[2023] JMSC Civ 21

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU 2020 CV05027

BETWEEN	**ODEL BROWN**	**CLAIMANT**
AND	**MAPLE TREASURE**	**DEFENDANT**

IN CHAMBERS

Mr. Michael Jordan instructed by Jordan and Francis for the Claimant.

Mr. Obika Gordon instructed by Frater Innis and Gordon for the Defendant.

Heard: December 15, 2022, January 18, 2023 and February 15, 2023

PROPRIETARY ESTOPPEL: House built on land with consent - intention of the parties - Extent of equitable interest - determine proportionality between expectation and detriment, unconscionability test - Building Act, 2018.

O. SMITH, J

[1] The Claimant Odel Brown is a taxi operator from Corn Piece Street, Exchange District, White River P.A. in the parish of Saint Ann. He is the nephew of the Defendant of the same address. On December 22, 2020 he filed a Fixed Date Claim Form seeking the following declarations:

> *"1. A Declaration that the Claimant is entitled to an equitable interest in a house situated at Corn Piece Street, Exchange in the parish of St. Ann, located on property registered at Volume 1162 Folio 920 of the Register Book of Titles;*

2. Alternatively, a Declaration that the Defendant by herself and/or her servants and/or agents are estopped from claiming to be solely entitled to the dwelling house constructed by the Claimant on the subject property;

3. An Order/Declaration Restraining the Defendant by herself and/or her servants and/or agents from taking any steps to deal with said property for her sole interest;

4. Order Restraining the Defendant by herself and/or her servants and/or agents from taking steps to interfere with the Claimant and/or his servants or agents, heirs or successors use and occupation of said property;

5. An Order that the Defendant is Restrained from interfering with the Claimant's right to possession and/or quiet enjoyment of the dwelling house constructed by the Claimant on the subject property.

6. Alternatively, an Order directing a valuation be done by a reputable valuator agreed between the Claimant and the Defendant to determine the extent of the Claimant's interest in the subject property; the Defendant within 30 days of producing the Valuation Report can purchase the same from the Claimant for its current value;

7. An Order that if the Defendant is unable to purchase the said dwelling house, the Claimant is empowered to have the section of the property surveyed and thereafter apply for a duplicate Certificate of Title for the same;

8. Order that any proceedings commenced against the Claimant, relative to any subject property in any Court within the jurisdiction is stayed pending the determination of the claim herein.

9. An Order that the Claimant's Attorney have sic has carriage of sale in the event that the property is being sold."

THE CLAIMANT'S CASE

[2] The background to this case is relatively short. The Claimant's case is that sometime in or around 2010, his aunt gave him permission to build on the property described above. This, coupled with her encouragement, led him to build a two bedroom, one bathroom, living room and kitchen house on the property. In 2010, she gave him a letter of authorisation to build on the land. He did not just build a house, he built it to her exact specifications.

[3] In or about July 2014 he completed the house, it was tiled in 2015. He also welcomed his son in 2015 and decided to live with his family in the recently completed house. It is his evidence that the defendant never approved of his girlfriend and this culminated in her telling him in 2018 that he should tell his girlfriend to leave the premises. Despite his best efforts to get to the heart of the issue nothing changed. Eventually, even though he asked his girlfriend to leave the property, his aunt also asked him to leave.

[4] It is also his evidence that she told him to value the house and she would pay for him the value. Suffice it to say, after he had it valued and gave her the sum, she refused to pay. A Bill of Quantities was done by Carlton Hollingsworth who determined that the total cost to build the house was $3,768,497.00. The Claimant is of the view that he should be paid the current value of the house and not the cost to construct.

[5] The Claimant tendered into evidence as Exhibit OB 1, the Letter of Authorization dated August 5, 2010 and Exhibit OB 2, the Bill of Quantities dated November 2020.

THE DEFENDANT'S CASE

[6] Ms. Treasure, who is a taxi operator, admits that she gave her nephew permission to build a two-bedroom apartment on her property. However, she says that the agreement was for her to repay him the cost of construction whenever he decided to leave the property. Ms. Treasure says that she has always been financially strong and took in the Claimant when he was destitute.

[7] It is her evidence that it was never her intention to give him the property permanently. According to her, Exhibit OB 1 was given to the Claimant in order for him to apply to the Municipal Corporation for approval of the Building Plan.

