IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2005 HCV02425

BETWEEN	***GEORGE BROMFIELD***	***CLAIMANT***
A N D	***DUDLEY DAVY***	***DEFENDANT***
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BETWEEN	***DUDLEY DAVY***	***ANCILLARY/ CLAIMANT***
A N D	***GEORGE BROMFIELD***	***ANCILLARY/DEFENDANT***

Appearances

Mr. S. Smith for the claimant/ancillary defendant.

Miss C. Minto and Miss K. M. Reid instructed by Nunes, Scholefield, DeLeon and Co. for the defendant/ancillary claimant.

Heard: December 14 -18, 2009 and November 12, 2010

P.A. Williams, J.

Background

Mr. Dudley Davy the defendant and ancillary claimant wanted to build a church. He said he is a minister of religion and the building of the church was to fulfill his vow to God.

In the desire to fulfill this dream of building a church Mr. Davy contacted Mr. George Bromfield, the claimant/ancillary defendant who came from the same district that is Wilson Run in Trelawny.

Mr. Bromfield describes himself as a building contractor with experience in general construction of buildings spanning many years.

2. In June 2004 they came to an oral agreement for Mr. Bromfield to construct the church for two million dollars.

By February of 2005, the construction had come to an end and the agreement between the men was no more.

3. Mr. Bromfield brought this action in August 2005 claiming damages for breach of a building contract alleging that Mr. Davy had wrongly and unlawfully repudiated the contract.

Alternatively he claimed reasonable compensation on a quantum meruit basis for work done pursuant to the said building contract.

4. Mr. Davy denied that it was he who breached the contract and by July 27, 2006 filed an ancillary claim/counterclaim seeking from Mr. Bromfield damages for breach of contract since he was forced to engage other contractors to complete work and to remedy the work already executed.

The evidence

5. As is perhaps to be expected in matters where there is a dispute as to terms of the oral contract, the parties presented opposing evidence as to what had been agreed upon. There was nothing in writing to support either side.

6. Both parties agreed that the contract came into being in June 2004. Further they agreed that the church was to be a two-storey building to be constructed at a cost of two million dollars. It was also agreed that payment was to be made on a fortnightly basis

with Mr. Davy providing the requisite material needed by Mr. Bromfield to carry out the work.

Another matter agreed upon was that a brother of Mr. Davy would be employed as a labourer at the work site.

All other major terms of the oral contract are in dispute.

7. Mr. Bromfield insisted that it was agreed that he would not be required to do any plumbing or electrical work. He also was not to be responsible for the casting of the ground floor or the decking and casting of the first floor.

Mr. Davy however maintained nothing was to be exempted as contractor Mr. Bromfield was to provide the labour and he would provide all the material.

He however said that after they had settled the contract and after the construction had commenced, Mr. Bromfield told him he did not want to get into the electrical and plumbing work and that he should get someone to do it and deduct it from the two million.

Further, Mr. Davy said he had wanted wooden floors and it was Mr. Bromfield who had suggested decking and utilizing hand labour rather than premix.

8. Mr. Davy insisted that he had advised Mr. Bromfield that the construction was to be completed by December 2004. He admitted that he saw from visits to the site, that given the slow progress of the work this six (6) months construction time limit would not be met.

Efforts to have discussions with Mr. Bromfield was not always successful and by December although the work was not done, he did not use this as a reason to end the contract immediately.

Mr. Bromfield said no time limit was ever discussed. He said that Mr. Davy had confessed to employing him with no knowledge as to where the money would come from to complete the building but that he was starting it in Jesus name and that the Lord would provide.

9. In effect the claim by Mr. Bromfield was that he had taken on this job without knowing how long it would last and with no guarantee that there would be monies to pay him to complete.

Mr. Davy denied having said he was unsure as to where the monies to build the church would come from. He said he had the money from the start and had intended to build without borrowing.

10. Mr. Bromfield said he was presented with an architectural building plan which he was advised had been approved by the Trelawny Parish Council.

The plan contained the specifications for the proposed building and he said Mr. Davy had made it clear that the contract was based on the plan. He exhibited this plan which he agreed bears the date stamp of August 17, 2004.

