

IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW & EQUITY DIVISION

Claim No. 2021/CLE/gen/FP/00168

BETWEEN

JAMES BAILLOU (trading as “BAILLOU CONSTRUCTION II”)

Claimant

AND

CLIONA BACON

Defendant

Before: The Honourable Madam Justice Constance Delancy

Appearances: Mr. Simeon Brown for the Claimant
Mr. Alexander Maillis for the Defendant

Hearing Dates: 5, 6 and 20 February, 2024

JUDGMENT

DELANCY, J.

[1.] This is a claim made by the Claimant for breach of a contract to conduct repairs to the Defendant’s house located in Hope Town, Abaco. The Claimant also made a claim for damages for slander.

Background

[2.] The Claimant is a building contractor trading under the name “Baillou Construction II”. The Defendant is the owner of a house known as “By The Steps” located in Hope Town, Abaco Cays, The Bahamas. On 7 April, 2021 the parties signed a document titled “*Estimated Costs to Make Repairs to Cliona Bacon’s House*” (“the contract”). The estimated costs were \$400,000 inclusive of labour and materials, and payments were divided into 4 payments. There was no completion date specified in the contract.

[3.] On 18 September, 2021 the Defendant terminated the contract as she was dissatisfied with the quality of the Claimant’s workmanship and the pace of the construction. At the time of the termination of the contract, the Claimant had received the first and second payments totaling \$250,000.00.

[4.] The Claimant filed a specially endorsed Writ of Summons on 29 November 2021 seeking *inter alia*:

2. By a written contract dated the 7th April, 2021, the Plaintiff agreed to repair the house of the Defendant at Hope Town, Abaco, for the total sum of \$400,000.00, inclusive of materials and labor comprised of four payments as follows:-
First Payment - \$150,000.00
Second Payment - \$100,000.00
Third Payment - \$100,000.00
Fourth Payment - \$50,000.00
3. It was further orally agreed by the parties hereto that the approximate sum of 300,000.00 would be applied to the cost of labour and the sum of \$100,000.00 for the purchase of building materials and supplies. If there was extra materials needed, the Defendant agreed to pay for the same.
4. No written completion date was made for the performance of the said contract by the Plaintiff, but it was generally agreed by both parties that the project required approximately 6 months.
5. It was an implied term of the said contract that the Defendant grant the Plaintiff access to the subject house and property and permit the Plaintiff to work in performance of the said contract and that the Defendant not in any manner obstruct the Plaintiff in the performance of the same.
6. That since the commencement of work by the Plaintiff in performance of the same in April, 2021, the Defendant has acted in breach of contract.

PARTICULARS OF BREACH

- (i) The Defendant has obstructed the Plaintiff in repairing the subject house by constantly unreasonably complaining of the workmanship and skill of various workers including the Plumber and in interrupting the conduct of the same;
 - (ii) The Defendant obstructed the Plaintiff's work as afore said by demanding the termination of some of the Plaintiff's workers.
 - (iii) The Defendant obstructed the Plaintiff as aforesaid by requiring the worker in the absence of the Plaintiff to perform work not covered by the contract herein.
 - (iv) Further, the Defendant obstructed the Plaintiff as aforesaid by communicating directly with the Plaintiff's workers in the absence of the Plaintiff and in preventing them from working whilst he was off the Island, thereby suspending the conduct of work that the Plaintiff had contracted to perform.
 - (iv) The Defendant in breach of contract stopped the Plaintiff from the further performance of the said contract by denying the Plaintiff access to the house being repaired and in hiring a new Building Contractor to complete work started by the Plaintiff.
 - (v) Further, the Defendant falsely accused the Plaintiff of using her materials on another job and in stealing the same, thereby causing damage to his character and lowering him in the eyes of his workers and generally.
 - (vi) Further, the Defendant breached the contract with the Plaintiff by denying the Plaintiff the opportunity to complete the repair work contracted and in refusing to pay the Plaintiff for work performed in the sum of 150,000.00.
7. By reason of the aforesaid breaches of contract, the Plaintiff has suffered loss and damage.

PARTICULARS OF LOSS AND DAMAGE

- (i) Labour Costs in the sum of \$150,000.00
 - (ii) Damage to Reputation and Character
8. Further, the Defendant intentionally and falsely accused the Plaintiff to his workers and other of dishonesty in misappropriating building materials which he had purchased for her house, alleging their use on other jobs, she further invited them to work directly for her to the exclusion of the Plaintiff.
9. The said statements and accusations of the Defendant were false and malicious and has caused the Plaintiff to suffer mental distress, damage and loss in his trade, profession and calling.
10. The Plaintiff thus claim damages for slander and defamation of his character as aforesaid and Aggravated Damages herein.

