

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 HOLDEN AT GEORGE TOWN, GRAND CAYMAN  
3

4 CAUSE NO. G 0033 OF 2014  
5

6 **BETWEEN:**

7 **RELIABLE ROOFERS**

8 **PLAINTIFF**

9 **AND:**

10 **RAYBURN WATLER**

11 **DEFENDANT**

12 ***Appearances:***

13 *The Plaintiff represented by Ms. Martha Rankine instructed by*  
14 *Goldfield Cayman*

15  
16 *The Defendant represented by Mr. H. Philip Ebanks and Mr.*  
17 *Andrew Miller instructed by Premier Solutions Group*  
18

19  
20 **JUDGMENT**  
21



22 The issues before the Court arose from the construction of premises  
23 by the Plaintiff, pursuant to contract, on property owned by the  
24 Defendant. The Plaintiff claimed that he was not fully paid for his  
25 work and the Defendant counterclaimed for breach of contract.  
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1 **Background**

2 The Plaintiff is a construction company owned and operated by Mr.  
3 Gary Ebanks. In or around December 2010 the Plaintiff and the  
4 Defendant entered into an agreement whereby the Plaintiff would  
5 construct a four-plex on property owned by the Defendant and  
6 registered at Registration Section Midland East, Block 59B/Parcel  
7 31 ("the property"). The total cost of construction was \$334,512.00.  
8 At least some of the completed units were intended for sale by the  
9 owner.

10  
11 The construction of the premises was funded by a loan which the  
12 Defendant obtained from Scotiabank & Trust (Cayman) Ltd ("the  
13 bank"). Under the terms of the loan, funds were obtained from the  
14 bank at various stages of the construction of the property. Funds  
15 would not be released by the bank for the next stage until an  
16 assessment of the work done to date was carried out by the quantity  
17 surveyors, DDL Studio Ltd. ("DDL"). In fact; the original contract  
18 price of \$297,162 was revised to \$334,512.00 after DDL advised the  
19 Plaintiff and the bank about certain additional work and appliances;  
20 which had been missed in the original estimate.

21  
22 There was a written contract signed by both parties dated  
23 December 16, 2010. In addition there was a detailed estimate of the  
24 same date which although signed only by Mr. Ebanks; was  
25 acknowledged by the Defendant during cross-examination to form a  
26 part of the contract. It detailed the following:-



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"Dec 16/2010  
THIS IS A PRICED CONSTRUCTION CONTRACT BETWEEN RELIABLE  
ROOFER'S T/A GARY EBANKS & RAYBURN W. WATLER OWNER  
PRIVATE 2 STOREY APARTMENT BLOCK 59B PARCEL 31

Mr Rayburn W. Watler

Estimate to build apartment.

0)	continue preparation of foundation and slab to completion	\$12,000.00
1)	To block walls and belting for roof	\$39,976.00
2)	Pay for roof trusses installed regular shingles	\$43,900.00
3)	Electrical complete with fixtures	\$21,483.00
4)	Complete plumbing with tub, and fixtures	\$19,978.00
5)	dry wall hanging complete with knock down trough out	\$12,572.00
6)	Plastering complete trough outside and inside of the house	\$28,898.00
7)	Windows non-impact & doors complete and installed	\$22,567.00
8)	Cabinets complete bath and kitchen with Formica	\$20,765.00
9)	Marmaron outside and inside painting finish complete	\$12,468.00
10)	Septic tank complete with digging	\$10,687.00
11)	2 units – 3 ton 2 units 1 ½ tons 12 sear Ac	\$17,697.00
12)	ceramic Tiling floors bath shower areas shower head high	\$16,373.00
13)	Fill for around the site and slab	\$17,697.00
14)	kitchen appliance	\$16,000
15)	upper floor stair case	\$8,600.00
16)	exterior works	<u>\$12,750.00</u>
	Total complete material and labour	\$334,512.00"

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1 It was an agreed term of the construction contract that construction  
2 was to be carried out in accordance with plans drawn up by the  
3 Defendant's architect Mr. Jay Welcome. This became a source of  
4 contention between the parties at a later date.

5  
6 A Certificate of Occupancy was issued on 15 November 2011.

7  
8 **The Plaintiff's Claim**

9  
10 The Plaintiff claimed that the project was completed and brought  
11 suit for funds claimed to be owed by the Defendant under the  
12 contract. At the time of trial, this sum was estimated to be \$34,000.

13  
14 One of the areas of disagreement involved the meaning of the term  
15 "exterior works" in the items specified in the estimate dated  
16 December 16, 2010. According to Mr. Ebanks, this referred to air  
17 conditioning pads and steps. The Defendant claimed that he  
18 undertook the expense of work which the Plaintiff had not  
19 completed.

20  
21 Mr. Ebanks testified that the Defendant had agreed to pay  
22 separately for the driveway and sidewalk of the premises and also  
23 for a drainage system which was later required by the Public Works  
24 Department. He referred to clause "5" in the written agreement  
25 which specified that all changes and deviations in the work ordered



1 by the owner could be given verbally or in writing with the  
2 contractual sum being adjusted accordingly by the contractor. This  
3 he claimed, supported his position that he did nothing to which the  
4 Defendant had not consented.

5

6 It was the Plaintiff's claim that the property was finally completed on  
7 June 15, 2011, however the certificate of occupancy was not sent  
8 out until November 15, 2011. Mr. Ebanks testified that that was the  
9 way that the Planning Department operated but that full electricity  
10 was installed by the Caribbean Utilities Company on June 29, 2011.  
11 It was his claim that the local electricity company would not have  
12 done this unless the property was completed. Mr. Ebanks further  
13 testified that the Certificate of Occupancy would not have been  
14 issued unless the building was in full compliance with the  
15 architectural plans prepared by Mr. Welcome.

16

17 Mr. Ebanks testified that while the Defendant contracted DDL to  
18 carry out interim valuations at each stage of the work, for the bank  
19 to disperse funds, he asked Mr. Ebanks to pay for some of those  
20 reports because he lacked the available cash. He promised to repay  
21 Mr. Ebanks.

22

23 Since the Defendant was the client of DDL, he had to contact the  
24 company to release the valuations to Mr. Ebanks upon payment.

25



1 Mr. Ebanks pointed to the cover letter dated 30<sup>th</sup> May 2011  
2 addressed to Scotiabank and Trust (Cayman) Ltd. and which  
3 accompanied the Final Interim Valuation of the property as proof  
4 that DDL was satisfied that the work was complete.

5  
6 The Plaintiff made reference to advancing other sums to the  
7 Defendant.

