

THE EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2015/0520

BETWEEN:

[1] JERMAINE ANTHONY.

[2] MICHELLE ANTHONY

Claimants

and

[1] KIWI ENGINEERING & CONSTRUCTION LTD

Defendant

Appearances:

Mr. Lawrence Daniels with Mr. Pete-Semaj McKnight for the Claimant

Mr. Sherfield Bowen for the Defendant

2022: July 14th

2023: February 20th

JUDGMENT

[1] **ROBERTSON, J.: Introduction.** The Claimants, Jermaine Anthony and Michelle Anthony, claim damages (general and special damages) against the Defendant, Kiwi Engineering & Construction Ltd for breach of contract. The Defendant is a company duly incorporated pursuant to and in accordance with the laws of Antigua and Barbuda, and is involved in the business of construction. The Defendant was retained by the Claimants to construct the Claimants' house.

[2] This Court has determined that the Defendant is liable in negligence for the defects to the foundation of the dwelling house constructed.

Relevant Background

[3] The Claimants, Jermaine Anthony and Michelle Anthony, a married couple, contracted with the Defendant, Kiwi Engineering & Construction Ltd, through Mr. Claude Weaver, the managing director of the company, to construct a concrete dwelling house. The dwelling house was to consist of three bedrooms, two bathrooms on land situate at Mount Joy Gardens, in the parish of Saint Peters, in the State of Antigua and Barbuda.

[4] The cost for the construction of the house was EC\$287,280.00. This sum was to be paid to the Defendant in the following tranches:

(1) Mobilization fee	\$57,500.00
(2) Completion of super structure	\$52,000.00
(3) Completion of roofing	\$72,000.00
(4) Completion of plastering and installation of windows and doors	\$49,000.00
(5) Painting, tiling and finishing	\$43,000.00
(6) Retention fee (3 months)	\$13,780.00.

[5] The Claimants' plead that the relevant contract was dated December 17, 2008. However, in examination in chief the Claimants indicate that subsequent to the execution of the agreement dated December 17, 2008 the parties executed another agreement on May 19, 2009 which agreement was to govern the arrangement between the parties. The second Claimant indicated that the agreement which was subsequently executed was similar in terms to the agreement dated December 17, 2008, and that the copy of that agreement was in the possession of the financial institution from which funds were obtained to build the house.

[6] The only agreement which the Claimants presented to this Court is dated December 17, 2008, and that agreement provided, among other things, that:

- (1) For the consideration stated the Defendant would with diligence and in a good workmanlike manner carry out and complete the building works in accordance with the contract drawings and to the reasonable satisfaction of the Owners¹.
- (2) The sum of EC\$287,280.00 represents the construction costs inclusive of labour and materials and such other sums as shall become payable hereunder in accordance with the agreement².
- (3) Unless otherwise specifically provided the Defendant shall provide and pay for all labour, equipment, tools, construction equipment and machinery, water, utilities, transportation and other facilities and services necessary for the proper execution and completion of the said building works and warrants to the Claimants that all work will be of good quality, free from faults and in conformity with the agreement and the contract drawings³.
- (4) The Defendant shall at all reasonable times keep upon the said building works a competent person in charge and shall at all times enforce strict discipline and good order among his employees and shall not employ on the building works any unfit person or any other not skilled in the task⁴.
- (5) The building works may be commenced on April 1, 2008⁵ and shall be completed in any event not later than seven (7) calendar months from the date of commencement. If it becomes apparent that the building works will not be completed by the date of completion or any extended date agreed to in accordance with the provisions of the agreement for reasons beyond the control of the Defendant, the Defendant shall notify the Claimants who shall extend the time for completion by a reasonable period agreed between the parties, failing which the Defendant shall pay to the Claimants EC\$25.00 per day⁶.
- (6) The building works and all unfixed material and goods intended for, delivered to, placed on or adjacent to the building works and intended thereof (except temporary buildings, plant, tools and equipment owned or hired by the Contractor or any sub-contractor) shall be the sole risk

¹ See Clause 1 of Agreement dated December 17, 2008.

² See Clause 2 of Agreement dated December 17, 2008.

³ See Clause 3 of Agreement dated December 17, 2008.

⁴ See Clause 5 of Agreement dated December 17, 2008.

⁵ Likely a typographical error and should read April 1, 2009.

⁶ See Clause 6 of Agreement dated December 17, 2008.

of the Claimants as regards to loss and damage by fire, lighting, explosion, storm etc. and the Claimants shall maintain adequate insurance against such risk⁷.

- (7) The defendant shall promptly correct any part of the building works which are defective or fail to conform to the Contract Drawings whether observed before or after practical completion and shall correct any work found to be defective or non-conforming within a period of six (6) months from the date of practical completion⁸.

[7] The Defendant contended that the parties did execute several agreements with respect to the construction however the agreements lapsed as the Claimants were unable to source funds by the commencement dates indicated in the respective agreements. A mobilization fee was required before the Defendant commenced the construction work. The mobilization fee was intended to be paid prior to the commencement of construction and was intended to cover the cost of completing the foundation, the material and labour costs for the completion of the foundation. Further, the Defendant produced a document dated July 8, 2009, entitled "Estimate for construction of house" and indicated that the construction was premised on this document. The Defendant also produced a document dated February 16, 2009, captioned "List of additional material and labour for Mount Joy construction" which represented an agreement regarding additional work to be done on the construction.

[8] The Claimants contend that the Defendant breached the terms of the agreement since the building constructed was defective, sub-standard and failed to comply with the agreed particulars for building the dwelling house. The Claimants also indicated that the house to be constructed was to have a wooden deck measuring 19 feet x 6 feet, but the house constructed had a patio measuring 8 feet by 4 feet.

[9] The Claimants seek, *inter alia*, general damages for breach of contract and special damages for the reconstruction of the house as well as the cost associated with having to find alternative accommodation and storage of personal items of the Claimants during the period of reconstruction.

⁷ See Clause 8 of Agreement dated December 17, 2009.

⁸ See Clause 10 of Agreement dated December 17, 2009.

[10] The Defendant defends the claim and maintains that the dwelling house was constructed in a good workmanlike manner in accordance with the specifications and that the Defendant did not deliver the dwelling house to the Claimants with defects. The Defendant denies that the Defendant is liable for damages for breach of contract, or any other damages claimed.

[11] There was extensive evidence presented to the Court. The Claimants testified and called Addison Workman, engineer, in support of its case. Claude Weaver, the director of the Defendant, testified on behalf of the Defendant. Documents were also admitted into evidence and formed the basis of examination and cross-examination. These reports include the report of Addison Workman dated February 8, 2015, April 15, 2015, May 6 2015; the report of B. T. Lewis, structural and civil engineer, dated April 29, 2010; the report of R. Everon Zachariah dated March 25, 2014 and the report of Mark Mansoor, Civil/Structural Engineer dated August 4, 2017.

