# COMMONWEALTH OF THE BAHAMAS

# IN THE SUPREME COURT

## Common Law & Equity Division

## 2017/CLE/gen/01010

## BETWEEN

## BYRON MUNNINGS

**Plaintiff**

## -AND-

## TED MILLER/FOUR T'S CONSTRUCTION

**Defendant**

**Before:** The Honourable Madam Justice Indra H. Charles

**Appearances:** Mr. Elvis Hanna of Sivle Law Chambers for the Plaintiff
Mr. Allan Emmanuel of Althavon & Co. for the Defendant

**Hearing Date:** 22 July 2019

**Civil – Breach of contract – Damages – Remoteness - Special damages**

The Plaintiff and his mother are the owners of a property situate at Venice Bay, New Providence. In July 2015, the property was still in the stage of construction. They needed a good contractor to complete it. The Defendant was recommended. After some discussions, the Plaintiff entered into a written agreement with the Defendant to construct a portion of the property for $50,000. The Plaintiff promptly paid the full amount. The proposed work was estimated to take eight weeks: to commence on 6 July 2015 and be completed by 31 August 2015. The proposed work commenced on or about 6 July 2015 but was never completed.

On 18 February 2016, the Plaintiff terminated the services of the Defendant and requested a refund of the balance of the funds that the Defendant was holding for the completion of the proposed work. The Defendant has refused and/or failed to reimburse the Plaintiff. In the meanwhile, the Plaintiff hired another contractor to complete the proposed work at the cost of

$26,018.81. The Plaintiff commenced these proceedings seeking damages for breach of contract in the amount of $26,018.81 with interest and costs.

The Defendant denied that he breached the contract and stated that the Plaintiff was responsible for the delay in him not completing the proposed work by the stipulated date.

**HELD: Finding that the Defendant breached the contract, he is therefore liable to pay damages to the Plaintiff.**

1. On the evidence adduced, the Court preferred the evidence of the Plaintiff to that of the Defendant. The Defendant was an untruthful and unreliable witness. His account of what lead to the delay in completing the proposed work was rejected.

2. The object of an award of damages for breach of contract is to place a plaintiff in an equivalent position financially to the position he would have been in if the contract had not been breached. The broad rule is said to be, essentially, that the innocent party recovers that loss which was in the assumed contemplation of both parties in the light of the general and specific facts (as the case may be) known to both parties or, put another way, the question is whether, on the information available to the defendant when the contract was made, he should reasonably have realised that such loss was sufficiently likely to result from the breach of contract.

3. In a claim for breach of contract, the Court is obliged to conduct an inquiry into the loss actually suffered by the plaintiff as a result of the non-performance of the contract subject to any issue of remoteness. The rule governing foreseeability and remoteness of damage depends on the degree of relevant knowledge held by the defaulting party at the time of the contract.

4. The Plaintiff is entitled to special damages in the sum of $26,018.81 which have been proved by contemporaneous documents.

## JUDGMENT

**Charles J:**

**Introductory**

[1] Byron Munnings ("the Plaintiff") and his mother, Anya Munnings ("Mrs. Munnings") are the owners of a duplex building ("the property") situate at Venice Bay in the Island of New Providence. In July 2015, the property was still in the stage of construction. They needed a good contractor to complete it. Jeffrey Henfield ("Mr. Henfield"), a former co-worker of Mrs. Munnings, introduced them to Ted Miller of Four T's Construction ("the Defendant"). After some discussions, the Plaintiff and his mother obtained an undated estimate from the Defendant to construct a portion

of the property for $50,000 (“the proposed work”). The Plaintiff paid the Defendant the full amount of $50,000 on 2 July 2019. By letter dated 4 July 2015, the Defendant acknowledged receipt of that sum. The letter stipulated that the proposed work was estimated to take eight weeks to commence on 6 July 2015 and be completed by 31 August 2015. The proposed work commenced on or about 6 July 2015 but was never finished.

