

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)**

CLAIM NO. SLUHCV2019/0407

Between

NATARCIA LOUISY

Claimant

and

NATALIE BIROO

Qua Administratrix of the Estate of Julian Biroo

Defendant

Appearances: Mr. Ramon Raveneau counsel for the Claimant
Defendant unrepresented

2020: September, 17th

2021: June, 30th

JUDGMENT ON ASSESSMENT OF DAMAGES

Introduction

- [1] **SANDCROFT, M. [Ag.]**: This is an application for assessment of damages for breach of contract. The Claimant seeks to enforce what is purported to be an agreement for sale between the Claimant and Julian Biroo, now deceased. This document is dated the 2nd day of June, 2011, wherein Julian Biroo purportedly sold a single lot of land measuring 8,000 square feet and situated at Balata in the quarter of Castries (hereinafter referred to as the property). The deceased, Julian Biroo, had represented that once the survey was done, that he would complete the sale to the Claimant. Said representation was reproduced within the body of the agreement for sale and so she had no reason to doubt the deceased. These terms however were found to be inaccurate as the deceased, Julian Biroo, was later found not to be the owner of the parcels he represented were his to sell and neither was there a completed survey at hand. The Claimant having accepted that there was a breach of contract now seeks damages for the said breach of contract by the late Julian Biroo.

- [2] It was also a condition precedent for the completion of the contract and sale that the aforesaid survey be produced and the lot given its own block and parcel number. To date neither the Administratrix herein nor the deceased before her has produced said survey and as far as I am aware the lot is still as yet to be partitioned.
- [3] The Claimant filed and served the Statement of case in this matter on the 4th and 5th of September 2019 respectively. There was no acknowledgment of Service filed by the Defendant.
- [4] On the 4th October, 2019 the Claimant filed a request for Judgment in default of acknowledgment of service.
- [5] The aforementioned request was approved by the High Court office on the 30th October, 2019 and returned to the Claimant's Counsel for perfection on the 5th November, 2019 with a notice reading that the terms of the judgment were to be determined in chambers on the 9th December, 2019 at 9:00 am. This was the notice to the parties of the date of the assessment.
- [6] The final perfected order was filed on the 8th November, 2019 at 3:15 pm.

Claimant's Submissions

- [7] The Claimant submits, inter alia, that by virtue of an Agreement for Sale dated 2nd day of June, 2011 the Claimant entered into a contract with the Defendant for the purchase of a single lot of land measuring 8,000 square feet and situated at Balata in the quarter of Castries.
- [8] The Claimant further submits that at the execution of the above-mentioned agreement, she paid a deposit in the sum of EC\$10,000.00 to the deceased Mr. Julian Biroo.
- [9] The Claimant also submits that prior to the execution of the agreement, the deceased represented as follows:
- (i) That he was the registered owner of the property which he was selling;
 - (ii) That he was in the process of surveying the property and that said survey would soon be completed;
 - (iii) That upon completion of the survey he would complete the sale to the Claimant.
- [10] The Claimant avers that the aforementioned representations were pertinent to the contract; without which she would not have entered into the agreement.
- [11] The Claimant further avers that the above-mentioned representations were however false as the deceased was not the owner of parcels he purported to sell and neither was there a completed survey at hand. The deceased made these representations either knowing them to be false or not

believing them to be true or being reckless or not caring as to whether or not they were true and said representations above mentioned induced the Claimant to enter into the contract.

[12] The Claimant avers that there was no specific completion date stated in the agreement and it was a condition precedent for the completion of the contract and sale that the said survey be produced and the lot given its own block and parcel number. To date neither the Defendant nor the deceased, before her has produced said survey and the lot is still not partitioned.

[13] The Claimant also submits, inter alia, that the failure of the deceased to close the sale within a reasonable time, by letter dated 5th September, 2016 the Claimant accepted the deceased's repudiatory breach of the contract and made demand for return of her \$10,000.00 deposit plus costs.

