



Neutral Citation Number: [2020] EWHC 3393 (TCC)

Case No: HT-2019-000196

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
TECHNOLOGY AND CONSTRUCTION COURT (QBD)

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: Friday 11th December 2020

Before :

MR ROGER TER HAAR QC

Sitting as a Deputy High Court Judge

Between:

MASHAEL ALEBRAHIM

Claimant

- and -

BM DESIGN LONDON LIMITED

Defendant

Mr. Simon Butler (instructed by **TKD Solicitors**) for the **Claimant**
Ms. Binkie Moorhead, a director of the Defendant company, for the **Defendant**

Hearing dates: 16, 17, 18 and 26 November 2020

Approved Judgment
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Covid-19 Protocol: This judgment will handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 10.30am on Friday 11th December 2020.

Mr Roger ter Haar QC :

1. The Claimant is the leaseholder of a substantial flat in a late Victorian mansion block, Harley House on Marylebone Road in London. I refer to the Claimant in this judgment as “MA”.
2. MA is a Saudi national. Together with her extended family she has been visiting the UK and Europe on a regular basis and staying 5 to 6 months a year. Her evidence was that her family had always used London as their main base and stayed in hotels or furnished apartments in the West End of London.
3. Towards the end of 2015 and due to the sharp rise in the rent of furnished properties in the West End, MA decided to purchase her own property in London for her own use and to offer it for use by her own close family relatives and to some members of the Saudi royal family, when she was not in occupation. Her intention was to be in occupation for around 5 to 6 months of the year.
4. In 2016 MA purchased the flat. In February 2017 MA agreed with a designer and contractor, Helen Reed Design Ltd, to refurbish the property.
5. Soon after that, in March 2017 MA was looking for an interior designer to assist her with decorating and furnishing the flat. She identified the Defendant to act as interior designer.
6. The Defendant company is in business as an interior designer. Whilst I do not have details of the corporate structure of the Defendant, I infer from the evidence before me that it is controlled and directed by Ms Binkie Moorhead. In this judgment I refer to Ms Moorhead as “BM”. BM represented the Defendant at the hearing before this Court.
7. MA engaged the Defendant to act as interior designer.
8. In the Re-Amended Particulars of Claim, MA claims hundreds of thousands of pounds from the Defendant in the Re-Amended Particulars of Claim under the following heads:
 - (1) In respect of monies paid for building works, recovery of £347,853.78;
 - (2) In respect of loss of use of the flat: £200,200.00;
 - (3) In respect of hotel expenses: £120,302.76;
 - (4) In respect of obtaining a licence for alteration: £5,951.00;
 - (5) In respect of remedial works: £35,000;
 - (6) In respect of double accounting of VAT: a sum to be assessed;
 - (7) In respect of the amount payable in respect of furniture: a sum to be assessed;
 - (8) In respect of the loss of use of furniture: a sum to be assessed.

9. Thus the claims in respect of which the quantified sums were claimed totalled more than £700,000 in the pleading, and totalled £810,650.39 in the Schedule of Loss¹.
10. To put those claims into context, it is common ground that the Defendant was paid £774,561.92.

The hearing before me

11. The hearing before me was heard partly remotely and partly in court. On the first day of the hearing I heard submissions remotely from Mr Butler, counsel for the Claimant, and from BM on behalf of the Defendant.
12. The remainder of the hearing was held in Court. MA herself gave evidence from Saudi Arabia by a video link. This was not entirely satisfactory as MA suffered from some audio problems. Next a building surveyor, Mr Wates, gave evidence as an independent expert on behalf of the Claimant.
13. BM then gave evidence. Her evidence was not completed on the second day.
14. A final witness, Mr. Helps, the Defendant's accounts manager, was due to give evidence by video link, but in the event Mr Butler elected not to cross-examine Mr. Helps.
15. None of this evidence was without problems:
 - (1) MA suffered from audio problems, as I have said, and was clearly very angry particularly about the delays to the project, this limited the utility of her oral evidence, although as will be seen below, I have found much of use in her witness statement;
 - (2) As will be seen below, I gleaned little assistance from Mr. Wates's evidence, for reasons which were none of his making;
 - (3) BM produced a witness statement which deals some with but not all of the material issues in the case. When she gave evidence she was by no means always on top of the figures, or perhaps had difficulty explaining the figures to me. This made the evidence problematical. However, I am satisfied that in the end she did establish to my satisfaction what had actually been spent by the Defendant;
 - (4) Mr Helps's witness statement was of limited assistance, and it was no surprise that Mr Butler elected not to cross-examine.
16. Where possible I have pieced the story together from the documentary evidence, but that is not a complete record of events.
17. The difficulties faced by the Court were to an extent compounded by the fact that the way in which the case was pleaded seemed to me to present legal difficulties and because Ms Moorhead is not legally qualified.

¹ A164

18. It should however record that all parties seemed to me to be honest, and that Mr Butler, dealing with an opponent who is not legally qualified, acted with courtesy throughout, as did Ms Moorhead in what must have been a stressful situation given the amount of money being claimed from her company.

The pleaded claims and their basis

19. The claim is made under a contract in writing dated 7 April 2017. It is MA's case in paragraph 3 of the Re-Amended Particulars of Claim² that it was an implied term of the contract that the Defendant would exercise all due professional skill and care in the performance of its services under the contract and/or (in paragraph 4) that the Defendant owed MA a duty of care in performing its services as an interior designer³.
20. The Re-Amended Particulars of Claim alleges breach of that implied term and breach of the tortious duty. Thus in those respects the claim is a professional negligence claim. However, when the allegations of breach are considered in detail, they include but are not limited what might be termed conventional allegations of professional negligence.
21. Paragraphs 7 to 13 plead as follows⁴:

"7. Before the contract was entered into, and in order to induce the Claimant to enter into the Contract, the Defendant warranted and represented to the Claimant that the estimated costs of the works (goods and services) would not exceed £200,000 plus vat and professional fees. The Claimant represented to the Defendant before she entered into the contract that she could not afford to pay any sum above this figure. The Defendant assured the Claimant that the sum would be sufficient to undertake the proposed works, and accepted the Claimant's specified terms with the intention that it was to become binding.

"8. On 29 March 2017, the Defendant sent an email to the Claimant stating that the figure of £200,000 was possible but needed to include vat and professional fees.

"9. Induced by and in reliance upon the representations the Claimant entered into the contract with the Defendant.

"10. The representations as to the value and cost of the works, amounted to a collateral warranty, in consideration of which the Claimant entered into the contract.

"11. On each and every occasion the Contract was varied to increase the cost of undertaking the works, the Defendant represented to the Claimant that the works were more expensive than estimated and the cost of goods and services

² A3

³ A3

⁴ A4-A5

had increased due to the contractors and suppliers charging higher fees/costs.

“12. Induced by and in reliance upon the representatives the Claimant agreed to pay additional sums requested by the Defendant to ensure that the project was completed on time.

“13. The representations as to the value and cost of the works, amounted to a collateral warranty, in consideration of which the Claimant agreed to pay the additional sums requested.”

22. Paragraphs 29 to 33 plead as follows (the passages through which a line is drawn were deleted in the Amended or Re-Amended Particulars of Claim and those underlined were insert in one or other of those pleadings)⁵:

“29. The Claimant has paid the Defendant the sum of £774,561.92 to date.

“30. The Defendant is now asserting that the total cost of the works is £1,025,614.97:

- i) £514,035.44 for building works (inclusive of vat and 20% mark-up).
- ii) £437,011.61 on furniture.
- iii) £58,871.92 on the kitchen.
- iv) £15,696 fixed fee for the design fee.

“31. The representations made by the Defendant were false and the Defendant is in breach of the collateral warranty in that the building works did not cost £514,035.44 and the Defendant has refused to provide the details of the contractor(s), invoices and confirmation of payments to the contractor(s); the furniture did not cost £437,011.61 and the Defendant has failed to provide details in respect of invoices and confirmation that payment has been made in the sums claimed.

“32. Further, the Defendant made the representations to the Claimant fraudulently negligently in that it knew it was false, or did not believe it to be true, or was reckless, not caring whether it was false, or did not believe it to be true, or was reckless, not caring whether it was true or false. At each stage of the refurbishment, the Defendant made clear and unambiguous representations to the Claimant that additional sums of money were needed to complete the work, when the Defendant knew full well that the value of the works was in fact less than the sums claimed.

“33. The value of work undertaken (goods and services) by the Defendant was worth and cost far less than £1,025,614.97 514,035.44.

⁵ A7

“Particulars of Fraudulent Negligent Representations

- i) ~~The Claimant is in the process of obtaining an expert report which is compliant with CPR 35.~~
 - ii) ~~The current valuation of the works undertaken by the Defendant in respect of the building works (including marble and sanitary ware) amounts to £161,181.66.~~
 - a) The value of the work carried out by or on behalf of the Defendant is in fact £166,181.66 including a design fee of £4,316.40, but excluding the 20% mark up on building costs, and another 20% for VAT. The gross total, including fees of 20% on the total net of the design fee of £161,865.26 and VAT, amounts to £233,085.97.
 - b) The true cost of the work carried out is £233,085.97 and not £514,035.44 as represented and claimed by the Defendant. The cost of labour and materials could not have exceeded £166,181.66. The sum of £166,181.66 reflects the true and actual cost of the work carried out. The additional design fee and 20% mark up brought the total cost of the work to £233,085.97.
 - c) The Defendant claimed and received an additional sum of £347,853.78, which it was not entitled to claim or receive.
 - d) Please see the attached expert report of Mr John William Wates, MA (Oxon), BSc, FRICS dated 2 July 2019.”
23. This pleading is somewhat confused. It purports to delete allegations of fraud by deleting the word “fraudulently” in paragraph 32, but then retains in that paragraph references to falsity and adds the last sentence which alleges that the value of the works was to the knowledge of the Defendant less than the sums claimed. These are clear and unambiguous allegations of fraud. Thus paragraph 32 is internally inconsistent in both withdrawing a reference to fraud and particularising an allegation of fraud.
24. The particulars in paragraph 33 are also problematic: the word “fraudulent” is deleted and substituted by the word “negligent”, but what is then to be found by way of particulars are not particulars of negligence and, whilst not expressly alleging fraud, read more like a case of fraud than any case in negligence.
25. Paragraph 34⁶ then asserts an implied term in somewhat different terms from that pleaded in paragraph 3. Paragraph 3 pleaded simply an obligation to exercise all professional skill and care, whilst paragraph 34 pleads as an element of the contractual duty an obligation of good faith:

“Further or in the alternative, it was an implied term of the Contract that in complying with the Contract, in exercising its rights under the Contract, the Defendant must act reasonably

⁶ A8

and in good faith and undertake the project with reasonable skill and care.”

26. Paragraph 36 pleads⁷:

“In breach of the above duty of care and implied terms, the Defendant has demanded and received monies from the Claimant, which it was not entitled to demand or receive. The amounts claimed by the Defendant have been inflated and exaggerated to ensure that the Defendant reaped more than it had sown.”

27. This could be taken to be a reference to the implied duty of good faith alleged, but reads very much like a pleading of fraud.

28. Paragraph 35 repeats the allegation of a duty of care in tort⁸.

29. Paragraph 39 makes a plea which is not attached to a cause of action, but is in the nature of an accounting point:

“Further, the Defendant [has] added additional VAT to the invoices from third parties, which already included VAT. The Defendant has been charging the Claimant VAT at 20% on the works and then added an additional 20% on to that figure.”

30. Paragraph 40 pleads a case of unjust enrichment:

“Further or in the alternative, the Defendant has been unjustly enriched by benefiting from the exaggerated and inflated costs and expenses. The retention of the enrichment is unjust and unconscionable.”

31. Paragraphs 37, 38 and 41 plead breaches of the implied term to exercise skill and care and/.or breach of the tortious duties⁹:

“37. Furthermore, the Defendant was under a contractual obligation and/or a duty of care to obtain tenders, to perform due diligence, and to obtain comments and/or approval from the Claimant before commencing the works. It was incumbent on the Defendant to ensure that the cost of the works and the preferred contractor was approved by the Claimant before a decision was made to appoint a preferred contractor.

