

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**CV 2017-00950**

**IN THE HIGH COURT OF JUSTICE**

**Between**

**PRE CAMP TT LIMITED**

**Claimant**

**AND**

**UNIVERSITY OF TRINIDAD AND TOBAGO**

**Defendant**

**Before the Honourable Mr. Justice Frank Seepersad**

**Date of Delivery: 22 March 2022.**

**Appearances:**

1. Ms. L. Kisto Attorney-at-law for the Claimant.
2. Mr. S. Singh instructed by Mr. K. Alexander, Attorneys-at-law for the Defendant.

**DECISION**

1. Before the Court for its determination is the Claimant's Claim Form and Statement of Case filed on 17 March 2017 whereby the Claimant sought as against the Defendant the following reliefs:
  - a. Specific performance of the Principal and Supplemental Agreements in accordance with the provisions of the said Principal and Supplemental Agreements relating to the payment of both the Retention Amount and the Varied Retention Amount and/or;
  - b. Interest pursuant to Section 25 of the Supreme Court of Judicature Act Ch. 4:01 at such rate and for such period as the Court shall deem fit; and/or
  - c. Such further and/or other relief as the Court may deem fit; and/or

- d. Costs.

OR, in the alternative:

- e. Damages in lieu of specific performance or at common law; and/or
- f. Damages arising from any consequential loss suffered by the Claimant; and/or
- g. Interest pursuant to Section 25 of the Supreme Court of Judicature Act Ch. 4:01 at such rate and for such period as the Court shall deem fit; and/or
- h. Such further and/or other relief as the Court may deem fit; and/or
- i. Costs.

- 2. Also before the Court is the Defendant's counter claim by virtue of which the following reliefs have been sought:

- a. Payment in the sum of \$351,726.00
- b. Interest
- c. Costs
- d. Such other costs as the Court may deem just.

- 3. Based on the defence which was filed, the Court issued an Order dated the 21st January 2019 and the sum of \$426,413.33 together with the applicable interest and costs was awarded to the Claimant. As a result, this trial involves the Retention Balance of \$351,726.00. This is also the sum counterclaimed by the Defendant.

**The Claimant's Facts:**

- 4. The Claimant company, Pre Camp TT Limited, entered into a contractual agreement with the Defendant, The University of Trinidad and Tobago. The parties effected the Principal Agreement on 25 September 2007 for the construction of a prefabricated building at the Defendant's Chaguaramas campus for classroom and teaching purposes for \$12,662,852.40 ("the contract price").

5. On 23 November 2011, the Claimant and the Defendant entered into a supplemental agreement (the Supplemental Agreement). Pursuant to the Supplemental Agreement particular terms of the Principal Agreement were varied and it provided for additional works at a total cost of \$2,899,934.30 .
6. Pursuant to Clause 4.4.1(e) of the Principal Agreement, the sum of \$633,142.62 exclusive of VAT (“the retention amount”) representing 5% of the contract price and the additional sum of \$144,996.71 exclusive of VAT (“the varied retention amount”) representing 5% of the sum for additional works were both held by the Defendant as retention money during the life of the project and same had to be paid upon the expiration of the Defects Liability Period or the completion of the remedial works, whichever was latter.
7. In compliance with Clause 4.13.1 of the Principal Agreement, the Claimant issued a letter of 2 October 2012 which it advocates amounted to a Certificate of Practical Completion. The Claimant further contends that the Defendant agreed that the Project was completed and all remedial works were completed within the Defects Liability Period given that they were effected by 13 May 2013. This was outlined by the Claimant’s letter of 13 May 2013 which was issued pursuant to Clause 4.14.2 of the Principal Agreement. This letter was acknowledged by the Defendant by its letter of 24 June 2013.
8. On or about 13 May 2013 the Claimant also called upon the Defendant to pay both the retention amount as well as the varied retention amount and it issued a valid tax invoice dated 3 May 2013 but in breach of the Principal and Supplemental Agreements, the Defendant failed to pay. As a result of the said default, the Claimant suffered loss and/or damages.

**The Defendant’s facts:**

9. The Defendant denies the claim on the basis that remedial works were never completed to specification and states that it was never satisfied with the Claimant’s rectification work.

