THE EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCV2011/0196

BETWEEN:

DEVELOPMENT BANK OF ST. KITTS-NEVIS

Claimant

and

MERVYN RICHARDSON

Defendant

Appearances:

Mr Jason Hamilton of Hamilton & Co for the Claimant
Ms Maurisha A Robinson of Daniel, Brantley and Associates for the Defendant

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2012: July 26
2012: October 17

JUDGMENT

[1] THOMAS, J.[Ag]: On 7th July 2011 the Claimant, Development Bank of St. Kitts-Nevis filed a claim form seeking $85,570.84 and interest of the said sum in the amount of $1144.07 plus further interest from the date of the claim at the daily rate of $18.76.

[2] Essentially, the Claimant's pleaded case is that Kevin M. Jeffers was its customer and there was an agreement dated 9th December, 1999 for a loan of $30,398.00 to the said Kevin M. Jeffers. The loan carried an interest rate of 9% per annum and repayments were to be in the monthly sum of $445.34 commencing 15th December 2000, and continuing until the debt was extinguished.

[3] It is the further contention of the Claimant that the Defendant, Mervyn Richardson, agreed to act as guarantor under the terms of said agreement.

[4] At paragraphs 7 to 10 of the Statement of Claim the following is pleaded:

> "7. Contrary to the terms of the loan agreement Kevin Jeffers and/or the Defendant failed to make monthly payments as agreed the last such

payment having been made on or about the 14th April 2010 in the amount of $672.05.

8. Since the issuance of the said loan and during the currency of the period for the repayment the Mr Jeffers and the named Defendant failed to make monthly payments as agreed and as such the total amount loaned together with interest and other charges became due and payable under and pursuant to the terms of the said loan agreement and the Defendants' total indebtedness now stands in the sum of $85,570.84.
9. It was an express term of the said contract that the loan amount together with the interest and other bank charges would be repayable upon demand should the Defendants default in payment of any installment under the said loan agreement.
10. By letter dated 27th September 2010 written by the Claimant Company's Solicitors and addressed to the Defendants, the Claimant demanded payment of the said sum but the Defendants have failed to pay the sum outstanding or any part thereof.

Defence

[5] The Defendant, in his defence admits to the contract in issue but joins issue with the Claimant with respect to certain terms of the contract as pleaded by the Claimant.

[6] In reference to paragraph 5 of the Statement of Claim, while the advance of $30,398.00 is admitted the Defendant deems that the repayment terms included 'other transaction costs and/or bank charges' on a monthly basis.

[7] As regards to paragraph 8 of the Statement of Claim the Defendant denies that he failed to make monthly repayments as agreed but contends that the Claimants' action indicated and confirmed that Mr Kevin Jeffers had the primary responsibility of repaying the loan. However, as one of the guarantors he had the responsibility to monitor the debt.

[8] Also in reference to paragraph 8 of the Statement of Claim the Defendant denies that he is responsible for any late fee charges and as a consequence makes no admission to the loan balance and accumulation balance interest.

[9] At paragraph 9 of his defence the following is pleaded:

"9. The Defendant denies paragraph 9 of the Statement of Claim and avers that there was no express provision for any other bank charges except for the annual interest rate of 9%. Accordingly, the contract (at paragraph 2 on page 3) stated that in any case of any of the said monthly payments of

> principal and interest shall for any cause whatsoever not be paid upon the dates hereinafter mentioned for such respective payments, the said obligators shall upon demand pay to the said oblige the whole balance then remaining upon the said sum of Thirty Thousand three hundred and ninety eight dollars East Caribbean Currency with all interest accrued thereon".

[10] On the matter of the letter dated 27th September 2010, the Defendant avers that it was not only a copy of that letter was sent to him and that it was the principal beneficiary to whom the letter was sent demanding settlement of the outstanding debt. The Defendant's further contention is that the failure of the Claimant to prosecute its claim immediately upon default constitutes a breach of the bond which make the Claimant's action prejudicial to him.

Evidence

Kristyl Bristol

[11] Kristyl Bristol in her witness statement says that she is a Credit Risk Management Officer at the Claimant Bank.

[12] In the said witness statement the witness details the history of the loan agreement the Claimant and the Defendant whereby the Claimant agreed to loan Kevin Jeffers the sum of $30,398.00. Mention is made of some of the terms of the agreement regarding repayment and the failure of Kevin Jeffers to repay is agreed and the consequential correspondence with the said Kevin Jeffers and copied to the Defendant.