“38. Furthermore, in breach of the implied terms and/or negligently, the Defendant failed to manage the works competently, in that the works should have been completed within a period of 10 months, when in fact the works were still incomplete as at 23 June 2019.

⁷ A8

⁸ A8

⁹ A8-A10

“....

“41. In breach of contract and/or negligently, the Defendant failed to exercise all due professional skill and care in the performance of its services.

“Particulars of Breach of Contract and Negligence

- a) Failed to place the building contract for the carrying out of the works with a competent contractor on terms which afforded reasonable protection to the Claimant;
- b) Failed to administer the building contract so as to achieve speedy and economical completion of the works;
- c) Certifying monies as due and payable by the Claimant, without exercising any or any reasonable skill and care to ascertain the true value of the works carried out and materials supplied;
- d) Failed to inspect the works properly or at all;
- e) Demanding money for works not completed;
- f) Failing to complete the works within a reasonable period of time;
- g) Issuing invoices for works which did not justify the amounts claimed.
- h) Including additional amounts for VAT which were not due or payable.”

32. Of the particulars given, (a), (b) and (c) are recognisable pleas of professional negligence, even if somewhat barely pleaded, whilst (d), (e) and (f) are more in the nature of allegations against a main contractor under a building contract. (h) is an accounting point.

33. Paragraph 42 pleads loss and damage under the following headings¹⁰:

- (1) In respect of monies paid for building works, recovery of £347,853.78;
- (2) In respect of loss of use of the flat: £200,200.00;
- (3) In respect of hotel expenses: £120,302.76;
- (4) In respect of obtaining a licence for alteration: £5,951.00;
- (5) In respect of remedial works: £35,000;
- (6) In respect of double accounting of VAT: a sum to be assessed.

34. The pleading then turns to a claim in respect of furniture. Paragraphs 43 to 47 plead¹¹:

¹⁰ A10-A11

“43. Further, on 23 January 2019, 28 January 2019 and 10 May 2019 the Claimant’s solicitor sent emails and correspondence to the Defendant requesting that the furniture should be delivered forthwith to the property.

“44. The Defendant wrongfully detained the furniture from the Claimant and refused to deliver the same, until 24 September 2019.

“ 45. Further, the Defendant owed the Claimant a duty of care to ensure that all furniture was purchased, the correct prices were paid for the furniture, and delivering the furniture in a timely manner.

“ 46. In breach of contract and negligently, the Defendant failed to exercise all due professional skill and care in the performance of his services in respect of the furniture.

“Particulars of Breach of Contract and Negligence

- a) Failed to order all the furniture;
- b) Failed to charge the Claimant the correct amounts for the furniture;
- c) Negligently charging the Claimant additional amounts for VAT, which were not due and payable;

“47. As a result of the matters set out above, the Claimant has suffered loss and damage.

“Particulars of Damage

The furniture

- 1) First, the Defendant has failed to purchase all the furniture set out in the invoices for payment to the Claimant and agreed between the parties.
- 2) Secondly, the sums claimed by the Defendant for the furniture do not correlate with the invoices from the supplier. The Defendant has charged increased prices and then included an additional sum for her professional time and then included an additional element for VAT, when VAT has already been claimed.
- 3) Thirdly, there are no invoices for the following items:

[There then follows a list of 29 items of furniture and furnishings in respect of which it is said no invoices were provided]

“Sum claimed – to be assessed

¹¹ A11-A15

“Loss of use

“The Claimant seeks damages for loss of use of the furniture.

“Sum claimed – to be assessed”

The Re-Amended Defence

35. The Defendant served a Re-Amended Defence. This sets out a history of email exchanges between the parties and then, under the heading “General” pleads as follows¹²:

“1. The claims are answered by reference to the trail of emails above. The Defendant has exercised all due professional skill and care and has fully performed and fulfilled all contractual obligations to the Claimant. It was the Claimant who requested additional works and services from BMD. Thereby increasing the costing of the original estimate on a number of occasions, at each and every stage, these additional requests were tendered to a number of reputable suppliers, BMD sourced the materials to the specifications of the Claimant and to the most cost efficient. The Claimant was kept informed at every stage of the project to any increase in cost due to changes in her specifications and the Claimant agreed to the costings submitted and agreed to pay.

~~“2. The Claimant approved the estimates and agreed the costings in advance of the work being carried out and the Claimant agreed to pay.~~ Because the total cost of the works has exceeded the initial estimate of £200,000 for furniture, the Defendant is apparently in breach of contract and of a collateral warranty “as to the value and costs of the works”. This allegation ignores the Claimant’s conduct: she chose fixtures and fittings that exceeded her original budget and decided to purchase them through the Defendant after being provided with price estimates and requested construction works outside her original budget.

“3. The Claimant approved the same and chose to make purchases through the Defendant.

“4. The Claimant failed to pay the sums she owes to the Defendant.

“5. Under Clause 10 of the contract, ownership of the goods vests in the Defendant “until payment is received in full.”

~~“6. The value of the overall work undertaken stated by the Claimant according to the Claimant is not correct. The cost value of the building works undertaken is £290,766.93.~~

¹² A27-A30

“7. BMD have managed the works for the Claimant efficiently and competently above the initial agreed requirements for furniture alone by the Claimant and BMD have made every endeavour to assist with the increasing requirements by the Claimant in relation to the project at all times. The Claimant made endless requests for additional and continued work and falsely led BMD to believe that payments would be made. Clearly the Claimants had no intention of ever paying. Costs for all aspects of the project have been negotiated by BMD on the Claimants behalf for competitive prices and very difficult timeframes as insisted upon by the Claimant for implementation of the works have been met.

“8. The claim on behalf of the Claimant for loss of use of the property is contradictory. The Claimant seeks conflicting damages for loss of use and occupation. The Claimant at all times informed BMD that the apartment was for personal family use and not intended for rental. Why is the Claimant seeking loss or rent in concurrence with loss of occupation, if clearly the Claimant was intending to live in the property?

“9. BMD objects to the claim for loss of use of the furniture and wrongful detention. BMD offered to deliver up the furniture on numerous occasions – in which the Claimant requested storage of the furniture until the project had been completed. The Claimant was therefore not intending to use the furniture. In response to the Claimants request email 3/10/17 BMD provided storage and continued to incur costs. The total cost of which as £950 + vat between 14th November – 17th September delivery 2019, £20,900 net. The Claimant seeks damages for loss of use of the furniture – BMD’s emails demonstrate that the Claimant requested storage of the furniture until the project had been completed.

“10. Our defence and counterclaim are straightforward and flow directly from our contract.

- a. The Claimant was provided with options both within and outside of her original budget.
- b. The Claimant chose furniture and fittings that exceeded her budget, and requested construction works outside her original budget and timeframe.
- c. BMD provided quotes to supply the aforesaid furniture and fittings along with the construction works.
- d. The Claimant continuously approved and chose to make purchases through BMD.

- e. The Claimant has failed to pay the sums which she agreed, and which are owed to BMD.
- f. Under clause 10 of the contract (see below), ownership of goods vests in BMD ‘until payment is received in full’.

[Clause 10 of the Contract between the parties is then set out]

“11. BMD has the capacity to deliver 1-2 large scale projects per year, we do not have the advantages of scale that say a building contractor would have (building 100 homes a year) in terms of generating profit. As an award-winning Interior Design company, we therefore strive for higher average profit margins than a standard building contractor in terms of mark-up and design fees. Indeed a 20% margin/project management fee is not unusual/below average within the design industry.

“12. BMD has provided detailed valuations throughout the project to the claimants/client’s requirements and at no stage has the claimant/client refused the quotation/valuation. Acceptance of additional valuations/variations to the contract have either been accepted by way of email, telephone conversation or in face to face meetings. BMD dealings with previous clients are based on trust and we expect clients to honour their obligations when projects are delivered, and invoices are presented.

“13. In summary,

- a. at no time have valuations been rejected
- b. costs have been incurred by BM Design Ltd to complete the project
- c. the project was managed and delivered as requested
- d. no additional assurances were required nor sought after by the client regarding, start/end dates, payment conditions, insurance obligations or liquidated damages. And none of the above should be considered to be in any contract between BM Design Ltd and the claimant
- e. The client unilaterally decided not to pay the final account
- f. Furniture was withheld until full payment was received (this was identified in a previous court ruling as being part of the entire contract).”

36. Finally, under the heading “Conclusion”, paragraph 6 says¹³:

“The Defendant respectfully request that the Claimant is ordered to pay the outstanding balance owed to BMD for the works completed. As the contract between BMD and the Claimant is valid, there is no breach of contract.”

37. As I have said, the Defendant’s pleading is headed “Re-Amended Defence”. However within the text of the pleading there is put forward a counterclaim.

38. I raised with the parties the question whether there is a counterclaim with which I must deal. On behalf of MA, Mr Butler submitted that at a hearing before O’Farrell J. it was clarified that there is no counterclaim: as Mr Butler points out that no fee for filing a counterclaim has been paid and that the directions given by O’Farrell J. at A63-A65 are consistent with the absence of any Counterclaim.

39. That it was Mr Butler’s contemporaneous understanding that there was and is no counterclaim is confirmed by paragraph 1 of the Reply to Re-Amended Defence which says¹⁴:

“As to paragraph 1 of the Re-Amended Defence, the Claimant contends that the document is not a claim and/or counterclaim.”

40. This is somewhat unsatisfactory, but it seems to me that the Defendant was given the opportunity to pursue a counterclaim, but elected not to do so, doubtless because if it had done so it would have incurred a substantial fee.

The Scott Schedule

41. On 7 April 2020 Mrs Justice O’Farrell ordered the completion of a Scott Schedule¹⁵. This happened, but in the end, the factual findings which I have made have rendered it unnecessary to complete the Scott Schedule on an item by item basis. .

The original contract between the parties

42. The parties entered into a written contract dated 7 April 2020.

43. The contract starts with a page headed “Introduction” which includes the following provisions¹⁶:

“The proposed presentation date will be the week commencing 1st May 2017. When the client approves the design and initiates the ordering process, 35% of their project Value is due, with the remainder payable in instalments throughout the duration of the project.

¹³ A31

¹⁴ A32

¹⁵ A64

¹⁶ B182

“The week before installation, the outstanding balance from the clients approved project value (typically 5%) and any authorised modifications or approved services are due. BM Design will notify the client of the amount in advance, so the client can submit payment at least one week prior to installation day. To complete the look of the interiors, accessories and artwork may be added to the scheme on installation day. The client is not obligated to purchase the stock accessories. The client has five days to review these items and notify BM Design of any accessories they wish to purchase. Payment for items is due within seven days of the installation.”

44. Clause 1 provides¹⁷:

“Outline of interior service offered

- 1.1 Establishing client objectives
- 1.2 Analysing floor plan
- 1.3 Detailing internal layout
- 1.4 Specifying and Procuring fittings & furnishings
- 1.5 Overall Project Management
- 1.6 Implementation of Interior Design Scheme
- 1.7 Snagging of Interior Design Works
- 1.8 Travel Arrangements
- 1.9 Estimated Costs & Interior Design Fee
- 1.10 Increase to Scope of Works
- 1.11 Delivery Dates
- 1.12 Payment Schedule.”

45. Clause 2 provides¹⁸:

“Establishing Client Objectives

“BM DESIGN Limited will hold meetings with Mrs Mshail Alibrahim to discuss objectives – including lifestyle, preferences, tastes and ambitions. I believe that to create the ideal home for you I must understand your way of living.”

46. Clause 5 provides¹⁹:

¹⁷ B183

¹⁸ B183

“Specifying Fittings and furnishings

“To create your lifestyle objectives, a selection of furniture, fittings, fabrics and accessories will be sourced for client approval.

“BM DESIGN Limited will source, design, commission and procure all aspects of the interior scheme including window treatments, bespoke furniture and joinery where necessary. Accessories and artwork may also be commissioned and procured where required.

“Specifications will be drawn up for all paints colours, timber stains, ironmongery and electrical where appropriate.

