

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2023/0205

BETWEEN:

[1] KHARY ROBERTS
[2] DANIELLE BYERS-ROBERTS

Claimants

And

[1] DIZZYB ENTERPRISES LTD
Trading as DIZZYB SPORTS & TOURS

Defendant

Appearances:
Ms. Sherrie-Ann Bradshaw for the Claimants
Mrs. Kivinee Knight-Edwards for the Defendant

2024: October 7;
December 10.

JUDGMENT

- [1] **BYER, J.:** The claimants in this matter brought an action in breach of contract and negligence in tort against the defendant company. On 6th June 2023, the claimants filed a Claim Form along with its Statement of Claim against the defendant herein for the following relief:
- (1) repayment of \$27,961.00 for breach of contract;
 - (2) damages for negligence;
 - (3) Interest thereupon at such rate and for such period as the Court may think fit pursuant to section 27 of the Eastern Caribbean Supreme Court Act, Cap. 143;
 - (4) Fees and Cost; and
 - (5) Such further and other relief as the Court deems fit.

Background

- [2] The claimants are a married couple. The defendant company is a tour company that offers customised group tours and destination management. As this court understands it, sometime in 2021, the defendant company organised a group tour to Australia & Tasmania. The tour “Dizzy B Sports & Tours, Australia and Tasmania” was scheduled for 11th October to 27th October 2022. The defendant company publicly posted a flyer to advertise its tour services.
- [3] On 20th May 2022, the claimants entered into a contract with the defendant to participate in the group tour¹, which provided the terms and conditions for the anticipated tour.

¹ See pages 13-17 of the Trial Bundle of Documents filed 19/4/2024

- [4] The undisputed facts between the parties are that the initial tour cost was US\$4,600.00 per person. Subsequently, on or about 12th August 2022 via 'WhatsApp messages'², the defendant, by its principal Zorol Bathley, communicated a change in the tour price to the claimants from US\$4,600.00 to US\$5,285.00 per person due to fewer persons deciding to participate in the tour than initially anticipated. The claimants accepted the price increase, indicating their intention to carry through with participating in the tour per their earlier agreement at the new increased cost.
- [5] Pursuant to the contract dated 20th May 2022, there were express terms between the 1st and 2nd claimants and the defendant that the cost of the tour package included the following:
- i. Limited travel insurance coverage;
 - ii. Cost and process of securing a visitor's visa for entrance to Australia (if required and depending on passport);
 - iii. Cost of economy airfare Antigua- New York-Sydney-Tasmania- Melbourne-New York-Antigua;
 - iv. 4 nights' accommodation in Sydney;
 - v. 4 nights' accommodation in Hobart, Tasmania.
 - vi. 3 nights' accommodation in Melbourne
 - vii. 2 nights in transit accommodation at JFK, New York.
 - viii. Daily organized group tours, including 2 West Indian games in ICC T20 World Cup in Hobart³.
- [6] Per item (ii), it was common knowledge among the parties that the claimants required an Australian Visa for travel into Australia on the tour. It was also undisputed that the defendant undertook to obtain the Australian visa.
- [7] However, it was not until the 15th September 2022⁴, when the defendant by Mr Bathley communicated via WhatsApp with the first claimant, that the claimants first became aware that they were required to apply for their own Australian visa. The defendant by Mr Bathley informed them that the Australian Embassy had advised that each passenger must submit their visa application online, along with other instructions. This was some twenty six (26) days before the scheduled date of travel on the tour. The cost of the visa application already having been factored into the cost of the tour, the defendant informed the claimants that that cost would be refunded.⁵
- [8] The claimants, therefore, immediately commenced their visa application for the tour. However, before the application was granted, (although the precise time as to when the defendant undertook certain acts is unclear), the defendant claimed that he proceeded to purchase all airline tickets and booked hotels for the claimants' accommodation on the tour⁶.
- [9] Upon the application having been made, the second claimant's visa application was granted within three (3) days of their application. However, the first claimant's visa was not approved until after the

² See page 25 of the electronic trial bundle ("ETB").

³ See pg 12 of ETB.

⁴See Pg 37 of ETB

⁵ See page 37 ECB.

⁶ No evidence was laid before the court as to whether this was in fact done

commencement of the tour which was scheduled for 11th October 2022. Owing to this, the claimants cancelled the tour with the defendant.

- [10] The claimants subsequently sought a return of the contract price of the tour package from the defendant which totalled EC \$27,961.00.
- [11] The claimants inter alia have claimed the full refund of this contract sum on the basis that the defendant had failed to adhere to the terms of the contract and that further that its principal Mr Bathley had been negligent in his provision of service to the claimants.
- [12] The defendant however denied this assertion and has throughout the proceedings maintained that they took all care in providing the services to the claimants under the contractual arrangement and that they were therefore not entitled to a refund of their contract sum nor was the defendant negligent in the provision of services.
- [13] This is the crux of the contention between the parties.
- [14] The matter came up for hearing and at trial, each party gave evidence on their own behalf.

Evidence of the claimants

- [15] The court has carefully reviewed the witness statements from both claimants. Since their accounts substantially mirror each other and describe a shared experience, the court will summarise their statements together to avoid repetition. The following summary reflects the combined evidence provided by both witnesses.
- [16] The witnesses gave an account that sometime in 2021, they came across a flyer advertising a customised group tour of Australia and Tasmania, organised by the defendant for the dates 11th – 27th October 2022. After seeing the flyer, they decided to participate in the tour. On 20th May 2022, they entered into a contract with the defendant ⁷, with the first claimant signing on behalf of himself and the second claimant. The initial price of the package was stated as US\$4,600 per person.
- [17] It is their evidence that the associated flyer and contract included express terms outlining the contents of the tour package.
- [18] The witnesses stated that at all relevant times, it was known to the defendant that, based on their Antiguan passports, the claimants would have required an Australian visa to participate in the tour, and that this responsibility was initially assumed by the defendant.

⁷ DizzyB Enterprise Ltd, DizzyB Sports & Tours, Booking Terms & Condition, statement #20 dated 8th July 2022.