[12] The Court did not have the benefit of the closing submissions for the Counsel for the Defendant.

The Evidence

Evidence of the Claimants

MICHELLE ANTHONY

[13] This Claimant led evidence that, on May 19, 2009, the Claimants, contracted with the Defendant, through Mr. Claude Weaver, to build and to construct their dwelling house in accordance with an agreed drawing for the cost of EC\$287,280.00. This witness indicated that the agreement of May 19, 2009 was executed subsequent to the agreement dated December 17, 2008. The agreement of May 19, 2009, and its terms were not tendered into evidence on behalf of the Claimants and are therefore not before this Court. However, this witness indicated that the terms of the agreement of May 19, 2009, were similar in terms to the agreement of December 17, 2008. The funds for the construction of the three-bedroom dwelling house were to be paid at agreed intervals in the construction. The Claimants paid to the Defendant the sum contracted save the retention fee. The payments were:

- (1) The sum of EC\$57,5000.00 by cheque dated 6th August 2009;
- (2) The sum of EC\$49,000.00 by cheque dated 30th October 2009;
- (3) The sum of EC\$40,426.74 by cheque dated 18th November 2009;
- (4) The sum of EC\$52,000.00 by cheque dated 16th September 2009; and

(5) The sum of EC\$72,000.00 by cheque dated 16th September 2009.

[14] This witness indicated during cross-examination that the plan approved on April 16, 2009, by Development Control Authority (DCA) was the plan to be used to build the house and it was designed by Keitha Withy although the initial discussions on the design referred to the Modern Designs model. The building was completed in March/April 2010 and the keys were handed to the Claimants, but the Claimants moved into the property in August 2010.

[15] The witness indicated that the Defendant sent a letter to the Claimants dated March 24, 2010, thanking the Claimants for choosing the Defendant for the construction project, requesting that the retention fee be paid by March 31, 2010, and also indicating that the Defendant is available to do additional works on the property such as the installation of driveway, construction of the garage, a deck and fencing. The Claimants responded by correspondence of March 29, 2010, raising several issues with the Defendant regarding work to be done on the dwelling house and the need for the issues to be addressed, to enable the Claimants to occupy the dwelling house by April 2010. Further, the Claimants informed the Defendant that the retention sum would not be paid before the satisfactory completion of the agreed work.

[16] The correspondence of March 29, 2010 outlined the following complaints to the Defendant: that the kitchen gas line hole was not installed; the bat strips were absent; the master bedroom air-conditioning upgrade was not done; the generator switch was not installed; the washroom was not relocated under master bedroom; the east facing front porch was incomplete; the utility closet was incomplete; and the shoe rack in the master bedroom was incomplete.

[17] The Claimants penned another correspondence to the Defendant on August 13, 2010, and raised concerns about the structure of the building. In this correspondence the Claimants referred to two vertical cracks in the ring beam of the building and noted that the cracks were previously reported to the Defendant in May 2010. The Claimants demanded immediate resolution of all incomplete works and defects to the house and further informed that the retention fees would not be paid until matters were resolved.

[18] The Claimants took possession of the house sometime in April 2010. Subsequent to taking possession the Claimants engaged the services of persons to provide an assessment of the structure. The Claimant retained B. T. Lewis, structural and civil engineer, who did an evaluation of the house and provided a report dated April 29, 2010. The evaluation report stated that there were leaks originating from the partial underground cistern.

[19] The Claimants approached Addison Workman Engineers, Civil and Structural Engineering Consultants to assess the structure. Mr. Workman produced reports dated February 8, 2015, April 15, 2015, and May 6, 2015. The Claimants also approached CivilTech Engineering Services which produced a report dated August 4, 2017.

[20] On February 18, 2015, the Claimants' Attorneys-at-Law, gave a written notice to the Defendant requiring the Defendant to remedy all existing defects on the dwelling house and attached a copy of the Structural & General Survey Report of Mr. Workman dated February 8, 2015.

[21] The Claimant identified the Defendant's breaches to the contract as:

- (1) Poor foundation.
- (2) Diagonal cracks inside at the window corners with matching cracks in the outside.
- (3) Poor floor planning techniques.
- (4) Poor beam structure – vertical cracks in the inside walls at the rafters/ring beam level with matching cracks on the outside.
- (5) Poor wall plastering- hollow and cracked plastering on the exterior walls.
- (6) Poor door quality- French door defective and leaking at the seals.
- (7) Incorrect patio size- the agreed patio size is 19'-0' x 6'-0', whilst the patio actually built and presented was measured as being only 8'-0' x 4'-0'.
- (8) Omission of exterior laundry room.
- (9) Incomplete roofing.
- (10) The absence of bat strips which were invoiced to the Claimants but not installed.
- (11) The absence of gas line opening for the propane tank.
- (12) An infestation of wood-boring weevil in the kitchen cupboards.
- (13) The presence of mold in the kitchen cupboards.
- (14) The absence of the grease trap.
- (15) The non-installation of the generator switch.
- (16) A blockage of the downspout on the southern side of our dwelling house.
- (17) Leaks to the cistern of the dwelling house.

[22] During cross-examination the witness also noted that certain items which were included in the concerns raised by the Claimant and reflected in the correspondence of March 29, 2010, were not part of the original agreement between the parties. The matters which were not part of the original agreement included the upgrade of the air condition in the Master bedroom, the installation of the generator switch, the relocation of the washroom and the completion of the shoe rack in the Master Bedroom. This witness admitted that the leak which originated from the cistern was detected and was repaired by the Defendant before the Claimants moved into the house.

[23] On the matter of payment this witness indicated that she was of the view that the cheque tendered for “tiling and finishing” works included the costs of the air-conditioning upgrade. The installation of the shoe rack was not part of the original agreement and that no payment had been made for this item. Additionally, no payment was made for the relocation of the washroom as the Defendant agreed to relocate the washroom at no additional costs.

[24] Further this witness made the following observations:

- (1) The patio was not built to the agreed size,
- (2) The mold which was present was not indicative of improper or poor hygiene,
- (3) There were discussions about additional work required by the Claimants and the payment for such additional work.

JERMAINE ANTHONY

[25] Mr. Anthony's evidence was in similar terms to the evidence of the other Claimant and maintained that the house constructed by the Defendant was sub-standard and was riddled with defects.

[26] The Claimants intended to purchase property in Mount Joy Gardens. This witness indicated that prior to the execution of the written agreement, the Claimants were in discussions with an agent of APEX REALTORS Antigua, who held himself out as a representative of the Defendant. The agent advised the Claimants that it would be advantageous to choose the Defendant to construct their home since the Defendant was owned by Mr. Claude Weaver who also owned V.E.G Internationals. In choosing the Defendant the Claimant would be able to save costs on concrete and aggregates, and that V.E.G Internationals, would supply all necessary materials at a reasonable price. This Claimant also indicated

that the Claimants were informed that there were a variety of house plans and construction options available to the Claimants.

