

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2015/0406

BETWEEN:

SHODO ADVENTURES LTD.

Claimant

and

KENNY'S TRUCKING & EQUIPMENT SERVICES LTD.

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Ms. Carah St Paul for the Claimant

Ms. Caryn Adams for the Defendant

2025: October 30th

RULING ON ASSESSMENT OF DAMAGES

- [1] **ACTIE, J.:** The claimant, a developer of an eco-tourism project known as the Grenada High Wire Adventure Course Project (hereafter referred to as “the Project”), entered a contract with the defendant on 10th December 2014. The defendant was to execute building works including the erection and casting of twenty-five wooden poles using concrete and steel as per engineers’ specifications for a zip line.
- [2] The defendant was to complete the scope of works on 15th January 2015 but delayed and completed at the end of February 2015. Following the completion of the works, the claimant discovered that the defendant carried out defective work using inferior and unsuitable materials in breach of its contractual duty.

- [3] The claimant in a statement of claim filed on 24th September 2015 and amended on 20th October 2015, claimed, among other things, special damages in the sum of \$194,708.16, the completion of the works by another contractor, general damages for breach of contract, interest and costs.
- [4] The claimant by agreement dated 24th June 2016 contracted Selective Engineering Company Ltd (hereafter referred to as “Selective Engineering”) for the re-erection and casting of 25 zip lining posts, bases and pillars on site using concrete and steel.
- [5] The matter was referred to a Referee pursuant to Part 40.3 and the court, acting pursuant Part 40.6(3), accepted the Referee’s report indicating that the defendant carried out defective works which were not fit for the intended purpose. Accordingly, judgment was entered in favour of the claimant, and the defendant’s counterclaim was dismissed with damages to be assessed if not agreed.

Damages

- [6] The parties failed to settle, and the matter came on for further hearing and discussions on the pleadings and quantum claimed for special damages.
- [7] It is trite that the purpose of an award of damages is to put the claimant back into the position he would have been in had the contract been performed¹. This court at a further hearing on 23rd September 2025, allowed special damages in the sum of \$15,709.95 as pleaded. Counsel for the parties conceded a nominal sum of \$15,000.00 for future earnings in keeping with the principle in **British Westinghouse Electric Co. Ltd. v Underground Electric Railways**².
- [8] The court is only now required to rule on damages for the breach of contract. The issue arising between the parties is the measure of damages to be awarded for the defendant’s breach of the contract as a result of the defective work.

Measure of damages to which the claimant is entitled

¹ Robinson v Harman [1843-60] All ER Rep 383

² [1912] AC 673

[9] Counsel for the claimant relies on **Chitty on Contracts**³ where it is stated that:

“Where, after completion, there are defects in the works, the employer will normally be entitled to damages equal to the costs of making good the defects (this is sometimes referred to as the costs of reinstatement)”

[10] The authors go on to state that whilst such an award puts the employer into the position he would have been in if the contract had been properly performed, it is still for the employer to show that reinstatement is a reasonable response to the damage in question⁴.

[11] The authors of **Halsbury’s Laws of England**⁵ state the following with regard to reliance damages:

“Reliance damages, by contrast to expectation damages, compensate for losses suffered by the claimant through having relied on performance by the other party and then having been disappointed...”

Reliance damages can be divided into two categories. One is where the claimant incurs expenditure which he would not have undertaken at all had the defendant duly performed his contractual obligations. The second arises where the claimant would have incurred expense even if the contract had not been broken, but alleges that that expense, which might otherwise have borne fruit, has become wasted owing to the breach. ... For these purposes it is irrelevant whether any relevant expenditure was made before or after the contract was concluded: the only question, with either pre-contract or post-contract expenditure, is whether the defendant's breach has caused it to become wasted.”

[12] It is the law that the damages due to the employer in respect of defective works will normally be the cost of making good the defect, unless that cost is out of all proportion to the harm suffered, in which case, damages comprise the difference between the value of the property without the defect and the value with the defect (diminution in value caused by the defect)⁶.

