IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. P-078/2002

BETWEEN	JUNE PERREAULT	CLAIMANT
AND	DERRICK FEARON	1st DEFENDANT
AND	ARLENE GAYNOR	2ND DEFENDANT

Mr. Manley Nicholson instructed by H. Charles Johnson & Co. for the Claimant.

Defendants not appearing and unrepresented.

October 24 & 25 and November 24, 2006

McDONALD-BISHOP, J. (Ag.)

1. The claimant is an American citizen. On or about the 23rd June, 1999, she entered into a written agreement with the first defendant to purchase from him an apartment at premises known as 209 Carib, Ocho Rios, St. Ann. The first defendant was at all material times the owner and vendor of the said premises. The second defendant was the attorney- at-law with carriage of sale. Ill- advisedly, she acted for both vendor and purchaser in the transaction.

2. The agreed purchase price was US$50,000.00 which was stated to be, for the purposes of stamp duty, the equivalent of JA$1,900,000. It was a term of the agreement that a deposit of 10%, being US$5000.00, was payable on the signing of the contract, a further payment of US$10,000.00 should be paid within four weeks of the signing and the balance of US$35,000.00 payable on or before the 30th September, 1999. Completion was scheduled for ninety days upon payment in full of the purchase price and costs of transfer payable by the purchaser in exchange for the

duplicate certificate of title with the purchaser's name noted thereon. The agreement also provided that possession would be upon completion.

3. The claimant testified that she paid the full purchase price along with all other sums set out in the purchaser's statement of account (as exhibited) in addition to outstanding maintenance costs that were due on the property. There were three receipts tendered into evidence as proof of payment of US$68,000.00 by the claimant to the second defendant on account of the first defendant. Part of this sum included payments for chattels purchased by the claimant from the first defendant.

4. It is the claimant's contention that upon fulfilling her part of the bargain, a letter of possession over the signature of the second defendant was given to her. However, she has not received the title and to date her name has not been endorsed on the title pursuant to the sale agreement. No transfer was effected by the vendor. She said that she made requisitions of the second defendant to have her name placed on the title and she was informed by the second defendant that there was an outstanding mortgage against the property which had to be paid off before the property could be transferred.

5. Given the delay of the defendants to complete, the claimant subsequently procured a copy of the duplicate certificate of title from the Registrar of Titles that was admitted into evidence. Upon receiving the certificate of title, she discovered that the property was still encumbered by mortgages to Victoria Mutual Building Society and National Housing Trust. According to her, it was never disclosed to her that the property was subject to a mortgage. It is seen, as an expressed term of the agreement, that the property was to be **sold** ***"free of encumbrances save and except those restrictive covenants and easements (if any) endorsed on the certificate of title and such easements as are obvious and apparent."***

6. Consequently, by an amended writ of summons and particulars of claim dated 16th September, 2002, the claimant brought action for damages against the first defendant for breach of contract of sale and against the second defendant for negligence in that she acted negligently in not carrying out the proper investigations on various encumbrances existing on the property. She averred that as a result, she has suffered loss and incurred expenses. Accordingly, she seeks the following remedies:

"AND THE PLAINTIFF CLAIMS:

1. ***Damages.***
2. ***Special Damages and interest pursuant to section 3 of the Law Reform (Miscellaneous Provisions) Act.***
3. ***Attorney's cost.***
4. ***Costs.***
5. ***Any further and other relief that this Honourable Court deems fit."***

7. The defendants were served with the writ and accompanying particulars of claim but failed to file an acknowledgment of service and a defence within the prescribed time. Consequently, on 24th October, 2002, interlocutory judgment in default of appearance and defence was entered against the defendants and it was ordered that the claimant recover damages to be assessed and costs to be agreed or taxed. Notice of assessment of damages was subsequently issued.

8. On 22nd October, 2003, an application by the second defendant to set aside the interlocutory judgment was refused by Sinclair-Haynes, J (Ag) (as she then was). Thus, after several adjournments at the instance of the claimant, the matter eventually came before this court for damages to be assessed. The defendants have not attended.

9. It is expressly stated by the claimant that damages for breach of contract and negligence is the remedy being sought. Curiously though, in her evidence, she stated that she has been in possession of the apartment and that all she requires is for her name to be put on the title and for the property to be hers. This is clearly suggestive that the more appropriate remedy might have been one for specific performance to

have the transaction brought to completion. This remedy was, however, never sought by the claimant and her counsel, Mr. Nicholson, made it clear in his submissions that the claimant is not seeking specific performance but, according to him, damages in lieu of specific performance.