[27] The Claimant agreed that there was a re-configuration of the two-bedroom house so that a three-bedroom house could be constructed with the same or similar square footage and at the same costs of the two bedroom house. Sometime in late January 2009 the Claimant met with Claude Weaver and the agent to consider the completed plans. The Claimant was presented with both a draft drawing of the dwelling house representing what the Claimants desired and a set of architectural drawings. The Claimant indicated that he observed the 6x19 wooden deck was omitted from the official plans presented but that the deck was clearly indicated on the draft drawings. The Claimant indicated that he was advised that the omission of the deck was an oversight and that the deck would be constructed as shown in the draft plan.

[28] Thereafter, on May 19, 2009, the Claimants signed a written agreement with the Defendant for the construction of the dwelling house.

[29] Construction of the dwelling house commenced in August 2009, and each payment as required for respective phases of the work on the dwelling house, as agreed, was paid in full by way of cheques save the retention fee. The Claimant indicated that the Claimants frequently visited the construction site to observe the works as the building progressed. The Claimant indicated that during the visits to the construction site the Claimant expressed his dissatisfaction with certain works that were being executed.

[30] The Claimant states that at the point of constructing the flooring under the two bedrooms on the southern side of the house, the first Claimant observed that the workmen excavated approximately 6 inches in preparation for pouring the strips footing. It was the Claimant's view that this depth was inadequate, and this concern was expressed to the foreman. However, the first claimant indicated that he was reassured by the foreman that the technique was one variation of foundation that was commonly used in construction. The concrete was poured some days later.

[31] This Claimant noted that there was no attempt to construct the wooden deck measuring 8'.0 x 19'.0 which the parties discussed, and the Claimant raised the matter with the Defendant's representative. The

evidence of this witness is that he was reassured by Mr. Weaver and that he was informed that the construction on the deck would commence soon.

[32] Thereafter, the Claimant on several occasions identified defects in the work. The Claimants observed that the guest bathroom walls were being constructed without the installation of the toilet vent pipe, the Claimant pointed this out to the Defendant and his workers. The Defendant sought to reassure the Claimants that the work will be done properly and that the Defendant or his agents had the requisite knowledge to complete the work. The Claimant noted in his evidence in chief that despite the observation made by the Claimant and the reassurances of the Defendant or his agent the guest bathroom wall and roof were completed without the vent pipe having been installed. Mr. Weaver expressed that he would rectify the defect which he sought to do by installing a 2-inch pipe on the exterior wall running up to the roof. The Claimants expressed dissatisfaction with the manner in which the issue was resolved. The Claimant also indicated that the workmen of the Defendant cut out or excavated a vertical section in the entire height of the bathroom's load bearing wall to install the vent pipe inside the excavated area and re-cast the wall. This caused the wall to look uneven and to not have a smooth finish. This Claimant was of the view that this action would compromise the strength of the load bearing wall.

[33] Additionally, the Claimant noted that the eastern side of the wall of the master bedroom had to be re-plastered as the entire bedroom wall plastering was hollow and did not adhere to the concrete blocks.

[34] The Claimant indicated that when he was approached about the possibility of the Claimants paying the retention fee in advance of the agreed six (6) months period the Claimant responded by highlighting several outstanding issues that were yet to be addressed by the Defendant and stated that the retention fee will not be paid in advance until the expressed concerns were resolved. Some of these concerns included: the construction of the wooden deck of 19'.0 x 6'.0 on the eastern side of the dwelling house. The Claimant maintained that the deck as constructed was smaller and was not agreed by the parties.

[35] The Claimant indicated that when Mr. Weaver wrote to the Claimants by correspondence dated March 24, 2010, thanking the Claimants for the opportunity to build their home and raised, among other things, the matter of the payment of the retention fee the Claimants took the correspondence as an indication that the Defendant was of the view that work on the construction of the house was completed. The Claimants by their March 29, 2010, correspondence reiterated their position on the matter of an early

payment of the retention fee and referred to matters which the Claimant was of the view needed to be addressed by the Defendant. The evidence of this Claimant is that sometime in April 2010, the keys to the dwelling house were handed over by Mr. J.C Weaver (Mr. Weaver's son) although in the Claimant's view the construction had not been completed. This Claimant indicated that Mr. J.C Weaver gave assurances that all outstanding matters will be addressed by the Defendant.

[36] The evidence of the Claimant is that within a month of receipt of the keys there was heavy rainfall and this witness noticed water pouring through the walls of the cistern from numerous block joints. This Claimant described the flow of water from the cistern as being "fountain style". The Claimant revealed that several unsuccessful calls were made to Mr. Weaver with the view of bringing this leak to his attention. The Claimants then engaged the services of Mr. B.T. Lewis, civil engineer. The Claimants' made a request to the Defendant that the leaks in the cistern be repaired. The Defendant repaired the leaks, but this Claimant is of the view that there may still be an unidentified leak since in the Claimant's view the water level in the cistern is inexplicably low.

[37] In May 2010 the Claimants observed two vertical cracks in the ring beam above the main entrance door to the living room. Mr. Weaver was made aware but never visited the house, the agent who previously interacted with the Claimants visited the house and observed the complaint. This Claimant indicated that Mr. J.C. Weaver visited the house and upon observing the cracks, employed a mason who chipped off the cracked plaster; reapplied fresh mortar and then repainted the area. However, this witness indicated that the cracks reappeared within a month after the remedial work had been done. After another complaint Mr. Weaver visited the dwelling house and engaged a mason who chipped out the cracks in the walls (which exposed hollow pockets inside the ring beam where there ought to have had a solid wall), filled the walls with mortar, re-plastered and repainted the wall. The Claimants articulated other issues to Mr. Weaver, which issues, the Claimant indicated, remained unaddressed. In August 2010 this Claimant stated that the Claimants took the decision to move into their home notwithstanding the Claimant being of the view that the dwelling house was incomplete.

[38] Early in 2011 the first Claimant indicated that the wall which was previously cracked and twice repaired began cracking in the same location that the repair works was done. Additionally, there were vertical cracks visible in all areas of the ring beam around the house. There were cracks around window frames and cracks in several load bearing walls. The Claimants made unsuccessful attempts to contact Mr. Weaver.

