IN THE SUPREME COURT OF BELIZE, A.D. 2018

CIVIL APPEAL NO. 99 of 2015

ISMAEL CARIAS APPELLANT

AND

JESSIE BENNER RESPONDENT

BEFORE the Honourable Madam Justice Sonya Young

Written Submission
15.5.2018 – Appellant
15.5.2018 – Respondent
Oral Submissions
25.5.2018
27.6.2018
Supplemental Written Submissions
15.6.2018 - Appellant
Decision
27.6.2018

Mr. Ronnell Gonzalez for the Appellant.
Mrs. Andrea McSweaney-McKoy for the Respondent.

Keywords: Civil – Inferior Court Appeal – Breach of Building Contract – Unreasonable Decision – Unfair Trial – Evidence Wrongfully Admitted Or Rejected – Documentary Evidence not shown to Appellant – Denied a Translator

JUDGMENT

1. This is an appeal against the judgment of the Learned Magistrate where Mr. Carias was ordered to pay Ms. Benner damages for breach of contract in the sum of $14,468 by three monthly instalments – 15th January, 15th March and 15th May, 2017.

2. The evidence was that Mr. Carias had been contracted by Ms. Benner to build her a three storey concrete house. She would provide all the material and he would be paid for his labour.

3. Once the building was completed signs of water penetration began to show on the walls. Eventually, water flowed through the walls and into the house. The walls became mold infested and the paint bulged and rolled off.

4. After she repeatedly informed Mr. Carias of the problem he eventually came to see it himself. He accepted responsibility but opined that the problem was minor. He had the walls repaired and repainted which was not a successful remedy. On one occasion he sent his sixteen year old son with sand on another he offered $1000. Both attempts were refused by Ms. Benner and the problem persisted.

5. Ms. Benner says she had an inspection and evaluation, of the remedial labour cost and material required, done by another contractor. She called around and got costs for the cement. That total sum amounted to $14,468.00. She presented all of this to the Court. Judgment was given in her favour in that amount.

6. The Grounds of Appeal raised by Mr. Carias are as follows:
   1. The decision was erroneous on a point of law.
   2. The decision was based on wrong principle or was such that the Inferior Court hearing the circumstances reasonably could not properly have so decided.
   3. The Court, by not allowing the Defendant's witness to testify, prejudiced the trial.
   4. The trial was unfair.

7. The Court is obliged to comment on the unsatisfactory state of the grounds of appeal. The Supreme Court of Judicature Act, Inferior Court (Appeals) Rules, Order LXXIII requires at Rule 6 that an "*appellant shall in his Notice of Grounds of Appeal so set forth such particular matter on which he relies or of which he complains as will inform the Magistrate, the opposite party and the Court thereof, as for example if he relies upon the Ground of Appeal stated:*

(a) ...

(b) in paragraph (i) of that section, the nature of the error shall be stated; and

(c) in paragraph (K) of the section, the illegality complained of shall be clearly specified."

8. Although the Rule at subrule (a) refers to section 130 of the Supreme Court of Judicature Act, this now translates to section 111 where the available Grounds of Appeal are laid out. Counsel for the Respondent did not object to the inadequacy of the information provided in the grounds filed until she made her written submissions. Perhaps because the practice has developed where the appellant would file an affidavit in support of his appeal outlining much of the matters which ought properly to form part of the grounds. However, this Appellant did not even avail himself of that procedure. All that could be gleaned of the grounds appeared only in his counsel's submissions. This made the Court's job even more difficult than it should have been.

9. The Court also noticed that although the Appellant signed the notice and grounds in person his signature was not verified by at least two adult witnesses as required by Rule 7 of the above mentioned Order.