[14] The Claimant claims damages in the alternative as follows:

(1) Damages for breach of contract in the amount of \$20,000.00 as follows: -

1. \$10,000.00 deposit;
2. \$10,000.00 earnest in accordance with Article 1387 of the Civil Code of Saint Lucia; and
3. \$250.00 the cost of correspondence from legal counsel.

(2) Interest in accordance with Article 1009A of the Civil Code at the rate of 6% per annum;

(3) Costs;

(4) Any or further relief as the Court deems fit.

Alternatively

(1) Damages for fraudulent misrepresentation to be assessed;

(2) \$250.00 the cost of correspondence from legal counsel;

(3) Interest in accordance with Article 1009A of the Civil Code at the rate of 6% per annum;

(4) Costs;

(5) Any or further relief as the Court deems fit.

[15] The Claimant further avers that for the purpose of the assessment, that she would abandon the alternative claim for fraudulent misrepresentation and focuses on the damages for breach of contract solely.

[16] The Claimant also submits that she is entitled to a return of her \$10,000.00 plus a further \$10,000.00 as earnest for the defendant's breach of contract.

[17] The Claimant further submits that Article 1387 of the Civil Code states as follows:

1387: If a promise of sale be accompanied by the giving of earnest, each of the contracting parties may recede from it; he or she who has given the earnest, by forfeiting it, and he or she who received it, by returning double the amount.

[18] The Claimant avers that the defendant is to return the amount of \$20,000.00 which would represent double the amount that she paid to secure the property.

[19] The Claimant further avers that the Real Estate Agreement (page 1) between the parties reads as follows:

"In case of employment of an Attorney to enforce the terms of this agreement, the seller(s) agree to pay the Attorney's fee and all costs of collection."

[20] The Claimant also avers that to date she has paid the amount of \$3,000.00 on account for legal representation in this matter plus the amount of \$300.00 for her initial legal consultation and demand letter as agreed, the Claimant submits that she is entitled to recover these costs which were incurred as part of enforcement of the terms of this agreement.

[21] The Claimant finally submits that the amount to which she is entitled in damages is the total sum of TWENTY-THREE THOUSAND THREE HUNDRED DOLLARS (\$23,300.00). And that she is also entitled to interest and costs on the sum awarded.

Discussion & Findings

[22] It is trite law that a contract is an agreement giving rise to obligations which are enforced or recognised by law. In common law, there are three basic essentials to the creation of a contract:

- (i) agreement;
- (ii) consideration; and
- (iii) contractual intention.

The first requisite of a contract is that the parties should have reached agreement. Generally speaking, an agreement is reached when one party makes an offer, which is accepted by another party. In deciding whether the parties have reached agreement, the courts will apply an objective test.

[23] There are several legal definitions for a contract but on the facts of this case, the definition that it is a promise or set of promises which the law will enforce, seems the most appropriate¹. Regardless of the definition relied on however, there are three main elements for the creation of a contract whether it is written or oral: an offer, acceptance, consideration and an intention to create legal relations.

[24] In **Garvey v Richards [2011] JMCA Civ 16**, Harris JA, in discussing when an agreement will be considered to have legal effect, stated at paragraph [10] that:

“It is a well-settled rule that an agreement is not binding as a contract unless it shows an intention by the parties to create a legal relationship. Generally, three basic rules underpin the formation of a contract, namely, an agreement, an intention to enter into the contractual relationship and consideration. For a contract to be valid and enforceable all essential terms governing the relationship of the parties must be incorporated therein. The subject matter must be certain. There must be positive evidence that a contractual obligation, born out of an oral or written agreement, is in existence.”

[25] The general rule is that contracts can be made informally; most contracts can be formed orally, and in some cases, no oral or written communication at all is needed. Thus, an informal exchange of promises can still be as binding and legally valid as a written contract. There are statutory exceptions to this rule. For example: (i) a lease for more than 3 years must be made by deed: **Law of Property Act 1925**, ss. 52 & 54(2); (ii) most contracts for the sale or disposition of an interest in land must be "made in writing": **Law of Property (Miscellaneous Provisions) Act 1989**, s 2; (iii) contracts of guarantee are required to be evidenced in writing: **Statute of Frauds**, s 4.

