

IN THE SUPREME COURT OF BELIZE A.D. 2004

ACTION NO: 43

BETWEEN

PLAINTIFFS

WILLIAM HOFFMANN
KELLI HOFFMANN

AND

DEFENDANT

MANUEL SOSA

HAFIZ J.

Ms. Cynthia Pitts for the Plaintiffs
Mr. Leo Bradley for the Defendant

J U D G M E N T

1. This is a claim for breach of contract against the Defendant, a Building Contractor who built a two-storeyed house on the Arenal Road, Benque Viejo Area, Cayo District, which later suffered major structural damage. The Plaintiffs who are owners of the house made some efforts to remedy the defects but because of the severity of the structural defects they had to move out of the house.

Plaintiff's case

2. In or about September, 2002 the Plaintiffs, William Hoffmann and Kelli Hoffmann and the Defendant, Manuel Sosa who is a general contractor entered into an oral contract to build a house. It was agreed that the Defendant would build an 'American Style House' together with perimeter security fence and a 5,000 gallon water tank.
3. By Amended Statement of Claim filed on 2nd November, 2005 the Hoffmanns' pleaded that it was agreed that the Defendant would build the house, perimeter fence, gate and a 5,000 gallon water tank for US\$68,499.78 or BZ \$136,999.48.
4. The Claim is that the Defendant built the house but the house was not in accordance with the contract. Further, the house was not built with the best workmanship or with proper or sufficient materials. As a result the Plaintiffs had to expend the sum of BZ\$34,238.50 to finish the house and to attempt to remedy the defects.
5. The Hoffmanns pleaded at paragraph 14 that there were unsuccessful in their attempts to remedy the structural defects of the house and therefore the house is unsafe and unfit for habitation and is a constructive total loss and will have to be pulled down and thereafter reconstructed.
6. At paragraph 15 the Hoffmann's claim is for
 - (i) US\$75,249.74 being monies paid to Mr. Sosa to construct the house;
 - (ii) US\$17,119.25 being monies to finish and remedy defects;
 - (iii) US\$450.00 being monies paid to a consultant;
 - (iv) US\$9,540. being cost of deconstruction;

- (v) US\$3,520. being cost of removal and accommodation during period of deconstruction and reconstruction.

The total sum claimed is US\$105,878.99, damages and interest.

Defendant's case

7. On 8th March, 2006 Mr. Sosa filed a Defence and Counterclaim. He admits that there was an oral contract to build the house but stated that at first there was no agreement to build a fence and a tank. This was later agreed. He pleaded at paragraph 2 that there were no plans as the Hoffmanns made it clear that they wanted to save money and refused to hire an architect although this was a house with two levels and a lower vacant level.
8. Mr. Sosa admitted to receiving US\$25,230.68 on 19th September, 2002, US\$2,046.51 on 4th October, and on 7th November, 2002, \$18,923.01 and in January, 2003 US\$6,750.00 from the Claimants but said the payments were made upon the Plaintiffs having been satisfied with the level of workmanship and with the proper and sufficient material before making further payment until the conclusion of the contract. He denied receiving a payment of US\$22,299.54 on 18th November, 2002.
9. The Defendant avers that the Plaintiffs were pleased with his job and made the payments and that the house was built with proper and sufficient material and with the best workmanship and that the flaws have been exaggerated and concocted by the Plaintiff to be grander than they really are.

10. Mr. Sosa denied that the building is inhabitable and said changes in building structure was caused wholly or in part by the negligence of the Plaintiffs, their servants or agents or an act of God.

11. Mr. Sosa also counterclaimed for loss of contracts because he claims that the Plaintiffs has defamed him. The counter-claim was not pursued before the court.

12. The issues to be determined

(a) Whether the house built by the Contractor had structural defects and the cause of the defects.

(b) Whether the contractor or the client had the responsibility for the designs/plans of the house.

(c) Whether the Defendant breached his duty to build a house fit for habitation.

(d) Whether the claimant is entitled to US\$105,878.99 in damages.

13. Mr. Hoffmann, the first Claimant and Mr. Sosa tendered witness statements to prove their respective case. There was no witness statement from Mrs. Hoffmann, the second Claimant.

A witness statement was tendered by Mr. Ken Dart on behalf of the Claimants. Witness statements were tendered by Philbert J. Lesli,

Eustequio Nicefero Lisbey, and Samuel Dean Bruce on behalf of the Defendants.

14. When this case (which was instituted before the new Civil Procedure Rules came into effect) came up for case management the then Registrar ordered that both parties submit names of structural engineers to the Court and the Court will then appoint one of them to do a structural assessment of the house. The Court subsequently appointed Mr. George Moody of Mitchell-Moody Associates who is a Civil and Structural Engineer. He prepared the report dated 8th August, 2006 and submitted it to the Court. Mr. George Moody was cross-examined by Ms. Pitts, Counsel for the Plaintiffs and Mr. Bradley, Counsel for the Defendant on the contents of his report submitted to the Court.

The evidence

15. Mr. Moody was the first to testify. He said he has a Bachelors Degree in Civil and Structural Engineering. He has been practicing since 1974. The Court deemed him an expert witness. Ms. Pitts showed him a copy of a report dated 8th August, 2006 and he accepted that it is the report he submitted to the Court. The report was admitted into evidence and marked MM '1'. He prepared a clear and concise report and attached to the report were pictures of the building showing the evidence. He testified that he was appointed by the Court to do an inspection on the property in Benque Road. He further testified that when he inspected the building it was three years old and that in his opinion two factors affected the building (1) it was poorly designed and (2) It was poorly constructed. This contributed to most of the problems encountered. He said in his report that:

“Our inspection of the building indicated that the building was poorly designed and constructed and had severe structural problems.

Ground floor slab had failed and had numerous cracks to it. Indication was that it lack reinforcement. Several beams had failed in deflection and showed several cracks through the beams.

Most beam to column connected failed because it was poorly designed. Cantilever beams supporting the verandah had failed and has severe cracks to them.

Upper level concrete floor showed several deflection and is breaking away from the external walls. The deflection of the floor is also lifting and breaking the ceramic tiles on the floor.

The timber section of the floor was poorly designed, with excessive spacing of the floor joints. Based on the span of the supporting beams the spacing of the floor joists should be at 16” center to center. Presently, they are spaced at 2’ – 8 to 3’- 0 center to center.

Because of this, the floor bounces when walk upon. The timber T & G flooring used was not properly cured and therefore, shrinked leaving openings in the floor.

The external concrete blockwalls had severe cracks to them, which, in our opinion was due to failure of the supporting beams.

This movement has also caused shifting of windows and doors creating openings between windows and wall.

Cantilevers were discontinued at the columns and therefore, created severe deflection in the columns which developed cracks at the joints between the cantilever and column.

It is our opinion that the structural members of the building, namely foundation, slab, beams and columns were under designed and the quality of work was poor. Attached are pictures of the building showing the problems.

We have also estimated the cost of carrying out the remedial works to correct the problems which are attached.

It must be noted that because of so much failure of the structural members, it is our opinion that others will also fail over time as the quality of the work is the same.”

