

EASTERN CARIBBEAN SUPREME COURT

SAINT CHRISTOPHER AND NEVIS

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCV2011/0165

BETWEEN:

JOSEPH ADOLPHUS GATON

Claimant

and

FREDERICK MIKE

Defendant

Appearances:

Mr Garth Wilkin of Kelsick, Wilkin and Ferdinand for the Claimant

Mr Renold Benjamin for the Defendant

2012: July 24, 25

October 17

JUDGMENT

[1] **THOMAS, J.[Ag.]**: In a claim form filed on 22nd June 2011, the Claimant, Joseph Adolphus Gatton, claims against the Defendant, Frederick Mike:

1. An account to the Claimant for money had and received by the Defendant in respect of \$100,000.00 advanced to the Defendant by the Claimant on or about 28th February, 2011.
2. An order for payment by the Defendant to the Claimant of all sums found to be due from the Defendant to the Claimant on the taking of the account under (1) above.

Further and/or in the alternative:

3. Damages for conversion and/or breach of contract in the sum of EC\$60,000.00.

AND Orders that the Defendant pay to the Claimant:

4. Interest pursuant to Section 29 of The Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act Cap. 3.11.
5. Costs.
6. Further, or other relief including all further necessary or appropriate accounts, injuries and directions.

[2] In his Statement of Claim the Claimant avers that there was an oral agreement with the Defendant in or about December 2010 which construction of a dwelling house on land owned by the Claimant situate at Farm Meadows Housing Development, Sandy Point; the wages of the Defendant in connection with the said construction; the purchase of all building materials needed for the construction were to be paid for from an account at Bank of Nova Scotia of which parties were co-signatories, the hiring of workers for the construction and payment from the same account and periodic true and full accounts to be given by the Defendant concerning all monies spent on the construction.

[3] Also pleaded is a further oral agreement between the parties with respect to the transfer from the Scotia account aforesaid to the Defendants' account at St Kitts Nevis and Anguilla National Bank to be used solely for the payments to the Defendant's weekly salary and the wages of the labourers. Certain allegations of wrongdoing are pleaded which it is contended are in breach of the agreement. In the result the Claimant contends that he suffered loss and damage.

Defence

[4] In his Defence Form the oral agreement pleaded at paragraph 1 of the Statement is admitted. Also admitted as pleaded are: the construction of the house, the purchase of all materials and the hiring of workers by the Defendant. It is however denied that the Defendant in relation to the said paragraph 1, would be paid a reasonable weekly wage and that the Defendant would render periodically a true and full account of all monies spent on the construction works.

[5] Paragraph 2 of the Statement of Claim (date of construction) is admitted but paragraph 3 (oral agreement of February 2011 concerning EC\$100,000) is denied. In this connection the following is pleaded:

"It is expressly stated that by an oral agreement between the Claimant and the Defendant, the Claimant agreed that the Defendant would transfer EC\$100,000.00 from the Scotia Bank Account advance to the Defendant as part of the labour price for the constructing the dwelling house. The Bank account on which the \$100,000.00 was transferred was not a matter of agreement between the Claimant and the Defendant."

[6] The Defendant admits paragraph 4 of the Statement of Claim (transfer of (EC\$100,000.00 on 24th February 2011 by the Defendant from the Scotia Joint Account to the Defendant's National Bank Account).

[7] The Defendant denies the Claimants' averments pleaded at paragraphs 5 and 6 of the Statement of Claim which concern alleged breaches of the agreement and conversion by the Defendant of monies advanced to the said Defendant.

[8] Finally, it is the Defendant's contention that the Claimant is required to prove he suffered loss and damages as alleged at paragraph 7 of the Statement of Claim.

Counterclaim

[9] In his counterclaim the Defendant details the facts surrounding the construction of a dwelling house pursuant to an oral agreement with the Claimant in or about December 2010.