On August 1, 2012, the Claimant saw Mr. Weaver at a house near their dwelling home and had a conversation expressing his dissatisfaction with the work carried out by the Defendant and expressing the Claimant's dissatisfaction on the Defendant's failed attempts to remedy the defects. Mr. Weaver accompanied the Claimant to the Claimants' house where this Claimant highlighted the following to the Defendant:

- (1) The two failed attempts at repairing the cracks in the walls;
- (2) The cracks on both the interior and exterior walls of the house;
- (3) The poorly constructed strip footing that was badly eroded so that Claimants fully grown Rottweiler could live under the foundation of the house;
- (4) The French-doors were leaking, and all the glass seams and wood were deteriorating rapidly, because of the weather protection needed to cover the French-doors was not built/done; and
- (5) The absence of the front porch that was agreed to be constructed.

[39] Mr. Weaver committed to have an engineer evaluate the property.

[40] On August 13, 2010, the Claimant wrote to Mr. Weaver highlighting the previously stated concerns, there was no response to the correspondence of August 13, 2010. This Claimant indicated that it was observed that the cracks along the walls continued to expand.

[41] The Defendant's representatives made several visits to the dwelling house to discuss and address the matters raised by the Claimants. The evidence of this witness is that on May 19, 2010, and August 20, 2012, Mr. Weaver accompanied by two other persons visited the premises but the visits resulted in no solution to the issues raised. On April 17, 2014, Mr. Weaver visited the property and observed longer cracks and again committed to having an engineer investigate the source of cracks. Sometime in March 2014, the Defendant arranged with the Claimants to have Everon Zachariah, civil engineer, and Donovan Bembridge assess the house. Mr. R Everon Zachariah produced a report dated March 25, 2014. Mr. Bembridge drilled five holes in the ring beam to ascertain whether steel reinforcement was present as the lack thereof would explain the cracks. It was determined that steel was placed in the ring beam.

[42] A test recommended by Mr. Zachariah was to determine the strength of the concrete and to determine whether the concrete poured in the construction of the ring beam met the correct PSI rating. This test was never conducted.

[43] In January 2015, the Claimants sought the services of Mr. Addison Workman to inspect the house. Mr. Addison Workman gave evidence in these proceedings and provided reports.

ADDISON WORKMAN

[44] Mr. Addison Workman, Civil and Structural engineer, provided evidence and indicated that he was contacted by the Claimants to examine the Claimants' house. Mr. Workman indicated that he visited the house on January 26, 2015, and produced the report dated February 8, 2015. This witness indicated that on May 6, 2015, he produced another report which estimated the cost for repairs to the property to be \$436,910.00. This witness also provided reports dated March 7, 2015, April 15, 2015, and April 26, 2015.

[45] In the report of February 8, 2015, this witness indicated that:

“On looking at the drawings we found that 2'-0" wide strip footings were proposed and this would mean that quite good foundation material was anticipated. We noticed that the site was boulder strewn and from its topography we would expect that the soil might reasonably be expected to be boulders with a fine grained sandy or clayey matrix. Unfortunately, it appears that no soil investigations were carried out to confirm or deny these conditions. It is unfortunate because under conditions such as these the bearing capacity of the soil is governed by the bearing capacity of the matrix since the boulders when loaded will transfer the load to the matrix so ultimately the matrix is the foundation material.

The drawings also show the entire house except the cistern to be on compacted fill but it has not been built that way because of the sloping ground encountered. Our concern here is how has the floor slab been reinforced? Assuming the slabs to be on compacted fill we see what appears to be BRC with a top layer of ½" bars @ 10" c/c in some areas near supports. With the floor as it has been built this ought to have been changed to a bottom layer of ½" bars throughout with ½" bars in the top layer over supports and around the perimeter. We trust that such a change has been made but there is no evidence to support that at this time.

Further examination of the drawings has shown that a revision to the approved drawings has been made with the layout being essentially handed. The revised drawing however shows that coming off the Living Room there is to be a Porch or Patio 19' – 0" x 6' – 0". What has been built is 8' – 0" x 4' – 0" which is totally inadequate.

In our walk-through of the house we found that there are countless wall cracks of all kinds including under all rafters, the corner of windows, and a cracked wall in the Western Bedroom. It would also seem that poor quality elements were used especially the collapsed French Door at the front and poor construction techniques resulting in loose plaster in several areas. On the outside we were surprised to find areas where the foundations are, but lumps of concrete poured out on the ground without the benefit of confining framework and one must wonder if there is any reinforcement."

[46] Mr. Workman took photographs of areas of the house and highlighted what Mr. Workman indicated were the existing defects and submitted these in the report presented.

[47] The witness with the aid of photographic presentations made the following observations:

- (1) "The exterior corner of the master bedroom and at the other end of the front wall under the master bedroom, displayed unbelievably poor foundation work. Clearly, poured lumps of concrete, unrestrained by formwork have been used to support the walls of the house." "When coupled with the fact that this lump of concrete is sitting on the un-tested boulder strewn matrix its stability is in grave doubt".
- (2) "The bottom of the beam coming across the floor was lower than the bottom of the beam under the front wall. This would result in the beams meeting the support element at different heights. The end of the cross beam was therefore arbitrarily canted upwards and could possibly lead to reduced cover to the beam reinforcement leading in turn to rusting and splitting of the concrete beam".
- (3) "The underside of the floor slab which (*sic.*) has a row of cement bag material embedded in it. Perhaps there was a gap in the concrete framework, and it was packed with wet cement bag

fragments to stop leaking during the pour. This ought to have been chipped out and firmly packed with mortar or hydraulic cement. This area left, as it has been, could lead not only to structural weakness, but also create a line of reduced concrete cover which may lead to rusting”.

- (4) The examination of this house has revealed all kinds of defects that can be found in a completed constructed project and they are all widespread ...” The list may include poor foundations; poor floor pouring techniques; poor beam structure; poor wall plastering; poor door quality; incorrect patio size; an omission of exterior laundry room; and incomplete roofing.

[48] During cross-examination the witness admitted that there is a practice to place cement bags to cover breaches or holes but noted that there is a specific technique when this is done.

[49] This witness indicated that repair work would be required throughout the entire building and to undertake the repairs will make the house un-inhabitable and the expenses for the Claimants’ relocation during the period of repair would have to be taken into account.

[50] On May 6, 2015, Mr. Workman supplied a Contractor’s Estimate of Repair Costs to the Claimants which stated that the estimated cost of the total project would be EC\$436,910.00. In the view of this witness’ account and given the state of the house his advice is that the house be reconstructed rather than trying to effect repairs. The sum of EC\$436,910.00 would include the demolition costs and the cost of carting away of debris which would cost EC\$24,890.00. Re-construction of the house to the agreed drawings was estimated at EC\$412,020.00.

[51] This witness also noted that the patio provided is contrary to the revised layout drawing that was used. The witness further stated that the French door collapsed owing to rainwater seeping through the defective seals in the joints around the glass panes of the door. This caused the growth of mold on the bottom area (the wettest area), and consequently there was rot causing the door to fall off. The vast number of cracks starting at the rafters throughout the house developed due to the fact that the plaster was applied loosely and not due to the quality of the ring beam. At the base of one flight of the stairs at the front of the house, some erosion took place and revealed that the end of the step ‘just sits’ on the ground there being no strip foundation to support the stair and stabilize the material on which it sits.