“On receipt of the signed off scheme and deposit funds, BM DESIGN Limited will place orders on behalf of the client.”

47. Clause 6 provides²⁰:

“Overall Project Management (Please refer to “Our Services” document)

“BM DESIGN Limited if commissioned will co-ordinate sub-contractors at every level of Interior Design involvement to include regular site meetings and client updates.

“Any building works will be subject to regular site visits by BM DESIGN Limited in order to keep a high quality control.”

48. Clause 10 provides²¹:

“Estimated Costs & Interior Design Fee

“The Interior Design Fee is based on 20% of the total cost of works and is clearly set out in the payment plan below. We will propose detailed guideline estimates of costs as the scheme evolves.

“For your information, this fee covers all procurement, in connection with the interior scheme.

“Any items sourced separately by parties outside of BM DESIGN Ltd and not purchased through BM DESIGN Ltd, will not form part of our ‘Cost of Interior Design Works’ and therefore will not [be] subject to our 20% Design Fee.

¹⁹ B184

²⁰ B184

²¹ B185-6

“Any items sourced by BM DESIGN Limited but purchased separately by parties outside of BM DESIGN Limited will be subject to our fee.

“Please note that the Interior Design Fee **DOES** cover the following areas:

- Furniture (sofas, tables, chairs, freestanding cabinets, decorative lighting, cushions)
- Window Treatments (curtains, blinds, shutters etc.)
- Rugs
- Artwork sourcing

“Please note that the Interior Design Fee **DOES NOT** cover the following areas:

- Detailed drawings, design concepts, installation, sourcing, schedules and project management, which are chargeable hourly.

“Please refer to “Our Services” document for additional services offered.

“We will propose detailed guideline estimates of costs as the scheme evolves. We assure you that BM DESIGN Limited keeps a strong focus on budgetary control. For your information, our fees cover all meetings, design time, planning, estimating and procuring and overall installation in connection with the interior scheme.

“Please note that figures quoted throughout duration of the project **NO NOT** include

- VAT
- Design Fee
- Delivery and Carriage
- Supplier Installation
- Storage facilities (This is recommended and a quote will be prepared for the client).”

49. Clause 12 provides²²:

“Increase to Scope of Works

²² B186

“In the event that after submission and acceptance of the estimate changes are made to the Scope of Works or any circumstances arise or events occur which could not reasonably have been foreseen at the date of the estimate, any additional sums reasonably and fairly incurred will be charged to the Client.”

50. Clause 13 provides²³:

“Delivery Dates

“BM DESIGN Limited would like to bring to your attention that BM DESIGN Limited cannot be held responsible for the delay of delivery of items included in our costs of works (i.e. loose furniture, rugs, mirrors, decorative lighting, built in joinery, artwork, accessories) due to late payment of invoices particularly immediately prior to delivery. BM DESIGN Limited however will give the client sufficient notice of payments due to avoid any delay in production and installation.”

51. There follows a schedule of payments²⁴:

	INTERIOR DESIGN FIXED FEE	COST OF INTERIOR DESIGN	STATUS OF PROJECT
Apr 2017	50% Deposit of Fixed Fee		Signing of Contract
May 2017	50% Balance of Fixed Fee	35% Deposit for Furniture	Interior Design development/Orders Placed
May 2017		30% Interim Payment	Management of Orders
Jun 2017		30% Interim Payment	Order Management
July/Aug 2017		5% Balance on completion	Installation of Interior Design

²³ B186

²⁴ B187

52. The contract has a separate part headed “Interior Design Terms & Conditions” (“the T&C”).

53. The opening section of the T&C has a heading “General”²⁵:

“This sets out the terms and conditions upon which BM DESIGN Limited has been engaged for Interior Design Works.

“Scope of Works. These are the goods and services as described in the contract issued with these Terms & Conditions.

“Interior Design Works. These are the on-going works of BM DESIGN Limited during the supply and implementation of the Scope of Works and may include but are not limited to all conceptual and design work, developing and refining the design, detailed preparation of estimates, sourcing and procuring, site visits, meetings, progress reporting, monitoring and implementation.”

54. Clause 3.0 of the T&C provides²⁶:

“ESTIMATE OF COSTS

“Whilst producing the scheme for the Interior Design Works, BM DESIGN Limited will produce an estimate of costs with instalment payment dates for the supply and implementation of the Scope of Works, which will be prepared in accordance with the Clients budgetary requirements.

“Prices quoted in the estimate and any subsequent revised estimates are subject to finalised detail. BM DESIGN Limited reserved the right to alter all prices quoted if suppliers alter those quoted to them. Any fluctuation in the prices quoted above £500 will be confirmed in writing to the client for their approval.

“The estimate of costs is subject to variation in accordance with clause 6 below. On estimates of a value less than £20,000 + VAT, BM DESIGN Limited reserves the right to invoice 100% on acceptance of estimate.”

55. Clause 6.0 of the T&C provides²⁷:

“ADDITIONALS TO SCOPE OF WORKS

²⁵ B190

²⁶ B192

²⁷ B193

“Increase to Scope of Works. In the event that after submission and acceptance of the estimate changes are made to the Scope of Works or any circumstances arise or events occur which could not reasonably have been foreseen at the date of the estimate, any additional sums reasonably and fairly incurred will be charged to the Client.

“Should the client request that BM DESIGN Ltd purchase an item on their behalf which has not been outlined or scheduled for in the Scope of Works, BM DESIGN Ltd will request that the client confirm this in writing. BMD will detail the price of the item as well as stating that the client will be required to pay for the item in full on the next invoice issued to them by BM DESIGN Ltd.

“Additional work. If additional work is requested by the Client which is not included within the original Scope of Works and which cannot be accommodated within the original time scale the additional works will be subject to a separate proposal for agreement and implementation together with new payment terms and conditions.”

56. Clause 9.0 of the T&C provides²⁸:

“SUSPENSION AND TERMINATION ON NON-PAYMENT

“In the event of the Client being in default of payment of any fees and/or expenses, BM DESIGN Limited may suspend performance of any or all of the Interior Design Works.

“If no payment is received within 20 days of the due date BM DESIGN Limited may terminate the contract.

“On termination of the contract BM DESIGN Limited shall be entitled to, and shall be paid, all expenses and fees to date, calculated according to the amount of design time spent based on BM DESIGN Limited’s standard hourly rate as outlined in Our Services.

....”

57. Clause 10.0 of the T&C provides²⁹:

“OWNERSHIP OF GOODS

“Title to all goods and materials supplied shall remain with BM DESIGN Limited until payment is received in full. BM DESIGN Limited hereby reserves the right to re-enter the site

²⁸ B194-195

²⁹ B195

and collect all goods and materials in respect of which payment has not been received by the due date.”

58. As the arguments and evidence emerged before me during the trial, it became apparent that there is a central issue between the parties as to whether, as the Claimant contends, the Defendant was obliged to charge for all items procured by it at cost, to which the Defendant would be entitled to add its 20% fee.
59. It was BM’s submission and evidence upon behalf of her company that her task was to prepare estimates for approval by MA. Her belief was that in preparing the estimates she was not bound to put forward estimates based upon the cost to the Defendant of the items (with the fee on top) but rather that the Defendant was entitled to put forward an estimate based upon the retail price of the items. It was then for MA to accept (approve) or reject such estimates. If accepted, the estimates became binding.
60. In the end, which view is correct is a matter of interpretation of this particular contract.
61. I have no doubt that, as BM told me, interior designers do often charge their clients a retail price, whilst benefiting from the difference between the retail price charged to the customer and the trade price charged to the designer. Indeed, if the contract between the designer and the client does not allow for any fee to be added, this would be the only way in which the designer would be rewarded for his or her services. However, there is no evidence before me which would enable me to conclude that the practice of charging on a retail basis is so widespread as to amount to a recognised custom of the trade.
62. There are a number of features of this contract which can be said to indicate that the estimates to be put forward by the Defendant were to be based on cost:
 - (1) The natural inference from a contractual arrangement where one party agrees to “procure” in return for a fixed fee on top of the cost of the item would be that the it would be the cost to the procurer which would be charged;
 - (2) Clause 10 of the contract refers to the Design Fee being based upon “20% of the total cost of the works”;
 - (3) The provision in Clause 10 that the Defendant “*keeps a strong focus on budgetary control*” is consistent with an expectation that the Defendant would charge the net cost to it;
 - (4) The provision in Clause 12 of the contract that the Defendant would charge “*any additional sums reasonably and fairly incurred will be charged to the Client*” is consistent with additional works being charged at cost to the Defendant. It can be said that it would be odd if the primary works were to be charged on one basis, and additional works on a different basis;
 - (5) In Clause 3.0 of the T&C, the estimate is to be an “*estimate of costs*”: whilst as a matter of English that could be an estimate of costs to the client on a retail basis, it can also mean an estimate of the actual costs to the designer. The latter

interpretation is supported by the further provision in the same Clause that “*BM DESIGN Limited reserves the right to alter all prices quoted if suppliers alter those quoted to them*”.

63. Against those arguments in favour of the Claimant’s case as to interpretation of the contract, it can be said:
- (1) Whilst an email of 30 March 2017³⁰ includes “request proforma invoice” as part of the services to be provided by the Defendant, there is no reference to this as part of the services to be provided in the contract itself. The contract makes no provision in any way for the Defendant to verify the actual cost to the Defendant of the items supplied;
 - (2) The provision of estimates seems to me to be envisaged as taking place before the placing of orders – see in this regard clause 5 of the contract. Once the estimates had been accepted, then as between the client and the Defendant the prices were final subject to exceptions in Clause 12 of the contract, and Clauses 3.0 and 6.0 of the T&C. If the arrangement were that the Defendant was simply to pass on the cost to it of an item plus a fee on top, then I would expect the contract to say so, and the clauses which I have referred to in the previous sentence would be unnecessary.
64. I do not find this an easy issue. In my view the Defendant’s construction of the contract is to be preferred since it fits most closely with the machinery of the contract. On this basis, the Defendant would propose a budget for acceptance by its client. If this was accepted by the client, then it became binding as between them subject to the provisions in the contract permitting departure. If the client accepted the design concept, but disliked the price, then Clause 10 contained an option whereby the client could purchase the items directly from the supplier identified by the Defendant: see the provision “*any items sourced by BM DESIGN Limited but purchased separately by parties outside of BM DESIGN Limited will be subject to our fee*” . The reference to “sourced” must refer to a supplier of a particular item identified by the Defendant. If the client liked the design cost but did not wish to purchase the items through the Defendant or from the Defendant’s sources, then Clause 10 provided that the 20% design fee was not payable.
65. For these reasons, I accept the Defendant’s case on this important issue. However, I would emphasise that the contractual scheme was for the estimate to be accepted by the client before it became binding. Of course there could be details to be worked out, but the main substance of the estimate had to have been accepted for it to be binding. The consequence of this is that if the Defendant started procurement or performing any other services without an accepted estimate it did so at risk, and, in my judgment, would be entitled only to payment upon a quantum meruit basis if agreement was not reached later.
66. I have set out below my findings as to the amount payable on the Claimant’s construction of the contract. It will be seen that on my findings the difference in the interpretation only results in a different amount due in respect of the “FF&E” element of the goods supplied and services provided by the Defendant.