[10] It is the Defendants' case that under the said oral agreement the Claimant agreed that the Defendant would prepare and submit estimates to the Claimant of the cost of the construction of the dwelling house. And according to the estimates prepared and accepted by the Claimant the estimated cost of materials was EC\$356,322.72 and labour costs was EC\$215,905.46. According to the Defendant's pleadings the latter costs of \$215,905.46 was an express term of the Agreement in connection with the construction of the Claimant's dwelling house.

[11] At paragraphs 9 – 13 of his counterclaim the following is pleaded:

- "9. At the request of the Claimant and by oral agreement between the Claimant and the Defendant in or about the month of March 2011, the Claimant agreed that the Defendant would make alterations to the said dwelling house by diverting from the approved plans and specifications in that:'
- (1) The garage was lengthened by 7.5 feet.
 - (2) The room above the garage was lengthened by 7.5 feet:
 - (3) An additional 180 square feet of structure was added to the garage and the room above.
10. The Defendant carried out the alterations to the said dwelling house by adding 180 square feet of structure to the dwelling house in accordance with the oral agreement made between the [Claimant] and the Defendant
- 11 The Claimant has not paid the Defendant for adding 180 square feet of structure to the said dwelling house which is additional work the Defendant performed at the Claimant's request.
- 12 On Thursday the 28th day of April 2011, while the Defendant was doing substantial work on the roof and decking of the said dwelling house, the Defendant requested that the Claimant pay him the labour costs of EC\$29,750.00 for completing the walls of the first floor.
- 13 On the 3rd May 2011, the Claimant brought the contract to an end when he refused to pay the Defendant for work done on the construction of the dwelling house."

[12] At paragraph 14 of his counterclaim the Defendant contends that he is entitled to interest on all sums found to be due to him at such rate as the Court thinks fit pursuant to section 29 of the Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act, Cap 3.11.

Defence to counterclaim

[13] In his defence to counterclaim the Claimant disputes the Defendants pleadings contained therein on several grounds. There are also some admissions.

[14] Essentially, the oral contract of December 2010 between the said parties is admitted, but in so far as the preparation of estimates, pleaded at paragraph 3 of the counterclaim, this is denied and the Defendant contends that the estimates never formed part of the construction agreement between

the parties. It is however admitted that the Defendant prepared estimates by dividing the construction of the dwelling house into stages for the carrying out of the construction work.

- [15] The Defendant's estimates for materials and labour costs are denied by the Claimant who contends that: "...the Defendant agreed with the Claimant on the Defendant's offer, that the Defendant would work not as a contractor but as a worker to be paid weekly who would hire other persons to perform the work with him and these, persons like the Defendant, would be paid weekly." At the same time the Claimant denies that any labour costs were agreed between the parties and further that labour costs did not form part of the construction agreement.
- [16] The matter of commencement of the Claimants' dwelling house in or about the month of January 2011 is pleaded at paragraph 7 of the counterclaim. This fact is admitted by the Claimant but he denies the remainder of the paragraph "because the construction agreement between the Claimant and the Defendant was not performed in stages, indicated by stages or otherwise."
- [17] In so far as the alteration of the dwelling house is concerned, the agreement for this purpose is admitted but the remainder of the said paragraph is denied "because the Claimant does not know if the figures provided for the length added and the actual square footage are true reflections of the said length and square footage."
- [18] The non-payment for the additional 180 square feet of structure to the dwelling house¹ is denied by the Claimant "because ...no such additional payments was required under the agreement ..., the weekly payments (if properly made) during the time of the alteration would have been proper payment for such alteration under the construction agreement between the Claimant and the Defendant."
- [19] At paragraph 12 of the counterclaim the Defendant outlines the activities that were taking place in as far as the construction work is concerned on 28th April 2011 are denied by the Claimant; but the Claimant avers that the Defendant did request on or about 24th April 2011 that he wanted approximately EC\$29,000.00 for labour costs to put up a wall at the construction works.

¹ Paragraph 11 of the Defendant's counterclaim

[20] With respect to the cessation of work on the Claimants' house, the Claimant denies that he caused the work to cease. He avers further that the Defendant suggested that someone should be secured to complete the house.