PARTICULARS OF AGGRAVATED DAMAGES

These relate to the allegations aforementioned, particularly the defamatory statements accusing the Plaintiff of dishonesty and misappropriation. Abaco is a small society, especially with the reduction in population after Hurricane Dorian. News, whether good or bad, travels fast. Given the construction boom existing in Abaco, the likely cost of damage to the Plaintiff as a Building contractor is huge. The reckless and false defamatory statements by the Defendant is likely to cause the Plaintiff to suffer millions of dollars in lost job opportunities. The Plaintiff is a Bahamian citizen who lives and works in Abaco. He is dependent upon his good character at home. The Defendant is a visitor who may come and go. The Plaintiff is home and has to earn a credible or perish. His reputation and Character is thus of great value. Any unjustified attack on the same demands unlimited compensation.

AND THE PLAINTIFF CLAIMS:-

- (i) Damages of Breach of Contract
- (ii) Damages for Slander;
- (iii) Aggravated Damages;
- (iv) Interest thereon as the Court deems just and appropriate;
- (v) Costs.

[5.] The Defendant filed a Defence and Counterclaim on 5th January, 2022, denying the allegations in the Statement of Claim and counterclaiming *inter alia* for breach of contract and/or any statutory or common law duty owed by the Defendant to the Claimant, and costs. The Defence and Counterclaim states as follows:

3.The Defendant avers that at all material times it was an express and/ or implied term of the contract that:

- (a) All materials purchased by the Plaintiff for use at the Defendant's home would be reasonably priced and /or of a suitable quality so as to be fit for its purpose;
- (b) That the Defendant would conduct all of the necessary works in a timely and efficient manner and that the works would be carried out in a good and workman-like manner and to a reasonable level

- of proficiency in keeping with Bahamas Building Code and the Pre-Dorian standard of the home;
- (c) the monies advanced to be used for the purpose of buying materials for construction were to be used for purchasing materials specific to the Defendants construction project;
- (d) materials would be ordered in a timely fashion and the use of materials managed properly so as to maximize efficacy of labour;
- (e) the Plaintiff would account to the Defendant for all materials purchased as the construction project proceeded, and/ or in a timely manner, and/or upon request;
- (f) the Plaintiff was responsible to ensure that the works completed by those persons employed by him or subcontracted by him, was fit for its purpose and of a standard and quality commensurate with the style and quality finish work of the Defendant's home;
- (g) the Plaintiff would follow the directions and specifications shown on the Architectural plans and/or provided by the Engineer for the completion of the project;
- (h) the Plaintiff would generally oversee, supervise, manage, coordinate and/or facilitate the project in a good and workman-like manner using all reasonable skill and care of a Construction manager with 30-plus years' experience in the field;
- (i) the Construction site would be kept clean and orderly and the Construction debris would be removed from site and properly discarded;

4..... The Defendant denies agreeing generally a timetable that allowed for Six (6) months as alleged in the Statement of Claim. The Defendant avers that at all material times it was an express or implied term of the agreement that the works would be undertaken in a diligent and timely manner and that the building would be "closed in" (i.e. the interior closed to the elements) by the beginning of hurricane season and completed shortly thereafter. The Defendant avers that at all material times the completion timetable discussed was July 2021.

5..... The Defendant admits that access to the property and being allowed to work are implied terms of any usual construction agreement, but denies that the same are absolute or unconditional and avers that a property owner faced with egregious breach of express and/or implied terms of an agreement has the right to suspend or call off works and/or close the work site to prevent abuse and or damage from accruing, and that such rights are inherent and or implied by law in every such contract.

6. The Defendant denies any breach of contract as alleged in Paragraph 6 of the Statement of Claim or at all and avers that it was the Plaintiff who initially breached the said agreement by failing to show up on site to perform any work at all for a period of Nine (9) weeks following his being paid the second instalment of \$100,000.00. The Defendant further avers that the Defendant has also breached the terms express and implied terms of the agreement as specified in the particulars of breach set out in the Counterclaim below.

7.....

