

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

Claim No. SLUHCV 2004/0792

BETWEEN:

STANLEY LUCIEN

Claimant

V

WENDELL PHILLIPS

Defendant

Appearances:

Mr. Vernantius James for the Claimant
Ms. Beverley Downes for the Defendant

.....
2008: May 12
May 19
.....

JUDGMENT

COTTLE J:

[1] The Claimant hired the Defendant, a licensed Land Surveyor to survey and sub-divide a portion of land. The contract price was \$35,000. The terms of the contract were contained in a fee note dated 17th March, 2003 prepared by the Defendant and signed by both parties. The contract was

expressed to be between the Defendant and the Heirs of Etienne Lucien represented by the Claimant.

[2] The Defendant received his contracted fee of \$35,000 in full. He did not complete the performance of the contract. Instead another Surveyor had to be hired to do the work.

[3] The Claimant brought the instant claim seeking inter alia the refund of the contract price paid.

[4] The Defendant denied liability. He says he did all he could to complete his contractual obligations but was stymied in his efforts by the actions of the Claimant. Essentially then this is a contest of facts depending largely on the creditability of the witnesses. There were two witnesses for the Claimant. The Defendant was the only witness for the defence. The Defendant did not impress the court. His demeanour displayed arrogance and irritability. However he explained that he had a medical condition which was causing him pain and discomfort. He asked that his attitude in the witness stand be ascribed to this rather than any intended disrespect for the Claimants or the court.

The Facts

[5] I reproduce in full the written terms of the fee note. It is a short document.

C.W. PHILLIPS
Licensed Land Surveyor

.....

17th March, 2003

Heirs Etienne Lucien
C/O Stanley Lucien
GROS ISLET

FEE NOTE FOR SURVEY TO BE DONE AT VIEUX SECREIE/GROS ISLET

To: Professional Services to be rendered in surveying and partitioning of a portion of land at Vieux Sucreie into five (5) portions.

Fee.....\$35,000.00

Manner of Payment

- (1) Twenty-five thousand (\$25,000.00) dollars to be paid up front
- (2) The balance of ten thousand (\$10,000.00) dollars to be paid on presentation of a plan of survey TO BE LODGED at The Survey and Mapping Unit of the Ministry of Planning

Conditions

- (1) Field work to be commenced on no later than four (4) weeks after deposit
 - (2) Duration of field work to be approximated at eight (8) weeks
 - (3) Application for approval to partition to be at The Development Control Authority (D.C.A.) no later than six (6) weeks after commencement of field work
-

C.W. Phillips

[6] Receipts exhibited showed that the Defendant had been paid the demanded \$25,000 deposit by 21st March, 2003. The claim was filed in October 2004 some 19 months later. There was argument by the Defendant that the contract does not specify a time by which the survey and partition was to be complete. Nothing turned on that however, as the complaint of the Claimants is not that the Defendant took too long to complete the work but that he refused to do so at all.

[7] In his evidence the Defendant admitted that his contractual obligations would only be fulfilled when he had submitted his plan showing the proposed partition to the Lands and Surveys Department. He adduced two reasons for the failure to submit the plan.

[8] Firstly he explains that after his original survey had been completed, the area of land to be surveyed and partitioned was diminished by the Claimants allowing one Erenise James to have three (3) acres of the land. This would have necessitated a re-survey and new partition of the remaining land.

[9] Secondly he says, that after he had prepared his plan, and was ready to submit it he visited the lands for the final check to assure himself that things on the ground had not changed. He found that some pegs along an access road were missing. He insisted that he be paid to replace those pegs. He says he was not paid and this did not submit the plans.

[10] I did not consider these to give the Defendant sufficient reason not to perform. I arrived at this conclusion because the Defendant said in his evidence that even after the diminution of the available land due to the excising of the three acres for Ms, James he was prepared to complete the survey and partition for no additional charge.

[11] I also discount the issue of the moving pegs for two reasons. In the first place, I am not convinced that any pegs were in fact missing and even if they were missing the Defendant could, simply have submitted his already prepared plans. Any difficulties in securing approval for those plans and any proposed mutations would then have been for the account of the Claimants. The Defendant would have done what he had been paid to do.

[12] I indicated earlier that the Defendant did not appear to be a reliable witness. I preferred the evidence of the Claimants. However this was not all. There was independent evidence which confirmed in my mind that the Defendant, having been paid in full, decided to repudiate the contract and not complete the work he had been paid to do.

[13] The Claimants caused their Solicitor to write to the Defendant in the following terms:

16th September, 2004

*Mr. Wendell Phillips
Licensed Land Surveyor,
High Street,
CASTRIES*

Dear Sir,

I was this morning informed by your Secretary (by telephone) that you had decided to withdraw from the Survey being done by you for Heirs Lucien and to refund the amount advanced to you.

I have been instructed to require you to communicate this in writing.

You will no doubt appreciate that this project had been long protracted. My clients would like to finalize the survey, and would also like the said refund be paid not later than 30th September, 2004.

Yours faithfully

*IRA A. d'Auvergne
SOLICITOR FOR MR. SAMUEL LUCIEN*

[14] The Defendant did not respond. This attitude exemplifies the conduct of the Defendant and caused the court to use the description "arrogant" to characterize the Defendant's behavior.

[15] I believe the evidence of Samuel Lucien who says that the Defendant refused to complete the work and indicated that he would refund the contract price. This is why the Defendant did not respond to Mr. d' Auvergne's letter. He did not then deny that he had decided to repudiate the contract and refund the Claimants.

[16] It is this fact which strengthens my conviction that the Claimants are entitled to judgment in this contest of facts.

[17] I therefore find for the Claimants. The Defendant is ordered to return the \$35,000.00 paid to him. He will pay the Claimants prescribed costs on this sum calculated at \$10,250.00

[18] Interest on the award at the rate of 6% from judgment until payment is also granted to the Claimants.

BRIAN COTTLE
High Court Judge