16. Mr. Moody's evidence is that it would cost \$65,888.50 to do corrective works to the house, that is to remedy the defects. Mr. Moody in cross examination by Ms. Pitts said that even if steps were taken to remedy the defects this would not have stopped other damage occurring. He stated that at the time he did the inspection of the house some improvements were done to the building. That the photographs he took at that time showed the defects in the building.
17. In cross-examination of Mr. Moody by Mr. Bradley the questions not surprisingly took a different turn. He was asked what should one do if they want to build a house. Mr. Moody said that the person should contact an architect or engineer who is qualified to prepare a design which is a plan. The plan has to be designed at a certain standard. After getting the plan one has to look for a contractor to do the construction. He testified that the person who designed should supervise the works. He said people consider it expensive and it is not normally done in Belize.
18. Mr. Moody was asked by Mr. Bradley when was it necessary to use piles? He said that to build a house three things needed to be done:
(1) Get a soil engineer to test the soil; (2) Get a Plan; and
(3) Get a contractor. He made it clear that in his opinion the Benque area does not require piles.
19. Mr. Moody's evidence is that the rate in 2002 to build a dwelling house in Benque was about \$80 - \$90 per square foot. This rate depends on the types of construction and finishes. He said \$40 per square foot in his opinion is cheap.

20. Mr. Moody was shown drawings which was used to build the house and he said that in his opinion those were sketches. He said that proper drawings and plans should have been prepared by a designer. That this is the responsibility of the client and that the contractor should advise the client that he is unable to construct on a sketch.

21. When asked about regulations in Belize regarding plans he said that the Central Building Authority had been formed two years ago to look at plans. That there is an Association for Architects and Engineers and they are members of the Central Building Authority. He said there are bodies such as Belize City Council but said there is no body in Benque. He stated that there are building regulations in place. He stated that the Building Code was in place from the early 50's. This house has been built since 2002.

The Plaintiff's evidence

22. Mr. Hoffman's evidence is that he is a disabled combat veteran of the US Armed Forces. He decided to move in Belize in 2002 and to build a retirement home. He met the Defendant through a businessman and he told him that he wanted to build an "American Styled" home. He submitted to him a rough drawing of what he wanted and requested a cost analysis.

23. Mr. Hoffmann at paragraph 4 of his witness statement said that the Defendant instructed him to draw up plans to illustrate the three levels of the structure, the size of the rooms, location of sinks, commodes, appliances, windows, doors, burglar bars, electrical outlets, interior and exterior lighting, description of desired flooring, paint, tiles, perimeter security fence and gate, location of driveway and other things. He then said that the Defendant indicated to him that his large, poster size

drawings would be suitable and that neither the Claimants nor himself would need an Architect for him to build such a dwelling. This is due to his many years of experience in construction and the building of homes in Cayo District.

24. Mr. Hoffman stated at paragraph 5 of his witness statement that he submitted a large poster-size plan to the Defendant which was carefully drawn with as much detailing as possible and contained three separate outlays. The first plan covered the ground level. The plan contained all the details for the ground level. The second drawing illustrated the size of the second level of the home and included details of the rooms and their size, the type of flooring, number and types of sink (kitchen and bathroom), interior and exterior lighting, the size and shape of exterior decks, windows, various types of doors and their appropriate locations. The third drawing illustrated the size of the third level of the home, the type of ceiling, type and style of tin roofing, windows, type of flooring etc. Mr. Hoffman further testified in amplification of his witness statement that he understood what he had drawn on the poster board does not replace an architect. He said he did not have a plan. That Mr. Sosa felt he could carry out the operations with what he gave him. He also said he was not a supervisor of the project.

25. Mr. Hoffman said that upon delivery of the drawings which he also calls plans, the Defendant examined them in their presence and after doing so he stated that he could build them their retirement home. – See paragraph 5 (d) of Mr. Hoffman's witness statement.

At paragraph 6 of his witness statement he said that Mr. Sosa then presented a cost of US\$ 68,499.78 to build the house, perimeter fence, gate and a 5,000 gallon water tank.

26. Thereafter, Mr. Hoffman stated that Mr. Sosa took them, meaning he and his wife to visit three of his most recent building projects in the Benque Viejo area so as to see his workmanship.
27. Mr. Hoffman's at paragraph 9 of his witness statement said that the first payment made to the contractor was US\$25,230.68 made on 19th September, 2002. The second payment of US\$2,046.51 was paid on the 4th October, 2002. The third payment of US\$18,923.01 was made on 7th November, 2002. The fourth payment of US\$22,299.54 was paid on the 18th November, 2002. According to Mr. Hoffman this fourth payment included the sum of US\$6,750.00 being an agreed price with the Defendant for an alteration/extension to the structure and the building of a concrete pad.
28. Mr. Hoffman further stated that the Defendant was shown the deficiencies of the house and was requested to remedy them. All the deficiencies were listed at paragraph 17 of his witness statement. He stated that he also contacted Mr. Sosa with an effort to come to an amicable solution but this was fruitless as he did not respond.
29. He further testified that one year after moving into the house there began to show large cracks in the foundation of the house and eventually grew bigger as the house slowly began to fall. He said he then consulted a licensed building inspector who did a detailed inspection of the building and informed him that the structural defects were of such a serious nature that the house was unsafe and unfit for habitation and should be pulled down. See paragraph 20 and 21 of Mr. Hoffman's witness statement.
30. Under cross-examination of Mr. Hoffman by Mr. Bradley he was asked at what point he had an expert look at his property and he said that this was

done about six months after they moved into the house by one Mr. Mar who is or was a Building Inspector. At this time the foundation problems was not showing. He said he did not meet any building planner. He said he asked Mr. Sosa about his skills and he was satisfied with him. Mr. Bradley suggested to Mr. Hoffman that he wanted to keep cost to a minimum and his response was that he does not remember that but said that he had a fixed amount of money. He admitted that Mr. Sosa came back to him and said he will construct the house for \$40.00 a square foot.

31. When it was suggested to him that Mr. Sosa said to him that he would require an architect he said that he does not recall. He said that his recollection is that Mr. Sosa said that he could handle this himself. When asked if the house had been dismantled and sold he said it was a piece meal and that he received about BZ\$30,000.00.

32. Under re-examination Mr. Hoffman said that the last time he went to the property was in October of 2006. At that time, doors were still intact and the roof was there. He confirmed that so far he received US\$30,000.

33. Mr. Ken Dart also testified for the Claimant. He testified that Mr. Sosa had done some construction work for him which turned out to be defective. In cross-examination he admitted that he has no training in Civil Engineering and said he was not involved in the construction of Mr. Hoffman's house. In my view, Mr. Dart's evidence does not assist the court in the determination of the issues in this case.

Defence case

34. The Defence opened its case with the evidence of Mr. Manuel Sosa the Defendant. Mr. Sosa said that he was introduced to Mr. Hoffman by Mr. Bruce. Mr. Hoffman expressed his interest in building a residential home. He stated that Mr. Hoffman interrogated him about his knowledge and

experience in respect of construction. He said he answered all his questions and he insisted that Mr. Hoffman visit some of the most recent houses he constructed in the community. He said that Mr. Hoffman saw two of his recent constructions.