[8] She admits that she asked the Claimant and his girlfriend to leave the premises because of what she described as "acts of throwing oil and other items on her

steps." It is her evidence that the relationship deteriorated because of acts of obeah used against her and steps taken to kill her.

[9] Ms. Treasure averred that she agreed to pay him for the cost of constructing the building if he left, but did so because she feared the use of obeah against her. In support of her case she tendered into evidence six letters. Five of which are letters between the lawyers commencing with a suggestion by the Defendants attorney that the house be valued to determine the cost to construct the house. The Claimant was not averse to this. The Report of Mr. Hollingsworth was also relied on and accepted by the Claimant.

ISSUES

[10] The parties agree that Mr. Brown has an equitable interest in the property. The main issue is the extent of his interest. In other words, whether the Claimant is entitled to the current value of the house or the cost of construction.

[11] In the case of ***Greaves v Barnett*** [1978] 31 WIR 88, Williams J clearly outlined the law in relation to how the court treats with buildings constructed on land not owned. At page 91, paragraph J she states:

> *"The general rule is that what is affixed to land is part of the land so that the ownership of a building constructed on land would follow the ownership of the land on which the building is constructed. "*

[12] That is a basic statement of the law and what I see as the starting point in cases of this nature. It would therefore follow, that since the house is constructed on Ms. Treasure's land, the house invariably belongs to her. The next step is an examination of the circumstances that lead to Mr. Brown building on the land. There is no dispute in this case that it was Ms. Treasure who gave Mr. Brown permission to build the house on her land. I will state from the outset that I do not accept her evidence that it was with the understanding that she would repay him for his expenditure on construction when he wanted to leave. Exhibit OB 1, which

was tendered by the Claimant and accepted by the Defendant, speaks to her intention. It is rather short so I will set it out in its entirety.

> ***TO WHOM IT MAY CONCERN***
>
> *This serves to inform that I, Maple Treasure has given and authorized Odel Brown a part of my land to build a two bedroom apartment inclusive of living, dining, kitchen and washroom with a view to build on top (no addition to sides, front or back) of building.*
>
> *This is my intention and remains binding up unit and beyond death.*

The letter is signed by Ms. Treasure and Mr. Brown and witnessed by a Reverend Walter Russell.

[13] I find that the letter speaks to her intention regarding the property. It was never her intention for him to leave and I accept the evidence of Mr. Brown that there was never an agreement at the inception for her to repay him the cost of construction should he ever intend to leave.

[14] It is Mr. Brown's evidence that he spent a number of years, building the house. He painstakingly saved the money from running a taxi towards constructing the house. At the end of which he moved his family in. I accept that he intended to remain there for the rest of his life and that Ms. Treasure was well aware of this.

[15] ***Dillwyn v Llewelyn*** [1862] 42 ER, 1285 is a useful case on this point. This case also provides guidance on the extent of the estate that is derived by the person who builds on the land. Lord Chancellor Lord Westbury said at page1286;

> *"…if A. puts B. in possession of a piece of land, and tells him, " I give it to you that you may build a house on it," and B. on the strength of that promise, with the knowledge of A., expends a large sum of money in building a house accordingly, I cannot doubt that the donee acquires a right from the subsequent transaction to call on the donor to perform that contract and complete the imperfect donation which was made."*

[16] He continued at page 1287;

> *The equity of the donee and the estate to be claimed by virtue of it depend on the transaction, that is, on the acts done, and not on the language of the*

> *memorandum, except as that shews the purpose and intent of the gift. The estate was given as the site of a dwelling-house to be erected by the son. The ownership of the dwelling-house and the ownership of the estate must be considered as intended to be co-extensive and co-equal. No one builds a house for his own life only, and it is absurd to suppose that it was intended by either party that the house, at the death of the son, should become the property of the father."*
>
> *The equity of the donee and the estate to be claimed by virtue of it depend on the transaction, that is, on the acts done, and not on the language of the memorandum [which amounted to an imperfect gift]."*

[17] Perhaps it would be useful to state the facts of the case. I will take it, in part, as stated in the judgment. The deceased father placed his first son in possession of land, and at the same time signed a memorandum that he had presented the land to his first son for the purpose of building a dwelling-house. The son, with the assent and approbation of the father, built at his own expense a house upon the land and resided there. However, the father died leaving a will in which he devised his property to his wife for the remainder of her life and to the plaintiff and the defendant his second son. The Plaintiff brought an action seeking a declaration of his rights and that the defendant be ordered to execute a conveyance of the estate. It was held on appeal, that the Plaintiff was entitled to an equitable interest in the property for his life and a conveyance was ordered.