[13] According to the witness, correspondence to the said Kevin Jeffers concerning the failure to honour the obligations under the agreement were dated 23rd April, 2003, [1]November 2004, and 27th September, 2010.

[14] In cross examination Kristyl Bristol testified that not all correspondence from the Development Bank are on letter head. She further testified that loan recipients are required to bring in their transcripts; but that while the Bank may not have a copy of the certificate, she was also not certain that he brought in transcripts.

[1] The latter Exhibit KB is undated the letter makes reference to "our loan records as at 23 Nov 04 indicate …

[15] The witness in further cross-examination conceded that late fees are not mentioned in the bond and she went on to explain that such fees are calculated on the arrears but the amount is not added to the principal on interest.

Mervyn Richardson

[16] In his witness statement Mervyn Richardson recites the events pertaining to the loan to Kevin Jeffers on 9th August 1999, and the fact that Eustace Hendrickson and himself agreed to be guarantors on the said loan. According to the witness Hendrickson and himself were informed by the bank that in the event of default by Kevin Jeffers they would be immediately notified and a demand made on Kevin Jeffers to make the outstanding payments.

[17] It is the Defendant's evidence that: "Upon entering into the Agreement no discussions were had about any late fees or bank charges neither was there any clause included in the Agreement to this effect".

[18] At paragraphs 15 and 16 of his witness statement the evidence is this:

> "15. Based on my review of the correspondence and the history of the loan account, the loan was in default for approximately seven (7) years prior to the Bank demanding payment of the full balance and in contravention of the Agreement. The Bank failed to act promptly furthermore, it continuously gave Mr Jeffers extensions of time without my knowledge and or approval.
>
> 16. In the circumstances, I am of the view that I should not be found liable to pay the sum of $85,570.84 and other relief including costs being claimed by the Bank as it acted negligently in the course of carrying out its contractual duties and obligations; and they sought to vary the terms of the agreement unilaterally by granting extensions of time to Mr Jeffers without my knowledge as well as including late fees and/or bank charges which were never part of the original agreement".

Amplification

[19] Pursuant to an order of the Court, there being no objections by learned counsel for the Claimant, the Defendant was permitted to amplify paragraph 12 of his witness statement. In this regard the Defendant testified that he received correspondence after he engaged the services of Daniel Brantley and Associates in 2010.

[20] In cross examination Richardson said that the bank has an obligation to inform him when the loan is in arrears and that such a requirement is not contained in the bond. This is his further testimony:

> "In my witness statement I said it was told to me. I read the agreement before I signed and I noticed the clause was not in it. As a guarantor when I signed the bond there were certain obligations on both parties – myself and the bank. It is not in the bond. In my defence certain obligations are not there but I did not ask for them to be put in".

[21] In further cross examination Richardson said that he understood the agreement he signed and the said agreement did not contain a requirement that he should be notified in writing.

[22] With respect to the issue of the money in issue the Defendant's evidence in cross examination is this:

> "I do not feel I owe the money at all in the face of the agreement coupled with the time span. The agreement does not speak directly but implies certain undertakings. The way I was treated is not part of the contract. It gave me the right to vitiate the contract".

[23] After admitting the receipt of certain correspondence from the Bank, including one which was copied to him in 2010, the witness said he did not make any payment. He however went on to testify that if he had received correspondence "earlier" he would have made arrangements.

[24] The Defendant ended his cross examination in this way:

> "The loan was not repaid. There was no obligation on the Bank to notify me of action as per the agreement. The Bank had obligation to inform me of the demand. The sum has not been repaid".

[25] There was no re-examination of Mervyn Richardson.

ISSUES

[26] The issues for determination are

1. Whether there was a variation of the agreement
2. Whether the Defendant is liable for all the sums claimed by the Claimant.

The Bond

[27] Central to the issues is a bond executed by Kevin McKenzie Jeffers ('the first named obligor") Eustace Hendrickson and Mervyn Richardson (the second named obligors) and the Development Bank of Saint Kitts and Nevis ("the obligee").

