

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO: ANUHCV 2009/0636

BETWEEN:

DEVON BROWN

Claimant

AND

NEIL WILLIAMS

Defendant

Appearances:

Charlesworth O.D. Brown for the Claimant
Ms. Nellisa Spencer for the Defendant

2011: March 7
May 30

JUDGMENT

INTRODUCTION

- [1] **REMY J.:** This claim arises in respect of a building contract entered into between the Claimant and the Defendant whereby the Defendant agreed to construct a dwelling house for the Claimant. The Claimant alleges that the Defendant repudiated the contract and he claims damages including special damages, interest and costs.

PLEADINGS

- [2] By Claim Form and Statement of Claim filed on the 26th October 2009, the Claimant avers that:-

- (a) By agreement dated 7th April 2008, (the Agreement) the Defendant, a building contractor, agreed to construct a dwelling house for the Claimant for the "fixed amount" of \$264,500.00. The agreement provided that the works would be completed by 15th October 2008.
- (b) On or about February 18th 2009, the Claimant made a routine site visit and discovered that the Defendant had removed virtually all of his equipment and tools from the said site. Further that a letter dated February 18th 2009 was left for him by the Defendant. That by the said letter, the Defendant alleged that the project had reached practical completion with a value that had surpassed the projected completion value by \$ 38,000.00 and advising the Claimant that the works would be discontinued.
- (c) By letter dated February 23rd 2009, the Claimant's Attorney wrote to the Defendant inviting him for discussions towards completion so as to achieve an amicable settlement.
- (d) The Defendant failed to acknowledge or respond to the letter, and to a further letter dated June 3rd 2009 and to complete the works.
- (e) As a result of the Defendant's conduct, the Claimant has suffered loss and damages in the sum of \$36,086.36.

[3] By Defence filed on the 16th December 2009, the Defendant denied that he had been paid the full contract sum save for the agreed retention fee of \$5000.00 as at the start of February, 2009.

[4] The Defendant pleaded that upon the execution of the Agreement, the Claimant and the Defendant agreed to a written stage payment schedule. He pleaded that the requirement that the payments would be made by the Claimant to the Defendant in a timely manner was a substantive term of the Agreement. Further, that in breach of the Agreement, the

Claimant failed to make the stage payments, and as a result, the Defendant was unable to purchase materials and provide labour to continue the works as required under the Agreement. He pleaded that as a result of the non payment of the stage payments, the Defendant was unable to obtain materials required for the timely completion of the Agreement, and to date had not been paid \$10,000.00 due under the Agreement by the Claimant.

[5] The Defendant further pleaded that as a result of the Claimant's breaches, he was entitled to, and did repudiate the Agreement and that as a result, that he is not indebted to the Claimant.

[6] In his Reply to the Defence, the Claimant pleaded that it was agreed between the parties that the stage payments would be released by the Bank of Nova Scotia on behalf of the Claimant upon certification by Engineer Wayne Martin that the works executed during the preceding stage was satisfactory. The Claimant also pleaded that the Defendant knew that any late or short payments were due to incomplete or unsatisfactory works as certified by Mr. Martin and/or administrative delay at the Bank.

EVIDENCE

THE CLAIMANT'S EVIDENCE

[7] In his Witness Statement, the Claimant stated that:-

(a) The Defendant and himself entered into an agreement for the construction of his dwelling house at the price of \$265,000.00 based on drawings prepared by the Defendant.

(b) Prior to receiving the first payment for the works, the Defendant delivered several lengths of steel to the job site (the site) and that soon after commencement of the construction works (the works), the Defendant informed him that there were changes in the price of some materials due to the oil crisis,

but "led him to believe" that he would make sure that the job was completed at the agreed price.

