THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2014-00653:

BETWEEN

DFA INFRASTRUCTURE INTERNATIONAL INC.

Claimant

AND

WATER AND SEWERAGE AUTHORITY

Defendant

Before the Honourable Madam Justice Eleanor J. Donaldson-Honeywell

Appearances

Mr. Jonathan Walker and Ms. Cherie Gopie, Attorney-at-Law for the Claimant

Ms. Christlyn Moore, Attorney-at-Law for the Defendant

Delivered on: February 25 2016

ORAL JUDGMENT

I. Introduction:

1) The present claim concerns an agreement made on May 5, 2009 ["the Contract"] between the Claimant and the Defendant for the Claimant to provide to the Defendant consulting services ["the Original Services"] in relation to the then proposed

separation of the wastewater sector from the Defendant's operations to another entity ["the Project"]. The Original Services were largely advisory in nature and the Contract included provision for payment of 30% where a draft is delivered and the payment of a balance of 70% when the draft is accepted.

2) This agreement was subsequently expanded orally in August, 2009 to include what was termed "Additional Services". These Additional Services involved further provision of advice as well as the actual implementation of the transfer of Wastewater to the new entity. The Defendant emphasized in its pleadings that this was to be subject to Board approval which was never obtained. The Claimant submitted fee proposals in relation to the Additional Services, the final version thereof being submitted on March 19, 2010 was for CDN$ 3.9 million.

3) The Claimant commenced the Additional Services prior to receiving any formal acceptance of its quoted fees, but performed the services without objection from the Defendant (whether in relation to the fee quote or at all).

4) Sometime in or around May, 2010, and while the Claimant was in the process of performing both the Original Services and the Additional Services, the Defendant advised the Claimant that it was suspending the project and requested that the Claimant stop all works on both the Original and the Additional Services.

5) The contract was expressed for an eighteen month duration so it expired by effluxion of time on November 5, 2010 without the Defendant authorizing that the works recommence. The Defendant subsequently took a decision to abandon the objective of establishing a new entity to deal with wastewater, i.e. a Wastewater Authority and engaged the Claimant to re-transition the wastewater services back to the Defendant.

6) At no material time, whether prior to or post the expiration of the Contract was there any complaint or allegation made by the Defendant that the Claimant had failed to perform satisfactorily any of its Original Services or any of the Additional Services.

7) The Claimant submitted an Invoice dated June 1, 2010 claiming Canadian One Million, Nine Hundred and Fifty-three Thousand and Four Hundred Dollars (CDN$ 1,953,400.00) for the Additional Services which has not been paid fully to date. The balance remaining to be paid based on the Claimant's invoice was the sum of Canadian One Million, Six Hundred and Sixty-two Thousand Dollars (CDN$1,662,000.00). Accordingly, the Claimant seeks firstly by this action, payment of the remaining sum due for the additional services rendered, either on the basis

agreed between the parties under the Contract or on a *quantum meruit* basis. The Claimant admits that the services were completed in part at the time when the contract was suspended.

8) Under the terms of the Contract, the Claimant was required to establish performance security in the amount of 10% of the Contract price. The Claimants in June, 2009 duly provided a Letter of Credit issued by their bankers which was to be automatically extended from year to year until it is released by the Defendant. The Claimant therefore claims that it should have been released at least since the expiry of the contract on 5th November, 2010 as stipulated by the Contract. The Claimant claims that it was forced to borrow monies as a result of the Defendant's failure at the lending rate of 12%. Accordingly, the Claimant's second claim is for damages in respect of the Defendant's failure to release the security. The quantum claimed is the interest that could have been earned on the sums at the rate of 11%, taking into account the 1% interest accrued on the funds.

9) Finally, the Claimant claims reimbursement for loss and expense incurred in undertaking this project. There have been no particulars of this loss pleaded and in the Claimant's closing submissions this head was limited to loss of profit that would have been made on the contract itself, exclusive of costs that would have been incurred in performing the contract that are no longer required to be incurred.

10) Although the Defendant has filed no formal notice of admission in relation to any aspect of the Claim, on a review of the pleadings therein, it is clear that some salient aspects of the Claimant's case were not being contested from the outset. One such important aspect of the Claimant's case was the pleading at paragraphs 14 and 15 of the Statement of Case that, under the Contract, services shall be deemed to be completed and finally accepted by the Defendant and the final report from the Claimant deemed to be approved thirty calendar days after receipt unless, within the thirty days, the Defendant gave written notice querying any deficiencies.