[26] The burden of proof is on the Claimant to prove that a contract existed as alleged on a balance of probabilities.

[27] Section 4 of the **Statute of Frauds** states-

“No action against Executors...upon a special promise, or upon any Agreement, or Contract for Sale of Lands, unless Agreement ... be in Writing and signed. No Action shall be brought [...] whereby to charge the Defendant

¹ Pollock Principles of Contract 13th Ed. 1

upon any special promises to answer for the debt, default or miscarriages of another person [...] unless the Agreement upon which such Action shall be brought or some Memorandum or Note thereof shall be in writing and signed by the parties to be charged therewith or some other person there unto by him lawfully authorized.”

[28] In relation to the **Statute of Frauds**, Sykes J as he then was in **Nation Hardware Ltd. v. Norduth Development Co. Ltd et al HCV2314 of 2005**, at paragraphs 26 - 28 enunciated -

26. Before the passing of the Act oral contracts for the sale of land were sufficient. Apparently, there was no shortage of convincing mendacious witnesses. A method of cutting down on the many fraudulent practices which [were] commonly endeavoured to be upheld by Perjury and Subordination of Perjury would be to require writing as a prerequisite for enforceability. Therefore, any act of performance has to be very cogent because one was now starting from a position of non-enforceability...

27. I should point out that shortly after the Statute of Frauds was passed some judges thought, no doubt because of the purpose of the Act which I have set out above, that where there was no risk of perjury or fraud then an oral contract for the sale of land could be enforced even if there was no writing. This led some to think that sale of land by auctioneers and brokers were outside the statute. This view was eventually rejected (see Lord Blackburn in Maddison at page 488). All this reinforces is the demand for an unequivocal act which payment of money alone could not provide.

28. The Lord Chancellor went back to 1701 and traced the decisions of the courts in order to make the point that in balancing these two principles identified in paragraph 24 the issue was what type of evidence had the cogency to pull the contract away from section 4 of the Act. It necessarily follows from this that the type of evidence required would have to be quite cogent and difficult to explain on any other reasonable and rational basis other than a prior oral agreement. Consequently, acts such as taking possession and expenditure of money, unsurprisingly, became the quintessential acts of part performance. These acts by their nature tended to be unequivocal. In fact, these acts but for the contract would have been trespasses. It does not require a great deal of imagination to appreciate that in this

context payment of money, simpliciter, paled in comparison to taking possession and expenditure of money on the property by the purchaser. The conclusion would be even stronger if the purchaser who did these acts was a stranger to the vendor. (Emphasis added).

WHAT METHOD SHOULD BE USED TO CALCULATE THE DAMAGES DUE?

[29] There have been several authorities over the years which have dealt with the issue of assessment of damages and the consideration that ought to be given to that question, particularly in respect of general damages when the quantification of the same is difficult. I will start with the leading text of **McGregor on Damages, 15th edition**. The general principle, stated by the author in para 343 is well known and recognised, namely that a plaintiff claiming damages must prove his case. As indicated in the oft cited speech of Lord Goddard, CJ in **Bonham-Carter v Hyde Park Hotel Ltd (1948) 64 TLR 177 at 178** when dealing with special damages;

“Plaintiffs must understand that if they bring actions for damages it is for them to prove their damage; it is not enough to write down the particulars, and, so to speak, throw them at the head of the Court, saying: ‘This is what I have lost; I ask you to give me these damages’. They have to prove it.”

In that case the learned Chief Justice said that he found the evidence with regard to damages extremely unsatisfactory. However, the damages were nonetheless assessed and judgment given in the amount of £275.