[21] Finally, the Claimant contends that the Defendant is entitled to any damages as pleaded in his counterclaim.

ISSUES

[22] The following are the issues for determination:

1. Was a contract concluded between the Claimant and the Defendant.
2. What is the origin of \$100,000.00 that was transferred from the Claimant's Scotia Bank account to the Defendant's National Bank Joint Account.
3. Was the sum of \$100,000 used for the purpose for which it was intended, that is to say, for the payment of wages.
4. Whether the Defendant was in breach of the contract.
5. Whether the work carried out by the Defendant surpassed the \$100,000.00 advanced to the Defendant by the Claimants; and whether the Defendant is required to be paid quantum meruit for the 180 square feet of structure added to the dwelling house.
6. Whether the Claimant should be awarded interest pursuant to section 29 of the Eastern Caribbean Supreme Court Act (Saint Christopher and Nevis) Act
7. Whether the Defendant can succeed on his counterclaim?

ISSUE NO 1

What are the terms of the contract between the Claimant and the Defendant

- [23] According to **Chitty On Contracts**:² “A general rule of English Law is that contracts can be made quite informally: no writing or other form is necessary.” The learned authors go on to say that “There has recently been an increasing tendency to impose such requirements which have been used as devices to protect the weaker parties to contract for example, tenants, employees and debtors”.
- [24] The foregoing is merely aimed at restating the principle that it is within the law to enter into an oral contract. In this case there can be no doubt that there is an oral agreement as pleaded by the Claimant, as pleaded at paragraph 1 (a) of his Statement of Claim. And in his Defence the Defendant pleaded agreement is admitted³.
- [25] The evidence of the terms of the contract must necessarily come from the parties themselves. In this instance, given the informality, the terms must either be findings of fact or inference drawn therefrom. Indeed, learned counsel for the Claimant submits that: “...this conversation [between the Claimant and the Defendant] initiated the construction contract between the Claimant and the Defendant and contained the most crucial term as to the Defendants remuneration, ie a reasonable weekly salary based on work done.”
- [26] The matter of a reasonable weekly wage may give rise to the notion of vagueness. But there is no dispute that there was a contract. Further, the Defendant’s evidence is that he is an experienced contractor having started in the early 1980’s and on his own as a building contractor from 1989. On the other hand, the Claimant also worked in the construction field. And he said in cross

² Twenty-fifth Edition at para 261 ...

³ The Court notes with some alarm that learned counsel for the Defendant after filing a defence on behalf of the Defendant admitting the agreement proceeds in submission to build an entirely new case contrary to that which was pleaded. It was always known and recently by the former Chief Justice, sir Hugh Rawlins that submissions cannot be used as an avenue to introduce new pleadings. See: *Quinn Leandro v. James* [2010] 78 WIR 26.

examination that he has a fair knowledge of construction sites. He added that labour costs is a percentage of material costs .

[27] In any event neither Sylvester Earle, Alex Edingborough nor the Defendant himself complained about that weekly wage. Indeed, they were paid the payment was accepted as the evidence shows.

Stages

[28] The only evidence of stage building comes from the Defendant. And in any event it is contradicted by the abundance of evidence suggesting, and as the Court found, that all work was paid for on a weekly basis.

[29] In his witness statement at paragraph 14 the evidence is this:

"14. The Claimant said to me, 'being that you working in stages transfer \$100,000 to your account'. In the month of February 2011 I transferred EC\$100,000 from the Scotia Bank Joint Account to my National Bank Account. From that date I paid my workmen until the 29th April, 2011'.

15. I performed work on the construction site by stages. I completed each stage. I deducted monies according to the estimated labour cost for that stage. I completed the following: (a) foundation based wall at the labour cost ... was \$24,804.90 floor slabs and decking at labour costs of \$23,208.64; the walls lentils and beams for the same floor slabs at a labour cost of \$34,321.74; the first floor at a cost of \$30,179.82 and the first floor walls at labour cost of \$29,750.94. I continued working on the decking for the roof. The complete framing of the decking was completed.