- (c) He visited the site regularly and from time to time, enquired of the Claimant whether "small changes could be made without increasing the cost of the project" and that they agreed that the Defendant would make provision for a cellar, a Jacuzzi and a smaller walk in closet, all within the stipulated budget. Further, that the Defendant agreed that these changes could be done at no additional cost provided that he (the Claimant) make sacrifices in other areas, but did not inform him of any additional costs for the agreed changes.
- (d) As the work progressed, he noticed that the Defendant often worked by himself and no longer had his usual team of three or four workmen. He became increasingly concerned when the bank paid only a fraction of the agreed installment because its engineer certified that either the preceding stage was not complete or that the value of the work done was less than the required value for the release of the particular stage payment.
- (e) The works fell increasingly behind schedule and the Defendant was obliged to work on at least two extra weekends in an effort to catch up. A further delay was caused due to the Defendant's absence when he traveled to Canada for a week during the construction of the roof. He spoke to the Defendant on several occasions about the delay and the insufficient value of the stage works as certified by the engineer, but that the Defendant refused to accept blame.
- (f) The Defendant caused a lot of wastage when he purchased more sheets of galvanize and lengths of steel than were required.
- (g) The Defendant often complained about the Bank's withholding of a portion of the stage payment as a result of which the Defendant and himself met with the Loans Officer and the Bank Manager. Following the meeting, it became clearer

to him that the Defendant needed help as he was doing all the work by himself. He offered to let his friend who is an electrician help the Defendant, but that the Defendant refused.

- (h) In October 2008, when the project was about 3 months behind schedule, the Defendant offered to pay his rent for an additional month and also promised to complete the house by December of that year.
- (i) The Defendant repeatedly complained about the "short payments" and often stated that he needed the money to pay his creditors. Further, that due to the fact that the Defendant often used some of the money from a particular stage to pay for debts he incurred earlier, this naturally left insufficient money for the actual work for a particular stage.
- (j) He decided to hold on to the final stage payment in the sum of \$8,000.00 less the bank's penalty fees in the sum of \$1,600.00 and used the balance of \$6,400.00 to purchase the required materials himself.
- (k) Sometime in February 2009, about 6 months after the completion date, all that was left was the retention fee of \$5000.00 which the Bank agreed to release early. The Defendant wanted him to pay that sum to him but that he refused as that was his "only leverage" to make the Defendant complete the works.
- (l) On the day following his conversation with the Defendant about the retention fee, the Claimant went to the site and discovered that the Defendant had left a letter and some of the keys on the kitchen counter for him. The letter advised that the Defendant had terminated the Agreement.
- (m) He was forced to hire other persons to assess the work done by the Defendant and to complete some of the unfinished work, remedy some of the Defendant's defective work, and estimated that his house was now about 90% complete.

- [8] By way of amplification of his Witness Statement, the Claimant testified that the work was to be done in three to four months "give or take", provided there was no bad weather. He stated that he was made aware of the additional costs claimed by the Defendant when he was shown the Witness Statement of the Defendant. He stated that he was not aware that the Defendant was using funds from a particular stage to meet the cost of materials acquired at an earlier stage.
- [9] Under cross-examination, the Claimant re-iterated that he was not aware that the Defendant was using monies from one stage to meet the cost of materials from an earlier stage. However, when confronted with his Witness Statement, he accepted that he did know that the Defendant was doing so. He testified that he accepted that there was more labour involved in making the changes he requested and that these changes meant an additional cost. However, that he did not know that the additional labour would have come at an additional cost and thought that "the Defendant and the men he employed would have done this work for free." He also re-iterated that the time frame for the works was three to four months, but when referred to the Agreement which he signed, admitted that the time frame was "at least" five months.
- [10] The Claimant agreed that the Defendant regularly complained to him about the short payments. He stated that he was aware that the Defendant had creditors, although he was not aware of the exact amount. He added that, although he was told that this was in respect of materials used in the house, that he did not think he should pay for these materials, even though they were already in his house.
- [11] The Claimant testified that the Defendant and himself had discussions as to the "sacrifices" which could be made to cut down on costs, but that he did not remember the ways which were suggested by the Defendant. Further, that he did not recall the Defendant saying that he (the Claimant) could forego doors on closets and vanities in order to save costs. He testified that, at the latter stage of construction, the plumbing

was his main concern, and that he told the Defendant that he wanted to ensure that the plumbing was done so that he could move into the house.