10. He sought to remind the court that whereas the usual remedy for breach of contract for sale of land is specific performance, there is authority for an action for damages. He relied on the following principle stated in **Halsbury's Laws of England,** 4th edn. vol. 42, paragraph 254 in support of his contention:

> ***"The purchaser can maintain an action for damages for breach, but for this purpose there must be a contract enforceable at law. The claim may be made by a party who has elected to rescind the contract following the repudiatory breach by the other party. On the other hand, a party who elects to affirm the contract may claim in the alternative for specific performance or damages."***

11. This, of course, is accepted as trite law. There is, however, no claim for specific performance or for damages in lieu of specific performance in this case and so Mr. Nicholson's submission has raised the question as to what remedy is the claimant entitled in all the circumstances. It is patently clear from the claimant's pleadings that this is an action at law and that the claim is for damages for breach of contract and negligence. Upon the application of the claimant, judgment was so entered in her favour for such damages to be assessed. This, as I see it, means damages at law- pure and simple.

12. Here the claimant has stated that she has done all that is required of her under the contract. It is, therefore, for the vendor to complete but the vendor has failed to do so. In such circumstances, she would have had two options opened to her upon the failure of the vendor to perform his part of the contract. In keeping with the same principle of law cited by Mr. Nicholson from **Halsbury's Laws of England** (supra), she could have affirmed the contract and elected to seek relief for the delay by way of

specific performance or damages in lieu or in addition thereto or to accept the repudiation and rescind the contract and then sue for damages.

13. Faced with these options, the claimant has elected to sue for damages. She sought no equitable relief. What then is the effect of her election? Has she affirmed the contract or has she accepted it as been repudiated and as such is treating it as been rescinded? The resolution of this question is authoritatively provided for us in the pronouncements of the Judicial Committee of the Privy Council in **Edwards v Cowan et al** (1986) 23 J.L.R., 24.

14. In that case the respondents, who were purchasers, commenced proceedings against the appellants, the vendors, for specific performance and for damages in lieu of or in addition to specific performance. After the defence was filed, the respondents commenced proceedings for summary judgment for specific performance and damages. The specific performance claim did not proceed at that stage and a consent order was made in the proceedings for the respondent to recover damages against the appellants to be assessed. An order was made on a summons for that purpose for interlocutory judgment for judgment to be assessed. Two years later, the respondents proceeded on the original summons for summary judgment for specific performance before Wolfe, J (as he then was). The order for specific performance was granted. The appellants appealed to the Court of Appeal who affirmed the decision of Wolfe, J. On appeal to the Privy Council, the Court of Appeal's decision was reversed.

15. Lord Oliver, in giving the decision of the Board, stated at pages 26 and 27:

> ***"Their lordships find themselves unable to agree with the Court of Appeal. An interlocutory judgment for damages to be assessed for delay, entered at a time when it could not be known when, or even whether, a decree of specific performance would be made (for the appropriateness of such a decree was one of the matters squarely put in issue on the pleadings in the action), simply does not make sense and the course which the proceedings took is, in***

their Lordships' view, consistent only with the acceptance by the respondents of the appellant's repudiation of the contract."

At page 28, he continued:

"But it is, in their Lordships' view, unnecessary for the appellant in this case to rely upon an estoppel, for the facts which have been recited above lead inexorably to the conclusion that, in obtaining and acting upon the consent order and in entering judgment for damages ... the respondents unequivocally elected in favour of their remedy by way of damages and thus precluded themselves from further proceeding for specific performance of a contract which had, as a result of such election, then been discharged."

16. This principle, as to a party being bound by his election, was enunciated by their Lordships as one that "cannot be better expressed" than it was by Lord Blackburn in **Scarf v Jardine** (1882) 7 App. Cas., 345 where he, reportedly, said at pages 360 and 361:

"The principle, I take it, running through all the cases as to what is an election is this, that where a party in his own mind has thought that he would chose one of two remedies, even though he has written it down on a memorandum or has indicated it in some other way, that alone will not bind him; but so soon as he has not only determined to follow one of his remedies but has communicated it to the other side in such a way as to lead the opposite party to believe that he has made that choice, he has completed his election and can go no further; and whether he intended it or not, if he has done an unequivocal act- I mean an act which would be justifiable if he had elected one way and would not be justifiable if he had elected the other way-the fact of his having done that unequivocal act to the knowledge of the persons concerned is an election."