10. The Defendant also claims that the Claimant breached Clause 4.6.2 of the Principal Agreement in that it failed to “exercise all reasonable skill care due diligence and economy in discharge of its duties” and as a consequence, the Defendant incurred loss and expense.
11. The Defendant asserts that it never signed or agreed to the letter dated 2 October 2012 and maintains that there was never any agreement whereby it acknowledged that the works were completed to its satisfaction.
12. The Defendant further claims that the Claimant was notified of the work defects pursuant to clause 4.13.2 of the Principal Agreement and argues that the Claimant misinterpreted its letter of the 24 June 2013.
13. The Defendant contends that the Claimant also failed to furnish it with documents such as, *inter alia*, warranties, user manuals and design calculations.
14. Due to the Claimant’s failure to properly remedy the defects, the Defendant claims that it had to engage an alternative contractor to perform the works and this costed \$351,726.00.
15. The Defendant maintains that the significant remedial works were never completed and/or performed by the Claimant.

**The Principal Agreement:**

16. The following are the pertinent clauses of the Principal Agreement :
  - a. Clause 4.4.1(e) – “the sum of \$633,142.62 VAT exclusive representing 5% of the Contract Price, to be held as retention money and paid upon the expiration of the Defects Liability Period or the completion of the remedial works in accordance with 4.13.2 whichever is later”.
  - b. Defects Liability Period – means the period of twelve (12) months from the day named in the Certificate of Practical Completion.

c. Clause 4.13.1- “Where the Client and the Contractor have agreed that there has been practical completion of the Services, the Contractor shall issue a certificate (Certificate of Practical Completion) to that effect and practical and shall be deemed for the purposes of this Agreement to have taken place on the day named in the Certificate.”

d. Clause 4.13.2 – “The Client shall, at any time prior to the Defects Liability Period, notify the Contractor of any defects or outstanding work in respect of the Services. The Contractor shall, within a reasonable time of being notified as aforesaid, and at no cost to the Client: (a) remedy any defects due to the Contractor’s design; (b) cause to be remedied all other defects; and (c) cause to be completed all outstanding works.”

e. Clause 4.6.2-

“The Contractor shall exercise all reasonable skill care due diligence efficiency and economy in discharge of its duties under this Agreement. The Contractor, its staff, employees and agents shall comply with the laws of Trinidad and Tobago and any regulations of the Client that have been provided to the Contractor. In addition, the Contractor shall:

(a) Maintain and update a Project Management Plan to ensure that the Services are completed on time, within cost and in accordance with sound industry practice. Any changes to the Project Management Plan shall be communicated to and, where necessary, approved by the Client;

(b) Adhere to the Safety Program submitted with its proposal and ensure that all personnel involved in the provision of the Services are advised of the Safety Program submitted and operate in accordance therewith;

(c) Liaise and collaborate as directed, with any other contractors or consultants retained by the Client in relation to the Project;

- (d) Ensure that the quality of the design, workmanship and materials used in the provision of the Services shall be of the highest standard; and
- (e) Liaise with the relevant local statutory authorities with respect to building codes and other statutory requirements and approvals as may be required.”

f. Clause 4.15- this clause deals with dispute resolution.

g. Clause 4.14.2- “Notwithstanding the provisions of clause 4.14.1, above, the Client reserves the right to terminate this Agreement, for any just cause or for unsatisfactory work performed by the Contractor, at any time upon one (1) week’s notice in writing to the Contractor”.

**Evidence:**

17. The Court heard evidence from Mr Kurt Allahar, Ms Mirielle Hunsel and Mr Terry Narine.

**Evidence of Kurt Allahar:**

18. The witness testified that he was not aware of day to day operations under the agreements and his involvement really commenced towards the end of the contract.

19. Mr Allahar, however, accepted that he was in charge of construction of the building and downpipes. He testified that he knew that the location of the campus made it susceptible to sea blast.