³⁰ B7-B8

67. In case I should be held by another court in due course to be wrong in my interpretation of the contract, I should say that having seen and heard BM in evidence, I reject any suggestion that BM personally (or, through her, the Defendant) was acting dishonestly. I accept her evidence that such pricing practices are to be found in her profession, and that she genuinely thought she was entitled to put forward estimates, and to charge, upon the basis that she did.
68. I emphasise that at the time that the contract was entered into, the elements to which the contract applied appears to me to have been limited to what became referred to as “F, F & E”, or as defined in Clause 10 of the contract³¹, i.e.
- Furniture (sofas, tables, chairs, freestanding cabinets, decorative lighting, cushions)
 - Window Treatments (curtains, blinds, shutters etc.)
 - Rugs
 - Artwork sourcing
- ”
69. Against that background I turn to consider the implied terms of the contract as pleaded by the Claimant.
70. As correctly submitted by Mr. Butler, for MA, in paragraph 41 of his written opening submissions, the question of the terms to be implied must be considered at the date of the contract: *Marks and Spencer plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd* [2015] UKSC 72; [2016] AC 742 and *David Joseph v Deloitte NSE LLP* [2020] EWCA Civ 1457.
71. It is important to note that at the date of the contract in April 2017 the scope of the Defendant’s obligations did not extend to any building works.
72. It is also significant that although Clause 6 of the contract envisaged the Defendant carrying out “project management” that was an option, as made clear by the words “if commissioned”. In this case by email on 7 April 2017 MA indicated that she did not require the Project Management service³².
73. The scope of the Defendant’s services was therefore correctly summarised in the table at B187:
- (1) Interior design development;
 - (2) Placing of orders;
 - (3) Management of orders;
 - (4) Installation of interior design.

³¹ B185

³² B10

74. Section 13 of the Supply of Goods and Services Act 1982 (as now enacted) it is provided that:
- “In a relevant contract for the supply of a service where the supplier is acting in the course of a business, there is an implied term that the supplier will carry out the service with reasonable skill and care.”
- This was a contract falling within the statutory definition of a “relevant contract” and accordingly there was an implied term as above.
75. Paragraph 3 of the Re-Amended Particulars of Claim formulates the implied terms in slightly, but immaterially, different terms.
76. Paragraph 34 pleads a different and more extensive implied term (see paragraph 16 above). The important components of the extended term alleged are that the Defendant was obliged “*to act reasonably and in good faith*”. Insofar as that plea seeks to extend the statutory implied term, I reject it. Insofar as it is intended to plead an obligation not to charge more than was properly due, it is unnecessary.
77. I have set out paragraph 37 of the Re-Amended Particulars of Claim at paragraph 31 above. It appears to attempt to extend the obligations of the Defendant beyond those in the contract, and again I reject the attempt. In my judgment, the obligation of the Defendant under the express terms of the contract was to put forward an estimate of cost of items to be supplied for approval by its client. If the estimate was approved, then the Defendant’s obligation was to procure the items. No further documentation or approval process was required by the contract. The contract was silent as to what would happen if the client asked for further information before accepting an estimate: as this did not happen, I do not need to consider that possibility further.
78. Paragraph 38 of the Re-Amended Particulars of Claim, set out at paragraph 31 above, sets out an allegation of failure to manage “the works” competently. This appears to relate only to the building works which were not a part of the April contract. I consider the circumstances of what I consider to have been a variation to the April contract below.
79. Paragraph 45 of the Re-Amended Particulars of Claim (set out at paragraph 34 above) may be intended to plead a different implied term in respect of the purchase of furniture. Insofar as it is suggested that the Defendant owed a contractual obligation going beyond the express terms of the contract and the statutory implied term, I reject the suggestion. In my judgment the contract taken with the statutory implied term constitutes a complete statement of the Defendant’s obligations in respect of the procurement of furniture.
80. On my analysis of the case before me, and on the facts as found, this case is primarily concerned with an assessment as to the correct amount due to the Defendant under the terms of the contract – in effect, the taking of an account. The only element of the claim in respect of which the implied terms may be relevant is the claim for loss of use of the flat.

81. I accept that if on the taking of that account it appears that MA has paid more than was due to the Defendant, then she would be entitled to an order for repayment.
82. I am not sure that that entitlement is properly based upon a claim of unjust enrichment. It seems to me that it may more properly be categorised as a claim for breach of contract, but either way the Claimant would on that basis be entitled to an order in her favour.

The Claimant's pre-contract representation and collateral warranty case

83. As set out at paragraph 21 above, paragraph 7 of the Re-Amended Particulars of Claim alleges that before the contract was entered into, and in order to induce the Claimant to enter into the contract, the Defendant warranted and represented to the Claimant that the estimated cost of the works (goods and services) would not exceed £200,000 plus VAT and professional fees.
84. MA's evidence as to the factual basis of this part of her case is to be found in paragraphs 31 and 32 of her witness statement³³:

"In my reply on 29 March 2017 at 3.53pm and before entering into any agreement with the defendant, I informed BM that my budget for all works to be completed at the property is around £200,000. I appreciate that budgets can fluctuate to some degree. However, I wanted to make it clear that this was the budget for the stage 3 works, described above. BM responded on the same day stating that the figure of £200,000 would be possible, and that they could work within that budget. I informed BM that I could not afford to pay more than £200,000.

"BM however indicated that the proposed budget did not include VAT or professional fees and in this regard BM added in her email of 30 March 2017: "*... In regards our fee's we work in two stages, very simply we charge an hourly or fixed fee for the design followed by a percentage based on the total expenditure for furniture and fittings, this fee covers the procurement and management of the ordering process. Please note that typically we recommend as expenditure from £80-£150 per square foot for interior design (not including building works costs)*". I was happy to accept the terms on the understanding that the works would be completed by at least the end of July 2017 and within budget. I relied on BM's representations before agreeing to enter into the agreement with BMD."

85. In her witness statement BM said this³⁴:

³³ A77

³⁴ A112-113

“1. My first phone conversation with Mashael was on 27 March 2017, we discussed her vision for the apartment, her requirements and the mood and feel. Mashael informed me that there was a contractor working on the property and that we could view the apartment on 28 March, I enquired as to her budget and she responded by email informing me that she liked bright and earthy colours, her family size and that she wanted our proposal before setting a budget. I viewed the property with my colleague Charlotte Evans.

“2. I responded by email following a phone conversation on 28 March, where Mashael confirmed our involvement would be FF&E (furniture, fixture & equipment) kitchen, bathroom and joinery design. I refer to a copy of my email 29/03/17 exhibit E1 enclosed, in which our scope of work is clearly set out for furniture. I advised Mashael that a typical expenditure would be between £100 - £150 per sq foot. Which based on her floor plan – 2,500 sq ft, she should expect to spend between £250,000 and £375,000 + vat and professional fees. This offer pursuant to entering into an agreement was accepted.

“3. Following our site visit, together with my colleague Charlotte Evans and account manager Jonson Helps, prepared and issued our formal design proposal, with recommended expenditure for FF&E “*(not including building works)*” together with an itemised list detailing our involvement, including the fees and expenses for the project. Please refer to Exhibit E3.

“4. Further to the Re-amended PoC, I can hardly understand the claims that we misrepresented information to Mashael, as evidenced in our enclosed exhibits E1, E2, E3 and E4, clearly stating building works were not included. At no time did Mashael discuss or confirm in writing that our proposal should include building works to the property. Please refer to Exhibit E4, in my email to TKD solicitors, I clearly explain that our proposal did not include project management for building works, and refer to Stage 3 of our Services. I further clarify that we would be happy to work with Mashael’s preferred contractor to implement their works on site. Mashael responds and confirms in writing that she does not require project management input. Please refer to Exhibit E4. Contracts are issued and signed by both parties directly following on from this. It was my understanding that we would simply be required to communicate with the current contractor to oversee the implementation of FF&E only.”

86. MA’s statement makes it clear that the misrepresentation case is based on what was said before the contract was agreed on 7 April, and that what was said was said in emails:

(1) On 24 March 2017 BM wrote to MA³⁵:

“Thank you for your recent interest in BM Design London.

“We would love to hear more about your project, including any recent photographs you may have of the property. It is tempting to view the design of your home as a series of interventions but it is my view that for a really successful outcome the project should be approached as a single cohesive design including the interior of the property.

“We would welcome the opportunity to meet with you in person to discuss your home in more detail. In the meantime kindly provide your contact telephone number and please do let me know a convenient time to schedule a call.

“I have enclosed a portfolio of our recently completed projects which provides an overview of our style, we can of course tailor to suit any design preference. In regards our fees we work in two stages, very simply we charge a fixed fee for the design followed by a percentage based on the total expenditure, this covers the procurement and management of the ordering process.

“At this stage it would be extremely beneficial to establish [an] idea of your overall budget and your requirements as well as your personal style. If you have any recent concepts or images that you find inspiring, then please do send these across....”

(2) On 28 March 2017 BM visited the apartment.

(3) There were exchanges of emails on 29 March 2017. Doing the best I can, it appears to me that the order of the emails was as follows (this does not follow the times on the emails, but seems logical).

(4) On 29 March 2017, showing a time of 4.41 pm, BM wrote to MA³⁶:

“Thank you again for arranging the site visit access yesterday evening. It was lovely to see your apartment and it is a great blank canvas to work with, we particularly loved the original cornicing and architrave details.

“We would very much love to be involved in the project and with that [in] mind I would like to discuss the scope of work, our involvement and the overall budget. When we spoke last night you mentioned that you would require out design input for the Kitchen, Bathrooms and Joiner, all of which we normally do include in our interior design projects. Therefore our scope would be as follows:

³⁵ B1

³⁶ B3

“Furniture Layouts, General Arrangement Floor plans

“Kitchen design

“Bathroom design

“Bedroom joinery design

“Furniture design

“Full Fabric boards, Fixtures and Fittings selection for client approval

“All associated schedules

“Flooring selection and schedule

“Preparation of full itemised interior design estimate

“Order management and procurement

“Installation

“Style and dress on completion

“It [would] be extremely helpful to establish an idea of your budget. I would always advise an expenditure of £100 – £150 per square foot in order to obtain the full interior design feel. Of course anything is achievable and so please have a think and feel free to give me a call to discuss your budget further, so that we make sure we can provide a full design package that meets your specific budgetary requirements.

“Once we have had a chance to discuss your thoughts, the next stage would be to prepare out [fee] proposal and project programme, this will enable us to present the full design scheme in the coming weeks as I am aware time is of the essence.

“I very much look forward to hearing back from you. I will be in a meeting for the next hour, however I will have my phone with me at all times and so please do not hesitate to call.”

(5) Also on 29 March 2017, showing a time of 3.53, MA wrote to BM³⁷:

“Lets say £200,000 is the Budget.”

(6) Finally, timed at 9.07 pm, BM wrote to MA:

“Thank you for your email, this figure will be possible but not including VAT or professional fees. We are currently

³⁷ B3

preparing our proposal for you, I will contact you tomorrow....”

- (7) On 30 March 2017 BM wrote to MA³⁸. I have highlighted the parts relevant to budgeting (highlighted headings are in the original):

“Further to our previous correspondence, we would be delighted to be involved in the design of your apartment in Marylebone. With that said I have the pleasure of enclosing our fixed fee proposal for the design and a break down of our Scope of Works. Further to our discussion, I have enclosed a portfolio of our recently completed projects, **we can of course tailor to suit any design preference and more importantly budget. In regard to our fees we work in two stages, very simply we charge an hourly or fixed fee for the design followed by a percentage based on the total expenditure for fixtures and fittings, this fee covers the procurement and management of the ordering process. Please note that typically we recommend an expenditure from £80 - £150 per square foot for interior design (not including building works costs).**

“Please find below an outline of our services and our fixed fee proposal attached.

“Stage 1 – Initial Consultation

-Complete

“Stage 2 – Interior Design Package

-Produce preliminary GA layouts including decorative furniture layouts based on the drawings provided for discussion.

-Prepare design/style concepts to all areas for design development meeting with the Client.

-Re-submit finalised concepts including samples and finishes for sign off.

-Prepare finishes schedules, details and specifications.

-Prepare a comprehensive finishes schedule on room by room basis coordinated with finishes samples.

-Establish a timeline for all stages of the FF&E process (Furniture, Fittings & Equipment)

-Explore options for furniture layouts to work with proposed room layouts in plan and 3D if applicable.

³⁸ B7-8

-Prepare mood boards and presentation indicating furniture, lighting style, fabrics and general design direction.

Show on elevations suggested areas & proportions for artwork.

-Present boards and schemes to the Client.

-Adjustment of concepts after Client meetings to include revised furniture plans and elevations, fabrics, furniture, lighting etc.

“Fee: Chargeable hourly for our research time and interior design services, broken down as follows:

“Director £165 p/h

“Design Director £100 p/h

”Interior Architect £65 p/h

“Please note a fixed fee has been provided in this instance, please find enclosed.

