

IN THE SUPREME COURT OF TONGA

CIVIL JURISDICTION

NUKU'ALOFA REGISTRY

C. NO.1146/98

BETWEEN : TALA'OFA LOTO'AHEA : **Plaintiff**

AND : PENI TU'ALAU : **Defendant**

BEFORE HON JUSTICE FINNIGAN

Counsel : Mr Fakahua for plaintiff, Defendant in person

Date of Hearing : 9 December 1999

Date of Judgment : 7 March 2000

JUDGMENT OF FINNIGAN, J

This is a judgment in a contested claim over the quantum of damages. The claim is for faulty construction of a residence. It was not defended and on 9 October 1998 I entered judgment for the plaintiff by default, reserving quantum as unliquidated damages for proof.

There was a hearing on 9 December 1999, after which I reserved judgment because of the volume of work at that time. I have been unable to keep a promise to hand down a judgment before the Court vacation commenced on 21 December, until now, for that same reason.

At the hearing, evidence was given by Tevita Lavemai, who was the plaintiff's architect, and by the plaintiff. They produced a technical report and photographs of the incomplete and inexpertly built house in question. They were both expertly cross-examined by the defendant, who appeared in person. The defendant gave no evidence and called no witnesses.

I am satisfied from the oral evidence and from the report and photographs that the building is structurally deficient. I accept that if completed in its present condition and at its present standard of construction it will continue to be what it is now, i.e. in a dangerous condition and probably unable to withstand a hurricane. I am satisfied that before any further progress is made, there must be remedial work to the concrete columns, the stairs, the framing and the wall cladding. The trusses and rafters need remedial nailing and more purlins are required.

After taking time to consider the evidence, I accept without hesitation that the cost of the remedial work will be what the architect has carefully

calculated, i.e. \$3165.01. I give judgment for that amount in the claim for special damages.

The plaintiff claims also general damages of \$5,000. I accept his evidence of the history of the building, and of his difficulties in having the defendant complete the work. I accept his evidence that he paid out to other workers the balance of what he had kept for the defendant, in order to have the building completed to a reasonable standard, but that the money ran out before the building was complete. I have no doubt that justice requires he should be compensated by damages for the mental anguish and physical discomfort of which he gave evidence. I also find he is entitled to some compensation from the defendant for the money he has to spend to bring the house up to the structural standard for which he contracted with the defendant. The claim for \$5,000 is reasonable in my view, and I allow it.

Judgment is entered for the plaintiff in the sums of \$3165.01 as special damages, and \$5,000 as general damages. Costs on this hearing and this part of the judgment are allowed to the plaintiff, which I fix at \$500.

NUKU'ALOFA, 7th March 2000



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JUDGE