

IN THE SUPREME COURT OF BELIZE A.D. 2010

CLAIM NO. 160

BETWEEN: RUPERT BATTY CLAIMANT  
AND  
JACQUES BABET DEFENDANT

Before: Hon. Justice Minnet Hafiz-Bertram

Appearances:

Mr. Hubert Elrington SC for the Claimant  
Mr. Mark Williams for the Defendant

**J U D G M E N T**

**Introduction**

1. This is a claim for \$17,940.00 in damages for breach of a building contract. The Claimant, Rupert Batty is a building contractor and the Defendant, Jacques Babet is a businessman.
2. Mr. Batty claims \$10,400.00 being the loss caused by Mr. Babet for failure to have materials on site for eight weeks at \$1,300.00 per week. He also claims \$7,500.00 for the cost of additional work.

**Statement of Case**

3. Mr. Batty claims that between the month of April and August, 2009 he was engaged by Mr. Babet to erect a 20 x 30 ferro concrete house on his premises in Caye Caulker. It was a labour and supervision contract only and it was agreed that Mr. Babet would provide the materials. Mr. Batty

says that Mr. Babet failed to have the materials needed on site when required. As a consequence, eight weeks were lost in having contractor and labourers on site, each week costing \$1,300.00.

4. Mr. Batty further claims that Mr. Babet varied the building contract by increasing the size of the building from 20' x 30' to 28' x 38' and he agreed to pay Mr. Babet an additional labour cost being the sum of \$7,540.00.
5. Mr. Babet in his defence states that it was agreed that Mr. Batty would provide the labour for the construction works at a cost of \$15,000.00 within a period of three months. The said works commenced on or about the 3<sup>rd</sup> April, 2009 and he paid to Mr. Batty the weekly sums amounting to \$15,000.00 up until 19<sup>th</sup> May, 2009 towards the construction of the ground floor.
6. Mr. Babet denies that he varied the contract by increasing the size of the building. He says that the extension of the work was for two rooms on the upper floor at an additional cost of \$12,000.00. Mr. Babet states that up to and including the 7<sup>th</sup> August, 2009, Mr. Batty was paid the sum of \$11,120.00 whereupon he abandoned the work, leaving the building unfinished.
7. Mr. Babet counterclaims for the sum of \$17,162.00 being the cost for completion of the unfinished works. The cost of labour being \$10,287.00, cost of food being \$2,750.00 and cost of transportation being \$4,125.00.
8. Mr. Batty denies the counterclaim. He says that he has not been paid for the additional labour works. Further, that the additional labour works for the second floor was agreed to at \$10,000.00.

9. Mr. Batty further states that when he left the work site 90% of the construction work was completed.
10. Mr. Batty also sought to change his claim in the defence to the counterclaim to \$22,100.00 instead of \$17,940.00 as in his claim.
11. The issues for determination are:
  - (i) Whether Mr. Batty is entitled to change his statement of case after case management conference held on 30<sup>th</sup> January, 2012.
  - (ii) Whether Mr. Batty is entitled to \$10,400.00 being the loss suffered for failure by Mr. Babet to have materials on site for eight weeks.
  - (iii) Whether Mr. Batty is entitled to \$7,500.00 for additional works.
  - (iv) Whether Mr. Babet is entitled to the sum of \$17,162.00 being the cost for completion of unfinished works.

12. Witnesses

The witnesses in this matter are Mr. Batty and Mr. Babet. Both of them were cross-examined quite extensively. Mr. Lucien Belisle filed a witness statement on behalf of the Defendant but he was not available for trial.

Written submissions

13. The parties were ordered to file written submissions by 31<sup>st</sup> July, 2012. The transcript in this matter was ready on 23<sup>rd</sup> July, 2012. Learned Counsel Mr. Williams filed his written submissions on 12<sup>th</sup> October, 2012. Learned Senior Counsel, Mr. Elrington filed written submissions on the 18<sup>th</sup> December, 2012, hence the reason for the delay in handing down the judgment.