10. The issues for the Court to determine are:

    1. Was the Appellant denied a fair hearing.

A. Did the Learned Magistrate err by passing judgment before the case was heard in its entirety.

B. Did the Learned Magistrate err by wrongfully admitting or rejecting relevant evidence.

C. Was the appellant denied a Translator.

2. Was the Learned Magistrate's decision unreasonable in the circumstances.

Was the appellant denied a fair hearing:

1A. Did the Learned Magistrate err by passing judgment before the case was heard in its entirety:

11. Counsel for the Appellant raised that the Court Order dated 8th December, 2015, stated *"Take notice that the above case was part heard at the San Pedro Magistrate Court on the 08th day of December, 2015 by Magistrate …"* That Order, also gave the judgment in the matter. He contends that it is clear that the matter had not been heard in its entirety on the 8th December, 2015, and the Magistrate had therefore erred in passing judgment at that time.

12. This ground is entirely without merit. At the end of taking evidence prior to the 8th December, 2015, the Magistrate's own notes clearly state:

> *"This is the end of the matter I will render the decision December 8th, 2015.*

13. She did render accordingly. Part heard simply means that the matter had been adjourned to be dealt with further. Part of a hearing necessarily involves rendering a decision on the issues raised as the Magistrate did on December 8th, 2015. Further and perhaps more importantly, the Order is signed by the Clerk of Court whereas, the record of the Court is in the Magistrate's own handwriting. The Court relies entirely on that record

which shows that the evidence had been completed and only judgment remained.

1B. Did the Learned Magistrate err by wrongfully admitting or rejecting relevant evidence:

14. In his submissions Counsel states that during trial Mr. Carias did not get a copy, nor was he allowed to see a copy of the estimate that was referred to in the transcript and considered by the Magistrate in assessing quantum. He did not have an opportunity to question the amount being claimed. He added that the only way he knew about the total claimed was when the plaint was read in court. The Court begins by stating that evidence in a matter cannot be presented through Counsel's submissions. It must come from the Appellant himself. The Court warned Counsel of this in open Court. Counsel on the other side also raised it in her oral submissions. Counsel for the Appellant made no effort to address same.

15. Be that as it may, let us consider first the allegation that he only became aware of the sum claimed while in court. The Court states that the plaint had been served on the Appellant along with the summons to appear. There is no denial of this by the Appellant. Ergo, he had been notified of the sum being claimed and the reason for the claim long before appearing in court. If he did not read it, that was a matter for him. The Court entirely rejects that allegation.

16. In her plaint, Ms. Benner explains that she contracted Mr. Carias to build her home. She outlines the problems encountered and she states her claim of $14,468.00. This to my mind was sufficient to inform Mr. Carias of the particulars of her claim. As a contractor he would certainly know whether

$14,468 was a reasonable sum to remedy the issue she outlined. Even without seeing a breakdown there would be nothing barring him from meeting this case.

17. Further, from the notes of evidence, the Magistrate in fact raised the issue of the remedial cost to reinstate twice with Mr. Carias. First, when she invited him to cross-examine Ms. Benner she said: *"Do you leave* (sic) *any questions about the issue of the house and the cost is too much."* Then when she called on him to present his defence she states: *"Mr. Carias please explain to me your defence. You say your* (sic) *liable or responsible. There is the issue of the water and ... so forth that you must address and you must also address the issue of the cost that she's attached to fixing the house.*

18. Moreover, it becomes apparent from what Mr. Carias says in his defence that he was well aware that the cost was in issue. He ventures: *"It wasn't a big thing but now she remodel the whole house only for that little piece. She refused to have us fix the house. You paid me $3,000.00 to plaster the whole house now she is asking for that much money. I tried to help her but she didn't accept. I have witnesses that I took material. It was never a big job it might cost $500.00, but because she is rich.*

19. The Court is satisfied that Mr. Carias was well informed of the case he was to meet. Where the Court finds merit however, is the Appellant's contention that he was never allowed to see the documentary evidence relating to the actual sum claimed. Indeed the Court record does not show where this was done but equally it does not show where the documents were tendered and admitted either. Counsel for the Respondent in her oral submissions to the Court conceded that there was no indication whatsoever that those documents were in fact shown to Mr. Carias.