11) At paragraph 35 of the Statement of Case the Claimant avers that by letter dated July 13, 2010 and by invoice dated June 1, 2010 it presented its claim for the Additional Services to the Defendant. It is clear from paragraph 47 of the Statement of Case that the Claimant is contending that the June 1, 2010 invoice was the final report, for purposes of the thirty days period starting to run, for the Defendant to be deemed to have accepted the services if they had no queries. There was no written notice with

queries from the Defendant within thirty days and in fact no queries were received until more than a year later in October, 2011.

12) At paragraph 17.b. of the Defence it is admitted that there being no provision in the Contract for suspension, the May, 2010 suspension of the Claimant's services amounted to a termination of same. It was therefore final. Later on in the Defence at paragraph 23 there is an admission that the Defendant asked the Claimant to submit an invoice for its services up to that termination date. At paragraph 38 the Defendant admits that it did not give written notice to the Claimant within thirty days of the date of its final invoice, specifying in detail any deficiency in the Additional Services or complain that any item was not performed.

13) In light of these admissions at the close of the pleadings the main live remaining issue in Defence of the Claim for payment for the Additional Services was whether, even though the Claimant had done work and submitted a report, there could be payment for parts of the services that were admittedly not complete. If so, the other point in contention from the Defence was as to how the amount to be paid to the Claimant for the Additional Services could be ascertained since according the Defendant the formula in the Contract did not contemplate scenarios where there were no "drafts" submitted by the Claimant.

14) On the last day of the hearing, parties were directed to prepare written closing submissions to be filed at a later given date but were first asked to briefly give an oral introduction to the said submissions at the close of the case for the Defendant

II. Issues:

15) The issues to be determined are as follows:

a. Whether the Claimant can recover any remaining payment for the Additional Services rendered and if so, whether the value of those services are to be determined on the agreed basis outlined in the contract or on the basis of *quantum meruit*;

b. Whether the Claimant can succeed in its claim for loss and expense as a consequence of the Defendant's decision to suspend the contract; and

c. Whether the Claimant can succeed in its claim for damages in respect of the Defendant's failure to release the performance security provided by the Claimant in connection with the contract.

III. Evidence and Submissions:

16) The evidence is contained in:

(i) The Witness Statement of Mr. Derek Ali, President of the Claimant Company together with exhibits thereto, filed on 15th June, 2015 on behalf of the Claimant.

(ii) The Witness Statements of Ms. Penelope Williams, Head Internal Audit and Compliance of the Defendant Company, together with exhibits thereto, filed on 12th June, 2015 on behalf of the Defendant.

(iii) The documents comprising the agreed bundle of documents filed on 9th April, 2015;

(iv) The oral evidence given under cross-examination and re-examination by the above named witnesses at the trial of this matter on the 29th September, 2015, 30th September, 2015, 11th November, 2015, 12th November, 2015 and the 13th November, 2015.

17) Evidence of Derek Ali - Mr. Ali is the President of the Claimant. He was intimately involved in the project and had first-hand knowledge of many of the matters in dispute. He was subjected to a thorough and rigorous cross-examination lasting three and a half days by Counsel for the Defendant on matters that had occurred over five years before. The documentation in this matter representing work completed by the Claimant was voluminous. There were instances where Mr. Ali's recollection of certain documents was less than perfect. Despite this Mr. Ali delivered his evidence in an open, candid and consistent manner and was not shown under cross-examination to be dishonest.

18) Under cross-examination some doubt was shed as to whether his assessment of the extent of completion of parts of the Additional Services was fair. This was highlighted in the closing submissions of the Defendant wherein a main contention was that in order for the Court to determine whether the 30% payment provided for in the Contract was due to the Claimant "one must find that a draft was presented to the Defendant." According, to counsel for the Defendant it stood to reason that if the Claimant did not produce a draft then a draft could not have been presented for payment and there would be no payment due to the Claimant. Counsel for the Claimant was able to elicit a response from Mr. Ali as to what was meant by

producing a "Draft". It was put to him that under the original contract what really had to be produced at the "draft" stage for payment of 30% was a final document. He responded "fairly close". He clarified, however, that the amounts claimed for the Additional Services were "based on at the time of suspension of the contract, and our best estimate of the time put in by our staff on these activities." Furthermore, in admitting that some deliverables were not reduced to writing he said not all of the deliverables in the Additional Services were documentable[1]

