EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

IN THE DISTRICT COURT
AT MANUKAU

CIV-2015-092-001736
[2017] NZDC 29873

BETWEEN	CHAMPAKLAL PARBHU, VIDAYWATI PATEL AND SHANTILAL PATEL AS TRUSTEES OF THE C PARBHU FAMILY TRUST Plaintiffs and Counter-claim Defendants
AND	PLASTERTECH SYSTEMS LTD First Defendant and Counter-claim Plaintiff
AND	KEITH MURRAY WHITLOW Second Defendant and Counter-claim Plaintiff

Hearing:	2, 3 and 7 August 2017; with written Closing Submissions filed on 11 August 2017
Appearances:	Mr M Taylor, for the Plaintiffs, and Counter-claim Defendants Mr K Whitlow, for First and Second Defendants and Counter-Claim Plaintiff
Judgment:	27 September 2017

JUDGMENT OF JUDGE G A ANDRÉE WILTENS

A. Introduction

[1] This case involves the interpretation of the conditions in a contract; and the determination of several factual disputes between the parties.

[2] By agreement, the evidence-in-chief of all four witnesses was taken as read from their written briefs and affidavits provided; and the witnesses were then able to add to that *viva voce* and be cross-examined in the usual manner.

[3] Overnight, after the conclusion of the plaintiff's evidence on day one, Mr Whitlow sought an adjournment to instruct counsel – he accepted that running an effective defence case was possibly beyond him. I heard his application on the morning of the second day – it was opposed. In reality, it was a plea out of desperation as Mr Whitlow had struggled to get to grips with Court procedure and had had to be reined in numerous times during his opening address and when questioning the plaintiff's witnesses. It was not difficult to understand his position.

[4] I had some sympathy for Mr Whitlow's predicament – even though I had on an earlier occasion at a case management conference strongly advised him to get legal representation well ahead of the defended hearing. However, I was also sympathetic to the plaintiff's position – this was a matter which emanated from 2011 and the resulting 2014 dispute required finality, not to be further adjourned.

[5] Accordingly, after discussing my preliminary view with Mr Taylor, I acted on my inclination and granted Mr Whitlow's application - but on strict terms. I considered the issues were easily discernible, and the evidence that I had heard was of relatively short compass. I considered any competent counsel would have little difficulty, in the time I proposed to make available, to be prepared to continue on with the case – indeed I was hopeful resolution might be attempted/achieved in the interval.

[6] I adjourned the case from Thursday morning until the following Monday, to resume again at 10.30am – regardless whether Mr Whitlow's preferred counsel was available or not. If counsel was present, I was prepared to consider allowing further cross-examination of Mr Turner, the plaintiff's expert, for up to an hour – if that was desired. However, if Mr Whitlow remained unrepresented, the case would continue from where we had left off with the defence evidence.

[7] A secondary matter was conveniently addressed as a result of the short adjournment. When Mr Craig Turner of Forensic Building Construction Limited was called for the plaintiff I was advised that Mr Lee, the defence expert witness, had been released; but he was able to be brought back to Court within a reasonable time. I instructed that occur, so that Mr Lee could be present throughout Mr Turner's evidence.

[8] After Mr Lee arrived back at court, I was then advised that he required a Korean interpreter, and that no such interpreter had been arranged or was immediately available.

[9] I resolved to continue with the evidence, and asked for a Korean interpreter to be obtained as soon as possible – he/she could translate Mr Turner's evidence from the transcript prior to Mr Lee testifying. That is what occurred – the interpreter arrived during the afternoon, and he translated Mr Turner's evidence after the Court was adjourned towards the end of day one; and he continued on with that on the second morning of the trial, after I had allowed Mr Whitlow's adjournment application until Monday morning.

[10] In the end, Mr Lee apparently was comfortable in giving much of his evidence in English, and he proceeded to do so – despite the interpreter being present, and willing and able to assist him. I was satisfied Mr Lee was not prejudiced in the way this aspect was dealt with - that he understood what he was being asked and that he was able to adequately respond. He appeared to have understood Mr Turner's evidence

[11] At 10:30 am on Monday, day 3 of the trial, Mr Whitlow appeared without counsel and sought a further adjournment. This was opposed. The application was based on a memorandum sent to the Court at 5:30 pm on Friday, seeking more time as a Mr Moore was unavailable. Apparently he would be ready to commence his involvement in some two –three weeks. Mr Whitlow had been unable to find anyone else.