35. Mr. Sosa said in his witness statement that following the inspection of the houses, Mr. and Mrs. Hoffman and Mr. Bruce met with him and gave him a piece of paper with a sketch stating that this was the type of house he was interested in. On the paper there was a sketch which did not give details of construction. This paper which is letter size, 8 ½ x 11" is exhibited as M.S. "1". Mr. Sosa said he enquired who was going to construct the plan and Mr. Hoffman told him that the piece of paper is the plan. Mr. Hoffman then told him that if he was interested in constructing the house he would make it more elaborate. According to Mr. Sosa he then questioned Mr. Hoffman as to whether he was an architect. Mr. Sosa said he informed Mr. Hoffmann that he is not an architect and cannot construct a plan but that he can read and comprehend a plan. He said Mr. Hoffman then informed him that he did not have a lot of money and will not spend money on a architect when he, Mr. Sosa could do the job. Mr. Hoffman told him that he would accompany him during the construction and explain to him how he wanted his house built. Mr. Sosa stated that he recommended to Mr. Hoffman an architect who is a teacher and would charge him a reasonable price. However, Mr. Hoffmann refused his advice and explained to him that he was not interested. See in particular paragraphs 10 to 15 of Mr. Sosa's witness statement.

36. Mr. Sosa then went on to say at paragraph 16 of his witness statement that he informed Mr. Hoffman that the price per square foot for building a house like his was BZ\$50.00. However after being promised by Mr. Hoffman that he would recommend him to his friends who were interested in taking up residence in Belize he decided to charge him \$BZ40.00 per

square foot because he thought he would be accumulating a lot of money from these future works.

37. Mr. Sosa according to paragraph 22 of his witness statement said that the construction project proceeded efficiently and within two weeks all foundation pads were built. Thereafter he was ready for working on the floor plan and requested same from Mr. Hoffman. He stated that Mr. Hoffman gave him a typing sheet with drawings on it named floor plan. This plan was attached to the witness statement as Exhibit M.S. '2'. He then requested more details in respect of what he wanted so as to purchase materials. Mr. Sosa stated at paragraph 23 that he was given verbal detail which was put in a list and both of them reviewed the list - See exhibit M.S. '3'.

38. At paragraph 25 of his witness statement, Mr. Sosa said that on 18th November, 2002 he received a final payment for the job as a written agreement was drafted which he signed stating that he received the final payment. See exhibit M.S. '4'. This exhibit I find helpful and will address the details upon determining the amount paid to the contractor. At paragraph 26 he said that Mrs. Hoffmann bought all electrical fittings from Miami, Florida as Belize did not have the quality of things she wanted.

39. According to Mr. Sosa the house was completed and he delivered the keys in February, 2003 to Mr. Hoffman. He stated that he and his workers assisted Mr. Hoffman to transport articles to his new residence. He said all that was left to do was to transfer a BEL electricity bill from his name to Mr. Hoffman. He stated when he went to Mr. Hoffman's residence he was surprised when he did not permit him to enter upon his land and threatened to shoot him. At the time of the threat Mr. Hoffman held a gun. Mr. Sosa stated that he then went to BEL's office and informed

them that he wanted a disconnection. From that day he did not exchange any words with Mr. Hoffman nor go on his premises. See paragraphs 27 – 31 of Mr. Sosa's witness statement.

40. Mr. Sosa at paragraph 32 of his witness statement stated that in the project Mr. Hoffman always held himself out to be the Architect and Engineer of his house and he was the Contractor who brought along his workers to do the work.

41. The learned attorney for the Plaintiffs vigorously cross-examined Mr. Sosa. She asked him about his experience as a contractor, responsibility as to the quality of his work, and questions on the plan. He said over the last ten years he was involved in many constructions in Belize City and Belmopan. He said he was involved in building family houses. He said he normally work with plans as all construction is done with plans. Further, that usually an architect supervise the construction. He said he recommended Roger Balanco who is an architect to Mr. Hoffman but he did not accept. He was asked why he thought the Hoffman's asked him about his experience. His reply was because they want him to build their house. He then said he showed them other houses that he built and Mr. Hoffmann was satisfied. It was suggested to Mr. Sosa by the learned attorney that the reason why the Hoffman's hired him was because of his experience. Mr. Sosa answer to this is that Mr. Hoffman accepted his word and he did not want to pay for a plan.

42. Mr. Sosa was asked why he built the house without a plan and he said he did so because Mr. Hoffman said he would supervise the job. He said that first there was a sketch and then there was a design on a Bristol Board made by Mr. Hoffman. He was asked a very important question as to whether he advised Mr. Hoffman to get a second drawing? He said 'yes'. He was then asked as to whether he was willing to work from a plan that

was not a real plan? He replied, 'yes'. That he had a sketch which was the same on the bigger Bristol Board. He said he did not know whether Mr. Hoffman was experienced in construction but Mr. Hoffman was telling him about design and size. However, he admitted that Mr. Hoffman did not tell him about materials such as sand, stone or steel or how deep to dig. Mr. Sosa said he worked out materials like sand and stone. He said the Claimant was there because of the design. Mr. Sosa was asked whether the things Mr. Hoffman gave him directions about concerned the structure of the house. His response was that it did not concern structure. Mr. Sosa candidly said that it was his responsibility as to the quality of the work and the quality of the materials.

43. Mr. Sosa was also cross-examined about payments made to him and the agreed price per square foot. In particular he was asked whether Mr. Hoffman set the price at \$40.00 per square foot and why did he agree to it. He said he thought he could complete the house.

Knowledge of defects

44. Mr. Sosa in cross-examination said that he knew the walls of the house cracked a year later but he was never told to remedy anything. He also said that he never remedied anything during construction. He said that he did not know that tiles from the house were popping up. It was suggested to him by the learned attorney that he was not telling the truth and he said he did not know. He testified that he knew of the defects because of the court proceedings. He said if Mr. Hoffman had come to him he would have remedied the defects. Mr. Sosa said that he could have remedied all the defects he saw in the Report but he would have had to get advice.
45. In re-examination by learned attorney, Mr. Bradley, Mr. Sosa was asked about the architect that he recommended to Mr. Hoffman. His response

was that Mr. Hoffman said that he did not have money to pay for an Architect.

46. The second witness in support of the defence case is Philbert J. Leslie. It is obvious from his witness statement that his evidence was focused on direction and control of the construction and on the drawings for the house. He said he worked with Mr. Sosa as a helper and that he did cement work. At paragraph 6 of his witness statement he said that during the construction of the house both Mr. and Mrs. Hoffman would give instructions to the Defendant who would then give directions to the workers. He said the majority of the instructions came from Mr. Hoffman.

47. He said that several times he witnessed Mr. Hoffman going to Mr. Sosa with drawings he called plans to show the Defendant how he wanted the job done. He said he never heard the Hoffmans' complain to the Defendant as to the progress of the construction of the house. That when the construction was completed the Hoffmans' had a social get together and gave them gifts. And the day after the party he assisted Mr. Hoffman to move furniture into his new house. See paragraphs 7 – 10 of Mr. Leslie's witness statement.

