

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2010/CLE/gen/01429

B E T W E E N

LIONEL FERGUSON

Plaintiff

AND

**BERTRAM MORLEY
T/A CRYSTAL BUILDERS**

Defendant

Before: The Hon. Chief Justice Sir Ian R. Winder

Appearances: Arthur Minns for the Plaintiff
Mario Gray for the Defendant

Hearing date(s): 14 July 2022 and 26 May 2023

JUDGMENT

WINDER, CJ

This is a claim by the Plaintiff (Ferguson) for breach of a contract dated 4 December 2008 for the provision of electrical services to the Defendant (Morley) who had been contracted to do work at the College of The Bahamas. Morley has counterclaimed asserting that Ferguson had not completed the works timely acted causing a significant loss of profit.

[1.] Ferguson's claim is set out in a Statement of Claim dated 9 August 2019. The relatively short Statement of Claim, claiming \$33,150.63 provides as follows:

1. The Plaintiff and the Defendant entered into a written contract on the 4th day of December 2008. This contract shall be relied on at the trial of this matter.
2. As an electrical contractor, the Plaintiff agreed with the Defendant to do certain electrical works for the Defendant at the then named College of the Bahamas.
3. The Plaintiff completed the said works as agreed but the Defendant refuses to pay the balance of thirty-three thousand one hundred-fifty dollars and sixty-three cents (\$33,150.63) owed to the Plaintiff by the Defendant for the said completed works.
4. Despite numerous demands from the Plaintiff, for the said payment to be paid, the Defendant has refused and continue to refuse to pay the amount owed.
5. The Plaintiff has filed a Writ of Summons herein on the 19th day of October 2010.

AND THE PLAINTIFF CLAIMS:

- a. Damages in the amount of \$33,150.63;
- b. Loss;
- c. Interest pursuant to the Civil Procedure (Award of Interest) Act 1992 at such rate and for such period as the Honourable Court deems fit and just;
- d. Costs; and
- e. Any additional or further Orders which this Honourable Court may deem fit and just.

[2.] By Morley's Amended Defence and Counterclaim, he asserts as follows:

1. The Defendant denies paragraph 1 of the Plaintiff's Statement of Claim and say that the contract between the parties hereto was entered into sometime after the 16th February, 2009 because the contract was not signed with the then College of The Bahamas until the 16th February, 2009.
2. The Defendant admits to paragraph 2 of the Statement of Claim.

3. The Defendant denies that he owes the Plaintiff the amount of \$33,150.63 as claimed in the Statement of Claim or any other sum, because the work for which the contract was entered into was to have been completed by the Plaintiff within six months of the signing of the contract or by the end of July 2009 but due to the negligence of and Breach of Contract by the Plaintiff and lack of sufficient man power hired by the Plaintiff, the work dragged on and on and was not completed until February 2010 (6 months late). The Plaintiff therefore breached the contract.
4. Because of the Plaintiff's Breach of Contract to complete the work contracted within six months of February 2009, the Defendant was forced to keep the men he had hired for the contract on a weekly payment or lose them, which cost him about \$1,800.00 per week for 6 months or \$43,200 together with \$600 per week salary for himself or \$14,400 for 6 months for a total of \$57,600 in extra salaries or wages for the men who were needed to complete the building once the Plaintiff's electrical work would have been completed.
5. For the reasons herein stated the Defendant Claims Damages for Breach of Contract against the Plaintiff.

AMENDED COUNTERCLAIM

The Defendant's claim is for Breach of Contract by the Plaintiff as a result of the Plaintiff's failure to complete the work contracted within 6 months of the date of the contract but instead took one year to do so.

The Defendant therefore claims the amount \$57,600.00 which he lost as a profit from his contract because he was forced to pay that amount in wages for the extra six months that he was required to pay his workmen while he waited for the Plaintiff to complete the work for which he was contracted. The Defendant therefore claims:

- a) The amount of \$57,600.
- b) Damages for Breach of Contract.
- c) Interests (pursuant) to the Civil Proceedings Rate of Interest Act 1992). (sic)
- d) Costs.
- e) Any further or other relief that this Honourable Court deems just.

[3.] Ferguson filed an Amended Reply and Defence to Counterclaim, which provides as follows:

1. The Plaintiff joins issue with the Defendant upon his Amended Defence save in so far as the same consist of admissions and save for any admission contained herein.
2. The Plaintiff denies that the facts pleaded entitled the Defendant to reject the Plaintiff's Claim laid out in the Plaintiff's Statement of Claim herein. And further, the Defendant's Claim is false.

AMENDED DEFENCE TO COUNTERCLAIM

3. The Plaintiff absolutely denies the Defendant's assertion in the Amended counterclaim and the Amended prayer thereof. And further, the Plaintiff asserts that the Defendant has a

history of not paying persons for work done through contractual agreements with the Defendant.

