IN THE ROYAL COURT OF JERSEY

8th August 1988.

Before R. Vibert, Esq., O.B.E. Commissioner,
Jurat the Hon J.A.G. Coutanche, Lieut. Bailiff,
Jurat M.W. Bonn

BETWEEN	Window Fixers (Jersey) Limited	PLAINTIFF
AND	Mr. J.A.A. Farrugia	DEFENDANT
	AND	
BETWEEN	T.A. Picot (C.I.) Limited	PLAINTIFF
AND	Mr. J.A.A. Farrugia	DEFENDANT

Mr. T.A. Picot, a Director of each of the Plaintiff Companies
for the Plaintiffs,
Advocate S.K.C. Pallot for the Defendant

The first named Plaintiff Company, as its name implies, installs windows. The second manufactures and supplies them. The two Companies are under the same management and appear to work as one. As a result of negotiations between their representative and the Defendant, it was agreed that windows and doors described as uPVC, and of other and various specifications, would be supplied and fitted in the residence of the Defendant. The detailed terms of the agreement were set out in a document described as an Order Acceptance Note, prepared by the Plaintiffs and signed by the Defendant, with a few notes written thereon in manuscript at the time of his signature.

The Plaintiffs claimed for non-payment of account. The Defendant pleaded that he was not liable because of the unsatisfactory nature of the work done, and counterclaimed for damages for breach of contract and/or negligence.

Although the two Companies are distinct legal entities, they used the one document for the contract with the Defendant, and notepaper in which Window Fixers (Jersey) Limited is described as an associate, employed the same personnel and in general appear to the Court to be so merged as to have been indistinguishable to their customer, the Defendant. They will therefore be treated as one in this judgement and will be jointly referred to as 'the Plaintiffs'.

During a lengthy trial the following issues emerged -

(a) Was the Defendant entitled to certain discounts?

(b) Did the contract oblige the Plaintiffs to ensure that window handles were in brass?

(c) What compensation should be paid by the Plaintiffs for alleged unsatisfactory work?

(d) Who should be responsible for the considerable costs incurred?

THE DISCOUNTS

The contract provided for substantial discounts. 20% on the cost of supply of the windows and doors, dependent on payment of invoice delivered on supply. 5% on the cost of fixing, dependent on payment on completion of the work. And a further 10% deduction on the whole as shown on the Order Acceptance Note.

On the 24th September 1985, the Plaintiffs, considering that the work was complete, and no payment having been made, wrote to the Defendant in the following terms:-

"....

Further to your conversation with our Mr. Chris Tough, we confirm that if an interim payment of £6,000.00 is paid today, then we will allow discounts to stand.

The balance of the account is then to be paid on completion of the Contract.

...."

Clearly this letter follows a conversation between Mr. Tough, a representative of the Plaintiffs, and the Defendant, in which the Defendant had been informed that he had lost his entitlement to the discounts but that they would be allowed to stand if £6,000 was received that day.

By letter of the following day, the Defendant sent a cheque for £6,000 saying that the balance would be sent on completion of all work outstanding. It is clear therefore that the cheque was not received on the 24th September. The Defendant however stated in evidence that his letter of the 25th had been handed personally to Mr. Tough, with the cheque, who had called to collect it, on the understanding that the discounts would be thereby preserved. Unfortunately Mr. Tough was not a witness, but the Court accepts the evidence of the Defendant, which is supported by the fact that there is no further correspondence on the matter of the discounts. We therefor hold that the Defendant is entitled to all the discounts originally agreed.

THE PLAINTIFFS' ACCOUNT

Resolution of the issue of the discounts enables us to set out the basic claim of the Plaintiffs, which is as stated in the Order Acceptance Form, dated the 23rd April, 1985; as follows:-

Overall Total for windows & doors		£10,783.91
Less 20% Discount		2,156.78
		8,627.13
Total for Fixing	£1,962.70	
Less 5% Discount	98.13	
Total Net Amount Due re. fixing		1,864.57
		10,491.70
	less 10%	1,049.17
		9,422.53

Of this amount, £6,000 had been paid as stated above, leaving the sum of £3,442.53 unpaid.