[2] On 18 February 2016, the Plaintiff terminated the services of the Defendant. He requested a refund of the balance of the funds that the Defendant was holding for the completion of the proposed work. The Defendant refused and/or failed to reimburse the Plaintiff. In the meanwhile, the Plaintiff hired Audley Pearson of General Household Maintenance (“Mr. Pearson”) to complete the proposed work. He bought materials costing $15,018.81 and paid $11,000 to Mr. Pearson for the cost of labour.

[3] On 30 August 2017, the Plaintiff filed a Writ of Summons indorsed with a Statement of Claim in which he claims special damages of $26,018.81 for breach of contract together with interest and costs.

[4] On 30 October 2017, the Defence filed a Defence. He did not deny that a contract existed but denied that he breached it. In paragraph 8, he averred that the delay in completing the proposed work was because the Plaintiff along with his father (Mr. Henfield) and his mother were given samples of tiles to select from since the tiles that they wanted could not be found locally. They took a month to do so and it took another month to be shipped and cleared. By that time, the deadline for completion of the proposed work had already expired and no further date for completion was agreed upon. Furthermore, he said that the roof had a serious sink in it which necessitated its inspection by the Ministry of Works. That delayed the completion of the proposed work by another four to five weeks. The Defendant averred that he later rectified the sunken roof at an additional cost of $2,600. The Plaintiff paid him $1,000 for the repairs to the roof but has not paid him the balance

of $1,600. The Plaintiff did not deny that he owed $1,600 to the Defendant. However, the Defendant has not counterclaimed for that sum.

**The pleadings**

[5] In paragraph 1 of the Statement of Claim, the Plaintiff averred that he and his mother owns the property. The Defendant does not admit or deny this assertion but puts the Plaintiff to strict proof of this fact. In my opinion, nothing turns on whether or not the Plaintiff owns the property. The issue before this Court is whether the Defendant breached the Agreement.

[6] In paragraphs 3 and 4 of the Statement of Claim, the Plaintiff stated that by an agreement dated 4 July 2015, he contracted the Defendant to do some work at a cost of $50,000 which included labour and material. On 5 July 2015, he paid the Defendant the full amount. See: Scotiabank Cheque No. 116217 issued on 2 July 2015 to Ted Miller by Byron Munnings at page 13 of Plaintiff's Trial Bundle and Submission dated 3 July 2019.

[7] The Defendant admitted paragraph 3 but contended that the Plaintiff, his mother and father contracted him. He averred that the sum of $50,000 was paid for by the Plaintiff's mother to do the following repairs to the property namely trenching the floor, changing the plumbing and electrical, put in doors, windows and tiles on the roof and part of the interior. The repairs identified by the Defendant seem to be in stark contrast to an undated estimate which bears his name and signature.

[8] At paragraph 4 of the Defence, the Defendant stated that "*paragraph 4 of the Statement of Claim is admitted sufficient to say that the Plaintiff's mother paid the $50,000 in cheque*". There is clear documentary evidence – Ibid, page 13 (to demonstrate that the sum of $50,000 was sold to the Plaintiff in favour of the Defendant).

[9] In paragraph 6, the Plaintiff stated that the work on the property commenced on 6 July 2015 and according to the agreement, the due date for completion was 31 August 2015. The Defendant admitted this but alleged that the Plaintiff along with

his father and mother took a long time to choose the tile which could not have been obtained locally. By the time the tile arrived, the due date for completion had already passed. Furthermore, the roof had a serious sink which also contributed to the delay.

[10] In paragraphs 7 to 9 of the Statement of Claim, the Plaintiff stated that on 18 February 2016, he dismissed the Defendant and hired Mr. Pearson to complete the work. According to him, the cost of labour was $11,000 and the costs of materials was $15,081.81. Contemporaneous documentary evidence supports these expenses: pages 15-17 of Plaintiff's Trial Bundle and Submission.

[11] The Defendant admitted that his services were terminated by the Plaintiff. He further alleged that the Plaintiff packed his scaffolds, ladders and other tools and told him that his services were no longer required.