[18] The Claimants relied on the case of ***Inwards v Baker*** [1965] 1 All ER, 446 as an authority on how the Court should resolve the issue of the quantum to be attached to an equitable interest. At page 448 Lord Denning MR said;

> *"It is quite plain from those but if the owner of land request another or indeed allows another, to expend money on the land under the expectation created or encouraged by the landlord that he will be able to remain there, that raises an equity in the licensee such as the entitle him to stay…*

[19] At page 449 he continues;

> *"All that is necessary is that the licensee should, at the request or with the encouragement of the landlord, have spent the money in the expectation of being allowed to stay there. If so, the court will not allow that expectation to be defeated where it would be inequitable to do so…*

> *It is an equity well recognized in law. It arises from the expenditure of money by a person in actual occupation of land when he is led to believe that, as a result of that expenditure, he will be allowed to remain there. It is for the court to say in what way the equity can be satisfied. I am quite clear in this case that it can be satisfied by holding that the defendant can remain there as long as he desires to use it as his home.*

[20] In ***Pascoe v Turner*** [1979] 2 All ER 945 at 951 Cumming-Bruce L concluded that in such a situation there are two remedies available, a license to the Claimant to occupy the house for her lifetime on a transfer to her of the fee simple. On the facts of that case, in determining which remedy should be given, the court considered whether the evidence demonstrated that the party had spent more money or done more work on the house than she would have done had she believed that she had only a license to live there for her lifetime. However, even that his lordship cautioned should not be a hard and fast rule and instead posited that the court should look at the circumstances of the case.

[21] In examining the circumstances of the case, it is my view that the Court in its contemplation of interest should not only look at the bare facts but also at the words and conduct of the parties to ascertain their intention. In ***Dean Hinds v Janet Wilmot*** 2009 HCV 00519, Edwards J addressed how the court should establish common intent. At paragraph 25 of her judgment she opined that;

> *"Evidence of a common intention can either be expressed or implied. In the absence of an expressed intention, the intention of the parties at the time may be inferred from their words and/or conduct.*
>
> *Where a common intention can be inferred from the contributions to the acquisition, construction or improvement of the property, it will be held that the property belongs to the parties beneficially in proportion to those contributions. See Nourse, L.J. in Turton v Turton (1987) 2 ALL ER 641 at p. 684.*
>
> *In the absence of direct evidence of a common intention, any substantial contribution to the acquisition of the property maybe evidence from which the court could infer the parties' intention: Grant v Edwards [1986] 3 WLR 120, per Lord Brown-Wilkinson. The existence of substantial contribution may have one of two results or both, that is, it may provide direct evidence of intention and/ or show that the claimant has acted to his detriment on reliance on the common intention.*

The claimant must have acted to his detriment in direct reliance on the common intention."

In the case at bar, Exhibit OB 1 eliminates the need for the Court to draw an inference from the actions or words of the parties to ascertain common intent. Nonetheless, any proven words or actions can only be of further assistance to the Court. Once this common intention has been disclosed the Court will be better able to determine the extent of the remedy to award to the party who acted to his detriment.

[22] In ***Jennings v Rice and others*** [2002] EWCA Civ 159 Lord Justice Aldous at page 10 to 11 of his judgment cited the following passage from the judgment of Hobhouse LJ in ***Sledmore v Dalby*** (1996) 72 P & CR 196 in coming to the conclusion that the award must be proportionate taking into consideration the expectation and the detriment.