[28] After naming the obligors the bond goes on to provide that [we] "acknowledge ourselves jointly and severally bound to the Development Bank of Saint Kitts and Nevis… the obligee… in the sum of thirty thousand three hundred and ninety-eight dollars ($30,398.00) East Caribbean Currency inclusive of interest up until repayment commences.

[29] Two circumstances are given which would render the bond void. They are:

1. In case the above mentioned obligors or any of them shall pay to the said obligee the sum of thirty thousand three hundred and ninety-eight dollars ($30,398.00) East Caribbean Currency inclusive of interest up until repayment commences and thereafter interest is payable on the amount aforesaid at the rate of nine (9) per centum per annum by monthly installments of four hundred and forty-five dollars and thirty-four cents ($445.34) East Caribbean Currency which payments include interest at the rate aforesaid the first of such payments to be made on the 15th day of December 2000 and subsequently payments on the 15th day each and every ensuing month until the said sum of thirty thousand three hundred and ninety eight dollars ($30,398.00) East Caribbean Currency with interest be fully paid.
2. In case of the said monthly payment of principal and interest shall for any cause whatsoever not be paid upon the days hereinbefore mentioned for such respective payments, the said obligors shall upon demand pay to the said obligee the whole balance then remaining upon the said sum of thirty thousand three hundred and ninety-eight dollars east Caribbean Currency with all interest accrued thereon".

ISSUE NO. 1

Whether there was a variation of the agreement

[30] On this issue it is submitted on behalf of the Defendant[2] that the agreement was varied by:

(a) Granting extensions of time to the principal debtor to pay;

(b) Failing to make demands upon the obligors in accordance with the agreement;

(c) Electing not to demand the full sum (principal and interest) once there was default;

Extensions of time

[31] In relation to extensions of time reference is made to various letters produced by the Claimant and the assertion that they were sent to Kevin Jeffers and copied to the Defendant.

[32] Specifically reference is made to two letters. One is dated April 23, 2003[3] and another which is undated, but it makes reference to the Bank's records as of 23rd November 2004[4].

[33] What the Defendant extracts from these letters is the time which elapsed after the default occurred, which according to the Defendant is 47 months.

[34] The Defendant's conclusion on this aspect of the issue is this: "the Defendant's evidence is that he never received this letter; neither was he aware of or consented to the grant of extension of time. Again, for him this letter constituted a variation in the loan agreement. As it made no provision for the granting of time to pay up the arrears and neither did the Claimant reserve a right under the loan agreement to take such action".

No demands made on the Defendant to pay

[35] In relation to this sub-issue the Defendant makes the submission that if the two letters were sent out they show that no demand was made on the Defendant and other obligor to pay up the whole balance with interest in accordance with the agreement. Reliance is also placed on the following learning from Halsbury's Laws of England[5]

> "A guarantor is discharged if the creditor, without his consent and without expressly reserving his rights against the guarantor enters into a binding agreement with the principal debtor to give him time to perform the principal obligation. Different reasons given by different judges may be found for this principle. The main reason

[2] There were no submissions on this issue by the Claimant
[3] Trial Bundle page 29
[4] Ibid at page 30
[5] 4th Edition, Vol. 20 para. 314

> is usually stated to be that the guarantor's right at any time to require the creditor to call upon the principal debtor to pay off the guaranteed debt for himself to pay the debt and after paying it to sue the principal debtor in the name of the creditor is thereby interfered with ….Under this principle the guarantor is released whether or not he is prejudiced by the giving of time".

[36] Reliance is also placed on the case of NG-A-YOW v Mendonca[6] which concerns a contract guarantee which required notice in writing in the event of any default by the debtor. This case will be analyzed in the reasoning.

Reasoning

[37] A variation of a contract occurs when the parties modify or alter the terms of the contract by mutual agreement. As such a mere unilateral notification by one party to the other in the absence of agreement cannot constitute a variation of a contract[7].

