

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
BEFORE THE HON. THE CHIEF JUSTICE

CAUSE NO. 1 OF 1988

On 4th May and 7th July, 1989

BETWEEN A. L. THOMPSON BUILDING SUPPLIES LTD. PLAINTIFF
AND ESTHER MCLAUGHLIN DEFENDANT

Mr. N. Levy for the Plaintiff

Mr. R. Nelson for the Defendant

COLLETT C.J.

JUDGEMENT.

The main issue in this action has resolved itself into a comparatively straightforward one of disputed fact. The Plaintiff is a supplier of building materials. It is suing the Defendant for the price of materials alleged to have been sold and delivered to her, plus interest. The Defendant admits that she had a contract with a builder, Mr. Seth Arch, to erect a house for her. She denies that she ever contracted with the Plaintiff to purchase the materials concerned although she admits that some of them found their way into her house as a result of the action of Mr. Arch and of the plumber whom he brought onto the work, a Mr. Vernon Sims Coe.

The evidence of Mr. Alfred Lawrence Thompson the owner and Managing Director of the Plaintiff, is that a meeting was held in his office one morning in May 1986 at which the Defendant

was introduced to him by Mr. Arch and that in his presence she gave an express verbal authority to Mr. Arch to purchase from the Plaintiff whatever he needed to perform her building work and to charge the prices to her account with the Plaintiff. His evidence in that respect is confirmed by that of Mr. Arch. Mr. Coe gives evidence of her giving a similar authority to himself to order materials from the Plaintiff on her behalf.

The Defendant's evidence is quite to the contrary. She denies having given either Mr. Arch or Mr. Coe any authority to order materials from the Plaintiff on her account. She further denies that she ever authorised the Plaintiff to charge her with the cost of any materials supplied to either of these two gentlemen. She denies that there was any meeting at all between the three of them at Mr. Thompson's office although she testifies that she went there in her lunch hour one day in the month of April, 1986 at Mr. Arch's suggestion for the purpose of choosing colours for the bathroom fixtures to be installed in the house. She says she was presented with two catalogues by Mr. Thompson and that she chose the American standard fixtures as being cheaper, whereupon they went through the catalogue and she chose the colours. That is all.

The building work continued through the early Summer of 1986 but it was broken off in July of that year with the work uncompleted because the Defendant had exhausted her loan from the bank and had no other source of ready funds. While it was still in progress the system adopted was for Mr. Arch to present weekly invoices of his own for labour and/or materials used in the work to the Defendant who would then make out a personal cheque to Mr. Arch for the amount invoiced. Several of these cheques have been placed before the Court. There are also cheques which are made out to various suppliers of building materials other than the Plaintiff which the Defendant said she made out in that way at Mr. Arch's request and gave to him to pass on to the supplier. But Mr. Arch said in evidence that customers do not give him cheques to pass on to suppliers although they sometimes give him cash to purchase materials for them. He therefore denies the

It is the Defendant's evidence that after work stopped she heard nothing from Mr. Thompson about the amount alleged to be owing to the Plaintiff until he telephoned her in January, 1987 to say he was disappointed she had not paid for what had been ordered. Up till then she said she had received no statements of account or invoices from the Plaintiff so that demand came out of the blue. She testifies that she asked him 'for what' and he indicated bathroom fittings, a clock and some items that Mr. Arch had taken from him; that she asked him for the invoices but that these were not sent to her and all that was sent a few days later was a statement of account made up to 1st July, 1986 which showed an amount owing of \$6,265.94. I have compared this statement (Ex.16) with a later copy of the same statement (Ex.13) made up to the 2nd October, 1987 which includes three further entries for interest charged in 1986 subsequent to July. It would be odd if Mr. Thompson had supplied the Defendant in January 1987 with a copy statement which was six months out of date. That lends some support to his testimony that he had made earlier demands to her for payment which had met with no response from her. This she denies.

Another pointer is that Mrs. McLaughlin admittedly paid the Plaintiff \$1000 on account on 27th January, 1987 very shortly after this surprise demand had been sprung on her and told Mr. Thompson she would like to settle with him once she had been able to sell a piece of land which she owned. This is not to be taken against her as an admission that she owes the full amount now claimed by the Plaintiff but it is conduct inconsistent with her present case that she owes him nothing at all. Her explanation that she felt responsible because of having been to choose the bathroom fitting colours from the Plaintiff, is unconvincing and hard to square with her insistence that she never had given authority to Mr. Arch or Mr. Coe to order any items at all from Thompson's on her behalf. When Mr. Thompson expressed interest in buying the land she even gave him details so that he could go and inspect it, although in the end they

could not agree upon the price for it. In January 1987, therefore, the Defendant was certainly not taking the stance that nothing Mr. Arch had ordered from the Plaintiff for her house was her responsibility to pay for.