8  
9 According to Mr. Ebanks, he had charged all appliances to his  
10 account at A. L. Thompson's. He stated however that the Defendant  
11 had wanted the prospective purchasers to have the option of  
12 upgrading certain items such as: appliances; the upstairs carpeting  
13 and the handles on the cabinets. As such, these items were paid for  
14 but not delivered. Mr. Ebanks testified that the fitting of flooring  
15 upstairs units 2 and 3 were not completed because the Defendant  
16 had wanted prospective purchasers to have the option of either  
17 carpeted or wood flooring. Mr. Ebanks stated that the flooring had  
18 been paid for at Paramount Carpets and that the Defendant had  
19 been aware of this. An exhibited letter from Paramount confirmed  
20 this.



21  
22 For his part, the Defendant claimed that the only appliances  
23 supplied were four electrical stoves. He challenged the conclusion  
24 in the DDL interim valuation dated 13<sup>th</sup> May 2011 which stated that  
25 save for kitchen appliances, the work was 100% completed. He

1 stated that he refused to pay the final bill but if the Plaintiff had  
2 agreed to complete the outstanding work he would have paid him.

3  
4 **The Defendant's Counterclaim**

5  
6 For his part, the Defendant alleged that the Plaintiff was in breach of  
7 their contract and had failed to carry out the construction work in  
8 accordance with building specifications. Further, he alleged that the  
9 Plaintiff had failed to complete the works as specified. Below are the  
10 particulars of the breach which are alleged.

11  
12 "PARTICULARS OF BREACH OF CONTRACT

- 13 a) the Plaintiff engaged the use of sub contractors without the permission of the  
14 Defendant;
- 15 b) the Plaintiff incorrectly fitted the roof within the property;
- 16 c) the Plaintiff failed to install handles in the kitchen of one of the units;
- 17 d) the Plaintiff failed to have bi-folder doors installed;
- e) the Plaintiff failed to install framing around closet and utility doors in units 1  
and 4;
- f) the Plaintiff failed to adequately fit the sheet rock on the property;
- g) the Plaintiff failed to fit attic doors in units 3 and 4;
- h) the Plaintiff failed in installing vertical attic doors for the air handler rooms in  
units 2 and 3;
- i) the Plaintiff failed to install panel box screws for units 1, 2 and 4;
- 25 j) there are missing screws in fire rated windows in unit 1;
- 26 k) the Plaintiff incorrectly fitted anterior door frame in unit 1;
- 27 l) the Plaintiff failed to complete the fitting of flooring in the upstairs of units 2  
28 and 3;
- 29 m) the Plaintiff failed to complete the fitting sheet rock in unit 2;
- 30 n) the Plaintiff failed to install front door threshold screws in all units;
- 31 o) the Plaintiff failed to complete the fill around the air conditioning vent in unit 4;



- 1 p) there was a visible opening in the sheet rock in the units 2 and 3;  
2 q) there is no seal upon exterior eaves in units 1 and 4;  
3 r) openings on porches in units 2 and 3 were left requiring sealing;  
4 s) the Plaintiff failed to drill gutters;  
5 t) the Plaintiff failed to install the parking lot drain correctly;  
6 u) the metal guide provided to the Plaintiff cannot be found;  
7 v) the Plaintiff failed to surface the parking lot properly and as such it needs to  
8 be resurfaced;  
9 w) the Plaintiff failed to fit the correct doors in closets of units 1 and 4;  
10 x) the Plaintiff failed to install the rear doors of all units correctly;  
11 y) the Plaintiff failed to build the overhead wall above the staircase correctly;  
12 z) failed to supply all appliances as is provided for in the Contract.”

13

14 The Defendant also counterclaimed for financial losses which he  
15 claimed to have suffered due to the negligence and/or breach of  
16 contract on the part of the Plaintiff. His claim was based on the  
17 report presented by the expert witness Mr. Leonard Prospere.

18

19 The Defendant testified that his counterclaim set out the matters  
20 which he found wrong with the property. He stated further that  
21 several items were not finished at the time that the building was  
22 turned over to him and the final bill presented.

23

24 According to the Defendant he contracted with Mr. Clifford Henry  
25 Elliott to complete the building and he took out an additional loan for  
26 the completion. The costs that he claimed to pay were summarized  
27 by his Counsel as follows.

28



- 1 (i) "CI\$,16,000 – appliances  
2 (ii) CI\$1,100 – return of deposit on Carpets (Paramount Carpets invoice)  
3 (iii) CI\$23,370 – Unfinished works left undone by Contractor (per invoice of  
4 Clifford Elliott exhibited to his affidavit and as set out in the Leonard  
5 Prospere's report/s)  
6 (iv) Septic well CI\$1096.50  
7 (v) Parking lot main drain CI\$1500.00  
8 (vi) All 2 inch electrical pvc pipes for mains CI\$285.00  
9 (vii) Frame and grate for parking drain CI\$248.00  
10 (viii) Parking blocks CI\$414.00  
11 (ix) Parking lot seal CI\$380.00  
12 (x) 6 sheets of wire mesh CI\$100.00  
13 (xi) – half ton of 1/2 inch steel CI\$340.00  
14

15 **Total: CI\$44,833.50**

16

17 The Defendant subsequently conceded that the contract between  
18 himself and the Plaintiff did not specify the installation of "vertical  
19 attic doors for the air handler rooms in units 2 and 3" as specified in  
20 his particulars of breach of contract. The Defendant claimed that he  
21 was not of the view that this was something that needed to be  
22 specified because otherwise the space would be wide open. He  
23 stated that he believed that certain things are implied in a contract.



27 The Plaintiff denied the allegations and also stated that certain  
28 items claimed by the Defendant had never formed a part of the  
29 contract. He also claimed to have done work that had not been a  
30 part of the original contract but for which he bore the cost, such as  
the installation of the parking lot.

1 With reference to the allegation that there were holes in walls near  
2 the water heater. Mr. Gary Ebanks testified that the Defendant had  
3 requested a change in the type of water heater from what was  
4 originally designed. Holes were left to manage the heat generated  
5 by the new type of water heaters. Mr. Ebanks claimed to have borne  
6 the cost for the heaters and the wiring.

7

8 Mr. Ebanks testified that a contractor had no authority to install  
9 water metres on someone's property. Only an owner could do this.  
10 He further testified that the single water heater that had been  
11 installed had not been done by him.



### The Roof

15 The main source of disagreement between the parties stemmed  
16 from the roof which was installed by the Plaintiff.

17

18 According to Mr. Ebanks, Mr. Welcome's (the architect) drawings  
19 concerning the roof; had elements of the roof being a "stick frame"  
20 roof as well as that of a "truss roof". He referred to the part of the  
21 drawing which showed a diagram of a roof with plywood gussets.