[38] In this case the alleged variation concerns the failure by the Claimant to demand the loan and thereby extending or varying the time for repayment. The Defendant's conclusion is this:

> "18. The loan agreement before the Court specifically stipulates that 'in case of the said monthly payments of principal and interest shall for any cause whatsoever not be paid upon the days hereinbefore mentioned for such respective payments, the said obligors shall upon demand' pay up principal and interest due thereon. It is to be inferred that the Claimant ought to have notified the guarantor once there has been a default and also demand [of the guarantors] that payment of full sum including interest be paid. Furthermore, it is clearly stated that the loan agreement became void if any monthly payment is not made. Therefore, like any contract, once a breach occurs the contract becomes voidable, in this case it is expressly stated that the contract would be void. Therefore, the Claimant did not have the option of accepting the breach and continuing as if no breach had occurred; rather, the contract was to be treated as at an end as of the 16th December 2000 when the monthly payment was not made. The Claimant should have taken necessary steps to recover the principal together with the interest accumulated as at the date. However, the Claimant decided unilaterally to indulge and or extend time to the principal debtor which, essentially resulted in a variance of the loan agreement and such actions were without the knowledge and assent of the Defendant. Therefore, in accordance with the legal principles and supporting authorities, the Defendant ought to be released from liability".

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[6] [1962] 4 WIR 443

[7] Chitty on Contracts – General Principles (25th ed), at para. 1489

[39] Essentially, the Defendant is saying that when one the events stipulated in the contract occurred which would render the contract void, the Claimant in the absence of an agreement between the parties had no choice. And the end result was a unilateral variation of the contract.

[40] The Defendant has sought to rely on the case of NG-A-YOW v Mendonca[8] which turned on an express term in an agreement requiring the creditors to notify the guarantor in writing of any default on the part of the debtor. Upon such notice the guarantors would be required to make the payments due within a specified time.

[41] In the event of the default there was no compliance with the terms of the agreement and the debtor was given extended time to pay the debt.

[42] On appeal, however, the Court held that the original contract between the respondent and the debtor had been materially varied to the prejudice of the appellant when the respondent allowed the debtor time for repayment and as such the respondent was released from liability.

[43] Mr Justice Archer reasoned in part that:

> "Not only did the extension result in the debtor's liability to pay in lump sum what he had originally contracted to pay in installments but in an increase in the amount due under the original agreement. This was completely at variance with the arrangement for payments which the appellant had guaranteed and moreover, would of binding upon her have had the effect of exposing her to an increased liability…[9]"

[44] The express requirements of the agreement for notification in writing to the guarantor renders at distinguishable from the terms of the agreement an issue as there is no such requirement. In fact in cross examination the Defendant did make this concession the subject to what is said below, the contract was rendered void by virtue of the unilateral variation.

[45] The Defendant's contention of a unilateral variation of the agreement flies in the face of a letter written to the Bank on his behalf dated[10] 14th January 2009[11]. It states in part that:

> "Our client has received notification from your institution on January 01, 2009 which reflected the balance of #30,420.00ECD, late fees of $16,700XCD and

[8] [1962] 8 WIR 443
[9] Ibid at 448

> interest of $22,000.00 totaling $67,120.00XCD as being the current amount outstanding.
> Our Client is willing to have this matter resolved. To this end he is asking that all late fee and interest be waived and that he be allowed a reasonable time to repay the principal amount of $30,420.67XCD.
> We are of the view that the onus was on your institution to have contacted our client at a much earlier stage as opposed to the notification he received almost seven years after the loan went into delinquency. If our client was notified earlier, these outstanding fees would not have accrued at the rate they did.
> We look forward to meeting with you or your legal representative at the earliest convenient time to bring this matter to a favourable conclusion".

[46] The point which the foregoing raises is that the Defendant is, on the one hand, seeking relief from interest on the loan which he acknowledged he co-signed, and also a reasonable time to pay the amount due less the relief sought. On the other hand, the Defendant in his defence challenges the extended time given to the principal debtor and construed such action as a variation of the contract.

[47] By letter dated January 21, 2009 the Claimant through its acting manager in Nevis, responded to the Defendant's attorneys in these terms, as material, by referring to the letter of the 14th January 2009 and continued thus:

> "The Development Bank reviewed your correspondence carefully and while it is within our policy to write reminders to our clients, we remind you that as a guarantor, Mr Richardson has a responsibility to monitor any debt on which he is recorded, be it direct of contingent. Please be advised that the Bank cannot accede to your proposal for forgiveness of all late fees and interest on the loan. Rather, the Development Bank is prepared to forgive 100% of the EC$17,523.89 late fees as well as 50% of the EC$22,062.89 interest outstanding as at January, 2009 on the loan to Kevin Jeffers. The total amount forgiven will be EC$28,555.33.The principal balance of EC$30,413.46 plus EC$11,031.44 of the outstanding interest must be paid in full to the Bank in six (6) months or before the 31st July, 2009. Is this amount is not repaid by the date specified in this letter the proposal is automatically withdrawn. Notwithstanding the above, the loan would continue to accrue interest at the rate of EC$7.50 per diem on the principal balance".