HANDLES IN BRASS

It was contended by the Defendant that the handles of the windows should have been of brass. There is indeed a note to that effect added to the Order Acceptance Note and initialled by Mr. Tough, the representative of the Plaintiffs. But the Plaintiffs produced a copy of a letter dated 27th April, 1985 (two days after signature of the Note) addressed by them to the Defendant, to the effect that brass handles were unavailable. The Defendant maintained that either he had not received the letter (which is unsigned) or he received it at a much later date. But the copy of the letter produced was obtained on discovery from the Defendant's lawyers. We hold that the letter was sent at the time it was dated, and that if the Defendant had wished not to continue the contract on this slightly changed basis, he should have made it clear at the time.

COMPENSATION FOR UNSATISFACTORY WORK

The crux of the case was the contention of the Defendant that the work had been carried out in an unsatisfactory manner, causing considerable damage, and leaving the windows and doors in an unsatisfactory state. The Plaintiffs agreed that rather more damage than necessary had been caused but disputed its nature and extent. Eight witnesses were called for the Defendant, including two Chartered Surveyors, one of whom had originally been retained by the Plaintiffs, two men whose business involved the fixing of glass windows, and a former employee of the Plaintiffs. Mr. T.A. Picot, who conducted the case for the Plaintiffs, was the only witness called on their behalf.

The Court itself visited the residence of the Defendant and examined the various areas of complaint.

The items of damage complained of by the Defendant were particularised in his Answer in sub-paragraphs 5 (a) to (r). After hearing the evidence, the Court requested the Chartered Surveyor retained by the Defendant to estimate the cost of repair of the damage for which he considered the Plaintiffs were responsible. This was done by a member of his staff, Mr. H.McG. Menzies, himself a Chartered Surveyor, who produced an estimate on which he was examined and cross-examined. His estimate consisted of sixteen items, and Counsel for the Defendant in his address to the Court based his claim on those items, and not on the items as set out in his Answer. We do likewise.

The first item is headed "Plasterwork repairs" and the second "Re-Wallpapering". A figure of £268.84 is estimated for the first, and £1,102.10 for the second. These, in the view of the Court, constitute the justifiable part of the Defendant's complaints. More damage was done to the wallpaper and plasterwork around the windows than should have been. The damage as seen by the Court did not appear as serious as might have been thought from the evidence of the Defendant and some of the rooms had been redecorated throughout by the Defendant, since the installation of the windows. But damage there was and had been, and the Court is satisfied that much of it was beyond that which should reasonably have been caused, or than was covered by the clause in the Order Acceptance Note making the Defendant responsible for redecoration. We consider a reasonable award to the Defendant under these two headings to be £1,200.

The third item provides for the cost of taking out tiles put in by the Plaintiffs and for substituting tiles of a better match with the tiles nearby. Mr. Menzies was not confident that an exact match could be obtained. It is

disputable whether the Plaintiffs were responsible for replacing these without charge, though they did replace them. We consider that it would be wholly unreasonable to require the Plaintiffs to take these tiles out and replace them with others which themselves might not match perfectly.

In respect of items four and five, which cover a number of small matters, we award the sum of £100.

Items six and seven relate respectively to a wash basin, in which there is a minute chip, and to two stair treads on each of which is a very slight indentation. It could be argued that the maxim 'de minimis non curat lex' applies to these, and that the remedy (replacing basin and treads) is out of proportion to the damage, but in any case there is no evidence that the damage was caused by the workmen of the Plaintiffs, and no award is made in respect of these items.

Awards under items so far dealt with thus amount to £1,300.

In our view the remaining items fall into a different category. While the preceding items relate to the repair of damage excessively caused by the Plaintiffs, those remaining relate to the performance of the windows as fitted. Items eight and nine, for example, call for adjustment and replacement of parts of the machinery attaching to the windows and doors. It was contended by the Plaintiffs and not disputed that these matters are covered by guarantees, both as to material and workmanship; moreover the manufacturer of the window is also under guarantee, as is stated in the Quotations sent to the Defendant. The surveyor retained by the Defendant stated in his report that "the goods and workmanship involved in the supply and installation of the new windows and doors of this property are of a reasonable overall standard", though there were certain individual aspects which he regarded as unsatisfactory. The Plaintiffs further contended that they had not been permitted, since their men left the job in September, 1985, to enter the property. Advocate Pallot, writing on behalf of the Defendant on the 3rd and 13th November, 1987, made it clear that they were not to carry out any remedial work unless they first undertook to pay all the Defendant's costs.