17. In the case at bar, unlike in **Edwards v Cowan** (supra), there is no claim for specific performance so there is no difficulty in identifying the remedy elected by the

claimant. It follows on the strength of the foregoing principles that once the claimant had elected to sue for damages and not for the contract to be specifically enforced, she has made an election and so she is bound by her election. She is bound because her election has, in fact, been communicated to the other parties. Her claim for damages for breach of contract and negligence means that she has unequivocally accepted the defendant's repudiation of the contract and has, therefore, considered herself discharged with a right to sue for damages for the breach. The claimant has elected, by the nature of the proceedings she has initiated, to treat the contract as at an end.

18. Judgment having been received for damages to be assessed and the claimant having proceeded to this stage means that she is here based on the first defendant's failure to complete the contract. The repudiation of the contract by the first defendant is thus accepted and that is the basis for the damages to be now assessed. I will now borrow the words of Lord Oliver in **Edwards v Cowan** (supra) who puts it aptly when he stated at page 29:

> ***"Once that point is reached, as, in their Lordships' view, it clearly was here, the contract is discharged and there is nothing of which specific performance can then be ordered (see Johnson v. Agnew (1980) A.C. 367 per Lord Wilberforce at page 392 E-G)."***

19. I say all this to ultimately make it clear that the claimant's assertion now that what she wants is title is of no effect in light of the fact that she has not elected to seek an order to get title and there is no longer any contract in respect of which she is entitled to title. It goes without saying then that the remedy being sought cannot place her in a position to complete the contract or to have the defendants do so. Specific performance is no longer available to her as an option. It follows, logically then, that there is no merit in Mr. Nicholson's submission that the claimant be given, as an award for damages, a sum that would enable her to discharge the outstanding mortgage on the property and for her to pay the requisite closing costs, duties and taxes to have the title transferred to her. The completion of the contract, by whatever

means, cannot now be accomplished with there being no contract on which specific performance may be granted. This proposition of counsel that the claimant be placed in a position, as far as money can do so, to enable her to complete the contract and to get title in her name is, therefore, rejected as having no legal basis.

20. My task, therefore, is to embark on an assessment of the damages to which the claimant is entitled. Ordinarily, for breach of contract, the general principle for the assessment of damages is compensatory, that is, the innocent party is to be placed, so far as money can do so, in the same position as if the contract had been performed. Where the contract is one for sale, this principle normally leads to assessment of damages as at the date of breach. Case law has, however, revealed that this is not an absolute rule and that if to follow it would give rise to injustice, the court has power to fix such other date as may be appropriate in the circumstances: **Johnson v Agnew** (supra) at page 895.

21. However, in relation to contracts for the sale of land, the damages which a purchaser of realty can recover for a breach of contract by the vendor at common law are, in general, limited to the expenses which he has incurred: **Grant v Dawkins** [1973] 1 WLR, 1406. This rule forms an exception to the ordinary rule of contract that an injured person is entitled to be placed in the same position as if the contract had been performed: **Day v Singleton** [1899] 2 Ch. 320; see too **Malhotra v Choudhury** [1979] 1 All ER, 186.

22. Thus the rule has developed, as was laid down in **Bain v Fothergill** (1874) L.R. 7 H.L, 158, that where a vendor who has not expressly undertaken to deduce good title is unable, acting in good faith and without fraud, to make a good title, the intended purchaser in an action for breach of contract can recover only the expenses which he has incurred but not entitled to recover compensation for loss of the bargain. This rule is still applicable within our jurisdiction.

23. However, this is an exceptional rule that only applies if the vendor, through no default of his own, is unable to carry out his contractual obligation to make a

good title. In order to obtain the benefit of the rule, the vendor must prove that he has used his best endeavours to make a good title. If the vendor fails to discharge this burden of proof, the purchaser is entitled to substantial damages: **Engell v Finch** (1869) L.R. 4 QB 659; such damages to be assessed according to the normal rule applicable to damages in contract.

