

Benoit Leriche

Appellant

v.

Francis Maurice

Respondent

FROM

**THE COURT OF APPEAL OF
SAINT LUCIA**

JUDGMENT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL

Delivered the 30th January 2008

Present at the hearing:-

Lord Bingham of Cornhill
Lord Rodger of Earlsferry
Baroness Hale of Richmond
Lord Carswell
Sir Henry Brooke

[Delivered by Lord Carswell]

1. In 1991 the appellant Benoit Leriche and his wife decided to construct a dwelling house on their land at Mon Giraud, in the Quarter of Gros Islet, Saint Lucia. The appellant discussed the project with the respondent Francis Maurice, an architect and building contractor, in consequence of which he determined to proceed with the erection of a single-storey building containing four two-bedroom apartments. It was common case that the parties made an oral agreement on or about 6 September 1991 for the engagement of the respondent, but the major dispute in this case has been about the content of that agreement,

concerning the terms on which he was engaged. The respondent claims that he was employed under a labour contract to supply the labour required to carry out the works for the agreed sum for the original works of \$144,000. The appellant claims, on the other hand, that the respondent's engagement was limited to supervision of the construction of the works from the floor to the ring beam, for the sum of \$28,000.

2. In the High Court Hariprashad-Charles J accepted the correctness of the respondent's case and made an award in his favour of \$153,100 for the labour supplied less the amount already paid, and \$1490.08 for the cost of tools, with interest at 6 per cent per annum from the date of judgment until payment and a fixed sum of \$15,000 for costs. The Court of Appeal (Redhead and Saunders JJA and Georges JA (Ag)) dismissed the appellant's appeal and also the cross-appeal brought by the respondent, with fixed costs of the appeal to the respondent of \$1500.

3. Construction work commenced on 9 September 1991 and on 11 September the appellant and respondent met in the offices of the appellant's solicitors to discuss the reduction of their agreement to writing. On the following day 12 September 1991 the solicitors produced a draft agreement in writing providing for the respondent as contractor to carry out the works for the appellant as employer for the sum of \$144,000. The respondent signed three copies of this agreement, but the appellant did not sign it. The appellant claims that the parties agreed on some variations to the works, witnessed by the fact that on 12 September 1991 the appellant's son signed an amended plan on his father's behalf.

4. Between September 1991 and the end of January 1992 the works proceeded, during which time the respondent paid out sums of money to the labourers working on site. The materials for construction of the house were purchased by the appellant. Between 29 January and 3 February 1992 the respondent was away from Saint Lucia, and on his return found that the appellant or his son had made some payments to the labourers. The respondent continued to supply his services until 18 March 1992, when he was asked by the appellant to leave the site, but he regarded this action of paying the labourers as a breach of contract on the appellant's part.

5. While the works were in progress the appellant's daughter Mrs Flavia Vilna Honora constructed a wooden canteen on the site. An issue arose with the local development control authority about her authority to do so. The respondent prepared a letter dated 26 February 1992 stating that the appellant had given his daughter (therein described as Miss Vilna Lericke) permission to erect the canteen, which was used solely to provide refreshments and food to the labourers working on site. The

letter described the respondent as “the Contractor under a labour contract undertaking the construction of a building” on the site. The letter was signed by the respondent and also purported to be signed by the appellant and his wife and daughter. At the trial of the action the appellant claimed that the signatures of the appellant and his wife were forged by their daughter, but the judge rejected that claim as untrue and found that the signatures were genuine.

6. The respondent engaged a quantity surveyor Mr Desmond Sealy to value the work carried out on site by the labour employed by the respondent. He prepared an interim valuation as at 11 February 1992 and a final valuation as at 17 March 1992. In the latter he valued the work at a total of \$196,600. He also referred in his valuation to a quantity of sheets of plywood and sheets of lumber used for formwork which were present on site and which were said to have been damaged as a result of use on the project, but did not specify any sum of money to represent the value of the materials or of such damage.

7. During the course of the contract works the appellant paid the respondent sums totalling \$43,500.

8. By writ of summons issued on 29 May 1992 the respondent commenced proceedings against the appellant for the balance which he claimed to be due under the contract. In the statement of claim he sought payment of (a) the value of the works, \$196,600 less the amounts paid (b) \$6541, the value of the plywood and lumber (c) \$1490.08, the value of tools brought on to site by the respondent, which the appellant refused to allow him to remove (d) \$1000, the cost of the valuer’s report (e) general damages.