22

23 According to Mr. Ebanks trusses do not use plywood, they require  
24 metal. Further other individual diagrams in the drawing pointed to  
25 stick framing. However the "General Notes" made reference to

1 "ROOF- (TRUSS SYSTEM)". Those notes also indicated that the  
2 roof was to be engineered by the supplier and had to conform with  
3 all the standards of the CIBC (Cayman Islands Building Code).

4  
5 The plans were approved by the local authority and according to Mr.  
6 Ebanks what was approved was a truss roof system. The Plaintiff  
7 arranged for A.L. Thompson's to provide the roof and they sub-  
8 contracted to McAlpine.

9  
10 An inspection of the construction work took place on March 30,  
11 2011. The roof was failed by the Planning Department. The  
12 headroom was below the CIBC minimum. The Inspection Activity  
Report noted "Revised drawings and Engineers report required for  
structural changes that will have to be made for engineered truss  
frame roof". According to Mr. Ebanks this was a further indication  
that the plan called for a truss frame roof. Revisions had to be done  
by the engineers.

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18  
19 It was Mr. Jay Welcome's evidence that the plans which he  
20 prepared for the four-plex and which were approved by the Planning  
21 Department included drawings for a framed roof or a stick frame  
22 roof. He was adamant that the roof that was installed did not accord  
23 with the plans that he drew.



1 **Incomplete & Defective Works**

2  
3 The truss roof having been provided by the engineers, it was  
4 installed by the Plaintiff. When the roof did not pass inspection in  
5 March 2011, the engineers were called in to make adjustments.  
6

7 Reference was made during the trial to an exhibited letter dated 4  
8 March 2015 from A. L. Thompson's. This confirmed that the  
9 company had produced roof trusses for the Plaintiff for property  
10 owned by the Defendant according to plans presented and  
11 approved by the Building Control Unit. These were engineered by  
12 McAlpine. The letter stated that the original trusses were in dispute  
13 and they were requested to be modified in order to produce  
14 additional headroom for the loft area in two units. The letter  
15 confirmed that the repair was engineered by the same firm and  
16 sealed drawings were produced as requested. No additional  
17 bracings or bearings were required.



18  
19 The Defendant Rayburn Watler testified and confirmed entering into  
20 a contract with the Plaintiff, having previously instructed Mr. Jay  
21 Welcome to produce the plans. According to the Defendant the  
22 plans produced provided for an A-frame roof, the concept being to  
23 provide roof space.  
24

1 He stated that at the end of April/May 2011 when he visited the  
2 property he observed that a truss roof had been installed. He  
3 claimed that when he went upstairs with Mr. Gary Ebanks he  
4 observed that the roof was too low, only giving clearance of about  
5 an inch. He claimed that Mr. Ebanks blamed the architect. The  
6 Defendant reiterated that the drawings had not been for a truss roof.  
7 The Defendant blamed the Plaintiff for the loss of square footage in  
8 the roof space.

9

10 During cross-examination the Defendant testified that it was not until  
11 installation had taken place that he realised that a truss roof had  
12 been installed. He also said it was at that time that he realised that  
13 the headspace was low.

14

15 According to the Defendant the Plaintiff indicated that he would  
16 return to the truss company to rectify matters. The Defendant  
17 alleged that the Plaintiff only repaired one side of the roof and that  
18 on the other side; the space was compromised.

19 Another witness for the Defendant was Mr. Jay Welcome the  
20 architect of the building plans for the premises.

21

22  
23 He testified that the roof was designed to allow for the maximising of  
24 space within the attic. Mr. Welcome stressed that the upfront  
25 drawings included a standard notice that if there were any



1 dimension or design enquiries, then the architect should be  
2 contacted. Mr. Welcome in his evidence, stated that he believed  
3 that it is possible to design a truss roof which would allow a similar  
4 amount of space as the design with the framed roof if the aspect of  
5 space is addressed by the designer. He stressed however that this  
6 was not the intention of the design that he prepared.

7  
8 According to Mr. Welcome, after the building was completed, he  
9 was contacted by the Defendant and at his behest inspected the  
10 property. The Defendant had concerns about the space. Upon  
11 inspection, he observed that a truss roof had been installed and that  
12 the interior walls and panels did not allow as much space as would  
13 have been afforded by a Stick Frame Roof.

14  
15 Mr. Welcome stated that the Plaintiff had never contacted him and  
16 went off plan and fitted a roof of his own design. He denied that any  
problems with the building was due to any fault on his part in the  
plans that he produced.

20 In his evidence Mr. Welcome stated that the change in design  
21 resulted in a reduction in available space in the attic area both in the  
22 available floor space and in the height space. There was a  
23 significant reduction in headroom on the stairs which he stated was  
24 in breach of the Cayman Islands Building Code and not  
25 aesthetically pleasing. He claimed that it gave a cramped feeling to  
26 anyone using the stairs.



1 Mr. Welcome claimed that there was also a reduction in stairway  
2 due to the reduction in height space.

3

4 Mr. Welcome claimed that contrary to his design the Plaintiff used  
5 additional 2 x 6 members that occupied the roof space. He  
6 theorised that the Plaintiff, in an attempt to improve the amount of  
7 space, decided to cut through some of the members and this  
8 resulted in a loss of support for the roof and to remedy the situation,  
9 the Plaintiff built a supporting wall which further diminished space.  
10 According to Mr. Welcome the supporting wall replaced the open  
11 balcony design shown on the plans.

12

13 During his evidence-in-chief Mr. Welcome testified that in the  
14 original design one should be able to look over the balcony,  
15 however as built, a part of the balcony had to become part of the  
16 retaining wall for the truss.

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In response, Mr. Ebanks testified that the Defendant had requested that the wall be altered from being halfway down; to being carried all the way up. He claimed that this would make the area safer for young children.

22

23 Mr. Ebanks in his testimony conceded that there was a loss of floor  
24 space in units 2 and 3. He stated that when the truss was adjusted  
25 to provide more headspace, the further provision of the closets led

1 to the sacrifice of some floor space. He insisted that this was the  
2 only problem that was ever brought to his attention.

3

4 In contrast, during his testimony Mr. Welcome stated that the floor  
5 space had not been altered much but that the headroom had been  
6 affected. He claimed that the ceiling height left one with the feeling  
7 that one could not move around comfortably and that this was due  
8 to the lower corner of the ceiling.

9

10 During cross-examination Mr. Welcome testified that what forms a  
11 truss is the way that the roof was actually supported and that this  
12 could be a scissors truss or an A-frame truss. He claimed that the  
13 design of the roof had been an A-frame truss system. He claimed  
14 that the truss could be made by stick or it could be pre-  
15 manufactured. He referred to the general notes and claimed that  
16 they were standard. He stated that it was up to the person using the  
general notes to see what should be done.



20 Mr. Welcome conceded that he was aware that once planning  
21 permission is granted one could not deviate from the project without  
22 further planning permission. He explained that one could do  
modification but one would have to send it in to the Planning Board.