He explained that once construction had started, Mr. Davy had taken back the plan to show relatives abroad. He never got it back and subsequently had to apply to the Parish Council for a new one.

He carried on with the construction and between September 04 and January 05 he did so without any plans.

Under cross-examination he asserted that there was a different identical copy of the plan but he couldn't say if all copies bore the same date stamp.

11. Mr. Davy said it was Mr. Bromfield who raised with him the need for "a blue print". It was Mr. Bromfield who referred him to someone at the Parish Council, with whom he met and had discussions. This person visited the site after the building had been lined out 50 feet by 32 feet and the work had started with the digging and the pouring of concrete for the base.

The person from the council then drew the plan, which took about a month to complete. He was then given two blue prints along with the permit. One blue print he gave to Mr. Bromfield who said nothing about it nor requested any more money.

12. Mr. Bromfield stated the work he was to perform was to be based on the drawings and specifications contained in the building plan. Therefore it was a distinct agreement that any structure not included in the plan did not constitute part of the contract.

In his opinion it would be "manifestly unreasonable to expect him to construct any additional structure or effect major variations or perform additional works above that which was in the plan for the same agreed contract price."

13. Mr. Bromfield pointed out that there was such variations on the contract. The fact is that the blue print indicated the dimensions of the lower floor was 17 feet by 50 feet but while performing the work consistent with the plan he agreed with Mr. Davy to effect modification to this, extending it to a new dimension of 32 feet by 50 feet. This entailed work which was extremely labour intensive demanding additional work, thus there should be additional quantification and payment.

Mr. Davy agreed that the plan had dimensions of 17 feet by 50 feet but he said this had been drawn by the person from the parish council and not on his instructions.

14. Mr. Davy also insisted he had told Mr. Bromfield the dimensions required and the actual lining out 50 feet by 32 feet had been done before the blue print had been received. The land had to be dug down before the construction started but this was to be included in the two million dollars agreed on.

Mr. Bromfield agreed that he and Mr. Davy had spoken about the dimensions being 50 feet by 32 feet but he maintained there was in existence a plan with the ground floor dimensions being 17 feet by 50 feet and hence there was an increase of some seven hundred and fifty square feet from the original plan - a variation for which he was to be paid.

15. Mr. Bromfield felt there was further variation to the original agreement when he was approached to do the decking and casting which required additional workers to do this manually instead of using pre-mix concrete to slab the floors – additional cost for which there should be additional payment.

16. Given the failure of the parties to agree on these basic terms of the contract, it is hardly surprising that there was also differing accounts as to how the work had progressed.

Mr. Bromfield said it had progressed steadily with him receiving commendation from Mr. Davy as to the high standard of performance displayed on the site. He felt the work reflected exceptionally good workmanship.

17. Mr. Davy was dissatisfied. The work was not progressing quickly and he complained to Mr. Bromfield, when he could.

Attempts to have meetings sometimes failed. Mr. Davy felt his telephone calls were being ignored. Mr. Bromfield, he said, was almost never on the site and was in fact doing another job at the time in another parish.

He was forced to communicate with another man left at the site by Mr. Bromfield. This man was Mr. Chesson Motta. He complained to Mr. Motta about Mr. Bromfield's absences.

However he did see Mr. Bromfield when payment was due at the end of each fortnight and on those occasions when he asked about the pace of the work he got no reasonable answer.

18. Mr. Bromfield acknowledged that he was doing work on another site in Westmoreland but he was on the site of the church regularly.

In cross-examination he went from being there every day Monday to Friday – to Mondays and Thursdays to at least one day per week.

He insisted he was there however when there were "technicalities" to be done.

He pointed out that he had a foreman on the site who was in charge in his absence - Mr. Chesson Motta.

He received commendations from Mr. Davy through Mr. Motta – but did not receive complaints.

19. Mr. Norman Davy gave evidence for the defence and is the brother of Mr. Davy it had been agreed would be employed on the site.

He sought to support this assertion that Mr. Bromfield was often away from the site but said there was no one to supervise in his absence. He recalled regularly having to sit around waiting for Mr. Bromfield.