20. The witness was shown the letter at KA3 dated 30 August 2012 which was a letter from the Claimant's Director, Mr Lie A Fat to Mr Terry Narine. The letter stated that the handover of the ground floor was carded for 3 September 2012 and Mr Allahar outlined that the ground floor was handed over in excellent condition. He however accepted that there was no evidence which established that a walkthrough occurred prior to the handover.

21. Mr Allahar testified that, exhibit KA4 which was an exhibit dated 1 October 2012 , was the only document which related to the handover and he said that this email effectively indicated that there was a practical completion of the building.
22. Counsel for the Defendant drew the witness's attention to Clause 4.13.1 which provided that both the client and contractor had to be ad idem as to whether there was practical completion.
23. The exhibit KA5 stated that the practical handover took place on 2 October 2012 and that the entire campus was handed over in excellent condition. The witness maintained that exhibits KA4 and KA5 amounted to a certificate of practical completion.
24. Mr Allahar testified that the issue with respect to the quality of the effected works first arose in January 2013 and was referenced in an email dated 25 January 2013. The witness also agreed that by 12 March 2013 the same problems which were mentioned in the email of 25 January 2013 i.e. leaks in the building, break downs on the AC Units and overheating of major electrical components, were still unresolved.
25. When referred to Clause 4.13.2 of the Principal Agreement, which set out the Contractor's obligations during the Defects Liability Period, the witness accepted that one of the documents which the Defendant requested i.e. the Customer Booklet in relation to the split-system condensing unit was a document which was critical to the operation of the AC unit as it outlined the exclusions and warranties.
26. In relation to paragraph 34 of his witness statement, Mr Allahar testified that the issues with the AC units were the result of electrical work which was effected without the Claimant's knowledge. He further said that the defects outlined at paragraphs 34.1 to 34.5 of his witness statement referenced defects which did not impact upon the quality of the Claimant's work.

27. Mr Allahar agreed that the Defendant never issued any letter which confirmed that all remedial works were completed by 13 May 2013.

**Evidence of Ms Mireille Hunsel:**

28. Ms Hunsel was shown the letter dated 30 August 2012 which she exhibited as MH3. This was a letter by Mr Lie A Fat to Mr Narine which informed him that the handover for the ground floor was carded for 3 September 2012. Ms Hunsel stated that the letter referenced the handover for the ground floor. The witness explained that when the letter was written there was no walkthrough or handover and she accepted that Mr Lie A Fat could not have confirmed that the ground floor was handed over in excellent condition.

29. Ms Hunsel acknowledged that in January 2013, Mr Narine complained about defects.

30. The witness however maintained that the email dated 1 October 2012 effectively communicated that there was practical completion of the project in accordance with the Principal Agreement.

31. Counsel for the Defendant then drew Ms Hunsel's attention to Clause 4.13.1 of the Principal Agreement and asked Ms Hunsel if there was any practical completion certificate and Ms Hunsel said there was the letter of 2 October 2012. She stated that in her opinion "practical handover" was the same as "practical completion". The witness however accepted that no duplicate copy of the said letter was signed by UTT.

32. This witness testified that the Defects Liability Period ran from 2 October 2012 to 1 October 2013 but testified that there was a subsequent agreement which varied the period to six months. Ms Hunsel further testified that this agreement was forged by Mr Lie A Fat and Mr Narine but indicated that there was no executed document which evidenced same.

33. Ms Hunsel testified that she was first notified by Mr Narine about the leaks in January 2013 and she insisted that the late supply of documents which included warranties



amounted to a snag. She was referred to Clause 4.20.1 of the Principal Agreement which said, *inter alia*, that all documents reports, etc. produced in connection with the services became and remained the property of the client (UTT). The witness accepted that the Claimant's failure to produce warranties breached this clause.