**The evidence**

[12] Both the Plaintiff and the Defendant testified before me and I was able to see, hear and observe their demeanour. On a balance of probabilities, I prefer the evidence of the Plaintiff to that of the Defendant. I found the Plaintiff to be a candid and straight-forward witness whose evidence was supported by contemporaneous documentary evidence. On the other hand, I found the Defendant to be a stranger to the truth. His evidence was unreliable and fabricated. When shown the Agreement dated 4 July 2015, which he signed, he stated that he does not know about the document although the signature looks like his. At the heart of the Agreement were a commencement date and completion date for the proposed work. It also states: "*I, Ted Miller, received a cheque in the amount of $50,000 from Mr. Byron Munnings on July 5th, 2015…*"

[13] The Defendant admitted that the proposed work was not completed on or about 31 August 2019 and that he never stopped working (which is an untruth). The reality is he never completed the proposed work. In addition, he insisted that the mother of the Plaintiff paid him by cheque in the sum of $50,000. When he was

shown Scotiabank Cheque in favour of him dated 2 July 2015 in the amount of $50,000 sold to Byron Munnings, the Defendant said "*this isn't the cheque I saw*." This is another untruth.

[14] I must state that from the inception, this case was rendered far more complex than it really should have been, because of the Defendant. For example, in paragraph 1 of his Defence, the Defendant pleaded that the Plaintiff's Statement of Claim discloses no reasonable cause of action. He provided no evidence or submission at the trial or at any stage of the proceedings of this wholly unmitigated statement. The converse is true as the Statement of Claim conforms to all the requirements of a succinctly- drafted Statement of Claim. It:

1. shows the general nature of the Plaintiff's claim to the relief sought;

2. gives sufficient particulars of time, place, amounts, names of persons and other circumstances to inform the court and the defendant whom the relief is sought of the plaintiff's cause of action;

3. states specifically the basis of the claim for interest and the rate at which interest is claimed and;

4. costs.

[15] Next, the Defendant insisted that Mr. Henfield is the father of the Plaintiff (nothing turns on this unfounded allegation) and that he contracted with Mr. Henfield, the Plaintiff's mother and the Plaintiff despite the fact that there is overwhelming documentary evidence to demonstrate that the Agreement was between him and the Plaintiff: see the undated estimate by the Defendant which was addressed to Mr. Byron Munnings and also, the Agreement dated 4 July 2015 (the Defendant states that he is not aware of this Agreement) which states as follows:

> **"<u>Four T's Construction Limited</u> have (sic) been contracted by <u>Mr. Byron Munnings</u> to complete the portion of work outlined in the quote dated June 25th 2015 (see attached)…."**

**The issues**

[16] There are two principal issues to be considered by the Court namely:

1. Whether the Defendant breach the contract by not completing the proposed work on the stipulated date? and

2. Should the Defendant reimburse the Plaintiff for the works which was left undone?

**Discussion**

**Issue 1 – Breach of contract**

[17] On or about 4 July 2015, the Plaintiff and the Defendant entered into a written Agreement for the following proposed work to be done on the property. It included:

1. To demolish the unfinished portion of floor and prepare for new plumbing and electrical roughing;
2. To demolish and make good the areas for window and exterior door openings, as per the revised drawings;
3. To finish pour concrete slab for floor;
4. To plaster the interior walls (brown coat);
5. To stud up interior walls;
6. To finish the roof and;
7. To close up (windows and exterior doors).

[18] The cost of the proposed work was agreed at $50,000 which included labour and materials. By Manager's Cheque dated 2 July 2015, the Plaintiff paid the entire amount to the Defendant.

[19] By Agreement dated 4 July 2015 which was signed by the Defendant and witnessed by Mr. Henfield, the Defendant contracted with the Plaintiff to complete the proposed work by 31 August 2015. The commencement date was 6 July 2015 and the proposed work was scheduled to take eight weeks to be completed.

[20] The Defendant did not deny that the proposed work was not completed. He however, attributed the delay in completion to the Plaintiff (and others) taking a

month to choose the tiles. He also alleged that it took another month for the tiles to arrive in The Bahamas. He also attributed the delay to the sunken roof which necessitated the approval by the Ministry of Works.