- [19] Additionally, it is the witnesses' evidence that they "implied the following terms into the contract⁸", that upon payment, the defendant would make and confirm bookings with airlines and hotels, advance the Australian visa application process, promptly secure the visitor visas for entry into Australia, and take all necessary steps to ensure that the tour package was in order. In particular, they relied on what they believed was the defendant's expertise in securing the Australian visas.
- [20] It is without dispute that on 12th August 2022, the defendant, in the person of Mr Bathley, notified the claimants via 'WhatsApp' of an updated tour cost, which was increased from the initial price of US\$4,600.00 per person to US\$5,285.00 per person⁹. The claimants agreed to the new cost, bringing the total amount payable to the defendant to US\$10,570.00. No other terms of the package changed. However, on 15th September 2022—just 26 days prior to the scheduled departure—the claimants were informed for the first time by the defendant that they would need to apply individually for their Australian visas¹⁰. They maintained this position during cross-examination, which was also affirmed by the defendant's witness.
- [21] The claimants testified that Mr Bathley had 'intimated' that, despite the approaching travel date, they could "likely" secure their visas before departure. It was their evidence, that Mr Bathley suggested there was a 'strong possibility' that the visas would be granted within a few days after submitting their applications. According to the claimants, they proceeded with their applications; the second claimant's visa was approved approximately three to five days after the making of her application—before the scheduled travel date—while the first claimant's visa was only granted after the tour start date of October 11, 2022. Consequently, they were unable to join the Australia & Tasmania tour as scheduled from October 11th to 27th, 2022.
- [22] During cross-examination, the witnesses underscored, that despite the second claimant's visa being processed and approved before the tour start date, she ultimately opted not to travel as her travelling solo defeated the purpose of the intended "baecation" with her husband the first claimant. It was also disclosed that both the first claimant and Mr Bathley attempted to communicate with the Australian embassy to expedite the visa application process on the first claimant's behalf but to no avail. On cross-examination, when the first claimant was questioned as to why they continued to persist in the travel plans at the point when they were told that they needed to apply for the visa themselves, the first claimant told the court that the defendant never gave them the option to quit the tour at that time. However the first claimant did admit that the defendant had extended an offer to him to join the tour upon approval of his visa however, at that time, being a week after the 11th October, the first claimant considered it would have made no sense to join a two-week tour, a week late.
- [23] The nub of the claimants' evidence was therefore that not only was the defendant aware that they needed to obtain visas, but having had the experience as a tour operator they should have recognised the significant improbability of obtaining their visas on time, especially given the late notice of the same. The claimants in this regard relied on their own personal review of the Australian Government Department of

⁸ See paragraph 11 *ibid*.

⁹ See pages 35 and 36 of ETB.

¹⁰ See page 37 of ETB.

Home Affairs website, which clearly stated that the official global processing time for an Australian visitor visa (subclass 600) was 109 calendar days. Additionally, the claimants noted that the website strongly advised against purchasing airline tickets before visa approval to avoid potential complications. Based on this information, they calculated that, in order to have had a visa approved by the tour's start date of October 11th, 2022, the application should have been submitted by at the latest, June 24th, 2022 just about a month after having signed the contract.

[24] They further stated that, during multiple calls to the Australian Department of Home Affairs to check the status of their visa applications, representatives consistently stated there was nothing further they could do to expedite the process once the application was within the recommended period of 109 days.

[25] The witnesses further testified that they relied on the defendant's constant reassurances from Mr Bathley that the visas would be processed before the date of travel. Under cross-examination, however, they did confirm that it was without question that the defendant was not responsible for granting the visitor's visa. They maintained, however, that Mr Bathley should have been cognizant of a possible backlog in the visa processing as in 2022, many countries, including Australia, were returning to normalcy post-COVID-19, coinciding with the ICC Cricket Men's T20 World Cup, which resulted in a substantial increase in 'subclass 600 - Visitor visa' applications.

[26] The witnesses stated that they believed they should have been informed earlier and further stated that Mr Barthley relied on inaccurate information which resulted in the entire visa process being entered into late by the claimants.

[27] The claimants therefore maintained at trial that the defendant had breached its duty of care to them by failing to make necessary inquiries about the Australian visa application process, delayed in advising that each individual needed to apply for their visa separately and that the defendant did not notify them within a reasonable time frame regarding this requirement. Having not adhered to the standard of care required as between the claimants and the defendants, the claimants therefore further made it clear that the defendant having failed to purchase refundable tickets or buy travel tickets, which were subject to a fee for a change of travel date or advise them the limitations of the travel insurance that was included in the package, that the defendant should be solely responsible for the loss that they have suffered.

Evidence for the Defendant-Zorol Barthley

[28] This witness was the sole witness for the defendant company and he stated that he is the director and representative of the defendant company. He agreed with the claimants that he on behalf of the defendant and the claimants had entered into a contract on 20th May 2022 to undertake a group tour of Australia as had been advertised by his company...

[29] In his evidence, the defendant's witness stated that on 26th April 2022, at the beginning of the process and in order to ascertain what was needed for the visa application process, he contacted the Australian High Commission in Barbados and was advised that he would need to supply a group application to the Australian Embassy, listing the names of all individuals.

- [30] Further to this advice, the witness stated that on or around 30th August 2022, he submitted the applications on behalf of the group to include the claimants. Thereafter, Australian Home Affairs communicated via email requiring him to take further steps to establish an account for the visa application process. Although the defendant had initially indicated that the email he received was confirmation of the visa submissions, on cross-examination, he in fact, admitted that the initial contact was simply an automated response with instructions for creating the necessary account.¹¹. This contradicted his assertion that applications had been filed by that date. He admitted this discrepancy and acknowledged that his claim of completing applications for the group was incorrect.
- [31] In fact, in his evidence-in-chief, this witness sought to advance the steps he took to undertake the visa application process but failed to produce any evidence to substantiate the same.
- [32] This witness stated that after having made initial contact on the visa applications, that it was not until 13th September 2022, he was advised by the Australian Visa Issuing Agency that the visa process had to be undertaken individually.
- [33] After the receipt of this information, this witness contended that he communicated this information to the first claimant on or around 15th September 2022 and expressed the urgent need to apply for their visa. He further informed the claimants that the cost of the visa would be deducted from the tour package¹². He stated that 12 of the 16 (including the claimants) applicants who had submitted their application, had their visas approved within seven (7) days, however, the first claimant's application was one of those not issued on time by the Australian Embassy.
- [34] Under vigorous cross-examination, the witness for the defendant denied any failure to conduct due diligence with regard to the visa application process. He however admitted that despite having visited the global visa website multiple times he never noticed that each participant needed to submit an individual application. He further admitted that he had not downloaded the application or instructions for such an application from the website. Yet in the end of the questioning, he denied that he had failed the claimants with regard to the visa process.
- [35] Rather the witness for the defendant maintained that he had engaged his best endeavours to assist the claimants and the first claimant in particular when the application was made.
- [36] Additionally, the witness asserted that at some point all of the airline and hotel accommodations were already in place for the tour and when it appeared that the claimants may have been delayed in their visa application, he reached out to the airline to facilitate their delayed departure.

