



[2023] JMCC COMM. 36

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE COMMERCIAL DIVISION

CLAIM NO. SU2021CD00007

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|----------------|----------------------|------------------|
| BETWEEN | O'NEIL NELSON | CLAIMANT |
| AND | WILWOOD ADAMS | DEFENDANT |

Ms Tamiko Smith instructed by Smith, Afflick, Robinson & Partners, Attorneys-at-law for the Claimant

Mr. Wilwood Adams appearing in person

IN OPEN COURT

Heard: 5th, 6th June and 21st July, 2023

Breach of Contract- Whether there is a valid contract- whether contract void for consideration- Whether principle of promissory estoppel applicable

STEPHANE JACKSON-HAISLEY J.

INTRODUCTION

[1] This is a claim for damages for breach of a contract entered into on the 9th April, 2014 between O'Neil Nelson (hereafter Mr. Nelson), an Engineer of Banana Ground District, Banana Ground P.O in the parish of Manchester against Wilwood

Adams (hereafter Mr. Adams), an attorney-at-law of Spaulding District, Spaulding P.O in the parish of Manchester to recover the sum of Six Million and Eighty-Eight Thousand Jamaican Dollars (J\$6,088,000.00). It is the Claimant's case that he was the purchaser of property located at New Forrest District in the parish of Manchester and registered at Volume 1005 Folio 530 of the Register Book of Titles and that Mr. Adams was the attorney-at-law with carriage of sale. He was granted early possession of the property as a result of which he commenced construction on the said land.

- [2] In relying on the representation made by Mr. Adams, Mr. Nelson alleges that he spent the sum of Six Million Jamaican Dollars (J\$6,000,000.00) to construct a building on the land, only to discover that Mr. Adams did not obtain authority from the vendor to permit early possession. He further alleged that Mr. Adams admitted to the misrepresentation as a result of which an Agreement was entered into on or about 9th April, 2014 for the repayment of the Six Million Jamaican Dollars (J\$6,000,000.00) within a period of four (4) years between April 1, 2014 to March 30, 2018. It was further agreed that if a minimum of Four Million Five Hundred and Sixty Thousand Jamaican Dollars (J\$4,560,000.00) was not paid by the end of four (4) years, interest at 10% per annum would apply to the balance sum until it was fully paid.
- [3] Mr. Adams proceeded to make thirty-five payments of Thirty Thousand Jamaican Dollars (J\$30,000.00) each and one lump sum payment of Two Hundred and Fifty Thousand Jamaican Dollars (J\$250,000.00) totalling One Million Three Hundred Thousand Jamaican Dollars (J\$1,300,000.00) up to September 25, 2017. Thereafter no further payments were made. Despite repeated requests, Mr. Adams failed or refused to settle the balance outstanding.
- [4] In his Defence, Mr. Adams denied that Mr. Nelson was the purchaser of the parcel of land registered at Volume 1005 Folio 530 of the Register Book of Titles. He also denied that he was the attorney representing the Vendor. He stated that the

parcel of land in question was disputed property having been in contention since 1995 when the purchasers at the time, Olive and Renel Brown, were unable to secure a registered title for the parcel of land from the person who sold them the land. He argued that he represented Olive Brown in another claim where the court found that Olive Brown had no legal or equitable interest in the said land and that Mr. Nelson was seeking to purchase an expected legal interest that was contingent upon the interest first being vested in Olive Brown. He also stated that the agreement to purchase the land was negotiated with Mr. Nelson and Ms. Brown outside of his knowledge and control and that the parties only came to him to formalize that agreement.

- [5] Mr. Adams denied that he represented to Mr. Nelson that he had obtained permission from Olive Brown to commence construction on the land. He also denied acting for Mr. Nelson in his capacity as an attorney-at-law and further stated that Mr. Nelson did not retain the services of an attorney-at-law. Mr. Adams is claiming the sum of One Million, Three Hundred Thousand Jamaican Dollars (J\$1,300,000.00) given to Mr. Nelson in counterclaim.

EVIDENCE OF THE CLAIMANT

- [6] In his witness statement filed March 23, 2022, Mr. O'Neil Nelson stated that in or about October 2012, he entered into an Agreement for Sale with Olive Brown to purchase the said land situated at New Forrest District, Manchester for the agreed price of Fifty Thousand United States Dollars (US\$50,000.00). At the time of the sale, Mr. Adams had carriage of sale acting on behalf of Olive Brown.