In conformity with the fundamental purpose of all estoppels to afford protection against the detriment which would flow from a party's change of position if the assumption that led to it were deserted, these developments have brought a greater underlying unity to the various categories of estoppel. Indeed, the consistent trend in the modem decisions points inexorably towards the emergence of one overarching doctrine of estoppel rather than a series of independent rules. The element which both attracts the jurisdiction of a Court of Equity and shapes the remedy to be given is unconscionable conduct on the part of the person bound by the equity, and the remedy required to satisfy an equity varies according to the circumstances of the case. As Robert Goff J. said in ***Amalgamated Property Co. v Texas Bank*** *[1982] QB 84 at 103: 'Of all doctrines, equitable estoppel is surely one of the most flexible.' However, in moulding its decree, the court, as a court of conscience, goes no further than is necessary to prevent unconscionable conduct.*

... it should be accepted that there is but one doctrine of estoppel which provides that a court of Common Law or Equity may do what is required, but not more, to prevent a person who has relied upon an assumption as to a present, past or future state of affairs (including a legal state of affairs), which assumption the party estopped has induced him to hold, from suffering detriment in reliance upon that assumption as a result of the denial of its correctness. A central element of that doctrine is that there must be a proportionality between the remedy and the detriment which is its purpose to avoid. It would be wholly inequitable and unjust to insist upon a disproportionate making good of the relevant assumption.

[23] The cases throughout the years have established that the determination of the award will always depend on the circumstances of each case and further that the court will draw a balance between expectation and the detriment.

[24] The recent decision of **Guest and another (Appellants) v Guest (Respondent)** [2022] UKSC 27 has however sought to say that that approach is not ideal when one considers the varied nature and circumstances of each case. Lord Briggs expressed it in these terms at paragraph 13:

> *"In my view the notion that the problems about framing an appropriate remedy in proprietary estoppel cases can all be solved by identifying either compensation for detriment or fulfilment of expectation (or in default compensating for its loss by a monetary award) as the true purpose of the remedy, is misconceived. The true purpose, as recognised by the Court of Appeal in the present case, is dealing with the unconscionability constituted by the promisor repudiating his promise. It is wrong to treat the unconscionability question as limited to the issue whether or not an equity arises, and then to leave it out of account when framing the remedy. Concern about disproportionality between expectation and detriment is not the only one of the many real-life problems that have made the framing of an appropriate remedy so difficult in many cases. Nor is the beguiling application of "minimum equity" necessarily a just solution. The suggestion is that the court separately values the expectation and the detriment and then chooses whichever is the cheaper for the promisor: see Robertson: The reliance basis of proprietary estoppel remedies [2008] Conv 295. Scarman LJ had nothing like that in mind in Crabb. His dictum was not minimum equity, but minimum equity to do justice. In this context justice means remedying the unconscionability identified in the promisor's repudiation of his promise."*

Lord Briggs in his judgment, identified a particular specie of cases which he referred to as "the clean break cases". He described those cases as arising in circumstances where full enforcement of the promise. i.e. living together on the same property is not possible because of the toxic relationship between the parties. He acknowledged that in those cases the Court has traditionally sought to impose a monetary remedy based on the value of the promised expectation but was of the view that the better course was the proportionality test which is finding a balance between the proven unconscionability and satisfying the promised expectation.

ANALYSIS AND DISPOSITION

[25] There is no dispute that this is a case of proprietary estoppel. The Defendant is now estopped from repudiating her promise in circumstances where it would be unconscionable for her to do so by virtue of her encouragement or acquiescence to the Claimant constructing the house on her land.

[26] Having examined the evidence, I accept the evidence of Mr. Odel Brown that Ms. Treasure gave him permission to build on the property with the intention that he would remain there all his life. This is underscored by the letter of authorization given to him. Therefore, based on ***Esmin Williams v George Breary and Cynthia Breary*** (1984) 21 JLR 6, a case cited by the Claimant's Attorney, an equitable interest has been raised in favour of Mr. Brown. The evidence presented by both parties demonstrate that the relationship between them has deteriorated to an untenable level. This case therefore falls squarely in to the class of cases described by Lord Briggs in **Guest v Guest** as the "clean break cases". Every act of the other is viewed through the lens of suspicion and resentment, whether real or imagined. The deterioration of their relationship was occasioned by the introduction of Mr. Brown's spouse to the property. Ms. Treasure for whatever reason is vehemently opposed to her. Mr. Brown understandably, wishes to live with his family and Ms. Treasure is wholly against the mother of his child. It would be unwise, to say the least, for them to have to live together for the rest of their lives.

[27] The Claimant has not insisted on his equity being recognized in the way of ***Dillwyn v Llewelyn.*** Rather, he has sought monetary compensation. In those circumstances, the value of Mr. Brown's equity has now to be determined. That Mr. Brown must be compensated for the house he built the parties agree. Whether he should be paid for the cost of construction of the house or the current value of the house now stands to be resolved.