**Issue 1:** *Whether Mr. Batty is entitled to change his statement of case after case management conference held on 30<sup>th</sup> January, 2012*

14. Mr. Batty in his statement of claim filed on the 3<sup>rd</sup> March, 2010 claimed \$17,940.00. Mr. Babet filed a defence and counterclaim on 16<sup>th</sup> November, 2011. Mr. Batty filed a Defence to the counterclaim on the 17<sup>th</sup> April, 2012. He changed his statement of case in the defence to the counter-claim to \$22,100.00. He included works that were not claimed on 3<sup>rd</sup> March, 2010.
15. The Case Management Conference in this matter was held on 30<sup>th</sup> January, 2012 and an order was made on that day. There was no application by Mr. Batty to change his statement of case at the time when the case management was held or at all. Mr. Batty filed a Defence to the counterclaim on the 17<sup>th</sup> April, 2012, changing his statement of case without any permission from the court. In fact, Mr. Batty filed his witness statement on 17<sup>th</sup> April, 2012 and the Defence to the Counterclaim on the said day. The Defendant filed his witness statement on 16<sup>th</sup> April, 2012, one day before Mr. Batty changed his statement of case.
16. The question is whether Mr. Batty was entitled to change his statement of case on the day his witness statement was due and filed. Learned Counsel Mr. Williams submitted that **Part 20** of the **Supreme Court (Civil Procedure) Rules** permits a party to change his statement of case at any time before the case management conference or with the permission of the court. That since Mr. Batty did not obtain such permission the Defence to the Counterclaim should be struck out.

17. It can be seen by the date the pleadings were filed that Mr. Batty did not change his statement of case before the case management conference. I agree with the submissions of Learned Counsel Mr. Williams that the Defence to the Counterclaim should be struck out for failure to comply with the rules. Mr. Batty did not obtain permission of the court to amend his statement of case pursuant to **Rule 20.1 (2)** of the **Supreme Court (Civil Procedure Rules) 2005**. Further, in flagrant disregard of the rules he did so on the day he filed his witness statement. Accordingly, the Defence to the counterclaim is struck out.

**Issue 2: Whether Mr. Batty is entitled to \$10,400.00 being the loss suffered for failure by Mr. Babet to have materials on site for eight weeks.**

18. Mr. Batty claims \$10,400.00 being the loss caused by Mr. Babet who failed to have materials on site for eight weeks at \$1,300.00 per week. In his witness statement he stated that Mr. Babet engaged him in 2009 to provide the labour for a house he planned to construct in Caye Caulker. The building was originally 20' x 30' ferro concrete building with a reinforced ferro concrete slab roof of four inches thick. He stated that the agreed labour cost was \$15,000.00 and was payable in weekly amounts depending upon the amount of men that worked each week.
19. Mr. Batty's evidence is that Mr. Babet did not provide the materials on time and this resulted in loss of work days. Further, he and his workmen live on the mainland and they had to travel to Caye Caulker and remain there on the worksite even when there was no work. He stated that he billed Mr. Babet at the end of the week even though the materials were not on site. The result was that payment for delays and time wasted was

- paid by Mr. Babet and this does not form part of the contract work payment.
20. Mr. Batty stated in his witness statement that he expected to be paid according to the contract for the contract work and he also expected to be paid on an hourly basis for the hours he and his workmen were left idle on the work site. Further, that they received wages weekly and were paid for contract work done and the time lost for that particular week.
  21. Mr. Babet, the Defendant at paragraphs 13 and 14 of his witness statement, stated that it is not true that he failed to provide the necessary materials to enable Mr. Batty to progress with the construction. He said that he provided all the materials upon request by Mr. Batty.
  22. In cross-examination, Mr. Batty's evidence is that he is claiming \$10,400.00 for wasted time which is eight weeks at \$1,300.00 per week. In further, cross-examination he stated that it is six to eight weeks.
  23. Learned Counsel, Mr. Mark Williams submitted that Mr. Batty admitted that he was being paid even when the materials were not available but is nonetheless claiming \$1,300.00 per week for extra time spent on the site.
  24. Learned Senior Counsel, Mr. Elrington submitted that Mr. Batty's evidence is that there were extensive and costly delays. That he and his workmen were camping on the island and whether they were working or not they were entitled to be paid either a contract sum or a reasonable sum by way of *quantum meruit*. Further, that Mr. Batty is claiming by way of contract sum \$1,300.00 per week for eight weeks delay.