He however saw no foreman on the site. Mr. Motta who he knew as Soljee – was little more that a common labourer in his view.

20. In any event Mr. Bromfield formed the view that between June 04 to December 04, there was hardly any problems on the site and lines of communication were always open between him and his employer. He got the material needed on time and also got paid fortnightly as agreed.

It was Mr. Davy who kept the record of the payments and these records were not available at trial.

Mr. Davy confirmed there was no problem during the contract's life regarding fortnightly payments which varied from one hundred and ten thousand dollars and one hundred and thirty thousand dollars initially until it reached one hundred and fifty thousand dollars.

21. Mr. Motta gave evidence agreeing with Mr. Bromfield that he was employed as a foreman on the site; as he described it in his witness statement "he was charged with and exercised general oversight of all the works done on the building."

Along with the supervisory role he also performed various types of work usually of "a highly technical nature."

He vividly recalled that Mr. Davy on many occasions commended him for what he called the excellent work being done and expressed satisfaction with the quality and pace of the work.

22. Mr. Mota said Mr. Davy approached him on many occasions during Mr. Bromfield's absence suggesting he take over the work on the site.

He was even offered a large sum of money when the building was completed, if he took over. Mr. Davy denied that any such conversations took place.

23. Under cross-examination Mr. Motta acknowledged knowing Mr. Bromfield for years and accepted that a good part of livelihood comes from working with him

For this job, Mr. Motta said, it was he who was responsible for preparing the fortnightly labour bill. He asserted that there were in fact problems with getting paid for his work during the period June 04 to December o4, although it didn't happen very often.

He however agreed that at the time he did not tell Mr. Bromfield of the attempts by Mr. Davy to get him, Motta, to take over the job. He only revealed this fact "of late, sometime before the trial".

24. Mr. Bromfield, having had no problem with Mr. Davy, would have been surprised when he says Mr. Davy just upped and left the island without paying him and without leaving material to carry on the job.

This is what he said forced him to stop working on the site – he was unable to do so.

He acknowledged that Mr. Davy had been off the island previously but at that time arrangements had been made for him to get monies via Western Union.

25. It was in January 05 that Mr. Bromfield said a fortnightly payment had become due but efforts to contact Mr. Davy proved futile.

Mr. Davy on the other hand said he had met with Mr. Bromfield and had given him one hundred and fifty thousand dollars and told him to carry on the work. He also left material at the site he felt was sufficient to carry on the job. This was done on

December 24 and he left Jamaica late December early January intending to return in February.

26. Mr. Davy said he believed he called Mr. Bromfield on about two occasions to make enquiries as to what was happening. He also said that to the best of his recollection he had given Mr. Bromfield his house number in the United States of America.

27. Mr. Davy maintained that in December 04 the church was not completed and no where near completion. When he left the island the walls were up and it was the roof which was being put up.

Although in his witness statement he said he took photographs of the stage the work was at when he left, at trial it was clear he was unsure as to when he actually took the pictures and he did not rely on them.

He returned to the island in February and said he telephoned Mr. Bromfield while on the way from the airport requesting they meet and discuss things.

The meeting at the site never took place when he got there. Mr. Davy says he found the building at basically the same stage as when he had left. No work had apparently been done and all the material was still there.

28. Mr. Norman Davy in his witness statement said that after his brother left things got to a point where the work at the site stopped completely. Material was available but the work stopped because Mr. Bromfield stopped showing up.

He called his brother and advised him of this. He did not say when this was done.

29. Hence, Mr. Bromfield said he was forced to stop working when he had no money to pay his workers and no material to continue the work.

It was on February 5th while he was in Kingston with Mr. Motta that Mr. Davy called Motta and advised him that he was fired.

It was not until two weeks later on February 15th that he visited Mr. Davy at his house and was ordered not to set foot again on the premises. His request for monies due and owing under the contract was denied with Mr. Davy retorting in response that he had already got too much money.

He deemed that the instructions not to re-enter the site along with the fact that he had been fired was a repudiation of the contract.

30. Mr. Davy counters that it was Mr. Bromfield who had repudiated the agreement between the parties by ceasing construction at the premises in February 2005.