16. At this point, I checked the amount of money for the stages that I reached I realized I had gone over the stage covered by the \$100,000.00 transferred into my National Bank Account.... I told my brother I need money for the first floor walls and lentils. My brother said to me "I wonder if Winston could send us the money..."

[30] The Defendant's evidence on the question of stages can best be dismissed by stating some facts and rhetorical questions.

1. Why would a person, being the Claimant, who received US\$700,000 as compensation and returned to St Kitts to live permanently have to ask Winston to send money? In any event this was denied by the Claimant.
2. Based on the vast sums stated as costs of labour for stages how are the cheques for \$5000, \$3100, \$5000, \$3800 and \$4000 for labour costs explained.⁴
3. Given the \$100,000.00 after the stage costing \$34,321.74 the sub-total (on the stage figures) would have been \$82,335.28 and the next stage costing \$30,179.82 could not have been drawn down from the National Bank Account.
4. The transfer of the \$100,000.00 was for reasons of security. According to the Defendant in cross-examination "It was the only reason."
5. How were the other workers paid in the midst of stage payments when there is copious evidence of weekly payments.

[31] It is therefore the determination of the Court that the following represent the terms of the oral contract between the Claimant and the Defendant.

1. The Defendant was to build a dwelling house for the Claimant on land situate at Farm Meadows Housing Development, Sandy Point.
2. The construction of the said house was to commence in January 2011.
3. Materials for the construction of the house were to be purchased by way of cheques drawn on an account at Bank of Nova Scotia opened by the Claimant.
4. The Defendant was the person to hire workers but Claimant ended up hiring (but not paying) two persons.

⁴ See Exhibits JA62. the six cheques are made payable to the order of "Frederick Mike". They are dated "14-01-2011," "21-01-2011", "28-01-2011", "04-02-2011", "11-02-2011", respectively.

5. The wages of the workers including that of the Defendant were to be paid from money drawn from the said Scotia Bank account initially.
6. In agreement with the submissions on behalf of the Claimant the workers, including the Defendant were be paid a reasonable weekly wage based on the following pieces of evidence:
 - (a) the Claimant's evidence that the Defendant agreed to work for a weekly wage;
 - (b) the withdrawal of specific sums and sometimes identical sums for the payment of wages;
 - (c) the following extracts from the Defendant's testimony:
 - (i) "I took a wage for myself. I cannot recall how much I paid myself. I normally work for \$2000 for a week."
 - (ii) "\$15,000 was paid to my personal account. I had just transfer it. It was wages for a period of time 7 weeks."
 - (iii) "I remember \$450 was paid as a wage to me. The \$450 had to do with wages."

ISSUE NO 2

What is the origin and purpose of the one hundred thousand dollars transferred from the Claimant's Scotia Bank account to the Defendant's Joint Account at the National Bank?

- [32] The manner in which the issue is framed suggests that the transfer admits of no doubt. Rather, it is its origin and purpose that matter.
- [33] There is much conflicting testimony on this sub-issue and as such it is necessary to reproduce the relevant portions of the evidence verbatim.
- [34] The extracts from the Claimants' evidence in this connection are as follows:

"One hundred thousand dollars were transferred from my chequing account at Scotia Bank to Frederick Mike's account at National Bank. Mike requested the transfer. Mr Mike deals with the Bank. I know why it was transferred because he came to me and say Pacer I don't like going to the Bank to change the five thousand dollar cheque. I don't like anybody to look at me with the money and track me down. I am going to transfer one hundred thousand dollars to my current account and pay wages. I told him yes."

[35] In further evidence in chief he said: "I allowed the transfer because of what he told me regarding people watching him with money. The money was to pay for wages until the building finished."