### Determination

25. I agree with Learned Counsel Mr. Williams that Mr. Batty admitted that he was being paid even when there was no materials on site. Mr. Batty in his witness statement stated that he and his workmen received wages weekly and were paid for contract work done and the time lost for that particular week. Mr. Batty did not say how much he was paid for contract work and how much he was paid for time lost. He stated that he expected to be paid on an hourly basis for the hours he and his workmen were left idle but he has not proven what is the hourly rate and also how many hours they were left idle by giving dates and times.
26. During cross-examination, Mr. Batty changed his testimony from time lost as he testified that his workmen did other work such as dig up root, chop, clean the beach and all sort of things but no additional cost was paid to them. Mr. Batty's evidence is not credible and he has not proven when he and his workmen were left idle or how much time he spent digging up root, chop and clean. In his claim he stated that the time wasted was eight weeks and in cross-examination he said it was six to eight weeks. It is a mystery as to how he arrived at six to eight weeks.
27. Further, Mr. Batty did not address in his witness statement the claim for wasted time. He stated that he is owed \$22,100.00 in total and this figure as shown by the evidence does not include wasted time. I am not in agreement with Learned Senior Counsel, Mr. Elrington that the evidence shows that there were extensive and costly delays. I find that Mr. Batty has not proven that he is entitled to \$10,400.00 being the loss suffered for failure by Mr. Babet to have materials on site for eight weeks.

**Issue 3:** *Whether Mr. Batty is entitled to \$7,500.00 for additional works.*

28. Mr. Batty claims \$7,500.00 for the cost of additional work. In his witness statement he stated that the building he had to construct was originally 20' x 30' with a reinforced ferro concrete slab roof 4" thick. The agreed labour was \$15,000.00 and that was payable in weekly amounts depending upon the amount of men worked each week. He stated that two days after the work begun the Defendant told him to change the size of the building to 28' x 38'. It was agreed that the labour cost would be \$11,600.00. Mr. Batty said that he was not paid this sum.
29. Mr. Batty at the last paragraph of his witness statement stated that when the roof for the first floor was completed, Mr. Babet decided to put on an additional floor on the building. He was engaged to do the labour for \$10,000.00 but he has not been paid. Further, he was not paid \$11,600.00 for the expansion of the building. Also, that he was not paid \$500.00 for a well that was dug by him. Mr. Batty's evidence is that he is claiming \$22,100.00.

**Cross-Examination of Mr. Batty**

30. Mr. Batty's evidence is that he received \$15,000.00. It was put to him by Mr. Williams that he received more than \$15,000. He was shown the following vouchers which were admitted as evidence by consent:

3 <sup>rd</sup> April, 2009	- 1,000.00
9 <sup>th</sup> April, 2009	- 1,000.00
17 <sup>th</sup> April, 2009	- 1,100.00
24 <sup>th</sup> April, 2009	- 1,100.00
30 <sup>th</sup> April, 2009	- 1,000.00
5 <sup>th</sup> May, 2009	- 1,400.00



8 <sup>th</sup> May, 2009	- 1,400.00
15 <sup>th</sup> May,2009	- 1,400.00
19 <sup>th</sup> May, 2009	- 160.00
22 <sup>nd</sup> May,2009	- 1,400.00
29 <sup>th</sup> May, 2009	- 1,400.00
12 <sup>th</sup> June,2009	- 1,600.00
19 <sup>th</sup> June,2009	- 1,040.00

The total of these vouchers is \$15,000.00 which covers the first phase of the project.