In his defence he stated that between December 23, 2004 and February 2005 he had made advances to Mr. Bromfield for works to be executed.

In his ancillary claim/counterclaim he asserted that it was Mr. Bromfield who without any just explanation ceased all work at the premises in or about February 2005. It was on February 3rd that he went to the site and discovered none was being executed and no workmen were there.

Under cross-examination he denied suggestions that Mr. Bromfield had continued to work on the site after December and up to January 2005.

When re-examined he maintained work had stopped in December 2004 but in his view the job had been abandoned in February 2005.

31. He explained in his witness statement that on his return to Jamaica he had called Mr. Bromfield and arranged a meeting for the day after. When Mr. Bromfield didn't

show he saw Mr. Motta and asked him to advise Mr. Bromfield to meet the following day. Once again he failed to show.

This was when he called Motta, learned the claimant was in Kingston and told Motta to tell Bromfield he was fired.

He felt he was justified in doing this as no work was going on, efforts to have a meeting failed. He was satisfied Mr. Bromfield had abandoned the job.

He agreed that Mr. Bromfield had visited his home to collect monies some two (2) weeks later and he advised him there was nothing to be paid and in fact felt he was the one who was owed.

32. Under cross-examination Mr. Davy showed his exasperation with the manner in which he was being questioned, he expressed his exhaustion with what he saw as being asked the same questions repeatedly in different manners. He even admitted to having problems with his memory.

He now said he had become dissatisfied with the pace of the job some three (3) to four (4) months after it had commenced but he did not speak to Mr. Bromfield about it.

33. He initially said he was in Jamaica on January 5th but did not go to pay Mr. Bromfield as no work had been done. Later however, he said he did not go to the site after the 24th of December until his return from the United States.

He at first said he had returned to Jamaica on February 5th and then said it was February 7th he offered his passport with the relevant stamp as proof of the date of his return.

He also said that the initial meeting had been set for a Saturday and not a Friday as he had initially said.

34. He accepted that he did not fire Mr. Bromfield solely because of the delays and the failure to meet the six (6) months deadline.

He insisted that when he returned to the island, there was material on the site but no one appeared to have been working. He was unable to say how long during the period he was away there had been a work stoppage.

He was tested as to the payment allegedly made in December 04 and he insisted he had paid for work done up to that time as distinct from work to be done on the future.

35. There was no dispute that someone else had to be employed to complete the church. Mr. Davy said he had to pay eight hundred and sixty thousand dollars to have his dream completed.

36. A draughtsman/quantity surveyor gave evidence for Mr. Bromfield – He it was who sought to quantify the value of the work that had been completed by Mr. Bromfield and thus an estimation could be arrived at as to how much was owed.

Mr. Joseph Honeywell was the witness and he explained that he was very knowledgeable about best practices standards and rates within the building industry.

37. He said it was on the 3rd of March 2005 he visited the site and did the requisite inspection and measurements. He subsequently prepared a report entitle "Labour estimate for job done on church at Wilson Run Trelawny."

38. Based on this estimation Mr. Honeywell concluded the work done was valued at $1,429,365.00.

Mr. Bromfield said he had been paid $1,020,470.00 in fortnightly installments.

Mr. Davy's recollection that he had paid out $1,220,000.00.

Neither men had any documentation or receipts to prove the actual amounts paid.

39. Under cross-examination, Mr. Honeywell agreed that the Incorporated Master Builders Association (MBA) compiles sheets stating the standard rates for various items or description of work for different buildings. He agreed also that such sheets would be available for public purchase or acquisition but could not recall how often they would be produced.

40. Mr. Honeywell was then tested as to whether the figures quoted in his report conformed with those in the MBA rate sheets. He did not have the rate sheet he used to prepare his report but insisted they were what prevailed in the industry at the time.

He did not agree that the rates he used was in fact higher that those with which he was now being confronted.

The rates however did in fact appear to be higher that the MBA rates he was shown for the relevant years.

He was unwavering in his pronouncement that the figures in his report were based on the rates then prevailing as far as he could recall.