19) In the Defendant's written closing submissions instances in the testimony of the Claimant's witness Mr. Ali were highlighted to support the contention that the Claimant had not provided sufficient evidence to prove that payments were due for the additional services. In some instances the submission was that the work was incomplete, in others it was submitted that there was no supporting document to substantiate the deliverable. The Defendant having relied, however, on the terms of the original contract as to payment terms failed to show in evidence or submissions that it had complied with the contract by bringing these alleged deficiencies to the attention of the Claimant within thirty days of receiving the final report on June 1st, 2010. Many of the deficiencies were in fact raised for the first time in cross-examination during the trial. Much was made for example of the fact that for certain deliverables that could not be documented the Claimant had not produced records of time spent by staff. There was no evidence that this query was raised before in a timely manner to be addressed by the Claimant.

20) Evidence of Penelope Williams - Ms. Williams was the sole witness for the Defendant. She testified to being an auditor who was charged with the responsibility of reviewing the project and who prepared two reports with regard to the claims made by the Claimant. Ms. Williams was an honest witness in that while her testimony under cross-examination was consistent with her witness statement she also provided candid and truthful answers under cross-examination which tended to lend credit to the case for the Claimant. In particular, Ms. Williams accepted that:

    a) She was not involved in the substantive project. Her involvement commenced in September, 2011 – long after the Claimant had been instructed by the Defendant to cease all works.

[1] Trial Day One 2015.09.29 at pages 102 and 105. And Day Three 2015.11.11 at page 38.

b) The information that informed her review was second hand information supplied to her by the then Chief Corporate Officer, Dion Abdool and other persons within the Defendant's company.

c) At no time did she contact the Claimant directly to provide information on any of the matters that were under review or the questions that she had, but instead relied entirely on WASA personnel to get that information for her.

d) She made assumptions as to what questions were relayed to the Claimant, which assumptions were false. For example, she assumed that her first report had been forwarded to the Claimant, though this was not the case.

e) She was not prepared during her audit to accept any evidence outside of written documentation with regard to the services performed by the Claimant. In fact under cross-examination she admitted that she had seen an email to the Defendant's then Chief Corporate Officer, Mr. Dion Abdool that referred to attached documentation proving that the Claimant had conducted the training courses that were part of the Additional Services. However, she did not take this into account because although it was clear that attachments had been sent with the email she had not seen them. She admitted that she did not request that the attachments be shown to her.

f) In conducting her review, there were gaps in the documents that were provided to her. For example, she was not provided with the contemporaneous status reports that were submitted by the Claimant. Furthermore, she refused to accept the Claimant's claim for providing training on the basis that she had not seen the training manuals. This was so despite there being clear evidence that the training manuals had been provided to the Defendant. In the circumstances there was little basis for the Defendant to have relied on her findings as establishing the extent of the work that was actually done by the Claimant in performing the Additional Services. Additionally, her evidence was neither cogent, compelling nor of any assistance in any material respect to the Court's determination as to what amount of work the Claimant had completed.

g) She was not in a position to assess on behalf of the Defendant, the value of the Claimant's incomplete work. She admitted this inability in her cross-examination[2]. This inability to assess the value of the Claimant's work was also made evident by Ms. Williams in her second report to the Defendant dated March 13, 2012 which was exhibited to her witness statement as "PW2". In the report there was no denial that work had been done on the additional services by the Claimant. The report made clear that it had been possible to agree to full payment of Canadian Two Hundred and Ninety-one, Four Hundred Dollars (CDN$291,400.00) on certain deliverables within the Additional Services that were completed. There was no decision not to pay anything for the remaining Additional Services that were started but not completed due to the Defendant's unilateral termination of the contract. What Ms. Williams said in her report was that "the balance of Canadian One Million, Six Hundred and Sixty-two Thousand Dollars (CDN $1,662,000.00) re: partial deliverables should be determined through negotiations between WASA and DFA".

h) She named persons other than herself who should continue these discussions with DFA so as to evaluate the partially completed deliverables. One such person was Mr. Dion Abdool, the Defendant's then Chief Corporate Officer. There is no evidence before the Court that these other persons acting on behalf of the Defendant in accordance with the recommendation of its own witness engaged in the necessary discussions with DFA to determine the extent of completion of the remaining Additional Services and what should be paid for same.

