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Judgment: approved by the Court for handing down | *Delivered:* **12/03/10**
*(subject to editorial corrections)**

2008 No. 102819

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

RICHARD PEOPLES

Plaintiff:

-and-

JASON KYLE, Trading As
KYLE CONSTRUCTION

Defendant:

JUDGMENT

McCLOSKEY J

[1] In the events which have occurred, this has proceeded as an undefended action. The trial was conducted over two dates, 8th February and 9th March 2010. The correspondence produced to the court satisfied me that the Defendant had sufficient notice of these hearings. The evidence adduced on behalf of the Plaintiff and recalled in outline below was unchallenged, in consequence.

[2] At the heart of the Plaintiff's action is a complaint about the standard and quality of certain building works carried out by the Defendant at the Plaintiff's home at 31 Newbridge Park, Coleraine ("*the premises*"). The works entailed an extension to the existing building. The Plaintiff attested to a representation by the Defendant that the duration of the works would be of eight weeks. They began during the third quarter of 2007 and, by January 2008, were unfinished. The Defendant continually "missed" proposed completion deadlines, making various excuses.

[3] According to their bargain, the Plaintiff was to pay the Defendant £13,495. Payments were made by cash or cheque, spanning a period of some few months. The final payment was made on 14th March 2008 and, having made payments totalling £11,000, the Plaintiff declined to pay any more, on account of his substantial concerns about the works and services provided. He claims:

(a) Repayment of the amount of £11,000.

(b) The cost of demolition.

(c) Interest on (a).

[4] The Plaintiff arranged for a friend, who was a builder, to assess the works and was informed that they were "*absolutely shocking*". The Plaintiff then compiled a list of problems and defects and furnished this to the Defendant. They inspected the works together, with the Plaintiff ventilating his various concerns. The Defendant made no real response and removed his tools. The purpose of this visit had been to collect the balance of the monies due to him, £2,495. There has been no further communication between the parties since then.

[5] Expert evidence was given on the Plaintiff's behalf by Mr. Magee of Messrs. Brian Canavan Associates, a firm of chartered quantity surveyors. The court also received in evidence Mr. Magee's report. This contains the omnibus conclusion that the overall standard of workmanship and "*detailing*" is poor and unsatisfactory. Specifically, it is suggested that there are grave concerns about the standard of *each* of the main elements of construction viz. the substructures; the roof; the external walls; the finishes; and the drainage. Mr. Magee elaborated on these defects in evidence. He highlighted matters such as the minimum pitch necessary for the concrete roof tiles, to avoid water penetration; the damp evident beneath the roof tiles; the failure to remove the existing gutter; and the poor quality "verges" or overhangs. Mr. Magee's evidence was that there are fundamental defects in each of the areas highlighted. He testified that the cost of remedial works would be prohibitive, with the result that the only viable option was outright demolition.

[6] I accept the central thrust of the evidence of both the Plaintiff and Mr. Magee. They have satisfied me on the balance of probabilities, based on the evidence summarised above, that the quality and standard of the works executed by the Defendant are wholly inadequate. By virtue of Section 13 of the Supply of Goods and Services Act 1982, there was an implied term in the agreement between the parties that the Defendant would carry out his services with reasonable care and skill. I find that there has been a clear breach of this term, to the extent that the Defendant is in fundamental breach of contract. I hold that there has been a complete failure of consideration. I

treat the other causes of action invoked by the Plaintiff (misrepresentation and negligence) as makeweight and of no substance in the circumstances. Breach of contract is the real and true cause of action on the particular facts of this case. The Plaintiff's reparation will be measured accordingly.

Award

[7] The damages recoverable by the Plaintiff are to be measured by reference to well established principles. In the celebrated words of Alderson B:

> "*Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either as arising naturally i.e. according to the usual course of things from such breach of contract itself, or as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it.*"

[**Hadley –v- Baxendale** (1854) 9 Exch 341, at pp. 354-355].

The application of these principles to the present matrix is relatively uncomplicated. My finding of a fundamental breach of contract entitles the Plaintiff to recover, firstly, the £11,000 paid by him to the Defendant. The second element of his claim relates to the estimated cost of demolition. On the first day of trial, the court expressed concerns about the quantum of this claim (some £7,500), which were confirmed when Mr. Magee was duly probed about the matter. Following an adjournment, the Plaintiff has adduced in evidence three estimates in amounts ranging from £5,200 to £5,850, plus VAT. I find that this element of the Plaintiff's claim also readily falls within the ***Hadley –v- Baxendale*** doctrine and I consider it appropriate to award the Plaintiff the smallest of these amounts.