In our view it is unreasonable to seek from the Plaintiffs damages, covering work to be done by somebody else in respect of the workings of windows and doors, which the Plaintiffs are required, and will continue to be required, to keep working under guarantee, and for which recovery might also be possible from the manufacturers, when the Plaintiffs have themselves not been permitted to attend to the matters in question. No award of financial compensation is therefor made for the remaining items. The Defendant, if he wishes, should require the Plaintiffs to inspect what is alleged to be wrong and call on them to correct it. Only when they fail in this obligation will it be reasonable to seek financial compensation.

SUMMARY

From the £3,442.53 remaining unpaid on the Plaintiff's account, there should therefor be deducted the sum of £1,300 awarded as above to the Defendant as compensation for damage caused, leaving the sum of £2142.53, to which we add the sum of £600 being the approximate equivalent of interest thereon at 10% from the 31st October, 1985 (the last day of the month following completion of the works) to this date, making a total sum due by the Defendant to the Plaintiffs of £2742.53. This sum should be paid by the Defendant to T.A. Picot (C.I.) Ltd. as the Plaintiff Company with the greater claim, but will not be payable until settlement of the costs, to which we now turn.

COSTS

We deal with the costs as part of the judgement, as they were considered fully at the trial. The first thing to say about the costs is that it is ridiculous that they should have been incurred to the extent they have. The matters at issue between the parties are, and always have been, of relatively small financial consequence. Grown men should have had the sense to settle them without going to law. Advocate Pallot urged the Court to hold against the Plaintiffs on the question of costs because of their failure to respond to an invitation to go to arbitration. We do not feel we can do so. Counsel was unable to produce any authority of such a ruling having been made. Nor is arbitration necessarily cheaper than the Court. It is not the Court which is expensive to the litigant, but the lawyers and, to a lesser degree, the expert witnesses, all or some of whom may be involved in arbitration. Nor, in any event, do we feel inclined to hold that a man should be penalised for taking a dispute to the Court instead of to some other forum. The matter should not have been argued anywhere. It should have been settled.

Both parties, in our view, have been unreasonable. The Defendant should have let in the Plaintiffs to adjust the windows and doors. Part of the costs incurred are attributable to his refusal to do so. The Plaintiffs should have offered the Defendant a reasonable sum to replaster and re-paper; he did so eventually, but too late, and a large part of the costs incurred would have been avoided if he had done so earlier.

Of the two, the Defendant, in our view, came the closer to making a reasonable offer of settlement, by a letter undated but sent on the 31st January, 1986. In this he asked for compensation of £1,000 which is roughly what we are now awarding, providing certain work was carried out by the Plaintiffs. Though the work listed includes unreasonable items, in particular the replacement of a window, installed in accordance with specifications, because he did not like the look of it when he saw the result, the offer should not have been dismissed out of hand. The Plaintiffs should have taken negotiation further from that point. Instead, they went to their lawyers for the institution of proceedings.

In their turn, in November, 1987, the Plaintiffs made an offer of the same sum of £1,000 by way of compensation, and expressed readiness to remedy in accordance with their guarantee. Now, however, the Defendant had incurred further costs, and wished to have them all reimbursed. His lawyers did not help a settlement by stating that their fees would be "limited to" £2,000, plus those of the Surveyor. As we thought this very high, the parties not yet having reached the Courtroom, we called for a statement, and find some of the charges excessive. As, however, Mr. Picot stated that he would have objected in principle to the payment of any costs, the lawyers' letter, though unhelpful, does not appear itself to have been that which prevented a settlement.

We are left therefore with the facts that, in January 1986, the Defendant made an offer which was rejected by the Plaintiffs, who made almost the same offer himself twenty-one months later, during which time the Defendant had incurred additional costs, which the Plaintiffs were unwilling to assume.

In these circumstances, taking account of the conduct of both parties, we order

(a) that the Plaintiffs bear the whole of their own costs;

(b) that the Defendant bear his costs incurred prior to the 3rd February, 1986, that is prior to his receipt of the Plaintiff's letter rejecting his offer of the 31st January, 1986 and informing him that they were taking legal proceedings; and

(c) that the Plaintiffs be jointly and severally responsible for two thirds of the taxed costs of the Defendant incurred after the 2nd February, 1986.