- [52] Under cross-examination, Mr. Workman agreed with Counsel that compacted soil is important to the structure of the house. He admitted that in the three reports made to the Court, there is no indication that the soil was tested. Mr. Workman also indicated that he did observe the absence of compacted soil in some areas of the property and in some cases the foundation was exposed. Mr. Workman further indicated that after five years it is normal to see small cracks in certain areas in the structure of a building.
- [53] During cross-examination, Mr. Workman also admitted that he did not perform any test to determine whether the ring beam had steel and/or the composition of the steel. However, Mr. Workman indicated that based upon his observations and in his opinion the speed of deterioration is suggestive that the ring beam was not constructed properly. This witness did concede that the removal of the compacted soil from around the foundation could show similar deterioration in the structure of the house. Mr. Workman also admitted that while he is of the view that the patio was not built to the agreed required measurement he did not actually measure the patio and cannot state that it was not built in accordance with the approved plan.
- [54] Mr. Workman maintained that in his experience as an engineer he had never seen a house so placed, to 'just rest' on a concrete slab as he saw when inspecting the front wall of the Claimants' house. In this witness' opinion it is the worse example of construction work because it shows that the concrete was not vibrated, and that the concrete cannot be reinforced in any constructive manner. Mr. Workman noted that the photograph entered as number 7 revealed that the foundation of the front wall as having a lump of concrete which looks as if the concrete was thrown away and allowed to harden.
- [55] On the matter of the compacted soil and the foundation this witness noted that only one section of the house was built on compacted fill while the other section is suspended from columns which come up from the ground. Based on the topography, the actual slope of the land could not be sitting on compacted soil. For there to be compacted soil on the slope it would require 6 to 8 feet of compacted fill. This witness opined that it would be unlikely that 6 to 8 feet would be compacted. In this witness' opinion this was unlikely to have been done. The witness also indicated that in his opinion the foundation was built on top of the soil rather than on an excavated area in the soil.
- [56] This witness also commented on the placing of cement bags to cover breaches and holes in the form but noted that there is a technique to this practice which the witness suggested was not observed during

construction. On the matter of the presence of termites in the house the witness indicated that the prior to construction and during construction the soil ought to have been sprayed to address any potential termite issues.

Evidence of the Defendant

[57] Claude Weaver gave evidence on behalf of the Defendant. Mr. Weaver's evidence is that he is a competent contractor who employed competent A-Class workmen in trades of carpentry, masonry, plumbing, electrical work to assist with the construction of the house. Mr. Weaver indicated that he has been in the construction industry for approximately 20 years. The witness also indicated that he has done courses in applied mathematical concepts as well as concepts in compression and tension all of which this witness indicates are required to be used in his profession.

[58] The Defendant led evidence that he entered into a written agreement with the Claimants to build a three-bedroom house for the price of EC\$287,260.00 in April 2008. This agreement lapsed, the agreement was redrafted and again signed by the Claimants on December 17, 2008. This witness further stated that this agreement also lapsed. According to the witness the agreements lapsed because the Claimants were unable to source the funding to build the house pursuant to the April 2008 and the December 2008 agreements.

[59] On or about August 2009 the Claimants tendered the mobilization fees and the witness indicated that the Defendant proceeded on an oral agreement to construct the house since the previous agreements lapsed. The house was to be constructed based on a written estimate by KIWI Construction which was accepted and agreed to by the Claimants.

[60] The witness indicated that the house to be constructed was a "low-budget" house of 1192 square feet and at a value of \$240.00 per square foot. This witness indicated that, the "...basis of the works now was a written estimate made by Kiwi Construction and accepted and agreed upon by the Claimants. This written document clearly dictated the materials to be used, described by name and costs and which clearly set out the quality contemplated by reference to the cost assigned."

- [61] Mr. Claude Weaver indicated that he reviewed the report of Addison Workman and noted that according to Addison Workman the cost of construction of the house according to the plan was EC\$412,020.00 or EC\$350.00 per square foot but noted that these funds were not available to the Claimants. The witness indicated that in the process of downgrading the costs from \$350.00 per square foot to \$240.00 per square foot there were downgrades in the materials used.
- [62] The witness noted that the drawings for the original plan had bigger rooms and a patio, however, the Claimants could not afford that particular structure. The Claimants requested that the Defendant downsize the structure. Thus, the plan was downsized to accommodate the Claimants' available finances.
- [63] The Defendant referred to the Claimants' complaint about the French door and noted that before construction commenced the Claimants chose the French door to be used. This door, the witness stated was vandalized when someone broke into the Claimants' house. He also surmised that the door required the protective covering.
- [64] The Defendant also indicated that upon the inspection of the complaints laid by the Claimants this witness indicated that he observed that the Claimant(s) excavated or caused to be excavated the soil that the builder firmly compacted around the house. The soil remained excavated for over seven years. The witness also observed that on the southern side of the building where the area is relatively flat, and the gradient is zero, there was also 'massive excavation' of the compacted soil. The witness also noted the excavation of the compacted soil underneath the front steps. Mr. Weaver indicated that when he was last on the premises he noticed evidence of deliberate digging around the column on the North Eastern corner of the house.
- [65] The Defendant stated that he cautioned the first Claimant that the Defendant would not be responsible for any adverse effect arising due to the removal of the compacted soil and that the Claimants should re-compact the soil to preserve the integrity of the foundation. However, according to the witness, each time thereafter, when the witness visited the property, the witness noticed that the soil remained excavated, and the cracks to be building got worse. The last time the witness visited the house the soil around the foundation was still excavated.

- [66] Mr. Weaver noted that at least ten years have passed since the floor was cast and there are no cracks across the floor. This was noted by the engineers Zachariah and Edwards who did a report on the integrity of the house⁹.
- [67] The Defendant stated that he made enquiries about why the areas were excavated and was informed by the first Claimant that his pet dog did the excavation. During the cross-examination of the first Claimant, the first Claimant denied that he informed the Defendant that his pet dog dug around the foundation but admitted that during the Court proceedings it was agreed by the parties that a particular area would be excavated to observe the foundation and the excavation was only done at that agreed location.
- [68] The witness noted the Claimants having enquired about whether there was adequate footing present in the foundation and re-enforcement in the ring beams, noting that both the foundation and the ring beams were left open and exposed to the elements for several years. The elements, especially the water had a great impact upon the foundation because the water would not drain away but pooled on the surface and gradually eroded the subsurface which supported the foundation. The situation worsened since the foundation which is “now on the ground and not below the ground” is weakened. This, according to the witness is as a result of the eroded subsurface which cause “spaces” into which the foundation settles and the movement of the building creates tension and stress resulting in cracks in the walls.
- [69] The Defendant also contends that the Claimants removed compacted soil which was around the foundation and the failure of the Claimants to re-compact the foundation is the cause of the damages. The witness gave the analogy of a small pothole in the road which, if left unattended, grows into a crater when rain falls and notes that the water would eat away at the foundation if the foundation were left without the compacted soil and without it being properly backfilled. The weight of the building is “constantly acting upon the foundation” when the Claimants left the foundation bare. The weight as well as the water creates spaces which cause settling of the subsurface and these factors can compromise the foundation. The resulting displacement caused by the lack of support which the compacted soil would normally provide created further damage to the superstructure.