THE DEFENDANT'S EVIDENCE

[12] In his Witness Statement, the Defendant states that:-

- a. Sometime in January 2008, he entered into a written agreement with the Claimant to construct a house for him, based on plans which he had prepared for the Claimant, for a quoted price of \$264,500.00. The Claimant provided him with the mobilization sum and that construction works started in late May 2008 with a total of six persons working with him on the project. He stated that prior to receiving the mobilization fee and commencing construction, he purchased the first set of steel that would be needed for the foundation works with his own funds. He did so to ensure progression of the works and to try to get the materials at the cheapest price possible as he was aware that the price of materials had almost doubled as a result of the oil crisis.

- b. He continually kept the Claimant informed of any price increases for materials and tried to keep him abreast of the progress of the project as a whole. The Claimant made various requests for change of work throughout the project and did so almost from the start. At a later stage in the project, the Claimant requested the installation of a spa tub, as a result of which the plumbing work, which had been completed, had to be ripped up and redone. He indicated to the Claimant that if he (the Defendant) were to take the money from the draw for that stage to accommodate his change request, that the Claimant would have to sacrifice in other areas to help to keep the costs down. Further, he suggested that the Claimant may have to put off getting closet doors and other such ways which would not affect the habitability of the house. The Claimant agreed and the change was done as requested by the Claimant.

- c. The Claimant requested a further change for additional storage space over the hallway and that this was done and would have incurred further costs. The total costs of the changes requested by the Claimant, which included the cost of the cellar, the Jacuzzi and the concrete landing, inclusive of materials and labour, was approximately \$4,950.00.
- d. The Defendant stated that he told the Claimant that if as a result of the price increases they were not able to get completion, that the Claimant could approach the bank with a view to obtaining any further sum needed. He nevertheless made diligent efforts to keep the project within budget and that for some areas of the work, he would do the work himself instead of incurring labour costs.
- e. After Stage 2 of the project, they encountered a further hurdle in that the monies which were to be distributed by the bank were less than originally anticipated. Based on a formula used by the bank, even though the earlier stages were fully complete, the bank disbursed less money than the Defendant originally expected to receive for that stage of the project. As a result, the project was financially running behind somewhat. He stated that this put financial strain on the project, and that in order to compensate, he had to cut back on labour costs and reduced the number of workers at varying times. As a result, there was further pressure on the workers as they had to do the work of those persons whom he could not afford to pay.
- f. Around stage 5 of the project, they were covering the roof and in anticipation of getting a certain amount for the next draw, he purchased materials, mainly galvanize, "out of his pocket", to complete the covering of the roof but that the draw came \$10,000.00 less. After the roof was completed, they moved ahead into the next stage which involved, among other things, interior plastering and installation of windows. The Defendant stated that at this stage, because of the reduced funds and the heavier financial strain, he laid off most of his workers

and only one worker and himself completed all of the interior plastering. As a result of having only one worker on site, the amount of work which could be completed was reduced. He stated that he explained all of this to the Claimant and suggested to him that they approach the bank and ask them to vary the draw schedule.