¹² Paragraph 10 of witness statement dated 1st February 2024.

[37] Thus, as far as the defendant was concerned in the evidence of its witness, they had put things in place for the claimants and it was the claimants who had decided to cancel the tour. In that regard, the witness for the defendant stated that he attempted to seek the assistance of the airlines and tour operators to obtain refunds on the failure of the claimants to take up their participation but unfortunately, by the time he had made contact, the applicable deadlines had passed. He stated that one international airline had waived fees for delayed travel, whereas the other agreed to hold the tickets to be used within one year which was communicated to the claimants.

[38] The defendant by its witness however admitted the defendant had in fact booked basic airfare without securing any specific guarantees for those whose visas might not have materialised or delayed. He admitted that there was no contingency plan for missed travel and that he had failed to purchase refundable tickets or travel insurance, reasoning that the contract allowed for only limited insurance, covering travel medical expenses only. Indeed the witness further admitted that he had never shared the particulars of the purchased travel insurance with the claimants.

[39] The witness for the defendant ultimately told the court that he did not believe that he should refund any of the monies expended by the claimants for the tour. As far as he was concerned, having secured credits for the unused services, specifically the flights on American Airlines and a refund to the defendant which he was willing to pass on for the accommodation negotiated in New York, the defendant had done the best it could in the circumstances and could not be required to refund payments due to circumstances beyond their control.

The claimant's legal submissions

[40] Counsel for the claimant argued that the defendant breached its contract, and secondly, the defendant owed the claimants a duty of care, which had also been breached. Therefore the claimant's counsel contended that the claimants suffered loss and damage in the amount of EC\$27,961.00 and are entitled to a full repayment of monies paid to participate in the tour.

Breach of contract

[41] As it relates to the contract, counsel argued that it is undisputed that a contract existed between the parties. Pursuant to the contract, it was an express term between them that the cost of the tour had attached to it specific conditions which were to be fulfilled by the defendant, in particular the provision of the service to secure the claimants' visitor's visa for entrance into Australia. Counsel further contended that in addition to the express terms there were implied terms that on payment to the defendant of the cost of the tour, the defendant would make bookings with airlines and hotels confirm the same, advance the Australian visa application process; proceed in securing the visitor's visa for entrance to Australia in a timely manner; and that the defendant would take the necessary steps to ensure that all was in place for the commencement of the tour.

[42] They argued that the defendant having failed to provide all travel information, left the claimants uncertain as to when any of those arrangements were made, the type of arrangements that had been made and for where and when. Further, as it concerned the provision of the limited travel insurance, owing to the

defendant's failure to provide any policy per the contractual agreement, the claimants were not made aware of the extent of the insurance coverage.

[43] They further contended that the defendant ought to have known what was required to make the application for an Australian visa and that they should not have proceeded to make bookings without the completion of that process.

[44] It is the argument of the claimants that the onus was on the defendant to ensure that they were privy to current and correct information regarding the visa process. Therefore, having initially taken responsibility for the visa process and having failed to satisfactorily provide that service, it was clear that the defendant had breached the contract, which breach resulted in loss and damage to the claimants, and as such, the claimants are entitled to the relief as sought.

Negligence

[45] In relation to the claimants' argument that they had established a right to claim under the tort of negligence, the claimants relied on the authority of *Halsbury's Laws of England* to argue that all the claimants had to show to establish negligence was that the defendant who was the entity tasked to provide certain services for which they had a duty of care had failed to do so and was therefore in breach of that duty. They contended, that the determination of Alderson *B in Blyth v Birmingham Waterworks Co.*¹³, who defined negligence as either the omission of actions a reasonable person would take or the commission of imprudent acts under similar conditions clearly supported their case as it related to the defendant and their failure to act.

[46] To further this argument, the claimants referenced ***Charlesworth & Percy on Negligence***¹⁴ and ***Grant v Australian Knitting Mills***¹⁵, highlighting that negligence constituted a "specific tort in itself," distinct from other complex duties. These authorities in the contention of the claimants supported their position that a breach of a clear, standalone duty could give rise to their claims.

[47] In terms of duty assumption, the claimants cited ***Charlesworth & Percy on Negligence***¹⁶ and ***Henderson v Merrett Syndicates Ltd***¹⁷ which buttressed their submission that, where a party assumes responsibility to perform tasks on which others rely, a duty to exercise reasonable skill and care arises. They emphasized that this assumption of responsibility is an objective determination—namely, whether a reasonable claimant in similar circumstances would believe that the defendant had accepted responsibility to act with due care. This standard, the claimants argued, applied fully to the defendant's conduct in this case.

[48] The claimants argued that the defendant assumed responsibility for applying for the Australian visas, a duty explicitly outlined in their contract. They supported this claim with the learning in ***Briscoe v Lubrizol***

¹³ (1856) 11 Ex Ch 781

¹⁴ Page 11, paragraph 1-19

¹⁵ [1936] A.C. 85

¹⁶ Supra

¹⁷ [1995] 2. A.C. 145

and another¹⁸, where similar principles were recognized. In **Henderson v Merrett Syndicates Ltd.**¹⁹, Lord Goff elaborated on the principles *in Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd*²⁰, stating that when a party assumes responsibility for providing services, it should be liable for any economic loss resulting from negligent performance of those services.

[49] To further underscore their point, the claimants referenced **White v Jones**²¹, where Lord Browne-Wilkinson clarified, that the assumption of responsibility related to the task undertaken, not merely legal liability. This special relationship, once established, binds the defendant to perform the task carefully. **Henderson**²² also demonstrated that a special relationship based on assumed responsibility can exist even if the defendant has a contractual agreement with a third party, provided that the defendant directly undertakes tasks impacting the claimant's interests. The claimants contended that these principles apply directly to their case, asserting that the defendant's actions created a binding duty of care, which was negligently breached.