[12] I determined the application to be grossly unfair to the plaintiffs. Mr Whitlow had had ample time to prepare for trial and instruct counsel if that was his intent – indeed he had been strongly advised to do that. I declined to further the case – it required finality.

[13] Accordingly I heard from Mr Whitlow and Mr Lee – both of whom were cross-examined. I then allowed both parties to file written closing submissions by the end of the week. Both duly complied.

[14] I reserved my decision, pending closing submissions and due consideration of the evidence and all the exhibits. This is my decision and the reasons for it.

B. Factual Background

[15] The Parbhu Family Trust is the owner of a residential property at [address deleted]. It unfortunately proved to be a "leaky home".

[16] The home was the subject of proceedings in the Weather Tight Homes Tribunal in 2011. That matter was eventually settled following mediation. The settlement reached involved the developer, the designer, the builder, the plastering company (PlasterTech Systems Ltd) and Mr Whitlow all accepting responsibility to certain degrees and agreeing compensation in proportionate shares. The settlement was reduced to writing and signed in 2012 by all the parties involved, including Mr Whitlow - as Director of PlasterTech Systems Ltd ("PlasterTech"), and in his own right.

[17] Following that, and as a condition of the settlement, a construction contract was entered into by The Parbhu Family Trust and PlasterTech and Mr Whitlow to rectify the property's weather tight issues – as identified by Mr Noel Green in his WHRS Assessor's Report of 13 May 2010 and as set out in a Scope of Work prepared by Mr Turner. The settlement agreement was also conditional on the appointment of Mr Turner as Engineer to the construction contract. Mr Whitlow signed the construction contract as both Director of PlasterTech, and in his personal capacity. The construction contract incorporated all the conditions contained in the Conditions of Contract for Building and Civil Engineering Construction NZS 3910: 2003. The construction contract also incorporated numerous of the settlement contract conditions – and it is this amalgam that required interpretation to resolve the issues between the parties.

[18] The construction contract was dated 30 July 2014. The fixed price was $395,082.00. This was to be paid from the sums agreed to be contributed as part of the settlement, including a provision for PlasterTech/Mr Whitlow to contribute $59,000 of labour and materials.

[19] As work was completed on site, PlasterTech was able to make payment claims for labour and materials supplied, which were to be checked by Mr Turner; and, if in order, he would instruct the plaintiffs to pay what he independently authorised as being appropriate payment for the materials supplied and work completed. There were conditions in the contract allowing for challenges to Mr Turner's decisions; as well as provisions as to arbitration/dispute resolution between the parties.

C. Assessment of Witnesses

[20] I reminded myself to consider solely the evidence put before me during the hearing, and to not speculate. There clearly was other evidence/witnesses which could have been put before me, but hadn't been for one reason or another. I ignored that and dealt only with the evidence that was presented.

[21] I reminded myself to also exclude all considerations of prejudice or sympathy. I had regard to the evidence in a cold, dispassionate manner.

[22] I assessed the credibility (truthfulness) of each of the witnesses and the reliability (accuracy) of each of the witnesses. I then considered the evidence of the witnesses as a whole – looking for where it fit together, and where there were inconsistencies. I also compared what witnesses said with the available exhibits.

[23] I reminded myself that witness demeanour should not be the sole or even the main factor in determining whether to believe any particular witness. I focussed instead on consistency, both within a person's account and when comparing different accounts – as I considered consistency to be a more reliable indicator of the truth and accuracy; and inconsistency to likely be an indicator of something other than the entire truth and accuracy.

[24] As well, I was alive to the possibility that a witness who is determined to be untruthful about matters may well have prepared himself or herself (and possibly others) to tell consistent versions that are not truthful or accurate.

[25] I looked for concessions appropriately made as an indicator of someone doing their best to recall matters and give honest and accurate answers.

[26] I had due regard for the vagaries of human memory, and the fact that people see things differently and remember different aspects of what they have done, observed or heard.

D. The Plaintiff's Case

[27] Mr Parbhu and his family were to reside in the property during the construction. Mr Parbhu's evidence was that work was done on the ground floor mainly, with his son occupying a bedroom on the first floor; and he and the remainder of the family were on the floor above that. Accordingly, on his evidence, there was little inconvenience caused by the premises being occupied. He specifically denied that furniture had to be frequently re-positioned, something which Mr Whitlow relied on as a part-explanation for the slow progress of the work, and which he properly put to Mr Parbhu. Mr Parbhu also testified that the majority of work done by PlasterTech was outside the home, not inside. He added that the curtains on the ground floor were taken down only once and never re-instated.

