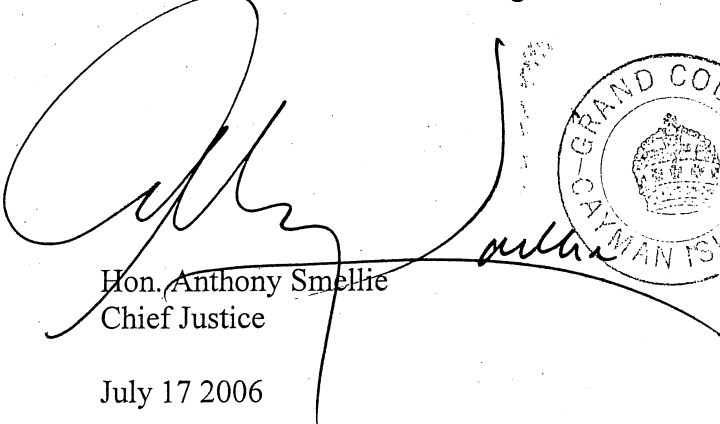


stipulated works and that the other works which she said she required would take the contract sum up to \$175,000 – the difference to be paid by the plaintiff herself.

4. He points to another estimate, dated 11 October 2004 in that larger amount and asserts that that represents the agreed contracted sum for which, it was the parties' oral agreement, that he would be prepared to do all the works which the plaintiff had stipulated but some of which – \$60,000 worth – was not covered by the written agreement for \$115,000.
5. What is most troubling about this account, however, is the further aspect by which he explained that that estimate of \$175,000 was a misrepresentation in many respects. In that, insofar as it showed certain items for major repairs (such as to the roof for \$28,900) which were identical with the smaller estimate of \$139,700 (or, for that matter, with his very first for \$101,000), that was for the purpose of not disclosing to the insurance company that the plaintiff's claim for insurance, included not only reinstatement of the property, but substantial improvements as well.
6. Thus, in the estimate for \$175,000, while the costs of raising the roof line to include attic space were included over and above the stated sum of \$28,900, those additional costs were spread out and hidden among the several other items in the estimate. This, he said, was true for other items as well.
7. That being the state of the evidence, this estimate for \$175,000 is not a document upon which any party may be allowed to rely before this Court and, as it is the defendant who relies upon it, to that extent his case must be regarded as unsubstantiated.

8. From all the evidence that remains, I am however persuaded that there was a mutual breach of the agreement between the parties such as it was and, which I accept, on the plaintiff's case, was that all the stipulated work would be done for \$139,700.
9. She did however, also on the evidence I have accepted, act in breach of the agreement by her unilateral decisions to vary the terms. In particular, I accept the defendant's evidence that she counter-manded the order for the fittings and appliances from Miami and that that resulted in the delay of the delivery of the cabinets and other major items such as the granite counter-top for the kitchen.
10. For his part, the defendant also acted in breach of the agreement by his discontinuance of the works without proper notice or consultation. This I find to be the case despite whatever sense of outrage he may have taken at the allegations of dishonesty which had been brought to his attention second-hand by his workers as having been raised by the plaintiff.
11. I therefore find for the plaintiff on her claim. I also find for the defendant on his counterclaim but only to the extent of the value of the invoice for the cabinets and other items which were delivered but never accepted by the plaintiff.
12. After set off, that gives an award of CI\$2,000 to the plaintiff, plus interest and costs to be taxed if not agreed.


Hon. Anthony Smellie
Chief Justice

July 17 2006