48. In cross-examination Mr. Leslie said that Mr. Hoffman was in charge of the construction. He gave an example and said that Mr. Hoffman asked for other things like water-tank and parkway. He said that Mr. Hoffman did not give instructions on how much sand or cement to be used.

49. The third witness for the Defence was Mr. Eustequio Nicefero Lisbey who said that he worked with the Defendant on several projects including the construction of the Claimant's house.

50. At paragraph 4 of Mr. Lisbey's witness statement he said that during the construction of the house he was given instructions by Mr. Sosa about the work he should do and how he was to do the work. The work included mixing cement and laying blocks. He then went on to say at paragraph 5 that during the construction of the house, Mr. Hoffman would give instructions to the Defendant who would then give the workers directions on what to do.

51. Mr. Lisbey said that after the construction of the house he worked with Mr. Hoffman at his house for 3 months as a carpenter. At that time Mr. Hoffman made various adjustments to the house. This included the bathroom floor, additional flooring on the entire floor inside the house and made an addition to the verandah on which a satellite dish was placed. See in particular paragraphs 7 to 10 of Mr. Lisbey witness statement.

52. The final witness for the Defence was Mr. Samuel Dean Bruce. He said in his witness statement that he is acquainted with both the Claimants and the Defendant in this case. He said that he recommended Mr. Manuel Sosa to Hoffmans.

53. At paragraph 7 of Mr. Bruce's witness statement he said that it was his impression that the Hoffmans knew that the Defendant was not an architect nor an Engineer and was in fact merely a builder who followed directions.

54. Mr. Sosa said that when the Claimants and the Defendant met he can recall Mr. Hoffman showing Mr. Sosa a house plan that he had drawn up and they proceeded to discuss the plan. He said that he knows that the project was based on the plan that was presented by the Hoffmans. See paragraph 10 and 11 of Mr. Bruce's witness statement.

55. Mr. Bruce said at paragraphs 16 and 17 of his witness statement that he recalled that during the course of the construction the Hoffmans came several times and they were satisfied with the work of the Defendant as he was cooperative and he listened to their directions.

56. In cross-examination by learned attorney, Ms. Pitts, Mr. Sosa said that he has no knowledge if Mr. Hoffman had any construction skills.

Submissions by the Claimant

57. Ms. Pitts in her submissions referred to several authorities in support of her arguments.

Firstly, learned Counsel referred to the case of **Hancock v B.W. Brazier (Anerley) Ltd.** (1966) 1 W.L.R. 1317 in support of her argument that when a house is being built there is an implied undertaking that the builder would reasonably supply good and proper materials and that the house would be reasonably fit for human habitation on completion. Also any construction work must be done in a good and workmanlike manner.

Ms Pitts submitted that the Defendant did not do his work in a “good and workmanlike manner” which resulted in the house not being reasonably fit for human habitation.

58. The other authorities referred to by Counsel concerns defects in architect’s design. In the case of **Brunswick Construction Ltd. V. Nowland** **Supreme Court Canada (1974) 21 BLR 27, 49 D. L. R. (3d) 93, (1975) 2 S.C.R. 523, 8 N.B.R. (2d) 76, 2,** it is said that where architect’s plans are so inaccurate on a matter such as ventilation that the building is virtually uninhabitable the contractor may be liable for breach of contract even when he has followed the plan and specification. An

experience contractor should recognize obvious defects. The obligation to carry out work which will perform its intended function overrides that of following specification. The contractor had agreed to “give efficient supervision .. using his best skill and attention.”

Learned Counsel submitted that the Defendant knew from the start that the Claimants did not have an Architect or Engineer to supervise the works. That according to the evidence the Defendant assured Mr. Hoffman that he could deliver a well built house without the plan or presence of an architect.

59. Ms Pitts submitted that even if the Court believes the evidence of the Defendant that he recommended to the Claimant to hire an architect and the Claimant refused and opted to act as his own Architect and Engineer, the Contractor was under a duty to warn the Claimant about the danger of relying on a sketch. Learned Counsel also submitted that the Expert witness stated that the contractor should have advised the client that he was unable to construct the house from a sketch.

60. Ms. Pitts then relied on the case of **Equitable Debenture Assets Corporation Ltd. v William Moss Corp. Ltd.** (1984) WL 281900 WL 281900, 11 Con. L.R. 1 where it was held that there was an implied term in a contract requiring contractors to inform their employer’s architect of any defects in the design of which they knew.

61. Ms. Pitts relying on this principle submitted that if contractors have this obligation to an architect when there is a design or plan, then their obligation is even higher when there is no architect and no formal plan and the relationship is directly between the contractor and the owner. Counsel further submitted that the evidence of the Claimant if accepted,

is that he relied on the representation of the contractor that he was skilled and experience enough to build the residence without a formal plan. The Defendant cannot now when the building turns out to be a disaster, say that he advised the First Plaintiff to get an architectural plan.

62. The next case relied on is **Victoria University of Manchester v Hugh Wilson** (1984) 1 Const. L.J. 162; (1984) C.I.L.L. 126. where it was held that the duty stated in **Equitable Debenture Assets Corporation Ltd.** supra extended to defects which the builders believed to exist. Ms Pitts relying on this principle submitted that this raises the bar even higher. That it is not only where there is a defective design but if the builder believes that there exists a defect then he is under an obligation to warn the architect or owner.

63. Learned Counsel further relied on the case of **Lindenberg v Canning** (1993) WL 964924 (QBD), 62 B.L.R. 147, 29 Con. L.R. 71, (1993) 9 Const. L.J. 43 where it is stated that a builder owed a duty by contract to exercise reasonable skill and care and that extended to querying the design. It was held that the builder in not raising doubts about the design acted with less care than was to be expected of the ordinary competent builder and was therefore in breach of contract.

64 Ms. Pitts submitted that the authorities cited above support the submission that the Defendant was in breach of an implied contractual obligation to build a house that would definitely not have serious structural defects after only three years. That the contractor's obligation is to warn an architect, if there is one, or where there is none, the owner, of defects in the design, or where there is no design, as in the present case, the danger of not having a design. Learned Counsel further submitted that the Defendant influenced the Plaintiffs into giving him the job to build by assuring them that he could build without a formal architectural plan.

Further, he cannot use the fact that there was no plan to say that it is not his fault and that it is the Claimants fault.

Submissions for the Defendant

65. Mr. Bradley in his legal submissions referred to **Halsbury’s Laws of England, Fourth Edition Reissue Vol. 4(2) para 301:**

“The law applicable to building contracts is the general law of contract ... much of the supposed law or principles relating to business contracts is on analysis found to be no more than the result of the interpretation of the relevant building contract and not of rule of law it must be emphasized that virtually all such rules may be displaced by the terms of the relevant contract.”