**Evidence of Mr Terry Narine:**

34. The witness testified that the disputed sums were retained pursuant to Clause 4.4.1(e) of the Principal Agreement. He also testified that the Claimant took out a performance bond but he did not accept that the performance bond had to be repaid when the scope of the works was completed and in his opinion the performance bond had to be repaid upon the expiration of the agreement.
35. The witness was shown the performance bond and he agreed that the performance bond had to be released once the contractor observed all the terms of the said agreement. Mr Narine was then referred to UTT's letter of 16 December 2013 which bore the subject caption "Release of Performance Bond for the Construction of Pre-Fabricated Buildings". The witness agreed that that this letter was a request to release the performance bond and noted that the second paragraph stated that the Defendant did not object to the release of the performance bond. The witness further said that was however unaware that the performance bond was released.
36. Mr Narine accepted that a soft handover of the ground floor of the building took place in September 2012. The witness explained that this was a partial hand over of the building because the entire building was not complete at the time.
37. Mr Narine stated that although there was a partial handover, the Defendant commenced its occupation in November 2012 but he subsequently corrected his position and said that occupation occurred towards the end of October 2012. Mr Narine was referred to paragraph 23 of Mr Allahar's witness statement and he disagreed that a walkthrough

occurred on 2 October 2012. He was shown the email of 1 October 2012 which was attached as MH4 to Ms Hunsel's witness statement and he thereafter accepted that the handover took place on the 2 October 2012 .

38. According to Mr Narine, the handover allowed the Defendant to proceed with occupancy of the building.

39. The witness disagreed with paragraph 25 of Mr Allahar's witness statement and added that expansion works were not effected on the first floor.

40. The witness stated that the Defects Liability Period commenced on 2 October 2012 and he did not accept that the exhibit attached as MH5 to Ms Hunsel's witness statement amounted to a certificate of practical completion.

41. Mr Narine was referred to Exhibit MH12 of Ms Hunsel's witness statement. This was a letter issued by the Defendant which was dated 24 June 2013. Paragraph 1.2 thereof stated:

“1.2 It was also noted and agreed that in-spite of a defects period commencing November 2012 with a schedule end of April 2013, defects brought to PreCamp's attention during the defects period were not addressed until end of May 2013.”

42. The witness then accepted that the Defects Liability Period was varied from twelve months to six months but Mr. Narine did not accept that the defects in the Claimant's work were addressed by the end of May 2013.

43. He was then referred to Exhibit MH11 of Ms Hunsel's witness statement which was a letter dated 13 May 2013 issued by the Claimant. The letter stated that the remedial works were completed to the Defendant's satisfaction. Mr Narine said he would have communicated with Mr Chatoorang via email in relation to this but he also accepted that his witness statement did not mention same and no document was produced which disputed the contents of the said letter.

**Issue:**

44. The main issue which the Court has to resolve is whether the Defendant is entitled to withhold the sum claimed.

**The Law:**

45. In legal claims relating to Building and/or Construction Contracts, the Court must first look to the language in the Contract to determine the true intention of the parties.
46. In construing the language of any contractual provision the primary focus is to objectively ascertain the intention of the parties and the Court must give due consideration to the context and consider the terms of the contract as well as the relevant factual matrix. Care has to be exercised so as to avoid an overly technical or linguistic approach but primacy must be given to the language of the clause(s) in question. Lord Hoffmann said in the **Bank of Credit and Commerce International v. Ali [2001] 1 All ER 961 at paragraph 39** “But the primary source for understanding what the parties meant is their language interpreted in accordance with conventional usage ...”
47. The law with respect to building contracts also recognizes that defects must be addressed in accordance with any stipulated defects clause and the contractor cannot be held liable for defects which were discovered after the expiration of the established Defects Liability Period.
48. The law further acknowledges that costs incurred for the remedying of defects which were discovered after the Defects Liability Period will generally not be recoverable from the contractor.

**Analysis:**

49. The Court in its evaluation of the evidence reviewed the language in the Principal and Supplemental Agreement so as to ascertain the intention of the parties. The Court also

considered the natural and ordinary meaning of the words of the contract and remained mindful that it should not attribute, to the parties, an intention which they did not have.

50. It is undisputed that the Parties signed the Principal and Supplemental Agreements and these provided that the Defendant was entitled to retain 5% of the Contract Price until the expiration of the Defects Liability Period or the completion of identified remedial works in accordance with Clause 4.13.2, whichever was the later.

51. Under cross examination, Mr. Narine agreed that the Claimant effected a Performance Bond pursuant to the terms of the Principal Agreement Performance Bond. This Performance Bond had to be released when the Claimant duly performed and observed all the terms, provisions conditions and stipulations of the Principal and Supplemental Agreements.