⁹ Report of Everon Zachariah, Civil/Structural and Coastal Engineer dated March 25, 2014.

- [70] Mr. Weaver conceded that it is natural for a homeowner to do small excavations around the house to ensure that the foundation is adequately reinforced with steel matting, however having done this it was the homeowner's responsibility to ensure the soil is re-compacted in the excavated areas.
- [71] The witness noted that although the Claimants alleged that there was no steel in the foundation and in the ring beams upon inspection it was determined that there was steel in the foundation and in the ring beams.
- [72] This witness maintained that the Defendant, KIWI Engineering Construction Ltd, did not deliver a defective house to the Claimants.
- [73] On the matter of specific complaints this witness noted that several changes and accommodations were made to the Claimant during the construction of the house. The first Claimant suggested that the patio be eliminated to cut cost as he would put in a swimming pool in the space at a subsequent time. Also, the wooden deck was removed from the drawings to reduce costs. The witness also noted that there was no mention of a gas line in the estimate; however, the Defendant offered to install one, but the first Claimant declined the offer for fear of insects using that point to enter the house.
- [74] The witness confirmed that during the construction of the house, the first Claimant visited the construction site regularly to observe the work and at the end of construction the first Claimant indicated his satisfaction with the work that was done.
- [75] The witness also indicated that the Claimants requested that additional work be done on the house and the Defendants were not compensated for the additional work, but the request formed the basis of some of the complaints of the Claimants. The witness produced a document dated February 16, 2009, which listed the additional material and labour required for additional work requested and an email dated March 19, 2010 from the second Claimant to the Defendant's agent committing to pay the cost for the additional work amounting to EC\$9162.45 in monthly installments of EC\$2,000.00 commencing April 2010.
- [76] The Defendant conceded that the Claimants has a genuine complaint regarding the leaks in the cistern. However, the witness stressed that this concern was addressed by the Defendant.

[77] On the matter of the retention fee, the witness noted that although it was customary to request the retention sum some three (3) to six (6) months after the house is handed over the Defendant requested the retention fees earlier owing to the additional work which was requested and carried out.

[78] Mr. Weaver stated that he hired an engineer, Mr. Everton Zachariah, to assess the state of the house and prepare a report on his findings on the house.

Issues

[79] The issues to be determined by this Court are:

- (1) What are the terms of the agreement between the Claimant and the Defendant,
- (2) Whether the Defendant breached the terms of the agreement,
- (3) If there are breaches in the agreement what remedy is available to the Claimant.

The Terms of the Agreement

A contract is an agreement giving rise to obligations which are enforceable or recognized by the law¹⁰.

[80] The Claimants have initiated these proceedings pleading that the Claimants by an agreement dated December 17, 2009, engaged the Defendant to construct a dwelling house. The Claimants annexed a copy of this agreement to the initiating proceedings. However, the evidence of the Claimants is that subsequent to the agreement dated December 17, 2008, the parties entered into another agreement on dated May 19, 2009 and that the latter agreement governed the terms of the relationship between the parties. The Claimants further indicated that the agreement of May 19, 2009, was similar in terms to the agreement December 17, 2008, and that a copy of the agreement May 19, 2009, is in the possession of the financial institution from which the Claimants sourced funds for the construction. The agreement of May 19, 2009 was not presented to the Court. Thus, the Court is unable to verify the accuracy of the statement made regarding the existence of such agreement and the terms therein.

¹⁰ Treitel, Law of Contract (8th Ed., 1991) p. 1.

- [81] The Defendant contends that no written agreement governs the relationship between the parties. The Defendant contends that the two agreements which were signed between the parties, in April 2008 and December 17th 2008, had lapsed. The Defendant makes no mention of an agreement dated May 19, 2009.
- [82] This Court accepts that the parties had an oral agreement for the Defendant to construct a dwelling house for the Claimants. That oral agreement was based upon certain terms of the agreement dated December 17, 2008, such terms included the cost of construction and the disbursement to the Defendant of the construction costs. The particulars of construction costs were more particularly indicated in the document titled "Estimate for construction of house" dated July 8, 2009. To this certain additional works were agreed at additional costs by the parties. It was an implied term of the contract that the house would be constructed in a good workman like manner.
- [83] On the matter of the type of house that was to be constructed this Court notes the evidence of the Claimants. It was noted that a particular model of the two-bedroom house which was available was the same square footage and cost of the three-bedroom house and that the decision was made to reconfigure the two-bedroom house to become a house with three bedrooms and two bathrooms. This Court also noted the evidence of the Defendant that the building plans were modified to permit the Claimants to obtain a three-bedroom dwelling house at reduced costs. The words of the Defendant were that the Defendant was providing the Claimants with a "low budget" house. Specifically, as it relates to the wooden deck the Defendant indicated that the first Claimant requested that the deck/patio be eliminated and the savings from the patio be used to offset other changes requested. Although the Claimants dispute that the wooden deck measuring 6'.0" x 19'.0" was to be eliminated the fact is that plan as approved by DCA on April 16, 2009 approved a deck or patio measuring 6'.0 x 5'-6" and the Claimants had notice of this approval and having proceeded with the construction meant that unless another plan was submitted for approval this was the plan that the Defendant was obliged to construct.

The Foundation

- [84] The contention of the Claimants is that the foundation is substandard and therefore the entire structure has been compromised. This, the Claimants indicate is obvious from certain visible cracks in the structure and from pictures taken and presented to the Court. The Defendant disputes that the cracks have arisen

as a result of the Defendant's poor workmanship and indicate that the actions of the Claimants have compromised the foundation and therefore compromised the structural integrity of the house and in such circumstances the Defendant ought not to be held liable.

[85] It is noted that although there are structural reports before this court neither party has presented an expert which accords with the provisions of CPR 32. The reports presented to the Court are reports from Addison Workman, engineer and a witness for the Claimants and reports from Mark Mansoor, Civil Tech Engineering Services and R. Everon Zachariah, civil/structural and coastal engineer.