23 Mr. Welcome claimed that he had no information concerning what  
24 the Plaintiff produced to the persons, who built the truss in order to  
25 get a pre-manufactured truss. He claimed that the full set of plans

1 should have been produced to the engineer. For his part he had no  
2 communication with those persons.

3

4 Mr. Welcome testified that the same design of his had been used a  
5 number of times on different buildings and he had not previously  
6 encountered a problem.

7

8 Mr. Welcome eventually testified that it was possible to have a stick  
9 frame roof and still do a manufactured truss from his drawings.

10

11 Mr. Welcome went on to say that he noted that the Planning and  
12 Building Control Unit had discretion. He believed that this was the  
13 reason that a Certificate of Occupancy was granted for the building  
14 despite the (alleged) deviation from the Cayman Islands Building  
15 Code.

16

17 Mr. Ebanks asserted that it was only after he requested final  
18 payment from the Defendant, that the latter complained about the  
quality of the work that he had done.

18

22 Reference was made to a document dated 21<sup>st</sup> December 2011  
23 which Mr. Ebanks prepared and presented to the Defendant. The  
24 document set out details of the contract costs, payments made, and



1 the cost of additional items of work. The contract amount was  
2 \$334,512 and the total paid to date was \$312,230 leaving a balance  
3 of \$22,282 on the contract. The document then set out "extras"  
4 which the Plaintiff claimed had been done but which have not been  
5 covered by the original contract. This list included a claim for hot  
6 water heaters, topsoil fill, the driveway sidewalk and cash advanced  
7 to the Defendant.

8

9 Mr. Ebanks testified that the Defendant objected to paying for the  
10 extras but offered to pay him the balance in instalments. Mr. Ebanks  
11 said that he requested \$250 per month, but the sum of \$300 was  
12 offered and agreed. According to Mr. Ebanks, the Defendant made  
13 several payments totalling \$3,900 but he failed to pay the balance.  
14 These payments were detailed on the document by Mr. Ebanks  
15 showing that monthly payments took place between the period  
16 December 2011 and March 2013. The document, adapted to  
17 exclude the alleged payments and signature(s) is shown below.

18



1	"ADDITIONAL COST CONTRACT AGREE TO PAY AFTER PROJECT COMPLETE EXTRAS AND	
2	ADDITIONAL FUNDS.	
3	CONTRACT AMOUNT	\$334,512.00
4	FUNDS RECEIVED TOTAL	\$312,230.00 -
5		-----
6	BALANCE	\$ 22,282.00 BALANCE ON CONTRACT
7		-----
8	BALANCE	\$22,282.00
9		
10	<b>ADDITIONAL EXTRAS</b>	
11		
12	HOT WATER HEATERS	\$ 945.14 INSTANT WATER HEATERS
13	TOP SOIL FILL	\$1,350.00
14	DDL FIVE CHARGES	\$1,750.00
15	BAND UNDER EVE	\$6,350.00
16	ELECTRICAL	\$1,225.00
17	CASH GIVEN RAYBURN	\$3,000.00
18	DRIVE WAY SIDE WALK	\$9,200.00
19	BUILT ANOTHER STORM CATCHMENT	\$1,200.00 JACK HAMMERING AN BACKHOE
20	SERVICES	
21	BROWN GUTTERING WITH DOWN SPOUTS \$3,200.00	DOWNSPOUTS PAINTED BROWN AND
22	3' DRAIN RUN TO CATCHMENT BASIN	
23		-----
24	BALANCE	\$28,220.14
25	BALANCE ON CONTRACT	\$22,282.00+
		-----
	BALANCE OUTSTANDING	\$50,502.14



30 This document was not signed by the Defendant however Mr.  
 31 Ebanks pointed to the estimate which had not been signed by the  
 32 Defendant but which the Defendant had acknowledged as being  
 33 accurate. In this document, the extras totalled \$28,220.14 with a  
 total balance of \$50,502.14.

34  
 35 For his part the Defendant acknowledged making several payments  
 36 of \$300 to Mr. Ebanks, but he claimed that these funds were

1 payments on a personal loan made by Mr. Ebanks to him. He  
2 denied that payments were being made because he agreed that the  
3 contract was completed and the balance owed to the Plaintiff was  
4 being settled.

5

6 During cross-examination the Defendant stated that he had taken  
7 out a loan of about \$30,000 for additional work but that he had no  
8 paper work to support this contention. He was referred to an invoice  
9 from Universal Furnishing and stated that the bill was not paid by  
10 cheque but rather by cash. This was the sum of \$10,000 and he had  
11 no receipts. During re-examination, the Defendant testified that this  
12 sum was paid to Mr. Clifford Henry Elliott, a contractor,  
13 incrementally and further that Mr. Elliott had requested cash.

14

15 Mr. Clifford Henry Elliott testified on behalf of the Defendant. It was  
16 his evidence that in February 2013 he was approached by the  
17 Defendant to complete certain outstanding work at the premises.  
18 Having given a quotation, he then undertook certain work for which  
19 he was paid cash. He stated that he was paid the sum of \$10,745.  
20 He also gave an estimate of items which he observed that required  
21 completion and quoted a price, through his business Universal  
22 Furnishing of \$12,625. He confirmed meeting with Mr. Leonard  
23 Prospere and giving him this estimate.

24

25 Mr. Elliott testified that his wife is a member of the Defendant's  
26 family but stated that she is a distant relation. He later clarified that



1 his wife was a cousin to the Defendant. He stated that he and the  
2 Defendant would meet at family gatherings on a monthly basis but  
3 not every month.

4

5 According to Mr. Elliott, none of the units were occupied when he  
6 went into them in February 2013.

7

8 Mr. Elliott conceded that he would not state that all the work on the  
9 property is of low quality; just the areas that he assessed. He  
10 conceded that he did not review the plans. Challenged about  
11 accepting payments in cash as opposed to checks; he stated that  
12 he used the cash for his personal business as well as company  
13 business. He stated that he did not wish to put the money in the  
bank but he also stated that he had several bank accounts.



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Mr Elliott stated that the business, Universal Furnishing operated under a trade and business licence of which he was the owner. He initially stated that the said licence gave his occupation as a contractor. He adamantly denied that it said he was licensed to carry out the trade or business of General Maintenance and Repairs; until he was confronted with a copy of the said licence. In re-examination he reconfirmed that he had worked for several years as a contractor and had contractor accounts at some of the big businesses in the Cayman Islands.