19) While there were persons employed by the Defendant (and who continued to be employed by the Defendant) such as Mr. Abdool, who were involved in the project, and who were in a much better position than Ms. Williams to speak to the work that was actually done as well as the value of that work, they did not call any of those persons as a witness. Instead only Ms. Williams, a person who was not involved in the project, had no personal knowledge of the work that was done, had no full appreciation for what needed to be done, was not in a position to assess the extent of

[2] See page 47 lines 16 to 19 and page 48 lines 9 to 11 of transcript for the 12 November, 2015

the work done nor its value and who did not have all of the information relevant to the matter was called as a witness.

20) In closing submissions Counsel for the Claimant contended that the review/audit process undertaken by Ms. Williams was flawed, and as a consequence – other than her admission that the Claimant performed work for which it should be paid - her evidence was of limited, if any, value to the Court. In addition, there was no dispute that the first time the Claimant saw Ms. William's reports (and therefore the matters that she had raised with regard to gaps in the work performed and her recommendation that payment for the remaining items be negotiated between WASA and DFA) was when it was exhibited to the Amended Defence. This was several years after the 30 day period within which such queries should have been raised had passed,

21) Moreover, the Defendant did not disclose any subsequent report from any other evaluation team in its list of documents, nor did it call as a witness any such member of this evaluation team. In the circumstances, given this failure by the Defendant to present evidence from any persons who have the sufficient expertise to challenge the monetary value ascribed by the Claimant, the evidence of Mr. Ali was more compelling than that of Ms. Williams as to both the extent of the work performed and the value of same.

i) Law and Analysis:

Payment for Additional Services:

22) The main issue in the present case is whether the Claimant is entitled to recover payment for the incomplete Additional Services that had been provided before the suspension of the contract, and if so, in what quantity. The Claimant's claim is expressed in the alternative, claiming for either payment as provided for by the terms of the original contract or for payment on the basis of *quantum meruit*. The Defendant's contention at paragraph 7 of its defence is that the additional works amounted to a mere modification of the original contract and should therefore be guided by the operational terms of the initial contract.

23) Further, in the Defendant's propositions of law its major contention is that the claim for *quantum meruit* cannot stand as the works were governed by the existing contract.

This is not at odds with the Claimant's case save that the Claimant avers that since the additional services were more operational than advisory in nature, not all could have resulted in the submission of a "draft" that would be evidence for 30% payment under the contract or a final report to show that the service was completed. Accordingly, both parties are agreed that the contract terms are applicable; however, in the circumstances of incomplete work with no "draft" or final reports in some instances to show the extent of work done, there is no agreement as to the amount to be paid.

24) It is clear from the evidence that parts of these additional services were carried out at the request of the Defendant. Cross-examination of the Claimant's witness Mr. Derek Ali was aimed at highlighting that the works were incomplete or only partially done and that there was no "draft" or final document to prove the work done. The fact that the work was not completed does not mean that there should be no payment for the work done. This is particularly so as it was the Defendant's unilateral decision to stop the project. The Defendant's counsel in propositions of law filed prior to the trial admits that this is an exception to the rule that where a party has only partly performed a contractual obligation no payment falls due. This is the normal position since the court has no power to apportion the consideration[3].

25) The exception to the rule is that where the Defendant has wrongfully prevented complete performance by the Claimant of contractual obligations then the Claimant may recover damages for breach of contract or sue on a *quantum meruit* basis to recover reasonable remuneration[4].

26) There is therefore no dispute on the law that in the circumstances of this case the Claimant must be paid. The fact that some allowance must be made for the difficulties occasioned in assessing the extent of completeness of the services appears to be accepted by the Claimant in its submissions where three different methods of calculating the value of the works have been set out.

27) The Claimant in closing submissions has addressed the Defendant's concerns as to whether under the terms of the contract any of the remaining additional services were delivered in a "draft" form or completed. These concerns are addressed by the Claimant putting forward, in one of the three possible suggested calculation formulae, that only the 30% payment applicable on submission of a draft could be ordered by

[3] See Bates v Hudson (1825) 6 Dow. &Ry.K.B.3 and Bolton v Mahadeva [1972] 2 All E. R. 1322 cited by the Defendant.

[4] See Planche v Colburn (1824-34)All ER 94 cited by the Defendant.

the Court as it relates to instances where an amount was claimed for a specific item as having been completed but no approval was indicated by the Defendant.