[86] R. Everson Zachariah indicated in his report that:

- (1) He was asked to look at the dwelling house by the Defendant to determine the likely cause of observed defects and to provide solutions for the rectification of same. At the time of inspection, construction had been completed some four years earlier. The building was constructed predominantly on isolated pad footings with reinforced concrete columns and floor beams cast monolithic with the reinforced floor slab.
- (2) There were no observed defects to the foundation or columns/floor beam structure. The floor tiles were generally in good condition and no cracking or signs of distress were observed. Mr. Zachariah indicated that "generally" the tell-tale signs of structural defects to the foundation is seen by defects in the floor tiles.
- (3) The roof appeared to be in good condition and there were no signs of distress to the structural elements comprising the roof. However, the main defects observed were systemic vertical cracks in the wall usually emanating just below the rafter. The cracks were fairly widespread and were prominent along the eastern and western wall of the living/dining room, the eastern wall of the master bedroom and along a few other areas. The cracks generally started immediately below the rafter and progressed downwards, extending through the thickness of the wall. At the time of the visit the cracks varied from hairline to medium extent and are of the order of 1 to 2 feet long. Mr. Zachariah noted that the Claimants indicated that the cracks were increasing in length.
- (4) Diagonal cracks were observed at the bottom corners of the window openings.
- (5) Mr. Zachariah observed that the vertical cracks were observed to be at a location which should be a strong point of the house and therefore under normal circumstances such cracks would

not have been expected. Mr. Zachariah indicated that the position of the cracks (just below the rafters) and the direction of the crack (vertical) suggest that there was no ring beam present.

- (6) The diagonal cracks at the base of the windows are commonly observed in houses and this is due to stress concentration which normally occurs where there is a square opening in a continuous material. These cracks are not serious and can be repaired cosmetically.
- (7) Mr. Zachariah recommended that the Defendant determine whether the cracks are due to the absence of the ring beam and/or the extent to which this is in fact the case. The proposed remedial work consists of retrofitting a ring beam at the affected areas. At the time of the report the estimate for the remedial works was \$14,900.00 for an assumed 60 feet of ring beam which would require retrofitting.

[87] The observations of Mr. Addison Workman were previously expressed. Mr. Workman noted, among other things, that poor construction techniques were employed which resulted in loose plaster in several areas and there were areas where the foundation were lumps of poured concrete without the benefit of confining formwork. Mr. Workman also made the observation that the cracks from the rafter penetrates the wall plaster but the plaster does not adhere to the concrete block wall. This suggests that a vast number of cracks originating from the rafter throughout the house have been formed not because of weakness in the ring beam but from the fact that the plaster finish of the house is loose. Mr. Workman noted that there were points in which the plaster was loose and gives a hollow sound on knocking.

[88] Mr. Workman noted that at the base of the stairs at the front of the house where there was some erosion it was revealed that the end of the step sits on the ground and there is no strip foundation to support the stair and stabilize the material on which it sits. The exterior of the Master bedroom shows clumps of concrete unrestrained by formwork being used to support the walls of the house. This is coupled with Mr. Workman's opinion that the lump of concrete is sitting on untested boulder strewn matrix making the stability and the integrity of the foundation questionable.

[89] Mr. Workman noted other structural weaknesses such as the underside of the floor slab having a row of cement bag material embedded in the slab. What ought to have occurred is that the bag be chipped out and the area firmly packed with mortar or hydraulic cement so that there is no structural weakness due to the reduced concrete in the area which would lead to rusting of the steel.

[90] Mr. Mark Mansoor in the report dated 4th August 2017 noted that:

- (1) The property is undergoing continuous settlement and in some of the exposed areas differential settlement rates have led to certain parts of the structure moving and settling differently from other parts.
- (2) Water and moisture from the rain appear to be getting under the foundation as there is no barrier to prevent the water and the moisture from penetrating in and around the columns. Mr. Mark Mansoor indicates that normally the foundation should be a closed and capped system. This would mean that it is closed from the sides around the perimeter and capped above the compacted fill with a concrete slab.
- (3) The pier columns seem to be isolated and are not strapped or tied together at the foot level to resist the lateral earth movements. It appeared to Mr. Mansoor that especially for the footings on the slope, the column bases are relying primarily on friction to stay put on the slope. In this case the column footing should have been tied together and a slab cast on top to provide a clear barrier between the elements and the foundation elements. The tying of the footings would ensure that settlement is even and a proper redistribution of loads can be achieved efficiently throughout the structural system.
- (4) Cracking of the ring beam and cracks around the doors and windows are as a direct result of foundation issues. All elements of the house are designed to be carried ultimately by the foundation, and when this moves or settles out of place, all of the supportive elements that rely on this, would also exhibit shift behavior. Cracks will eventually get larger and allow water to be drawn into the wall thereby causing steel corrosion and mold inside the wall cavity.
- (5) In the opinion of Mr. Mansoor, a qualified engineer was required at the construction stage to make recommendations to the structure as the original drawings do not indicate a sloping parcel of land but rather a flat parcel of land with foundation elements shown as being within a closed system. The Claimants' land was sloping.
- (6) Mr. Mansoor also noted that one of the main floor beams that is exposed in the basement appears to be cast on top of a foundation wall. The key point being that this particular beam should have been cast directly above and carried by the blocks of the supporting wall. In some areas of the foundation the concrete beam does not sit directly on the blocks but there is dirt, between 1" to 2" between the beam and the blocks. This would cause the beam to sag and

eventually may lead to the floor sagging and ring beam sagging. The correct practice would have been to wash and clean any surface that will have concrete directly placed over the surface. This is to ensure proper bonding and load distribution while not undermining the strength of the building elements.

[91] Having considered the reports that are before the Court it is clear to this Court that the foundation of the house has been compromised. Mr. Zachariah noted that there were cracks on the areas below the rafters which should be strong areas. Mr. Zachariah suggested that the Defendant should investigate whether the ring beam was present during the construction. The evidence of the Defendant is that this matter was investigated and it was confirmed that steel was used during the construction process. Thus, it is not likely that the source of the problem is the ring beam. The Defendant attributes the problem to the Claimants' role in excavating the soil around the foundation and not returning and compacting the soil to the foundation. However, it is noted that Mr. Zachariah made no reference to this excavation of soil on the property when that site visit was conducted but that the cracks were present. Additionally, the explanation given by the Defendant does not account for the other matters raised in the report of Mr. Mansoor. Further, it is difficult to accept on a balance of probabilities that a homeowner would excavate around the foundation of his property and leave the foundation exposed.

Other Matters Raised by the Claimants.

[92] Upon the Defendant letter suggesting completion the Claimants raised certain matters as being indicative of the Defendant having breached the contract. As it relates to the matters raised the following are noted and the following findings are made:

- (1) **Omission of the Exterior Laundry Room.** The evidence before the Court is that the parties agreed that the laundry room would be relocated to a space under the Master bedroom. The Second Claimant agreed that the new placement of the laundry room was not in the original plan and not part of the original agreement. It is also noted that the Defendant had not paid for the relocation. This Court notes that the report of Addison Workman dated 15th April 2015 priced the building of the laundry room/store/utility room in the identified place under the house would be at a cost of EC\$30,260.00.