[30] The learned Author in **McGregor** goes on to state in the said paragraph, 343, that:

“To justify an award of substantial damages he [the plaintiff] must satisfy the court both as to the fact of damage and as to its amount. If he satisfies the court on neither, his action will fail, or at the most he will be awarded nominal damages where a right has been infringed. If the fact of damage is shown but no evidence is given as to its amount so that it is virtually impossible to assess damages, this will generally permit only an award of nominal damages; this situation is illustrated by *Dixon v Deveridge* [(1825) 2 C.&P 109], and *Twyman v Knowles*. [(1853) 13 C.B.222].”

[31] In **Twyman v Knowles [1853] 13 CB 222**, the plaintiff had sued for trespass, as he was in possession of the land, but he did not produce the lease which would have shown the extent of the term. The lessor had given the defendant a lease also. Since the plaintiff had failed to prove the extent of his interest in the land, he was only entitled to nominal damages. The lease which he could have produced and which was in writing, would have defined his interest. He was only able to proceed on an interest in the land based on bare possession. That case is distinguishable from the instant case where the respondent showed that there was a contract, which had been breached and which had resulted in substantial damage. Similarly in **Dixon v Deveridge (1825) 2 C&P 109**, where the defendant accepted that he owed a debt, but the plaintiff gave no evidence of the amount, the court took the view that the plaintiff was only entitled to a nominal amount of damages. That too is different from the instant case.

[32] The Author of **McGregor** however, continues in para 344 and makes the qualification that:

“On the other hand, where it is clear that some substantial loss has been incurred, the fact that an assessment is difficult because of the nature of the damage is no reason for awarding no damages or merely nominal damages. As Vaughan Williams L.J. put it in Chaplin v Hicks, the leading case on the issue of certainty: “The fact that damages cannot be assessed with certainty does not relieve the wrong-doer of the necessity of paying damages”. Indeed if absolute certainty were required as to the precise amount of loss that the plaintiff had suffered, no damages would be recovered at all in the great number of cases. This is particularly true since so much of damages claimed are in respect of prospective, and therefore necessarily contingent loss. Of course, as Devlin J said in Biggin v Permanite: “Where precise evidence is obtainable, the court naturally expects to have it, [but] where it is not, the court must do the best it can...”

[33] The standard of proof is therefore not one of certainty, but one of reasonable certainty, which only demands evidence in respect of which existence of damage can be reasonably inferred. The dictum of Bowen LJ in **Ratcliffe v Evans [1892] 2 QB 524** at page 533 is clear on the point and instructive. He stated:

“In all actions accordingly on the case where the damage actually done is the gist of the action, the character of the acts themselves which produce the damage, and the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable, having

regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pedantry.”

[34] In **Aerial Advertising Co v Batchelors Peas, Ltd (Manchester) [1938] All ER (annotated) Vol 2, 788**, Atkinson J made the point that damages for breach of contract ought not to be restricted to special damages which could be strictly proved. It was held that general damages were recoverable for pecuniary loss sustained in respect of the breach of contract. In this case the plaintiff, engaged to supply air advertising by flying over various towns and trailing behind the aero plane words advising the public to buy the defendant's products, in this case peas. In breach of contract, the plaintiff failed to communicate the plans and schedules for the particular day in question and the pilot was seen flying over Manchester and Salford while the Armistice services were in progress, and over the main square of the town during the time when two minutes silence was being observed, to the horror and indignation of thousands of persons gathered there. The result of that [negligent] flight was alarming as persons affronted by the insensitive actions of the plaintiff in droves decided to no longer purchase the defendant's products. In deciding how to assess the general damages in light of the pecuniary loss which had been sustained and in addressing the argument that in those circumstances only special and not general damages were payable, the learned judge made these insightful comments at page 795 A - C:

“... I fail myself to see any difference in principle between a claim for special damage and a claim for general damage. One, of course has to be proved as completely as does the other. The only difference is that, where one is claiming special damage, the circumstances are such that one is able to put one's finger on a particular item of loss and say, “I can prove that I lost so much there, so much there, and so much there”, whereas a claim for general damage means this: “We cannot prove particular items, but we can prove beyond all possible doubt that there has been pecuniary loss.” Once that has been proved, I cannot myself see any difference in principle between special damage and general damage. When one reads *Groom v Crocker*, one sees that, so far from saying that there is any difficulty in recovering general damages, to my mind it says precisely the opposite.”