24. What then is the claimant's entitlement to damages? It is clear from the facts of this case that all the vendor needed to do to transfer title was to discharge the mortgages on the property so that the claimant could receive title free of such encumbrances as was agreed by them and thus within their contemplation. This, in effect, is not a matter of title but clearly one of conveyance. It is settled law that whenever what is left to be done by the vendor is a matter of conveyance rather than title, the rule in **Bain v Fothergill** (supra) does not apply. As such, the purchaser in such circumstances is entitled to recover damages beyond merely the return of money paid to the vendor with interest and other expenses incurred. Such a purchaser is entitled to substantial damages.

25. This position, by which I am strongly influenced, was taken in **re Daniel. Daniel v Vassall** [1917] 2 Ch., 405. In that case, the vendors failed to redeem a mortgage affecting the property in question whereby the sale of the property was prevented from being carried out. Sargant, J. came to the conclusion that the purchaser was entitled to substantial damages. He stated in part:

> ***"The question indeed seems to me to be covered by the following passage in the judgment of Lord Hatherley in Bain v Fothergill..., namely, "The vendor in that case"- Engell v. Fitch...-"was bound by his contract, as every vendor is bound by his contract, to do all that he could to complete the conveyance. Whenever it is a matter of conveyancing, and not a matter of title, it is the duty of the vendor to do everything that he is enabled to do by force of his own interest and also by force of the interest of others whom he can compel to concur in the conveyance." Here, I think the vendor could "complete the conveyance," and could compel the mortgagees to join in the***

conveyance within the meaning of that passage; and that mere pecuniary inability to do so forms no better defence than it ordinarily does to a claim for breach of contract..."(Emphasis supplied)

26. A review of the relevant case law also reveals the following principles by which I am further guided. The purchaser is entitled to damages for such consequences of the vendor's breach of contract as follow in the usual course from the breach or may reasonably be supposed to have been in the contemplation of both parties at the time of the contract: see **Diamond v Campbell-Jones** [1961] Ch., 22 ; **Lloyd v Stanbury** [1971] 1WLR, 535. Where there is merely a delay in completion, the purchaser is entitled to recover damages for the delay: **Jones v Gardiner** [1902] 1 CH. 191; **Phillips v. Landin** [1949] 2 KB 33. Where there is a failure to complete, he can recover damages for loss of his bargain: **Braybrooks v Whaley** [1919] 1 KB 435; **Thomas v Kensington** [1942] 2 All ER 263.

27. In this case, the claimant has done all that she is obliged to do under the contract. What was left to be done before this action was initiated by the claimant was for the property to be freed of the encumbrances in issue and for the transfer to be effected. For seven years and continuing the first defendant has not done what he is obliged to do to complete the contract. The second defendant, as the attorney-at-law for both vendor and purchaser, has done nothing to remedy this state of affairs. The claimant, as already been established, has accepted the repudiation and by her action has discharged the contract. The case can no longer be viewed as a matter of mere delay in completion.

28. **McGregor on Damages**, 16th edition, at paragraph 968, offers the following guidance:

> ***"If the seller delays in effecting a conveyance of the property in circumstances which allow the purchaser to regard the breach as discharging the contract and justifying him in refusing the property, then, since he will not have the property transferred to him, the situation is the***

same as with a failure to complete as far as the measure of damages is concerned. More often he will have the property transferred to him late, either because the delay does not discharge the contract or he elects not to treat the delay as a discharge, or because he forces the seller's hand by successfully suing for a decree of specific performance. In such a situation the measure of damages is properly regarded as damages for delay."

It is clear that the measure of damages in this case must be damages for failure to complete rather than for delay.

29. The first defendant, as vendor, cannot enjoy the benefit of the rule in **Bain v Fothergill.** He is, therefore, liable to the claimant for damages over and above that allowed under the rule. It is well settled that where it is the vendor who wrongfully refuses to complete, the measure of damages is the loss incurred by the purchaser as the natural and direct result of the repudiation of the contract by the vendor. These damages include the return of any deposit paid by the purchaser with interest together with expenses which he has incurred in investigating title and other expenses within the contemplation of the parties and where there is evidence that the value of the property at the date of repudiation was greater than the agreed price, damages for loss of bargain:(see **Halsbury's Laws of England,** vol. 12 (1) 4th edn. para.1059). Damages for the loss of bargain will, prima facie, be the difference between the purchase price and the market price at the time of breach: **Ridley v De Geerts** [1945] 2 All ER, 654. In some instances, where appropriate, the measure of damages may be assessed on the basis of the difference between the contract price and the market value of the property on the date when the purchaser lost his purchase rather than at the date of completion: **Suleman v Shahsavaria** [1989] 2 All ER 460. I will, therefore, follow the lead afforded by the foregoing principles of law in assessing damages in the instant case.