The Experts

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Mr. Mike Kenna, a Quantity Surveyor employed to DDL Studio Ltd. was engaged in October 2010 to prepare a valuation report for a construction estimate for the bank which the Defendant dealt with. The original quotation from the Plaintiff was for the sum of \$297,162. However as indicated in his letter to the bank dated 13<sup>th</sup> December 2010 that quotation did not include: the upper floor structure; some staircases; kitchen appliances or any exterior works. Mr. Kenna reported that these would be covered by the property developer using alternate funds. In that letter Mr. Kenna estimated that the total sum to construct the property was \$335,712. He also recommended that the client proceed with the new quotation from the Plaintiff.



Mr. Kenna explained that he was not responsible for providing commercial management for the job. However the bank required ongoing valuations to ensure that the money extended by the bank at each stage had been properly invested in the project. He further explained that he utilised architectural plans to make financial assessments. He testified that it was not his role to verify whether or not the building was in compliance with the plans. This he said was the responsibility of building inspectors. He stated that if the building was not in compliance, approval would not be granted by the Planning Department.

1 According to Mr. Kenna, in preparing his final valuation for the bank,  
2 it was required that he conduct an inspection of the premises and  
3 take into account any incomplete or defective works. He would be  
4 required to reduce the valuation to reflect these.

5

6 He testified that when conducting an inspection, he only did a visual  
7 inspection. He did not test anything because that was a task for the  
8 building inspectors.

9

10 Mr. Kenna testified that he stood by his Final Interim Valuation of  
11 the property which was dated 30<sup>th</sup> May 2011. In his letter to the  
12 bank of the same date; he stated that at the time of his inspection of  
13 the property, construction works had been completed save for minor  
14 decorative touch-up works and the installation of kitchen appliances.  
He stated therein that the materials and labour required to complete  
those works within the next 7 days had been secured; and the  
report had been prepared on the basis that those works would be  
completed.

19

20 The cover letter also noted that a number of the windows had been  
21 upgraded to fire-rated windows. Additionally, the exterior decoration  
22 had been upgraded to include decor mouldings and the air  
23 conditioning installation had been upgraded. These changes were  
24 valued at \$25,000. This resulted in the construction estimate being  
25 increased to \$410,750. The "likely market value of the property  
26 upon the completion of the works" was assessed at \$583,000.



1 Mr. Kenna was shown the Defence and Counterclaim filed herein  
2 and asked to comment on the items listed by the Defendant as  
3 being either incomplete or defective in his Particulars of Breach of  
4 Contract. Mr. Kenna testified that if any of the large items such as:  
5 roofs; windows; doors and flooring had been missing, he would  
6 have made note of it in his report. He stated that he did not observe  
7 that any of these items were missing. In relation to small items such  
8 as screws and seals, these were particularly small and perhaps  
9 could have been overlooked by him on a visual inspection. He  
10 testified that he could not recall that any walls had been  
11 inadequately fitted or that any sheet rock was missing.

12

13 Mr. Kenna testified that he did not believe that there were any gaps  
14 in the sheet rock in units 2 and 3 when he conducted his inspection.  
15 He commented that it would not be unusual for sheet rock to  
16 develop cracks four years after installation.

17

18 Mr. Kenna commented that the contract of construction made no  
19 reference to gutters being drilled, the installation of parking lot  
20 drains or the surfacing of the parking lot. He testified that while he  
21 noted that the parking lot drains had been installed he was not in a  
22 position to comment about whether or not the work had been done  
23 properly. He stated that the parking lot at the time of his inspection  
24 had been surfaced. He testified that at the time of his inspection  
25 closet doors and rear doors had been installed but he was not in a  
26 position to comment about whether or not they were the correct  
27 ones as referred to in the claim. He also testified that at the time of



1 his inspection, the installation of the kitchen appliances was an  
2 ongoing process.

3

4 When questioned about the findings in the Report prepared by Mr.  
5 Leonard Prospere of Cayman Surveying & Property Consultants  
6 Ltd. for the Defendant, Mr. Kenna reiterated many of his previous  
7 comments. He did insist that it was not unusual after the passage of  
8 time for hairline cracks to appear or other items of wear and tear.  
9 He also pointed out that he would be unable to comment on any  
10 construction issues which fell outside of his remit.

11

12 During cross-examination, Mr. Kenna commented that he worked  
13 on behalf of the bank and it was his responsibility to account for  
14 funds spent on the project, based on his valuation rather than the  
15 contract.



17 Mr. Kenna also testified that he did not require a Certificate of  
18 Occupancy to have been issued for him to certify a project as being  
19 completed.

20

21 The Defendant's expert witness was Mr. Leonard Prospere, a  
22 Chartered Surveyor. He prepared a document entitled Qualitative  
23 Assessment of Property and Work Completed dated August 14,  
24 2014 having visited the said property on 8<sup>th</sup> April 2014 and 27<sup>th</sup> July  
25 2014.

1 He testified that his report was meant to comment on defects and  
2 incomplete works in the project. He stated that he had seen the  
3 market evaluation reports which were prepared by DDL. He gave  
4 the opinion that if an evaluation report stated that the works were  
5 100% completed this did not mean that the work was completed to  
6 the client's satisfaction. He stated that such a comment was purely  
7 for the purposes of the bank to establish that sufficient work had  
8 been completed in order to allow for the release of funds and the  
9 occupation of the property.

10  
11 Mr. Prospere testified that he liaised with the architect Jay Welcome  
12 and examined the relevant plans. He testified that the roof truss  
13 design had been changed and this resulted in lower headroom in  
14 some areas. In the two end units, space was no longer available for  
storage. In the middle units, there had been an alteration to the  
original truss and a scissors truss was put in place.

15  
16  
17  
18 According to Mr. Prospere, when climbing to the attic in the two  
19 middle units he experienced the sensation that he might hit his head  
20 because of the ceiling heights. Upon measuring this, he found that  
21 whereas the drawings had indicated that the height should have  
22 been 6'8"; the actual height was 6'1". Mr. Prospere also testified that  
23 one unit which should have had a balcony, had a solid wall instead.



1 He stated that one of the drawings showed what he referred to as  
2 an "A" truss frame for the roof plan. He stated that he was not  
3 familiar with the term "stick frame". Looking at another plan which  
4 had General Notes, he testified that the roof shown therein was a  
5 truss roof.

6

7 Mr. Prospere testified that the reason that he claimed that the roof  
8 was incorrect was because the space which the architect designed  
9 had been changed and provided less headroom. He went on to say  
10 that one could deviate from an approved plan subject to approval  
11 from the planning authority and the client. He stated that the  
12 architect should also be made aware so that he could make  
13 adjustments.

14

15 He stated that with respect to the letter about trusses from A. L.  
16 Thompson's, he was uncertain about which trusses the letter  
17 referred.

