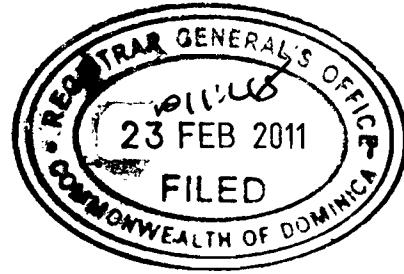


COMMONWEALTH OF DOMINICA  
DOMHCV2007/0163



**BETWEEN:**

**JOSEPH MICHAEL GEORGE**

**Claimants**

**and**

**LAND SALES, BUILDERS AND FINANCIAL LTD**

**Defendants**

**Before: The Hon. Justice Brian Cottle**

**Appearances:**

Ms. Dyer for the Claimant

Mrs. Hazel Johnson for Defendant

[2010: December 2<sup>nd</sup>]

[2011: February 23<sup>rd</sup>]

## **JUDGMENT**

- [1] **COTTLE J:** The defendants are in the business of home construction. The claimant was a client of the defendants. The defendants entered into a contract with the claimant. That contract is in writing. Under that contract the defendants built a home for the claimant. The claimant now says that the home does not accord with the terms of the contract. He brings the present claim to recover damages for breach of the building contract.
- [2] According to the claimant, the house supplied is defective. The particulars of defects are set out in the pleadings. The defendants deny that the house was poorly constructed and aver that any minor defects in construction they stand

ready to remedy but the claimant has not fixed any time at which they could attend to deal with the defects.

### The Evidence

- [3] The claimant, in his witness statement, swore that the house was “badly built with poor quality materials”. He said the front and back doors were rotting and the paint on the walls was coming off. The claimant employed an architect, Mr. Cuthbert Joseph to assess the house and prepare a report. Mr. Joseph identifies what he calls internal and external corrective works as well the cost to address these.

#### **Internal Corrective works.**

Cleaning of all exposed timber works, EC\$ 1, 200.00  
which include door frames,  
skirting boards ceiling edge moulding strips  
and verandah railing and repaint with one  
(1) coat wood primer and two (2) coats oil based wood paint.

Securing the wash-hand-basin vanity cabinet 200.00

Securing the verandah entrance gates with the  
proper tower bolt and latching system, if not  
obtainable can be fabricated 300.00

Cover over the telephone/cable tv connection  
box in the living room area. 15.00

Making good the gap between the door frame and  
the main entrance door as to make the door  
lock more secure. Recommendations is that  
the door should be removed and have a ½ “wood  
strip planted on, reinstall the lockset and re-hanging  
the said door. 300.00

#### **External corrective works**

Complete guttering to roof on the northern elevation 1,000.00

Covering over back step on the northern elevation

Protect the exit door in that area. Allow also for tiling of the said landing and steps with non-skid ceramic tiles	1,200.00
construction of concrete trough with outlet flow to separate soak-pit. At present this area is not complete	1,100.00
concrete apron around building to be constructed total length 128'-0", 4"thick and 4'-0" wide complete with 4"x8" upstand edge. Pavements is to be reinforced with ¼"x 6"x6" RBC mesh fabric	2,500.00
tidying up works around the septic tank is required remove the cement bag paper left therein and seal covers properly	300.00
<b>GROSS TOTAL</b>	<b>EC \$8,115.00</b>

The difficulty with Mr. Joseph's report is that he did not have the benefit of seeing the contract. He could not compare what he observed with what was provided for in the contract.

[4] During the course of discussions between the parties after the house had been handed over, a letter was written by the defendants to record the contents of those discussions. There were 7 areas of concern. I shall go through each in turn.

1) The need for adjustment to the gate on the front porch.

As it turned out at the trial both parties agreed that the gate had originally been fitted with a fastening device but that a tower bolt would have to be added. Mr. Joseph the architect considered that it would cost \$300.00 to install a tower bolt. The defendants say they are prepared to put in the bolt.

2) The need to stabilize the faucet to which the washing machine is connected.

This was actually completed by the defendants plumber.

- 3) The mobile nature of the bathroom sink in relation to its vanity cabinet.

This remains undone. Mr. Joseph says that this will cost \$200 to address.

- 4) The claimant's preference for a modified or replacement bath shower.

No cost for this is assessed by Mr. Joseph.

- 5) The appearance of rot on the lower end of the back door frame.

The evidence of the defendant's workman is that the door is made of aluminum and cannot rot. The problem was identified as mould.

- 6) The need to seal one area of the eave at the rear of the house.

The defendants accept this as defect and say the omission was inadvertent and they stand ready to remedy it.

- 7) The need for a clamp to be placed on the pvc pipe at the back of the house.

This was in fact done by the defendants workmen

[5] Of the seven areas identified, two were addressed. In correspondence addressed to the claimant from the defendants dated 15<sup>th</sup> September 2006 the defendants undertook to address the other five (5) areas as follows:

***The LSBF subcontractor visited your home on Saturday September 9<sup>th</sup> to access the extent of work necessary to accomplish his mission according to the list of task listed above. As a consequence of both visits, and in fulfillment of its contractual obligations, LSBF will further undertake the following.***

1. Modification to the gate at the front porch
2. Stabilize the bathroom sink on the vanity cabinet
3. In spite of the fact that you have visited the house site on numerous occasions during the construction process, at which times you saw the installation of the bathroom shower stall as agreed to in the specifications for the house, in an effort to facilitate your easier access to the bath facility, LSBF is prepared to remove the original shower stall and to replace it with a modified structure.

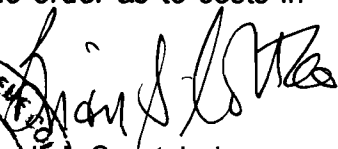
4. LSBF will construct a cover over the back door designed to avoid water splash on the woodwork of the back door frame thereby preventing the mould produced on the door trim as a result of wet and dry conditions.
5. LSBF will seal the gap inadvertently left under the eave at the back of the house.

[6] Mr. Curtis Tonge chairman of the Board of Directors of the defendants gave a witness statement and was cross examined. He denied that the house was badly built with poor quality materials. He accepted that the claimants raised some concerns. He says further that the defendants have written to the claimant confirming this. The reason why the works have not been completed is because of a lack of cooperation by the claimant who has failed to make the house available to have the remedial works done.

[7] The defendants also called Francis Richards, the project manager, and Lewis James the building contractor. These witnesses testified that the house was built according to the agreement using proper materials and workmanship, and the proper paint and primer applied.

[8] After considering the evidence of all the witness it is the conclusion of the court that the house conformed largely with what the claimant contracted for. The "defects" identified by Mr. Joseph the architect, have not been related to incomplete or unperformed obligations under the contract. There remain however the small matter of the items that the defendants agreed to remedy. I accept the evidence of Mr. Tonge that the defendants remain willing to complete these. It merely requires the claimant to stipulate a date for the defendants to do the works.

[9] In the circumstances of this case I find that the claimant has failed to establish his claim but that he has acted reasonably in bringing it. This is the sort of matter that ought to have been resolved at mediation. I expect that the claimant will afford the defendants the opportunity to complete the works and that they will do so within a reasonable time. I make no order as to costs in this matter.

  
High Court Judge  
Justice Brian Cottle