- g. The Defendant stated that before the last draw, the Bank made an inspection and, satisfied as to the stage of the works and given the circumstance, of its own initiative, released the retention to the Claimant. He added that the Claimant indicated that he would hold on to the monies received and would purchase the materials needed for the exterior plumbing and any other bits he could manage to complete. He stated that the total cost of materials purchased by the Claimant himself was between \$900.00 and \$1000.00. According to the Defendant, the Claimant contacted the Bank and was informed that the bank had deducted approximately \$1600.00 for the payment of interest on the loan. The Defendant stated that he estimated that there should have been approximately \$5,500.00 still left in the Claimant's account which could have been used to further the works to a stage even closer to completion.
- h. The Defendant stated that when he left the project the only remaining work to be done as agreed between the Claimant and himself was to install cupboard doors, both in the kitchen and for the vanity in the bathrooms and the service door on the Jacuzzi. He contends that the \$5500.00 would have sufficed to cover the cost of the materials for the remaining work agreed between the Claimant and himself. The Defendant added that, after he realized that the Claimant had refused to deliver the \$5,500.00 to him in accordance with the contract, he wrote the Claimant and terminated the Agreement.

[13] By way of amplification of his Witness Statement, the Defendant denied that he caused a lot of wastage. He stated that the extra materials purchased amounted to two sheets of

galvanize and two lengths of half inch steel, purchased at a cost of about \$ 550.00, and that he left these items at the Claimant's house.

[14] Under cross-examination, the Defendant testified that the figure over which he terminated the Agreement was substantially the amount of the retention fee.

FINDINGS

[15] From the evidence in its totality, as well as the submissions of Counsel, I make the following findings of fact:-

- (a) The Agreement between the parties stipulated an "approximate commencement date" of May 15th 2008, and an "approximate completion date" of 15th October 2008. Accordingly, there is no basis for the Claimant's testimony that the Defendant actually agreed to complete the house within 3 to 4 months.
- (b) The changes made were at the request of the Claimant and were agreed upon by the parties. The Claimant himself admitted that all the changes would have required additional labour and costs, and that they would have necessitated more time to complete.
- (c) The Defendant tried to remain within his budget by reducing and cutting back on the amount of his workers and doing a lot of the work himself. This is admitted by the Claimant himself.
- (d) The "short payments" contributed to delay in the progress of the works. Again this is supported by the evidence of the Claimant.
- (e) The changes which were carried out at the Claimant's request were neither slight nor trivial. By the Claimant's own admission, the Defendant had to go deeper into the foundation to accommodate the cellar. With the change from a

regular tub to “the more luxurious jacuzzi tub”, the Defendant had already completed the plumbing for the regular tub and had to re-do the plumbing to accommodate the Jacuzzi. There was also the walk in closet and the additional storage area in the hallway. The Defendant’s delay in carrying out the works was therefore neither willful nor negligent, and in the circumstances, was not unreasonable.

(f) The Claimant agreed to make “sacrifices” so as to compensate for the changes he requested. This is supported by the evidence of the Claimant, notwithstanding the fact that he claims that he “could not recall” what these sacrifices were.

(g) The Defendant kept the Claimant informed of any price increases for materials purchased and that he kept him abreast of the progress of the project as a whole.

[16] On the whole, I prefer and accept the Defendant’s version of the facts over that of the Claimant. For instance, I accept the evidence of the Defendant with respect to the changes requested. The Claimant’s evidence as contained in his Witness Statement and under cross-examination was that the first of the changes which he requested was the walk in closet and that he requested the change for the cellar after the foundation stage. On the other hand, the Defendant, in his Witness Statement, states:-

“The Claimant made various requests for change of work throughout the project. In fact, almost from the start, changes were requested. Just shortly after we dug ground, the Claimant asked me to dig the lower end of the land much deeper, deep enough so that he could use it as a cellar. This of course took more time and materials and labour costs were higher for this aspect.”

[17] Under cross-examination, the Claimant rejected the suggestion of Counsel for the Defendant that the first of the changes was in respect of the cellar. The Claimant, however, accepted and conceded that his change request for the cellar would have involved changes to the foundation in that the Defendant would have had to dig deeper.

[18] It is therefore more logical, as submitted by Counsel for the Defendant that the first change request would have been for the cellar, since, as submitted by Counsel for the Defendant “the foundation is clearly the first stage of any construction project.” Further, even though the Claimant testified that the change to accommodate the cellar came after the Defendant had completed the foundation, he testified that the Defendant did not have to “rip up” some of the foundation.

