

SUPREME COURT OF YUKON

Citation: *Jack v. Morehouse*, 2014 YKSC 56

Date: 20141114
S.C. No. 13-A0108
Registry: Whitehorse

Between:

MARGARET LUCILLE JACK

Plaintiff

and

JAMES MOREHOUSE

Defendant

Before: Madam Justice K. Shaner

Appearances:

Darcy Lindberg
James Morehouse

Counsel for the plaintiff
Appearing on his own behalf

REASONS FOR JUDGMENT

[1] The plaintiff, Ms. Jack, seeks judgment for damages for breach of contract.

[2] The parties entered into a written contract on October 1, 2012, for the construction of a duplex in Whitehorse by the defendant, Mr. Morehouse.

[3] The completion date in the contract was June 17, 2013. The price was fixed at \$488,355 and was subject to change only by agreement between the parties. In addition to the price and completion date, the contract contained a number of other terms, including a provision that Mr. Morehouse would not be responsible for any delays caused by “acts of god, shipping and handling and/or sub trades hired by the home owner” (the “Act of God Clause”) and a clause stipulating that if Mr. Morehouse could

not complete construction for any reason, “such as insolvency, death or injury etc.”

Ms. Jack could terminate the contract and complete the construction on her own (the “Injury Clause”).

[4] Ms. Jack testified she intended to live in one half of the duplex when it was completed and she anticipated renting out the other side for \$1,800 per month. She made her intentions known to Mr. Morehouse.

[5] Ms. Jack financed the project through a mortgage.

[6] Mr. Morehouse was injured in a motor vehicle accident in early 2013. He testified this impeded his ability to continue working on the duplex. Ms. Jack knew about the accident, but testified Mr. Morehouse did not indicate his injuries would interfere with his ability to continue with construction. Mr. Morehouse did continue to work on the project following the motor vehicle accident.

[7] Construction soon fell behind schedule. On March 12, 2013, the parties agreed on a revised schedule and the completion date was moved to July 31, 2013. As this date approached, however, the project was only 35% complete and it was apparent the work would not be completed by July 31. Thus, Ms. Jack agreed, in writing, to extend the completion date to September 27, 2013.

[8] Mr. Morehouse did not meet this deadline.

[9] Ms. Jack terminated the contract on September 27, 2013. As of that date the construction was approximately 38% complete and Ms. Jack had paid Mr. Morehouse \$288,812.75. This included \$65,000 advanced to Mr. Morehouse for supplies, for which he was unable to account. At trial Mr. Morehouse conceded Ms. Jack is entitled to the \$65,000.

[10] Ms. Jack arranged for other contractors to do the work required. Construction was completed and an occupancy permit granted in late June of 2014. In addition to what she paid Mr. Morehouse, Ms. Jack incurred expenses of \$388,882.61 in materials and labour to complete the duplex. She produced receipts for all of these expenses at trial. These expenses exceeded the original contract price by \$189,340.36.

[11] Mr. Morehouse submits he did not breach the contract and accordingly, he is not responsible for any damages. Specifically, he argues the failure to meet the completion date was due to the injuries he sustained in the motor vehicle accident, which, he suggests, comes under the “Act of God” clause in the contract and absolves him of responsibility. This argument cannot succeed.

[12] The motor vehicle accident was not an act of God as that term is commonly understood in contract. The meaning and effect of an act of God clause was stated by Dickson J., as he was then, in *Atlantic Paper Stock Ltd. v. St. Anne-Nackawic Pulp and Paper Company Limited*, [1976] 1 SCR 580, 1975 CanLII 170 (SCC), at 583:

An act of God clause or *force majeure* clause . . . generally operates to discharge a contracting party when a supervening, sometimes supernatural, event, beyond control of either party, makes performance impossible. The common thread is that of the unexpected, something beyond reasonable human foresight and skill.

[13] The possibility of injury is not something beyond human foresight. Indeed, in this case it was something specifically contemplated by the parties, as evidenced by the Injury Clause included in the contract. Had Mr. Morehouse been injured to the extent that he was unable to complete the project, (and I do not find that he had been) Ms. Jack would have had the option of terminating the contract.

[14] Perhaps more importantly, it is clear from the evidence that Mr. Morehouse's injuries did not make performance impossible, and thus did not engage the Act of God clause. The evidence showed that in addition to Ms. Jack's duplex, he continued to work on at least one other construction project following the accident, which he completed in November of 2013. He also continued to sign documents in which he and Ms. Jack agreed to new schedules and completion dates, and he asked Ms. Jack to advance money to him to purchase materials for the project, which she did.

[15] I find Mr. Morehouse breached the contract by failing to complete the project by the date specified. As of the date of the last deadline extension, most of the work remained uncompleted. Time was an essential term of the contract and the breach was substantial in the circumstances. Ms. Jack was entitled to terminate the contract.

[16] As noted, once she terminated the contract, Ms. Jack took steps on her own to complete the project. It was eventually completed by June 30, 2014, but it cost her more than what was set out in the contract with Mr. Morehouse. These additional costs were necessarily incurred, however. As of September 27, 2013, Ms. Jack was left with a structure that was not even half-way completed. She had no choice but to continue with construction, lest she incur even more costs and losses. This required her to use other contractors and sub-contractors, who were not bound by the price she had negotiated with Mr. Morehouse. She seeks damages in the amount she spent to complete the project over and above the price specified in the contract, being \$189,340.36.

[17] Ms. Jack also seeks damages for loss of rental revenue between September 27, 2013, and June 30, 2014, in the amount of \$16,200 and costs she incurred for rent for herself during that same period in the amount of \$10,800.

[18] As noted, Ms. Jack planned to rent the other half of the duplex for \$1,800 a month, which is the amount she ultimately agreed to charge her tenants following completion. This is supported by a lease agreement tendered into evidence. This is the basis upon which she has calculated damages for lost rental revenue.

[19] With respect to her own rent, Ms. Jack testified she paid \$1,200 a month between September 27, 2013, and June 30, 2014, for alternative accommodation, since she was unable to live in the duplex.

[20] The purpose of contract damages is to place the aggrieved party in the position they would have been in had the contract not been breached. But for Mr. Morehouse's failure to complete the project within the time required, Ms. Jack would have had the structure completed for the contract price and she would have had the benefit of rental revenues and a home for herself between September 27, 2013 and June 30, 2014. Accordingly, she is entitled to the damages she claims, namely, the costs in excess of the contract price, the lost rental revenues and her own rental costs, for a total of \$216,340.36. She is also entitled to pre- and post-judgment interest in accordance with the provisions of the *Judicature Act*, R.S.Y. 2002, c. 128 and to her party-and-party costs.

[21] Judgment shall issue accordingly.

SHANER J.