- [7] He further stated that after two (2) years into the sale, Ms. Brown attempted to renegotiate the sale price, as a result of which, the agreement was cancelled. However, prior to the cancellation, Mr Adams represented himself as having full authority over the property and gave explicit permission to carry out renovations to

the building as a result of which he spent upwards of Seven Million Five Hundred Thousand Jamaican Dollars (J\$7,500,000.00). He stated that he sought to recover the sums spent on renovations and Mr. Adams indicated that he would take full responsibility to repay the sum of Six Million Jamaican Dollars (J\$6,000,000.00). Accordingly, they entered into a written Agreement dated April 9, 2017 signed by both parties. The Agreement was titled "An Agreement to Reimburse Monies Expended by O'Neil Nelson on the Renovation of Property at New Forest in the Parish of Manchester". Among the stated terms of the Agreement was that *the Attorney shall reimburse the purchaser the sum of Six Million Dollars (\$6,000,000.00), the sum expended by him to advance the completion to the building on the property above described, in consideration for ALL HIS EQUITABLE AND LEGAL INTEREST ACQUIRED IN THE SAID PROPERTY...*"

[8] It was also a term of the Agreement that there would be a minimum base payment of Thirty Thousand Jamaican Dollars (J\$30,000.00) per month which is to be paid on the 25th day of each month commencing on the 25th day of April 2014 for the entire agreed period of the reimbursement which is forty-eight (48) months. According to Mr. Nelson, Mr. Adams made thirty-five (35) payments of Thirty Thousand Jamaican Dollars (J\$30,000.00) between July 31, 2015 and February 27, 2017 and one lump sum payment of Two Hundred and Fifty Thousand Jamaican Dollars (J\$250,000.00) on October 2, 2017, however, thereafter, without notice or explanation he stopped making payments. He stated that Mr. Adams asked him to hand over all the original invoices, receipts and documents evidencing how the sum of Six Million Jamaican Dollars (J\$6,000,000.00) was arrived at which he did.

[9] Mr. Nelson pointed out that Mr. Adams, having denied the validity of the Agreement, he proceeded to retain an Expert document examiner to prove that the Agreement was in fact signed by Mr. Adams. Mr. Nelson claims that he is entitled to recover the outstanding sum paid to the document examiner plus interest and costs to obtain the Expert Report.

[10] In cross examination Mr. Nelson admitted that the first time he met Mr. Adams was when he came to Jamaica. He also admitted that he met Olive Brown in Toronto and agreed the purchase price of the property prior to coming to Jamaica. Mr. Nelson admitted that he was unaware that the property was in dispute until he came to Jamaica. He also admitted that when he was given early possession there was no discussion regarding what should be done on the property neither was there any discussion regarding the estimated amount to be spent on the premises.

EVIDENCE OF THE DEFENDANT

[11] In his witness statement filed February 24, 2022, Mr. Adams indicated that he is an Attorney-at-law and an Associate in the firm of Robertson, Smith, Ledgister & Company located at Lot 15, Leaders Plaza, Mandeville in the parish of Manchester. He stated that the person from whom Mr. Nelson was purportedly purchasing the property registered at Volume 1005 Folio 530 is a ghost Vendor with no name or identity. He claimed that the land is purportedly owned by Olive Brown and Renel Brown (who is now deceased) and they purchased the land from Everel Simpson in around 1995.

[12] Mr Adams indicated that Mr. Nelson met Olive Brown in Canada where discussions ensued regarding the sale of the property. He claimed that the parties agreed certain terms of the agreement, namely, the sale price and that Mr. Nelson would pay the full transfer costs of the property for both parties. He also expressed that he informed Mr. Nelson of the full history of the parcel of land including the 'just' concluded court hearing which would have legal implications and that efforts would be made to have the legal issue surrounding the registered title rectified. In cross-examination Mr. Adams admitted that at the time he prepared the Agreement for Sale in October 2012 between Olive Brown and O'Neil Nelson, he was aware that Olive Brown had no legal interest in the property.