52. Exhibit "M.H.22" attached to the Witness Statement of Ms Hunsel filed 27th September 2019 , provided undisputed evidence that on the 16th December 2013, the Defendant wrote to the Surety of the Bond (Trinre) and informed as follows: "The work associated with the contract have been substantially completed and in accordance with the terms and conditions of the contract. Accordingly, UTT does not object to the release of the Performance Bond".

53. Mr. Narine accepted to the contents of Exhibit "M.H.22" the Letter dated 16th December 2013 and he stated that the Performance Bond was only to be released when all identified defects were remedied.

54. Ms Hunsel meticulously laid out in detail the operative facts in relation to the handover of the Building on the 2nd October 2012 and Mr Allahar corroborated her evidence as to the date of the official handover.

55. Mr. Narine in his Witness Statement made no mention of the handing over ceremony but under cross examination he admitted that he was present at the handing over of the ground floor on 2<sup>nd</sup> October 2012 and that he received the keys from Mr. Terry Chatoorang.
56. The witness also stated that the Defendant thereafter assumed control over the building.
57. Based on this evidence the Court found as a fact that the ground floor was handed over on the 2 October 2012 and drew the logical inference that after that date the Claimant no longer had unrestricted access to the Building.
58. Ms Hunsel suggested that the Claimant's letter dated 2 October 2012 amounted to a Certificate of Practical Completion in accordance with Clause 4.13.1 of the Principal Agreement. Under cross-examination Ms. Hunsel reiterated that the words "practical handover" referred in the letter meant the same thing as "practical completion". Mr. Allahar however stated that the words "practical handover" were different from the words "practical completion".
59. Mr Narine accepted that the Defendant received the letter dated 2<sup>nd</sup> October 2012 and subsequently occupied the building by the end of October 2012. The witness further accepted that the Defendant issued no response which contradicted the contents of the Claimant's letter of the 2<sup>nd</sup> October 2012.
60. Based on the evidence the Court formed the view and found as a fact that the letter of 2 October 2012 (the said letter) amounted to Certificate of Practical Completion in accordance with Clause 4.13.1 of the Principal Agreement as the Defendant assumed possession and control over the building after its receipt of the said letter.
61. Ms Hunsel at paragraph 29 of her witness statement testified that pursuant to Clause 1.1, the Defects Liability Period commenced on the 2<sup>nd</sup> October 2012 and ended on the 1<sup>st</sup> October 2013 and Mr. Allahar supported the contention.

62. Mr Narine confirmed that the Defects Liability Period was a 12 month period which began from the date of the Certificate of Practical Completion. Mr. Narine was cross examined on the purport of his letter dated 24th June 2013. The said letter referenced a defects period between November 2012 to April 2013. Under further cross examination Mr Narine accepted that the Defects Liability Period was varied and he agreed that it was shortened from 12 months to 6 months.
63. The Court considered the letter dated 3 May 2013 and noted that paragraph 3 thereof stated as follows: “..... not prepared to extend the retention period which expired on April 1, 2013 beyond May 13, 2013...”
64. Having considered the evidence the Court found as a fact that that the Defects Liability Period was varied and it ran from November 1 2012 to May 13 2013.
65. In accordance with Clause 4.13.2 of the Principal Agreement, the Defendant was supposed to notify the Claimant of any defects or outstanding work in respect of the services rendered at any time prior to the Defects Liability Period. The Defendant, based on the said clause, should have notified the Claimant of any defects between the period 2nd October 2012 to 1st November 2012.
66. Ms Hunsel testified that the Defendant did not notify the Claimant of defects referenced in its defence during the said period and only raised those issues after the Defects Liability Period had expired.
67. The evidence however established that between the Defects Liability Period i.e. 1 November 2012 to April 2013 the following issues were raised:
- a. By early January 2013 leaks were experienced
  - b. By 23rd January 2013, there was a request for specified documents
  - c. By 25th January 2013 the Defendant notified that there was a problem with the A/C unit and that there was overheating of electrical components (with respect to the