ISSUES

[19] The issues for determination by the Court are as follows:-

- (1) Whether the Defendant lawfully terminated the Agreement between himself and the Claimant.
- (2) Whether the Claimant is entitled to the damages claimed.

[20] I will now deal with each of the issues in the light of my findings as above.

ISSUE # 1 – Whether the Defendant lawfully terminated the Agreement between himself and the Claimant.

[21] In his Defence, the Defendant pleads that the Claimant breached the Agreement by failing to make the stage payments as agreed, and that as a result of the said breach, he was entitled to, and did repudiate the Agreement.

[22] In order to arrive at a determination as to whether the Claimant was in breach of the Agreement as submitted by Counsel for the Defendant, it is necessary to peruse the relevant parts of the Agreement with respect to payment. These are contained in Article 5 thereof and read as follows:-

5.1 Payment are to be made by the Owner to the Contractor upon completion of every stage of work according to the construction draw schedule except for the first stage which is to be paid in full after the deposit and prior to commencement date.

5.2 If payment is not received by the Contractor within (14) business days after the request for payment for services satisfactorily completed, the Contractor shall have the right to stop construction management and supervision or terminate the contract at his option. Termination by the Contractor under the provision this paragraph shall not relieve the Owner of the obligations of payments to the Contractor for that part of the services performed prior to such termination. Termination by the Owner under the provisions of this paragraph shall not relieve the Owner of the obligations of payment to the Contractor for that part of the services performed prior to such termination.

[23] In his Defence, the Defendant pleaded that upon the execution of the Agreement, the parties agreed to a written stage payment schedule. This fact is not disputed by the Claimant. The Defendant further pleaded that the requirement that the payments outlined in the payment schedule would be made by the Claimant to the Defendant "in a timely manner was a substantive term of the said agreement."

[24] It is the submission of Counsel for the Defendant that:-

"Despite the repeated complaints of the Defendant, the Claimant continuously short paid the Defendant and on the final occasion the Claimant admits that he refused to hand over to the Defendant the last draw received from the Bank. It is on this basis that the Defendant lawfully terminated the Agreement."

[25] The termination letter (the letter) from the Defendant is hereby reproduced:-

"18/2/09

Mr. Devon Brown

Hodges Bay
St. George, Antigua

Dear Mr. Brown;

Owing to the following reasons work will be discontinued on your project indefinitely except and unless all funds remaining on the project account is paid in full.

I regret to have to take this position but due to the fact that I now have \$15,000.00 in credit to pay for materials directly used in your project, your project is at practical completion and your project has surpassed the projected completion value by \$38,000.00 I am forced to do nothing else but this discontinue as previously stated. This is a difficult decision but one that has to be made, contract notwithstanding.

Sincerely

(sgd)

A Neil Williams

Precision-Built Homes & Kitchens"

[26] At the time when the letter was written, the "funds remaining on the project account" were in effect, the retention fee. Under cross-examination, the Defendant testified that "the figure over which I terminated the Agreement was substantially the amount of the retention fee." He further re-iterated under re-examination that he "terminated the contract because the Claimant refused to give him the retention sum."

[27] As the Defendant himself testified under cross-examination, "retention is to be withheld by the Owner until sometime after completion" and "is normally withheld pending the discovery of any defects etc." He also testified that when he terminated the Agreement, there were outstanding works to be done.

[28] The Defendant's contention in the above letter that (a) he has \$15,000.00 in credit to pay for materials directly used in the Claimant's project and (b) that the project is at "practical

completion” and has “surpassed the projected completion value by \$38,000.00”, does not avail him of a reason or justification for terminating the Agreement.

The Defendant himself acknowledged in his letter to the Claimant dated 26th September 2008, that:-

“...This transaction is arranged under a “Fixed Contract Amount” which puts the burden of completion on my company irrespective of any budgetary concerns that may occur during this project...”