[50] The claimants contended that the defendant explicitly accepted the assumption of responsibility for the visa application process and thus owed a duty of care. They argued that the defendant failed to conduct sufficient research to ensure that they could fulfil this obligation, and they ought to have known that they could not apply on the claimants' behalf. Further, bookings should not have been done unless the visas were applied for and granted, given the mandate of the Australian authorities.²³

[51] Citing **Charlesworth and Percy on Negligence**²⁴ the claimants highlighted the established principles requiring proof of (a) an existing duty of care between the parties, (b) a breach of the prescribed standard of care, and (c) consequent damages suffered due to this breach. They argued that the defendant's negligence resulted in their inability to partake in the tour, leading to tangible losses and justifying the relief sought for breach of duty. This case, they argued, meets the standard of negligence on a balance of probabilities, entitling them additionally to damages for the losses incurred.

The defendant's legal submissions

[52] As a preliminary point, the defendant proffered six (6) issues for consideration by the court, which can be encapsulated into three (3) broad issues: (i) whether the defendant breached the contract between the parties; (ii) whether the defendant owed a duty of care to the claimants; (iii) what if any damages the claimants are entitled to? The defendant further sought to subsume the issue of privity of contract under the first issue. However, that issue was not raised on the pleadings of either party, thus, it is not properly before the court. Consequently, it will not form part of the court's considerations.

Negligence (whether a duty of care was owed by the defendant to the claimant)

¹⁸ [2000] ICR 694.

¹⁹ Supra

²⁰ [1964] A.C. 465

²¹ [1993] 3 W.L.R. 730

²² Supra

²³ As noted on page 46 of the ETB.

²⁴ Supra

[53] As the first line of argument, the defendant contended that there was no duty of care owed to the Claimants in the circumstances, as the relationship between the parties was purely contractual. Also citing *Grant v Australia Knitting Mills Ltd*²⁵, the defendant argued that negligence required a duty to take care as part of a specific tort, independent of any contractual relationship. The defendant further referenced Lord Wright's commentary in *Grant v Australia*²⁶, noting that, without a defined relationship from which a duty to take care can be deduced, there could be no actionable tort of negligence. Consequently, the defendant submitted that, in the absence of an established duty of care, the claim in negligence must fail.

[54] However, the defendant also argued in the alternative that, should the court find a duty of care existed, such a duty had been appropriately discharged by the defendant. Counsel for the defendant asserted that the defendant had acted reasonably by contacting the Australian High Commission to confirm visa requirements and then subsequently initiated the visa process based on that information. According to the defendant, once the defendant was aware that the claimants were required to undertake their own application they had taken all reasonable steps in line with the duty, if any, owed to the claimants by promptly informing them as needed. Thus, the defendant contended that any loss suffered by the claimants could not be causally linked to any alleged failure on the defendant's part.

Breach of Contract

[55] In response to the contentions of the claimants as to the breach of contractual terms by the defendant, the defendant contended that there had been no breach on their part. With regard to the provision of travel insurance, the defendant pointed out that while the tour package included "limited travel insurance," it encouraged participants to obtain additional coverage. Thus, the defendant argued, the contract's insurance clause had not been breached by the extent of what was provided by them as they were only obliged to extend limited not comprehensive coverage, and thus they had satisfied the contract's obligations.

[56] The defendant further relied on the contract's explicit terms to assert that the claimants' own misunderstanding of the insurance provision did not translate to any fault or contractual breach by the defendant.

Visa

[57] As it concerns the visa application the defendant countered the assertions of the claimants of the defendant's failures by detailing the efforts to facilitate the group visa application initially. The defendant emphasized that they acted reasonably in taking steps to inform the claimants to initiate their individual applications.

[58] Moreover, the defendant argued that since visa processing was beyond their control, but noting that several applicants, including the first claimant's wife, received their visas within a short timeframe after submitting their individual applications, they submitted that the delayed issuance of the first claimant's visa likely resulted from specific concerns with his application rather than any fault or breach by the

²⁵ [1936] A.C. 85

²⁶ *Supra*

defendant. They further contended that in any event, the claimants' actions—proceeding to submit their applications individually—indicated acceptance of this amended process and thus nullified any perceived breach.

[59] In conclusion, the defendant contended that there was no breach of contract and that any loss suffered by the claimants could not reasonably be attributed to the actions of the defendant, emphasizing that the process and timing of visa approval lay solely within the discretion of the Australian authorities. Should the court find otherwise, the defendant urged consideration of the reasonable efforts utilized to mitigate the circumstances surrounding the visa applications.

[60] The defendant argued that the claimants submitted that their inability to attend the tour resulted in a financial loss totalling \$27,961.00. They contended that the claimant failed to adequately mitigate the damages incurred by this alleged breach of contract. Citing the authority of ***British Westinghouse Electric & Manufacturing Co Ltd v Underground Electric Railways Co of London Ltd***²⁷ they argued that the principle of mitigation requires an injured party to take all reasonable steps to reduce their losses. In that case, Viscount Haldane LC stated that a plaintiff is obligated to "take all reasonable steps to mitigate the loss consequent on the breach and is debarred from claiming any part of the damage which is due to his neglect to take such steps."

[61] The defendant submitted that the claimants having acknowledged that the second claimant could have attended the tour as originally planned, but she opted not to participate and that further that the defendant offered alternative relief in the form of two American Airlines ticket credits valid for one year and a partial refund for two nights' accommodation that had been booked for transit which was not accepted signalled an unwillingness to mitigate their losses. Consequently, the claimants were not entitled to the full refund as claimed.

Issues:

[62] To this court's mind, there are two substantive issues for consideration, which are as follows:

- (1) Whether, in the circumstances, the defendant owed a duty of care to the claimants and, by its actions (or omissions), fell short of their duty, and is thus liable in negligence for the financial loss suffered by the claimants.
- (2) Whether in the circumstances, the defendant's actions or omission constitute a breach of a fundamental element(s) in the contract, thus entitling the claimants to an award in damages.

Law and Analysis

[63] From the claimants' pleadings before this court, the claimants sought to recover from the defendant a sum in the total amount of EC\$27,961.00, being the costs of the tour less the cost of the two Australian visa applications of EC\$598.00.

²⁷ [1912]

[64] Before addressing the substantive issues, the court wishes to underscore key elements which are central to its mind. Notably, on the claim, the claimants have not pleaded this amount in the alternative but have instead asserted that, due to one or more breaches, the defendant owes the claimants the specific amount stated above. Furthermore, the claimants seek an award for damages arising from negligence. As such, the claimants advanced a claim both under the contract and for negligence in tort, thereby asserting concurrent liability. The court intends to provide a brief discussion on this position.