66. He urged on the Court to look at the contract between the parties. He submitted that the Claimant hired the Defendant to build the house to his specifications. He drew a plan which was later enlarged. He was present during the construction and he never consulted anyone else during the construction of the house. Mr. Bradley then submitted that the house was habitable as the Claimant lived in the house several weeks and hired persons to do work in the house.

67. Learned Counsel further submitted that there was a duty of care placed on the Claimant in ensuring that there was a proper plan, that he hired an architect and once construction started that he get an expert or experts to review the construction as it went along especially since the Claimant had no experience in this area.

68. Mr. Bradley further submitted that the Claimant wanted his job done at a minimum cost and he paid rock bottom cost of square foot charge and as a result ended up with workmanship that was exactly what he had paid for. That all the normal terms of the contract, the hiring of an architect, the hiring of a civil engineer, a structural engineer, a mechanical engineer or an electrical engineer were all done away with. Learned Counsel submitted that this was a two man job in a third world town. That the Claimant was the Plan artist and architect and the Defendant was the contractor who subcontracted all the necessary plumbing, electrical, landscaping and other jobs necessary.

69. Mr. Bradley then referred to **Halsbury's at paragraph 373** on obligations as to design:

“The building contract may provide for the allocation of responsibility of the design of the work. It is an obligation to complete so that they are fit for their purpose. This may entail not only preparing the proposed design of the works but also making changes to it as may be necessary if the works proceed or after completion so that the works are fit for their purposes. Where the contract is silent design obligations are a matter of implication”

70. Learned Counsel then submitted that in this case the Claimant having taken on the responsibility of drawing the Plan and the enlarged sketch design he was by implication charged with the responsibility of the design obligations. That the Claimant visited the construction site regularly. That it was his responsibility to ensure that the construction was being

carried out in such a way as to ensure that his design plans were being met to specification.

Issue 1: *Whether the house built by the Contractor had structural defects and if so the cause of the defects*

71. Before I look at this issue I think it is important that I mention how Mr. Moody was selected to give expert evidence in this case so as to clarify any misconceptions by Mr. Hoffman on the non-acceptance of another report which he had prepared by an expert of his choice. Mr. Hoffman in his witness statement said that the highly-detailed report of C.J. Consulting was submitted to the former Registrar General but due to a legal interpretation this accurate report was forsaken and one Mr. Moody of Belize City inspected his house and his findings are now entered into the Supreme Court Record. See paragraphs 20, 21 and 22 of Mr. Hoffman's witness statement. I therefore, find it necessary to state the rules on expert evidence. Though this matter was filed before the New Supreme Court (Civil Procedure) Rules 2005 came into force, the Rules were applied where necessary. Rule 32.6 states that no party may put in an expert's report without the Court's permission. There are good reasons for this as will be seen later. When this matter came up for Case Management, the then Registrar General pursuant to Rule 32.9 of the Supreme Court (Civil Procedure) Rules 2005 ordered that expert evidence be given in this matter by one expert. Mr. George Moody of Mitchell Moody Associates was selected to do so. Pursuant to Rule 32.12 Mr. Moody addressed the report to the court. At the end of the report in compliance with Rule 32.13 (2) he issued a statement dated

19th September, 2006 which states that he understands his duty to the Court as set out in Rules 32.3 and 32.4 and he complied with that duty. He stated that the report includes all matters within his knowledge and area of expertise relevant to the issue on which the expert evidence was given. He also gave a statement as to the instructions given to him by the then Registrar General. He was instructed to inspect the Claimant's residence in Benque Viejo, Cayo District and that the purpose of the inspection was to evaluate the structural quality of the residence. The rules that I find of great importance are:

Rule 32.3 which provides that:

"It is the duty of an expert witness to help the court impartially on the matters relevant to his expertise."

And Rule 32.4 provides that:

"Expert evidence presented to the court must be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the demands of the litigation."

72. The permission of the Court is therefore important as the expert is required to help the court impartially and the evidence presented to the Court should be seen to be independent. The Court will therefore not accept a report filed by the Claimant without the permission of the Court.

73. I will now look at the issue to be considered which is the defects of the building. Mr. Moody's evidence as to the inspection of the building and his opinion as to the cause of the structural defects were not challenged by either party. Copies of Mr. Moody's report which was admitted in evidence was given to both parties months before the trial. The Defence focused on the so called 'plans/ drawings' and who was responsible for

the preparation of same. The Plaintiffs focused on the skills of the contractor.

74. Mr. Moody's opinion which is stated in his report is not a legal opinion but an opinion based on his area of expertise. Rule 32.3 of the Supreme Court Rules states that the duty of an expert witness is to help the court impartially on the matters relevant to his expertise. And rule 32.4(2) states that the expert witness must provide independent assistance to the Court by way of objective unbiased opinion in relation to matters within his expertise. So, it is clear from the rules that the expert witness assist the court with their views so as to enable the court to form its own independent judgment.

75. Mr. Moody's inspection of the building was thorough as can be seen in the report. He looked at the design of the building and the way it was constructed. He stated the facts and/or assumptions on which his opinion was based. For instance the failure of the ground floor slab was caused by the lack of reinforcement. Beams had failed because of poor design. He gave his evidence in a professional manner and was credible at all times. I accept Mr. Moody's evidence that the building had structural problems and I accept his views that the structural members of the building such as the foundation, slab, beams and columns were under designed and the quality of the work was poor. The pictures taken of the building was further confirmation of the defects of the building. For these reasons I find that the house was unsafe and unfit for habitation.

Issue 2: Whether the contractor or the client had the responsibility for the designs/plans of the house

76. I must say from the outset that I agree with Mr. Moody that proper plans should have been prepared by a designer, someone trained in drawing. This was not done in this case. Firstly, I will look at what is the normally required in building contracts. In large contracts for work of construction the employer will usually require an Engineer or an architect to prepare the contract documents, design the work and to ensure compliance with Building Codes. See ***Halsbury's Laws of England Vol. 4 at para 1103***. There are cases however, where no Engineer or Architect is employed to do the drawings and the Contractor takes on the responsibility for the design of the building. This is also confirmed by Mr. Moody who testified that it is the responsibility of the client to get a plan. Also, that the contractor should advise the client that he is unable to construct on a sketch.

77. In Belize there is the Belize Building Act, 2003 which was assented to on 31st January, 2003 but unfortunately has not yet come into force. The Act would have been useful in a case such as this as it is an Act to control building operations in the interest of public health and safety and to enable the introduction of regulations prescribing standards relating to the use of materials and methods of construction. This Act provides for a Central Building Authority and any one who proposes to construct a building has to send an application for a permit to build. Attached to that application there must be drawings, descriptions, calculations and specifications. Unfortunately, in 2002 when this house was built no Building Code was followed. Mr. Moody was very helpful in providing some useful information on the practice in Belize. According to him there are some bodies in place, for example the Belize City Council but in

Benque there is no body in place. He said that the person who designed should supervise the works. But, normally it is not done in Belize because people consider it expensive.