“Stage 3 – Interior Design Estimate, Procurement and Project Management

-Prepare preliminary FF&E (Furniture, Fittings & Equipment) budget costing schedule for both furnishings and decorative lighting for discussion and approval. The budget shall include but not be limited to costs for supply, fees, storage, delivery, insurance and installation.

-Arrange all necessary surveys.

-Design and liaise with manufacturers and specialist suppliers for all bespoke pieces as necessary.

-Raise invoice to Client for goods and associated costs.

-Request proforma invoices, raise purchase orders.

-Procure all FF&E items on behalf of the client.

-Oversee building works contractor and sub contractors at every level of the project.

“Fee: Charged at 20% of the overall cost of the goods/building works

“....

“I would like to propose a presentation date on Friday 7th April where we will propose the interior design scheme, fabrics and

finishes. I would be grateful if you could kindly confirm if this is convenient.”

BM’s evidence was that the area of the flat is 2,500 sq ft, so that the figure of £80 - £150 per sq ft represented between £200,000 and £375,000.

(8) On 7 April 2017 BM wrote to MA’s solicitor as follows³⁹:

“I trust this email finds you well and you had an enjoyable evening.

“Further to our conversation yesterday, please [find] enclosed our Interior Design Contract and Terms and Conditions. I have also included the deposit invoice for the design package as this is something we would very much like to get started with straight away, I am mindful that timing is of great importance to Mrs Alibrahim.

“With that said, the next stage would be to conduct a measured survey with our team next week, I would be grateful if you could confirm access on Monday 10th April. The site survey is in addition to the design package and will cost £550 + vat, kindly confirm acceptance so that I can nook this in for nest week.

“Please note that the fixed fee does not include project management, as per my email to Mshail on March 30th and as set out in Stage 3 of our services. We are more than happy to work with your preferred contractor to oversee the building works on site. We will hold regular site meetings with the team and will implement the work/installation of the property and provide a team to oversee installations. We will co-ordinate a BMD to client hand-over, including the resolution of any snagging issues and organise a three months defects meeting. Our project management services are chargeable at 15% of the building works value should you require our involvement in this aspect of the project....”

(9) On that same day MA emailed BM saying⁴⁰:

“We don’t need the project management service....”

87. The effect of the pleaded case is that either through a case based upon misrepresentation or a case based upon a collateral warranty, the Defendant committed to the “value and cost of the works” not exceeding £200,000 net of fees and VAT.
88. In his closing submissions, although it was apparent from MA’s oral evidence that she feels very strongly about the fact that the budget was exceeded, Mr Butler disavowed

³⁹ B10

⁴⁰ B10

any case based upon misrepresentation or collateral contract. In my view he was right to do so: at most, all there was was a statement that it might be possible to bring the cost of the “FF&E” within a budget of £200,000 plus fees and VAT. That “statement” was a short response to an email at a stage when, as MA well knew, the Defendant had had mere hours to consider the interior design for the apartment, and when the design work was all in the future. However, within days BM put forward an estimate which came to a figure between £200,000 at the bottom end of the range and £375,000 at the top.

89. Further, when, after the contract had been entered into, BM put forward estimates well in excess of £200,000, MA accepted those estimates without suggesting that the figure should be limited to £200,000.
90. All of this makes it improbable that BM intended to represent anything more than that £200,000 for furnishings might be a possible budget, or that MA understood that BM or the Defendant had warranted that the cost of the works overall, or the furniture and furnishings on their own, would not cost more than £200,000, or that MA entered into the contract induced by the representations alleged.
91. Accordingly, insofar as the pleaded case is based on pre-contract representations and/or a collateral contract I reject the case.

Duties of care in tort

92. The pleaded claims in tort appear to me to be unnecessary to MA’s claim. Accordingly I do not need to consider those claims further.

Claims in fraud

93. A matter of considerable concern is the pleading of allegations of deceit.
94. The Re-Amended Particulars of Claim shows that the Claimant originally alleged fraud on the part of the Defendant.
95. The Re-Amended Particulars of Claim purportedly remove allegations of fraud/deceit, but actually continue to make what are on any reasonable legal analysis, allegations of fraud or deceit.
96. When I pointed this out to Mr Butler in the course of his oral opening submissions, he made it clear that no case in fraud was now being pursued, and he re-affirmed this in his oral closing submissions.
97. The matters remaining to an extent on the record, it is proper that I should reiterate what I have set out above, namely that I found BM to be honest.
98. Having considered the overall structure of the legal relationship between the parties, the following issues remain for consideration (items (1), (2), (7) and (9) are not now in controversy):
 - (1) The amount payable for the Initial Design Fee;
 - (2) The amount payable for the kitchen;

- (3) The amount payable for FF&E;
- (4) The amount payable for Marble, Sanitary Ware and Flooring;
- (5) The amount payable for Building Works;
- (6) The amount payable in respect of loss of use of the flat;
- (7) The amount payable in respect of hotel expenses;
- (8) The amount payable in respect of obtaining a licence for alteration;
- (9) The amount payable in respect of remedial works;
- (10) The amount payable in respect of loss of use of furniture;
- (11) The amount payable in respect of double accounting for VAT;
- (12) The amount payable for storage;
- (13) The amount payable for expenses.

The amount payable for the Initial Design Fee

99. This is agreed in the sum of £15,696 inclusive of VAT.

The amount payable for the kitchen

100. This is an extra to the original scope of work. It is agreed in the sum of £40,883.26 net of VAT together with a fee of 20% plus VAT, a total of £58,871.89.

The amount payable for FF&E

101. As I have held above, on my findings as to the contract, it applied when agreed only to FF&E as defined in Clause 10 of the contract. In respect of that element, my construction of the contract is that if MA accepted an estimate put forward by the Defendant that became the binding basis between the parties, subject to specified caveats in the contract.

102. On 8 May 2017 BM met with MA. There are minutes of the meeting at B684. It is clear that at this stage the interior design was to an extent work in progress, but was substantially complete. BM's evidence in her witness statement is that at that meeting BM went through each item of FF&E and MA approved each item.⁴¹ I accept that evidence, which is consistent with the contemporaneous documents.

103. A week later, on 16 May 2017, Mr Helps of the Defendant wrote to MA saying⁴²:

“Further to your meeting with Binkie yesterday afternoon, please kindly find attached the deposit payment invoice no: 1049 for interior design furniture orders. The current total

⁴¹ A114, paragraphs 8 to 13

⁴² B32

value of the estimate is £309,812.52 but will be subject to variation as your final decisions on the furniture items have been agreed....”

104. On 26 May 2017 MA paid the Defendant the £144,000 requested in respect of the FF&E, which was clearly tied to the estimate of £309,812.52. In my judgment this was a clear acceptance of the estimate which had been put forward if, contrary to my finding above, it had not already been accepted.

105. There were exchanges between BM and MA until on 29 August 2017 an estimate for the FF&E was produced in a net sum of £294,588. When the Design Fee and VAT were added, this came up to £424,206.72.⁴³ This was sent under cover of an email from BM to MA⁴⁴:

“Please find attached the revised cost for the furniture with the items removed as agreed.

“The total is now £294,588 + vat. Please confirm you are happy to proceed and I will revise the balance payment for these orders....”

106. On the following day BM sent a further email⁴⁵:

“Please see the revised furniture estimate, with the removal of furniture pieces as requested yesterday, the new total is £293,638.42 + vat. To date you have paid £149,994.00 but we require the balance payment for the estimate in full prior to remainder of the delivery of the furniture in September. The balance to pay will be £272,845.32 which will be due in the next couple of weeks.”

107. This was accompanied by an estimate as indicated⁴⁶. With fees and VAT this came up to £422,839.32.

108. On 5 September 2017 MA and BM met⁴⁷ and discussed the furniture budget.

109. On 15 September 2017 BM sent an email to MA⁴⁸:

“I have spent a lot of time this week finalising all of the figures and negotiating with suppliers and the contractor to bring all of the costs down for you and to agree the project and complete everything as soon as possible so that we can start the installation of the furniture which is ready.

⁴³ B360-B385

⁴⁴ B147

⁴⁵ B160

⁴⁶ B1019-B1046

⁴⁷ The meeting is referred to in emails at B162 and B165

⁴⁸ B170

“I have separated each area of the project below and confirmed what has been paid:

“1) **Furniture** – The new total cost for all of the approved furniture comes to £437,011.61 inc vat/fee. You have paid to date a total of £249,994.00, which leaves a balance to pay for the furniture prior to the delivery of £187,017.61. The reason this is higher than the £150k that we discussed during our last meeting is because I had not added the vat to the total. I have attached the estimate for your reference so you can see clearly the items in blue which have all been ordered.”

110. The estimate is at B394-B417. It totals £303,480.28 net of fee and vat.
111. This figure is of the same order as that discussed in May 2017. On the evidence of BM I accept that the figure of £309,812.52 net was the agreed and understood figure from May 2017 although it was subject to some revisions until September 2017 by when it had come down to £303,812.52.
112. It is correct that part of this furniture is still being held by some of the Defendant’s suppliers who (I was told by BM) have not yet been paid in full. As on my findings the Defendant has not yet been paid all that was due to it, the Defendant is entitled to keep that furniture by reason of Clause 10.00 of the contract T&C set out at paragraph 57 above.
113. In my judgment that was the agreed and approved figure for furniture.
114. In case I am held to be wrong as to my construction of the contract, I should make findings as to the cost of the FF&E.
115. For MA, Mr Butler legitimately criticises the documentation produced by the Defendant. In a sense it is not surprising that the documentation is deficient given the Defendant’s case as to the basis upon which it was entitled to be paid.
116. The Claimant has completed the Scott Schedule and totalled up the amount claimed for FFE, a total of £298,329.93⁴⁹. In the same schedule the cost to the Defendant of all furniture which should have been delivered is calculated as £155,141.30, but the cost of that delivered is calculated as being £130,210.66. These figures are net of fee and VAT, so that the amount which the Claimant calculates as payable, based on the net figure of £130,210.66, is £187,503.34.
117. The Defendant on the other hand has done an “audit” of what was actually spent by it, which comes to £180,634.70, before fee and VAT: £260,113.97 including those elements.
118. Whilst the way in which the figures has emerged has been unsatisfactory, I am satisfied on the basis of BM’s evidence that the Defendant did spend £180,634.70. Accordingly, on this alternative basis I would have found £260,113.97 due.

The amount payable for Marble, Sanitary Ware and Flooring

⁴⁹ E53

119. As I have found, the original contract related only to FF&E.
120. However by mid May 2017 the Defendant was starting to prepare designs for joinery and bathrooms⁵⁰.
121. By 20 June 2017 the Defendant had produced an estimate for building works, marble and sanitary ware⁵¹. This was in the sum of £295,366.27 net, £425,327.42 with fee and VAT.
122. It is clear to me that the contract was varied so that the Defendant agreed to carry out design works in respect of the marble, sanitary ware and flooring. It is also clear that the Defendant agreed to procure the execution of these works.
123. However, over the course of Summer 2017 numerous estimates for different parts of the works were put forward, and I have difficulty in seeing that there was clear acceptance on the part of MA of any one of these estimates.
124. Accordingly, I have difficulty in holding that the machinery of the contract, which I have held was operated in respect of the FF&E, was operated so as to produce an approved/accepted estimate for the cost of the works up to the end of September. I deal with the position as to what happened after September below.
125. In those circumstances, in my view what the Defendant was and is entitled to is a payment upon the basis of a quantum meruit.
126. In respect of the appropriate sum to be paid for building works overall, the Claimant adduced a report from Mr. Wates, a chartered building surveyor, who also appeared to give evidence before me in person.
127. Mr. Wates valued the building works (which include for this purpose both what has been referred to in these proceedings as “the building works” and the works referred to as “Marble, Sanitary Ware and Flooring”) in the sum of £161,865.26 (or £166,865.26: there is a slight difference in different places in his report) plus fee and VAT⁵².
128. In the event, I did not find his evidence particularly useful on this point, since he suffered from disadvantages, not of his making: firstly, he did not himself carry out the primary valuation, which was carried out by a quantity surveyor. Secondly, the reason for this was because he came on the scene after another contractor had removed much or most of the work done during the Defendant’s time on the project; and, finally, he had minimal contemporary documentation upon which to rely.
129. Thus, I found his evidence of little assistance in assessing a quantum meruit.
130. On the other hand, because the Defendant relied upon its various quotations, and did not seek to justify them by reference to market rates or quotations from sub-contractors justifying the quotations put forward to MA, I have no evidence from the

⁵⁰ B35, B38

⁵¹ B778-B792

⁵² A126

Defendant to justify a quantum meruit other than by reference to what the Defendant actually spent.