9. The respondent obtained judgment in default of defence in 1994, but this was subsequently set aside in April 1995 and the appellant was given leave to defend. A preliminary submission on the part of the appellant was heard by the trial judge in July 2000. She dismissed the appellant’s application, giving written reasons on 18 September 2000, and the point at issue has not formed part of the appeal before the Board.

10. The trial of the action took place in May 2002. The judge gave her decision with brief reasons on 1 July 2002 and awarded the respondent (a) the sum of \$153,100, being \$196,600, the cost of the work, less \$43,500, the amount previously paid (b) \$1490.08, the value of the respondent’s tools detained by the appellant. She awarded interest at the legal rate of 6 per cent per annum from the date of judgment until payment and costs of \$15,000. Her factual conclusions were stated concisely:

“On the totality of the evidence, the evidence of the Claimant is preferred to that of the Defendant. I found the Defendant and his witnesses to be witnesses of untruth and reject their evidence. The submissions of Counsel for the Claimant are indeed more compelling.”

11. The judge gave expanded written reasons on 14 February 2003. In that judgment she set out in more detail her reasons for her conclusion that the contract was one for labour and was not limited to a supervisory contract. She repeated the concise conclusion which she had set out in her brief reasons. She also found that the appellant’s son Charles Leriche was acting as agent of the appellant and that the letter of 26 February 1992 to the development control agency had been signed by the appellant and his wife. She did not refer to the materials which the respondent claimed had been brought on to site and damaged, nor did she give any reasons why she did not award interest on the sums found due for any period before the date of judgment. In the course of her judgment the judge referred to the outstanding balance due to the respondent as \$151,015 and not \$153,100, the amount for which she had given judgment on 1 July 1992, but that is an erroneous total, the error being caused by the adoption of an incorrect figure for monies paid to the respondent.

12. The appellant appealed to the Court of Appeal, challenging the judge’s factual findings. The respondent counter-appealed, claiming in addition the sum of \$6540.80 for materials supplied (the plywood and lumber brought on to site), general damages and interest from an earlier date. He also claimed that the costs at first instance should not have been limited to \$15,000.

13. The Court of Appeal heard the appeal on 16 May 2003 and gave oral reasons for dismissing both the appeal and counter-appeal. They gave their written reasons on 12 August 2004. They held that there was ample material from which the judge could arrive at her findings and that there was no basis for the court to interfere with them. They did not refer in their judgment to the respondent’s claim for materials supplied. On the question of interest, they stated at paragraph 14:

“As to the cross-appeal, there was in the claimant’s pleadings, a claim for ‘interest’ but this was not particularised in any way. No basis was provided for claiming it nor was there any suggestion made to the Judge as to the rate that should be applied and the reasons for

applying such rate. Judging from the skeleton argument filed by Mr Leriche's lawyers, the Judge was never addressed on this issue. The learned Judge rightly in our view simply ignored the issue."

The court awarded a fixed sum of \$1500 for costs to the respondent.

14. At the hearing before the Board Mr Selby for the appellant, recognising that the Board has a settled practice of declining to review the concurrent judgments of two lower courts on a pure question of fact, sought to bring the case within one of the exceptions to the practice set out by Lord Thankerton in *Devi v Roy* [1946] AC 508, 521-522. He pointed to the length of time taken by the courts below to produce their reasoned judgments and submitted that the paucity of reasons for their conclusions would justify the Board in re-opening the factual issues. In particular, he argued that the trial judge failed to explain why she rejected the evidence of the appellant and his witnesses and found them to be "witnesses of untruth", apart from a reference to the "general demeanour" of Mrs Honora. He challenged the correctness of some of the reasons stated by the judge and submitted that others related to matters which were equivocal and proved nothing either way.

15. Their Lordships do not consider that any of the matters relied on by the appellant's counsel is sufficient to cause them to depart from the practice relating to concurrent findings. As Lord Thankerton stated in his sixth proposition in *Devi v Roy* at page 521, the practice is not a cast-iron one, and there may occur cases of such an unusual nature as will constrain the Board to depart from it. But, as he stated in his fourth proposition, in order to obviate the practice there must ordinarily be some miscarriage of justice or violation of some principle of law or procedure. The latter is not in issue in the present appeal. Lord Thankerton defined a miscarriage of justice for these purposes as being "such a departure from the rules which permeate all judicial procedure as to make that which happened not in the proper sense judicial procedure at all." Their Lordships do not consider that any of the imperfections to which counsel for the appellant pointed was at all sufficient to justify departure from their practice as to concurrent findings. They agree with the Court of Appeal that the judge had ample material on which to reach her findings of fact. The Court of Appeal was quite entitled to reject the challenge to those findings, and the Board does not consider that there are any grounds which would require it to disturb the conclusions of the courts below.