28) The Defendant has not filed a submission replying to this proposed payment formula but it is in line with the thrust of the cross-examination of Mr. Ali by the Defendant which was geared to showing, not that no work was done but that the work was not complete. It is my finding that this formula also accords with the terms of the contract in so far as the Claimant's partial completion is treated as the "draft" stage for payment purposes. In so finding I have taken into consideration the Defendant's failure to raise queries within the time stipulated in the contract and have accepted the Claimant's evidence as truthful that the nature of the additional services was such that not every deliverable could be evidenced by a "draft". Applying this approach, the amount to be paid for the remaining Additional Services is a total of Nine Hundred and Forty Thousand and Eighty Canadian Dollars (CDN$940,080.00) as detailed in the following table.

Item	**Amount Claimed CDN**	**Percentage Applied**	**Amount Due CDN**
Determination of Full Costs	$74,600.00	30% (comment made that templates were incomplete)	$22,380.00
Strategic Planning etc.	$56,400	100% (no adverse comment made)	$56,400.00
Performance Management	$40,200	100% (no adverse comment made)	$40,200.00
Training	$128,000	100% (no adverse comment made other than not seeing manuals. Evidence confirms that these were sent)	$128,00.00
Select/recruit Staff	$854,000	30% (comment made that staff mapping note complete)	$256,200.00
Preparing and	$436,900	100% (no express	$436,900.00

installing infrastructure		adverse comment made)	
TOTAL			**CDN$940,080.00**

Claim for Loss of Profit:

29) Under this head, the Claimant claims damages for loss of profits that would have been earned had the project been completed. The Claimant, in its submissions, suggests that this value can be obtained by beginning with the full contract price and reducing it by the amount that would have been the value of costs incurred to complete the project which no longer needed to be completed. The Claimant cites the case of ***Planche v Colburn [1824-1834] All ER 94*** as authority for recovery of such damages. That case involved a contract to write an article which was repudiated because the publication was cancelled before the article was written. The Plaintiff was awarded a sum that amounted to half of the contract price.

30) According to the **Halsbury's Laws of England**[5] on the general law governing the measure of damages to be award in Contract:

> *"The normal function of damages for breach of contract is…compensatory, aiming to compensate the true loss suffered by the innocent party and place him in the same position, so far as money can do it, as if the contract had been performed. Only in exceptional circumstances do courts depart from this policy and award some greater sum."*

31) The Claimant in its claim for loss of profits is actually only claiming the profits that would have been directly made under the contract for its services. This is not a claim for loss of consequential profits as contemplated in cases such as ***Victoria Laundry v Newman Industries [1949] 2 KB 528 at 536***. The only difficulty lies in ascertaining the value of the profit that would have been made on the contract. The Claimant claims that its loss of profit was Canadian Four Hundred and Eleven Thousand, Five Hundred and Fifteen Dollars (CDN$411,515.00) and that costs incurred in maintaining resources to perform the services for the period from suspension to expiry of the contract was Canadian Two Hundred and Thirty-six Thousand, Three Hundred

[5] Damages (Volume 29 (2014)) [499]

and Eighty-nine Cents (CDN$236,389.00). These fees and expenses have not been particularized nor have they been proven with reference to any document. The Claimant relies on its witness testimony. The Defendant has challenged the figures and put the Claimant to strict proof in the defence.

32) The law on particularization of damages is clear. According to ***Bonham Carter v Hyde Park Hotel (1948) 64 T.L.R. 178***, adopted in ***Grant v Motilal Moonan Limited and Rampersad Civ. App. No. 162 of 1985***, it was held:

> *"[P]laintiffs must understand that if they bring actions for damages, it is for them to prove their damage; It is not enough to write down the particulars, so to speak, throw them at the head of the Court saying 'this is what I have lost; I ask you to give me these damages'. They have to prove it'."*

33) It is my finding that this head of loss was not sufficiently proven by the Claimant. It was based on information within the Claimant's knowledge. It was therefore not for the Defendant to disprove the amount claimed but for the Claimant to provide evidence of same. This has not been done and accordingly this aspect of the claim fails.

Letter of Credit Claim:

34) The Claimant claims that as a result of the Defendant's failure to release the Letter of Credit, the Claimant was obligated to continue it beyond the contracted date, incurring bank charges in the amount of Canadian Four Thousand, Three Hundred and Forty-one Dollars and Twenty-three Cents (CDN$4,341.23). This amount was not disputed. The Defendant's defence was that it was entitled to hold the Letter of Credit for a reasonable period after termination of the contract.