- [13] He admitted that he gave Mr. Nelson early possession without seeking permission from Olive Brown as he considered it would not have done any harm. He also admitted that he knew that Mr. Nelson would commence working on the house to have it completed after taking possession. In cross-examination he stated that though he gave Mr. Nelson early possession he was not authorized to spend money on the property, however, he knew that Mr. Nelson would have taken steps to make the house habitable because he had a baby on the way.
- [14] Although in his Defence he had distanced himself from the Agreement, at trial he did not deny entering into the Agreement nor did he deny any of the terms. He claimed that in a bid to put Mr. Nelson back on his feet, he gave him a parcel of land at George North, Spaulding, Manchester which was worth Two Million Jamaican Dollars (J\$2,000,000.00) and further gave him the sum of One Million Three Hundred Thousand Jamaican Dollars (J\$1,300,000.00) gratuitously, to help him get back on his feet. He indicated that the money had nothing to do with the agreement to reimburse Mr. Nelson for money expended on Olive Brown's house.
- [15] In cross-examination, Mr. Adams indicated that he filed a Claim against Olive Brown for Six Million Jamaican Dollars (J\$6,000,000.00) and this was to refund Mr. Nelson for the balance outstanding from the amount he spent on the property. He also indicated that he withdrew the Claim when he found out that Mr. Nelson stabbed him in his back by commencing the Claim at bar against him.

SUBMISSIONS ON BEHALF OF THE CLAIMANT

- [16] Counsel for the Claimant, Ms. Tamiko Smith submitted that the Defendant is indebted to the Claimant having granted early possession and explicit permission to carry out renovations to complete the building on the property. She argued that Mr. Adams, who represented Olive Brown in another claim, was aware that she had not acquired an equitable or legal interest in land therefore she could not have

passed a valid legal title to the Claimant. She argued further that this was the basis on which the sale was cancelled.

[17] Counsel advanced that the issues that the court should consider are:

- a. Whether the document entitled “An Agreement to Reimburse Monies Expended by O’Neil Nelson on the Renovation of property at New Forest in the parish of Manchester” entered into between the parties on 9th April, 2014 is a binding and enforceable agreement?
- b. Whether there was consideration for the Agreement to Reimburse Monies Expended by O’Neil Nelson on the Renovation of the property at New Forest, Manchester?
- c. Whether the Claimant can rely on the doctrine of promissory estoppel to enforce the Agreement against the Defendant?

[18] Counsel submitted that the principal elements for a valid and enforceable contract as stated in **Keith Garvey v Ricardo Richards** [2011] JMCA Civ 16 are that (i) the parties must have the requisite capacity to contract; (2) there must be an intention to create legal relations; (3) the parties must reach agreement by way of offer and acceptance; and (4) unless the contract is made by deed there must be valuable consideration.

[19] Counsel also advanced that once the vendor and purchaser entered into an agreement for the sale of land, the purchaser upon execution of the agreement becomes the equitable or beneficial owner of the property and the vendor holds it on trust until completion. Counsel relied on **Riverton City Ltd v Haddad** (1986) 23 JLR 45 and **Earline Lawrence v Dean Edwards** [2017] JMCA Civ 121 in support of her proposition.

[20] Counsel submitted that where the vendor repudiates the Agreement she would be liable to pay damages if the matter was ventilated before the Court. She relied on **Marjorie Knight v Lancelot Hume** [2017] JMSC Civ 51 to support the point that the Defendant being an attorney-at-law with conduct of the matter and privy to the history of the land would have been well aware of the risk and having forgone his right to sue the vendor for breach, he had given valid consideration in the 2014 Agreement.

[21] In regard to the issue of consideration, Counsel submitted that consideration is what is asked for in exchange for the promise as indicated by Lord Dunedin in **Dunlop Pneumatic Tyre Co. Ltd v Selfridge & Co. Ltd.** [1915] AC 847. She also contended that an equitable interest in property would suffice as valuable consideration under the contract between the parties and relied on the definition accorded to consideration in **Currie v Misa** (1874) LR 10 Ex, as follows:

“A valuable consideration, in the sense of the law, may consist of either in some right, interest, profit or benefit accruing to the one party or some forbearance, detriment, loss, or responsibility, given suffered or undertaken by the other.”

[22] It was submitted that in order to determine whether the Agreement between the Claimant and the Defendant is enforceable, it must first be determined what is the promise being relied upon. Counsel found that the case at bar should be distinguished from **Re McArdle** (1951) 1 All ER 905 in that the Defendant in the case at bar promised to reimburse the sum of Six Million Jamaican Dollars (J\$6,000,000.00) and at the time of entering into the Agreement, the Defendant had not performed any part of the promise nor had the Claimant relinquished his interest in the property. She pointed out that the Defendant promised to reimburse the Claimant for the sum expended on the property and to commence legal proceedings against Olive Brown and the Claimant in turn promised to forgo all his legal and equitable rights in the property under the terms of the Agreement.