41. Mr. Davy in his witness statement outlined the amounts he said he had expended to complete the construction of the church. Apart from paying a second contractor, he had to pay various other persons to do other forms of labour, that is to dig pits for toilets and the baptizing pool; to level the car parks; to do the windows and doors for the rostrum. He had to pay a plumber, electricians, and a painter. He also included payments made to other persons with no indication of what exactly they had been paid for.

Mr. Davy concluded that he had spent a total of $2.9 million to build the church. This included the amount that he recalled he had paid to Mr. Bromfield.

He believed he should be now getting back from Mr. Bromfield the amount he had spent exceeding the two million, to complete the job.

The submissions

For the defendant/ancillary claimant Miss Minto identified what she called three critical issues in the case namely –

a. what were the terms of the oral contract between the parties and the scope of the work which had been agreed.

b. what were the circumstances leading to the termination of this oral contract.

c. the damages which would arise from the termination

42. She recognized that the issue of credibility is important in resolving the dispute – credibility not only of the parties and their witnesses but also the probability, plausibility of their accounts. She also submitted that the court also needed to consider whether the accounts advanced was supported or eroded by any documentary evidence.

43. She conceded that her client may well have appeared to be a simpleton seen for example in his mannerisms and his inability to understand simple questions posed to him in re-examination and the lack of any nexus between certain questions asked and his responses.

She submitted "the chosen methods of attack on his credibility should provide some vindication for any inconsistency which is discerned in his evidence."

44. Recognizing the inconsistency in Mr. Davy's evidence as it relates to when work on the site stopped she pointed out that he had to have explained to him the difference

between continuation of the contract and construction but it was clear on even the claimant's case that construction did not continue into February.

45. She urged the court to prefer Mr. Davy's version of the facts and submitted that he was justified in terminating the contract in the circumstances namely:-

(i) there was a delay in completion

(ii) there was no effort on Mr. Bromfield to remedy the contract or perform the contract – she referred to the authority of **Shawton Engineering Ltd. V. DGP International [2005] 306703**

(iii) Mr. Davy gave Mr. Bromfield an opportunity to remedy and scheduled a meeting but he did not attend or favourably respond.

She concluded that these breaches are fundamental and went to the root of contract – she referred to the case of **Stocznia Gdynia v. Gearbulk Ltd. [2009] 3 WLR 677.**

46. On the issue of damages, she submitted that Mr. Bromfield had not proven his damages. He had failed to disclose the fortnight bill which would represent his actual loss and he had not established that the sums disclosed in the Honeywell's estimate was the market rate.

On the other hand the defendant should be awarded on his counterclaim/ancillary claim the construction cost above the value of the original contract price representing his loss of bargain.

For the Claimant

47. Mr. Smith opened his submissions by declaring that it had been proven with the level of cogency required that it was Mr. Davy who had repudiated the contract and not the other way round.

Further he submitted Mr. Davy had embarked on a pattern of behaviour which indicated he had no intention to be bound by the contract after February 2005.

48. He pointed to the fact that there was an expressed term of the agreement that payment for work done was to be done on a fortnightly basis.

This payment was to represent the value of the work done over the period, hence he urged the evidence of Mr. Davy that he paid Mr. Bromfield for work not yet done ought not to be believed.

49. He argued that the defence had embarked on a totally different line from that in their statement of case by claiming that no work at all had been done after December 2004. In the defence filed Mr. Bromfield had said the construction at the premises ceased in February 2005.

50. This he pointed out offends the rule at CPR 10.7 which states-

> "The defendant may not rely on any allegation of factual argument which is not set out in the defence, but which could have seen set out there, unless the court give permission".

51. He relied on the text "Practical Approach to Civil Procedure" by Stuart Sime 5th edition at page 145 in submitting that this new line of defence was an opposing line from

that stated which means the defence must therefore fail and any allegations about abandonment of the job between December 24 and February must be put to rest.

52. In his written submission, he argued that there was in fact variation from the agreed contract to be seen from the fact the approved plans gave dimensions for the ground floor which was accepted by both sides to be different from what was actually done. He argued that such extensive variation could not be defined as reasonable and thus the claimant was entitled to be paid for it.