[48] There is no evidence that the Defendant acted on the proposal by the Claimant. However, that does show that as early as April 2003 the Claimant wrote to Jeffers which was copied to the Defendant. But the Defendant in cross-examination testified that he never received such a copy. On the other hand, Kristol Bristol for the Claimant testified that in this connection that once it was

cc the guarantors would be sent a copy. The Claimant's witness in cross examination the fact that the letter was not on the Bank's letter head and related matters in this way: "Not all correspondence is on the Bank's letter head. In the case of a reminded which is to a loan beneficiary, this is not on letter head. They are sent by regular mail if local. The Bank does not check unless they are sent back by the post office".

[49] In all the circumstances the Court accepts Kristol Bristol's evidence and draws a reasonable inference that the Defendant did receive a copy of the said letter. This letter in the Court's view would have answer the Defendant's contention in the letter of 14 January 2009 that the Claimant should have acted earlier.

Conclusion

[50] It will be recalled that there is a rule[12] that guarantor is discharged of the creditor, without his consent and without expressly receiving his right against the guarantor enters into a binding agreement with the principal debtor to give him time to pay. In this regard the Court find that there was no binding agreement to this effect between the principal debtor and the Claimant. In fact the request from the debtor for an extension of time came in his letter dated 15th August 2011after the Claimant filed the claim form and 7th July 2011.

[51] The Defendant in his submissions concedes that no time is specified in paragraph 6 of the agreement as to when the demand must be made by the Claimant. The further concession that the demand must be made within a reasonable time. In this regard the rule is that what is reasonable depends on the circumstances. These are to be deduced from the debtor said in his letter to the Claimant and the commencement of the demand by the Claimant in 2003. It is not a case the Claimant sleeping on its rights. And the Defendant's request for relief in 2009 must also be brought into the equation.

[52] As a factor in the circumstances of the case, the letter from the principal debtor is of some import. The letter is dated 15th August 2011 to the attorneys for the Claimant, explained his default by way of a response to a letter dated 27th September 2011[13]. It read in part as follows:

[12] 20 Halsbury's Laws (4th ed) para. 314
[13] Trial Bundle p. 61

"I acknowledge and understand that as a principal beneficiary to that loan I have failed to make regular and required payments towards the loan. However, this was not meant as a lack of respect to the Bank in any way but was due primarily to the fact that:

(a) I have been laid off by two different companies over the past 24 months.
(b) Lack of income has forced me to liquidate any asset of value.
(c) The lack of income has resulted in an accumulation of bills which has adversely affected my credit.
(d) The current economic climate necessitates employment at a significantly less rate of compensation as before.

Having realized that I was in default with my payments I contacted the Bank (via telephone or email) on several occasions wherein I spoke with Ms Laprisia Liburd and explained my financial position and further indicated that as soon as I found employment I would attempt to secure a loan to satisfy the debt in full. I further explained that due to my low credit rating at the time I had to improve prior to securing the loan.

Currently I am employed and in the process of attempting to secure a loan to repay the said loan. However in the interim I propose to make monthly payments of US$300.00/EC$805 per month.

I sincerely appreciate the Bank's patience and hope that it will be able to accede to my humble request thereby halting its claim against Mr. Richardson".

[53] The Court determines that the overriding consideration must be the fact that the Defendant sought relief from interest and charges in 2009 after the initial default of which he was long aware. And then when the claim was filed in his defence he seeks to argue that there was a variation of the contract. The rule is that one cannot approbate and reprobate all at the same time.

[54] It is therefore the conclusion of the Court that there was no variation of the agreement because:

(a) there was an absence of a binding agreement between the Claimant and the principle debtor to delay the payment due by virtue of a default;

(b) no time is specified in the bond as to when the demand must be made in the event of a default; and as such reasonableness must prevail; and in all the circumstances the demand made in the letter dated 27th September 2010 is reasonable;

(c) the action of the Defendant in seeking relief from interest on the loan and late fee charges in the midst of the default coupled with the Defendant's pleading in his defence regarding the variation of the contract means that the Defendant is approbating and reprobating at the same time.