[23] Counsel also submitted that the case at bar is distinguishable from **Roscorla Thomas** (1842) 3 QB 234 as the consideration for this agreement remained executory at the date of entry and this was evidenced by the terms of Agreement which also remained executory. Counsel argued that there are several exceptions to the past consideration rule that the Court should consider such as fresh evidence or whether the act was done at the Defendant's request.

[24] On the point of promissory estoppel Counsel argued that the Defendant is barred from reneging on his promise to repay the Claimant under the 2014 Agreement. She relied on **Odel Brown v Maple Treasure** [2023] JMSC Civ 21 where Smith J (Ag.) in her analysis opined that:

“[25] There is no dispute that this is a case of proprietary estoppel. The Defendant is now estopped from repudiating her promise in circumstances where it would be unconscionable for her to do so by virtue of her encouragement or acquiescence to the Claimant constructing the house on her land.”

[25] Counsel finally submitted that any ambiguity in the Agreement between the parties should be construed against the Defendant as the drafter pursuant to the *contra proferentem* rule or Gilbert-Ash principle and placed reliance on **Triple Point Technology Inc (Respondent) v PTT Public Company Ltd (Appellant)** [2021] UKSC 29 in support of this point.

SUBMISSIONS ON BEHALF OF THE DEFENDANT

[26] Mr. Adams appeared in person and presented both written and oral submissions. He argued that the real issue before the Court is whether the Agreement to reimburse O'Neil Nelson the sum of Six Million Jamaican Dollars (J\$6,000,000.00) is a valid agreement. He stated that the very preamble of the Agreement set out that the Attorney shall reimburse the Purchaser the sum expended, in consideration for all his equitable and legal interest acquired in the said property

under the terms and conditions. He argued that Olive Brown had no equitable or legal interest in the property to pass to O'Neil Nelson and at the time the agreement to reimburse Mr. Nelson was made, he had acquired no legal or equitable interest in the property to give consideration.

[27] He submitted that an enforceable agreement must have certain elements, one of which is consideration. He further stated that in executory agreements, consideration must be reciprocal in the promises of the parties. Mr. Adams argued that Mr. Nelson cannot rely on the value of the work done on the building as consideration in the agreement as this would be considered as past consideration. Counsel relied on the principle in **Roscorla Thomas** in support of his proposition as well as **Old Discount Company v Veronica Dunkley and Edwin Dunkley** 10 JLR (29) where the Court considered whether there was consideration in a vaguely worded passage in which one of the Defendants purported to hire a purchase agreement. Counsel also referred to dicta in **Re McArdle** and submitted that in the case at bar, the document was signed after the work was done and therefore, there was no consideration at all.

[28] Mr. Adams argued that consideration is an essential ingredient in all executory agreements. Consideration must be reciprocated, it must move from the promisee and on the lack of consideration, the claim must fail.

[29] On the point of promissory estoppel, Counsel relied on **Hughes v Metropolitan Railway Co.** [1877] 2 AC 439 to advance the point that where one party, by word or conduct made a promise which was intended to affect the legal relations, then once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations. He must accept his legal relations subject to the qualifications which he himself introduced though not supported by consideration.

[30] Mr. Adams contended that the contract to reimburse the Claimant the sum of Six Million Jamaican Dollars (J\$6,000,000.00) should be declared void for consideration. He argued that the misrepresentation claims and other claim in equity should also fail as the Claimant was not misrepresented nor did the legal relationship between the parties result in a relationship from which promissory estoppel can arise.

ISSUES

- I. Whether there is a valid contract between the parties?
- II. Whether there was consideration?
- III. Was there an intention to enter into a valid agreement?

DISCUSSION

Whether there was a valid contract between the parties

[31] The determination of this issue turns largely on the legal principles regarding the formation of a contract. However, during the course of the trial some factual issues were raised, largely by the Defendant and so I will address them first. Both sides were agreed on certain essential facts which I accept. I accept that the Claimant purchased the property registered at Volume 1005 Folio 530 and located at New Forrest District from vendor Olive Brown and that the Defendant in his capacity as Attorney-at-law had carriage of sale. I accept that the Defendant knew then that the vendor did not have the requisite legal interest in the property at the time of the transaction. I accept that the Claimant was granted early possession and thereafter commenced renovations of the existing structure thereby expending sums in excess of some Six Million Jamaican Dollars (J\$6,000,000.00). It is accepted that it was subsequent to the Defendant becoming entangled with legal issues regarding the transaction that he entered into a written Agreement with the Claimant dated April 9, 2014 which is the subject of this Claim.