18

19 Mr. Prospere's report contained a Summary of Cost Reinstatement  
20 & Completion Works. This stated as follows:

21

22

23





	Owner Appliances to be by owner Miscellaneous materials by Owner		1,197			
	<b>Sub Total</b>	<b>3,500</b>	<b>7,722</b>	<b>3,500</b>	<b>3,500</b>	<b>3,025</b>
	Total	8,450	13,537	9,315	6,000	8,125

1

2 **Summary of Cost Reinstatement & Completion works**

4.00	Roof Reconfiguration Total 1, 2 & 3 above					<b>120,583</b> <b>37,302</b>
	<b>Total CI\$</b>	<b>8,450</b>	<b>13,537</b>	<b>9,315</b>	<b>6,000</b>	<b>166,010</b>
6.10	<b>ESTIMATE SUMMARY</b>		<b>Date</b>	<b>Jul-14</b>		
Property for: Location Parcel #	Reinstatement & Completion Works Rayburn Watler's Apartments No. 8 Eagle St. Off Frank Sound Rd 59B 31		Flr Areas [Sq Feet]	Encl: Cov'd Encl: Cov'd <b>Total</b>	Level 1 Level 1 Level 2 Level 2	2,876 42 504 <u>3,422</u>
Element No	Description	Unit 1 CI\$	Unit 2 CI\$	Unit 3 CI\$	Unit 4 CI\$	Total CI\$
4.00	Roof Reconfiguration					
	Structure/Truss removal Plywood and shingle removal					6,844
	Airconditioning unit removal					2,200
	Electrical fixtures and wiring removal					1,080
	Plumbing pipe-work removal					1,000
	Interior partitions removal					1,721
	Temporary protection					1,320
	New roof structure New roof covering plywood & shingles					75,724
	New partitions					
	New electrical wiring					17,210



	Reinstall light and ceiling fans					
	Reinstall air conditioning units New air conditioning duct work					6,600
	Repaint building interior and exterior					6,884
	<b>Total CI\$</b>	-	-	-	-	<b>120,583</b>

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His original estimate of the cost to fix the defects he identified as well as to reconfigure the roof was \$166,010. He gave the opinion that the roof needed to be reinstated and the trusses removed to get the right headroom. That was the largest item at a cost of \$120,583.

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Mr. Prospere testified that after he prepared his report, he revisited the premises in the company of Mr. David Greener, the Plaintiff's witness. He testified that he read Mr. Greener's Report and prepared an updated schedule to highlight the differences between the two reports. He stated that the major difference was the roof which Mr Greener had not addressed. Additionally the various line items differed.

Having revisited the process, Mr. Prospere explained that his new valuation was lower and was \$152,000. This he said was his most up-to-date opinion and he believed that it was fair and accurate.



1 During cross-examination, Mr. Prospere testified that he would  
2 expect wear and tear to occur over the years on any property.

3

4 Mr. Prospere testified that he was not certain about the mechanics  
5 of obtaining a Certificate of Occupancy. He read a letter dated  
6 January 11, 2010 from the Central Planning Authority addressed to  
7 the Defendant which stated that Planning Permission had been  
8 granted for the project and the relevant conditions thereof. One item  
9 in particular stated:

10

11 *“Unless specifically authorized otherwise in writing by the Central*  
12 *Planning Authority, the development shall be carried out strictly in*  
13 *compliance with the approved plans which you will receive when*  
14 *you have complied with all of the above conditions.”*

15

16 Mr. Prospere ended his testimony by stating adamantly that in his  
17 opinion, the building was not in accordance with the design and that  
the design had been compromised.



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25

Another witness was the expert called by the Plaintiff, Mr. David Greener, a Chartered Surveyor with JEC Property Consultants Ltd. He had been retained with respect to the Report dated August 14, 2014 which had been prepared by Mr. Prospere. Pursuant to an Order of the Court dated 20<sup>th</sup> February 2015, it had been Mr. Greener's task to visit the property in question and inspect the

1 defects alleged in the said Report. Mr. Greener was provided with  
2 the following Schedule of Defects pursuant to an Order of the Grand  
3 Court.

4  
5 "SCHEDULE OF DEFECTS AS PER ORDER OF 20<sup>TH</sup> FEBRUARY 2015

6

**Unit 1**

Kitchen Cabinet	Missing door and drawer pulls	
Block Walls		Hairline cracks
Dry-wall in closets		Unfinished surfaces
Storage Closet		Missing door and ceiling in one. Unfinished wall surfaces
Attic Manhole Cover		Missing

**Unit 2**

Kitchen cabinet		Missing door and drawer pulls
Roof Light		Made ineffective due to roof design
Staircase		Incorrect headroom; cracked wall plastering
Bathroom vent		Incorrectly installed
Den aesthetic changed		Full height wall replaced with low wall and railing
Roof Apex		Opening at room abutment

**Unit 3**

Kitchen cabinet		Missing door and drawer pulls
Roof light		Made ineffective due to roof design
Staircase		Incorrect headroom, cracked wall plastering
Bathroom vent		Incorrectly installed
Den aesthetic changed		Full height wall replaced low wall and railing
Roof Apex		Opening at roof abutment

**Unit 4**

Kitchen Cabinet		Missing door and drawer pulls
Attic Manhole Cover		Missing
Holes in Walls (water heater)		Unfinished plastering
Dry wall repairs		Opening around air conditioning vent & bath tub

**External Works**

Water meter boxes		One installed instead of 4
Electrical switch and outlet covers		CI\$150 x 4
Pantry Doors		CI\$350 & CI150
Shower stall door		CI\$300 x 4
Base Board		CI\$550 x 2"



1 Mr. Greener testified that he inspected the property on 26<sup>th</sup>  
 2 February 2015 in the company of Mr. Prospere. He then prepared  
 3 the following Schedule of Defects Commentary and Remedial  
 4 Costings dated 2<sup>nd</sup> March 2015:

5

Nr.	Item	Estimate to Rectify CI\$
	<b>Unit #1</b>	
1.1	Missing door and drawer pulls – yes (now in place)	114.00
1.2	Hairline cracks in block wall – yes	225.00
1.3	Unfinished surfaces in closets – yes	175.00
1.4	Missing closet bi-fold door & finishes – yes	330.00
1.5	Roof Access hatch missing – yes (one now in place)	135.00
	<b>Carried forward CI\$</b>	<b>979.00</b>
	<b>Unit #2</b>	
2.1	Missing drawer and door pulls – yes	78.00
2.2	Roof light – Conforms to Building Code, 42" above floor. Certificate of Occupancy would not be granted if this was in contravention.	-
2.3	Staircase lack of full headroom – 6"1" high at one point when this would normally be 6'8" however it is built as per drawings that were accepted by Planning and Certificate of Occupancy was granted	-
2.4	Cracked wall plaster in staircase area – yes	70.00
2.5	Bathroom vent incorrectly installed – yes	80.00
2.6	Den aesthetic changed, (compensation adjustment for loss of floor area)	400.00
2.7	Opening at roof abutment – yes (now foam filled)	150.00
	<b>Unit #3</b>	
3.1	Missing door and drawer pulls (now in place)	78.00
3.2	Roof light – Conforms to Building Code, 42" above floor. Certificate of Occupancy would not be granted if this was in contravention.	-
3.3	Staircase lack of full headroom – 6"1" high at one point when this would normally be 6'8" however it is built as per drawings that were accepted by Planning and Certificate of Occupancy was granted	-
3.4	Cracked wall plaster in staircase area	70.00
3.5	Bathroom vent incorrectly installed	80.00
3.6	Den aesthetic changed, (compensation adjustment for loss of floor area)	400.00
3.7	Opening at roof abutment – yes (now foam	150.00