ISSUE NO. 2

Whether the Defendant is liable for all the sums claimed by the Claimant

[55] This issue falls within a very narrow radius since the Claimant's pleadings in relation to the existence of a contract are not disputed by the Defendant. On top of that the issues taken by the Defendant have already been addressed in the main.

Submissions

[56] Learned counsel for the Claimants advances the following:

1. A valid and existing agreement between the Claimant and the Defendant.
2. That the Defendant was jointly and severally indebted to the Claimant for the sums loaned and interest thereon as per the terms of the said agreement and was equally liable for the payment of the sums loaned together with interest thereon.
3. That the Defendant was an obligor under the agreement and was responsible for the payment of the sums loaned together with interest thereon at the rate specified in the agreement.
4. And in the event of a default by the parties to the said agreement the obligors upon demand were responsible for the payment of the entire loan sum together with interest thereon.

[57] The submissions ended thus: "No aspect of the Claimant's evidence was in any way diminished through cross-examination and the fundamental aspects of the Claimant's case for the most part was not controverted.

[58] In submission on the Defendant's case this is main focus: "The Defendant asserted his liability was non-existent based on the negligence of the Claimant but failed to show that there was negligence in fact and now it operated to extinguish his liability".

[59] In conclusion the following is submitted:

> "Based on the pleadings and the evidence that that the Defendant failed to undermine any aspect of the Claimant's case save and except the issue of late fees whilst the Claimant was able to establish every aspect of his claim in contract. As such judgment should be granted to the Claimant for the principal sum loaned

of $30,398.46 and interest accrued thereon at the rate of 9% per annum together with costs".

[60] The Defendant does not advance any submission on this issue and the main thrust of the submissions concern the grant of the extensions to the principal debtor. It is also submitted that the Claimant unlawfully superimposed late fee charges into the claim and acting negligently in the course of carrying out its contractual obligation and duties by failing to swiftly take actions against the Defendant to recover the loan.

Reasoning

[61] The Defendant case rest primarily on the variation of the contract, denial of failure to pay the debt as agreed, the basis of late fee charges and other bank charges and failure to mitigate loss/negligence in pursuing the claim promptly.

[62] For the most part the issues have already been addressed and found to be without merit. This relates to the question of variation of the contract and the terms of the contract which made all the obligators jointly and severally liable for the loan. This was admitted by the Defendant in his defence.

[63] In relation to the matter of the late fee charges and other bank charges, other than interest, the Court agrees that there is no provision in the agreement for these charges and fees. This is conceded by the Claimant; and as such only interest on the principal sum loaned will be due.

[64] The final matter of the failure to mitigate loss/negligence in pursuing the claim promptly has dual result in that the failure to mitigate loss is not pleaded and the issue of failure to pursue the claim promptly has already been addressed. The result being that the actions of the Claimant were reasonable in the circumstances.

[65] The Court therefore agrees with the Claimant's submission that except for the matter of late fees and other charges, other than interest, the Defendant has failed to undermine the Claimant's case.

[66] Therefore the Defendant being liable under the agreement must pay the sums claimed by the Claimant except for late fees. This means the loan balance of $30,413.46 and accumulated interest as at 17/9/2010, being $25,224.58.

Costs

[67] The Claimant is entitled to its costs based on the award by the Court in accordance with Part 65.5 of CPR 2000.

ORDER

[68] IT IS HEREBY ORDERED AND DECLARED as follows:

1. There was no variation of the contract having regard to
    a. The absence of a binding agreement between the Claimant and the principal debtor to delay the payment due by virtue of a default;
    b. No time is specified in the bond as to when the demand must be made in the event of default; and in all the circumstances demand contained in the letter dated 27th September, 2010.
    c. The action of the Defendant in seeking relief from interest and late fee charges in 2009 at in the midst of the default, of when he was aware the Defendant's pleadings in his defence regarding the variation off the contract amount to the Defendant approbating and reprobating at the same time.
2. Except with respect to the matter of the late fee charges the Defendant has failed to undermine the Claimant's case and is such is liable to pay the principal sum of $30,416.46 and interest of $25,224.58.
3. The Claimant is entitled to costs based on the award of the Court in accordance with Part 65.5 of CPR 2000.

Errol L Thomas
High Court Judge [Ag]