[36] Under cross examination Joseph Gatton, the Claimant, testified as follows:

"The conduct of Mr Mike was acceptable up to the transfer of the one hundred thousand dollars. He said he could transfer some money and I said ok. It was 22nd January 2011. It was transferred on 28th January 2011."

[37] It was put to the witness that he told the Defendant to transfer over one hundred thousand dollars; and his response was: "I did not. He told me he was going to transfer some and when he came back he told me he transferred one hundred thousand dollars. It was a large sum."

[38] In re-examination Gatton more or less repeated his testimony on the matter of the transfer. This is what he said: "The one hundred thousand was started by Mr Mike. The event happened when Mr Mike came to see me on 22nd January 2011, and he said Pacer don't like when I go to the Bank to change the five thousand dollar cheque. I don't want anybody to be watching me and track me down so I go transfer some money to my checking account that I could pay the workers by cheque. On 24th January 2011 he told me he transfer one hundred thousand dollars."

[39] On the other hand, Frederick Mike's testimony in chief on the said issue is as follows:

"He said since you work in stages how much the building would cost in labour. I told him two hundred and fifteen thousand dollars plus. He said ok transfer \$100,000.00 to your account which I did and when I went to see him he asked me if I get through and I told him yes and he said ok."

[40] In cross examination it was put to the Defendant that the only reason he gave to Gatton for wanting to transfer the one hundred thousand dollars was fear for his safety. This is Mike's response. "I did not put no amount to him. I agree I told him about security. It was the only reason."

[41] On this sub-issue, on the whole, the Court is satisfied, having seen both witness, that Frederick Mike is much less than being honest and truthful, based on the foregoing and the other evidence as a whole on the case. For instance in giving evidence as to the purpose of the \$100,000.00 Frederick Mike testified on the one hand it was to meet the cost of labour, but in cross examination he said it was a stage payment for the construction of the Claimants' home.

[42] Therefore, it is a finding of fact by the Court that the Defendant told the Claimant that he feared for his security with money on his person and for this reason he wanted to transfer some money to his account in order that he could pay the workers and himself by cheque. The Court also finds as a fact that the Defendant did not tell the Claimant initially, that is to say on 22nd January 2011, how much money he wanted to transfer. But according to the Claimant the amount of one hundred thousand dollars was only revealed on 28th January 2011 when the parties met. At the same time, Mike is adamant that he did not ask for the one hundred thousand dollars.

Purpose

[43] It is abundantly clear from the evidence, and the Court so finds as a fact, that the purpose of the \$100,000 was to pay wages.

[44] As noted before, the Claimant in evidence in chief said that this was the reason why he allowed it was because of the security concerns. And according to him it was "to pay wages till the building finished."

[45] Frederick Mike in his evidence in chief testifies that the \$100,000.00 arose in the context of the total labour costs of more than \$215,000.00.

[46] In cross examination when the issue of uses to which the said \$100,000 was put to Mike, he testified that it was for wages and labour costs till the end of the project. This was repeated in re-examination and when it was said that it was part of the labour costs which totaled \$215,905.46.

Conclusion

[47] It is the finding of the Court that the matter of the transfer of the \$100,000.00 came from the Claimant's Scotia Bank Account to the Defendants' National Bank account originated with the

Defendant the reason given being Defendant's security concerns. In this regard, too, this Court agrees with the submission of learned counsel for the Claimant that the Defendant, being in a position of trust deceived the Claimant to consent to the transfer of \$100,000.00

ISSUE NO 3

Was the \$100,000.00 used for the purposes for which it was intended, that is to say, for the payment of wages?

[48] From the Court's determinations thus far this issue points in a single direction and within a very narrow radius.

Submissions

[49] In the usual way learned counsel for the Claimant has made elaborate submissions on the issue. The Court considers the main points to be as follows:

"58...[T]he evidence before this Honourable Court is clear on this issue; the Defendant converted the monies advanced to him for his own use.