78. When the house in issue was built in 2002 the evidence that unfolded showed that no Engineer or Architect was employed. Sketches were done by the Claimant and the Contractor used the said sketches. These sketches that were called 'drawings' by both the Claimant and the Defendant were put into evidence. The sketches exhibited were the ones done on the typing sheet and not on the Bristol Board although the evidence shows that there was such a sketch. The evidence is that it is a larger version of what is on the typing sheet. A careful examination of the sketches shows square footage of the house, placement of kitchen, dining, sliding door, deck, size of rooms. In my view, though these sketches were called drawings they were not design drawings. The reason being that the sketches done by the Claimant show no details of the structural work. There was no specification which describe the structural work which is to be done or drawings giving details of the structural work. For instance, design of foundation, slab, beams and columns, size of steel. This is confirmed by Mr. Moody's evidence that was given in cross-examination that the drawings were sketches.

79. The question is who had the responsibility for the preparation of a plan in this case since no Engineer or Architect was employed to do the drawings. Was it the Claimant, the Employer or was it the Defendant who is the contractor? This question has to be determined from the terms of agreement between the parties.

80. In this case there is no written contract. What the court has is the evidence of the parties and the sketch itself. The Claimant's evidence is that the Contractor said he could work with the drawings given to him. The Defence evidence is that Mr. Hoffman, the first Claimant was responsible for getting a plan. This is the main contention between the parties.

81. Mr. Hoffman's evidence-in-chief is that Mr. Sosa instructed him to draw up plans to illustrate the three levels of the structure. He said *"The Defendant indicated to me that my large, poster-size drawings would be suitable, that neither we nor he would need an architect for him to build such a dwelling, this due to his many years of experience in construction and the building of homes in Cayo District."* See para 4 of witness statement.

82. At paragraph 5 (d) of witness statement Mr. Hoffmann said that, *"Upon delivery of these drawings/plans, the Defendant examined them in our presence (at our rented home in Benque) and after doing so he stated that he could build us our retirement home. He presented to us the cost for the total construction, including labour and materials, as well as a time-frame for completion."*

83. Under cross-examination Mr. Bradley suggested to Mr. Hoffmann that Mr. Sosa said to him that he required an architect. Mr. Hoffmann's answer was, *"I do not recall. I ask him if he could hand this and he said, 'yes'."* Mr. Sosa in his witness statement on this issue said:

10. *At the said meeting, present were Mr. and Mrs. Hoffman, Mr. Samuel Bruce and myself. The meeting was verbal and Mr. Hoffmann gave me a piece of paper with a sketch stating this was the type of house he was interested in. On the paper was a drawing that did not give details of construction. Attached Exhibit M.S. 1.*
11. *That I inquired who was going to construct the plan and he responded that the piece of paper I held was the plan and he informed me that if I was interested in constructing the house he would make it more elaborate for me.*
12. *I also questioned whether or not he was an architect and I informed him that I was not. I can read and comprehend a plan, but not construct one.*
13. *The First Claimant informed me that he did not have a lot of money, so he cannot spend money on an architect when I can do the job.*
14. *The First Claimant stated that he would accompany me during the construction process; therefore, he would explain to me how he wanted his house built.*
15. *I recommended to the First Claimant Mr. Lopez's architect who is a teacher and who would charge him a reasonable price, however, the First Claimant refused my advice and explained to me that he was not interested."*

84. Under cross-examination of Mr. Sosa he was asked by Ms. Pitts the following:

Ms. Pitts: *Why did you build the house without a plan?*

Mr. Sosa reply: *Because Mr. Hoffmann said he will supervise the job.*

Ms. Pitts: *Mr. Hoffmann was satisfied with the houses you showed him.*

Mr. Sosa: *After the sketch the client said he would make an elaborate plan. He made some design on a Bristol board.*

Ms. Pitts: *Did you advise him to get a second drawing?*

Mr. Sosa: *Yes.*

Ms. Pitts: *You were willing to work from a plan that was not a real plan?*

Mr. Sosa: *Yes. I had a sketch which was the same on the bigger Bristol Board.*

Ms. Pitts: *Did you know whether Mr. Hoffmann is experienced in construction?*

Mr. Sosa: *He was telling me about design and size. He did not tell me about materials such as sand, steel, and how deep to dig.*

After some other questions on other issues, Ms. Pitts suggested to Mr. Sosa that the reason why Mr. Hoffmann hired him was because of his experience. To which Mr. Sosa replied,

“He accepted my word and he did not want to pay for a plan”.

85. On a balance I believe the evidence of Mr. Hoffman that the Defendant indicated to him that the poster –size drawings would be suitable for him to build the house due to his many years of experience in construction and the building of homes in the Cayo District. Mr. Sosa also admitted that he was willing to work from a plan that was not a real plan. He therefore took on the responsibility of the design of the house. Mr. Sosa represented to the Claimants that he can do the job and the Claimants believed him. Mr. Sosa himself said, *“They accepted my word and did not want to pay for a plan.”*

86. In my view, when Mr. Sosa accepted the sketch he represented to the Claimant that he can work without a plan and that he is a specialized contractor. Mr. Sosa is an experienced contractor and from his own

evidence knows what is a plan and therefore he should have insisted on getting a plan.

87. I do not find the evidence of Mr. Sosa credible when he said that Mr. Hoffman always held himself out to be the Architect and Engineer of his house and he, the Defendant was the Contractor who brought along his workers to do the work. Mr. Sosa himself said in cross-examination that he did not know whether Mr. Hoffmann was experienced in construction. From the evidence it is accepted by Mr. Hoffman that he instructed the Defendant where in the building he wanted certain things located such as doors, windows, electrical outlets, sinks and other accessories. This in my view is not instructions of an engineer or an architect. The Defendant himself and the other witnesses for the Defence admitted that Mr. Hoffmann did not give any instructions relating to the structural construction or the design of the building. Mr. Sosa on the other hand, in my view held himself out to be a specialist contractor, meaning that there is no need for a plan.

88. I therefore disagree with Mr. Bradley's submissions that there was a duty of care placed on the Claimant in ensuring there was a proper plan and that he should have hired an architect and once the construction started he should get experts to review the construction as it went along. I find from the evidence that there was no such agreement between the parties. I further disagree with Mr. Bradley that the Claimant had taken on the responsibility of drawing the Plan and the enlarged sketch design and therefore he was by implication charged with the responsibility of the design obligations. In my respectful view, the Claimant was never charged with the responsibility of the design obligations. The sketch shows an outline of the shape of the house, the square footage and the place where the different rooms will be placed such as kitchen, dining living area. This information is what someone without any skills in

designing, drawing or building gives to his Engineer or Contractor when he wants to build a house. This is how the Claimant communicated the style and size he wanted. The Defendant is an experienced contractor who gave evidence that he can read plans though he cannot prepare one. He has knowledge of a proper plan. What the Claimant had was not a plan.

89. Ms. Pitts legal submissions appear to me to be correct in principle but would have been relevant only if I had found the Defendant's evidence credible. I do not believe that the Claimant refused to hire an architect and that he opted to act as his own Architect and Engineer. The Defendant knew the Claimant was not an Engineer. The sketch the Defendant received from the Claimant could not be classified as an 'architect's design'. These authorities cited by Ms. Pitts are therefore distinguishable from this case as the Contractor was never placed in a position to warn the Claimant of defects in the design. There was no design. The Contractor was acting on his own. Further, there is no evidence that the Claimant instructed the Defendant on the design of the house. In my view, the sketch by the Claimant speaks for itself. It lacks details and seems to be the work of a fifth grader. Why did the Defendant use this sketch? The answer is simple. He did not find it necessary to get a plan because of his experience as a Contractor.

