



IN THE HIGH COURT OF SWAZILAND

CIV. CASE NO. 1143/92

In the matter between

BUILDING DESIGN GROUP SWAZILAND

Plaintiff

and

BAFANA DLAMINI

Defendant

CORAM : DUNN A.C.J.
FOR THE PLAINTIFF : MR. FLYNN
FOR THE DEFENDANT : MR. DUNSEITH

JUDGMENT

1ST DECEMBER 1995

The plaintiff seeks judgment against the defendant for payment of the sum E14,750.00 being the balance outstanding on professional fees due by the defendant to the plaintiff..

The plaintiff's case is that it was approached and engaged by the defendant to design a house for him. The first meeting between the parties was held on the 6th September 1989. At this meeting the defendant gave details of his requirements. The defendant was at that time on vacation from his studies in the United Kingdom. He indicated that he would be returning to the United Kingdom at the beginning of October 1989 by which time he wished to have

seen and approved the preliminary design by the plaintiff. Mr Hall a professional architect and one of the partners of the plaintiff undertook to have the preliminary drawings completed by the 29th September. Broad details of the defendant's requirements are contained in a "client information" sheet (exhibit B) which was kept by the plaintiff. It is common cause that a preliminary design was drawn by the plaintiff and that a meeting was held between Mr. Hall and the defendant on the 29th September at which the design was discussed. It appears that the defendant may have expected a more detailed design. Mr. Hall, however, maintained that the preliminary design was in accordance with normal practice, based on the defendant's requirements. Some alterations had to be made to the design, in line with the defendant's requests and additional requirements. The defendant left for the United Kingdom on the 2nd October 1989. The required deposit of E1,000 was paid to the plaintiff by the defendant's wife acting on his behalf, on the 3rd October. Three letters were addressed to the defendant by the plaintiff between the 4th October and the 30th November regarding the progress of the project design. The letters were addressed to the defendant's wife at Zambia Airways, Mbabane, that according to Mr Hall having been the instruction given by the defendant.

The defendant returned to Swaziland in December. He met with Mr. Hall on the 11th December. It appears that the final design had not been completed at that stage. The defendant at that stage indicated that he intended having the final drawings submitted to the Mbabane Town Council for

approval before his departure for the United Kingdom on the 22nd December. According to Mr Hall it was agreed that the final drawings would be completed and ready for collection by the defendant on the 20th December. It is the plaintiff's case that the drawings were in fact completed but that the defendant failed to collect them from the plaintiff's premises as agreed. Attempts were made by Mr Hall to deliver the drawings at Zambia Airways. The defendant's wife was reported to have left for Johannesburg with the defendant. The drawings remained with the plaintiff until the beginning of January 1990 when Mr Hall delivered them to the defendant's wife. Mr Hall was advised that the defendant had returned to the United Kingdom. With the final drawings having been completed and delivered to the defendant, the plaintiff proceeded to seek payment of its fees. The fees amounted to E15,750.00 less the E1,000 deposit paid by the defendant on the 3rd October 1989. A letter was addressed by the plaintiff (exhibit 'M') to the defendant at his address in the United Kingdom on the 27th February 1990. The letter contained a summary of what had transpired between the parties and a request for a meeting between the parties during the defendant's next visit to Swaziland.

The defendant came to Swaziland in April 1990 and a meeting was held on 11th April. The meeting and the issues discussed thereat were confirmed by the plaintiff in a letter to the defendant dated 18th April (exhibit 'N'). According to Mr Hall the defendant was still interested in continuing with the project but it was clear that he could

not do so at that particular time. It was Mr Hall's evidence that the plaintiff agreed not to press on with its demand for payment until the defendant's return to Swaziland in about July 1990. The position was at that stage, that the defendant would upon his return to Swaziland finalise all the arrangements regarding a loan and that the project would then be re-activated. The plaintiff did not hear from the defendant as expected in July. On the 12th September 1990 the plaintiff wrote a letter (exhibit '0') to the defendant setting out, inter alia, the following :-

We agreed to post-pone claiming the outstanding fees due to us until your expected return in July. As you will appreciate, these fees were originally due in January 1990. It is now September and we have not heard from you. Could you please notify us of your intentions with regard to the project.

The defendant did not respond to this letter. Mr Hall subsequently learnt at a meeting with the defendant on the 20th February 1992 that the defendant had sold the land on which he intended building and was for that reason unable to proceed with the project.