[21] I do not believe the Defendant's account. Under intense cross-examination by learned Counsel Mr. Hanna who appeared for the Plaintiff, the Defendant testified that the restructuring of the roof and late arrival of the tiles in November 2015 were the reason for the delay. With respect to the roof, he testified that the delay was long - about four to five weeks – during which time, he was unable to work. According to him, the tiles arrived in November 2015. I believed the Plaintiff's account that the tiles were bought locally.

[22] In any event, even if the Defendant's account is correct, the tiles arrived in November 2015. By that time, the roof was already fixed. The question is: why was the property not completed at the very least by December 2015? It was not until 18 February 2016 that the Plaintiff terminated the Defendant's services. In my considered opinion, the Plaintiff had no other choice but to terminate the contract which the Defendant breached for non-performance.

**Issue 2: Damages**

[23] The Defendant, having breached the contract is liable to pay damages to the Plaintiff.

[24] The object of an award of damages for breach of contract is to place a plaintiff in the equivalent position financially to the position he would have been in had the contract not been breached.

[25] The measure of damages allowed consequential upon a breach of contract is set out in the leading authority of **Hadley v Baxendale** (1854) 9 Exch 341 at 354; [1843-60] All ER Rep 461 at 465 where it was held that:

> **"Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and**

> **reasonably be considered either arising naturally, i.e. according to the usual course of things, from such breach of contract itself (direct loss), or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it (consequential loss)."**

[26] In recent times, the Courts have moved to moderate the two-part principle derived from **Hadley v Baxendale** into a single integrated rule. The learned editors of **Halsbury's Laws of England, Volume 29** (2014), at para 534, put it this way:

> **"Nevertheless, the broad effect of recent authority has been to analyse the *Hadley v Baxendale* principle as disclosing not a two-part but a single rule, an approach which corresponds with how the matter is approached in practice. The two aspects of the general principle do not, on this approach, need to be treated antithetically and indeed on occasion run into one another. The broad rule is said to be, essentially, that the innocent party recovers that loss which was in the assumed contemplation of both parties in the light of the general and specific facts (as the case may be) known to both parties or, put another way, that the question is whether, on the information available to the defendant when the contract was made, he should reasonably have realised that such loss was sufficiently likely to result from the breach of contract."**

[27] Further, in a claim for breach of contract, the Court is obliged to conduct an inquiry into the loss actually suffered by the plaintiff as a result of the non-performance subject to any issue of remoteness. The rule governing foreseeability and remoteness of damage depends on the degree of relevant knowledge held by the defaulting party at the time of the contract. The defendant will only be held liable for the plaintiff's losses if they are generally foreseeable or if the plaintiff tells the defendant about any special circumstances in advance.

[28] In the present case, the Plaintiff claimed special damages of $26,018.81 which has been verified by contemporaneous documentary evidence. The Defendant did not admit or deny the amounts claimed but puts the Plaintiff to strict proof of it which the Plaintiff has so ably done.

[29] In an effort to mitigate his loss, the Plaintiff employed the services of Mr. Pearson who completed the proposed work which the Defendant should have completed.

The loss suffered was known or should have been reasonably contemplated by the Defendant.

[30] In the circumstances, the Plaintiff is entitled to be reimbursed the sum of $26,018.81 representing special damages.

[31] The Plaintiff, being the successful party, is also entitled to reasonable costs. By Bill of Costs submitted to this Court, the Plaintiff claimed $12,000 in costs. I shall award him that sum.

**Conclusion**

[32] In conclusion, it is ordered that the Defendant shall pay to the Plaintiff the following:

i. The sum of $26,018.81 as special damages;
ii. Interest at the rate of 4% from the date of the filing of the Writ of Summons to the date of judgment;
iii. Interest thereafter at the statutory rate from the date of judgment to the date of payment; and
iv. Costs to the Plaintiff in the sum of $12,000.

**Dated this 5th day of September. A.D. 2019**

**Indra H. Charles**
**Justice**