

ARGANA TIMBER COMPANY LTD.

Plaintiff.

THE UNIVERSITY
OF
PAPUA & NEW GUINEA
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F. KATSIAN

Defendant.

J U D G M E N T.

In this case the Plaintiff's claim is for an alleged breach of a building contract. The endorsement on the Writ of Summons is as follows:-

The Plaintiff's claim is for moneys due as a result of a breach of contract to build a dwelling, particulars whereof are as follows:-

1. On or about the month of July 1958 the Plaintiff and the Defendant entered into an Agreement in writing whereby the Plaintiff contracted to erect a cottage in Besels Street Boroko on behalf of the Defendant for the sum of Eight hundred pounds (£800).
2. It was a term of the Agreement that the Plaintiff would erect the house completely with the exception of the plumbing, drainage, electrical and painting requirements.
3. It was a further term of the said Agreement that the Defendant would pay in addition to the sum of Eight hundred pounds (£800) referred to above the sum of One thousand six hundred and eighty pounds (£1,680) for all materials required by the Plaintiff to erect the cottage as aforesaid. Such sum of Two thousand four hundred and eighty pounds (£2,480) to be paid as follows:-
 - (a) £500 on the completion of Framing and Roof Timbers.
 - (b) £500 on the completion of Outside Linings, Flooring, Doors and Window Frames.

- (c) £500 on the completion of Windows, Doors, Internal Linings.
 - (d) £500 on the completion of Contract.
 - (e) The balance of Four hundred and eighty-five pounds (£485) by equal fortnightly instalments of Forty pounds (£40) commencing when the Plaintiff commenced construction of the said cottage.
4. By a letter dated the 24th January 1959 written by the Defendant to the Plaintiff the Defendant refused to permit the Plaintiff to complete the Contract and the Plaintiff suffered damages, particulars whereof are as follows:-

To Wages paid in construction of cottage	£403. 0. 0
To Costs of Iron and Fibre	190. 1. 11
To Costs of Ant Caps	10. 10. 0
To Costs of continuous Ant Capping	15. 0. 0
To Cost of Nails	5. 0. 0
To Costs of 4,250 super feet of timber at £72.10.0 per thousand super feet	318. 2. 6
To Costs of Cartage	7. 10. 0
To Loss of profit on contract	<u>525. 0. 0</u>
	£1,474. 4. 5
Less £120 received	<u>120. 0. 0</u>
	£1,354. 4. 5

AND THE PLAINTIFF CLAIMS THE SUM OF - One thousand three hundred and fifty-four pounds four shillings and five pence (£1,354. 4. 5)*

To this claim the Defendant entered a defence and counter-claim as follows:-

1. The Defendant admits the allegations contained in paragraphs 1, 2 and 3 of the particulars to the Plaintiff's Statement of Claim contained in the Writ.
2. The Defendant denies the allegations of damage contained in paragraph 4 of the Plaintiff's Statement of Claim.
3. The Defendant's counter-claim and set-off is as follows:-
 - I. Monies due as a result of contract to build dwelling particulars whereof are as follows:-
 - (a) It was a term of the agreement referred to in the Plaintiff's Statement of Claim that the Plaintiff would erect the said house in a good and workmanlike manner and to the approval of the Town Building Board and the Plaintiff failed to erect the house in a good and workmanlike manner and to the

approval of the Town Building Board whereon the Defendant suffered damages particulars whereof are as follow:-

(i)	Stripping down and re-erection of the partly completed structure	£850
(ii)	Stripping down of existing plumbing and roof and re-erection of same	£150
(iii)	Completion of buildings as per original specifications	<u>£2356</u>
		£3356
	Less	<u>£2480</u>
		£876
	Plus	<u>£120</u>
		£996

and the Defendant sets off so much of the Plaintiff's claim if any as should be found to be due from the Defendant to the Plaintiff and claims the sum of NINE HUNDRED AND NINETY-SIX POUNDS.

II. The second count of the Defendant's counter-claim alternative to the above mentioned first count is as follows:

(a) For that the Plaintiff having agreed to erect a house as mentioned above by itself its servants and agents, so negligently and unskilfully erected the said house that it was faulty and defective whereby the Defendant suffered damages particulars whereof are as follow:-

(i)	Stripping down and re-erection of the whole partly completed structure	£850
(ii)	Stripping down of existing plumbing and roof and re-erection of same	£150
(iii)	Completion of buildings as per original specifications	<u>£2356</u>
		£3356
	Less	<u>£2480</u>
		£876
	Plus	<u>£120</u>
		£996

and the Defendant sets off so much of the Plaintiff's claim if any as should be found to be due from the Defendant to the Plaintiff and claims the sum of NINE HUNDRED AND NINETY-SIX POUNDS."

By a letter from the Defendant to the Plaintiff dated 24th January, 1959 (Exhibit "F") the Defendant repudiated the

contract. In this letter the Defendant employer gave notice to the contractor not to do any more work, so this amounted to repudiation of the whole contract.

In a building contract if one party repudiates the contract the other party can immediately elect to treat such repudiation as a rescission of the contract and sue for the breach.