[13] The House of Lords in **Ruxley Electronics and Construction Ltd v Forsyth**⁷ stated the following at page 357:

³ (32nd edn) vol 2 page 850

⁴ *ibid*

⁵ (5th edn., 2024) vol. 29, para 506

⁶ Stair Memorial Encyclopaedia, Building Contracts (Reissue) para 113

⁷ [1996] AC 344

“What constitutes the aggrieved party’s loss is in every case a question of fact and degree. Where the contract breaker has entirely failed to achieve the contractual objective it may not be difficult to conclude that the loss is the necessary cost of achieving that objective. Thus if a building is constructed so defectively that it is of no use for its designed purpose the owner may have little difficulty in establishing that his loss is the necessary cost of reconstructing. Furthermore in taking reasonableness into account in determining the extent of loss it is reasonableness in relation to the particular contract and not at large...”

[14] Counsel for the claimant submits that the measure of damages to be applied in the circumstances of this case is that of reinstatement. Counsel argues that a calculation based on the diminution in value of the property will not achieve the object of damages, and that the cost of making good the defects is proportionate to the harm suffered based on the following, among other things:

- (1) The concrete integrity was poor and necessitated further action on the part of the defendant.
- (2) The incurred repairs were required for the claimant to proceed with the next phase of the project. Practical completion occurred in or around the end of February 2015 and the pillar cracked on or around 7th April 2015 meaning that there was a high likelihood that, if not rectified before next phase, the defects would become more patent and dangerous in greater liability damage.
- (3) The claimant addressed the repairs required to ensure that the project was completed in the shortest amount of time and to the standard that it needed.

[15] Counsel for the defendant argues that the claimant failed to plead or provide the cost of rectification in the claim. The defendant relies on the decision of Webster JA (Ag.) in **Henry Owens III v Anguilla Partnership Enterprises Ltd.**⁸ where he stated at paragraph 46:

“One of the principles relating to an assessment of damages for breach of contract, or any other claim, is that the claimant is entitled to only such damages as are pleaded and the claimant is bound by his or her pleading—per Hariprashad-Charles J in *Ian Charles v The Board of Governors of the H. Laverty Stoutt Community College*. Further, as noted in *Dr. Miranda Fellows v Carino Hamilton Development Company Limited*, a claimant cannot expand his claim to seek reliefs that are not pleaded. Ms. Carter relied on these cases as well as *Bertha Francis v First Caribbean*

⁸ AXAHCVP2017/0008

International Bank (B'dos) Ltd. formerly CIBC Caribbean Ltd. where Mason J refused a late application by the claimant to amend her claim. The learned judge opined at paragraph 28 of her judgment that –

“In applying these considerations to the case at bar, I am of the view that the court cannot ‘embark upon substantive judicial consideration of the issue[s] that have not been previously canvassed.’ It is therefore the obligation and duty of the Claimant to have pleaded her case on liability and damages in advance so that the Defendant would have a fair idea of the case it has to meet. Not having done so, in order to fit within the scope of “further or other relief”, the claimant would need permission to raise, plead and seek the relief that she now wishes to seek.”

[16] Counsel for the defendant argues that the claimant failed to plead the cost for rectification and therefore the claim for rectification should not be allowed.

[17] The court notes that the claimant’s pleaded claim includes an order that the works be completed by another contractor at the cost of the defendant, as well as for general damages for breach of contract. Given this claim, the court is satisfied that there is sufficient basis for the relief advanced by the claimant to obtain damages in rectification of the defects.

[18] Counsel for the defendant argues that the claimant is estopped from seeking relief for the defects by reason of the agreement between the parties. Counsel submits that the agreement limits the measure of damages payable to the claimant.

[19] Counsel for the defendant also relies on **Chitty on Contracts**⁹ which states:

“Estoppel. ‘A party who executes a deed is estopped in a court of law from saying that the facts stated in the deed are not truly stated.’... Since estoppel by agreement is part of the doctrine of estoppel by conduct, and signed documents are binding, it seems that there is now no real difference between deeds and simple contracts.”

[20] Clause 18 of the agreement between the parties states:

“18. As part of its notification or at any time within 3 months after practical completion, the employer may provide the contractor with details of any work which has not been carried out, is incomplete or is defective, and the Contractor shall carry out any necessary work within a reasonable time of

⁹ (23rd edn. Volume 1, Sweet and Maxwell 1968) para 27

such notice. If he fails to do so, the employer may employ other persons to carry out such works and recover any additional costs from the Contractor.”