In ultimately deciding to award the defendants £300, he made a further comment on page 796 G - H. He stated:

“I can only do the best I can, being very careful not to put it too high, and particularly for the reason that, although I appreciate the difficulty, I think that the defendants, if they had taken the trouble, could have given me more reliable figures.”

[35] This court has however, accepted as correct the principle enunciated by Lord Goddard CJ in **Bonham-Carter v Hyde Park Hotel Ltd [1948] 64 TLR 177** at 178:

“On the question of damages I am left in an extremely unsatisfactory position. Plaintiffs must understand that if they bring actions for damages it is for them to prove their damage; it is not enough to write down the particulars, and, so to speak, throw them at the head of the Court, saying: ‘This is what I have lost; I ask you to give me these damages’. They have to prove it.”

[36] The case before Lord Goddard was one in which a guest’s room had been broken into and property stolen therefrom. The hotel keeper was held liable, and although the learned Chief Justice was unhappy with the state of the evidence as regards damages, he did award £275.00 to the plaintiff. In any event, I am of the view that the principle is more apt in respect of special damages. In the instant case, there has been a breach of contract and the challenge is in respect of the awards of general damages.

[37] In respect of the date to which the damages ought to relate, the case **Wroth and Anor v Tyler [1974] 1 Ch 30, [1973] 1 All E R 897** provides some guidance. There, the defendant contracted to sell his bungalow (where he lived with his wife and adult daughter) to the plaintiffs with vacant possession for £6,000.00. His wife entered on the Land Register a notice of her rights of occupation thereby preventing the sale. The defendant informed the plaintiffs that he was unable to complete the sale and offered to pay damages. Given the wife’s statutory right, Megarry J (as he then was) thought it best to award damages in substitution for decreeing specific performance. At the time of the hearing the bungalow was worth £11,500.00. In determining the proper amount to award as damages, Megarry J said:

“Now the principle that has long been accepted is that stated by Parke B in Robinson v Harman (1848) 1 Exch. 850, in which, incidentally, the

rule in *Flureau v Thornhill*, 2 Wm. Bl. 1078 was considered. Parke B. said, at p. 855: 'The rule of the common law is, that where a party sustains a loss by reason of a breach of contract, he is, so far as money can do it, to be placed in the same situation, with respect to damages, as if the contract had been performed'." [page 56 G-H]

Megarry J continued: "... on principle I would say simply that damages 'in substitution' for specific performance must be a substitute, giving as nearly as may be what specific performance would have given" [page 59 E].

Consequently, Megarry J reckoned that at the date of hearing the plaintiffs would have needed another £5,500.00 "to purchase an equivalent house". And so, he ordered that amount to be paid in lieu of specific performance.

[38] In *Tai Hing Cotton Mill v Kamsing Knitting Factory* [1979] AC 91, the Privy Council dealt with the assessment of damages arising from a breach of contract. It was apparent that substantial loss had been suffered but the material to enable the loss to be precisely quantified was lacking. The Privy Council considered the possible courses that were open to it to resolve the matter. These courses included ordering a retrial, restoring the figures fixed by the lower court, or fixing a new figure. Lord Keith of Kinkel said:

"Their Lordships are not disposed to order a new trial. Amendment of the pleadings would be required and the delay, trouble and expense which would be involved in further proceedings do not appear to their Lordships to be consonant with the due administration of justice. The problem about the figure of damages fixed by Briggs C.J. is that it was plainly arrived at upon a wrong basis, and that is now common ground between the parties. In the result, their Lordships have come to the conclusion that the ends of justice would best be served if they were to fix a new figure of damages as best they can upon the available evidence, such as it is."