	filled)	
	<b>Unit #4</b>	
4.1	Missing door and drawer pulls (now in place)	114.00
4.2	Roof access hatch missing – yes	135.00
4.3	Hole in wall below tankless water heater – yes	90.00
4.4	Drywall finishing repairs near bath – yes	150.00
	<b>Carried forward CI\$</b>	<b>3,024.00</b>
	<b>Generally</b>	
5.1	Water meters – only one installed in lieu of four, this is the Owner's responsibility not Contractors	-
5.2	Electrical outlet & switch covers – would have needed to be complete to attain Certificate of Occupancy	-
5.3	Pantry doors missing (now complete)	?
5.4	Shower stall door (now complete)	?
5.5	Baseboard (now complete)	?
	<b>Total CI\$</b>	<b>3,024.00</b>

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Mr. Greener testified that at the time of his inspection, a few of the items that he had been instructed to view had already been completed and he was unable to comment on those. It was Mr. Greener's conclusion that the sum of \$3,024 was required to remedy the defects.

Mr. Greener indicated that he was aware of the dispute concerning whether the roof should have been a stick frame or a truss roof. He testified that he had been afforded access to some of the architectural drawings, although not the full set. He also interviewed the persons from A. L. Thompson's who designed the roof trusses.

According to Mr Greener, he saw at least one set of drawings that suggested a truss frame and he saw another set which could be interpreted as stick frame. That set did not mention the word "truss".



1 Looking at certain sketches in court, he concluded that they could  
2 be interpreted either way; that is stick frame or truss roof. He stated  
3 however that the drawings are not contradictory. He gave the  
4 opinion that the notes on the drawings left the decision to the  
5 supplier. He testified that he was aware that trusses needed to be  
6 engineered and subsequently approved.

7

8 During cross-examination, Mr. Greener stated that he was not an  
9 engineer and that he had not been given enough information in  
10 order to determine whether the roof that was built complied with the  
11 design.

12

13 Mr Greener testified that the steel cases in units two and three  
14 lacked the full headroom of 6'8" and instead were 6'1". This he  
15 stated, was not in compliance with the drawing. He stated however  
16 that despite this, a Certificate of Occupancy had been issued by the  
17 Planning Department. He stated that there was apparently a level of  
18 discretion involved in the issuing of those certificates. However he  
19 pointed out that Certificates of Occupancy were government  
requirements and as such quite serious. He commented that issues  
which were seen as aesthetic would not prevent their issuance.

23 Mr. Greener's Report contained the following statement:

24 *"The main area of contention appears to be that of a roof/ceiling line*  
25 *that has altered slightly from that envisaged on the original*  
26 *Architectural drawings, however we understand this is due to*



1        *additional headroom that was required to the upper floor of the*  
2        *central one bedroom units to conform to planning requirements”*

3

4        Mr. Greener explained that by the words “we understand” he was  
5        referring to information that he had received from the truss  
6        manufacturer. Mr Greener stated that he was not in a position to say  
7        whether the roof/ceiling line had been significantly or slightly altered.

8

9        Questioned about the water meters referred to in his report, Mr.  
10       Greener stated that 4 water meters would not necessarily be  
11       required. There were four apartments on site and if the premises  
12       was going to be a strata; then 4 meters would be required. Mr.  
13       Greener stated that he believed that he saw 4 electrical meters but  
14       this was not an issue that he was required to comment on by the  
      Court Order.



18       Mr. Greener was asked to comment on the “Summary of Cost  
19       Reinstatement & Completion Works” shown in Mr. Prospere’s  
20       Report. He testified that much of the sum claimed appeared to be  
21       for roof reconfiguration but he saw no reason for that. He  
22       commented that some of the items listed had not been included in  
23       the Schedule attached to the Court Order which he had received  
      and which formed the basis of his response.

24

1 He testified that his appraisal was led by the Court Order and he  
2 confined himself to the parameters therein. He agreed that if he had  
3 received instructions from the owner, he would have examined all  
4 aspects of the building and he would have mentioned anything  
5 which was obvious.

6

7 Mr. Greener commented that based on his review, he considered  
8 that the work had been satisfactorily completed. In relation to  
9 deterioration, he stated that this happened to all property and that  
10 this is accelerated if the property is occupied. Further he said, all  
11 buildings "settle" and this causes cracks to appear.

12

13

### **Findings of Fact**

14

15 The disputes between the parties require a determination as to  
16 facts. Unfortunately, the evidence as presented was not as helpful  
17 as it could have been.

21

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25

It is clear from the evidence that regardless of the architect's original intention; it was reasonable to conclude that his drawing of the roof was that of a truss roof. Even he appeared to acknowledge that his drawing could be interpreted as being either a stick frame or a truss roof.



1 There is no dispute that a truss roof requires engineering and that  
2 Mr. Gary Ebanks did not possess the skill to build such a roof. None  
3 of the witnesses took issue with the fact that he took the project to  
4 A. L. Thompson's; and that McAlpine was subsequently involved.  
5 Although the architect Mr. Jay Welcome questioned whether the full  
6 and complete set of plans had been provided to the engineers;  
7 there is no evidence which establishes that this was not done and  
8 rebuts the evidence of Mr. Ebanks.

9  
10 It was the task of Mr. Gary Ebanks to install the engineered roof. All  
11 parties agreed that following installation, the roof left insufficient  
12 headspace. As such it failed inspection.

13  
14 I find as a fact if there was an error in the manufacture of the truss  
15 roof, it was not the error of the Plaintiff.

16  
17 It was the responsibility of the Plaintiff to have the roof rectified in  
18 order for it to pass inspection. There can be no dispute that the  
19 Plaintiff reverted to the original engineers and that these persons  
20 adjusted the roof and that the roof subsequently passed inspection.

21  
22 I find as a fact that after it was installed, the Defendant discovered  
23 that the roof was a truss roof. There is no evidence adduced that he  
24 informed the Plaintiff that he wanted the roof changed to the type  
25 that he had wished. The Defendant did discuss the lack of  
26 headroom with Mr. Ebanks and the parties also discussed that the  
27 Plaintiff should have the matter rectified. There was no discussion



1 which suggested that the architect Mr. Welcome needed to be  
2 consulted prior to any rectification taking place.