[29] In light of the above, my finding is that the Defendant, notwithstanding his best efforts to keep within budget, was not justified in terminating the Agreement for the reason which he stated in the above letter of 18th February 2009, namely that the Claimant did not pay him the retention fee. He therefore was in breach of the said Agreement. The conduct of the Defendant, by delivering the letter and the keys to the property to the Claimant, was such as to lead a reasonable person to believe that the Defendant did not intend, or was not able, to perform his contractual obligations. By his conduct, the Defendant evinced an intention no longer to be bound by the contract with the Claimant. Further, the Defendant’s failure to respond to the letter by the Claimant’s Attorney dated February 23rd 2009, inviting him for “discussions towards completion” (of the works) and an “overall amicable settlement” as well as to a further letter from the Claimant dated June 3rd 2009, illustrates not only that the Defendant did not take advantage of an opportunity to reach an amicable settlement, but provided further proof that the Defendant evinced an intention no longer to be bound by the contract. Accordingly, that the Defendant’s conduct was a repudiation of the contract which repudiation was accepted by the Claimant. His termination of the contract was therefore unlawful.

ISSUE # 2 – WHETHER THE CLAIMANT IS ENTITLED TO DAMAGES

[30] It is trite law that a breach of contract gives rise to an action for damages. The aim of an award of damages is to compensate the Claimant for the loss which he has suffered as a result of the Defendant’s breach. The normal basis for damages for breach of contract is

to put the innocent party in the position he would have been if the promise had not been broken. In the case at bar, damages will be assessed by the cost of getting the incomplete work completed and/or the defects corrected.

[31] In his Statement of Claim, the Claimant pleads loss and damage as follows:-

“ PARTICULARS OF LOSS AND DAMAGE

| | |
|------------------------------------------------------------------|-----------------|
| (a) For completing general interior and exterior works | \$ 22,156.36 |
| See attached Report of Geotech Company Ltd. dated April 23, 2009 | |
| (b) For completing general exterior works | 3,830.00 |
| See attached Estimate of Cardova Simon dated May 1, 2009 | |
| (c) For completion of electrical works | 6,600.00 |
| See attached Assessment of Carlton Samuel dated April 23, 2009 | |
| See attached Assessment of Stevenson Simon dated April 14, 2009 | |
| (d) Rental accommodation: 5 months @ \$700.00 | 3,500.00 |
| | ----- |
| Total | \$ 36,086.36. ” |

[32] The evidence of the Defendant himself is that when he terminated the Agreement, “there was outstanding work to be done.” In his Witness Statement, the Defendant stated, at paragraph 41:-

“The only remaining work, as agreed between myself and Mr. Brown, when I left the project was to install cupboard doors, both in the kitchen and for the vanity in the bathrooms and the service door on the Jacuzzi. The electric work also had to be covered and an issue with one conduit to be rectified. The sheetrock in the ceiling of the master bedroom closet was also to be installed. The tiling of not more than a quarter of the gallery was also left to be tiled, but the tiles for this had already been purchased.”

[33] Counsel for the Defendant in her submissions, invites the Court to accept the Defendant's "clear evidence" that the Claimant accepted his suggestions with respect to the "sacrifices" to be made in order to keep the costs down and that the suggestions included:-

- (a) not fitting doors for closets and cupboards
- (b) not fitting doors for vanities
- (c) foregoing painting.

[34] Counsel further submits that "despite having accepted that he agreed to make certain "sacrifices" and to this extent varied the agreement with the Defendant, the Claimant is still claiming sums for these items".

[35] As stated in paragraph 15 (e) above, I find that the Claimant agreed to make sacrifices so as to compensate for the changes which he requested. I also accept the evidence of the Defendant as to the suggestions which he made with respect to the sacrifices, which include, as mentioned in paragraph 33 above, (a) not fitting doors for closets and cupboards, (b) not fitting doors for vanities, (c) foregoing painting. However, since the Defendant has not provided any evidence as to the costing for the above items, the Court is unable to deduct any sum or sums for these items from the amount claimed by the Claimant by way of damages.