[65] Historically, there has been a general presumption against concurrent liability. However, as outlined in ***The Law of Tort (Common Law Series)***²⁸, this position evolved in 1994 when the House of Lords endorsed the principle of concurrent liability—a precedent that continues to hold today. In paragraph 16.7, the authors elaborate on this development, stating:

“The usual attitude is that of Lord Goff, who said in the context of the insurance market that: ‘...the common law is not antipathetic to concurrent liability, and there is no sound basis for a rule which automatically restricts the claimant to either a tortious or a contractual remedy. The result may be untidy; but, given that the tortious duty is imposed by the general law and the contractual duty is attributable to the will of the parties, I do not find it objectionable that the claimant may be entitled to take advantage of the remedy which is most advantageous to him, subject only to ascertain whether the tortious duty is so inconsistent with the applicable contract that, in accordance with ordinary principle, the parties must be taken to have agreed that the tortious remedy is to be limited or excluded.”

[66] It is therefore clearly now accepted that there is no inherent reason in common law to prevent a claimant from pursuing both tortious and contractual claims out of the same set of circumstances. Notably, however, this is subject to the singular limitation that if the tort duty (such as negligence) contradicts or conflicts with the terms of the contract, it must be taken that the parties may have agreed that the tort remedy should not apply.

[67] Each case is however unique. Thus, the court must consider the specific facts and the wording of the contract involved to understand the obligations and expectations set by the parties. The terms of the contract are essential in defining what each party agreed to do. These terms help determine whether the remedies available under tort law (like compensation for negligence) are appropriate and, if so, whether pursuing those remedies would place a greater burden on the defendant than what was initially agreed upon in the contract.

[68] This was further explained by the learned authors in **paragraph 16.7**²⁹, that “*there seems to be no general objection to concurrency outside very particular contexts, ... further, mindful of differing foundation for each obligation outlined by Lord Goff, the courts have confirmed the basis for any concurrent duty in tort to compensate for economic losses*” As Jackson LJ³⁰ puts it:

²⁸ The Law of Tort (Common Law Series) 3rd edition, December 2014.

²⁹ Ibid

³⁰ *Robinson v PE Jones (Contractors) Ltd* [2011] EWCA Civ 9 at 74-75.

'[...] the conceptual basis upon which the concurrent liability of professional persons in tort to their clients now rests, is an assumption of responsibility.'

Going on to note that:

'It is perhaps understandable that professional persons are taken to assume responsibility for economic loss to their clients. Typically, they give advice, prepare reports, draw up accounts, produce plans and so forth. They expect their clients and possibly others to act in reliance upon their work product, often with financial or economic consequences.'

As a result, the question of whether the concurrent duty in tort can be more onerous than the contract must be investigated in each case and depends on the scope of that contract."

- [69] As a result, once it is accepted that professionals whose work is meant to be relied upon, they must be seen as assuming responsibility for the economic losses their clients may suffer due to their advice or work.
- [70] Thus, for the claimants to bring an action under tort and contract is not unusual. Against this backdrop, the court will go on to assess the first issue.

Whether the Defendant was negligent in the circumstances of the case.

- [71] To address this issue, the court must first determine whether the defendant owed a duty of care to the claimants in tort, whether there has been a breach of that duty and whether there are any losses suffered by the claimants flowing therefrom.
- [72] In the case at bar, the court notes that the claimants claim the recovery of EC\$27,961.00, being monies transferred to the defendant under the terms of the contract established between the parties to take part in the group tour. There is no allegation of a consequential loss flowing from physical damage to the person or property of the claimants. Further too, there is no additional claim for non-economic damages, such as emotional distress or loss of opportunity.
- [73] Rather, the financial loss they claim stems solely from the prepaid costs associated with the tour, specifically airfare and accommodations that became non-recoverable due to the defendant's booking actions. Importantly, too, the court observes that the total sum of EC \$27,961.00 does not reflect the amount paid for the visa applications. Neither did the claimants claim any sum concerning their visa applications.
- [74] Instead, as it concerns the allegation of negligent conduct, the claimants argued that their loss was occasioned by the defendant's acts and omissions. These include delays in addressing the visa application process and its failure to clarify its ability, or lack thereof, to apply for the claimants' visas on their behalf within a reasonable time. Furthermore, the defendant allegedly conveyed to the claimants an expectation that their visas would be granted within three (3) days, which reflects a time before the commencement of the tour's start date. It is alleged that the defendant also prematurely booked travel arrangements, disregarding the Australian embassy's advisory not to do so before visa approval, and failed to inform the claimants that the travel insurance provided covered only medical expenses.

- [75] However, the underlying nature of the loss remains purely financial, as it is limited to the monetary amount the claimants paid for travel arrangements and accommodations under the terms of the contract. Consequently, this matter is one of pure economic loss, as the claimants seek only to recover the sum of money they paid under the contract, which became non-refundable as a result of the defendant's actions.
- [76] With this foundation established, the court can now consider whether, under the principles of the law of tort as set out in the well-celebrated case of *Hedley Byrne and Co Ltd v Heller and Partners Ltd*³¹, the defendant owed a duty of care in tort to prevent this type of financial loss, and if so, whether they breached that duty in a manner that would render them liable in negligence.
- [77] As a general rule, "no damages can be claimed for 'pure' economic loss in the law of torts. Pure economic loss is financial loss which is not consequent upon any physical damage to the person or property of the claimant. Economic loss, which is consequent upon physical damage to the claimant or his property is compensable"³².
- [78] The courts are cautious in allowing claims for pure economic loss in negligence, mainly to prevent "floodgate" claims. English law has historically differentiated between consequential economic loss (economic loss directly resulting from property or personal injury) and pure economic loss, which is not linked to any such damage.
- [79] The well-established exception to that rule is the principle arising from the case of *Hedley Byrne and Co Ltd v Heller and Partners Ltd*³³ which established that damages can be recovered in tort for economic loss caused by careless misstatements. The authority established that economic loss caused by negligent misstatement could be recoverable if a "special relationship" existed between the claimant and the defendant. This case introduced the idea of an assumption of responsibility by the defendant and reliance by the claimant, where it was reasonable for the claimant to rely upon the care and skill of the defendant who made the statement; and (ii) the defendant knew or ought to have known that the claimant was relying on him. This is often seen in cases involving professional advice, such as accountants or financial advisors, where the advisor knows the claimant will rely on their expertise³⁴.
- [80] Thus, the House of Lords recognized that a duty of care could arise in tort to avoid causing pure economic loss when a party makes a statement that another party will rely on for financial decisions. To establish liability for negligent misstatement, the claimant must prove that the defendant assumed responsibility for the accuracy of the statement and that the claimant reasonably relied on it.
- [81] In economic loss cases, the test of reasonable foreseeability alone will not justify a duty of care owed to the claimants without more. The courts will often examine whether there was sufficient proximity between the parties, whether the economic loss was foreseeable, and whether it is fair, just and reasonable to

³¹ Supra

³² Commonwealth Caribbean Tort Law 5th edition, Gilbert Kodilinye pgs. 124, 125.