131. In that regard, I have the result of the Defendant's audit of actual expenditure in the sum of £99,605.63 before fee and VAT, a gross total of £143,432.11. (As I am approaching this upon the basis of a quantum meruit, rather than a strict contractual entitlement, it seems to me to be open to me to apply the 20% figure for a fee, rather than the 15% fee which would have been payable if the Defendant were carrying out project management services under Clause 6 of the contract). In the absence of any better basis upon which to value this work, I take this figure for this element of the case.

The amount payable in respect of building works

132. As in respect of the last item, the Defendant put forward various figures for the building works over the summer, but I find it difficult to identify and estimate which was clearly approved.
133. As I have said, Mr Wates's report dealt with these works, but for the reasons given above I found his report of limited assistance.
134. Again, I find myself without assistance from the Defendant save in respect of actual expenditure.
135. In this instance the actual expenditure on the basis of the Defendant's evidence, which I accept, was £114,397.38 net, £164,732.23 with fee and VAT. In my view this is the proper figure to be allowed.

The amount payable in respect of loss of use of the flat

How the claim is put: the works should have been completed within 10 months of April 2017

136. Damages for loss of use of the flat are claimed in the sum of £202,000.
137. In the Re-Amended Particulars of Claim this is said to be a claim for loss of use of the property from May 2018 (paragraph 42(ix) at A10) until 23 June 2019 (paragraph 38 at A9).
138. This is supported by the evidence of Mr Wates who says that it would have been reasonable to complete the works in a period of 10 months from April 2017⁵³.
139. There are a number of factual difficulties with this assessment. Firstly, it was not until about June 2017 that the Defendant was asked to take over from the previous contractors. This could be dealt with by simply adjusting the assumed start date of the 10 month period. Secondly, and more importantly, it is clear from the documentary evidence which was not placed before Mr Wates, that there were factors which did delay or were liable to delay the building contractor, including the fact that the previous contractors had not done the works to a satisfactory standard, that the landlord caused some problems in authorising the works, and that the scope of the

⁵³ A128

works was not finalised for some time. In an email of 22 August 2017 BM identified some of the delaying factors up to that date⁵⁴. Further explanation of the delays was given in BM's email of the following day, 23 August 2017⁵⁵. Unless these factors are taken into account, it is impossible to assess what would be a fair time within which to complete the works. I do not have the detailed evidence upon which to assess the impact of these events either individually or cumulatively.

140. Accordingly, I do not accept the Claimant's case that the works could or should have been completed within 10 months of April 2017.
141. Further, that period of 10 months would have taken completion of the project to about February 2018.
142. Mr Butler in his closing submissions distinguished between the "building works" which were completed in about September 2017, and the other works such as electrical works which were to follow on. There appears to be some factual basis for that distinction, but I cannot see that Mr Wates made that distinction, or that the Claimant has laid the evidential basis for me to assess delay on that basis.
143. However, the point having been raised, it seems to me desirable to consider what happened after September 2017.

Events between August 2017 and January 2018

144. In order to put the story after September 2017 into context, it is necessary to go back a few days into August.
145. On 23 August 2017 BM wrote to MA as follows⁵⁶:

"Thank you for arranging payment of the kitchen balance yesterday which we have now received.

"Further to your email, I wanted to include all of the agreed costs in this email, I have also attached the estimates from the beginning of the project.

"The building works [have] increased from the original estimate due to the additional items required such as the flooring insulation, tanking, fireplace and extra marble to the bathrooms, I have highlighted these changes in blue on the attached estimate for your reference. The old estimate which was emailed to you for approval on 30th June is also attached so you can see where the increases have arisen. Any increase has been sent to you in writing for your prior approval before we have asked the building team to proceed. Likewise for the furniture estimate which is also attached.

⁵⁴ B138

⁵⁵ B144-145

⁵⁶ B144-145

“Please find the comparative costs between the previous estimates and the most current figures for both the furniture and the most current figures for both the furniture and the building works below:

“Building Works

Dated 30.06.17

Sub Total - £350,947.71

Fee - £70,189.54

VAT - £84,227.45

Total - £505,364.70

Dated 22.08.17

Sub Total - £379,178.95

Fee - £75,835.79

VAT - £91,002.95

Total - £545,017.69

“Furniture

Dated 30.03.17

Sub Total - £309,812.52

Fee - £61,962.50

VAT - £74,355.00

Total - £446,130.02

Dated 23.08.17

Sub Total - £322,103.85

Fee - £64,438.77

VAT - £77,326.52

Total - £463,950.14

“In regards to the expenses invoices, please note that based on our Contract, Terms and conditions, all carriage and expenses for the delivery of the furniture and fabrics as well as the site

visits by the team are to be invoiced to the client throughout the duration of the project.

“....

“Please find attached your most up to date statement of your account. At present only a deposit has been paid for the building works and the builders are requesting payment urgently, in particular the marble for the entrance hallway has not yet been paid and by withholding payment I am very concerned that the works will stop without the next instalment. I would be very grateful if you would call me to discuss this as this is now a critical time in the project and we need to progress very quickly.”

146. By this date the following payments had been made⁵⁷:

18.04.17: £7,848

16.05.17: £29,435.96

18.05.17: £7,848

26.05.17: £144,000

1.06.17: £5,994

11.07.17: £100,000

1.08.17: £100,000

22.08.17: £22,435.96

These payments total £424,561.90.

147. Mr Butler cross-examined BM on the 23 August 2017 email. As he correctly identified, such supplier’s or builder’s invoices as have been put before the court do not justify the amounts claimed, although the “audit” carried out by the Defendant which results in the figures set out in the second table at paragraph 196 below shows that by the end of the project the Defendant had paid £475,307.29 net of VAT, or £570,368.74 with VAT, the greater part of which had been paid or committed by this date.

148. On 29 August 2017 there was a meeting between MA and BM. MA’s account of that meeting and its aftermath is in her witness statement⁵⁸:

“63. At this point of time I became very concerned of the situation and of the increasing costs. I felt that I was being exploited and taken advantage of by BM. Therefore, I had a

⁵⁷ B632

⁵⁸ A87

meeting with BM on 29 August to discuss face to face the reasons for the delay and her plans ahead for the Property, if she had any.

“64. I made it clear to BM, in our meeting, that I am not happy at all with the way she had been conducting herself since we signed the agreement and that she managed in a systematic manner to push me into this messy situation, taking my money without delivering anything of what she had promised. The Property still looks as a construction site.”

149. BM’s witness statement does not deal with this meeting, but on the evening of 29 August 2017 BM sent two emails. The first said⁵⁹:

“Thank you for your time this afternoon, and please especially thank your mother for the delicious tea.

“The original figure for Building Works which I believe to be confirmed and was issued back in July was for £350k + vat. There have been some additional costs which have been added since that time such as the extra marble and the fireplace works, however if I can reduce the costs with the contractor so it is closer to this original figure, will you accept this going forwards.

“I look forward to hearing back from you.”

The second said⁶⁰:

“Please find attached the revised cost for the furniture with the items removed as agreed.

“The total is now £294,588 + vat. Please confirm you are happy to proceed and I will revise the balance payment for these orders.

“Please also find attached the dining room cabinet drawings for your approval.

“I would be grateful if you could come back to me on the above at your earliest convenience.”

150. In her witness statement⁶¹, MA says that after the meeting on 29 August she stopped taking calls from BM and passed her a message that she was considering stopping work with her on this project.
151. MA’s account is borne out by the fact that in the following chain of emails there was only one short email from MA:

⁵⁹ B146

⁶⁰ B147

⁶¹ Paragraph 66 at A87

(1) 30 August 2017 BM to MA⁶²:

“I can confirm that the kitchen work tops were installed yesterday, the builders will be doing the second fix today and then the splash back will be fitted later this week.

“In the meantime, could you please let me know your thoughts on the dining room cabinets and my email sent yesterday evening.

“Finally please confirm the payment has been made today so that I can get the marble teams back on site to finish the works.

“I look forward to hearing back from you.”

In an email sent shortly after that, BM forwarded photographs of the kitchen⁶³, then some proposals for the doors to cupboards in the kitchen⁶⁴ and a proposal for a vanity unit in a bathroom⁶⁵.

(2) At 5.26 pm on 30 August 2017 BM emailed MA about the finances of the project⁶⁶:

“Please see the revised furniture estimate, with the removal of furniture pieces as requested yesterday, the new total is £293,638.42 + vat. To date you have paid £149,994.00 but we require the balance payment for the estimate in full prior to remainder of the delivery of the furniture in September. The balance to pay will be £272,845.32 which will be due in the next couple of weeks.

“The building works have also been reduced from £379,178.95 to £359,087.61 + vat. We have only received a payment of [£100,000] for both the marble and building works and further payment is required urgently.

“I would be grateful if you could arrange a transfer for £200,000 at your earliest convenience as we are unable to get the teams back on site without further payments.

“Please do call me if you have any queries, otherwise I look forward to hearing back from you.”

(3) MA’s response a couple of hours later was pithy⁶⁷:

“The contractors total is extremely high. I told you I want it to be reduced to the half at least! I can’t pay that amount at all.”

⁶² B151

⁶³ B152_B156

⁶⁴ B156

⁶⁵ B157

⁶⁶ B160

⁶⁷ B160

(4) On 31 August 2017 BM sent two emails. The first said⁶⁸:

“We need to discuss this because the works are 80-90% done from the list provided that was agreed. I sent the estimate to you back on 30th June and the figures have only [increased] by £9,000 plus we have made additions since then such as the fireplace and changes to the chevron flooring, plus the additional marble.

“The new total is with considerable discount from the contractor but this is the lowest price achievable for all of these works.

“At the moment they have not been paid so they will not return to site this week if we do not arrange the payments for the works completed.

“I can request one further discount but the cost will not vary drastically and certainly not by half of the cost, its simply impossible to reduce by that much.

“Please let me know a convenient time to discuss, I am very worried about the progress and the next stage of the project. I desperately want to complete this for you by the end of the month which is possible but not without the works grinding to a halt so please do get back to me.”

The second said⁶⁹:

“Please kindly get back to me on this. I have spoken with Paul the main contractor and he has agreed to lower the price by a further £15,000 overall to assist with payment of your hotel bill.

“He would like to continue with the works asap and complete by the end of September as we agreed during our meeting.

“In order for that [to] happen I need confirmation from you on both the furniture and the building works and payment by tomorrow, otherwise we will miss this deadline.

“In the meantime I have managed to reduce the joinery by an additional £2,000 overall on the agreement that all of the joinery is ordered.

“I trust this is helpful and look forward to your confirmation on the above.”

152. MA’s statement then takes up the story, having referred to BM’s emails⁷⁰:

⁶⁸ B159

⁶⁹ B158

“68. I avoided any contact with BM for about a week and being so desperate to speak to me she contacted my mother who reluctantly agreed to meet her in our temporary accommodation. BM sent an email on 5 September confirming our same day meeting and assuring me that most of the furniture had been ordered and would be delivered by the end of the month.”

153. BM’s email to which MA refers in that paragraph of her witness statement said⁷¹:

“Our meeting is confirmed at 4pm this afternoon, I will come to your suite so we can discuss the next stage of the project. In regards to the furniture budget, we sent this many times by email showing the total cost. We placed the orders straight away so that the majority of the items could be ready by the end of this month, we would be unable to make any changes to the furniture at this stage without incurring a cost. Some of the furniture pieces have now been delivered, but we will not be able to deliver the remainder of the furniture until all of the suppliers have received their balances. We would like to deliver by the end of the month so we need to discuss this and agree today....”