- (i) The Defendant denies that any of her complaints were unreasonable. Following a 9 week unauthorized hiatus when the Plaintiff failed to have any workmen whatsoever on sight despite repeated promises and assurances which the Plaintiff made and failed to keep (all of which are documented and will be produced at the trial of this matter) it became clear that the workers which did eventually show up, and the subcontractors engaged by the Plaintiff were not performing the works to code, or according to the plans laid out by the Architect/engineer and/or was of a poor and unworkmanlike quality as particularized in the Particulars specified in the Counterclaim below, all of which was compounded by the near total lack of supervision or oversight by the Plaintiff, justify not only the complaints of the Defendant, but also her intervention and ultimately shutting down the site to prevent further damage;
- (ii) The Defendant denies any obstruction of the Plaintiff as alleged or at all. The Defendant avers that after Nine (9) weeks of the Plaintiff's failure to place a team on site, the Plaintiff dispatched two workers (not part of the original crew) to begin work. Their level of skill and work ethic was substandard and the errors in their work were repeatedly brought to the attention of the Plaintiff who would always respond that he would "fix it". There were times when they did not show up at all, or stated that they had no materials to work with despite the Defendant having funded \$250,000 to the Plaintiff by this point. The Plaintiff eventually admitted that his workers were not performing properly and agreed to find another building team, and did replace a number of workers;
- (iii) Any allegation of obstruction alleged in Paragraph (iii) of the Particulars of Breach is denied. Any further allegations by the Plaintiff are not admitted, and the Plaintiff is put to strict proof and further and better particulars as to what works not specified in the contract they were asked to perform;
- (iv) That as to paragraph (iv) of the Particulars of Breach the Defendant admits to speaking directly with the workers but denies that the same amounted to obstruction as alleged by the Plaintiff or at all. The Defendant avers that any direct contact she had with workers was born of necessity due to the total lack of supervision and co-ordination by the Plaintiff. The Defendant would arrive on site to inspect progress to find workers lounging about or unable to work due to lack of materials (which she had already paid for), or waiting for fuel for a generator - repeatedly- such that the Defendant had to engage the workers and become her own contractor to some degree due to the negligence of the Plaintiff, often having to go out herself and source tools or materials to allow the workers to function;
- (v) That as to paragraph (v) of the Particulars of Breach the Defendant admits that in September 2021 she stopped the further performance of

the work by the Plaintiff but denies that the same was a breach of contract. The Defendant avers that she had the right to do so, as by that time the contract had been breached by the Plaintiff in numerous and continuous ways resulting in serious loss and damage to the Plaintiff. As a result of his breaches the Plaintiff was fired, and a new contractor was found to repair his mistakes and move the matter forward;

- (vi) That as to Particulars of Breach item (vi), the Defendant denies accusing the Plaintiff of using her materials on another site. At one point the Defendant did stop one of the Plaintiffs employees from removing a jar of screws from the site and insisted that it be left on the site as it had been paid for by her. The Defendant's complaint was that the Plaintiff received the second installment of \$100,000.00 and immediately thereafter, went to work on another site Hope Town and did not return to the Defendant's site for a period of Nine (9) consecutive weeks, during which time the Plaintiff lied repeatedly to the Defendant about when they would begin again on her site. The Plaintiff has also flatly refused and or failed to provide the Defendant with any accounting at all as to the application of her money, despite having indicated and agreed through the Defendant's agent that he would provide an up-to-date accounting and monthly statements moving forward. The Defendant denies that any complaints or false allegations made were made and will prove the truth of each and every actual complaint she made against the Plaintiff at the trial of this matter;
- (vii) That as to paragraph (vii) of the Particulars of Breach, the Defendant denies any breach of the Agreement or contract on her part and avers that she had every right in law to rescind the Contract as a result of the Plaintiffs many repudiatory breaches. The Plaintiff has failed to provide an accounting of the monies spent or advanced to him and the Defendant denies owing him the amount of \$150,000.00 claimed for work performed and the Plaintiff is put to strict proof of the labour costs alleged and that the same was of a good and workman like quality such as would justify being paid.

7. The Defendant denies any breach of contract resulting in loss and damage to the Plaintiff as alleged and/or particularized in Paragraph 7 of the Statement of Claim or at all.

8. The Defendant categorically denies ever accusing the Plaintiff, to his workers or to others, of misappropriating materials which she had purchased for her house and alleging their use on other jobs. The Plaintiff did at one point stop a workman employed by the Plaintiff from leaving the site with a container of screws, explaining to the man that it needed to stay on site as she had paid for it, but denies that this amounts to an allegation against the Plaintiff in the manner pleaded. The Defendant has repeatedly complained that the Plaintiff pulled his team of workers from her site immediately after being paid the second installment and were seen working on another project instead, but this is neither a false nor malicious complaint and one which the record will clearly sustain. The Defendant further denies "inviting" the workers to "work directly for her to the exclusion of the Plaintiff" and avers that due to the Plaintiffs repeated absence from the work site and general

lack of supervision, oversight and instruction of his workers, there were times when she had to go and secure materials and tools and physically direct them to try and get the house closed in before the onset of the hurricane season. The Defendant avers that had the Plaintiff done his job in a proper manner the level of her involvement would not have been necessary.

9. The Defendant denies making any false or malicious statements or accusations and repeats the facts set out above. No admission is made as to any mental stress damage or loss in trade, profession and calling and the Plaintiff is put to strict proof. Further, if, which is not admitted, the Plaintiff has suffered any mental stress, damage or loss in trade, profession and calling the Defendant avers that the same is the result of his own mismanagement and incompetence, and the dishonesty and unprofessional behavior of the Plaintiff.