There is also the incident of the clock, which Mr. Thompson says the Defendant ordered from the Plaintiff for the sum of \$1000 after he had knocked \$250 off the price of \$1250. It appears as an entry in the Statement of Account for 24th June 1986. Eventually, since it was neither delivered nor paid for by the Defendant it was re-sold to someone else and her account was credited with \$1000 in March 1987. Mrs. McLaughlin however testifies that she never ordered it at all although Mr. Thompson had offered it to her at the reduced price on the day in April she went to choose the colours for the bathroom. If, as she maintains that was the only occasion when the clock was mentioned it is strange that the Plaintiff should have raised an invoice (No.34,711) on 24th June purporting to record a sale of it to her that day. Mr. Thompson's explanation that he cancelled the sale after payment of his account was not forthcoming appears to be the more natural one for these events and I accept it as the truth.

Although Mr. Thompson and Mr. Arch clearly have a close business and personal relationship, I can find no sufficient reason to disbelieve Mr. Arch's testimony on that account. Mr. Coe too must be regarded as an independent witness. Having seen them in the witness box and heard their testimony I am not prepared to believe that they have deliberately entered into a wicked conspiracy with Mr. Thompson to manufacture false testimony and pretend that the Defendant gave them authority to charge materials against her account with the Plaintiff while knowing perfectly well that she did not. Yet it would be necessary to regard their evidence in that light before I could properly find that there was never a meeting at which authority to charge the Defendant's account with the Plaintiff was conferred on Mr. Arch.

Another straw in the wind, as Mr. Levy for the Plaintiff

has mentioned, is the amount allowed for '3 bathroom suites complete' in the estimate Mr. Arch prepared for the Defendant in 1985 before work started on the house. The amounts appearing in the principal invoice submitted by the Plaintiff for these fittings (Ex. 1) - even making allowance for 3 items which Mrs. McLaughlin says were not supplied to her house-total in excess of \$2,300. Had authority not been given to Mr. Arch to charge such items to Mrs. McLaughlin's account it seems most unlikely that Mr. Arch would have taken it upon himself to order items which exceed in cost the provision which he had made in his own estimate to the extent of some seven hundred dollars or 53 percent.

For all these reasons, upon the balance of probabilities I must find on the main issue in favour of the Plaintiff. I am however prepared to accept the evidence that certain items invoiced were not in fact delivered to Mrs. McLaughlin's house and the value of these items should be deducted from the amount claimed. They are three items invoiced on Exhibit 1 totalling \$460~~g~~ also \$234 for base board and \$355.88 for door frames invoiced on Ex.9. These items Charles McLaughlin, the Defendant's son, testified were not supplied by the Plaintiff. The total deduction is \$1,049.88 I make no allowance concerning the cedar invoiced on Exhibit 11, since Mr. McLaughlin was unable to say how much less than the amount invoiced was used in the house and admitted that some was indeed supplied as invoiced although his mother had to purchase extra later.

The principal amount of the Plaintiff's claim as shown in Exhibit 13 is \$6,263.49 less two amounts of \$1,000 credited to the Defendant on that statement of account. When \$1,049.88 is also deducted that leaves a net amount of \$3,213.61 shown to be due.

There is also a claim for interest at 1 1/2% per month from 31st October 1986, when the first entry of interest at this rate calculated on the balance shown appears in the account. At the foot of the statements of account prepared by the Plaintiff

appears the printed words:- 'A finance charge of 1 1/2% per month (18% per annum) will be added to all past due accounts'. These words do not appear on any document bearing Mrs. McLaughlin's signature. There is therefore no evidence of a written agreement on her part to pay such interest to the Plaintiff.

What seems to be relied on by the Plaintiff is an alleged verbal agreement made between her and Mr. Thompson on the telephone to pay interest. She categorically denies agreeing to pay it. He is not precise as to when that agreement was arrived at between them but his evidence seems to suggest it was about the time of the payment of \$1000 on account, which took place on 27th January, 1987. On the other hand the Further and Better Particulars of the Statement of Claim places the date of that alleged agreement in August 1988 - which may perhaps be a clerical error. Such an agreement whenever it may have been arrived at could not justify retrospective charging of interest for earlier periods. Furthermore there is no evidence that any valuable consideration moved from the promisee, Mr. Thompson, in respect of the alleged verbal promise of Mr. McLaughlin to pay future interest, such as a forbearance to sue or the extension of fresh credit to her. The onus is on the Plaintiff to establish the existence of a binding agreement between the parties for payment of the stipulated interest and that burden has not been discharged. The claim for interest therefore fails.

In the result I give judgement for the Plaintiff for the sum of C.I.3,213.61 only, together with costs of the action to be taxed if not agreed and paid by the Defendant.

Dated 7th July, 1989

CHIEF JUSTICE.