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IN THE SUPRME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. B218 of 1994

BETWEEN	ERNEST BERRY	PLAINTIFFS
	A N D	
	BARBARA BERRY	
A N D	TAYLOR'S WOOD PRODUCTS LIMITED	DEFENDANT

Clarke Cousins for the plaintiffs

Leighton Pusey for the defendant

Heard: May 3 and 8; June 6 and November 14, 1996

PANTON J.

The plaintiffs and the defendant contracted for the defendant to manufacture and install kitchen cabinets at the plaintiffs' premises situated at Apartment 4E, Manor Court, Kingston 8. There were variations by the parties of this contract, in relation to the cost and time for completion.

According to a document headed "Estimate-Contract" and dated January 25, 1993 [Exhibit 1], the cost was first stated as $50,306.00, and delivery should have been within four to six weeks from the date of order. Another document, similarly headed, and dated February 3, 1993 [Exhibit 2] provided for a total cost, excluding G.C.T. of $57,453.80. This document made provision for a payment schedule. Prior to the drafting of Exhibit 2, the plaintiffs had paid a deposit of $20,000.00 which was less than the amount stipulated by the schedule. Subsequently, according to the female plaintiff, two amounts of $10,000.00 and $15,188.75 were paid by her, making the total payment $45,188.75. These payments do not appear to be in dispute.

There is no doubt that in October, 1993, that is, eight months after exhibit 2 came into existence, the parties were in discussion as to the defendant's failure to perform its part of the contract. On October 15, 1993, the plaintiffs wrote to the defendant complaining that the work had not been completed within the period promised, that is six to eight weeks after the first payment [see Exhibit 5]. On October 25, 1993, the defendant wrote to the male plaintiff. In that letter [Exhibit 3], the defendant acknowledged the existence of defects

in the work already done, offered a further discount of $17,000.00, promised installation no later than October 27, 1993, and enclosed a cheque to cover the amounts paid by the paid by the plaintiffs, such cheque to be lodged if installation had not commenced on October 27.

In my view, this letter is a clear acknowledgment by the defendant that it has breached the contract. It would appear also that the plaintiffs were also giving the defendant a further opportunity to perform its obligations.

It seems that the point for determination is whether the defendant breached the terms of this varied contract. This requires consideration of exhibit 3, and the subsequent behaviour of the parties.

In exhibit 3, the defendant states:

> "The above will be installed not later than Wednesday, October 27, 1993. Enclosed is a cheque .... to be lodged if installation does not commenced on above date."

In one breath, it appears that the defendant is saying that the installation will be done no later than October 27. In another breath, it is saying that the cheque is to be lodged if the installation has not commenced on that date. Even if a construction favourable to the defence is put to the words of this letter, the best that can be said for the defence is that the installation would be completed if not by October 27, then certainly very soon thereafter.

The cheque was lodged on Friday, November 5 but bears the date November 8. For a job that the defendant contracted in January to complete within four to six weeks, or even six to eight weeks as varied in February, it seems to me that when the defendant wrote on October 25, it was not promising to be still doing installation in November. It seems that the defendant was seeking a couple of days - and this was granted by the plaintiffs.

I accept the evidence of the female plaintiff that on the day that she lodged the cheque (that is, Friday November 5), when she left her home at 11:30 a.m., not a workman was in sight; but when she returned at 3:30 - 4:00 p.m., workmen "were there trying to install doors that would not fit." They had installed a countertop that she had not selected, and the "laminate was broken in two sections and also joined."

The female plaintiff cancelled the contract on the 9th. I accept her

evidence that she then requested the defendant to remove that which had been set up so far. The unfinished state of the work done by the defendant up to that point is amply verified by the witness George Johnson. He said that he saw cabinet frames and half-finished doors. The male plaintiff who is a retired marine engineer estimated that only fifteen to twenty percent of the work had been done - the framework and a few end pieces.

The defendant's managing director said there were problems with the installation. Like the proverbial workman blaming his tools, he described the plaintiffs' house as being "totally out of whack." He blamed the ceiling for being out of line, and said that they "had to go back and cut the cabinets" as .... "there was a two to two and a half inch drop in the roof." There were, he said, a bulge and a protrusion from the wall making it necessary for adjustments to be made to what had been built. There was even a 90^{o} corner that he blamed, in that it was at least 6^{o} or 8^{o} out.

In my view, the defendant cannot escape liability by pointing to incompetent workmanship on the part of the house builder. It is the defendant which has the responsibility to assess the structure for which it was building the cabinets, and to build them in keeping with that structure. The workman cannot, as the managing director informed the Court that he did, "assume everything was alright in measurements." It ought to do its work, and do it properly.

The defendant clearly failed in its duty to do that which it undertook, and for which it had received payment. Its failure resulted directly in:-

(a) great inconvenience to the plaintiffs;

(b) loss of that which was paid to the defendant; and

(c) the added expense of engaging the services of George Johnson to do that which the defendant should have done.

The defendant is also responsible for the cabinets that were removed from the plaintiffs' premises. I accept Mr. Johnson's estimate of their value. So far as the inconvenience suffered by the plaintiffs is concerned, I view the period November 1993 (the time of the breach) to May 1994 (the installation by Mr. Johnson) as the relevant period. I assess $25,000.00 as being adequate compensation in that respect.

Judgment is hereby entered for the plaintiffs as follows:-

1.	$ 45,188.75	- amount paid to defendant
2.	$ 20,711.25	- difference between amount paid to Johnson and the varied contract price
3.	$ 27,500.00	- value of old cupboards
4.	$ 25,000.00	- inconvenience
	$118,400.00	

Interest is awarded at 30% on the following sums for the periods stated:

1. on $45,188.75 from August 27, 1993
2. on $48,211.25 from April 1, 1994.

The costs of these proceedings are to be the plaintiffs', such costs to be agreed or taxed.