



In The Supreme Court of Bermuda

CIVIL APPELLATE JURISDICTION

2023 No 112

BETWEEN:

MYRON PIPER

APPELLANT

-and-

SHIRLEY CALLENDER

RESPONDENT

JUDGMENT

Date of Hearing: 18 June 2025

Date of Judgment: 25 June 2025

Appearances: Mr. Myron Piper in person
Ms. Shirley Callender in person

JUDGMENT of Elkinson JP, Assistant Justice

1. Appeals to The Supreme Court of Bermuda are pursuant to the Civil Appeals Act 1971.

Under section 14(1)

“...the court may allow the appeal in whole or in part or may remit the case to the court of summary jurisdiction to be retried in whole or in part and may make such other order the court may consider just.”

2. In this case, the appeal being brought by the Appellant, the Plaintiff in the action before the Magistrate, is that the Magistrate erred by making certain findings which were contrary to the evidence which was before him.
3. The Appellant submitted that one reason for the disconnect and the failure of the Magistrate was the very long period of time between the trial of the action and the Magistrate delivering his ruling. The case was heard on 24 and 25 April 2023 and a copy of the written judgment was not sent to the parties until 20 September 2023 although it was dated in August without specifying a day. There is force in that submission as I have found after hearing the parties and reviewing the Record of Appeal that there are errors in the Judgment which require correcting.
4. The basic underlying facts of the dispute are that the Appellant carried out building works for the Respondent in her former family home based on a cost and charge basis. Because of familial connections, the Appellant charged the Respondent \$50 per hour for the renovation work which included carpentry, masonry, and plumbing. There was no written agreement setting out what would happen in respect of changes, additional works or delays. The Respondent did however make it clear that she wanted the work done in phases although the position of the Appellant appeared to be that that wasn't realistic given the age of the home, perhaps over 100 years old, and that in the renovation/demolition of part of an interior wall this could and did result in more extensive works.
5. From this very basic arrangement, disagreement arose and continues. Phase 1 of the works was to commence on 14 January 2019 and there is dispute between the parties as to whether the Appellant should ever have commenced phase 2. Suffice it to say that at some stage in the course of 2019, the Appellant could not get any further instructions from the Respondent. He says this was the basis for him leaving the site and then in January 2020 issuing civil proceedings in the Magistrates court for payment for outstanding materials and work. There have been in the course of the dispute, different Magistrates engaged, an interim appeal, a further hearing before the Magistrates court, and now this appeal.
6. I have reviewed the Magistrate's judgment and the voluminous exhibits, pleadings, pictures in support of the parties' contentions.
7. In the context of that documentation and the submissions made by the parties to me on the hearing of this Appeal, I have determined that the Magistrate did indeed err in some of the

more substantial amounts which were in issue. It is evident that when he concluded his judgment by stating that the Appellant had claimed a sum of \$17,431.18, he erred in stating that there was no credit given by the Appellant for a payment of \$5,400 made in April 2019. The Appellant's position, which I hold as correct, was that he never received such a payment and there was no evidence that the Respondent ever paid such a sum to him, not least as it pre-dates the first billing which he provided. Further, it appears that the Magistrate did not fully appreciate that the contract, being one of cost and charge, could include all the work being carried out by the Appellant. That would not necessarily be physical work but also consultancy. The Appellant's evidence was that he spent 40 hours in total on advisory and exploratory work. The Magistrate did not find that this work had not been carried out but rather that the consultancy charges were not part of the contract. I am satisfied, and I so find, that a cost and charge contract for doing work does not exclude the possibility of consultancy work. The Magistrate was wrong to have excluded that as being a legitimate charge under the arrangement which the parties had. I find that the Appellant is entitled to the consultancy charges in the amount of \$2,000.

8. The Appellant complained further about the cost of items which he had paid for, and which the Respondent says he didn't, and that these amounts were not awarded to him. The Respondent says she had in fact paid for them herself. These amounted to \$1,727.69. Given the state of the evidence and there being no new evidence adduced in this court, I will not interfere with the finding of the Magistrate.
9. The Magistrate had also refused to allow interest on the outstanding sum which is a determination within his discretion to make. However, it would have been appropriate for the Magistrate to have expressed the basis on which his discretion was being exercised; he did not give any reason why he would not award costs to the successful party. His final ruling was that there would be judgment to the plaintiff in the amount of \$3,625.41 and no order as to costs. Given that there were no attorneys involved it is perhaps understandable about the 'no order as to costs' in relation to that judgment. The position as of today's date is that no payment has been made of that judgment sum of \$3,625.41 and the Respondent has had the benefit of that money since that date.
10. The other item in dispute on this appeal was the Magistrate's allowance of half the cost for the re-plastering of the bedroom ceiling which had to be rectified after it was initially plastered but there then was a partial collapse. He allocated the sum of \$875 for that which he stated was half the cost of the work. However, the Magistrate failed to realize from the evidence that the Appellant had already given the Respondent the benefit of an allowance of \$900, equating to half the cost of re-plastering the bedroom ceiling. For the purpose of this appeal, I consider it appropriate that that deduction be reversed. Based on the error of allowing credit for the payment of \$5,400, I hold that that sum should also be awarded to the Appellant.

11. My order in this matter is that the Respondent is to pay the Appellant the sums of \$2,000, \$5,400 and \$875 as recited above and that the judgment awarded to the Appellant by the Magistrate on 20 September 2023 be increased to include those sums. Accordingly, the Appellant is entitled to the sum of \$11,900.41. Interest is payable by the Respondent on that sum at the judgment rate of 3½ % from 20 September 2023 until the date of payment.
12. In relation to costs, I exercise my discretion and make no order to costs on the basis that the Appellant has not succeeded on every point and, in any event, both parties were unrepresented.

Dated this 25th June 2025



THE HON. MR. JEFFREY ELKINSON
ASSISTANT JUSTICE