[8] The Plaintiff also claims interest on the payments of £11,000 made to the Defendant. Whether interest is to be awarded and, if so, in what amount lies within the discretion of the court, by virtue of Section 33A of the Judicature (Northern Ireland) Act 1978. Where this discretion is exercised, as a general rule the court will award interest from the date when the financial loss was sustained to the date of judgment, at a rate not exceeding the judgment rate: see ***Watts –v- Morrow*** [1991] 1 WLR 1421, at pp. 1443 and 1446. In Northern Ireland, the judgment rate of interest is 8% and this has remained unchanged since 1993: see Order 42, Rule 9(2) of the Rules of the Court of Judicature and S.R. 1993 No 143 , effective from 19 April 1993.

[9] The yardstick (if any is deployed) by which to measure the appropriate rate of interest – for example, commercial rate or investment rate

– is also a matter for the court's discretion. In standard personal injury cases, interest on general damages is awarded at the rate of 2% per annum from service of the Writ, with interest on any special damage (ie financial loss) at the rate of 6% per annum from the accident date . While these are established conventions, importing a welcome measure of predictability, they do not dilute the court's overall discretion under Section 33A. In passing, the 6% rate might be more difficult to justify today than previously, given the significant fall in the value of money during recent years. In non-personal injury cases, there do not appear to be any comparable fixed practices or conventions.

[10] In ***Watts –v- Morrow***, the trial judge awarded interest at the subsisting judgment rate of 15% per annum. On appeal, it was submitted that interest should have been awarded at the lower short term investment account rate. Rejecting this argument, Ralph Gibson LJ stated:

> "*The award of interest at 15% was, in my judgment, within the judge's discretion and it is not shown that he misdirected himself or went wrong in principle in taking that rate. The fact that this rate was the same as the judgment rate and was higher than the short term interest account rates over the relevant period does not cause to be wrong the selection of that rate as the appropriate rate on the facts of this case*".

Bingham LJ added:

> "*Since the award of interest on damages is intended to compensate a Plaintiff for being kept out of money lawfully due to him, there is much to be said for applying a rate of interest which reflects the cost or value of money over the relevant period rather than a flat rate under the Judgments Act 1838, which has remained fixed over a number of years despite fluctuations in interest rates during that time. But the choice of an interest rate is discretionary and the judgment of Nicholls LJ in* ***Pinnock –v- Wilkins ...*** *precludes the argument that choice of the Judgments Act rate of 15% is a challengeable exercise of discretion. On this point the judge's ruling cannot be disturbed.*"

The learned President agreed with both judgments. While the decision in ***Watts*** was reviewed extensively by the House of Lords in ***Farley –v- Skinner*** [2001] UKHL 49 and [2002] 2 AC 732, the Court of Appeal's pronouncements on the award of interest were not questioned.

[11] In the present case, it was submitted by Mr. Girvan on behalf of the Plaintiff that the court should award interest at judgment rate (viz. 8%) from the date when the last of the payments totalling £11,000 was made, being 14th March 2008. This would produce the sum of £1,760. It was not submitted

that the court should consider any other rate – such as investment rate or commercial rate viz. "base" rate plus 1%: see ***Tate & Lyle Food Distribution –v- Greater London Council*** [1982] 1 WLR 149.

[12] Fundamentally, whatever the litigation context, it seems to me that the purpose of any award of interest on damages is to provide the Plaintiff with fair and reasonable compensation for the financial deprivation suffered during the relevant period. In the present case, such period is of two years' duration and the deprivation is readily measured at £11,000 gross. The effect of my findings is that by around March 2008, the Plaintiff and his family should have been the beneficiaries of an extension to the family home, properly constructed, of adequate quality and of satisfactory standard. By reason of the Defendant's breach of contract, as found by the court, it is clear from the evidence that virtually no benefit or enjoyment have accrued to the Plaintiff and his family *and* they have been deprived of the use of their moneys throughout the period mentioned. The Plaintiff's financial losses have continued to accrue ever since and, in the context of the present case, I consider it inappropriate to measure interest from the (later) date of the Writ of Summons (issued on 2nd October 2008). I consider that it would be fair and reasonable to award the Plaintiff interest at the rate of 6% per annum on the sum of £11,000 for a period of two years, measured from the date of the last payment.

[13] I conclude that the Plaintiff shall have judgment against the Defendant, made up as follows:

(a) £11,000, representing payment made to date.

(b) Interest on the said £11,000, in the sum of £1,320, calculated at a rate of 6% per annum and measured for a period of two years, as explained in paragraph [12] above.

(c) The estimated cost of demolition of £5,200 plus VAT, totalling £6,110.

Accordingly, the total judgment is in the amount of £18,430. I allow a two week stay of execution, calculated from 15 March 2010.

[14] Finally, I award costs to the Plaintiff, to be taxed in default of agreement.