An application for absolution from the instance was made on behalf of the defendant at the conclusion of the evidence given by Mr Hall. There clearly was no merit in the application. Mr Hall's evidence of an agreement between the parties was not challenged. It was not disputed that the plaintiff carried out its obligations under the agreement

and completed the drawings and design requested by the defendant. The plaintiff's fees were calculated according to a scale of fees which was available for scrutiny by the defendant. There was no serious challenge of this evidence, the position of the defendant being that he had cancelled the contract due to a failure by the plaintiff to complete the final drawings and design by the 15th December 1989. This was denied by the plaintiff. The application for absolution from the instance was, in the circumstances, dismissed.

The defendant gave evidence. There is no dispute as to the contract and performance by the plaintiff. The only dispute is as to the date by which the plaintiff was to have completed the project. The defendant emphasised in his evidence that it was a condition of the contract, that the final drawings should be completed well in advance of his departure for the United Kingdom on the 22nd December 1989. He told the Court that he was disappointed, on his return to Swaziland in December, to find that the final drawings had not been completed. It was his evidence that Mr Hall apologised for the delay, at the meeting of the 11th December and that Mr Hall undertook to work overtime to ensure that the drawings were completed by the 15th December 1989. According to the defendant the plaintiff did not complete the drawings by that date. The defendant left for the United Kingdom on the 22nd December without receiving the final drawings for inspection and submission to the Town Council as originally planned. It was his further evidence that when he was contacted by Mr Hall in January 1990 he

informed Mr Hall that the agreement was cancelled as a result of the plaintiff's failure to perform on time. Mr Hall's evidence of an agreement to put the project on hold until the defendant's return to Swaziland in July 1990 was denied by the defendant. The defendant stated that he again informed Mr Hall of the cancellation of the agreement, at the meeting of the 11th April at which meeting Mr Hall was, according to the defendant also informed of the defendant's intention to sell his plot.

It is without any hesitation that I accept the evidence of Mr Hall in preference to that of the defendant. Mr Hall was by far the better and more satisfactory witness. The plaintiff had taken care to keep a record, by way of the confirmatory letters to the defendant of what transpired between the parties. The defendant did not respond to these letters. The impact of his failure to respond to these letters forced him into the position of denying that he had given his wife's address as the place to which his correspondence should be addressed by the plaintiff. He proceeded to deny having received the majority of the letters. It is quite clear that the defendant has elected to admit only those portions of the plaintiff's evidence that tend to support his case. High on the list of such admissions is the telephone call which Mr Hall made to the defendant in the United Kingdom in January 1990. The defendant denied receiving any of the letters that were addressed to his United Kingdom address. He admitted the telephone call because that was the opportunity he states he had of informing Mr Hall that he was cancelling the contract.

The defendant's evidence of when he cancelled the contract is most unsatisfactory and contradictory. In a letter written by the defendant to the plaintiff on the 4th August 1992 the defendant stated that the contract was cancelled on the 15th December 1989. In his evidence, the defendant stated that he cancelled the contract in the course of the telephone call from Mr Hall in January 1990. There was also a suggestion of the contract having been cancelled during March 1990.

It is abundantly clear that there was no cancellation of the contract as alleged by the defendant. The plaintiff performed its obligations in terms of the contract. For reasons best known to the defendant he was unable to proceed to the next stage of the project namely, obtaining the necessary finance in order to commence construction. The plaintiff was in no way responsible for what became of the project. The plaintiff's specific obligations related to the design of the project. The defendant has unsatisfactorily tried to resile from the agreement on grounds which he has totally failed to substantiate. The issue of the design having been based on wrong dimensions as to the defendant's plot was thrown in as one of the defendant's complaints against the plaintiff. This issue was at the end of the day, irrelevant to the question of the plaintiff's performance of its obligations. The manner in which the plaintiff's claim was calculated was brought into issue at the trial. The claim had been communicated to the defendant some years before the issue of summons. A reply was given to the defendant's request for

further particulars on how the claim was arrived at. These issues do not in anyway affect the plaintiff's clear case as testified to by Mr Hall.

Judgment is granted in favour of the plaintiff in the sum of E14,750.00 with interest at 9% p. a. from to-day's date to date of payment and costs.



B. DUNN

ACTING CHIEF JUSTICE