10. The Defendant denies any slander or defamation of the Plaintiff as alleged in Paragraph 10 of the Statement of Claim. No statement or complaint made by the Defendant was untrue and or malicious. Those parts of the Particulars of aggravated damages which have already been denied and or specifically traversed in this Defence, are denied. As to the remainder of the Particulars, no admission is made as to the Particulars of Aggravated Damages and the Plaintiff is put to strict proof.

COUNTERCLAIM

11. The Defendant repeats Paragraphs 1-10 of the Defence above.

12. In breach of Contract and/or of any Statutory or Common-law duty of care owed by the Plaintiff to the Defendant, the Defendant avers that much of the work done by the Plaintiff, his servants and/or agents, was of a poor quality and/or negligently performed and/or of a poor workmanlike manner, that additional works had to be done to correct some of the (correctable) errors and/or omissions at the added expense of time and finances to the Defendant and by reason whereof the Defendant has suffered loss and damage.

Particulars of Negligence and/or breach of Duty of Care

- a. The Plaintiff was negligent in his hiring standards and practices by hiring improperly trained and/or experienced workmen to complete jobs;
- b. The Plaintiff failed to exercise the necessary degree of skill and care in overseeing the project resulting in numerous errors and defects that had to be corrected causing unnecessary delay and expense;
- c. The Plaintiff's failure to properly supervise the construction site crew and organize the works in an efficient manner cost the Defendant additional unnecessary hours of workers time wasted and/or allowed for errors to occur which took additional time to correct at the Defendant's expense;
- d. The Plaintiff failed to adhere to Bahamas building code requirements and/or the requirements set forth by the Architect/engineer;
- e. The Plaintiff received the Defendant's second payment and immediately thereafter left the job site and failed to return for a period of Nine (9) consecutive weeks causing delay loss and damage to the Defendant;
- f. The Plaintiff was repeatedly dishonest in his representation to the Defendant as to when he and his workmen would return to the construction site;
- g. The Plaintiff provided materials which were substandard and not fit for their purpose for use on the job site;

- h. The Plaintiff, by himself and his workmen and agents, failed to follow the specifications of the Architect shown on the plans provided to him and/or the directions of the engineer provided to him;
- i. The Plaintiff failed to keep the job site clean and orderly and allowed the construction debris to remain on site and/or on the neighboring property;

Specifics of substandard and/or erroneous works

- (1) The Plaintiff installed single rafters instead of double rafters on the new dormers;
- (2) The Plaintiff originally failed to properly tie in rafters with hurricane straps;
- (3) The Plaintiff failed to follow the correct manufacturers recommendation ("Original Equipment Manufacturer" or "OEM") specifications for the nailing of hurricane straps (used short galvanized nails instead of manufacturers recommended longer stainless steel nails);
- (4) The Plaintiff failed to repair the Bermuda roof prior to foam insulation;
- (5) The Plaintiff failed to seal the plumbing vents through the roof;
- (6) The Plaintiff failed to use house wrap in installation of the Dormer windows;
- (7) The Plaintiff failed to properly flash the comers of the windows;
- (8) The Plaintiff failed to properly frame new windows with king/jack studs and header;
- (9) The Plaintiff failed to repair the outside plywood for the sidings and replace the delaminated pieces prior to applying Hardie board siding. Plaintiff also failed to follow OEM directions for nailing Hardie board, resulting in buckling;
- (10) The Plaintiff used substandard material for new interior framing;
- (11) The Plaintiff failed to supervise the plumbing installation for the drain-waste- vent system. Glaring error occurred. Aspects of the installation not to code included a lack of clean out valves on the systems, lack of vents for fixtures, lack of correct slope for drainage, incorrect use of sanitary "T" in several r incorrect use of short radius 90 degree fittings instead of a long sweep or use of two 45s) and required a complete redo of the plumbing installation;
- (12) The Plaintiff failed to supply a working generator and fuel during the construction project;
- (13) The Plaintiff failed to build the deck with 16" on center ("OC") as shown on the drawings and instead chose to space 24" OC;
- (14) The Plaintiff failed to follow the owners supplied design for installation of the header required for the 12 foot span of sliding doors. Ignoring all directions he instead spliced in pieces of wood to make up the beam, resulting in visibly noticeable sagging in the header and floor. Attempting to correct his mistake, he used hurricane straps. This 'band-aid' solution wasted three days of labour and materials and the entire installation had to be ultimately removed;
- (15) The Plaintiff failed to follow plan specifications for the height of the roof over the deck;
- (16) The Plaintiff failed to clean up debris from the construction site;
- (17) The Plaintiff consistently failed to meet commitments on schedule for completion.