31. In further cross-examination Mr. Batty admitted that he received the following payments:

19 <sup>th</sup> June, 2009	- 600.00
26 <sup>th</sup> June, 2009	- 1,600.00
3 <sup>rd</sup> July,2009	- 2,000.00 (No signature)
7 <sup>th</sup> August, 2009	- 1,500.00
17 <sup>th</sup> July, 2009	- 1,700.00
9 <sup>th</sup> July, 2009	- <u>1,450.00</u>
	7,950.00

32. All the vouchers were signed by Mr. Batty except the one on the 3<sup>rd</sup> July, 2009. Mr. Batty thereafter admitted that he received the \$7,950.00. It was put to him that he received \$11,520.00 for the second phase of the project which he denied. He also denied that he authorized his worker, Mr. August to collect money and he also denied that there were times when he did not pay his workmen.

33. Mr. Batty said that at the time he received the \$15,000.00 he had not completed the ground floor because he received the windows and the doors on 7<sup>th</sup> August, 2009.
34. In cross-examination, Mr. Batty said that he arrived at \$11,600.00 because the total square feet of the building with the additional works was 1064 and he charged \$25 dollar per square feet. It was in cross-examination and after much wasted court time that it was brought out into evidence that Mr. Batty was claiming for the cantilever or overhang of the building which is on the first floor. Mr. Batty has admitted receiving a sketch from the Defendant but not the sketch which was put into evidence without any objections on the day of trial.

Mr. Babet, the Defendant

35. Mr. Babet stated in his witness statement that he verbally sub-contracted Mr. Batty to do the actual construction work and presented him with the necessary drawings and he said it would cost \$15,000. At paragraph 4 of his witness statement, he stated that that it was agreed that Mr. Batty would provide the labour and he would provide the materials, transportation and food.
36. At paragraphs 7 and 8 of his witness statement, he said that Mr. Batty and himself agreed that the labour cost for the construction of the upper floor would be an additional cost of \$12,000. Further, that as from 19<sup>th</sup> June, 2009 to the 14<sup>th</sup> August, 2009 he paid Mr. Batty a total sum of \$11,520.00 leaving a balance of \$480.00
37. In cross-examination, Mr. Babet said that it was agreed that the first floor would be 15,000. and the second floor would be 12,000. and he paid Mr. Batty \$21,000.00. In further cross-examination, Mr. Babet said that he

gave Mr. Batty a plan for the building and thereafter Mr. Batty gave him the price of \$15,000. for the first floor.

#### Submissions

38. Mr. Elrington submitted that the Defendant said that there was never an agreement to build a 20' x 30' building and that it was always a 28' x 38' building that Mr. Batty had agreed to build for \$15,000.00. Learned Senior Counsel submitted that as such this leaves without any explanation from Mr. Batty the glaring coincidence that 20' x 30' = 600 square feet. That 600 sq. feet x \$25.00 per square foot = \$15,000. Further that 28' x 38' = 1,064 square feet and 1,064 square feet x \$25.00 per square foot = \$26,500.00. He submitted that if Mr. Batty is right, the Defendant owes him \$11,600.00 for the first floor.
  
39. Mr. Mark Williams submitted that the sketch plan which is exhibited at "J.B. 2" was given to Mr. Batty and the size of the building was not increased as suggested. Further, there was no change to the plan so as to increase the floor area. Learned Counsel further contended that the Defendant did not tell Mr. Batty to build 20 ft x 30 ft as this measurement refers to the actual location of the column and the first floor measurement was always meant to be 36 ft x 45 ft.