³³ Supra .

³⁴ See page 126 of Gilbert Kodilinye Commonwealth Caribbean Tort Law 5th edn.

impose a duty of care in the circumstances. If all criteria are met, the court may find that a duty of care existed.

[82] This was established in the seminal authority of **Caparo Industries plc v Dickman**³⁵. In **Caparo**, the House of Lords outlined a three-part test for duty of care: foreseeability of harm, proximity between the parties, and whether it is fair, just, and reasonable to impose a duty. This case limited recovery for pure economic loss by requiring a close relationship between the parties. All of the requirements must be answered in the affirmative for a duty of care to exist between the parties.

[83] Based on the foregoing, the court will first determine whether the defendant made a negligent misstatement. If so, it will then assess whether it was reasonably foreseeable that such a misstatement would cause harm or loss to the claimants, whether sufficient proximity existed between the parties, and whether it is just and reasonable to impose a duty of care on the defendant in the circumstances of this case.

Negligent misstatement

[84] In the present case, the only alleged misstatement is based on the claimants' evidence that the defendant indicated their visas would be approved within three days of applying to the Australian Embassy. In considering the alleged misstatement by the defendant, the claimants argue that they negligently misrepresented this information.

[85] In **Hedley Byrne**³⁶, the duty of care for pure economic loss arose because the information provided was given in a professional capacity and was expected to be relied on financially. Importantly, here, however, the defendant is a tour operator, not an immigration advisor, visa officer or agent authorised to handle visa matters directly.

[86] The defendant's assertion, this court finds, was based on an informal conversation between the defendant's representative and the claimants, in which he referenced his experience as a tour operator rather than any "official" or "authoritative" information. He gave the claimants an estimated timeframe for visa approval based on his prior experience with tour groups rather than professional knowledge about visa processing times. The defendant's statement about the typical processing time was not part of a professional service related to visa procurement and did not arise from any special expertise in immigration matters.

[87] Given that the defendant had no control over or special insight into the visa process and was simply sharing an informal estimation, this court does not find that the defendant's statement was an assumption of responsibility in tort, but rather an opinion and not that of a professional assertion.

[88] In the tort of negligent misstatement, as established in **Hedley Byrne**³⁷, a duty of care arises where there is an assumption of responsibility, coupled with reasonable reliance by the claimant on the defendant's

³⁵ [1990] 2 WLR 358, at 364, 365

³⁶ Supra

³⁷ Supra

statement. Here, the court must assess whether the defendant's statement was such that the claimants could reasonably have relied on it as an assured timeframe for the processing of their visa.

- [89] After the defendant informed the claimants that they needed to apply for their visas independently and refunded the visa application fees, the defendant did nothing further to formally assume responsibility for obtaining the visas.
- [90] The claimants, in turn, later checked the Australian visa website and found that the Global Processing Time (GPT) for their visa category was estimated at 109 days. They contend that the defendant should have known this, especially given potential processing delays due to factors like the COVID-19 pandemic and the increased demand associated with the Cricket World Cup.
- [91] The claimants, in control of their own applications, had access to the Australian visa processing information (GPT of 109 days) and could have reasonably considered this when relying on the defendant's informal estimate.
- [92] Despite these factors, however, it remains notable that 12 out of the 16 members of the defendant's tour group successfully obtained their visas within approximately three days. One of the claimants even received their visa within this estimated period, suggesting that the defendant's statement, though informal, was not unfounded in practice. His representation, based on prior experiences with processing times, was not inherently unreasonable, particularly since he had no obligation to guarantee visa issuance, a matter ultimately beyond his control.
- [93] Furthermore, the core of the claimants' financial loss, however, stems not from this alleged misstatement but rather from the defendant's contractual decision to book non-refundable travel arrangements before visa approval, despite the embassy's clear guidance against doing so. Even if the defendant's estimate was optimistic, the claimants' primary loss resulted from the defendant's disregard for the embassy's instructions rather than from their reliance on its representative's statement about visa processing times.
- [94] The defendant's decision to proceed with bookings before securing visas is directly tied to its role under the contract. Thus, the loss primarily stems from contractual actions rather than reliance on any standalone tort duty.
- [95] The contract governed the tour arrangements, and the risk of premature bookings was arguably within the scope of the contract. The defendant's informal estimate about visa timing, provided in a non-professional capacity, did not create an additional duty in tort. The loss suffered by the claimants is therefore a matter best addressed under contract law, as tort law traditionally does not cover financial losses tied to contractual performance failures.
- [96] Therefore, under tort law, in this court's mind, the claimants failed to establish negligent misstatement by the defendant. The defendant's role as a tour operator rather than an immigration advisor, coupled with its

informal advice and the claimants' own access to official visa information, suggests that any reliance on its representative's statement did not meet the reasonable reliance threshold required to establish a duty of care in tort. The matter is more appropriately considered as a breach of contractual obligations, where the loss directly resulted from the defendant's premature booking actions, not the alleged misstatement.

[97] The court will now consider the second issue.

Breach of Contract

[98] In any contractual relationship, the parties involved are bound by the terms and conditions agreed upon. When one party fails to perform their obligations as stipulated in the contract, a breach of contract may occur. A breach can either be a minor deviation from the contract's terms or a fundamental breach, which goes to the root of the agreement and deprives the innocent party of the benefits they were entitled.

[99] In **Commonwealth Caribbean Contract Law**³⁸, the learned authors stated on pg 256 the following:

Breach of a condition in a contract, such as the conditions as to title, fitness for purpose and merchantability in a contract for the sale of goods, will entitle the innocent party to rescind the contract and recover the purchase price since a condition is regarded as a term of fundamental importance. Similarly, a breach of a term which is not a condition, but which is regarded as an important one, will entitle the innocent party to rescind, so long as it is shown that the breach 'goes to the root of the contract' or is 'fundamental', 'affecting the very substance of the contract'.