13. In addition to the matters complained of above, the Plaintiff demonstrated an inability to verbally communicate with the Defendant without becoming aggressive, abusive and verbose, often assaulting the Defendant by shouting or screaming at her in the presence of

others, and in a manner which caused the Defendant to feel fear and anxiety, causing her to feel stress and emotional pain.

14. By reason of the matters aforesaid the Defendant has suffered loss and damage in the material and labour costs required to cure the aforementioned errors and defects, the quantum of which is to be assessed.

15. The Defendant denies that the sum of money claimed in the Statement of Claim, is due but, if, which is denied, the Plaintiff is entitled to recover any sum at all, the Defendant claims the right to set-off all or part of that amount against damages due for negligence and/or breach of contract by the Plaintiff and/or any sum found to have been wrongly charged against the Defendant's account and due or owing to the Defendant by way of a refund or otherwise.

AND THE DEFENDANT COUNTERCLAIMS:

- (i) For an account of all monies had and received and expended by the Plaintiff in pursuance of the said Contract;
- (ii) An assessment of all moneys owed to the Defendant by way of a refund for the substandard and/or inferior works having to be repaired and/or for labour and/or materials having been wrongly or improperly billed to the Defendant; and/ or
- (iii) Damages for breach of contract to be assessed;
- (iv) Damages for pain suffering and loss of amenity to be assessed;
- (v) The right of set-off of any sums found due to the Plaintiff against any sum found due to the Defendant;
- (vi) Interest upon any and all sums found to be due and owing to the Defendant;
- (vii) Costs;
- (viii) Such further or other relief as the Honourable Court shall think just and equitable.

[6.] The Plaintiff filed a Reply and Defence to Counterclaim on 31 January, 2022 in which he made the following averments:

2.The Plaintiff asserts and avers that it performed and ensured the performance of its work in a competent and efficient manner in accordance with the laws, regulations, and standards of the Commonwealth of the Bahamas.

3. The Plaintiff further avers that there was no Architectural or Engineering plan at the commencement of its work and it was agreed that the Defendant would provide such a plan on the condition that it accorded with the Laws and Building Regulations of the Commonwealth of the Bahamas.

4.....the Defendant produced sketches from an American Engineer that was discovered to not comply with the Laws and building Regulations of the Bahamas. By reason thereof, it was necessary to make multiple adjustments to the said sketches as the Plaintiff attempted to comply with the said Laws and Regulations in the performance of its work.

5. In the course thereof, the Plaintiff encountered various disagreements with the Defendant who apparently depended on the opinions of the unlicensed American Engineer and/or other unqualified persons.

6. The Plaintiff further denied that it failed to keep the job site clean and orderly and avers that it was requested by a Heavy Equipment Contractor hired by the Defendant to compile construction debris in the specific area temporarily, since his access to the same was obstructed by trees which he was contracted by the Defendant to remove. In so doing

his stated intention was to cut the trees down and to remove the said debris immediately thereafter.

7. The Plaintiff denies paragraphs 14 & 15 of the said Counterclaim and avers that any undue expenses incurred by the Defendant was due to her errors of judgment.

8. The Plaintiff further avers that the Defendant is not entitled to the relief sought in its prayer and Counterclaim, since any loss or prejudice suffered by the Defendant was self-inflicted and the product of her dishonesty in failing to comply with her Agreement with the Plaintiff and in seeking to profit therefrom.

Issues:

[7.] Having reviewed the pleadings and the respective statements of facts and issues. In my view, the issues for determination can be framed as follows:-

- (1) What are the expressed and implied terms of the contract between the parties?
- (2) Is either of the parties guilty of a breach of contract which entitled the innocent party to treat the contract as having come to an end?
- (3) If the Defendant is guilty of breach, is the Claimant entitled to damages?
- (4) If the Claimant is guilty of breach, is the Defendant entitled to damages?

The Evidence

[8.] At the trial, the Claimant gave evidence on his own behalf and called Farrington “Jolly” McIntosh and Ked Cardot as witnesses. The Defendant gave evidence on her own behalf and called William “Bill” Brown and John D. Arndt as witnesses.

The Claimant

[9.] The Claimant’s evidence-in-chief was contained in his Witness Statement/Affidavit filed 12 December 2023 and Supplemental Witness Statement/Affidavit filed 17 January, 2024 and he was extensively cross-examined thereon. The Claimant’s evidence may be summarized as follows:

- a) He is a self-employed building contractor trading as “Baillou Construction II” and doing business on the Island of Abaco and its cays.
- b) He was hired by the Defendant to conduct repairs to her house, which was extensively damaged during the passage of Hurricane Dorian for an agreed estimated price of \$400,000. The sum was to be paid in a series of stage payments as set out in the estimate dated 7 April, 2021.
- c) There was no completion date was stated in the estimate which both parties signed. He indicated that he estimated the works to take five (5) to six (6) months to complete.
- d) The \$400,000 estimated costs were divided as \$300,000 for labour and \$100,000 for materials. Further, materials salvaged from the site would be reused to defray the costs of materials.