16. When presenting the cross-appeal to the Board, the respondent's counsel, in their Lordships' view correctly, did not pursue the claim for

general damages. On the question of the materials brought on to site, he accepted that there was no evidence of their value or the diminution caused by the damage sustained on site. The judge did not include this item in the award, though she did allow a figure for the tools at the amount claimed in the statement of claim. The Court of Appeal did not refer to it at all in their judgment. In these circumstances their Lordships are unable to accede to the respondent's request to allow his claim for this item in the cross-appeal.

17. The respondent did not make a specific claim for interest in his original statement of claim, but inserted it in his amended statement of claim dated 25 May 2001. The judge allowed interest on the award from the date of judgment but gave no reason why she did not allow it from any earlier date. The Board was informed that it is customary in Saint Lucia to include a claim for interest in a statement of claim where it is intended to ask the court to award it. Counsel drew their Lordships' attention, however, to two cases in Saint Lucia, *Auguste v Neptune* (1997) 56 WIR 229 and *Alphonso v Ramnath* (1997) 56 WIR 183, in which interest was awarded although no specific claim was apparently made. Be that as it may, in the absence of any rule in the court procedure rules requiring it to be pleaded, their Lordships consider that a trial judge has a general discretion to award interest in appropriate cases, irrespective of whether it is claimed in the pleadings, and should ordinarily address the question. It was suggested by Mr Selby that the Board should be slow to interfere with the judge's exercise of her discretion, especially on a procedural matter. There is no indication, however, that the judge did address the issue or exercise her discretion to refuse the respondent's claim for interest prior to the date of judgment. The general principle governing the exercise of such a judicial discretion is that a party who has wrongfully withheld money due to another ought not in justice to benefit by having that money in his possession and enjoying its use, when that money ought to be in the possession of another who is entitled to its use: *London, Chatham and Dover Railway Co v South Eastern Railway Co* [1893] AC 429, 437, per Lord Herschell LC. Building contracts form a classic case of this kind, and prima facie interest should be awarded on moneys found due to a claimant unless there is some reason to the contrary in the circumstances of the case. Their Lordships were given no such contrary reason and consider that the judge should have awarded interest from the date of service of the writ of summons and that she and the Court of Appeal were wrong to withhold it. They will therefore allow interest as claimed in the cross-appeal, at what is called in Saint Lucia the "legal rate" (cf *Auguste v Neptune, supra*, at p 239). At that rate of 6 per cent per annum, which was applied by the judge from the date of judgment, the total over 10 years and 30 days from service of the writ of summons to the date of judgment is \$93,516.41

18. It was agreed by the parties that the case was governed by the Eastern Caribbean Supreme Court Civil Procedure Rules 2000, which came into effect on 31 December 2000. It is clear that the case does not come within the provision for fixed costs provided for by CPR Rule 65.4. It is accordingly governed by Rule 65.5 and Appendix B, determining the value of the claim by reference to the amount ordered to be paid, which will include the above sum for interest. The total sum for which judgment will be given is therefore \$248,106,49 (\$153,100 building work + \$1,490.08 tools + \$93,516.41). The scale set out in Appendix B gives a figure for costs on such an amount totalling \$46,215.97. Their Lordships conclude that the respondent is entitled to this sum by way of trial costs. The order made by the Court of Appeal for fixed costs of the appeal to that court of \$1500 should stand. The respondent should have his costs of the appeal and cross-appeal to the Privy Council.

19. Their Lordships will humbly advise Her Majesty that (a) the appeal should be dismissed (b) the cross-appeal should be allowed to the extent that (i) interest on the award from service of the writ of summons to date of judgment amounting to \$93,516.41 be awarded (ii) the amount payable by the appellant to the respondent for trial costs be increased to \$46,215.97 (c) the appellant should pay the respondent's costs of the appeal and cross-appeal to the Privy Council.