IN THE HIGH COURT OF SOLOMON ISLANDS

DUKE TELAUPA

Plaintiff

EDWIN KOLAOI

Defendant

Reasons for Decision

At Honiara: 2 June, 26 August 2004

James Apaniai for the plaintiff.
Andrew Radcliffe for the defendant.

Brown J. The plaintiff claims pursuant to an oral agreement, a sum of money in amount $31,440 being a reasonable fee for his building work erecting the defendants new home at Matanikau River mouth, Honiara. In about February 1999 the two parties agreed that the plaintiff would be engaged as the builder supervisor for the defendant and erect a two-storey residential building on land owned by the defendant at Lord Howe settlement, opposite the Referral Hospital, Honiara.

In the plaintiff's statement of claim the terms of the oral agreement were set forth, including a term that the defendant "*would pay the plaintiff labour cost only in such amount as he considered reasonable having regarding to the size of the residence and the amount of work involved*". The discretion in so far as reasonableness was concerned, rested with the defendant and that was clear from the evidence.

Construction of the residence began sometimes after the oral agreement in February 1999 and the residence was completed in about March 2000.

The plaintiff's claim of a reasonable fee, having regard to the size of the residence would be 20% of the total estimated material costs of the residence plus the cost of plumbing work. The plumbing work was estimated to cost $6,000, the reasonable fee for the labour charge, $25,440 and the plaintiff accordingly claims $31,440. Although not separately pleaded, the plaintiff did also plead this claim as a *quantum meruit* for in his statement the plaintiff alleged a breach of the terms of the oral agreement whereby the defendant failed to provide carpenters and as a consequence, the plaintiff was obliged to carry out the building work himself, with assistance of untrained labourers. He was aggrieved

when the defendant only offered some $10,000 as reasonable remuneration.

The defendant by way of defense admits that the parties entered into an oral agreement early in 1999 and that the terms of the agreement were "ae iumi tufala ia gud frens ia, so iu nomoa save haomasi iu laek peim mi";the defendant further says that he agreed to provide all materials and his own labourers and that the plaintiff would supervise those labourers and the construction of the building. In addition the defendant would provide the plaintiff with a free lunch when the plaintiff was on site; three sticks of tobacco per day and transport the plaintiff to and from work. Further the defendant would pay the plaintiff on completion of the building work.

During the course of the building work, the defendant says he agreed to vary the terms of the oral agreement and pay the plaintiff moneys in advance of completion of the work and that such moneys totaled by way of advance, $7,429. The defendant accordingly calculated that a fair reasonable fee for the work performed by the plaintiff was $10,429 so that a balance of $3,000 was owing. On the 19th December 1999 a further $1,000 was paid the plaintiff leaving a balance of $2,000 due to the plaintiff.

After the Christmas break on the about the 22nd of March 2000 the defendant says the plaintiff claimed a further $6,000 which the defendant refused to pay. The defendant however claims to have paid a sum of $575 being part of the agreed balance of $2,000 sometime after Christmas 1999.

The defendant also denied that the value of plumbing work was to be an extra but was included in the fair sum which he was to pay the plaintiff for his work.

It can be seen that this was an agreement between friends which was not reduced to writing at the commencement and inevitably both parties fell out during the progress of the work.

The plaintiff gave evidence and asserted that he had calculated his claim by reference to his standard right of charge, which depended on his estimated total material cost of a house. He would apply a thirty-five percent (35%) right to that total cost and in this case his labour charge amounted to $25,440.

It was at Redbeach the plaintiff spoke with the defendant. The plaintiff said in his evidence in chief; "we were good friends, a reasonable amount I would accept, for my job will be to supervise his carpenters." In fact on the evidence it would seem the plaintiff became personally concerned with building work himself for those men provided by the defendant were but labourers, not carpenters as the plaintiff expected. Very early in the building work there were difficulties, for although the plaintiff alleged he prepared sketch plans for the building, in fact plans which went to the Honiara Town Council were prepared by one Andrew Airahui and he was paid separately for his plan drawing service. The Council stopped building work pending submission of these plans.