4. Save as is hereinbefore specifically admitted or not admitted, the Plaintiff denies each and every allegation contained in the counterclaim as though the same were herein set forth and traversed seriatim.

[4.] At trial Ferguson gave evidence and called Ronrick Bowe and Roger Lewis as witnesses. Morley gave evidence as the only witness in his case.

Ferguson

[5.] Ferguson's evidence was that he was an electrical subcontractor of Morley who had received a contract to construct the Data Room at the College of The Bahamas. The agreed sum under the contract, as between Ferguson and Morley, was \$283,050. Ferguson said that he completed the works and that Morley refused to pay the outstanding balance of \$33,150.63.

[6.] Under cross examination Ferguson denied that there was any timeline of 6 months or that he was advised of any timelines at all. He denied that he had insufficient workmen on the project. He said that his work was always ahead of the other subcontractors. He said that Morley was paying him as he saw fit.

Ronrick Bowe

[7.] Bowe's evidence was that he and Ferguson were both subcontractors of Morley in a project to construct a Data Room at the College of The Bahamas. He was an air condition contractor whilst Ferguson was an electrical contractor. Bowe's evidence was that Ferguson did outstanding work and did not hold up his work in any way.

[8.] Under cross examination Bowe denied the assertion that he only worked for a week on the project. He said that he worked over a period of 9 months to a year. He completed the job but not with Morley but with the College of The Bahamas, as he had not been paid by Morley. He was not aware of any timelines between Ferguson and Morley.

Roger Lewis

[9.] Lewis' evidence was that he is an electrical engineer with Pyramid Builders and was aware of the work done by Ferguson at the College of The Bahamas. He was the consultant engineer and attested that Ferguson carried out the electrical installation work in a competent and efficient manner. That at no time did Ferguson cause any delays to the completion of the construction works.

[10.] Under cross examination Lewis explained that his role in the project. He designed the electrical system and the air conditioning for the Data room. He was not aware of the timelines in the contract between Ferguson and Morley. None of the efforts nor actions of Ferguson resulted in any delays in the construction work.

Morley

[11.] Morley's evidence was that he entered into a contract with the College of The Bahamas to do repairs to some of the buildings on the campus. He hired Ferguson to do electrical work which should have been completed within 6 months. Owing to the negligence and incompetence of Ferguson the work was not completed until 6 months beyond the agreed completion date. The project was delayed by 6 months because most of the work had to wait until Ferguson was completed in order to proceed. The delays caused him to make additional payments to workers in the amount of 57,600. This sum of \$57,600 should be offset against the \$33,150.63 claimed by Ferguson leaving a net amount owed to him in the amount of \$24,449.37.

[12.] Under cross examination Morley admitted that he received the electrical inspections and the occupancy for the computer room. He also admitted that he never complained in writing about the delay allegedly caused by Ferguson. He said that the timelines were verbally communicated to Ferguson.

Analysis and discussion

[13.] At the close of the evidence the parties agreed to lay over written closing submissions. Ferguson lodged his closing submissions since May 2023 however despite a considerable period of wait the submissions of Morley had not been received.

[14.] The evidence and the pleaded case of Morley does not dispute that the contracted work was done by Ferguson. Instead, Morley's case was that the work done by Ferguson was not done within the agreed contractual period but some 6 months thereafter. It is this delay which Morley says caused him losses of profits in that he had to retain workmen beyond the contractual period.

[15.] Having heard the witnesses and observed their demeanour as they gave their evidence I have no hesitation in indicating that I prefer the evidence of Ferguson and his witnesses to that of Morley.

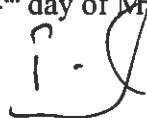
[16.] I am satisfied that the work was indeed completed by Ferguson and that he was not paid an outstanding sum of \$33,150.63 under the terms of the contract. Having accepted the evidence of Bowe and Lewis I was not satisfied that any delay in the construction of the Computer/Data Room at the College of The Bahamas was as a result of the work done by Ferguson. Bowe and Lewis confirm that the work was done in a timely and competent manner.

[17.] In all the circumstances I give judgment for Ferguson in the amount of \$33,150.63. I reject the counterclaim of Morley, which I found was not proven and dismiss it.

[18.] The judgment shall bear interest at the rate of 2% per annum from the date of the filing of the Statement of Claim until judgment. Interest shall accrue thereafter at the statutory rate.

[19.] Ferguson shall have his reasonable costs, which I propose to fix. I invite submissions within 21 days as to the appropriate sum to be awarded.

Dated the 14th day of May 2024

A handwritten signature in black ink, appearing to be 'I. Winder', written over a horizontal line.

Sir Ian R. Winder
Chief Justice