[39] The golden thread running through the law of damages is that the claimant should be compensated for the loss sustained. The principle has long been established that the aim of compensation for breach of contract which results in basic pecuniary loss, is to seek to return a claimant as closely as possible to the position he or she would have been in, had the breach not occurred. A clear statement of this principle is found in *British Westinghouse Electric and Manufacturing Co. Ltd. v.*

Underground Electric Railways Co. of London Ltd. [1912] A.C. 673 at 688 where Viscount Haldane L.C. said:

I think that there are certain broad principles which are quite well settled. The first is that, as far as possible, he who has proved a breach of a bargain to supply what he contracted to get is to be placed, as far as money can do it, in as good a situation as if the contract had been performed.

[40] In situations such as the present case, the issue is not whether or not damages should be recovered, but the way in which such damages should be calculated. A choice has to be made between the “difference in value” and the “cost of cure” approaches. In the former the claimant is awarded the pecuniary advantage lost as a result of the partial or complete deprivation of the contractual benefit. In the latter the measure is the additional financial outlay the claimant has to undertake in order to put him or herself in as good a position as if the contractual benefit had been received.

[41] In **Anglia Television Ltd v Reed [1971] 3 All ER 690**, the English Court of Appeal held that a plaintiff was entitled to elect to claim for his wasted expenditure by reason of breach of contract, instead of through his loss of profits. The Court made it clear that that plaintiff could not claim both types of loss and must elect between them.

[42] It must be noted that the general aim of analysing the issue of damages is to secure for the wronged party an award that will put him in the position, as far as money will achieve, that he would have been had the wrong not been committed. Two types of loss may entitle a wronged party to damages. The first is called “expectation loss”, that is, the failure to secure the profit that he would have made if, as in a case of contract, the contract had been performed. The second type of loss is called “reliance loss”, that is, the expenditure that the wronged party incurred in preparing, in the case of contract, to perform his end of the bargain. The wronged party is entitled to choose either approach in his claim for damages.

[43] Andrew Burrows, the learned Author of **Remedies for Torts and Breach of Contract, 3rd Edition** at page 209 – 210 points to three factors which influence courts in making the choice:

First, the claimant’s duty to mitigate means that it will recover the cost of cure where it has, or ought to have, incurred that cost in reasonably seeking to minimize its losses. Secondly, the fact that the claimant has cured or intends to cure may be a decisive factor favouring the cost of cure. Thirdly, the claimant’s purpose for wanting performance may be relevant; so if the claimant wanted performance primarily to

reap economic gain, the difference in value will fully compensate the claimant; that is, it will obtain the intended profits. But if performance was wanted for other reasons (eg for pleasure), difference in value will not, or not as fully, compensate the claimant.

[44] In the cases of **Tito et al v. Waddell (No. 2)**; **Tito et al v. Attorney General [1977] Ch 106** (generally cited as **Tito v Waddell (No. 2) [1977] Ch 106**) and **Radford v. De Froberville [1977] 1 WLR 1262** in urging the court to adopt the “cost of cure” approach. In **Tito v. Waddell (No. 2)** a British Company mining for phosphate on Ocean Island, a small island in the Pacific, had promised by contract to restore the mined-out land by replanting trees. They however failed to do so and were sued for their breach of contract. One of the issues for determination by the court was whether the claimants, (a landowner and the Council of Leaders an incorporated body that received royalties from the mining operations), were entitled to the cost of the replacement of the trees as damages, i.e., the cost of cure. Megarry VC in delivering the judgment of the court stated at page 333:

...if the plaintiff establishes that the contractual work has been or will be done, then in all normal circumstances, it seems to me that he has shown that the cost of doing it is, or is part of, his loss and is recoverable as damages.

[45] The court however held that the claimants had failed to prove that the cost of replanting represented their loss, for reasons including that the Islanders had removed to another Island. The court therefore awarded minimal damages.