30. The claimant seeks general damages and special damages in respect of amount outstanding for transfer tax, half cost of preparation of agreement of sale,

other legal fees and amounts outstanding for stamp duty and maintenance due on the property. It is clear that there is no evidence that there is any loss of profit to the claimant as a result of the breach.

31. I have examined the evidence and the circumstances of this case against the background of the foregoing principles of law which I accept as highly instructive and persuasive. Accordingly, I accept the items set out below as being inclusive in the claimant's losses as direct and natural consequences of the breach of contract of the first defendant and the negligence of the second defendant. These are the expenses and legal costs incurred by the claimant in approving and executing the agreement and which would have been in the contemplation of the parties for the contract to be completed:

(i) US$50,000.00- purchase price

(ii) ½ cost of Agreement for sale- $10,000.00 + G.C.T ($1,500.00)

(iii) ½ cost for stamp duty- $52, 245.00

(iv) Registration fee- $4,750.00

(v) Miscellaneous costs - $2,500.00

32. There is no evidence led and thus no proof as to the costs incurred by the claimant in investigating title prior to entering into the contract. She spoke to having gone [herself] to the titles' office and securing a photocopy of the title after the date for completion had passed. She has not provided any evidence as to any costs incurred in so doing. Also, there is no evidence that such an activity was undertaken on her behalf by anyone and that she had paid that person to do so. In light of this, I see no basis for damages to be allowed under this head.

33. Mr. Nicholson has also submitted that as part of the damages, the claimant should be awarded attorney's cost amounting to $343,005.00. This was neither pleaded nor proved and so damages cannot be awarded in respect of such items. In fact, the items he urged on the court would fall within the realm of the claimant's costs to be taxed; they have no place in assessment of damages.

34. The claimant has also failed to prove, as pleaded under special damages, money expended by her on outstanding maintenance. Having not been specifically proven, this sum is not allowed.

35. Similarly, the claimant has not strictly proved sums itemized as legal fees as pleaded under special damages. Similarly, she cannot recover the sum said to be outstanding for transfer tax it being a cost to be paid by the vendor to the public revenue and not to the claimant.

36. I will now consider whether the claimant should also be awarded damages for loss of bargain in addition to the costs directly incurred. In this case, the benefit to the claimant had the contract been performed would be that she would be the owner of residential premises at a certain value. Apart from evidence of the purchase price, no evidence has been adduced as to the valuation of the property at any time and of its current market value. The court has not been assisted in this regard. But does this mean that if there is no such evidence, it is fatal to the claimant's case for damages to be assessed for loss of bargain?

37. The guide as to how to resolve this question is provided for me in **Wallington v Townsend** [1939] Ch., 588. In that case, the purchaser was suing for damages for breach of contract and there was no evidence that the value of the property was greater than the purchase price. The vendor argued that in such circumstances the buyer could recover no damages at all. Morton, J. had this to say:

> ***" Under these circumstances, is a purchaser who has been deprived of his bargain by the vendor's default, but who cannot prove that the value of the property is greater than the purchase price, entitled to no damages at all? I do not take the view. In the present case, my position is this:...Being unable to prove this fact she is, in my view, entitled to recover the conveyancing expenses to which she has been put. I think the true view is that in a case where the vendor under a contract of sale of land has refused to carry out the contract is not due to a defect in the vendor's***

title, the damages are at large and the court can give such damages as according to general principle, it thinks right. Mr. Winterbotham has agreed that, if I think the plaintiff is entitled to damages, the damages shall be those specified in the amended statement of case and he does not dispute that under the circumstances of the present case, as I have held that the party in default is the vendor, the purchaser is entitled to the repayment... of the deposit. I propose therefore to make a declaration that the plaintiff is entitled to the repayment... of the deposit...and to award the plaintiff by way of damages for breach of contract, interest at the rate of 4 per cent from May 17, 1937 in respect of the loss of use of the deposit, damages in respect of the costs of approving and executing the contract...and damages in respect of the costs of investigating title and preparing the conveyance and searches." (Emphasis added)

38. Therefore, in that case, the buyer recovered legal costs incurred prior to the execution of the contract and also interest by way of damages for breach of contract from the date when the deposit was lodged and not merely from the date of contract. The learned judge also said damages ought to be considered at large in such circumstances.