He referred to the case **Sir. Lindsay Parkinson v. Commissioner of Works et al [1984] 1 All ER 504** in support of this argument.

53. Mr. Smith felt it necessary also to try to persuade the court that Mr. Davy had an expressed obligation by the terms of the contract to give possession of the site to Mr. Bromfield for the purpose of executing the contract –such a term was to be implied if omitted.

He referred to two authorities for this proposition (i) **Freeman v. Hensler 1900 Hudson's Building Contract** 4th edition Vol. 4 – 292 and (ii) **Arteriial Drainage Company v. Rathangan** 6 CR IR 513 digested at Vol. 7 paragraph 2472.

54. The case of **Planchet v. Colburn** 1831 3 Bing 12 reported at 81 English Reports page 30 was considered as instructive for the following:-

> "Where party to an entire contract performs part of the works undertaken and is then prevented by the fault of the other from proceeding further, the law doesn't allow him to be deprived of the fruits of his labout. He is entitled to recover damages for breach of contract but

alternatively he can recover reasonable remuneration

or quantum meruit for what he has done.

55. Mr. Smith went on to remind the court as to what entitles an innocent party to treat a contract as discharged; what would constitute repudiation.

He opined that Mr. Bromfield was entitled on his claim to proceed under both heads i.e. repudiation and substantial breach as both had occurred by the words and conduct of Mr. Davy between December 2004 and February 2005.

56. He pointed to aspects of the evidence which he said supported his assertion that it was Mr. Davy who breached the contract eg. denying access to the site, starving the site of necessary materials or payment as agreed, removing himself from Mr. Bromfield's access so he could be contacted regarding his breach, failing to provide material thus hindering performance as well as preventing completion of the contract.

57. In challenging the assertion that there was a stipulation as to when the contract was to be completed, Mr. Smith noted there was no evidence of any notice making time of the essence. In any event, he stressed, the circumstances of the case would not have allowed for any legal termination for this reason.

58. On the issue of damages it was submitted, Mr. Bromfield was entitled to recover for breach of contract but alternatively he could recover reasonable price or remuneration on a quantum meruit basis. His entitlement should be for the value of the work done plus his profit on the remaining work as damages for the breach of contract.

The issues

59. It is undisputed that the underlying issue to be resolved must be what was the cause for the termination of the contract. This ultimately then is to determined based on an assessment of the credibility of the parties and the believability of their stories.

60. The general rule relating to the area of law which arises is succinctly stated on Halsbury's Laws of England 4th edition Vol. 9 (1) paragraph 989:-

> "Where one party (A) to a contract has committed a serious breach of contract by a defective performance or by repudiating his obligations under the contract, the innocent party will have the right to rescind the contract de futuro, that is treat himself as discharged from the obligation to tender further performance and to sue for damages for any loss he may have suffered as a result of the breach. Such a breach by A does not usually itself automatically terminate the contract B has the right to elect to treat the contract as continuing or to terminate it by recession".

The decision

61. An observation I feel compelled to make from the outset, is that neither of the parties nor their witnesses impressed as speaking the entire truth. Both sides were guilty of glossing over the issues by being evasive in their responses to certain question.

It is also to be regretted that neither party could supply the court with any documentary evidence that could assist the court in any substantial way.

62. Mr. Bromfield as the astute contractor and businessman he sought to make out he was, would be seen as acting contrary to his depiction by agreeing to do work for which he was not sure he would be paid and being not sure how long the contract would last.

However it is believed that the parties would agree that payment would be made on the basis of work done over a fortnightly period. The fact is that there seemed to have been no problem with this payment method.

It is particularly of note that at one time during the construction when Mr. Davy was off the island payment was arranged apparently through a money transfer agent.

63. The issue as to whether there was a plan for the dimensions and design of the church in existence at the time the construction commenced is best resolved by referring to the architectural plan itself – the date on it would seem to speak for itself. The oral agreement was made in June the date on the plan is August 17, 2004.

It is further believed that the Dudley Davy whose demeanour was assessed by the court may well have not been aware of the need for such a document in the fulfilling of his dream. His version as to how the plan came into being is to be preferred.