154. MA’s statement continues⁷²:

“69. In our above meeting of 5 September, she repeated her promises to complete the works by the end of September 2017. She managed to persuade my mother that if we pay the so-called outstanding sums to date, she would ensure that contractors would work harder and complete the works by the end of September. Again, my mother thought that taking account of money and time we have already spent to date, we had no better alternative under the circumstances but to transfer the requested sum of £100,000.....”

155. BM’s statement does not deal with the 5 September 2017 meeting, but two mails written by BM on the following day make it clear that the project was progressing:

(1) First⁷³:

“Thank you for your time yesterday evening on site, although very dark it was good to recap on the fabrics and furniture.

“As discussed, I have attached the invoice for the balance of the furniture items which have been agreed so far, this includes the cushions to the entrance hallway, formal rooms and the chosen fabrics for the dining chairs. Please kindly arrange payment so

⁷⁰ A88

⁷¹ B162

⁷² A88

⁷³ B165

that we can schedule the furniture deliveries for the last week of September. The rugs were approved very late, we are trying our best to work with the supplier to get them for the last week but these may now come in October.

“I have attached the Joinery estimate and invoice for payment, please note the total figure which has been reduced overall. As I mentioned payment in full is required so that we can place these orders. Vanity units are of the highest urgency so we can complete the bathrooms.

“.....”

Second⁷⁴:

“Please see our quote for the high end decoration throughout the apartment. My team can start on Monday and complete in 3 weeks, this is the least expensive quote and the shortest time frame to complete so far”

156. On 7 September 2017 MA paid a further £100,000, bringing the total paid to £524,561.90. This appears to have been received by the Defendant on 13 September 2017. It was significantly less than the Defendant was seeking as shown by BM’s email of that date⁷⁵. The Defendant’s position was further clarified by BM’s email on 15 September 2017⁷⁶:

“I hope all is well with you and the family.

“I have spent a lot of time this week finalising all of the figures and negotiating with suppliers and the contractor to bring all of the costs down for you and to agree the project and complete everything as soon as possible so that we can start the installation of the furniture which is ready.

“I have separated each area of the project below and confirmed what has been paid:

“**1.) Furniture** – The new total cost for all of the approved furniture come to £437,011.61 inc vat/fee. You have paid to date a total of £249,994.00, which leaves a balance to pay for the furniture prior to delivery of £180,017.61. The reason this is higher than we discussed during our last meeting is because I had not added the vat to the total. I have attached the estimate for your reference so you can see clearly the items in blue which have all been ordered.

“**2.) Building works** - You have now paid a total of £200,000 for the building works. I have included the revised estimate

⁷⁴ B164

⁷⁵ B168

⁷⁶ B170

with most of the items now discounted for you, all items highlighted in blue have been completed and therefore do require payment. I have removed all other items as these have not been confirmed. The balance payment required for all of the building works and reduced marble comes to £255,079.17.

“**3.) Joinery** – please see attached the revised estimate for the vanity units only.

“**4.) Marble** – I have reduced the cost of the marble overall and this has now been included in the building works estimate and balance payment above.

“**5. Doors** – my apologies we were not able to book an Addison Lee today for the door sample. Because of the incident of the tube this morning, all transport was fully booked. I will arrange this for Monday at 1pm, kindly remind me of your address.

“We currently have no teams on site until we can arrange the payments for the works already completed. I would like very much to get them back on site and to complete the build, as I mentioned the furniture is ready and we can arrange delivery at any time as soon as the works are complete.....”

157. That email makes clear that BM thought that there were monies outstanding and that works were on hold until further payments were made.

158. MA describes her reaction to that email in her witness statement⁷⁷:

“I felt angry and frustrated when I received BM’s above email. It opened my eyes on the problematic situation I found myself in. On the one hand I had already paid BM £449,994, now required to pay her an additional £442,096, whilst after alleged six months of “work”, my flat still [looked] a construction site and nothing had been completed as promised by BM. In our last meeting with BM she managed to convince my mother to transfer £100,000, giving firm commitment to finish works by the end of September and now few days thereafter she says there were no contractors on site and she would try to persuade them to return to site.”

159. The documents in the trial bundle indicate that there was probably a meeting between MA and BM on 22 September 2017, but I have no evidence to confirm that such a meeting took place⁷⁸, nor, if so, what was said at the meeting.

160. On 3 October 2017 BM sent MA an email chasing money⁷⁹:

⁷⁷ A89

⁷⁸ B172

⁷⁹ B173 and B1063

“Outstanding Account Value: **£501,053.05**

“As at today’s date, we have yet to receive payment of the outstanding amount, which is now considerably overdue.

“Our company has not yet levied any late payment or interest charges under our terms and conditions. However should payment in full not be received within the next seven days we may add these charges to your account. Please also note that our company has a policy of ceasing supply of work/services to any client with an account more than 30 days in arrears.

“We trust this will not be necessary and look forward to receiving payment by return.”

161. MA responded on 4 October 2017⁸⁰:

“We have been talking a lot about payments!

“I have agreed on amounts to be paid to contractors in terms of adding more people and finish the work in a certain amount of time! Otherwise all invoices aren’t acceptable.

“I forwarded all Emails to solicitor I can’t take any more with this!!

“I was sending you emails if they will not finish in time let them stop the whole work! And you insisted for them to continue and you kept saying I will talk to them about the prices. You said your self that the amount they are asking to push the work and add 11 people [onto site] to finish it on time. There [were] only two working and not full hours! You weren’t there looking after them!! Why should I pay them please tell me!!!

“Any ways you can drop the whole work I will find a contractor to finish it!

“Whenever we are done we will let you know to provide us with furniture”

162. On 9 October 2017 MA wrote⁸¹:

“May I know how much would it cost to complete the whole flat with the vanities and joineries?

“The total of everything.”

163. On 19 October 2017 BM wrote⁸²:

⁸⁰ B1064

⁸¹ B1064

“I hope this email finds you well.

“Further to our previous correspondence, you have mentioned your solicitors (your email of 4 October). Since I have not yet heard from them, I am writing to you in the sincere hope that we can resolve this matter without resorting to lawyers. I don’t think “going legal” would be in either of our interests and should be avoided if at all possible. I am prepared to discuss the terms on which we might be able to go forward.

“I appreciate that you are disappointed with the way things have worked out. In particular, I know that you were hoping to move into the property sooner and that you are angry and frustrated that completion of the works [has] been delayed. I can well understand that you want the property ready for you to move into as soon as is humanly possible.

“I hope you can understand my position: I came into the project late and at an inauspicious time: you were dissatisfied with your previous contractors and they were difficult about providing information necessary for the handover. Since then, there have been delays which were nobody’s fault (I don’t want to go over the history in this email but they include new stipulations from the building management about the floor, unforeseeable issues with the plumbing to the flat etc). All this had the effect that, regrettably, you were unable to move in at the end of July as you had hoped. Whilst this was extremely unfortunate, and as I explained to you, the truth is that it was never going to be possible to complete the works within that time frame and, for that very reason, we never assumed a legal obligation to ensure completion of the works by then (in case it is helpful, I attach a copy of the Contract and the Terms and Conditions which form a part of it which you signed and which you had your solicitors, TKD, review on your behalf. You will see that there is no requirement for the works to have been completed by the end of July).

“You have also complained that we did not sufficiently manage the contractors Again though, the contract does not require any project management of us and we have not charged for any project management. That reflects what we expressly agreed at the outset: see for example your email to me on 7 April (“We don’t need the project management service”) and my email to your solicitors of 7 April (“Please note that the fixed fee does not include project management”). Had you wanted us to do project management services, we would have been pleased to do so and we would have agreed a fee for those services. I would also like to note that we have not charged for any site

attendance, this was agreed in the contract, furthermore we made multiple trips to site during each week of the build.

“I accept that the original build cost is higher than the original estimate but that is because you have requested and approved additional items which, not unnaturally, have to be paid for (see clause 12 of our Contract and clause 6 of the Terms and Conditions).

“I therefore feel very strongly that we have not breached any of our contractual obligations. Yet, despite this, I find myself in a difficult position whereby I have £501,053.05 worth of invoices outstanding. A large proportion of this £242,644.77 represents costs I have incurred on your behalf: £176,666.23 owed to the contractors and £81,742.04 relates to the cost of furniture which I have bought on your behalf and at your express request. I hope you will understand that, as a businesswoman, I cannot afford to allow this situation to continue indefinitely.

“There are legal remedies available to me under the contract (for example, I continue to own all goods and materials supplied until I have received payment in full (clause 10 of the Contract); I can invoke the jurisdiction of the English Courts (see clause 12 of the Contract) but I do not want to have to resort to those if there is any chance of an amicable settlement.

“As I have mentioned, I would be happy to help complete the project and I am confident that I would be able to do so to your satisfaction. I am happy to discuss this with you provided that, as part of those discussions, we also reach agreement on my outstanding invoices.”

164. If the true interpretation of the contract was that the Defendant was retained on a cost plus 20% basis, this was an outrageous email, as it sought almost as much again as had already been paid, without any substantiation of what had been paid to or incurred in respect of suppliers and contractors. On the other hand, if viewed from BM’s perspective with her belief as to the Defendant’s contractual rights, it was a reasonable demand for payments to be brought up to date.
165. What the email did do, in my view, was to show that there was a large differential between what the Defendant had incurred and/or spent and the amount said by the Defendant to be due.
166. The effect of the email seems to have been to infuriate MA, who says in her witness statement⁸³:

“74. I could not believe [what] I was reading. BM had given me assurances that the works would be completed by the end of

⁸³ A89

July 2017. BM had induced me to enter into an agreement with BMD based on her representations. BM had never explained to me that it was never going to be possible to complete the works within that time frame and [that she] never assumed a legal obligation to do so. I was incensed by her deceit and unprofessionalism.”

167. Despite her annoyance, MA continued to exchange emails with BM. She explains in her witness statement what happened between late October and January 2018⁸⁴:

“75. Following the above emails there had been extensive discussions with BM who assured me and my mother that she would like to resolve all understandings between us without involving solicitors and promised that on this occasion she had found the right contractors who are able to complete the works as soon as possible, if we pay her the outstanding sum of £501,053.05. We were concerned that taking the matter to court may further delay completion of the Property. We just wanted [the] Property completed and agreed in difficult circumstances to give her another chance and paid her the sum in two instalments with conditions. Based on BM’s firm promises and detailed plans how she would be completing the works I arranged for the transfer of £250,000 on 18 January 2018, bringing the total amount paid to BMD to date to £774,561.96. I refer to a chain of emails including my email of 14 November 2017⁸⁵, and BM’s emails dated 1, 14, 15 of November 2017⁸⁶ ...”

Events after January 2018

168. It is the case that on 18 January 2018 MA paid a further £250,000, bringing the total paid to £774,561.92⁸⁷.
169. It is not easy to determine the terms upon which that £250,000 was paid. In part the story is told in the email traffic:

- (1) On 3 January 2018 BM wrote⁸⁸:

“Sending my best wishes for the New Year, I hope you and your family had a lovely holiday.

“Please kindly let me know regarding the payment. As I mentioned previously I would like to arrange to meet my joiner on site this Friday at 3:30pm, we will be discussing how to reduce the prices and amending the designs. I confirmed that I will do the new designs for your approval at [no] cost so that

⁸⁴ A90

⁸⁵ B178 and B1072

⁸⁶ B177 and B1069, B177 and B1071, and B178

⁸⁷ B632

⁸⁸ B1079

we can confirm this and get the vanity units and wardrobes into production.

“Please let me know if you have the door sample that you approved last time, we would like to get the doors finished and ready for installation shortly also.

“I look forward to hearing from you in regards to the above.”

(2) On 5 January 2018 MA wrote⁸⁹:

“Wish you and your family a year full of happiness.

“About the payment of the balance amount will be done in 2 transactions.