63. He has tendered two diametrically opposed accounts of wages paid to labourers since 24th February 2011 transfer of \$100,000.00

64. The Defendant's account of money spent at page 4 of the Defendants' Accounts is that 'Total wages paid out (February, March, April)' was \$44,532.12."

[50] After an analysis of the Defendant's Social Security Accounts and the Defendant's accounts paid out to labourers (other than the Defendant) and arriving at totals of \$39,782.70 and \$35,752.53 respectively the following further submissions are tendered:

"72. [T]he Defendant has not accounted for any wages (other than \$35,752.53) purporting to be paid from the \$100,000.00 and deposited to the Defendant's account; and therefore the remaining sums were converted to the Defendant's own use and benefit.

74. The Defendant has failed to account for \$64,247.47 and the said sum remains due and owing to the Claimant."

[51] The submissions by counsel for the Claimant are on target. What he seeks to show is that after the date of the \$100,000.00 transfer to the Defendant's National Bank Account that is

when wages were paid from the Defendants' account. On the other hand, as an exhibit to a supplementary affidavit filed on 22nd July 2011 the exhibit seeks to show withdrawals from the \$100,000.00 as follows:

"Total Wage paid out (February March, April	44,532.12
Cheque #1254 deposited to a/c #6113 at St Kitts	
Co-operative Credit Union on 25 March 2011	15,000.00
Cheque #1320 deposited to a/c #12139443@	
St Kitts Nevis Anguilla National Bank on 4 th May 2011	15,400.00
Miscellaneous	25,067.88
Balance	Nil"
Miscellaneous	
Gasoline	150.00
Water for construction work	98.00
Mechanical work to vehicles	403.00
Accountant General September (including gasoline	2,781.14
Frederick Mike	7659.00
Rent	650.00
Other(nails, wire etc	826.70
Other (bank charges, ATM & other debits	<u>11,160.04</u>
	EC\$25,067.88"

[52] Thus on the Defendant's own sworn affidavit the \$100,000.00 was exhausted certainly on the date on which the affidavit was sworn, being 22nd July 2011. But his accounting shows a mixture of labour costs and personal expenses paid out of the said sum. The figure in the Exhibit aforesaid is \$44,532.12 for labour. On the other hand, the figures taken from the Social Security Statement of wages and contributions from 24th February 2011 to the end of April are: February (1 week) \$2462.00, March: \$15,720.00 and April \$20,579.40. These yield a total of \$38,761.40. There is no reflection of any payment to the Defendant but he did testify that his weekly wage is \$2000.00. And in his evidence in chief the Defendant did testify in relation to the cheque #1257 deposited to

a/c #6113 at St Kitts Co-operative Credit Union was wages for seven weeks. He also admitted that a cheque for \$450⁵ was also wage paid to him.

[53] The Court therefore agrees with the submission of learned counsel that the figure of \$44,532.12 is false as it seeks to reflect a period when the wages were not coming from the National Bank account, but rather the Scotia account prior to 29th February 2011.

[54] Therefore, the Court's calculations on the total sum deducted from the \$100,000 for wages is \$38,761.40 for the workers plus \$15,450.00 for the Defendant. The total is \$54,211.40.

[55] On the Defendant's evidence the \$100,000.00 is exhausted and the building by the Defendant ceased on 29th April 2011.

[56] It means therefore that a total of \$45,786.60 was not spent on labour costs in the construction of the Claimant's house.

ISSUE NO. 4

Whether the Defendant was in breach of the contract

[57] The question of breach of contract arises from the fact that the Defendant did not complete the building of the Claimant's house at Farm Meadows as agreed. This is not in dispute since the Defendant in his witness statement admitted that he stopped working after his brother refused to give him (the Defendant) the \$29,750 for the walls and lintels for the first floor.

[58] The building of the house, as determined above was one of the terms of the contract. It was further determined that stage payments was not a term of the contract.

[59] Learned counsel for the Claimant submits⁶ that the Defendant breached the construction contract by not performing any work on the project after 29th April 2011 and was therefore not entitled to any further remuneration.