64. Although Mr. Davy sought to establish his dissatisfaction with the pace and performance of the work being done, it is not clear whether this was ever communicated to his contractor – Mr. Bromfield.

Further his expression of the difficulties in meeting with the contactor is met by the fact that it is apparent that he was guaranteed seeing Mr. Bromfield when it was time for payment.

Mr. Bromfield's version as to the progress of construction is to be preferred.

65. On the matter of payments for variation, once again it is the assessment of Mr. Davy that leads to the conclusion that he would not have appreciated or agreed to any such arrangement. He had a dream, he had a sum of money to fulfill the dream and that was what formed the crux of his agreement.

The church was to be completed for a cost of two million dollars.

In any event the evidence of Mr. Bromfield on the value of any such variation was woefully wanting. There is not sufficient presented to establish how such a cost would have been arrived at outside of the payments made fortnightly for the actual work accomplished in that period.

66. Mr. Davy's assertion as to the existence of an agreement as to when the church was to be completed is also to be questioned. As indicated earlier the fact that the pace of construction indicated this deadline would not be met and yet this was never clearly urged on Mr. Bromfield.

Further is more than passing strange that Mr. Davy did not make this the integral part of his decision to terminate the contract. Indeed it is significant to note that on his version of events a week prior to the completion he had agreed to, he is supposed to have just paid Mr. Bromfield some monies to carry on the work for another two weeks.

67. It should be noted that the state of Mr. Davy's case given the variations in his allegations as to the date he determined construction had stopped draws his credibility into dispute in a significant way.

On this issue hinges much of the determination if the case.

68. It is evident that Mr. Davy was unsure as to when he returned to Jamaica after his departure in December. Hence his allegations as to when he is supposed to have called and arranged a meeting with Mr. Bromfield is unclear.

In any event he did not seem to have gone to the site till February – over a month since his departure. He gave no evidence as to what the arrangements would have been after the initial two weeks he supposedly paid for in advance had been completed.

He was not convincing in his seeking to establish that he had communicated with Mr. Bromfield while absent from the island. He was uncertain as to whether he had given Mr. Bromfield a phone number he could have been contacted at abroad. I am satisfied there was no contact.

69. On this assessment and analysis of the more important aspects of the case, I am satisfied on the balance of probabilities Mr. Bromfield version of how the contract came to an end is to be preferred.

He had not received payment to keep him engaged and was not in communication with his employer. He cannot be faulted for having ceased working while awaiting word from and of Mr. Davy. It is undisputed that the word he received through Mr. Motta was that he was fired. I am not satisfied that Mr. Davy was justified in so doing.

Ultimately there is judgment for Mr. Bromfield on the claim and on the counterclaim/ ancillary claim.

Damages

70. This is a classic example of what the courts have asked not be done in matters requiring assessment of damages –the throwing up of figures at the court without the necessary evidentiary foundation.

71. I am satisfied that in the circumstances Mr. Bromfield is entitled to reasonable compensation on a quantum meruit basis for work done.

I find that he would have worked for two weeks without being paid, hence this is the extent of his entitlement.

He has however given no evidence to assist the court as to what work was done over that time to determine how a labour bill for this period would be arrived at.

72. The witness Honeywell, called on Mr. Bromfield's case did not assist as it was anticipated. The cross-examination of him left court satisfied that the figures presented by him could not be relied on as being accurate.

Hence the court in seeking to determine the amount to be awarded has to consider the evidence from the parties themselves, as unsatisfactory as it may be.

73. It is significant that neither party has satisfied the court as to what stage the construction had reached. The promise of Mr. Davy to furnish the court with pictures showing this never materialized.

Resolution of this issue is therefore found in the evidence as to the average monies that was being paid at this stage for a fortnightly labour bill.

The amount seemingly accepted is one hundred and fifty thousand dollars ($150,000.00)

74. The order therefore is that there is judgment for the claimant on the claim and for the ancillary defendant on the ancillary claim with damages assessment at $150,000.00 with interest at 4 % from 5th February 2005 to today's date.

Cost to the claimant/ancillary defendant to be taxed if not agreed.

Cost to be determined at the Resident Magistrate level.