

ROYAL COURT

14th November, 1990 172.

Before: The Bailiff, and
Jurats Coutanche and Orchard

Between: Nigel I. Linder Plaintiff

And: Ellen May Hopkinson Defendant

Hearing of applications -

(a) by the defendant for leave to:

1. re-re-amend her re-amended answer and counterclaim; and
2. call additional witnesses; and

(b) by the plaintiff:

1. For the costs of and incidental to the adjournment of the proceedings and the amendment of pleadings; and
2. To recall witnesses already heard and to be granted the costs thereof on an indemnity basis.

Advocate P.C. Sinel for the plaintiff.

Advocate R.J. Michel for the defendant.

JUDGMENT

BAILIFF: We are sitting this morning first to give our decision on a summons issued by the defendant in this action seeking leave to re-amend her re-amended answer and counterclaim in accordance with the schedule attached to the summons, and to call additional witnesses.

The re-amended answer did not include a claim for general damages. It included an allegation that work had been badly carried out but, after some calculations had been done and after taking into account retention money and other matters in the answer, the prayer merely alleged that the plaintiff had been overpaid and should pay to the defendant the sum of £6,200.31 with interest and of course full costs.

The summons today introduces the concept of general damages which are listed a manner more applicable to a claim for particularised damages - the normal way of dealing with a claim by a builder. The defendant, in her summons, is claiming general damages. That is not, as Mr. Michel has said, merely an extension of the original claim; it is an introduction of a new matter. There are also some relatively minor amendments which it is sought to incorporate in the further amended answer, increasing the amount claimed by some specified payments totalling £2,122.78; this appears on p.8 of the proposed re-amended answer.

We have looked at the White Book which guides us in such matters and we find at paragraph 20/5-8/11 the following passage:

"But the court will not readily allow at the trial an amendment the necessity for which was abundantly apparent months ago and then not asked for".

It was clearly open to the defendant at the beginning of this case and certainly from the time when the Order of Justice was served to appreciate what she might have to meet and to allege the defects which are now sought to be put in under the guise of general damages. We do not think that it would be right at this stage in the trial to allow her to do that. We are, therefore, going to allow her, to a limited extent, by amending p.8 with the insertion of the small amount I have already mentioned (£2,122.78), but we are not prepared to allow her to amend pp. 9, 10, 11 and 12 of the proposed re-amended new pleadings. And we further think that it is right and proper in view of our ruling that the defendant should pay the costs of and incidental to today's hearing arising from the summons.

It is obviously in the interests of justice (certainly of the parties; let alone the Court's memory) that this case should not drag on indefinitely, as the longer it does in a case of this nature the harder it is to arrive at a just decision. Nevertheless we are satisfied that there ought to be an adjournment to enable Mr. Sinel to meet the new matters which we have allowed in today and to recall his witnesses for that purpose and any additional witnesses he may need. But we do not sanction the recalling of the witnesses merely to attempt to rebut the matters raised by Mr. Stoddart because those matters are only in general form and most of them are in any event contained, as we understand it, in the schedule which we have not allowed in today. Therefore we are not prepared to allow a general traverse of his evidence. Insofar as his evidence so far given and to be given relates to schedule 4, then you can call your additional witnesses or recall ^{those} who have already been called, Mr. Sinel, but not on the general lines.

The issue is quite clear, as Mr. Michel has said, the issue is what was the contract? Was it varied? Were there delays and if so, who was to blame? Was there some bad workmanship and how much was it caused by your client, Mr. Sinel, and should it be allowed and offset? And that has now been completed with sufficient exactitude for us to understand the amount and it is much smaller, in effect, than would have been the case had we allowed in the very large and wide ranging claim for general damages. Therefore, we grant that delay with the limited right of recall of witnesses only.

As regards the time, the only firm dates - and I am afraid it is going to cause some difficulty in the sense that I think the parties may feel disappointed - which are at present free in the Court's calendar are the 14th and 15th February and that is too far away for us to be satisfied with them; but we are going to do our best in December, because we understand from my secretary that there is a possibility that one or two of the cases in December will not come on. That being so I have told him to put this one at the top of the list.

There will be no order for costs on the site visit matter; each side will pay their own.

Authority referred to:

The White Book: Order 20/5-8/11.