⁵ Exhibit JAG1 Scotia Bank cheque dated 11-01-2011 payable to Frederick Mike.

[60] The building of the house was without doubt the very essence of the contract so as to be classified as a condition breach of which substantially defeat the purpose of the contract and entitles the innocent party to treat his as discharged from further performance of the contract.

[61] The Court therefore agrees with the submission by learned counsel for the Claimant. That the Defendant was in breach of the contract.

ISSUE NO. 5

Whether the work carried out by the Defendant surpasses the \$100,000 advanced to the Defendant by the Claimant, and whether, the Defendant is required to be paid quantum meruit for the 180 square feel of structure added to the dwelling house.

[62] These issues are premised on the Claimant's house being built and paid for by stages which has already been rejected. In this regard this Court has determined that the agreement required the Claimant to pay for materials and weekly wages for all who worked on the building. And the \$100,000 advanced or transferred to the Defendants' National Bank account on 24th February 2011 was to be used exclusively for labour costs. The Court has further determined that the \$100,000 was not used exclusively for labour costs in that \$45,788.60 was used by the Defendant for his personal benefit, and in any event such labour costs, on the evidence had not exceeded \$100,000.00.

[63] Quantum meruit is an equitable doctrine⁷ based on the concept that no one who benefits by the labour and materials should be unjustly enriched thereby; under those circumstances there is an implied a promise to pay a reasonable amount for labour and materials furnished, even in the absence of a contract.

[64] It is therefore the conclusion of the Court that:

⁶ There are no submissions by learned counsel for the Defendant on this issue

⁷ Blacks Law Dictionary (5th ed.) p.1119

- (a) the \$100,000 transferred to the Defendants' National Bank account was not for the cost of the building generally but for labour costs which on 29th April 2011 had not exceed the amount transferred.
- (b) in the absence of evidence that the Claimant was unjustly enriched by materials and labour supplied by the Defendant, the issue of quantum meruit does not arise.

ISSUE NO 6

Whether the Claimant is entitled to be awarded interest pursuant to section 29 of The Eastern Caribbean Supreme Court (St Christopher and Nevis) Act Cap 311.

- [65] Section 29 of the Eastern Caribbean Supreme Court Act (St Christopher and Nevis) Act vests in the Court a discretion to award interest on the whole or any part of the damages on any period between the date when the cause of action arose and the date of judgment. In the usual manner interest on general damages is awarded from the date of the service of the claim to the date of the start of the trial. The section prohibits the award of interest on interest. So this leaves the time from the start of the trial to the delivery of the judgment. No compelling reasons are advanced for the award of interest under this section, but the matter came into being in or about December 2010, and in the circumstances interest of 3% is awarded for the period aforesaid.

ISSUE NO. 7

Can the Defendant succeed on his counterclaim?

- [66] In his counterclaim the Defendant seeks the following:
- (a) \$24,750.94 for the first floor walls and lentils;
 - (b) \$9017.18 for completing 80% of the roof and decking;
 - (c) \$33,300.00 for adding 180 square feet of structure to the garage and room above the garage.
 - (d) Social Security contributions and overheads of \$16,822.57.

(e) Interest pursuant to section 29 of the Eastern Caribbean Supreme Court (St Christopher and Nevis Act Cap. 3:1 under paragraph 13 above; and

(f) Costs.

Reasoning

[67] As before, the amounts claimed are promised on the notion of payment by stages which, to repeat the Court determination, does not arise on the evidence.

[68] The only payments to which the Defendant was entitled was for his labour from the \$100,000.00 transferred to his account. The Defendant paid the workers and himself from the said \$100,000 but also admitted that he used some of the said money for his own personal benefit.

[69] The Claimant in his evidence in chief testified that he did not owe the Defendant the sums claimed. And in cross examination in relation to the \$29,750.94 sought on 28th April 2011, the Claimant testified that he was told by the Defendant that the payment sought was for the walls. It is the Claimant's evidence that at this time the Defendant was working on the decking and he told him with respect to the request, that the wall was already up. The Court draws the reasonable inference to that the Claimant was referring to the agreement for payment weekly and as such the payment would have already been made for his labour.