[28] The construction contract work commenced in about August 2014. Mr Parbhu was advised by Mr Turner to make, and he duly did make the following payments to PlasterTech pursuant to the authorised payment claims:

- Payment Claim 1: $7,314.00 (the amount claimed)
- Payment Claim 2: $15,259.35 (the amount claimed)
- Payment Claim 3: $22,841.17 ($29,032.77 was claimed)
- Payment Claim 4: $6,027.18 ($15,120.01 was claimed); and
- Payment Claim 5: $13,303.23 ($36,741.93 was claimed).

[29] Mr Parbhu had no ability to second-guess Mr Turner's advice, and he did not attempt that – he simply accepted Mr Turner's assessments and paid out the sums approved without delay. Mr Whitlow did not challenge Mr Parbhu as to the payments made – he reserved his criticisms for Mr Turner; and he was highly critical of Mr Turner for what Mr Whitlow considered to be the unfair and incorrect deductions as well as significant delays in directing Mr Parbhu to make payments.

[30] In total Mr Parbhu paid PlasterTech $64,744.93. He confirmed that PlasterTech's and Mr Whitlow's contributions to the total re-build costs of $59,000 were not received.

[31] Mr Parbhu testified that the works progressed slowly, and that there were various failures to pass Council inspections. He dealt with PlasterTech through Mr Turner, and later his solicitors. Ultimately, the construction contract was terminated by notice on 9 February 2015; and PlasterTech and Mr Whitlow were advised that under the settlement contract provisions, the plaintiff was engaging alternative contractors to complete the outstanding work and would seek to recover the attendant costs from PlasterTech and Mr Whitlow. Pursuant to the settlement contract such costs were "…a debt due and owing".

[32] Day Construction was then employed to complete the outstanding work at a total net cost of $207,156.44 (after deducting the costs involved in additional work requested). Mr Whitlow did not challenge this evidence in any way.

[33] Mr Parbhu testified that therefore the plaintiff was owed $265,156.44.

[34] Mr Parbhu also rejected a suggestion by Mr Whitlow that a large amount of materials was left on site by PlasterTech, which was not accounted for by the plaintiff in calculating its claim. Mr Parbhu pointed out that at all times he parked his motor vehicle in the garage, effectively saying that there was therefore little room for storing materials. Mr Parbhu testified that there was not much left behind by way of materials, either in the garage or nearby on site.

[35] Mr Turner's training and qualifications, his work history, his relevant experience and his expertise were not challenged. He has dealt with the plaintiff's property since June 2011 – commencing with his preparing a scope of works report to rectify defects identified by Mr N Casey, the WHRS Assessor. He confirmed Mr Parbhu's evidence relating to settlement of the plaintiff's initial claim and the subsequent signing of the construction contract in July 2014.

[36] Mr Turner confirmed that the remedial works commenced in around August 2014; but he very quickly identified the slow progress of the work. In Mr Turner's opinion, there was a lack of supervision at the site, resulting in disorganised and slow progress being made, with accompanying poor workmanship. He communicated his views in writing and orally to Mr Whitlow as follows:

- His letter dated 22 August 2014;
- The Site instruction No. 6 of 31 October 2014;
- During a meeting on site with Mr Whitlow on 18 November 2014;
- The Payment Certificate 4 of 28 November 2014;
- His letter of 3 December 2014; and
- Payment Certificates 3, 4 and 5 of 22 December 2014.

[37] Mr Turner confirmed that in his role as Engineer to the Contract he was tasked with assessing PlasterTech's payment claims with a view to certifying their correctness for payment. He stressed that he was independent to the parties to the contract; and that he undertook his role impartially and independently. He made regular site inspections, and checked each payment claim as against the work done and materials supplied. He confirmed Mr Parbhu's evidence as to receiving, assessing and certifying for payment a total of five payment claims, two for the full amounts claimed and the latter three for less than the amounts claimed for reasons he articulated at the time.