20. This omission to my mind means that Mr. Carias did not have the opportunity to present an effective case which is fundamental to a fair trial. Being show these documents would have allowed him to be able to challenge and cross-examine Ms. Benner's evidence. Contradicting the evidence is his right and a clear demonstration of the parties' equality before the law. A denial of that right is a denial of a fair hearing and I so hold.

21. Counsel for the Appellant contends that Mr. Carias had pictures to show regarding the alleged remodelling of the house but he felt rushed and never had a chance to show them. The Court states again that evidence cannot be given by Counsel in his submissions. Nonetheless, from the notes of evidence Mr. Carias presented his defence uninterrupted. It appears that when he stopped speaking the Court enquires: *"Is that it, Mr. Carias?"* He responds: *"Yes, it is."* There is absolutely nothing here to give the impression that Mr. Carias was rushed in anyway. The notes do not state that the Court procedures were explained to the parties. However, Mr. Carias certainly saw Ms. Benner present her own photographs into evidence. He cannot say that he did not know he could do the same. Nor is there anything to indicate that he tried and was denied. He does not even allude to the existence of any pictures in his testimony. There is no merit in this ground even if it were properly before the Court.

22. Counsel for Mr. Carias next raised that Mr. Carias was not allowed to have his witnesses testify. Counsel draws the Court's attention to the notes of evidence and Mr. Carias' statement that: *"… I tried to help her but she didn't accept. I have witnesses that I took material…"* He says this should have alerted the Magistrate to inquire as to whether he had any witnesses he wished to call. He says this is of particular importance because neither party was

represented. While I do agree that the Magistrate ought to have informed the parties of the Court procedures and make enquiries as to whether any witnesses they wished to call, I do not find that in these circumstances, this omission breached Mr. Carias' right to a fair trial.

23. Mr. Carias' testimony as well as that of Ms. Benner both confirmed that Mr. Carias had taken material to the house. This was not in issue and a witness in this regard would add nothing significant and was therefore not relevant or necessary. The true issue at hand was quantum as Mr. Carias' evidence amounted to an admission of liability.

1C. Was the Appellant denied a translator:

24. Counsel for the Appellant also submitted that there was a language barrier which affected Mr. Carias' full presentation of a defence. Again, this is evidence which ought to be presented by the Appellant himself. It therefore cannot be considered. The Court's only comment is that the notes do not reflect that Mr. Carias ever raised the need for an interpreter and the Learned Magistrate clearly never formed the view that one was needed. From the notes of evidence Mr. Carias cross-examined, seemingly, without difficulty and he presented his defence quite intelligibly. Even his vocabulary reflects that he understood what was expected and he narrated appropriately and without difficulty.

25. I am satisfied that he was sufficiently knowledgeably to express that he was having difficulty, (if indeed he was), and there was nothing which raised the Magistrate's suspicion. Again, I can find nothing to indicate that he needed an interpreter or was treated unfairly because he did not have one. This ground too is without merit. For completeness, I wish to underscore that it is

always a good rule of thumb as a judicial officer to enquire as to the needs of a party who appears to have a first tongue which is not English.

2. Was the Learned Magistrate's decision unreasonable:

26. The Magistrate has given no reasons for her decision. The only issue is what inferences the Magistrate could properly draw from what was presented. Having considered the evidence I find, that there was sufficient for the Magistrate to have found against Mr. Carias as she did. He in fact admitted liability. His only objection as to quantum seems to be grounded on his assertion that Ms. Benner had had a valuation done for far more than simply fixing the problem. The Court found that Mr. Carias was denied a fair hearing on the Magistrate's omission to have him view the documents tendered by the Respondent the Court will conduct a retrial on the issue of quantum only.

27. The parties are allowed to call any evidence they desire in that regard and a decision will accordingly be rendered thereafter. The issue of costs on the appeal will be dealt with at that time.

Determination:

The appeal is allowed in so far as quantum of damages are to be reassessed by this Court. Directions will be given for the presentation of evidence and the assessment on 2nd August, 2018. Costs of the appeal will be dealt with on the assessment.

SONYA YOUNG
JUDGE OF THE SUPREME COURT