Conclusion

[70] Based on the Courts rejection of the stage payments above and given the submission in that regard on behalf of the Defendant, it follows that the Defendant's counterclaim cannot succeed. Added to that, the claim with respect to the Social Security contributions was withdrawn at the trial.

Remedies sought

[71] The Claimant is seeking an account with respect to the \$100,000.00 payment of sums find due on the taking of the account

[72] In the alternative the Claimant seeks damages for conversion and/or breach of contract in the sum of EC\$60,000.00 plus interest and costs.

- [73] The matter of the account appears to the Court to be academic at this stage since the Defendant has indicated the amounts he used for his personal benefit.
- [74] In the alternative an amount of \$60,000 is sought as damages for conversion and/or breach of contract.
- [75] Based on the evidence the \$60,000.00 sought as damages represents the portion of the \$100,000 that was not spent on wages. This is based on the Claimant's calculations. But on the Court's calculations above the sum of \$34,221.80 was spent on wages which leaves the sum of \$45,786.60 which was not so spent and which the Court awards as damages.

Interest

- [76] Interest on the damages of \$45,788.60 is awarded at the rate of 6% from the date of the service of the Claim Form, being 23rd June 2011 to the date of the trial, 25th July 2012. A further 3% interest on the said amount is awarded from 30th April 2011 to 17th October 2012.
- [77] Interest is also awarded at the rate of 5% from the date of this judgment until payment.

Costs

- [78] The Claimant succeeded on his claim with the award of \$45,788.60. The Defendant did not succeed on his counterclaim in which an amount of \$67,062.12 was claimed.
- [79] By virtue of Part 64.6 the Defendant having lost on both instances must pay prescribed costs on the two amounts: \$45,788.60 and \$67,068.12.

ORDER

IT IS HEREBY ORDERED AND DECLARED as follows:

1. The oral contract was concluded between the Claimant and the Defendant. The terms included:
 - (a) Construction of the said house was to commence in January 2011.
 - (b) Materials for the construction of the said house were to be purchased by the Defendant by way of cheques drawn on an account at Scotia Bank on which Claimant and the Defendant were co-signatories.

- (c) The wages of the workers including the Defendant, were to be paid from money from the said Scotia Bank account initially.
 - (d) The workers, including the Defendant, were to be paid a reasonable weekly wage based in the following:
 - (i) The Claimant's evidence that the Defendant agreed to work for a weekly wage;
 - (ii) The withdrawal of specific and sometimes identical sums for the payment of wages.
2. The idea of transferring money from the Claimant's account to the Defendant's account originated with the Defendant. The reason given being security concerns with carrying around cash; and the purpose of the said sum was to pay weekly wages.
 3. The \$100,000.00 was not used exclusively for the payment of wages since \$45,788.00 was not spent to pay weekly wages.
 4. The Defendant was in breach of contract when he refused to continue the work on the Claimant's house as agreed.
 5. The \$100,000.00 transferred to the Defendant's National Bank Account was not for the purpose of building generally but for labour costs which on 29th April 2011 had no exceeded the amount transferred; and in the absence of evidence that the Claimant benefited from materials and labour supplied by the Defendant the issue of quantum meruit does not arise.
 6. The Defendant cannot succeed on his counterclaim since it is based on stage payments which is not supported by the evidence and rejected by the Court.
 7. The sum of \$45,788.60 is awarded to the Claimant as damages which will bear interest at the rate of 6% from the date of service of the Claim Form to date of the trial being 28th June 2011 and 25th July 2012 respectively. And a further 3% on the said award from 30th April 2011 to 17th October 2012.
 8. The Defendant must pay the Claimants costs on the quantum of the award of damages plus the costs on the value of his counterclaim, being \$67,068.12.

Errol L. Thomas
High Court Judge [Ag]