- (2) **The absence of bat strips:** This item was included in the construction information provided by the Defendant to the Claimant dated 8th July 2009. In that document the item is represented by “30 corrugated: Bat strips; @\$ 4.89 per unit: \$146.70. The Defendant remains liable to address this item.
- (3) **Infestation of wood-boring weevil in the kitchen cupboards.** There is no specific evidence on this matter save the evidence of Mr. Workman that the issue may have arisen if the construction site was not adequately sprayed prior to and during construction. The report of Mr. Workman also indicated that this matter could be resolved by replacing the existing cupboards with a ‘high level cupboards in the kitchen’ at a cost of \$4,500.00. In this Court’s opinion the Claimants’ have not proven on a balance of probabilities that wood-boring weevil was as a result of the poor workmanship of the Defendant. Additionally, Mr. Workman suggests that the issue may directly be related to the quality of the cupboards provided. The Claimants have not proven that the cupboards installed were not in accordance with the terms of the agreement.
- (4) **Mold in the kitchen cupboards.** The Claimants have not produced evidence before on the type of mold and whether the mold arose from moisture in the walls at the points where the walls are cracked and therefore the mold was as a consequence of the flaws in the structure of the house.
- (5) **Installing Grease Trap.** There is no evidence of this being a part of the contract.
- (6) **The non-installation of the generator switch.** There is no evidence that this was part of the original contract.
- (7) **Repair blocked rainwater down pipe.** No evidence has been presented to the Court on this matter.
- (8) **Replacement of the front door.** It is noted that the cost of the doors under the original construction costs ranged from EC\$124.00 to EC\$1,000.00. The door which was estimated to have been EC\$1,000.00 was indicated to have been a 36-inch metal door. The evidence before the Court by the Defendant is that the door which was initially selected was a French door which was estimated to cost EC\$525.00. This door, the Claimants complained, rotted. The indication from Mr. Workman is that the door ought to be replaced by a door costing EC\$3,465.00. It is clear that the quality of the original door would have been inferior in quality to the proposed replacement French door. There is evidence that the seals in the French door were damaged,

and protective coating was required to be placed on the door. The Defendant supplied and installed the door, and the Claimants are required to be compensated.

(9) **Non- Installation of Generator Switch.** The first Claimant indicated during cross examination that this element was an upgrade and was not part of the original agreement.

(10) **Leaks to the cistern of dwelling house.** The evidence before the Court was that after the recommendation by B T Lewis, Structural Engineer, the leak was repaired by the Defendant. Although the Second Claimant suspects that a leak continues to exist there is no evidence which supports this supposition.

[93] This Court has determined that the Defendant is liable to the Claimant for breach of contract in failing to construct specific parts of the house in a good workman like matter. The specific part of the house includes the foundation of the house, the French door and the installation of the bat strips.

Damages

[94] “It is noted that the normal function of damages for breach of contract is compensatory. Damages are awarded not to punish the party in breach or confer a windfall on the innocent party, but to compensate the innocent party and to repair his actual loss. Compensation is normally achieved by placing the innocent party in the same position, so far as money can do, as if the contract has been performed.”¹¹

[95] The Claimants in their claim seek, among other things, the cost of having to rebuild a new structure. In this regard the Claimants rely on the documents dated May 6, 2015, presented by Mr. Addison Workman in which he stated that *“because of the quality of construction and supervision have been so woefully sub-standard, no Contractor will offer any guarantee for the repair programme put in place. What you would therefore end up with is a house that will approximate the layout you had paid for, but with a quality that no one would guarantee to withstand the tests of time and the elements.”* Mr. Workman went on to note that *“a repaired structure will never afford you the comfort and peace of mind that your investment should have afforded you. It is clear therefore that the repair route is not the one that you should follow.”*

¹¹ **Romeo Skepple v Oliver Potter** ANHUHCV2013/0330.

[96] It is noted however that Mr. Workman's most recent estimate, May 2015, seeks to include elements in construction which did not form part of the original contract. Additionally, Mr. Workman assumes and gives little or no consideration to the issues related to the foundation being addressed through rehabilitative interventions.

[97] The report of Mr. Workman dated April 15, 2015, outlined certain costs which are helpful for the determination of damages. These costs are:

(1) Remove all areas of loose wall plaster inside and outside the building	\$9,240.00
(2) Repair wall cracks revealed by Item a.	\$11,150.00
(3) Provisional sum for tiling and unexpected matters	\$25,000.00
(4) Replace French Door	\$ 525.00
(5) Install "Bat Strips" around eaves and capping of roof	\$7,900.00

Total	\$53,815.00
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[98] To the sum of EC\$53,815.00 the Court would account for inflationary trends by adding an additional 10% to the costs stated. Thus, the sum is EC\$59,196.50.

[99] The Claimants claim special damages in the sum of EC\$2,990.00 as representing the cost of the report of Mr. Addison Workman. The Court awards the sum of EC\$1,725.00 as evidenced in the invoice dated 8th February 2015 as special damages.

[100] However, it is noted that the sum of EC\$59,196.50 does not account for the reconstructive work that is required to be done to the foundation. There is also likely to be a requirement for the roof to be removed and replaced and for the ring beam be rebuilt once the foundation is addressed. The information on the technical as well as the costs implications on these matters are not before this Court. In this Court's view the Claimants ought not to be penalized for its absence as the conclusions of the Court arose from the Court's finding on the evidence and the reports before this Court. Accordingly, the matter of the quantification of damages for the remedial work on the foundation and the quantification of any consequential work arising as a result of the work done to remedy the foundation of the house are referred to a Master in Chambers. The Master is at liberty to give full case management directions.

[101]The Defendant is also liable for the costs for a reasonable period which the Claimants' are required to be relocated during the period of the remedial works. Provided that such relocation is required.

[102]**It is ordered that:**

- (1) The Defendant is liable to the Claimant for breach of contract.
- (2) The Defendant is liable for the remedial work on the foundation and any consequential work arising as a result of the work done to remedy the foundation of the house such sum to be quantified by a Master in Chambers.
- (3) The Defendant is also liable for the costs for a period which the Claimants are required to be relocated during the remedial works. Provided that such relocation is necessary.

[103] **It is also ordered that:**

- (1) The Defendant is also liable to pay the sums of EC\$59,196.50 in general damages and the sum of EC\$1,725.00 in special damages.
- (2) The Defendant to pay the prescribed costs to the Claimants.
- (3) There be a stay of this order for seven (7) days.

Marissa Robertson

High Court Judge

By The Court

Registrar