[36] The Claimant is claiming damages in the sum of \$36,086.36 in respect of items (a), (b), (c), and (d) in paragraph 31 above."

[37] (i) Item (a) states:-

"For completing general interior and exterior works \$ 22,156.36
See attached Report of Geotech Company Ltd. dated April 23, 2009"

The Report is in the form of a letter headed "Report Re: Completion assessment for dwelling house at Golden Grove New Extension" and purports to be "an assessment of the outstanding contractual works and the attendant costs required to achieve the

completion of the project." It goes on to give a breakdown of (a) Interior Works and (b) Exterior Works. At the trial, the Claimant testified that the work shown on that estimate was not done.

(ii) Item (b) states:-

"For completing general exterior works \$ 3,830.00
See attached Estimate of Cardova Simon dated May 1, 2009"

The "estimate" from Mr. Simon is in fact a letter which states, among other things that:-
"What I saw when I arrive at the house I was very disappointed as a building contractor to see the amount of unfinished work leave there by the contractor. However, I was able to work on a few things so that they can move into their house."

The letter goes on to list "the few things" which Mr. Simon states he was "able to work on", and that the "total cost for construction and transportation" is \$3,830.00. At the trial, the Claimant testified that the work stated in the above "estimate" was done and paid for by him.

The Court notes that both items (a) and (b) deal with completion of "exterior works". There seems to be no logical explanation for two such estimates. Since the Claimant testified that he paid for the work done in item (b) above, that amount, namely, \$ 3,830.00, will be deducted from the amount stated in item (a) above.

(iii) Item (c) states:-

"For completion of electrical works \$ 6,600.00
See attached Assessment of Carlton Samuel dated April 23, 2009
See attached Assessment of Stevenson Simon dated April 14, 2009"

The Court notes that the Assessment of Carlton Samuel gives an estimate of E.C. \$2,800.00, while what is headed "Estimate" of Stevenson Simon has nothing to do with electrical work."

[38] I find therefore, that the only sums to which the Claimant is entitled for "completing the works" and "curing the defects" are (i) \$ 18,326.36 with respect to items (a) and (b); and (ii) \$ 2,800.00 with respect to item (c), making a total of \$21,126.36.

[39] Item (d)

The Claimant claims special damages of \$3500.00 for accommodation, representing 5 months rent at the rate of \$700.00 per month. However, since the Claimant has provided

no documentary proof or other testimony that he paid a landlord \$700.00 monthly totalling \$3500.00, he will not be allowed to recover this sum. The law is clear that special damages must not only be "claimed specially" but must be "proved strictly".

CONCLUSION

[40] In all the circumstances, I find that the Claimant has proved, on a balance of probabilities, that the Defendant breached the Agreement between them, and I give judgment accordingly. The Claimant is awarded general damages in the sum of \$21,126.36. However, from that sum is to be deducted the retention fee in the amount of \$5,290.00 which amount was disbursed to the Claimant by the bank, but was not paid to the Defendant. I therefore will enter judgment for the Claimant against the Defendant in the sum of \$15,836.36 (E.C)

ORDER

[41] My Order is as follows:-

1. Judgment is hereby entered for the Claimant against the Defendant on the claim.
2. The Defendant shall pay to the Claimant.
 - (a) The sum of \$ 15,836.36 (E.C)
 - (b) Interest on the above amount at the rate of 5% per annum from 9th November 2009 (the date of filing the claim form) to the 30th May 2011 (the date of judgment).
 - (c) Costs will be Prescribed Costs in accordance with Part 65.5 of the Eastern Caribbean Supreme Court Rules (CPR) 2000.


JENNIFER REMY
High Court Judge