3

4 I find as a fact that as he admitted, Mr. Gary Ebanks did not consult  
5 with Mr. Jay Welcome about the adjustment to the roof. Instead he  
6 dealt with the engineers and adjustments were made, resulting in a  
7 roof that passed inspection.

8

9 I do not accept that the lack of consultation with the architect about  
10 the adjustment to the roof was a breach of the contract between the  
11 parties. I find that in dealing with the matter, the Plaintiff was  
12 seeking to deliver the completed property in a timely manner to the  
13 Defendant and in compliance with the requirements of the Planning  
14 Department.

15

16 In relation to other disputed matters, I found the evidence of Mr.  
17 Gary Ebanks to be most compelling. I accepted his version of  
18 events.

19

20 I find as a fact that as stated by Mr. Gary Ebanks, the Defendant  
21 had requested that the balcony which appeared in the architect's  
22 diagram; be altered into full wall so as to make the area safer for  
23 young children. I find as a fact that the Plaintiff complied with this  
24 directive.

25

26



1 I find as a fact that the Defendant had agreed to pay separately for  
2 the driveway and sidewalk of the premises and also for the drainage  
3 system which was required by the Public Works Department.

4

5 I find as a fact that at the request of the Defendant, Mr. Gary  
6 Ebanks advanced various sums on the Defendant's behalf including  
7 payment for some of the interim valuations prepared by DDL.

8

9 I find as a fact that although only the electrical stoves were  
10 delivered, Mr. Ebanks had in fact paid for other appliances using his  
11 accounts as he testified. I find as a fact that the Defendant had  
12 wanted prospective purchasers to have the option of upgrading  
13 certain items such as appliances, carpeting and cabinet handles. I  
14 find as a fact that these items were paid for by the Plaintiff but were  
15 not delivered; pending the choice of prospective purchasers.

16

17 I find as a fact that, having previously discussed the roof with Mr.  
18 Gary Ebanks, prior to same being rectified, the Defendant did not  
19 raise any further complaints with the Plaintiff prior to the completion  
20 of the project. I find as a fact that when the Plaintiff handed over the  
completed project to the Defendant, the Defendant accepted it as  
having been satisfactorily completed and raised no objections.

21

22

25 I accepted the testimony of Mr. Ebanks that he and the Defendant  
26 arrived at an agreement whereby the latter would pay the money  
27 owed to him for the project in instalments of \$300 per month. I find  
28 as a fact that as a result; the sum of \$3900 was paid by the

29



1 Defendant to Mr. Ebanks. I reject the Defendant's explanation that  
2 these payments represented the repayment of a personal loan.

3

4 I find as a fact that the handing over of the property and the  
5 agreement to repay that which was owed in instalments; establish  
6 that the Defendant had accepted that the contract had been  
7 completed satisfactorily.

8

9 I had a difficulty viewing Mr. Clifford Henry Elliott as an entirely  
10 neutral witness given his familial connections to the Defendant. I do  
11 accept that he probably did some work on the property for the  
12 Defendant. I did not believe either his testimony or that of the  
13 Defendant that he was paid over \$10,000 in cash.

14

15 In general, the evidence concerning payments was not well  
16 presented in this case by either side.

17

18 I do not doubt that the experts reported accurately on their findings  
19 having inspected the property. What is not known is whether the  
20 defects they identified existed from the outset or occurred over time.  
21 The evidence does not allow for the conclusion that this was the  
22 state of affairs at the termination of the project and this cannot be  
23 assumed.

24

25 Mr. Prospere and Mr. Greener were experts testifying respectively  
26 on behalf of the Defendant and the Plaintiff. Mr. Mike Kenna had  
27 been essentially employed by the Defendant in that he prepared  
28 valuations for the bank that was financing the Defendant's project



1 and it was the Defendant's responsibility to pay for those valuations.  
2 However he was called as a witness for the Plaintiff.

3  
4 Mr. Mike Kenna testified that he was satisfied that at the end of May  
5 2011 the construction work on the project had been completed  
6 except for minor decorative touch-up works and the installation of  
7 kitchen appliances. These he expected to be completed within  
8 seven days. Additionally, he testified that if any major items had  
9 been missing from the project he would have noted this in his  
10 report. He allowed for the possibility that small items such as screws  
11 and seals could have been missing because it was easy to overlook  
12 these during a visual inspection.

13  
14 I find that because his duties involved working to ensure that the  
15 bank's money had been appropriately spent, Mr. Kenna was the  
16 most neutral and objective of the expert witnesses. One key factor  
17 in his favour was the fact that he inspected the project three or four  
18 years before any of the other experts who testified on behalf of  
19 either the Defendant or on behalf of the Plaintiff. I accepted his  
20 findings as being the most compelling.

21  
22  
23  
24 Each of the experts agreed that it would not be unusual for cracks in  
25 buildings to appear and wear and tear to take place after a few  
26 years. Additionally, the evidence did not make it clear what was the  
27 level of the occupation of the completed units after the project was  
28 completed. As stated previously, it is not known when the various  
alleged defects were first identified.



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The Defendant's counterclaim would have been greatly strengthened if evidence had been adduced concerning an inspection of the property by the Defendant in the presence of Mr. Gary Ebanks after the project was completed; with these defects identified. As such, on the evidence, it was difficult to affix blame to the Plaintiff or anyone else for anything identified as being defective several years after the Certificate of Occupancy was issued.

I find as a fact that the issuance of the Certificate of Occupancy by the Planning Department was proof that the building complied with the architectural plans and was satisfactorily built. Taken in conjunction with the final valuation report submitted by Mr. Kenna, I find as a fact that the work had been satisfactorily completed.

I do not find that the roof was incorrectly installed by the Plaintiff and as such the Plaintiff is not liable for breach of contract for that. I also do not find that the Plaintiff is liable to pay for any adjustments to the said roof. I further find that based on the evidence adduced the Plaintiff completed the work on the property to the required standard under the contract. I do not find that the Plaintiff is liable to make payment for any defect which was subsequently identified.

I find as a fact that the Defendant failed to complete payments to the Plaintiff under the contract. I award the Plaintiff the sum of \$34,000 as claimed.



1 The Defendant's counterclaim against the Plaintiff fails.

2

3 Judgment for the Plaintiff in the sum of \$34,000 plus costs to be  
4 taxed or agreed on the original claim; and Judgment for the Plaintiff  
5 on the Counterclaim with costs to be taxed or agreed.

6

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*Nova Hall*

10

11

Miss Nova Hall  
Judge of the Grand Court (Acting).  
2<sup>nd</sup> September 2016

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