[38] There was an issue regarding timeliness of payment of the payment claims. It is pertinent to note the following:

- Payment Claim 1 was dated 31 January 2013, and the authorised amount was paid on 15 August 2014;
- Payment Claim 2 was dated 30 September 2014, and the authorised amount was paid on 14 October 2014;
- Payment Claim 3 was dated 17 October 2014, and the authorised amount was paid on 22 October 2014;
- Payment Claim 4 was dated 17 November 2014, and the authorised amount was paid on 28 November 2014; and

– Payment Claim 5 was dated 2 December 2014, and the authorised amount was paid on 22 December 2014.

[39] Mr Turner's explanation for the alleged (but not accepted delays) involved time for his inspection of the works claimed, and clarification of issues he detected prior to his certification. In the case of the first claim, he pointed out that as the works did not commence until August 2014, it was problematic for him to certify as correct the claim dated the preceding year! Mr Turner particularly complained of a lack of communication from PlasterTech and Mr Whitlow in relation to the final claim referred to above – but made the point that communications were problematic throughout. He said he was in no way responsible for that.

[40] Mr Turner gave an explanation for the delays prior to each payment being certified (which I do not repeat here), at the time orally, in writing and in person; and he repeated much of that to me in his written brief and in responding to lengthy questioning by Mr Whitlow. I considered Mr Turner's explanations were not only reasonable in the circumstances, but were also ample justification for his various decisions/assessments. One particular example is apposite – apparently one window on site was removed and re-instated no less than six times in the course of only some 4 months of work. The necessity for that to have occurred is hard to fathom – and Mr Turner declined to instruct Mr Parbhu to pay for the repetitive labour costs involved. Any independent observer would endorse that decision.

[41] In my view, there was no undue delay in any of the payments authorised – such delay as there was resulted from Mr Turner raising queries regarding the claims which were either not satisfactorily responded to or ignored. In other words, I find the delays were caused by the defendants conduct, not by Mr Turner.

[42] Mr Turner also rightly pointed to the fact that despite being challenged by Mr Whitlow at trial regarding his various assessments, no formal reviews of his decisions were sought at the time as permitted by the construction contract. The construction contract also placed a time limit on such formal challenges, which expired more than a year prior to trial. Mr Whitlow's continued despairing efforts to gain some traction in respect of this aspect of his case by his constant challenging of

Mr Turner was doomed to fail – and in the end, it caused Mr Turner to lose patience which I considered a very human response, rather than any antipathy towards Mr Whitlow.

[43] There was also a dispute regarding Payment Claim 6. Mr Whitlow maintained this was submitted on 20 January 2015; Mr Turner testified that he had never received it; and that he did not see it until these proceedings had been commenced. Mr Turner says, quite logically, that had he received it in early 2015 he would, as was his practice, have assessed it and processed it. He also pointed out a complete lack of further work on site post-Xmas 2014 to justify any further payment claim.

[44] One of Mr Turner's predominant concerns with the construction contract was to do with 26 LM of concrete nibs required to remediate the wall frames. The nibs were the subject of two failed Auckland Council inspections - due to the necessary variation drawings not having been prepared or held on site for the inspector to view, and there being conflicting details in the drawings that had been supplied. Mr Turner had issued two site instructions on 15 September 2014 and 22 October 2014 requiring PlasterTech to provide the further details required – without response.

[45] PlasterTech never did attend to that. On 28 November 2014 Auckland Council required the nibs to be properly detailed prior to their construction, to be then inspected and properly installed prior to any further occurring on site (my emphasis). All work stopped – leaving a large portion of the house precariously balanced and unconnected to the foundations. That remained the position for some time, and as a result Mr Turner proactively approached the Council to persuade it to permit PlasterTech to complete a large section of the nibs "under urgency" in order to make the building structurally safe. That then eventuated.

[46] However, Mr Turner remained concerned about the progress of the work. The way he put it to me was that the project was then in distress. Eventually on 17 December 2014 Mr Turner advised Mr Parbhu that in his opinion PlasterTech had abandoned the contract or was persistently, flagrantly or wilfully neglecting to carry out its contractual obligations.

[47] Mr Turner challenged the suggestion that there was a significant amount of materials left behind on the site by the defendants. He said that there was very little left behind; and what there was had been mostly paid for by Mr Parbhu.

[48] Mr Turner went on to explain that after the defendants were not seen on site after Christmas 2014. They were formally dismissed, and the plaintiff then entered into a subsequent construction contract with Day Construction to complete the remedial work required. Mr Turner was the appointed engineer to oversee that work. He listed the work still required to be done, and he authorised payment of $619,808.34 to Day Construction over some 24 payment claims covering the period from January 2015 to October 2016.