The question arises whether the Defendant had the right to repudiate the contract when he did, that is to say, on the 24th January, 1959.

The contract consists of two documents (Exhibit "A"), a letter dated 11th June, 1958 from the Plaintiff Company to the Defendant which gives a quote for materials, and a short agreement dated 21st October, 1958 which among other things, provides for progress and final payments for the work in erecting the building.

In this agreement, which incorporates the letter of 11th June, 1958, the Plaintiff Company agrees to build a cottage, according to plans approved by the Port Harcourt Town Building Board, for the Defendant and his wife, for the sum of £800. The Company agreed to erect the house completely, with the exception of the plumbing, drainage, electrical and painting requirements, in a good and workmanlike manner and to the approval of the Town Building Board. On their part, Mr. and Mrs. Katman agreed to pay the sum of £800, already mentioned, in addition to the sum of £1,600 for materials quoted in the letter of 11th June, 1958, in the manner following:-

- a) £500 on the Completion of Framing and Roof Timbers
- b) £500 on the Completion of Outside Linings, Floorings
Doors and Window Frames
- c) £500 on the Completion of Windows, Doors, Internal
Linings, Built-in Wardrobes, Cupboards and Shelves
- d) £500 on the Completion of Contract
- e) The balance, viz £485, is to be paid by Mr. and Mrs. Katman at the rate of £40 each fortnight as from the commencement of the construction of the cottage. On completion of a satisfactory loan being obtained from the Administration, the balance outstanding shall become due and payable."

In item (e) there seems to be an error of £5 and the sum there mentioned should be £480 to make it agree with the sums of £800 and £1,600 which added together total £2,400.

It will be seen that from the commencement of the

construction of the cottage the contractor was to be paid out of a sum of £485 an amount of £40 fortnightly, and upon the completion of the framing and roof timbers, a sum of £500 was to be paid. I leave out of consideration the other stages for the second stage had not been entered upon, for reasons which will become apparent.

There is nothing in the contract stating what the fortnightly payments of £40 were to be for, so that they are taken to be in the nature of minor progress payments. During the first three months three fortnightly payments were made amounting to the sum of £120. This sum is acknowledged to have been paid.

It was a condition of the contract that the contractor was to erect the building completely, with the exceptions mentioned, in a good and workmanlike manner. There is nothing significant in those words, "good and workmanlike manner," being inserted in the contract because if they had not been it would have been a condition implied. It is an implied stipulation in a contract to perform any work.

Under the contract payment was to be made at certain stages of the erection of the building. The contract is severable and payment for each accrues on the completion of each particular part. It is the same in effect as if each part had been made the subject of a separate contract each of these contracts being entire in itself. Newfoundland Government v. Newfoundland Rail Co. (1888) 13 App. Cas. 199. Esobly v. Federated European Bank Ltd. (1932) 1 K.B. 423 C.A.

It follows then that the condition that the work is to be done in a good and workmanlike manner either expressed in the contract or implied, attaches to each stage.

The fact is, however, that the first stage had not been completed and the time had not come when the question of any breach by the contractor could be considered. The Defendant repudiated the whole contract when there was still something to be done before the Defendant contractor could call for his payment for the first stage.

The Defendant constituted himself inspector of works and he could have warned the contractor that he would withhold payment for the first stage if the defects, as he saw them were not remedied, and he could have engaged a building expert to support his own contention of unsatisfactory workmanship and his resistance to a claim to the progress payment when the time came.

Some of the things still to be done were defects but some were ordinary construction requirements to complete the

first stage.

All the expert witnesses who examined the erection in detail as far as it had gone, agree that whatever faults there were could have been corrected. Mr. Wild is a Bachelor of Architecture with much experience in building supervision, and to me he was an impressive witness. He was not prepared to say that the work had not been done in a good and workmanlike manner because it was unfinished.

The Defendant appears to have had a wrong impression of the situation. He seems to have regarded the relationship of the contractor and himself as one of master and servant instead of the relationship of two parties to a contract. The action of the Defendant was premature and he had no grounds for repudiation.

It remains to consider the question of damages. The Plaintiff is suing not for damages on the contract but for the fair and reasonable value of the work actually executed and the materials supplied. Two items are in dispute particularly, the wages and the loss of profits. As to the wages the Plaintiff has given evidence of the amount of wages he paid out and I see nothing in the evidence to dispute it. As to the profits, as the Plaintiff has chosen the course of claiming for the work performed and the materials supplied, at most he can only claim for the profits as far as he has gone. He has not claimed for damages on the contract and alternatively for the fair and reasonable value of the work done and the materials supplied. He can not have some of each under his claim. As far as I can see in the evidence he would have made no profit at all as far as he had gone in the first stage. I do not allow anything for the loss of profits. The damages should be the total of all the items set out in paragraph 4 of the Statement of Claim less the sum of £525 claimed as profits, less also the sum of £120 already paid. The final sum is £829.4.5.

I give judgment for the Plaintiff in the sum of £829.4.5.; I give judgment for the Plaintiff on the counter-claim, with costs to be taxed.

J.

3/8/59.