- [21] It is the evidence of Rosemarie St. Paul, on behalf of the claimant, that a meeting was held on 13th April 2015 with herself and Colin St. Paul as representatives for the claimant, Altus personnel, Leslie Barry, and Kenny Forrester and Floyd Sealey, both of the defendant, to discuss the defects discovered in the work done by the defendant. The evidence is that at this meeting, the defendant accepted that there were defects and agreed to remedy same but failed to return to the construction site.

- [22] The evidence of Rosemarie St. Paul is supported by the evidence of Leslie Barry, who states in his report dated 15th April 2015 that at site meeting held on 13th April 2015, the contractor admitted that the poles were not installed as per the approved drawings and specifications.

- [23] It is also the evidence of Kenny Forrester on behalf of the defendant that a meeting with Colin St. Paul, Rosemarie St. Paul, Floyd Sealey, Mike Frank and Leslie Barry took place on 27th May 2015 regarding the retrofitting of the structures. Forrester states that Leslie Barry requested that the bases of the structures be cleared to design an appropriate plan for their retrofitting, however that the defendant was unable to remove soil from around the bases without the use of an excavator.

- [24] The court accepts Leslie Barry’s evidence that the work was not done in accordance with the approved drawings, good workmanship and construction standards. The court further notes the evidence of the defendant of its inability to effect the retrofitting of the pedestals. It is also the evidence of the claimant that it entered into contract with Selective Engineering on 24th June 2016, after filing the claim and over a year following the meeting with the defendant on the retrofitting changes to be made.

- [25] Clause 18 of the agreement between the parties is clear that the defendant is required to carry out any necessary remedial work within a reasonable time of receiving notice. The court is of the view that allowing the defendant in excess of

a year to complete the additional work required as a result of defects discovered was reasonable in all the circumstances.

[26] It is settled law that the normal measure of damages for breach of building contracts is the cost of reinstatement unless it would be unreasonable to so insist¹⁰.

[27] It is worth citing at length the following statements made by Pereira CJ, in the Court of Appeal decision of in **Haynes Browne v Neil Sargeant**¹¹:

“19. ...The editors of Hudson's Building and Engineering Contracts, state that there are:

“three possible bases of assessing damages, namely, (a) the cost of reinstatement; (b) the difference in cost to the builder of the actual work done and work specified: or (c) the diminution in value of the work due to the breach of contract.

There is no doubt that wherever it is reasonable for the employer to insist upon reinstatement the courts will treat the cost of reinstatement as the measure of damage.”

20. These principles are aptly captured and restated in *East Ham Corporation v Bernard Sunley & Sons Ltd* where Lord Cohen accepted that the normal measure of damages for breaches of this kind is the cost of reinstatement within the bounds of reasonableness. Reasonableness, to my mind, informs the measure of damages. My view finds support in the dicta of Clarke LJ in *Southampton Container Terminals Ltd v Schiffahrts-Gesellschaft "Hansa Australia" MGH & Co* where he stated: “As I read the authorities, where reinstatement is the appropriate basis for the assessment of damages, it must be both reasonable to reinstate and the amount awarded must be objectively fair as between the claimants and the defendants. That can be seen, in particular, from para 1480 of *McGregor* and from *Farmer Giles Ltd v Wessex Water Authority* [1990] 1 EGLR 177. Paragraph 1480 of *McGregor* is in these terms:

‘The difficulty in deciding between diminution in value and cost of reinstatement arises from the fact that the plaintiff may want his property in the same state as before the commission of the tort but the amount required to effect this may be substantially greater than the amount by which the value of the property has been diminished. The test which appears to be the appropriate one is the reasonableness of the plaintiff's desire to reinstate the property; this will be judged in part by the advantages to him of reinstatement in relation to the extra cost to the defendant in having to pay damages

¹⁰ G. H Treitel *The Law of Contract* (7 th edn, Sweet & Maxwell 2007) 727

¹¹ HCVAP2018/0009

for reinstatement rather than damages calculated by the diminution in value of the land.”