[49] Some of that work was over and above what was required to complete the contracted remediation with PlasterTech and Mr Whitlow - and that cost $17,459.97. In all, after looking at the various contributions made or owed following the 2014 settlement, Mr Turner calculated the plaintiff was owed $207,156.44 by the defendants to make good their defaults. He confirmed Mr Parbhu's evidence that the defendants' contribution of $59,000 had not been made, and was therefore still owing.

[50] Mr Whitlow did not challenge:

- The plaintiff's right to appoint a replacement builder;
- The plaintiff's ability to recover the additional costs derived from having to appoint the replacement builder to complete the remediation;
- Mr Turner's various assessments of Day Construction payment claims; his instructing Mr Parbhu to pay those claims approved; or the total costs incurred.

[51] Among Mr Whitlow's challenges to Mr Turner was the suggestion that the concrete nibs issue lay at the feet of another engineer, whom PlasterTech had employed to do the necessary drawing and arrange for compliance with Council directions/inspections – namely Mr Rimmer. Mr Turner was very scathing of this suggestion – the responsibility for doing the work, in his view, lay with Mr Whitlow

and PlasterTech. In his view, if there was a problem with Mr Rimmer being too slow, another person should have been instructed. Mr Turner rightly pointed to the construction contract and who was a party to the agreement – Mr Rimmer was not, and he therefore had no obligations to the plaintiff.

[52] Mr Whitlow was very critical of Mr Turner's assessments of the PlasterTech payment claims. Mr Whitlow maintained that at all times there were sufficient staff on site, properly supervised, and doing all they could to complete the necessary work to a reasonable standard. Mr Turner did not accept those averments. Indeed, he apparently sought peer review of his assessments at the time from a Mr White, another Quantity Surveyor.

[53] Mr Whitlow was asking me in 2017 to second-guess Mr Turner's assessments of work claimed done in 2014. The time to challenge the assessment was long past. The procedures to challenge the assessments were plainly set out in the construction contract. In my view, Mr Whitlow was stopped from pursuing this avenue with any prospect of success. Nevertheless, pursue it he did – against strong interventions from me. Despite that, the end result is that Mr Turner's assessments stand as correct.

[54] Mr Whitlow rehearsed some of his written allegations when putting to Mr Turner that there were a large number of variations to the construction contract, which were claimed but not paid. Mr Turner refuted that; and again the issue for me was not so much as to which version I would accept, but that Mr Whitlow had the ability in 2014 to do something about this and chose not to. I was not prepared to countenance Mr Whitlow challenging these matters at this point.

E. The Defence Case

[55] Mr Whitlow provided an affidavit in which he set out his counter-claim comprising of the total of payment claims not authorised for payment, Payment Claim No. 6, and an alleged $8,000 of materials left behind at the site.

[56] Mr Whitlow also produced a brief of evidence in which acknowledged issues with delays at the start of the contract, which he attributed to others. He set out reasons for delays once the contract was underway; but maintained that his staff worked hard,

diligently and competently throughout, passing Council inspections and responding to requests by the clients. He said there was $9,000 of materials left on site, and that in February 2015 he tried to get a Quantity Surveyor to second-guess Mr Turner but was not given access to the site for that to occur.

[57] Mr Lee, the defence expert, was the defendant's site supervisor.

[58] I found it rather concerning that his affidavit was in remarkably similar terms to that of Mr Whitlow – it was largely a "cut and paste" effort, which detracted from my ability to place reliance on Mr Lee's evidence. I did note one discrepancy – Mr Lee in cross-examination said there was perhaps at a guess $5,000 of materials left behind.

[59] Not only that, but in cross-examination Mr Lee accepted that he was employed by Mr Whitlow and perhaps therefore not truly independent.

[60] I found that Mr Lee's evidence was very much a parroting of that of Mr Whitlow. I did not find it of assistance to me in determining the issues I was confronted with.

[61] Mr Whitlow, in his brief, accepted that the defence contribution to the settlement agreement of $59,000 had not been made. In relation to this, he blamed the cancellation of the contract for that and sought an equitable division of that amount so that not all of it should be now awarded to the plaintiff. He also blamed the non-payment of large portions of the Payment Claims as inhibiting the defence ability to make the contribution.