[32] The Agreement was very detailed and set out the events leading up to the formation of the Agreement including the fact that the Claimant had in fact paid the sum of One Million Six Hundred and Forty Thousand Jamaican Dollars (J\$1,640,000.00) as a deposit and further payment on the said property which is legally recoverable by him and further that the Purchaser also expended approximately Six Million Jamaican Dollars (J\$6,000,000.00) on the building situated on the land towards its completion. It went on the say that:

And whereas the Attorney, the said Mr Wilwood Adams did not receive any of the Six Million Dollars (\$6,000,000.00) whatsoever, expended on the building, whether directly or indirectly from the purchaser, O'Neil Nelson, but that he has knowledge that work was being done on the house and that it was he who acting in his capacity as Attorney-at-law for Olive Brown, had given permission for the work to proceed on an understanding that the sale of the property to the Purchaser would be completed.

NOW THIS AGREEMENT WITNESSETH:

THAT THE ATTORNEY SHALL REIMBURSE THE PURCHASER THE SUM OF SIX MILLION DOLLARS (\$6,000,000.00) the sum expended by him to advance the completion to the building on the property above described, in consideration for ALL HIS EQUITABLE AND LEGAL INTEREST ACQUIRED IN THE SAID PROPERTY under the following terms and conditions:

TERMS AND CONDITIONS

- 1. It is agreed and understood by both Purchaser and the Attorney that the Six Million Dollars (\$6,000,000.00) expended by the Purchaser as renovation costs on building situated on the land above described will be reimbursed by the Attorney to the Purchaser over a period of FOUR*

(4) YEARS beginning on the 1st day of April 2014 and ending on the 30th day of March 2018.

- 2. That there will be a minimum base payment of Thirty Thousand Dollars (\$30,000.00) per month which is to be paid on the 25th day of each month commencing on the 25th day of April 2014 for the entire agreed period of the reimbursement which is FORTY-EIGHT (48) MONTHS.*

[33] The Defendant in his Defence had initially sought to deny this Agreement, however, this was not pursued at trial. At trial he questioned the Claimant at length regarding the circumstances leading up to this Agreement. However, it is my view that the issues raised by him regarding all the events that transpired prior to executing this Agreement are not pertinent to the issues to be determined at this trial. The parties having entered into this written Agreement, the issues concerning what transpired in the transaction and what happened before the Claimant purchased the property from Ms Olive Brown are not relevant to my determination. The parties having entered into this written Agreement, that is what is relevant for my determination on the question of whether there was a valid contract and whether there was in fact consideration.

[34] In determining the issue as to whether there was a valid contract, regard must be had to the principles governing the essentials of a contract and what constitutes a valid contract. A useful reminder has been provided by counsel for the Claimant in her reliance on the case of **Keith Garvey** wherein the Court emphasized the need to establish an intention to create legal relations. In this case the parties executed a written document. At the time of doing so, the Defendant was an Attorney-at-law who would be expected to understand the implications of this and the Claimant was a business man. It is difficult to fathom how in the circumstances of this very clear Agreement how an argument could be successfully made that there was no intention to create legal relations. There was a clear offer by the Defendant to pay certain sums and an acceptance by the Claimant. The very terms of the contract evinced a clear intention to create legal relations. Not only did they execute this

Agreement but the Defendant commenced payments and in fact made payments up to September, 2017, by which time he had made some thirty-five payments. He also confirmed in his evidence that in making the payments he was carrying out the terms of the Agreement. There is no doubt in my mind that in these circumstances that the parties intended to create legal relations and to enter into a contractual relationship.

- [35] The main issue raised by the Defendant is that there was no consideration. If there was any doubt as to the importance of consideration in the formation of all contracts, the case of **Combe v Combe** [1951] 2 KB 215 has emphasized its seminal importance in the formation of a contract. Lord Denning stated that “*the doctrine is too firmly fixed to be overthrown by a side-wind. Its ill effects have been largely mitigated of late but it still remains a cardinal necessity of the formation of a contract*”.
- [36] This leaves me with the question as to what exactly constitutes consideration. The definition provided in **Currie v Misa** is still good law which is that consideration constitutes “*a valuable consideration, in the sense of the law, may consist of either in some right, interest, profit or benefit accruing to the one party or some forbearance detriment, loss, or responsibility, given suffered or undertaken by the other.*”
- [37] What is clear from the cases relied on is that consideration can take different forms and that it is not always tangible, it could be a binding promise by one party and an act by the other party. The case of **Dunlop Pneumatic Tyres** provided a useful definition of consideration relevant to the discussion in this case which is “*an act of forbearance of one party, or the promise thereof, is the price for which the promise of the other is bought, and this given for value is enforceable*’.