- e) In or about the second week in April, 2021, he begin work on the Defendant's house using drawings on several sheets of papers supplied by the Defendant which were not approved by town planning. Further that at no time during the contract did the Defendant ever provide him with a set of approved plans or building permit.
- f) He experienced delays in executing the works on the site as a result of COVID-19 infections among the construction crew as he and his workers had to quarantine as per the government's emergency orders. Further the pandemic also adversely affected the chain of supply of materials required for the job.
- g) Approximately 3 weeks after the start of works on the site the Defendant complained about the workmanship of the construction crew and demanded that he hire a different crew. As a result of the Defendant's complaints the Claimant dismissed the first crew of workers led by Farrington "Jolly" McIntosh ("*McIntosh crew*").
- h) A second crew was hired led by Ked Cardot ("*Cardot crew*") and approximately 5 weeks after the Cardot crew commenced work the Defendant began to complain about them. The Defendant also had Cardot crew doing work that was not a part of the work parties had discussed and agreed.
- i) In or about mid-August, 2021 the Defendant stopped works on the site and barred him and his workers entry.
- j) The Defendant paid \$250,000 of the estimated \$400,000 and he had to pay the Cardot crew from his funds as the Defendant refused to make any further payments.
- k) Under cross-examination the Claimant denied that there was a set timeline for completion or that he had unskilled workmen on the site. He also denied that it was agreed that he would give the Defendant an accounting of how the funds advanced were spent.

Farrington "Jolly" McIntosh

[10.] Mr. McIntosh's evidence-in-chief was contained in his Witness Statement filed 6 November, 2023 and he was cross-examined thereon. Mr. McIntosh's evidence may be summarized as follows:

- a. He was hired by the Claimant to supervise McIntosh crew to conduct repair works to the Defendant's house in or about April, 2021. Later, the Defendant complained about the work they were doing as a result the Claimant replaced the McIntosh crew with the Cardot crew.
- b. On cross-examination he stated that they were using drawing on several pieces of paper. That he never saw any approved plans or a permit related to the works.

Ked Cardot

[11.] Mr. Cardot's evidence-in-chief was contained in his Witness Statement filed 6 November, 2023 and he was cross-examined thereon. Mr. Cardot's evidence may be summarized as follows:

- a. He entered the construction site after Mr. McIntosh and his crew were let go. That at first the Defendant appeared to be pleased with his work and also attempted to hire him directly to complete the job.
- b. On cross-examination he stated that he provided power required for works by using his generators and the Claimant provided the fuel on at least one occasion. He can recall one time that the Defendant brought her generator to the site. That he has his workers had to commute to the site via the local ferry service.
- c. He also recalled that the Claimant had to source materials from the local suppliers on credit due to the delay in the chain of supply as result of the pandemic. He stated that the Defendant purchased some small items from the local suppliers on one occasion.

The Defendant

[12.] The Defendant's evidence in chief was contained in her Witness Statement filed 15 November, 2023 and she was cross-examined thereon. Defendant's evidence may be summarized as follows:

- a. She hired the Claimant to repair her home on Hope Town based on local recommendations. She and the Claimant agreed to his quote of and estimate of \$400,000.00 to complete the works to the house.
- b. That her expectation and understanding that the Claimant would build up to current construction standards to withstand hurricane force weather.
- c. At all material times the Claimant held himself out as being skilled in construction.
- d. That she understood "Estimate" to mean that the project could cost more, or less, and the Claimant would account to her for the monies expended as the job went on.
- e. It was always her express understanding that works would be conducted in a timely and expedient manner.
- f. She brought the deficiencies and errors that she and other persons noted to the Claimant's attention via WhatsUp communications.
- g. That the Claimant's workers were absence from the work site for long periods of time.
- h. That on 18 September, 2021 she "*shut down the whole site and locked the door and left the island*".
- i. Under cross-examination the Defendant conceded that while she got an approved set of plans from the local Town Planning Committee she did not provide that document to the Claimant.
- j. She also agreed that she relied on a report of a Mr. Cox who is not a qualified or approved "inspector" and the works were not inspected by a government inspector.
- k. She accepted Counsel's assertion that the works were conducted during the COVID-19 pandemic.

William "Bill" Brown

[13.] Mr. Brown's evidence in chief was contained in his Witness Statement filed 23 November, 2023 and he was cross-examined thereon. Mr. Brown's evidence may be summarized as follows:

- a. That he is a friend of the Defendant and a retired from the field of engineering and project management. He has a house in the area where Ms. Bacon's house and visited the site.
- b. That he gave her advice with reference to the renovations on her property.
- d. That he noted deficiencies in the works and he took pictures and sent them to the Defendant via email.
- d. Under cross-examination he admitted that he is not licensed to work as an engineer or project manager in The Bahamas.