In relation to the advances given the plaintiff, in his evidence Duke Telaupa said he had asked for some advances, four or five during the year and the sums paid him varied from about $150 to $400. He reiterated in his evidence that the defendant had specifically said the final payment would be made on completion of the job. Duke Telaupa agreed but said he would have problems with food if no progress payment were made during the construction period. When asked whether he was paid in amounts for food the plaintiff said "only when I asked, he provided 40kg bags of rice when I asked."

I am satisfied that these persons employed by the defendant to assist the plaintiff were not tradesmen and that the extent of the work expected of the plaintiff was beyond what he had been led to believe at the commencement of the agreement. I am further satisfied however that, despite the change of roles from building Supervisor to effectively the principal builder of the residence, the initial agreement relating to the manner of calculating payment due to the plaintiff at the conclusion of the work was not further addressed by these two men and the determination of a fair amount rested with the defendant throughout. The argument arose after completion of the building work. It was never suggested that the basis given in court by the plaintiff as proper for the calculation of a fair amount was discussed and agreed to by the defendant as the appropriate basis on which the defendant would pay.

Having listened to both the plaintiff and defendant in evidence it is clear that the plaintiff became disillusioned with the terms of his agreement during the latter part of the building. This arose for he had been talking to other tradesmen who had come on-site. When asked in cross examination, the plaintiff said the basis of the agreement was that he would accept, since they were friends "a reasonable amount – what he says is reasonable"; when it was put to him that Edwin Kolaoi said "iu mi tufala gud frens so iu nomoa save hao mas iu pei mi",the plaintiff agreed.

From this I'm satisfied that the plaintiff had agreed to accept an amount that the defendant determined in his absolute discretion, irrespective of trade considerations. What a tradesman may deem appropriate in calculating building fees was not an issue. At no time in the course of the evidence did the plaintiff suggest he had resiled from the basis of this agreement.

There is consequently little that the plaintiff can do if the subjective view of the defendant is that a fair, reasonable charge by the plaintiff for the work performed was $10,429. In evidence the plaintiff considered that he could not argue with defendants' assertion that the defendant had advanced a total of $8,429 up to the 10th December 1999, for the plaintiff acknowledged that the defendant had kept records. It was from these records in a diary (which was tended in evidence) that the defendant justified his assertion that advances had been made. I accept that record of advances.

The plaintiff also impliedly accepted that he had been paid a further sum of $575 after his return from holidays, for the defendant was keeping records and "could be right.

The matter that is in issue is the claim for plumbing. In his evidence in chief the plaintiff appears to have presumed that the defendant would understand that the plumbing costs would be extra. It is plain that the defendant accepted other tradesmen's costs (the plan drawer etc.) were extra but in this instance there is the remaining argument over the cost of plumbing.

In the course of discussions following completion of the building when both parties were attempting to negotiate a reasonable settlement, it is clear the discussions became heated. The plaintiff in court talks of offering compromises although the defendant refused. As a consequence the plaintiff advised the defendant he would settle the matter in court.

The defendant Edwin Kolaoi was called and gave evidence. He says he relied on his friend because he was a builder. The discussions were initially held at Red Beach and later the plaintiff prepared the sketch plan of the building for him which was then professionally drawn by the plan drawer. The defendant said that the since they were good friends the plaintiff told him any "amount you pay me, you just pay me" and it was further agreed that payment would be made on completion of the job. During the course of the building work the defendant says he did advance moneys from time to time but that such advance was part of the contract price.

As I say I'm satisfied this was so. The argument of course, revolves around the plaintiff's expectation and disappointment that $10,000 was insufficient and unfair having regard to the extent of the building work that he carried out for the defendant when looking at the total value of the completed building.

Two other witnesses were called for the plaintiff but their evidence did not assist the plaintiff in any material respect for they were not privy to the conversations between the parties when the agreement was made. If anything, their evidence suggested that the defendant was lucky in having the plaintiff complete the building for him at that the price.

I am not satisfied the claim has been made out in the amount claimed. Nor can it now be categorized as a *quantum meruit* for in fact the plaintiff did no more than expected of him, in completing the building. I also find that the argument about the plumbing arose after the building was finished as a result of the plaintiffs' dissatisfaction, as a means to negotiate a better price. But the circumstances of this arrangement reflect the parable in *Matthew 20, verse 1-16.*

The plaintiff has not made out his case. There shall be a verdict and judgment for the plaintiff in the balance of the sum offered by the defendant for $1425.