AC complaint , Ms. Hunsel testified that same was repaired by the Claimant's contractor Caribbean Dutchman Associates (on or about the 27th February 2013)

- d. On or about March 2013, the Defendant notified the Claimant that: 1) there were leaks from the roof level 2) cracks on the ceiling 3) the overheating of electrical components and 4) the break down of A/C Units .
68. Ms. Hunsel however testified that the said complaints lacked specificity and no firm details were advanced.
69. Ms Hunsel further testified that the Claimant's contractor rectified the defects relating to the Thermostat and the Electrical Breaker on the 16th March 2013.
70. By the 8th April 2013, the Claimant outlined that 9 of the 14 defects which were identified during the Defects Liability Period were remedied. In relation to the remaining 5 defects, the Claimant continued to work on the remedying of same.
71. The Court found that the aforesaid position was clothed with plausibility as it considered the position which was outlined in the bundle of emails which were annexed as MH15 to Ms Hunsel's witness statement.
72. The Court noted that by letter dated 13 May 2013, the Claimant informed the Defendant that the notified defects had been addressed. Mr Narine accepted that the said letter outlined the said position but he disagreed that all the remedial works were completed by that time. The evidence established that no response was issued to the 13 May 2013 letter and the Defendant took no issue with the Claimant's assertion that the defects were remedied.
73. The Court also considered the bundle of emails marked MH16 to Ms Hunsel's witness statement and in particular the email dated 18th June 2013 from Mr. Chatoorang to Ms. Hunsel, where Mr. Chatoorang said that he was "... just at the office of Narine and he said that the building has been running normally for a month now...." . The communication

however indicated that the Retention Amount and the Varied Retention Amount would not be paid because of non- receipt of documents.

74. On a balance of probabilities, the Court found as a fact that the Claimant remedied the defects of which it was notified by the 13 May 2013 and this action was primarily engaged within the Defects Liability Period. In support of this view, the Court also noted that by letter dated 24 June 2013 which is exhibited in bundle MH12, Mr Narine wrote to the Claimant and said “..... defects brought to Precamp’s attention during the defects period were not addressed until the end of May 2013.”

75. After May 2013 Mr Narine complained of further defects and these were communicated to Mr Chatoorang. Attached to his witness statement were exhibits TN9 and TN10. These exhibits were emails which spoke in general terms of roof leaks, damage to the ceiling, observations which were made on the 17th September 2013 by the Defendant’s representative Hayden Blackman, as well as complaints about the ingress of water into multiple rooms on both the ground and first floors level of the Phase III building. No evidence was however adduced so as to establish that these issues were raised prior to the expiration of the Defects Liability Period.

76. Under cross examination, Mr. Narine also accepted that these correspondences were issued after the Defects Liability Period had ended but the witness claimed that these correspondences were issued because the notified defects were not addressed during the Defects Liability Period. This position was however contradicted by the contents of the letter dated 24 June 2013 and the Court rejected same.

77. Pursuant to Clause 4.4.1(e) of the Principal Agreement the Defendant was to pay the Retention Amount and by extension, the Varied Retention Amount upon the expiration of the Defects Liability Period or upon the completion of the remedial works in accordance with Clause 4.13.2, whichever was later. Based on the evidence the Court found as a fact



that the notified defects were remedied and the remedial work was completed by 13 May 2013. The Court noted that although the Defects Liability Period ended in April 2013, the 13 day period in excess of the Defects Liability Period was reasonable.

78. In accordance with the provisions of the Principal and Supplemental Agreements, the Claimant was not under any contractual obligation to address any complaint which arose after the Defects Liability Period ended. Consequently, the retention of the sums claimed by the Claimant cannot be justified.

79. The Claimant's evidence established that after the Defects Liability Period, it acted in good faith and assisted the Defendant, with some repairs to the Building. This was engaged during the period September 2013 to October 2013. The Court registered that this position was not challenged during cross examination. The Court also noted that the Defendant engaged the services of Roofman Limited in August 2015 but costs associated with any work which might have been executed by this company, cannot be attributed to defects which arose during the Defects Liability Period. In any event the Court was not satisfied on the adduced evidence that the re-sheeting was actually effected or paid for.