35) The Claimant submits that the three-year period after the expiry of the contract up to 9th October, 2013 when the letter of credit was fully released went far beyond a reasonable period. The Claimant suggests that a reasonable time-frame would have been within the five months between suspension of the services by the Defendant and expiry of the contract. The Claimant in the Witness Statement of Derek Ali has claimed that the Defendant made a number of assurances through its representative Dion Abdool that the matter would be expedited through the Board. However, no evidence of this was given. The Letter annexed was merely a request from the Claimant to the Defendant that the payments be made.

36) According to the **Halsbury's Laws of England**[6] on the interpretation of express terms of a contract:

> *"The basic principle is that interpretation is 'the ascertainment of the meaning which the document would convey to a reasonable person having all the knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract', or which is 'reasonably available to the person or class of persons to whom the document is addressed'."*

37) In deciding what is a "reasonable period" the court must ascertain the meaning of the term of this contract as would have been conveyed to a reasonable person having all the knowledge of the parties at the time of the contract. It is clear that a reasonable person having all the knowledge of the parties at the time of the contract could not reasonably anticipate a "reasonable period" to have been the course of three years after expiration of the contract for the release of the Letter of Credit. Further in the circumstances of the early suspension of the contract, it is clear that the Defendant would have been in a position to consider the release of the Letter of Credit before the expiry of the contract. Therefore, it is my finding that a reasonable time would have expired upon the expiry date of the contract (five months after the suspension) in November, 2010. The charges incurred by the Claimant in maintaining the Letter of Credit after this period may be recovered.

Decision and Order:

38) The Claimant has succeeded in proving its claim for payment for the Additional Services carried out. The second of the three methods of calculation proposed by the Claimant in closing submissions effectively takes into account the Defendant's contentions as to the works being less complete than the Claimant contends by limiting some of the items claimed to 30% of the total value as was provided for in relation to the "draft" stage in the initial contract.

39) The Claimant has not, however, succeeded in proving its claim for loss and expenses as these sums were not sufficiently proven in evidence.

40) The Claimant has effectively proven its claim for losses occurring as a result of the Defendant's failure to release the Letter of Credit as the Defendant's sole defence was

[6] Contract (Volume 22 (2012)) [358]

that the Letter of Credit could have been held for a reasonable time thereafter. It is clear that the time taken for the release of the Letter of Credit went beyond a reasonable period. It is my finding that a reasonable period to retain the Letter of Credit would have been until the end of November, 2010. The Claimant must be compensated in damages in the amount of Canadian Twelve Thousand, Two Hundred Dollars and Sixty-three Cents (CDN$ 12,200.63) per year for three years representing interest at 11% that could have been earned on the amount held as security. The Claimant must also be compensated for the bank charges incurred in the amount of Canadian Four Thousand, Three Hundred and Forty-one Dollars and Twenty-three Cents (CDN4,341.23).

41) **IT IS HEREBY ORDERED** that:

a. The Defendant pay to the Claimant the sum of Canadian Nine Hundred and Forty Thousand and Eighty Canadian Dollars (CDN$ 940,080.00) being the sum contractually owed to it for its services rendered to the Defendant with interest thereon at the rate of 6% per annum from November 5, 2010 to the date of this Judgment.

b. The Defendant pay to the Claimant damages for breach of contract in the amount of Canadian Four Thousand, Three Hundred and Forty-One Dollars and Twenty-three Cents (CDN$ 4,341.23) for the bank charges incurred on the letter of credit with interest at 6% per annum thereon from November 30, 2010 as well as the amount of Canadian Twenty-two thousand, four hundred and sixty-seven dollars and nineteen cents (CDN$22,467.19) being interest owed on the outstanding balances at 11% per annum from the November 30, 2010 on the sum of Canadian One hundred and eleven thousand, seven hundred and thirty – three dollars (CDN$111,733.00) for failing to release the Letter of Credit.

c. The Defendant pay the Claimant's costs on the prescribed basis in the amount of Trinidad and Tobago Dollars Two hundred and forty- three thousand, eight hundred and thirty-eight dollars and twelve cents (TT$243,838.12).

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Eleanor Joye Donaldson-Honeywell

Judge

Assisted by:

Christie Borely

Judicial Research Counsel I