39. This case was considered and applied in **Lloyd v Stanley** [1971] 1 WLR, 535 wherein Brightman, J. stated at page 546:

> *"It appears to me that this decision is at least some authority that a disappointed purchaser suing for damages because the vendor is not willing to implement the bargain is not limited to compensation for expenditure incurred strictly after the execution of the contract. In my judgment the damages which he is entitled to recover include expenditure incurred prior to the contract representing (1) legal costs of approving and executing the contract and (2) the costs of performing an act required to be done by the contract notwithstanding that the act had been performed in anticipation of the execution of the contract. In addition, the buyer is entitled on general*

principles to damages for any other loss which ought to be regarded as having been within the contemplation of the parties."

The learned judge maintained, however, that in that case there was an important limitation to be placed on the claim for damages. He stated that where the buyer was let into possession prior to completion and sees it fit to spend money to improve the property after the date of contract, he is not, however, entitled to claim such expenses since, inter alia, they would not usually be in the contemplation of the parties. This he said, however, does not apply to any expenditure necessary to preserve the property.

40. In the end, I will accept on the basis of the principles distilled from **Wallington v Townsend** (supra) that the claimant would be entitled to a return of her money paid towards the purchase of the property- it being a direct cost incurred in arriving at the agreement and a loss to her notwithstanding that this was not claimed for. I would now go further on the basis of the same principles and say that she ought to be compensated, as far as money can do so, for the default of the vendor to complete. Consequently, she is entitled to loss of her bargain notwithstanding absence of evidence of the difference between the purchase price and the market value of the property at the time of breach.

41. I would adopt the approach employed in **Wallington v Townsend** and hold that damages are at large in such circumstances in the absence of evidence to quantify the loss of bargain. So, in addition to the return of the purchase money, I will also award, by way of damages, interest on the purchase price from the date it was lodged and not from the date of the breach. This would be in addition to damages in respect of the other expenses incurred and proved to be as a direct result of the contract and as being within the parties' contemplation at the time of the agreement.

42. The losses that flow from the breach of contract represent the same losses that flow from the second defendant's negligence. The measure of damages in tort is to place the claimant in that position, in so far as money can do so, as if the tort had not been committed. Had the second defendant discharged her fiduciary duty to the claimant, the claimant would have had the conveyance completed as agreed or she might not have entered into the contract at all.

43. With the commercial interest rates not having been pleaded and proved, I have no evidence as to the prevailing commercial interest rates on foreign and local currency at any material time that could be applied in assessing the interest to be awarded by way of damages. I will, therefore, use the interest usually given on judgment debt between 1999 and today as a point of reference. I would put the interest to be granted by way of damages in this case at the rate of 4% p.a. given that it is a foreign currency debt.

44. I will, therefore, declare that the claimant is entitled to the return of the purchase price of US $50,000.00 and she is awarded, by way of damages against both defendants, interest on the said US $50,000.00 at the rate of 4% p.a. from the date the first deposit was lodged, being June 23, 1999, to the date of the service of the writ on the second defendant, being October 4, 2002. Interest will then be applied as of that date as interest on damages.

45. For the purposes of special damages, the date of breach is selected as November 15, 1999 when letter of possession was given to the claimant but no title with her name endorsed thereon was given to her in keeping with the terms of the contract that the said would have been done upon payment in full of the purchase price. The handing over of title would have marked the completion of the contract.

46. A downward adjustment in the interest rate is made due to the delay in the prosecution of the action by the claimant particularly after judgment was entered. It must also be noted that the question as to the claimant's use and occupation of the

premises is not considered in these proceedings and so no allowance is made for that in any way. That is an issue left to be resolved between the parties. The claimant should now assess her position and elect her best course of action to protect her interest.

47. **Damages are hereby assessed as follows:**

Special

(i) **JA $70, 995.00** with interest thereon at 6% p.a. from November 15, 1999 to October 4, 2005 and at 3% from October 5, 2005 to November 24, 2006.

General

(ii) Refund of U.S **$50,000.00** with interest at 4% p.a. from June 23, 1999 to October 4, 2002 and at 3% p. a. from October 5, 2002 – October 4, 2005 and at 1½% p.a. from October 5, 2005– November 24, 2006.

(iii) Costs to the claimant to be taxed, if not agreed.