

**IN THE EASTERN CARIBBEAN SUPREME COURT
THE HIGH COURT OF JUSTICE
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT
(CIVIL)**

CLAIM NO. SKBHCV2009/0325

BETWEEN:

SYBIL CARTER

Claimant

AND

KEVIN HORSTWOOD

AND

CARIBBEAN BUILDING SYSTEMS (ST KITTS) LIMITED

Defendants

Appearances:

Mr Dennis Merchant *for the Claimant*

Mr Kevin Horstwood in person and on behalf of the Second Defendant

2012: 03rd July;
24th August.

ASSESSMENT OF DAMAGES

Introduction

- [1] **LANNS, M:** This is an assessment of damages in a claim for damages for breach of contract for sale and purchase of two lots of land at Rawlins Plantation in the Island of St Kitts. The Defendants failed to acknowledge service or file a Defence within the time limited by the Rules of Court. Consequently, Judgment in default was entered against them on 9th March 2011 for damages to be assessed. In earlier proceedings, the Defendants had applied unsuccessfully to set aside the default judgment and to remove the First Defendant as a party to the action.
- [2] The Claimant seemed to have abandoned the reliefs sought in paragraphs 1 to 3 of the Particulars of Claim, so this assessment is only concerned with the alternative reliefs sought in paragraph 4 of the Particulars of Claim, namely, the recovery of £89,350.00, legal fees, breach of contract, interest and costs.

- [3] At this juncture, I feel duty bound to say that the Claimant has placed before the court bundles of documents being several copies of affidavits, receipts and invoices for expenditure claimed in connection with the Defendants' breach of contract and brief submissions. There are several flaws in the presentation of these documents, the main flaw being that the documents are not properly explained, marked or referenced, leaving the court with the difficulty of searching through them to make the connecting link to the pleadings, the affidavit evidence, the documentary evidence, to determine the reasonableness or otherwise of the claims. Although the court expressed dissatisfaction with the way in which the documents to support the assessment were presented, and although the court indicated that it needed time to consider the assessment, the Claimant remarked that she had no idea that she was not going to have the judgment on the assessment of damages right away. Counsel simply apologized stating that some of his clients are very difficult. It was quite obvious.

Special damages

- [4] It is the law that special damages must be strictly pleaded and proved.
- [5] Upon considering the evidence, and submissions in support of the assessment; I am satisfied, based on the evidence that the Claimant has pleaded, proved and is entitled to special damages in the sum of \$369,300.00 made up as follows:
- | | | |
|----|---|----------------------------|
| a) | Refund of monies paid for purchase of Lots 26 and 30
at Rawlins Plantation | £89,350.00 or \$377,450.00 |
| b) | Legal fees | \$10,515.00 |
| c) | Disbursements | |
| | i) Bailiff fees | \$600.00 |
| | ii) Calvin Esdaille | \$700.00 |
| | iii) Searches | \$ 31.00 |
| | iv) Photocopying | <u>\$ 54.00</u> |
| | | \$1385.00 |
| | | <u>\$1,385.00</u> |
| | Total | \$389,350.00 |

- [6] The claims made in paragraphs 4 to 7 of the Affidavit of the Claimant sworn to and filed on 28th June 2012 have not been pleaded and are therefore disallowed.

General damages

- [7] I have no doubt that the Claimant had been put to great inconvenience and has suffered non pecuniary loss as a direct consequence of the breach of contract. I assess that loss at \$5000.00.

Interest

- [8] CPR 8.6(4) provides that a Claimant who is seeking interest must say so expressly in the Claim Form and must include in the Claim Form or statement of claim details of the basis of entitlement, rate and period for which it is claimed. The Claimant has run afoul of this rule and thus, she is only entitled to post judgment interest.

Costs

- [9] The Claimant is entitled to 65% of the prescribed costs in accordance with CPR 65.5, Appendix B as amended, and Appendix C.

The Order

- [10] 1. The Defendants, jointly and or severally do pay or cause to be paid to the Claimant special damages in the Sum of EC\$389,350.00.
2. The Defendants jointly and or severally do pay or cause to be paid to the Claimant general damages in the sum of \$5,000.00.
3. The Defendants jointly and or severally do pay or cause to be paid to the Claimant interest at the rate of five per cent per annum from the date of delivery of this Judgment to the date of final payment.
4. The Defendnats do jointly or severally pay or cause to be paid to the Claimant 60% of prescribed costs in accordance with CPR 65.5 Appendices B as amended and Appendix C.
5. This judgment attracts statutory interest at the rate of five per cent per annum from the date of delivery of this judgment to the date of final payment.

PEARLETTA E. LANNIS
Master