Diplock LJ suggested the following test:

Does the occurrence of the event deprive the party, who has further undertakings to perform, of substantially the whole benefit which it was the intention of the parties as expressed in the contract that he should obtain, as the consideration for performing those undertakings?

Put another way, 'the right of discharge ... depends on the answer to this question: Does the breach go so far to the root of the contract as to entitle the injured party to say, "I have lost all that I cared to obtain under this contract: further performance cannot make good the prior default"³⁹.'

[100] In determining whether a breach has occurred. The key question is whether, by the terms of the contract, the defendant has failed to meet these obligations in a way that amounts to a breach. This assessment will determine whether the defendant's actions or lack thereof, have prevented the claimants from receiving the full benefits promised under the contract. If the defendant's conduct has deviated from the contractual parameters to such an extent that it undermines the agreement's purpose, then a contractual breach has occurred. The court will thus assess whether the defendant's failure to apply for the visas correctly, provide adequate insurance coverage, or offer the necessary details about the travel arrangements constitutes a failure to perform its duties under the terms of the contract, thereby entitling the claimants to seek a refund of the full purchase price of the defendant's tour package.

³⁸ Gilbert Kodilinye and Maria Kodilinye, *Commonwealth Caribbean Contract Law* (2004).

³⁹ *Commonwealth Caribbean Contract Law* (2004), p 256, cited the authority of Anson's *Law of Contract*, 29th edn (2010), p 523.

[101] The court observes the claimants' argument that the defendant was negligent in conducting his affairs to organise the tour on behalf of the claimants. As previously established, the court does not agree that there was actionable negligence on the defendant's part, however, given the nature of the contract between the parties, there exists an implied term under the contract for the defendant to exercise reasonable care and skill.

[102] Prima facie any contracts for services contain an implied term requiring the service provider to exercise reasonable care and skill in carrying out contractual duties. Where the service provider has failed to take reasonable steps to fulfil a key contractual promise, this may constitute a breach, particularly if it deprives the innocent party of a substantial benefit under the contract.⁴⁰

Visa application

[103] Under the contractual agreement, there was a clause which initially governed the terms of the visa application process. The provision reads as follows:

"Your Responsibility: ..., You are also responsible for obtaining your US Visa. However, the cost and process of securing your visitor's visa for entrance to Australia (if required and depending on your passport) is included in the tour package.⁴¹" (my emphasis added)

[104] This contractual term clearly stated that the defendant would be responsible for the visa application process on behalf of the claimants. This duty implied that the defendant was expected to perform with a degree of competence and diligence, particularly, in light of its experience as a tour operator. Thus, according to **Midland Bank Trust Co Ltd v Hett**⁴², **Stubbs and Kemp**⁴³, the defendant's professional duty extended beyond avoiding negligence; it required him to undertake reasonable steps to verify that he could fulfil his obligations effectively.

[105] Here, the defendant sought advice from the Australian High Commission in Barbados, resulting in misinformation that led it to mistakenly initiate a group visa application rather than confirming the correct process with a source specifically relevant to Antiguan travellers. This oversight, combined with its failure to review the individual application requirements on the Australian visa website, suggests a failure to meet the implied duty of reasonable care and skill. Had the defendant thoroughly investigated the visa application process prior to advertising the tour, or even at the stage of incorporating it as a term of the contract, its representative would have known that he could not apply for any potential client with an Antiguan passport, particularly the claimants' visas.

[106] The defendant argued that it gave the claimants early notification, which was immediately upon unearthing that the process which he attempted to start was inapplicable. Thus, there was no breach of the contract. However, had the defendant exercised due diligence at the outset, it would have been aware of the limitations in applying for the visas and would have avoided placing the claimants in a position where they

⁴⁰ The Law of Tort (Common Law Series, OUP 2021) para 16.3, citing *Midland Bank Trust Co Ltd v Hett, Stubbs and Kemp* [1979] Ch 384.

⁴¹ See pg. 17 of ETB.

⁴² *Supra*

⁴³ *Supra*

were informed only 26 days(16 of which were actual working days) before the tour. Although this notification may have in fact been at the time that the information was discovered, his last-minute notification was the direct result of an earlier lack of careful inquiry.

[107] The defendant further argued that once the claimants were informed, they waived any breach by choosing to proceed with the visa applications themselves. By doing so, the contention was made that the claimants effectively affirmed the contract. Additionally, the defendant sought to rely on the “major changes” clause within the contract. This clause reads as follows:

“ When a change is a major change (and a major change is an alteration to your outward or return flight time by more than 24 hours), we will advise you as soon as is reasonably possible. You will then have the choice of accepting the change or withdrawing from the contract and accepting a full refund of the monies paid.”⁴⁴ (my emphasis)

[108] The defendant relied on this clause to argue that it granted the claimants the right to withdraw from the contract when they were informed of the change in the visa application process. By choosing to proceed with the contract, the defendant asserted, the claimants effectively waived any breach against him.

[109] In ***Commonwealth Caribbean Contract Laws***⁴⁵, the learned authors state that an affirmation occurs when a party chooses to continue with the contract despite the breach. The learned authors state that:

“Where the innocent party elects not to accept the other’s repudiation or decides to ‘affirm’ the contract, notwithstanding the guilty party’s fundamental breach, the effect is that the contract remains in force for both parties. In addition, each party retains the right to sue for past and future breaches and, in particular, the innocent party can recover damages for the other’s repudiation or breach of which he complains.” (my emphasis added)

...Thus where S delivered to B goods of the wrong size and of an inferior standard to that specified in the contract, and B accepted delivery and later resold the goods, B was taken to have treated the contract as still in force, but he was entitled then to sue for damages for the breach. *Modern Publications Ltd v Academy Press Ltd*⁴⁶.”

[110] The authority is clear, where an innocent party becomes aware of a breach and decides to proceed with the contract, they may be deemed to have affirmed the contract. This does not, however, bar them from claiming damages but it does mean they have elected to continue with the agreement in its altered state. Thus concerning the case at bar, the claimants would not in any event be barred from claiming damages.

[111] In any event, this court accepts that the defendant having notified the claimants of the issue some 26 days before the tour, thereby limiting their options, consequentially put them in a challenging position. Their decision to apply for the visas individually could, therefore, be seen as a practical response to the situation rather than a clear affirmation of the contract.