21. Further, the concept of reasonableness is amply demonstrated in the speech of Lord Lloyd in *Ruxley* where his Lordship in considering the judgment of Cardozo J in *Jacob & Youngs Inc v Kent* noted:

“Cardozo J.’s judgment is important, because it establishes two principles, which I believe to be correct, and which are directly relevant to the present case; first, the cost of reinstatement is not the appropriate measure of damages if the expenditure would be out of all proportion to the benefit to be obtained, and, secondly, the appropriate measure of damages in such a case is the difference in value, even though it would result in a nominal award.”

Lord Lloyd went on to consider the Australian case of *Bellgrove v Eldridge* and stated:

“Once again one finds the court emphasising the central importance of reasonableness in selecting the appropriate measure of damages. If reinstatement is not the reasonable way of dealing with the situation, then diminution in value, if any, is the true measure of the plaintiff’s loss. If there is no diminution in value, the plaintiff has suffered no loss. His damages will be nominal.”

[28] Thereafter, citing Lord Jauncey in **Ruxley** with approval, Pereira CJ stated:

“...I find the pronouncements made at page 357 E to be instructive:

““Damages are designed to compensate for an established loss and not to provide a gratuitous benefit to the aggrieved party from which it follows that the reasonableness of an award of damages is to be linked directly to the loss sustained. If it is unreasonable in a particular case to award the cost of reinstatement it must be because the loss sustained does not extend to the need to reinstate. A failure to achieve the precise contractual objective does not necessarily result in the loss which is occasioned by a total failure.”

[29] The Court of Appeal in **Haynes Browne** held that the reasonableness of an award of damages is to be linked directly to the loss sustained. If it is unreasonable in a particular case to award the cost of reinstatement it must be because the loss sustained does not extend to the need to reinstate.

[30] Counsel for the claimant further argues that where the repairs are extensive, replacement would be considered reasonable in all the circumstances, even if to

do so would render a better result than previously contemplated under the contract¹².

- [31] The court notes that the Grenada Bureau of Standards in its Compressive & Density Test Report of the concrete cylinders indicated that the compressive strength of each column tested at random measured below the required standard compressive strength of 4000 mpa/psi.
- [32] The court noting the nature of the Project is of the view that the sum paid to Selective Engineering is not unreasonable to remedy the defective work. The concrete cylinder poles formed the foundation for the high wire zip line adventure course project. The defendant was aware of the second phase of the Project which involved the installation of the timber platforms and high wires. It was during the construction and installation of those timber platforms and high wires by the French company, Altus, that one of the reinforced concrete foundations constructed by the defendant failed. This resulted in an investigation by the engineer, Leslie Barry, and the Bureau of Standards who both reported that the foundations were not constructed in accordance with the approved drawings and specifications. The court is of the view that having regard to the nature of high wire zip line project, it would have been a catastrophe resulting in astronomical financial liability to the claimant had the defects not been discovered at this early stage of construction and installation of the platforms. Selective Engineering was contracted by the claimant for the erection and casting of 25 zip lining posts, bases and pillars which was one of the defendant's obligations in the contract with the defendant.
- [33] Applying the above referenced authorities to the facts, the defendant is under an obligation to pay the reinstatement costs to the claimant in the sum of \$329,125.00 which represents the sum paid by the claimant to Selective Engineering.

Conclusion

- [34] It is therefore ordered and directed as follows, the defendant shall pay the claimant the following:

¹² The Board of Governors of the Hospitals for Sick Children et al v McLaughlin & Harvey PLC et al (1987) 19 Con LR 25

- (1) Special damages in the sum of \$15,709.95 with interest at the rate of 3% per annum from the date of filing the claim until judgment and at the rate of 6% per annum from judgment until payment in full.
- (2) Loss of future earnings in the sum of \$15,000.00.
- (3) General Damages in the sum of \$329,125.00 with interest at the rate of 6% per annum from judgment until payment in full; and
- (4) Prescribed costs on the total sum of \$359,834.95 to be paid within forty-five days of today's date.

Agnes Actie
High Court Judge

By the Court

Registrar