90. In my view, Mr. Hoffman was under no obligation or duty to provide any information or detail with regard to the method of construction of the house. He was not responsible for the plans/design. I find that the Contractor was solely responsible for the plans and designing of the house that he built for the Claimant.

Issue 3: Whether Mr. Sosa breached his duty to build a house fit for habitation

The law

91. Where a dwelling house is being constructed there is an implied warranty that the building will be fit for human habitation.

See para. **1151 of Halsbury's Laws of England, Fourth Edition**

See the case of **Jennings v. Tavener** (1955) 2 All ER 769

Workmanship and Materials

92. The terms as to workmanship and materials are normally implied in standard construction contracts.

Halsbury's Laws at para 1159 states that:

"In respect of the fitness and quality of materials, the terms which will be implied in a contract for work and materials correspond to the terms implied in the case of sale of goods. The warranties to be implied are three: that the materials used in the works and the completed works themselves shall be reasonably fit for the purpose for which they are required; that the materials used will be of good quality; and that the work will be carried out in a good and workmanlike manner."

See also the case of **Hancock v. B.W. Brazier (Anerley) Ltd. (1966)**
2 All ER 901 at 903.

Did the Defendant have control of the works?

93. From the evidence, on a balance I believe that Mr. Sosa was in control of the works. Mr. Hoffman did not perform any supervisory or inspection role with regard to the actual building works. The Contractor himself was responsible for the control of the works. In cross-examination Mr. Sosa also admitted that he as the contractor was responsible for the quality of work done. I find from the evidence that Mr. Sosa had control of the work and so was responsible for the work to be carried out in a good and workmanlike manner.

Materials

94. Mr. Sosa was also responsible for materials to be used in the works. He was paid for the building of the house in accordance with the square footage. This is not a case where he was paid for labour only. He was paid for materials and labour. He was responsible for the materials used in the works to be reasonably fit for the purpose for which they are required. Also, he was responsible to see that the materials used will be of good quality. Mr. Sosa in cross-examination admitted that he had the responsibility as to the quality of the work and the quality of the materials. At paragraph 23 he said that Mr. Hoffmann gave him details of what he wanted as he Mr. Sosa needed to purchase the necessary materials. He said he put these details in a list and they both reviewed it and Mr. Hoffmann was satisfied with the formal details. This list which is exhibited as M.S. "3" was carefully examined by the Court and it has nothing about quality of materials. The list gives descriptions such as exterior walls to be in concrete blocks, interior walls to be in treated pine, first floor to be in cement, second to be part wood floor, third level to be wood floor. In my view, this list which is signed by Mr. Sosa does not speak to quality nor quantity.

95. I accept Ms. Pitts submission that the Defendant did not do his work in a good and workmanlike manner which resulted in the house not being reasonably fit for human habitation. The evidence of Mr. Moody and the pictures fully confirm this fact. The report by Mr. Moody which is accepted as evidence clearly states that the structural members of the building, namely foundation, slab, beams and columns were under designed and the quality of the work was poor.
96. Mr. Bradley in his submission referred to the fact that the Claimant bought some material in the United States and that they accompanied the Defendant to choose some materials and fittings in Belize City. The evidence of Mr. Sosa himself is that Mrs. Hoffmann bought electrical fittings in Miami. There is no evidence of what materials and fittings the Claimants choose in Belize City. In my view, a client is allowed to choose their accessories such as bathroom fittings, design and colour of tiles, type and colour of paint. Did the materials and fittings chosen by the Claimant caused any of the defects. This was not proven. The evidence is that the house had structural defects caused by poor design and poor workmanship.
97. I must say that I find Mr. Bradley's submission very disturbing that the Claimant deserved the workmanship that he got because he paid rock bottom cost of square footage. Mr. Hoffman's evidence is that in the initial meeting with the Defendant one of the things he told him is about his limited budget. But, this did not influence the Defendant. In my view, there was a negotiation between the parties and the contractor agreed to accept the price of \$40. per square footage. Mr. Sosa's evidence is that he agreed to charge \$40. because the Claimant promised to introduce him to his friends and he thought he would get a lot of money

from future works. As for Mr. Sosa's evidence that Mr. Hoffman informed him that he would be assisting him in the construction of the house, I find that Mr. Sosa is being untruthful.

98. Further, having accepted the evidence of the expert witness, Mr. Moody, I disagree with Mr. Bradley that the building was habitable. When the Claimants moved into the house they were unaware that it was unsafe. The structural defects showed up after one year.

99. The Defendant has not proven any negligence against the Claimants as alleged in his statement of claim. Further, the Defendant has not proven that an earthquake had occurred during the period to cause the structural defects in the building.

Opportunity to remedy defects

100. Mr. Bradley submitted that the Defendant was not made aware of the dissatisfaction of the Claimants until he went to the premises to get the electricity bill which was in his name changed to the name of the Claimants and that the first Claimant met him with a shotgun. Mr. Hoffmann's evidence is that deficiencies were shown to Mr. Hoffmann after they moved into the house. But, Mr. Sosa told him that his work was finished and there was no more obligation on his part to complete anything. In my view, this is where the relationship broke down and on a balance I believe the evidence of Mr. Hoffmann that Mr. Sosa was aware of these deficiencies and unfinished work.

101. It was one year later when the foundation problems manifested itself and there were large cracks in the wall and over time the house began to lean. In cross-examination, Mr. Sosa said he knew that the walls cracked but he was never told to remedy anything and he also admitted that he

never remedied anything during construction. It was at this stage that the Claimants sought professional advice from a licensed building inspector who informed them of the severity of the structural defects. In my view, the Claimants at this stage was under no obligation to ask Mr. Sosa to remedy defects because of the severity of the defects.

102. For these reasons, I find that the Defendant has breached the implied term of the contract to build a house fit for habitation and that he would carry out the work in a good and workmanlike manner and with proper and sufficient materials.

Issue 4: Whether Claimant is entitled to US\$105,878.99 in damages for breach of contract

103. Mr. Moody's evidence is that it would cost \$65,888.50 to remedy the defects. He also said that even if steps were taken to remedy the defects this would not have stopped other damage occurring. He said that because of so much failure of the structural members, it is his opinion that others will also fail over time as the quality of the work is the same. The Court accepted Mr. Moody's evidence. I am therefore of the view that the defects of the house cannot be remedied.

The law on damages

104. Ms. Pitts in her submissions referred to numerous authorities on damages.

In **Robinson v Harman (1843-60) All ER 383 at 385**, Parke B said:

“The rule of 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, be placed in the same situation, with respect to damages, as if the contract had been performed.”