#### Determination

40. Mr. Batty's evidence in his witness statement does not prove that he is owed \$7,500.00 for additional works. The witness statement has addressed an entirely different claim. Learned Counsel, Mr. Williams submitted that Mr. Batty has departed from his pleading as he asserts that he was owed \$11,600.00 for additional works. I agree with Mr. Williams that Mr. Batty has departed from his pleading. The witness statement is far removed from the claim for \$7,500.00. In fact, Mr. Batty's evidence is that he is owed \$22,100.00 for additional works. Mr. Batty's

entire evidence is questionable and very confusing. He has been unable to prove to this court that he is owed \$7,500.00 as additional works. This is a conundrum and much court time has been lost during cross-examination. Further, I find it necessary to comment on the sketch before the court which Mr. Batty used to arrive at his labour cost and to construct a building in Caye Caulker. Mr. Batty who is the building contractor has accepted a sketch drawn by the Defendant who is an electrician. The defendant has accepted that he is not an engineer nor a draftsman. I have looked at the sketches before the court and they are deplorable. Mr. Batty being an experienced building contractor should have requested a proper plan before calculating his labour cost.

41. I accept the evidence of Mr. Babet that he gave Mr. Batty the sketch and the agreed price for the first floor was \$15,000. I do not believe Mr. Batty that he did not see the sketch which is marked 'Exhibit JB 2'. Further, Mr. Batty did not make a claim for the additional works (cantilever) when he was doing the first floor. Instead, he made a second agreement to do an additional floor which is the second floor for \$12,000.00. Hence, I do not find that his claim is genuine. It is even more alarming how his claim for additional works moved from \$7,500.00 to \$22,100.00.
42. The court accepts the evidence of the Defendant, Mr. Babet that the second floor cost \$12,000. The total for the two floors being \$27,000.00. Mr. Babet said according to his records he paid \$11,520.00 for the second floor leaving a balance of \$480 but the evidence as shown by the vouchers proves the amount of payments made to Mr. Batty for both floors to be \$22,950.00. As such, I am not satisfied that the balance of the contract price was \$480.00. The documentary evidence shows that

\$4,050.00 of the contract price remained as a balance. (\$ 27,000.00 – 22,950.00 = \$4,050.00).

43. The question is whether Mr. Batty is entitled to be paid the balance of the agreed price since the construction works remained unfinished. During corss-examination, he said that he finished about 75% of the additional works. Mr. Babet said that Mr. Batty ceased construction work and left the building in an unfinished state, without roof, doors and windows and all the walls were not plastered. Further, he ceased working after he was told that the balance on the contract work is \$480.00. In relation to payment, Mr. Batty's evidence is that he received wages weekly for work done. As such, it is my view that he cannot be paid for work not done. Since the construction work ceased, I find that Mr. Batty is not entitled to any more payments. Accordingly, the court finds that Mr. Batty is not entitled to \$7,500.00 for additional works.

**Issue 4:** *Whether Mr. Babet is entitled to the sum of \$17,162.00 being the cost for completion of unfinished works under the counter-claim.*

44. Mr. Babet's evidence at paragraph 12 of his witness statement is that it cost him \$17,162.00 to complete the construction of the building which took an additional eleven weeks to do so. Mr. Babet did not have any documentary evidence to prove his counterclaim. He produced vouchers for the weekly payment for work done by Mr. Batty but has not done so with the unfinished work which was later completed by three of Mr. Batty's workmen. Further, he paid Mr. Batty on a weekly basis for work done as he did not receive the full contract price on the commencement of the contract works. It has been proven that \$4,050.00. remained on the contract price to which Mr. Batty is not entitled since the work remained unfinished.

45. I find that Mr. Babet has not proven the counterclaim for the sum of \$17,162.00 being the cost for completion of the unfinished works. In particular, he has not proven the cost of labour being \$10,287.00. The cost of food being \$2,750.00 and the cost of transportation being \$4,125.00. cannot be claimed from Mr. Batty as the agreement was for him to provide only labour. Accordingly, the court finds that Mr. Babet is not entitled to the sum of \$17,162.00. The counterclaim is therefore, dismissed.

46. **Order**

The Claimant's claim is dismissed.

The Defendant's counter-claim is dismissed.

Each party to bear its own costs.

Dated this 17<sup>th</sup> day of January, 2013.

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Minnet Hafiz-Bertram

Supreme Court Judge