[38] Another element of consideration that was submitted on by Mr Nelson is that consideration should not be past as was enunciated in the case of **Old Discount Company**. In that case the goods which were the subject of the contract had been supplied some twenty months before the contract and so the consideration was caught by the rule in **Roscorla v Thomas**. The Defendant also relied on the **Re McCardle** case which he submitted bears some similarity to the instant in that the document was signed after the work had been done. I do not agree with his view of the consideration in the instant case. The instant case is clearly distinguishable and I do not find there to be any merit in Mr. Adams' contention that the work done being past consideration could not be relied on or that the document was signed after the work was done. I do not find there to be any element of past consideration as what is relevant is the events that transpired immediately before and subsequent to the April 9, 2017 Agreement. It was the term of this Agreement that the money would be paid to the Claimant in consideration for all his equitable and legal interest in the property. At the time of entering into this Agreement, the Claimant would have had the right to bring a claim to enforce his right to the property based on the sums paid by him and based on the act of renovating the property. This could not be tantamount to past consideration.

[39] In determining whether there was in fact consideration the terms of the agreement must be scrutinized. The following words were clearly expressed in the Agreement that "*in consideration for all his equitable and legal interest acquired in the said property*". I interpret this to mean that the Claimant was giving up his right to enforce his entitlement to any interest in the property. This would have meant giving up something tangible, something of value. He has expended some significant sums in the property, yet he was giving up his right to make any claim thereto whether legally or in equity if the Defendant paid him this sum and this is exactly what the Claimant did. This would also have been important to the Defendant who had by then been embroiled in a matter before the Court in which he was a Defendant and also a matter before the General Legal Council in his capacity as an Attorney-at-law. He confirmed that Mr Nelson promised him the

receipts and in addition all of his interest in the property. He also agreed that he had sued Olive Brown for the sum of Six Million Jamaican Dollars (J\$6,000,000.00) and that if he was successful, that money would go to the Claimant. He confirmed that Mr Nelson never filed a suit against Olive Brown and that he never pursued any other interest pursuant to the 2014 Agreement for Sale.

[40] Counsel for the Claimant has sought in aid the principle of promissory estoppel. Promissory estoppel operates to prevent a Defendant from denying the existence of a contract for lack of consideration and punishes the defendant for misleading the plaintiff to its detriment. The Claimant may very well be able to rely on the principle of promissory estoppel however, based on the clear terms of the contract and what I have found to be consideration, it is not even necessary on the part of the Claimant to rely on promissory estoppel. The Claimant has satisfied me on a balance of probabilities that this promise by the Claimant not to pursue his interest in the property constituted consideration.

Whether there was a breach of the contract?

[41] There are several uncontroverted facts. The Defendant has not denied that he commenced making payments in accordance with the terms of the contract and that he in fact made a total of thirty-five payments of Thirty Thousand Jamaican Dollars (J\$30,000.00) each and one lump sum payment of Two Hundred and Fifty Thousand Jamaican Dollars (J\$250,000.00) totalling One Million Three Hundred Thousand Jamaican Dollars (J\$1,300,000.00). It is also not denied that he thereafter failed to pay the balance of the sums due under the contract. In those circumstances, he is clearly in breach of the contract and liable to the Claimant in damages for breach of contract. The Defendant did not present any credible evidence to substantiate his Counterclaim and so it fails.

[42] The measure of damages here would be to put the Claimant in the position he would have been in if the contract has been performed, that is to say the position

he would have been in if the Defendant has paid all the sums he has promised to pay at the time he had promised to pay them.

[43] The Claimant is therefore entitled to be paid the balance due under the contract plus any interest that would have occurred.

[44] My orders are as follows:

1. Judgment is for the Claimant against the Defendant.
2. Damages awarded in the sum of \$6,233,313.61;
3. Interest continues to run at a rate of 10% per annum on the outstanding balance from January 12, 2021 until the date of payment;
4. Special Damages in the sum of \$150,000.00 representing the fee paid to Fraudulent Documents and Handwriting Expertise Consultant Services;
5. Interest on Special Damages at a rate of 6% per annum from February 14, 2022 to the date of payment; and
6. Cost to the Claimant to be agreed or taxed.