

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. M.121 OF 1993

BETWEEN MILTON McINTOSH PLAINTIFF  
A N D MILTON BRADY DEFENDANT

Mr. Hector Robinson instructed by Patterson, Phillipson and Graham for Plaintiff.

Alvin Mundell for Defendant.

Heard: January 22, 23 & 27, 1996

LANGRIN, J.

This is a claim against the defendant to recover damages for breach of contract made orally and reduced to writing on the 19th January, 1993 wherein the defendant agreed to carry out certain construction works at the plaintiff's premises at Teak Road, Portmore, St. Catherine.

The material facts are that the plaintiff, an accountant at Dyoll Insurance Company Limited, agreed with the defendant, contractor that he would carry out modification to an existing structure prior to his occupying the premises with his family. The complete job including the construction of a powder room would cost \$182,000.00. An advance of \$117,000.00 was paid to the defendant.

Mr. Brady, the defendant agreed that the work would be completed by the end of February 1993 to allow the plaintiff to move in the new premises with his family. The fact that the agreement in respect of the powder room came after the original agreement, no additional time was needed to complete the works.

The work continued smoothly but when additional sums were requested by the defendant, the plaintiff requested a detailed report of costs in respect of work already done. No report was furnished by the defendant and as a consequence the plaintiff was unable to supply additional sums to the defendant resulting in a cessation of the work, in February, 1993.

Despite other allegations in the defendant's pleadings as to the reasons for the stoppage of work the only reason relied on by the defendant is the absence of funding by the plaintiff. The defendant

is contending that due to the lack of funding by the plaintiff it was the plaintiff who was in breach of the contract.

On the contrary the plaintiff is contending that the defendant failed to furnish the plaintiff with details of the cost in respect of the work already done despite demand by the plaintiff. On the evidence adduced I am not in any doubt that the defendant did not comply with the request. Indeed, the defendant stated that he refused to continue the job because the plaintiff did not furnish him with additional funds.

While there are no express provisions for interim payment the defendant contends that the plaintiff had agreed to pay the contract price before completion of the contract. This contention is strongly disputed by the plaintiff.

The issue which I must determine is whether the plaintiff was right in terminating the contract on the 19th March, 1993.

The essence of a building contract is a promise by the contractor to carry out work and supply materials in consideration of a promise by the building owner to pay for it.

Thus in Sumpter v. Hedges (1898) 1 Q.B. 623 the law was made clear that where there is a contract to do work for a lump sum, until the work is completed the price of it cannot be recovered.

In that case S contracted with H to build two houses and stables for £565 S did part of the work worth £333 and received part payment. S then told H that he had no money and could not go on with the work and abandoned the contract. H Completed the work making use of materials which S had left upon the land. In an action by S the County Court Judge gave him judgment for the value of these materials but nothing in respect of the work he had done on the buildings. S appealed. Held, S having abandoned the original contract could not recover on it, there were no circumstances for which a fresh contract to pay for the work done could be inferred, and therefore S could not recover for the work done as upon a quantum Meruit.

The letter of March 11, 1993 written on behalf of the plaintiff making time of the essence of the contract goes to the foundation of the contract and must be treated as a condition since the parties were aware that the work had to be completed before the end of February, 1993 to facilitate a removal to the premises.

The defendant admitted that he would have completed the work by the middle of February but for the fact that the plaintiff was unable to furnish him with any additional sum.

The failure of the defendant to complete the work within the original time stipulated by the parties as well as the continued failure to do so up to the 19th March, 1993, the extended time gives the plaintiff the right to repudiate the contract.

I now turn to the question of damages. Mr. Robert Lee a Quantity Surveyor testified that on 25th February, 1993 he visited the premises and assessed the value of the work done at the time as amounting to \$77,916.00. Additionally he estimated the cost for total completion and found it to be \$118,649.00. This evidence remains unchallenged by the defendant.

The particulars of Special damages proved by the plaintiff are stated as under:

Cost of rented accommodation for 2 months at \$3300.00 per month	\$6,600
Additional interest incurred by plaintiff as a result of defendant's delay	151.74
Amount overpaid to defendant	\$39,084.00
Additional cost of completing work due to escalation.	14,565.00
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	\$60,400.00
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Accordingly, there is judgment for the plaintiff in the sum of \$60,400.00 with interest at 15% from the 19th March 1993 to 26/1/96. Costs to be paid by the defendant to be taxed if not agreed.

Defendant's counterclaim is dismissed.