments needed to the design drawing from the mechanical, electrical and plumbing professionals to be done on the condition that the Plaintiff to the Counterclaim would secure the necessary professional payment from the Defendant to the Counterclaim for onward payment to the MEP professional in the amount of \$6,500.00; and
- 22.3 undertook to cause the necessary adjustments needed to the design drawing from the structural engineer to be done on the condition that the Plaintiff to the Counterclaim would secure the necessary professional payment from the Defendant to the Counterclaim for onward payment to the structural engineer in the amount of \$10,003.50; and
- 22.4 undertook with the Registered Architect to secure the overall architectural costs which is due to the Registered Architect in the amount of \$27,774.64 and for which the Plaintiff to the Counterclaim was obligated to secure from the Defendant to the Counterclaim for her project; and
- 22.5 undertook to and did procure 2 quotes for construction of the said Bed & Breakfast for Defendant to the Counterclaim in the amount of \$3,000.00.

3. Laroda filed a Defence to the Counterclaim which sets out as follows:

6. As regards to paragraph 16 of the Counterclaim, the contract and its terms of the said contract is the entire agreement between the Plaintiff to the Counterclaim and the Defendant to the Counterclaim and both parties confirmed that they have not entered into this agreement on the basis of any representation that is not expressly incorporated into this agreement when they executed the agreement. Further, the contract provided for a **scope of work** by the Plaintiff to the Counterclaim, which included the electrical and plumbing design drawings (see number 2 on page 3 on the said contract). In any event, the contract could not be amended to include any fee for a third party or other person without the consent of the Defendant to the Counterclaim. The Plaintiff to the Counterclaim is put to strict proof of what he pleads herein.

...

8. As regards to paragraph 18 and 20 of the Counterclaim, the Defendant to the Counterclaim never requested additional design works. The fact is that the Plaintiff to the Counterclaim never incorporated the initial requests made by the Defendant to the Counterclaim in the first instance. Any request for changes were in regards to what the Defendant to the Counterclaim originally requested and what was originally agreed. In any event, additional design works made **upon or after completion of final approval by the Ministry of Public Works** was subject to an additional costs. The Plaintiff to the Counterclaim never got to the phase where he was to seek the said approval from the Ministry of Public works and the Plaintiff to the Counterclaim is put to strict proof of what he pleads herein.

4. At trial Laroda gave evidence in her case and called Tommy Laroda as a witness. Paul gave evidence in his case and called Architect Larry Forbes as a witness.

Discussion

5. Laroda says that there is a legally binding contract between the parties and that by entering into the contract, Paul agreed to accept the resulting obligations which were both express and implied. There was a breach of contract as the completion date had arrived and passed. She says that Paul admitted in cross-examination that there was considerable delay and that where an architect, without excuse, fails to complete in accordance with the time-scale provided or within a reasonable time, the Plaintiff is entitled to levy "*liquidated and ascertained damages*" at the contractual rate. (***Hick v. Raymond & Reid [1893] A.C. 22,32***)

6. Paul accepts that he was to provide the related construction documents for the B&B-House inclusive of Architectural, Electrical, Mechanical & Structural Engineering

Construction Drawings. Once completed, he would ensure that those drawings are submitted to the Bahamas Ministry of Works ("MOW") for approval to begin the construction of the B&B-House.

7. Paul says that before the drawings of the agreed upon structure for the B&B-House was completed, Laroda made significant revisions and changes to the initially contracted design such that the design under the Contract had metamorphosized into a 10-Unit Motel. Paul says that he performed all of what was required to be drawn in relation to the 10-Unit Motel save that he was not able to submit the drawings to the Ministry of Works for the necessary approvals because Laroda had failed or refused to provide the required fees for filing the construction documents.

8. Paul says that during the trial, both parties accepted that the design for the 10 Unit Motel by Laroda is markedly different from the contractual design initially agreed to for the B&B-House. They also agreed that this revised design came about because of the revisions made to the said design of the B&B-House.

9. This is a relatively simple dispute. Laroda claims that there were defects in the drawings which Paul prepared. Paul denied that there were any defects and instead asserts that there were changes in the scope of the project by Laroda and whilst there were delays these were contributed to by the Laroda's revisions.

10. Having seen and heard the witnesses, I accept Paul's submissions that Laroda's revisions expanded the scope of the work and was hugely responsible for the delays. It also expanded the scope of the work which was originally contracted for and which Paul completed. Further, Laroda, in my view was unable to prove that Paul was negligent or that the work was not in compliance with either the terms of the revised Contract or the codes of the Ministry of Works.

11. Laroda called no expert evidence. The evidence of Architect Larry Forbes however, was to the effect that the works done by Paul fully complied with the standards of the building codes of the Ministry of Works and that what was designed, was

esthetically acceptable. This was never challenged by Laroda, by bringing another Architect or Architectural Designer to show otherwise.

12. In the circumstances, I am satisfied that Laroda's claim ought to fail.

13. Paul argues that Laroda owes monies to third parties as a result of the increase in the scope of works. I am satisfied that whilst the scope of work went beyond what was contracted, Laroda was not advised of (or agreed to) the increase in costs and did not contract with any third party to perform these works. In the circumstances, I was not satisfied, on balance, that Paul had made out his counterclaim.

14. In the circumstances, Laroda's claim is dismissed and Paul's counterclaim is likewise dismissed. Each party shall bear their own costs of the action.

Dated this 27th day of June 2023

A handwritten signature in black ink, appearing to read 'I. Winder', written in a cursive style.

Sir Ian R. Winder

Chief Justice