[62] Mr Whitlow in his evidence raised the spectre of non-disclosure. This despite at an earlier case management conference accepting that all required disclosure had been exchanged. He also challenged Mr Turner's independence – without cause in my assessment. That challenge flew in the face of Mr Whitlow's acceptance of Mr Turner's scope of works and his appointment as engineer to the contract. I am convinced he did this out of desperation – to avoid an almost inevitable result of findings against him.

[63] Mr Whitlow maintained that the plaintiff had an obligation to pay his Payment Claims in full and on time. When questioned about Mr Turner's role in relation to authorising payments, he continued to maintain his position without being able to justify his statements – and he looked foolish in the process.

[64] Mr Taylor took Mr Whitlow through numerous exhibits, effectively demonstrating a time-line which coincided exactly with the plaintiffs' claims. At times Mr Whitlow felt compelled to rebel against some of the documents put to him, but when challenged as to the basis for his statements, rather lamely Mr Whitlow was left with only being able to say that the evidence had been left out of the Agreed Bundle of exhibits.

[65] I found Mr Whitlow to be a witness of extremely limited reliability. He made statements and assertions which were unsupported by the exhibits, and which flew in the face of other evidence. His attempting to put blame on Mr Rimmer is one obvious example of this. Mr Whitlow just would not accept that it was his and not the plaintiff's responsibility to deal with the nibs issue – and that Mr Rimmer answered only to him, not the plaintiff.

[66] Another glaring example of Mr Whitlow's doing all he could to avoid the obvious was that he had to twice be asked whether Mr Lee was the site manager. His first response was "Carpenter". Then later he acknowledged that Mr Lee was the site manager "as well." This example of disingenuity is not what I would expect from a truthful and reliable witness.

[67] My final example of Mr Whitlow as a witness: In cross-examination he boldly stated that "…the nib detail was a relatively minor part of the works." Given that the Auckland Council stopped all work on the site until this issue had been satisfactorily resolved; and given that the house was structurally unstable due to the delays in completing this part of the project, I considered this to a blatant under-statement.

[68] I noted at the time Mr Whitlow's demeanour as follows:

"Very sheepish looks. Red-faced. Almost in tears. Embarrassed. Keeps opening mouth as if going to say more."

[69] Mr Whitlow was adamant that Payment Claim 6 dated 20 January 2015 was properly issued to Mr Turner. Mr Taylor challenged that and put to him two exhibits (AB 113 and 155) which could well have been expected to include reference to such claim if it had in fact been made. Mr Whitlow was unable to satisfactorily explain the omissions. It seems to me that the more likely explanation is that Payment Claim was not created in January 2015 or sent to Mr Turner. It was a later attempt to redress some of the plaintiffs' claims.

[70] Mr Whitlow suggested instead of the contract being cancelled, the matter should have gone to arbitration/mediation. He had to accept that he made no moves to effect that – and further that the construction contract had appropriate conditions within it to provide for that. Mr Whitlow had not availed himself of the opportunity.

F. Findings

[71] Taking into account my views of the witnesses and their evidence, and comparing that to the voluminous documentary exhibits, the rub of the green fell only in one direction. It was not possible to place reliance on any of the defence case. My analysis of the plaintiff's case was quite to the contrary. I believed what Mr Parbhu told me; I believed what Mr Turner told me. Their versions of events were complemented by the documentary exhibits. I reminded myself that the standard of proof required was on the balance of probabilities – in fact the plaintiff's case met a far higher threshold.

[72] Pursuant to the construction contract, in certain instances, the plaintiff was entitled to cancel the contract, employ a new builder to complete the refurbishment works and look to the defendants to make good any shortfall in contributions.

[73] I am satisfied the plaintiffs were amply entitled to, and did in pursuance of the contract provisions, properly cancel the contract.

[74] The figures as to payments made, had and received, as presented by Mr Turner, were accurate and reliable. The plaintiff is short, by the two sums claimed.

[75] The counter-claim is dismissed. It has no basis, and it is not credible.

[76] Judgment is entered for the plaintiff in the sum of $265,156.44. The defendants are jointly and severally liable for that total sum.

[77] The plaintiff is entitled to costs on 2B basis. A memorandum as to costs claimed is to be filed within 15 working days.

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Judge GA Andrée Wiltens
District Court Judge

Date of authentication: 27/09/2017
In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.