⁴⁴ Page 16 of bundle

⁴⁵ Supra Page 258

⁴⁶ [1967] NCLR 146

[112] Further, although the “major changes” clause provided the claimants with the right to withdraw if notified of a significant change, it was clear that the only major change that would have allowed the parties to rely on this provision was “an alteration to your outward or return flight time by more than 24 hours” This change that was effected by the defendant, therefore, did not, in any event, fall within these parameters.

[113] According to the learned authors in ***Commonwealth Caribbean Contract Law*** (pg. 256), where a term in the contract is central to the purpose of the agreement, its breach can justify rescission if it “goes to the root of the contract.” The visa application process was a fundamental aspect of the contract because the claimants relied on the defendant to arrange the necessary travel authorisations, enabling their participation in the tour. By failing to fulfil this obligation, the defendant arguably deprived the claimants of “substantially the whole benefit” they sought under the contract—namely, a seamless, coordinated tour experience, including visa facilitation.

[114] In this context, the claimants’ intent to take the tour together as a “bae-cation” further emphasizes the material importance of this term. The delay in securing the visas, and the defendant’s actions, ultimately prevented the claimants from joining the tour. This underscores the significance of this obligation and suggests that the defendant’s failure “goes to the root of the contract”.

[115] Based on the foregoing, the defendant did not perform their obligations with reasonable care and skill. The visa application process was a core element of the contract, and the defendant’s error in handling it deprived the claimants of the tour’s full benefit, thus constituting a fundamental breach. The claimants’ choice to apply independently did not amount to an affirmation of the contract or a clear acceptance of the defendant’s breach but rather a practical response in circumstances when options were limited. In any event, the actions of the claimants do not preclude them from seeking damages for the demonstrable breach. Consequently, the claimants retain the right to claim damages for this breach, given the defendant’s failure to fulfil its contractual obligations adequately.

Booking of airfare, hotel accommodations and travel insurance

[116] In this case, the defendant undertook a series of contractual obligations as a tour operator, including the claimants’, airline ticketing, hotel reservations, and travel insurance arrangements. The claimants argue that the defendant failed to exercise due diligence in performing these duties, which resulted in preventable complications that undermined their ability to participate in the planned tour.

[117] As it concerns the booking of airline tickets, according to the evidence, the Australian visa guidelines advised travellers to refrain from booking non-refundable tickets until visa approval was secured. Despite this guidance, the defendant proceeded to purchase non-refundable airline tickets on behalf of the claimants before their visas were issued.

[118] The admission of the defendant’s representative under cross-examination that he was aware of this advice but chose to disregard it, highlights a failure to prioritise the claimants’ interests and a lack of basic due diligence expected of a responsible tour operator. Booking non-refundable tickets without visa assurance

introduced significant risk to the claimants, as any delay or denial of their visas could have and in fact did render these tickets unusable, leading to financial losses and disruption of their travel plans.

[119] The defendant, therefore, cannot then purport to pass the buck to the claimants that they should have obtained their own travel insurance which would have prevented this loss. Having included in the contract that the defendant would provide “limited travel insurance” and encouraged the claimants to seek their own coverage is of no moment and certainly of no assistance to the defendant whose representative somewhat sheepishly admitted on cross-examination that the extent of the coverage which the defendant offered was in fact never communicated to the claimants. The omission of this critical information deprived the claimants of the opportunity to secure adequate coverage for other potential travel risks, including trip cancellations, delays, or losses related to non-refundable bookings.

[120] This lack of disclosure goes to the core of the travel insurance coverage term, undermining the defendant’s argument that the claimants were responsible for obtaining additional insurance without first informing them of the true scope and limitations of the provided coverage.

[121] Furthermore, the defendant’s approach to securing hotel accommodations for the claimants further raises questions about its adherence to the contract’s standards of transparency, diligence, and professional responsibility. Although the defendant’s representative at trial asserted that he had in fact booked hotels across the intended destinations, he failed to provide the claimants and indeed the court with any concrete evidence of these reservations, such as booking confirmations or payment receipts.

[122] A party responsible for organizing travel should reasonably provide proof of bookings—such as flight and hotel confirmations—to ensure transparency and to offer assurance of services rendered under the contract. In this case, the defendant provided only an itinerary, which fell short of the required proof of confirmed bookings.

[123] By failing to give the claimants documentation of confirmed bookings, the defendant deprived them of the ability to verify the bookings and potentially address any issues proactively, such as cancelling or rescheduling if necessary. This lack of transparency is further compounded by the defendant’s subsequent reliance on terms or clauses in the contract when it suited its position, creating an inconsistent approach that weakened its representative’s credibility.

[124] The defendant’s approach to the airline tickets and refund for accommodations also raises concerns. The defendant’s action of placing the airline tickets “on hold” for future use instead of refunding or compensating the claimants for the non-fulfilment of their original trip does not adequately address the loss suffered. While this approach may appear to mitigate damages, it failed to provide the claimants with an equivalent substitute for their intended experience.

[125] The claimants booked the tour specifically to attend a series of organized events, including ICC World Cup matches, as part of a planned “baecation” in Australia. The offer to reschedule their tickets does not restore this unique, time-sensitive opportunity, which cannot be replicated by simply allowing travel at a later date.

[126] Further, the defendant did not consult with the claimants to determine if rescheduling would be acceptable or desired, nor did they provide details regarding the limitations or terms associated with this "on-hold" status, leaving the claimants uncertain as to the exact value of what was being offered. The lack of clarity and unilateral decision-making by the defendant suggested an attempt to avoid financial liability rather than to genuinely remedy the claimants' losses.

[127] In light of the foregoing, the innocent party—here, the claimants—are entitled to recover damages where the contract performance is defective.

Conclusion

[128] In the round, the court is satisfied that the claimants should be awarded damages for the defendant’s contractual breach. The measure of damages is to put the claimants in a position they would have been in had the defendant properly performed the contract⁴⁷.

[129] **Order of the court**

- 1. Judgment is entered for the claimants in the sum of \$27,961.00 for breach of contract as sums paid to the defendant by the claimants.
- 2. The claim for damages for negligence is dismissed.
- 3. Interest to the claimants on the said sum at 3% p.a. from the date of the breach to the date of this judgment and thereafter at the statutory rate until payment
- 4. Prescribed costs to the claimants on the sum awarded pursuant to Part 65 CPR 2023.

Nicola Byer

High Court Judge

By the Court



Registrar

⁴⁷ Gilbert Kodilinye and Maria Kodilinye, *Commonwealth Caribbean Contract Law* (2004), pg. 260.