[28] The cases examined above all state that the circumstances of each case must be examined in order to settle the issue. The Defendant has said that the Valuation Report is not appropriate in the circumstances as the Claimant did not purchase the land, that the building constructed by the Claimant cannot be separated from the land and finally that the Claimant would be unjustly enriched.

[29] It was argued in aide of point one on behalf of the Defendant that a valuation is likely to take into account the value of the land when accounting for the value of the house. The likelihood of this occurring is easily preventable by giving the relevant instructions to the valuator. See Exhibit MT 5 which is a letter from the Defendants Attorney giving specific instructions to the Quantity Surveyor to value only the house. Additionally, on that point, it was submitted that if the Claimant was to construct a similar building elsewhere he would have to find money to purchase the land. That is entirely correct and one of the reasons why this Court has to carefully consider the appropriate equitable compensation. However, the other side of the coin is also true, he would also have to find money to purchase the materials and to finance labour costs. The consideration here is that whatever he paid for materials between 2011 to 2015 cannot purchase the same materials in 2023.

[30] On point two it was submitted that there is no practical purpose in obtaining the value of the house as the Defendant cannot sell the house built on her property without selling the entire property. Of course no reason or evidence was given in proof of this statement. In addition, she made it clear on her evidence that she has no intention of selling her property. I am of the view that she could reap the benefits from that structure for the rest of her life, for example by renting it.

[31] Finally, it was submitted that the Claimant would be unjustly enriched as there is no evidence that there was an intention for the Claimant to benefit over and above what he spent on construction. This I hold could not be a serious submission on behalf of the Defendant. Exhibit OB 1 which is set out above is a glaring and absolute statement of the Defendants intention.

[32] The principle of proprietary estoppel takes into consideration the reasons put forward by counsel for the Defendant. While it is acknowledged that the Court will not perfect an incomplete gift without more, in this case, it cannot truly be argued that the plaintiff did not act to his detriment on the basis of the Defendants written and oral promise. It is this act that has spurred equity into action to demand that what was incomplete be made complete. As such, counsel's reasons as I see it, is an attempt to deny equity her pound of flesh. However, as I have stated, the Claimant himself is not requesting that a conveyance be made to him.

[33] Based on Exhibit OB 1 and the evidence, specifically of the Defendant that her intention was for Mr. Brown to remain on the property; that her authorization was meant to be binding even after her death and that she intended for him to have a place of his own to call his home. On the evidence of Mr. Brown, the building of the house was his realization of always wanting to own his own home.

[34] I take into consideration the fact that the Claimant saved and built his home incrementally for years with the blessing and encouragement of the Defendant between 2010 to 2018. When he was able to move in with his family and enjoy the benefits of his labour the Defendant announced that she wanted him out. He is not a wealthy man, just a simple taxi driver. The Defendant has made it a point of duty to highlight that Mr. Brown was destitute and she took him in. He therefore cannot afford to build another home easily or quickly. If he is compensated for the construction cost in the amount of $3,768,497.21, as is being advocated by the Defendant, will he be able to use that money to build a similar structure somewhere else? The resounding answer is no. Inflation would significantly impact on that effort. In addition, he now also has to find land. If he recovers the current value of the house will he be able to construct the same house elsewhere? The answer is not definitive because the Court was not presented with any evidence of the current value of the house.

[35] In applying the guidance provided by the cases, I ask myself, what is the balance between the Claimants expectation to live with his family in the house for the rest

of his life and beyond, because no one builds a house just for their life and the time, effort and money spent building the house over a period of at least seven years. See **Dillwyn v *Llewelyn*.** In fact, in ***Jennings v Rice*** the Court stated that the relief granted cannot grant a greater interest than what was granted based on the representations made.