In **East Ham BC v Bernard Sunley & Sons Ltd. (1965) 3 All ER 619 at 630** Lord Cohen said:

*“The learned editors of Hudson’s Building and Engineering Contracts, 8th edn. 1959 say, at p. 319, that there are in fact three possible bases of assessing damages, namely, (a) the cost of reinstatement; (b) the difference in cost to the builder of the actual work done and work specified; (c) the diminution in value of the work due to the breach of contract. ... There is no doubt that wherever it is **reasonable** for the employer to insist upon reinstatement the courts will treat the cost of reinstatement as the measure of damages.” (emphasis added).*

105. What is meant by reasonable? Ms. Pitts referred to **Ruxley Electronic v. Forsyth (1995) 3 All ER 268** where Lord Jauncey review a considerable body of authorities dealing with the question of reasonableness in the context of reinstatement. Among the cases reviewed is the case of **Bellgrove v Eldridge (1954) 90 CLR 613** where the High Court referred with approval to the rule stated in *Hudson on Building Contracts (7th edn. 1946) p 343*:

“The measure of the damages recoverable by the building owner for the breach of a building contract is ... the difference between the contract price of the work of the building contracted for and the cost of making the work or building conform to the contract ...”

A number of cases was referred to supporting this proposition and then the learned Judge continued:

“In none of these cases is anything more done than that work which is required to achieve conformity and the cost of the work, whether it be necessary to replace only a small part, or a substantial part, or, indeed, the whole of the building is ...the extent of the building owner’s loss. The qualification, however, to which this rule is subject is that, not only must the work undertaken be necessary to produce conformity, but that also it must be a reasonable course to adopt.”

106. Ms. Pitts then referred to the case of **Jacob & Youngs Inc. v Kent (1921)** **230 NY 239 at 244-245** which was also analysed by Lord Jauncey. In that case the Court of Appeal stated that:

*Damages are designed to compensate for an established loss and not to provide a gratuitous benefit to the aggrieved party, from which it follows that the reasonableness of an award of damages is to be linked directly to the loss sustained. If it is unreasonable in a particular case to award the cost of reinstatement it must be because the loss sustained does not extend to the need to reinstate ... This was recognized by the High Court of Australia in **Bellgrove v Eldridge** where it is stated that the cost of the reinstatement work*

*subject to the **qualification of reasonableness was the extent of the loss, thereby treating reasonableness as a factor to be considered** in determining what was that loss rather than as the respondents argued, merely a factor in determining which of two alternative remedies were appropriate for a loss once established...”*

107. Learned Counsel then referred to the **Ruxley case** supra where Lord Lloyd at page 283 said that Cardozo J. judgment in case of **Jacob & Youngs** supra was important because it established two principles which he believed to be correct:

1. the cost of reinstatement is not the appropriate measure of damages if the expenditure would be out of all proportion to the good to be obtained, and
2. the appropriate measure of damages in such a case is the difference in value, even though it would result in a nominal award.

108. Learned Counsel applied the principles in the cases referred to above to the case at bar and submitted that it would be more than reasonable for the Claimants to claim reinstatement as a remedy. That the expenditure for reinstatement would not be out of proportion to the good to be obtained. I agree with Ms Pitt and hold that the Claimant is entitled to re-instatement. The structural defects could not be remedied as the structural failures would have continued over time.

109. The question is whether the Claimants are entitled to US\$105,878.99 as set out in their claim? The evidence is that the house has been sold in pieces for a sum of US\$15,000.00. I agree with Mr. Bradley that the

money received for the house should be set off against any recovery of investment by the Claimant.

110. The Claimant claims US\$75,249.74 as monies paid to the Defendant to construct the said house. The Defendant in his witness statement at paragraph 21 said that it was verbally agreed that the payment would be in three (3) parts. The first payment was received on 27th day of September, 2002 when he commenced purchasing materials. At paragraph 25 he said that on 18th day of November, 2002, he received the final payment for the job as a written agreement was drafted which he signed, stating he received the final payment. This agreement was exhibited as M.S. "4". The amount stated in this exhibit is US\$22,299.54. In cross-examination Mr. Sosa said that he received a downpayment of 40% of the contract price but he cannot remember how much he received. Later he said he received a first payment of \$25,000.00. He said he cannot remember when he got the second payment. He also said that the money was deposited in the bank.

111. Mr. Hoffmann at paragraph 6 of his witness statement said that after he gave Mr. Sosa the drawings Mr. Sosa gave him a cost of US\$68,499.78 to build the house, perimeter fence, gate and a 5,000. gallon water tank. And at paragraph 9 of Mr. Hoffmann's witness statement he listed the date the payments were made and the amount paid. The total amount paid in accordance with the evidence was US\$68,499.74. The total claim is for US\$75,249.74 and the evidence is that US\$68,499.74. was paid. This leaves a difference of US\$6,750.00 for which payment is not proved. According to Mr. Hoffmann the fourth payment included a payment US\$6,750.00. for an extension. Exhibit M.S. "4" however shows otherwise. This exhibit shows the final payment as US\$18,923.00 plus an increase of US\$3,376.54 bringing the total to a sum of \$22,299.54. I am not therefore not satisfied from the evidence

that the difference of the US\$6,750.00 was paid. The Court has no real evidence in this case except the last payment. The parties made payments through the bank yet there is no hard evidence. Mr. Sosa did say he received the final payment for the contract which makes it easy on the Court. For these reasons, I award the sum of US\$68,499.74. as the contract price paid.

112. The Claimants other claim is for US\$17,119.25 which they spent to complete the unfinished work of the Defendant and to remedy some of the defects of the house when they moved in. In their Claim the Claimants stated the particulars of their expense. However, Mr. Hoffmann in his evidence made a bare statement that his claim is for US\$17,119.25 for monies paid to attempt to finish/remedy defects. He did not give any evidence as to particulars of the payment. That is, what it was used for and how much was paid. For this reason, the claim for the US\$17,119.25 must fail.
113. Mr. Hoffmann at paragraph 26 of his witness statement stated that his claim in this action is also for “(3) monies paid to consultant and associated expenses – US\$450.00. (4) Cost of deconstruction – US\$9,540.00 (5) Cost of removal and accommodation during period of deconstruction and reconstruction US\$3,520.00. There are no receipts or other proof to show these payments were made or these monies were spent. These claims also have not been proven and must fail.
114. Ms. Pitts in her submission argued that the Claimants are entitled damages for mental distress caused by the physical discomfort and inconvenience they were forced to experience. The Court has evidence only from Mr. Hoffmann in this case and he has not given any evidence as to mental distress suffered. This claim also fails.

115. The sum of US\$68,499.74 awarded as monies paid to the contractor must be reduced by US\$15,000.00 being sum received for the house which was sold in pieces. This brings the total sum awarded to US\$ 53,499.74. or BZ\$106,999.48.

Conclusion

116. The Claimants are entitled to US\$ 53,499.74. or BZ\$106,999.48. as damages for breach of contract.

Interest at 6% per annum from 2nd November, 2005.

Cost to the Claimants to be agreed or taxed.

Dated this day of September, 2008.

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MINNET HAFIZ
SUPREME COURT JUDGE