“[One] is £250,000 at first so you can continue the work left and to install the marble entrance and when all is done and the furniture all installed we will make another transaction of £250,000.00 + Marble and installation fees.

“Door sample

“I don’t have the sample I brought it with me when we met at the flat.

“I will be waiting for the joineries and vanities quotation.”

(3) On 9 January 2018 BM wrote⁹⁰:

“I hope you had a lovely weekend, thank you for your email.

“The joinery meeting has now been rescheduled to Wednesday as I was unable to make it back to London because of the storm until yesterday. I will update you afterwards but in the meantime we will begin to prepare the new designs for your approval, once approved my joiner will reduce the costs for the vanities and joinery.

“In the meantime, as soon as the payment has been received we will complete the door and ironmongery installation as agreed. All additional works must be agreed prior to commencement so that we avoid any confusion going forwards.

“Please kindly let me know once the payment has been made so that we can inform our team to return to site....”

⁸⁹ B1079

⁹⁰ B1080

170. Following receipt of the £250,000, on 19 January 2018 Mr Helps, the Defendant's accounts manager, sent an email apportioning the monies paid⁹¹:

“Please find attached VAT invoices marked paid, as follows:

“Invoice Activity	Value
0512 Marble Sanitary Ware and Flooring	£242,644.77
0513 Part payment for FF&E	£7,355.23

“This will leave the following invoices outstanding:

BMD1070 Completed Building Works	£176,666.24
BMD1094 Balance of FF&E	£74,386.81”

171. After that the email trail in the papers before me goes cold until 16 April 2018 when BM wrote⁹²:

“I hope this email finds you well and you have had a lovely weekend.

“please find below an image of the door sample that you chose when we last met, kindly let me know if this is approved. In regards to the installation of the doors, everything which has been completed on site has already been paid for, please refer to my email from February 1st. The doors and ironmongery will be delivered to the site once they are completed but it will be up to the contractor to ensure these are installed.

“Building Works

“All of the building works which have already been completed on site are included in the balance payment above.

“Also included in the balance payment but have not yet been delivered are the doors and the ironmongery.”

172. MA responded on 20 April 2018⁹³:

“Picture of the doors sample isn't clear.

“Please show it to Helen, and for the doors installation you said in previous emails that it's already included with the building works which we paid 50% of it!

“How come now you say another contractor will install it!

⁹¹ B1083

⁹² B1085

⁹³ B1085

“And about the marble I never approved the price you offered!

“I am waiting for Helen’s offer and will decide who will install it, as I don’t want any delays. It took way longer than was expected.

“So please complete all the included building works which we approved that will be done by you under the £501,000. And [hand] over everything else to Helen please.”

173. Thus the written record gives an incomplete view as to what was going on in the first half of 2018. MA fills in some of the gaps in her witness statement⁹⁴ the references to “HR” are to Helen Reed, who had been previously engaged by MA as an interior designer):

“76. I was informed by BM that all the ordered furniture/furnishings had been placed in storage awaiting payment from me and that contractors and suppliers are waiting for payment in order to deliver the materials and complete the works. BM assured me that once she had received the £250,000 ... all the furniture I had chosen would be delivered.

“77. After making the above payment, I expected the Defendant to deliver all the furniture/fittings in reliance on BM’s email dated 30 August 2017 ... where she stated that in order for the Defendant to deliver the furniture/furnishings, I was required to pay the **furniture** balance in full.

“78. After receiving the above sum, BM decided, without consulting me, to allocate £242,655.77 of the payment of £250,000 towards marble and sanitary ware, and £7,255.23 towards furniture balance. Bearing in mind that no marble or sanitary ware had been installed at this stage and the fact that I had agreed to make the payment upon the furniture being delivered. BM had agreed to this and I was astonished to receive the email allocating the funds at the discretion of BM. I refer to the BMD invoices no. 0512 & 0513 ...

“Terminating relationship with BMD and 2nd application for a Licence for Alteration

“79. By March 2018, the Property was still [uninhabitable] and no work had been completed, no marble had been installed and no items which were presumably purchased by BMD were delivered. Therefore, I informed BM that I would be instructing my solicitors to deal with the matter.

“80. In the meantime, the Licence for Alteration had expired and I decided to cease any relationship with BM and her

⁹⁴ A90-A91

company. My mother approached HR around May-June 2018 seeking her help to rectify the situation and complete the works at the property. I had to instruct my solicitors again to apply for a new Licence for Alteration which required further survey, drawings and scope of works and further legal costs. This arose as a direct consequence of BM/BMD [having] failed to deliver on the agreement.

“81. In June 2018 a new application to grant a second Licence for Alteration was made to the landlord and a request for an undertaking to pay the landlord’s legal costs was received on 8 June 2018 totalling £4080 in addition to a refundable deposit in the sum of £5,000. In total the Licence costs amounted to £5951.....

“82. In February 2019 HR was instructed formally to proceed with completion of works at the property”

Summary of the causes of delay

174. Tying the above elements together, I come to the following conclusions as to causes of delay:
- (1) It is Mr Wates’s view, which to this extent I accept, that it was never possible for the works to be completed by the end of July 2017, as MA believed they should have been;
 - (2) I do not accept Mr Wates’s evidence that the works should have been completed within 10 months of April 2017, and do not have an evidential basis upon which to assess what would have been a reasonable period to complete from a start in June 2017 and allowing for all the delays identified in the contemporaneous emails;
 - (3) Between September 2017 and January 2018 the works appear to have been on hold with the Defendant seeking more than was covered by approved estimates, and MA having paid and limiting her willingness to pay to less than I have found that she was liable to pay;
 - (4) Between January and March 2018 the works appear have to been on hold because of a debate about attribution of payments made by MA;
 - (5) In about March 2018, MA appears in effect to have terminated the Defendant’s retainer;
 - (6) There is a period between March 2018 and February 2019 before MA engaged Helen Reed Associates to complete the works. Her witness statement does not explain this significant gap.
175. On the basis of these findings I find it impossible to determine a period or length of delay for which the Defendant should be held responsible.
176. For these reasons I reject the claim for loss of use of the flat.

Other problems with the claim

177. Apart from the factual problems set out above, there are other problems.
178. First of these is that the legal basis for the claim is unclear. The case against the Defendant is clearly pleaded upon the basis of breach of implied terms to take due care. There is no pleaded case, as was developed before me both in the evidence of Mr Wates and in the submissions of Mr Butler, that on a true analysis the Defendant agreed to act as main contractor for the building works. In so far as there is a pleading of a claim in professional negligence, the claim is sparsely pleaded, as the pleading does not set out what a competent project manager would have done or would not have done which would have resulted in an earlier completion date.
179. In the event the claim was put not only on the basis that the Defendant was acting as project manager, but also on the basis that the Defendant was acting as contractor, and it was BM's evidence in effect that that was what she understood the Defendant's role to be. Accordingly, if the factual position was clearer, it might have been possible for me to assess the claim upon the basis that it was the Defendant's contractual responsibility to ensure that the works were completed within a reasonable time. However, given that the only evidence put forward in support of that case was that of Mr Wates which was unsatisfactory for the reasons given above, I decline to reach a conclusion in the Claimant's favour on this point.
180. There is a second point of difficulty. As Mr Butler very fairly submitted in his oral closing submissions, the Claimant can only claim damages for loss of the use which she would actually have made of the flat. However, whilst I have evidence as to MA's intentions generally (and have made some findings in that respect at paragraph 3 above), I have no evidence of MA's actual intentions during the period of claimed delay – when was she intending to visit, and for how long? I have no answers to those questions.
181. For these reasons, I dismiss the claim for loss of use of the flat.

The amount payable in respect of hotel expenses

182. This was abandoned in Mr. Butler's oral opening submissions.

The amount payable in respect of obtaining a licence for alteration

183. This is a relatively small claim, which did not seem to me to be pursued with any vigour. It was put forward in Mr Butler's written opening submissions as being part of the cost of remedial works, however that claim was abandoned in Mr Butler's oral opening submissions.

The claim for cost of remedial works

184. This was not pursued before me, being abandoned in Mr Butler's oral opening submissions.

The amount payable in respect of loss of use of furniture

185. This claim arose out of an argument as to whether the Defendant had wrongfully detained some of the furniture.
186. On my conclusions, there was no time at which MA had paid what was due from her to the Defendant. Accordingly by reason of Clause 10.00 of the contract T&C the Defendant was entitled to detain the furniture.
187. Whatever the merits of the claim as to liability, it has never been formally quantified.
188. There is evidence given in MA's witness statement at paragraph 94⁹⁵ in support of this claim. However the claim is put on a highly theoretical basis. It amounts to a claim for £160,000 being £80,000 p.a. for two years.
189. For furniture which the Claimant values at £155,141 in paragraph 81 of the Claimant's closing submissions this would be clearly excessive. Even judged against the amount I have found due below, it is still excessive in my judgment.
190. It is to be noted that no figure was put forward in the Schedule of Loss⁹⁶, nor were arguments in support of any claim for loss of use of the furniture put forward in the Claimant's written Opening and Closing Submissions.
191. Accordingly I reject the claim.

.The amount payable in respect of double accounting for VAT

192. I have assessed above what I regard as being the proper amount payable as at September 2017. In my judgment, the approach I have adopted strips out any element of double accounting as to VAT, and I need not consider this further.

The amount payable for storage

193. This is an element of counterclaim by the Defendant. I have accepted that there is no counterclaim pursued in this case, so this part of the case falls away.

Expenses

194. These are put forward by the Defendant in the sum of £3906.32 plus VAT (£4,773.54) and I do not understand them to be challenged.

Total due to the Defendant

195. For the above reasons, the amounts due to the Defendant before allowing for sums paid were:

Item	Amount Due	Fee @20%	Total Fee	Incl	VAT 20%	AT	Total
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⁹⁵ A94

⁹⁶ A163-A164

Interior Design Fee	£13,800.00	Nil	£13,080	£2,616.00	£15,696.00
Kitchen	£40,883.26	£8,176.65	£49,059.91	£9,811.98	£58,871.89
Building Works	£114,397.38	£22,879.48	£137,276.86	£27,455.37	£164,732.23
Marble, Sanitary Ware and Flooring	£99,605.63	£19,921.13	£119,526.76	£23,905.35	£143,432.11
FF&E	£303,812.52	£60,762.50	£364,575.02	£72,915.00	£437,490.02
Storage	0	0	0	0	0
Expenses	£3,906.32	0	£3,906.32	£781.26	£4,773.54
Total	£598,485.11	£111,739.75	£710,224.86	£142,044.97	£885,269.83

After credit for payments made, this would have led to a credit in the Defendant's favour of £77,709.91.

196. Taking the same table and inserting the alternative figure for FF&E set out above on the basis of actual expenditure, the figures are:

Item	Amount Due	Fee @20%	Total Incl Fee	VAT AT 20%	Total
Interior Design Fee	£13,800.00	Nil	£13,080	£2,616.00	£15,696.00
Kitchen	£40,883.26	£8,176.65	£49,059.91	£9,811.98	£58,871.89
Building Works	£114,397.38	£22,879.48	£137,276.86	£27,455.37	£164,732.23

Marble, Sanitary Ware and Flooring	£99,605.63	£19,921.13	£119,526.76	£23,905.35	£143,432.11
FF&E	£180,634.70	£36,126.94	£216,761.64	£43,352.33	£260,113.97
Storage	0	0	0	0	0
Expenses	£3,906.32	0	£3,906.32	£781.26	£4,773.54
Total	£475,307.29	£87,104.19	£562,411.48	£112,482.30	£674,979.74

197. On the alternative set out above, the total due to the Defendant before allowing for payments made by MA was therefore £674,979.14. It is only when the full amount of payments made is taken into account that a credit in favour of the Claimant results. The last payment made was in the sum of £250,000 in January 2018. On this basis, after 18 January 2018, the amount due to the Claimant would have been £99,582.18.
198. I have recorded above my acceptance of the Claimant's submission that there is no pleaded counterclaim. Accordingly on my construction of the contract the claim fails, and no further sum is payable to the Defendant as a result of my findings in this action.