[36] At the end of the trial counsel for the Defendant made oral submissions on the absence of permission from the local planning authority. The Defendant's evidence was that she gave Mr. Brown Exhibit OB 1 to take to the St. Ann Parish Council for approval of the building plan. Mr. Brown on the other hand denied under cross examination that that was the purpose of the letter or that there had been any discussion about the seeking approval. He was confronted with his affidavit where he agreed with the Defendant's affidavit that he was given the letter for the purpose of going to the planning authority. Even faced with his affidavit he insisted that the issue of approval never arose before or while he was building. He got the letter so that he could go ahead and build. Exhibit MT 2, dated April 10, 2019 and tendered by the Defendant supports his assertions. In that letter counsel representing the Claimant categorically denied that there was ever any discussion regarding building approval. Having listened to and observed Mr. Brown, I am prepared to accept his oral evidence and Exhibit MT 2 that obtaining a building permit was not discussed between the parties. It is of note that neither Mr. Brown nor Ms. Treasure has ever mentioned that there was a building plan. This I find, is because no such plan existed in 2010 and still does not exist. The house, as was admitted by the Defendant, was built to her exact specification as laid out in Exhibit OB 1.

[37] Counsel submitted that the absence of a permit renders the building an illegal one and that on a balance of probabilities such a building is likely to decrease the value of the property rather than increase it. I take note of the fact that the letter of authorization is dated in 2010. There is no evidence that at any time between the signing of the letter in 2010 and the demands for the Claimant to leave the property in 2018 that the Defendant asked the Claimant about a building permit. The house

was built over a period of almost a decade with her knowledge and encouragement. If obtaining permission had in fact been discussed I believe that Ms. Treasure would have or ought to have ensured that it was obtained. Should she now be given the benefit of her acquiescence?

[38] **The Building Act of 2018, The Act,** came into force on January 15, 2019. This Act repealed the **Kingston and St. Andrew Building Act** and the **Parish Councils Building Act.** Section 4 (1) of the Act states that it applies to building work that was commenced before or after the appointed day. Under the interpretation section of the Act *"building work" means the design, construction, erection, alteration, repair, extension, modification, demolition, or removal of a building, and all activities relating thereto*," as such it is applicable to the case at bar.

[39] Section 17 (1) of The Act makes clear that no one should carry out building work without a building permit. Subsection (2) makes it a criminal offence to contravene section 17 (1). The penalty for which is listed under the First Schedule.

> ***"****On summary conviction in a Parish Court to a fine in an amount that is not less than 3% nor more than 10% of the estimated construction cost… not exceeding $5M."*

By virtue of section 17(3) the Court may also issue an order permitting the Local Authority to remedy the breach by taking down or altering said building in addition to any penalty that may be imposed by the Court.

[40] It appears that the **Building Act** allows for a permit to be obtained during construction. The Defendant is insistent that the building is incomplete, as such it remains open to her to seek that permit if she so desires. The Act also allows for completed buildings to be made compliant. As previously discussed, I accept the evidence of the Claimant in relation to the issue of the building permit. I am of the view that to merely award the Claimant the cost of construction will do nothing to address the detriment he has and is likely to suffer now based on his expectation, which was to live in the house with his family for the rest of his life. The Plaintiff,

throughout the construction period, uttered nary a word about a building permit and has only now, I find, thrown it as the court in the hope that it will reduce her monetary obligations to the Claimant. The Claimant built the house to the exact specification of the Defendant. It is she who has cried foul and who cast the first stone, citing the use of obeah against her. She demanded that the Claimant send his child's mother away. He complied with her demands, yet she still was not satisfied. She has done everything, to ensure that the Claimant leaves the property. I find that her conduct was unconscionable and I believe that the house should be valued to obtain its current value in order to ascertain what the Claimant is entitled to.

[41] In the circumstances, I find judgment for the Claimant.

a. The house is to be valued by a Valuator agreed to by the parties within 30 days of this judgment. Specific instructions are to be given in writing to the Valuator that only the house is to be valued. Said instructions must be agreed between the parties.

b. If either party refuses or fails to agree on a valuator, then the Registrar of the Supreme Court is empowered to appoint one.

c. The cost of the Valuation is to be borne equally by the parties.

d. An updated Quantity Surveyors Report is to be obtained from a quantity surveyor agreed between the parties within 30 days of this judgment.

e. If either party refuses or fails to agree on a Quantity Surveyor, then the Registrar of the Supreme Court is empowered to appoint one.

f. The cost of the Quantity Surveyors Report is to be borne equally by the parties.

g. Interest is to be applied to the value of the house from the date of judgement until payment.

h. Interest is to be applied to the Quantity Surveyors Report from the date of the commencement of construction (2010) to the date of payment.

i. The Claimant is entitled to the sum of whichever is greater as equitable compensation.

j. Costs to the Claimant to be agreed if not taxed.