[46] Oliver J. in **Radford v. De Froberville** cited **Tito v. Waddell (No. 2)** with approval and applied the cost of cure approach. In **Radford's** case as a term of the contract for sale of land, the defendant agreed to build a dividing wall between himself and the claimant's land. He failed to do so. In holding that the claimant was entitled to the cost of cure, i.e., the cost of building the wall, Oliver J. at page 1270 letter E said:

If he contracts for the supply of that which he thinks serves his interests — be they commercial, aesthetic or merely eccentric — then if that which is contracted for is not supplied by the other contracting party I do not see why, in principle, he should not be compensated by being provided with the cost of supplying it through someone else or in a different way, subject to the proviso, of course, that he is seeking compensation for a genuine loss and not merely using a technical breach to secure an uncovenanted profit.

[47] His analysis of the application of the “cost of cure principle” concluded at page 1284 letter E as follows:

In the instant case, I am entirely satisfied that the plaintiff genuinely wants this work done and that he intends to expend any damages awarded on carrying it out. In my judgment, therefore, the damages ought to be measured by the cost of the work, unless there are some other considerations that point to a different measure.

[48] Considering the three factors which the learned Author Burrows indicated inform courts’ decisions in cases of this type, along with the cases of **Tito v. Waddell (No. 2)** and **Radford**, it is manifest that the “cost of cure” approach is the appropriate measure of damages in this claim.

[49] In **Vera Dallas (by her attorney Elmeda Robinson) v L.P. Martin Company Limited (trading as L.P. Martin Funeral Home) [2018] JMSC Civ 78** in which Jackson-Haisley J dealt with the issue of a contested Assessment of Damages on a Default Judgment, at paragraph 45:

“From the cases considered certain principles can be deduced. Firstly, in order to determine the true effect of the default judgment the pleadings must be closely scrutinized. An examination of the pleadings will aid in determining what the default judgment is taken to have decided. Secondly, the question as to whether or not all questions with respect to liability have been determined will be dependent on the pleaded cause/s of action. Thirdly, there is a distinction between causation on the liability issue and causation on the quantum issue. The fact of the default judgment means that issues in relation to causation with respect to liability have already been determined however causation issues with respect to quantum remain open. These principles seem to apply not only to default judgments but also to summary judgments and judgments on admission.”

[50] In order to arrive at a sum for general damages the court would have to take into account the loss of bargain. This is in keeping with the principles laid down by G.H. Treitel in the text **the Law of Contract, 1991** where in discussing loss of bargain the following is said at pages 830-31:

“the basic object of damages for breach of contract is to put the plaintiff “so far as money can do it...in the same situation...as if the contract has been performed. In other words, the plaintiff is entitled to be compensated for the loss of his bargain, that his expectations arising out of or created by the contract are protected. This protection

of the plaintiff's expectation must be contrasted with the principle on which damages are awarded in tort.....”

Conclusion

[51] After an examination of the pleadings at the time judgment was entered, I am of the view that the following was taken to have been decided:

- i. The Defendant breached the contract with the Claimant by failing to complete the contract of sale.
- ii. The Claimant is therefore entitled to damages arising out of the breach of contract;
- iii. The Claimant is also entitled to damages for loss of use of the premises.

[52] Having regards to the foregoing, it is my considered view, and I so hold, that the Claimant has satisfied me on a preponderance of probabilities that the late Julian Biroo had breached the contract for sale. Furthermore, I also find that an agreement or contract for sale existed between the Claimant and the deceased, Julian Biroo.

[53] In conclusion, I find that the document being relied on by the Claimant for assessment of damages for breach of contract can be sought by the Claimant.

[54] I also find that the Ten Thousand Dollars [\$10,000.00] was paid by the Claimant which is evidenced by the receipt signed by the deceased, Julian Biroo.

[55] I therefore order that the \$10,000.00 which was paid over to the deceased by the Claimant be paid back forthwith, by the Estate of the deceased, Julian Biroo.

[56] Orders

- (i) General Damages in the sum of \$10,000.00 with interest at a rate of 6 percent from September 5, 2016 to October 30, 2019.
- (ii) Special Damages in the sum of \$13,300.84 plus interest at a rate of 6 percent from June 2, 2011 to October 30, 2019.
- (iii) Costs to the Claimant to be agreed or taxed.

Ricardo Sandcroft

Master [Ag]

By the Court

Registrar