80. The Court noted with interest that in August 2015 when the Claimant was pressed for the release of the Retention monies, the Defendant's attorneys said they were in the process of taking instructions but they made no mention of the re-sheeting.

81. On the evidence before it and pursuant to the terms of the Principal Agreement, the Defendant has not proved its case that the re-sheeting was actually done and paid for. There are no copies of drawn cheques from the Defendant or any evidence of debits from the Defendant's bank accounts. The reports, quotations and invoices from Roofman Ltd which were exhibited as "T.N.14", "T.N. 15" and "T.N.16" did not convince the Court, on a balance of probabilities, that the re-sheeting was actually done. The Claimant filed a counter notice on the 27th November 2019 and called on the Defendant to bring the

relevant witness from Roofman Ltd to be cross examined and the Court noted that there was no compliance with the said request.

82. Accordingly, and for the reasons outlined the Court holds the view that on a proper construction of the terms of the Performance Bond, the said Bond was to be released once the terms and conditions of the Principal and Supplemental Agreements were complied with by the Claimant.

83. The Release of the Performance Bond occurred **in** or around the 16th December 2013, and there was effectively a practical completion of the Building given that the Parties' respective representatives attended the handover ceremony on the 2nd October 2012 and Mr. Narine accepted the keys for the Building.

84. Thereafter the letter of the 2nd October 2012 was issued and same amounted to a Certificate of Practical Completion in accordance with Clause 4.13.1 of the Principal Agreement.

85. After the handover ceremony the Defendant commenced occupation of the Building and the Defects Liability Period commenced as at the 1st November 2012 and ended on the 13 May 2013.

86. During the defects period the Defendant notified the Claimant of 14 defects and the Claimant remedied these defects, by the 13 May 2013.

87. Consequently, pursuant to Clause 4.4.1(e), all the remedial works were completed by 13 May 2013. Although, the Defects Liability Period formally ended by 1 April 2013, the time within which the work was completed was not unreasonable pursuant to Clause 4.13.2.

88. After 13 May 2013, the Retention Amount and the Varied Retention Amount should have been paid by the Defendant and its failure to do so amounts to a breach of Clause 4.4.1(e) of the Principal Agreement.

89. Notwithstanding the fact that the Court had insufficient evidence to accept the contention that the roof of the Building was re-sheeted any such work was effected some two years after the Claimant's completion of the remedial works. In any event the Defendant neither notified the Claimant that they were going to re-sheet the roof of the Building nor was an opportunity given to the Claimant to re-sheet same.

**90. It may well be that aspects of the Claimant's work was defective but the Defendant failed to undertake the necessary verification processes within the contractually stipulated time period as it relates to assertions of defective work. The Defendant, especially, since it is dependent upon state funding, should have operated with a heightened degree of care and caution so as to ensure that optimal value had been received. It is unfortunate and quite frankly unacceptable that detailed quality assessments were not engaged in a timely manner. As a result the Defendant and by extension tax payers must now bear the burden associated with any corrective work. There can be no room for complacency when state funds are involved. Now more than ever all organisations and entities which depend upon state funding must ensure that contractors, providers and all suppliers strictly adhere to all contractual obligations, as citizens deserve to get maximum value for its funds when they are expended.**

**91. On the totality of the evidence and on a balance of probabilities, the Claimant has proved its case and there shall be judgment for the Claimant. In the circumstances the counterclaim is devoid of merit and same is hereby dismissed.**

92. The Court therefore orders as follows:

- a. The Defendant shall pay to the Claimant the sum of \$351,726.00 which represents the balance of the retention sum.
- b. The counterclaim is dismissed with no order as to costs because it was intricately tied with the defence of the claim.
- c. The Defendant shall pay to the Claimant costs calculated on the prescribed costs basis.
- d. There shall be interest on the judgment sum at a rate of 2 ½ % from 13 May 2013 to the date of this judgment and thereafter interest shall accrue at the statutory rate of interest.
- e. There shall be a stay of execution of 28 days.

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**FRANK SEEPERSAD**

**JUDGE**