John D. Arndt

[14.] Mr. Arndt's evidence in chief was contained in his Witness Statement filed 5 December, 2023 and he was cross-examined thereon. Mr. Arndt's evidence may be summarized as follows:

- a. He is a friend of the Claimant and a professional engineer in the United States.
- b. He visited the Claimant's home after the passage of Hurricane Dorian and assisted the Defendant by shifting the foundation of the Claimant's house back in place after the passage of Hurricane Dorian.
- c. That he "*coordinated the preparation of Architectural delineations of the spatial reconstruction in accordance with directions provided by the Defendant*" which were submitted to the local town planning committee for approval.
- d. That he was off the island when the works were being conducted on the Defendant's home and he relied on information from the Defendant, Mr. Brown and Mr. Cox with reference to the works carried out.
- e. Under cross-examination Mr. Arndt admitted that he was not licensed to carry out engineering or architectural works in The Bahamas.

Analysis and Discussion

[15.] The fact that the Court does not refer to a particular submission or portion of evidence should not be taken as an indication that it has not been considered. The Court has considered the material properly before it.

[16.] The contract between the parties is an oral agreement evidenced by an estimate signed by the parties. The parties dispute the terms of the agreement in particular the completion date. The estimate is silent on the completion date for the works agreed to be done by the Claimant on the Defendant's house. Further, the estimate did not set any criteria for the payments to the Claimant. Neither party takes issue with the information within the contract. Further the contract is signed and complies with the requirements of section 4 of the Statute of Frauds, Chapter 154.

[17.] The Claimant contends that the parties agreed that the works would be completed within 5 to 6 months. The Defendant contends that it was agreed that the work would be completed in 4 months. The Defendant has also submitted multiple copies of WhatsApp conversations; however,

there is no evidence to assist in determining whether there was a proposed completion date for the contract. There is evidence of the Defendant asserting a completion date but at no point did the Claimant agree. Therefore, there is insufficient evidence to conclude that proposed end date for the contract was agreed between the parties. The Court, considering all the circumstances, is of the view that a reasonable time to complete the contract must be implied.

[18.] Conversely, Counsel for the Claimant asserted that the Defendant frustrated the contract by withholding building plans and locking away tools. However, this claim was not specifically pleaded. A party is bound by the pleadings. If a party seeks to put on an affirmative case, it must do so in its pleadings. In the case of **Glendon Rolle (T/A Lord Elliot & Co) v Scotia Bank** 2017/CLE/gen/01294 at para 39 *Charles, J.*, as she then was, observed the following:

39. In **Bahamas Ferries Limited v Charlene Rahming** SCCivApp & CAIS No. 122 of 2018, our Court of Appeal held that the starting point must always be the pleadings. At paras. 29-33 and 37-39 of the judgment, *Sir Michael Barnett, JA* (as he then was) stated:

“29. The real difficulty in the judgement of the court below is that the finding of negligence was not one that was pleaded by the respondent. This is ground 10 of the appellant’s grounds of appeal.

30. The trial judge rejected the particulars of negligence pleaded and founded liability on a ground not pleaded in the statement of claim.

31. In our judgment this is not proper and manifestly unfair to the appellant. ...

39. The starting point must always be the pleadings. In **Loveridge and Loveridge v Healey** [2004] EWCA Civ. 173, *Lord Phillips MR* said at paragraph 23:

“In **McPhilemy v Times Newspapers Ltd.** [1999] 3 ALL ER 775 *Lord Woolf, MR* observed at 792-793: ‘Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader.’”

Moreover, submissions do not make up the pleadings. Therefore, this claim cannot be considered.

[19.] It is evident by the Defendant's assertions that it was her belief that the contract was to be completed by early August. The Defendant presented no evidence that she sent notice stating she would rescind the contract if not done by that date. Nor did she demand that the Claimant complete the work by a reasonable date after early August. Rather, she chose to terminate the agreement.

[20.] In the absence of a completion date, the court must therefore determine what is a reasonable time frame for completion, having regard for all the circumstances. The Court, in determining what is reasonable, must consider the scope of works to be performed, the lack of infrastructure due to the passage of Hurricane Dorian, the protocols put in place during Covid-19 Pandemic and the change of workmen at the site.

[21.] The Defendant further contends that there was a delay in completing the contract. The Court notes that The Bahamas was under Emergency Orders during the entirety of the performance this contract. Moreover, the Claimant had a statutory obligation to isolate himself and his workers when exposed to Covid-19. The Defendant contends that only 2 of the 9 weeks are accounted for as it relates to Covid-19 exposures but failed to consider that further exposures by the Claimant's

agents would require further quarantine. Delay does not automatically repudiate a contract especially if it is a slight delay when considering the all circumstances.

[22.] The Claimant also contends that there was a delay in receipt of materials because of the effects of the pandemic. These delays were not unreasonable for the time and do not constitute a breach of contract for which the Defendant is allowed to rescind.

[23.] The Court accepts with Counsel for the Claimant's argument in that the Claimant would not be obligated to seek out an inspector pursuant to section 2-9 of the Building Regulations Ch. 200 unless and until construction was completed and he was seeking an occupancy permit.

[24.] The Defendant contends that the Claimant's work was defective and also not according to her plans. Counsel referred the Court to the case of **Greaves v Baynham Meikle [1975] 1 WLR 1095** at page 1098 as per *Lord Denning, MR*:

Now, as between the building owners and the contractors, it is plain that the owners made known to the contractors the purpose for which the building was required, so as to show that they relied on the contractors' skill and judgment. It was, therefore, the duty of the contractors to see that the finished work was reasonably fit for the purpose for which they knew it was required. It was not merely an obligation to use reasonable care. The contractors were obliged to ensure that the finished work was reasonably fit for the purpose. That appears from the recent cases in which a man employs a contractor to build a house: *Miller v. Cannon Hill Estates Ltd.* [1931] 2 K.B. 113; *Hancock v. B. W. Brazier (Anerley) Ltd.* [1966] 1 W.L. R. 1317. It is a term implied by law that the builder will do his work in a good and workmanlike manner; that he will supply good and proper materials; and that it will be reasonably fit for human habitation.

[25.] The evidence of the witnesses that the Defendant wishes to rely upon falls short of that what is required as none of those witnesses qualify as experts under the Evidence Act and thus cannot be considered. The Defendant wished to rely on a report which was compiled by Mr. Dwight Cox who is not a qualified assessor nor inspector and was not called as a witness in these proceedings.

[26.] It is not disputed that the Claimant began the works without an approved set of plans. The Court accepts the Claimant's evidence that the Defendant never provided him or his sub-contractors with fully stamped and approved plans for the renovations to her home. The Claimant conceded under cross-examination that confirmed that she received "approved drawings" from the Local Town Planning Board after the works began but never shared them with the Claimant.

[27.] Counsel for the Claimant also contends that while the Defendant complained about the quality of the workmanship, she offered to employ Mr. Cardot, which he argued is unlawful interference of economic with the Claimant's interest per **RAV Bahamas v Therapy Beach [2021] UKPC 8**.

[28.] Counsel for the Defendant contends that it was implied term the Claimant would account for the monies had and received and expended on the project and that the works would be completed in a reasonable time in order to give the contract business efficacy. Counsel referred the Court to the case of **Lister v Romford Ice & Old Storage Co. Ltd.** [1957] A.C. 555.

[29.] The Court accepts Counsel for the Defendant's submission that the Claimant's claim for defamation is without merit as he failed satisfy the criteria required to prove defamation and/or loss arising therefrom. Further that there was no "Publication" the effect of which would be to lower the Claimant in the estimation of right-thinking members of society generally: **Sim v Stretch** [1936] 2 ALL ER 1237.

[30.] The Court having heard the witnesses and observed them as they gave their evidence, finds that they were all generally truthful in the evidence they gave. I nonetheless preferred the evidence of Claimant and his witnesses. The Claimant asserts that it has been paid \$250,000 to date, but that \$150,000 remains owing. Further, additional sums are claimed for additional material however, the Claimant did not particularize any special damages. It merely provided a global sum owed, but did not plead or evidence how this sum was arrived at.

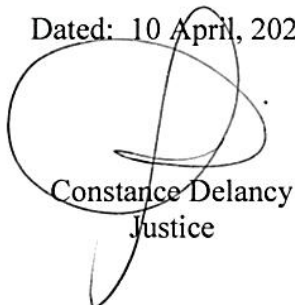
Conclusion

[31.] In all circumstances, I find as follows:

- (i) The Defendant is in breach of contract which has resulted in the Claimant suffering damages and awards the balance of the contract in the amount of \$150,000
- (ii) That interest shall attach to the awarded amount at the rate of 4.75% from the filing of the writ to judgment and thereafter at the statutory rate of 6.25% from the date of judgment to the date of payment.
- (iii) The Claimant's claim defamation is hereby dismissed.
- (iv) The Defendant's counterclaim was unsuccessful and is therefore dismissed.

[32.] Costs awarded to the Plaintiff to be assessed if not agreed and in the circumstances, I will exercise my discretion and reduced the Plaintiff's costs by 20%. The court deems this reduction appropriate as he was unsuccessful on the second claim of defamation.

Dated: 10 April, 2025


Constance Delancy
Justice