

12th January, 1988.

BETWEEN	Airport Cash Stores Limited	PLAINTIFF
AND	Roof and Wall Coatings (Jersey) Limited	DEFENDANT

Before the Judicial Greffier.

*Advocate M. S. D. Yates for the Plaintiff,  
Sean Louis O'Brien, a director of the Defendant, on behalf of the Defendant.*

By Act of Court dated the 2nd January, 1986, the Royal Court confirmed the Order of Justice in the above action, the defendant having failed to file an answer. The Court referred to me the assessment of special and general damage to be paid by the defendant to the plaintiff, and the hearing before me was in pursuance of that order.

The facts as set out in the Order of Justice can be summarized as follows:

On the 7th July, 1983, the defendant, a firm of builders and decorators, submitted to the plaintiff an estimate for carrying out the following work on the premises known as Airport Cash Stores, Petite Route des Mielles, St. Brelade -

To anti-fungicide asbestos slate roofs  
(not including main roof over shop)

To wash down roof

To tidy roof and replace slates where necessary

To application of one coat of roof coating materials (two where necessary)  
(5 year guarantee with all work)

To labour and materials - £585

The plaintiff accepted the estimate and the work was done.

On the 12th June, 1984, an inspection of the premises revealed that the coated surface had numerous 'bubbles' which were soft to the touch and the Order

of Justice alleges that the roof coating material had been applied when the surface of the roof was very hot, with the result that the coating was 'cooked' on to the substrate. The effect of this was that extensive areas of the coated surface require to be scraped off and re-coated. The plaintiff further complains that in or about August, 1985, water started to leak through the roof,

The prayer of the Order of Justice asks the Court to condemn the defendant to pay to the plaintiff -

- (i) the costs of all works of repair to and reinstatement of the roof if the defendant does not undertake that work itself;
- (ii) general damages;
- (iii) special damages, which were not particularised in the Order of Justice; and
- (iv) the costs of the action;

and the claim was based on the failure of the defendant to carry out the work efficiently and in a good and workmanlike manner in breach of a term of the contract entered into between the parties.

Advocate M.S.D. Yates appeared for the plaintiff. The defendant was represented by Mr. Sean Louis O'Brien, a director of the defendant. Advocate Yates pointed out that as judgment on liability had been given against the defendant in default of defence, the defendant must now be deemed to have accepted the facts as set out in the Order of Justice and therefore could not now challenge them.

He submitted that the proper measure of damages was the sum required to put the plaintiff back into the position it would have been had there been no breach of contract. He told me that the plaintiff had regarded the coating as a short-term measure, say 10 years, after which re-roofing would have been required, say in 1993. He said that the cost of stripping the coating applied by the defendant would

be a more costly operation than re-roofing and carried the risk of damaging the existing tiles in the process and that there was thus no reasonable alternative but to remove the slates and re-roof. Accordingly, the plaintiff had obtained two estimates for the job, one for £4,238.00 and the other for £4,297.23, but because these had been obtained in September, 1986 (in anticipation of a hearing at that time), a notional amount should be added to cover inflationary increases since that time -he suggested six per cent, which would bring the lower of two estimates up to £4,492.28.

He suggested that the proper basis on which to calculate the damages suffered by the plaintiff was as follows: The roof had to be replaced now instead of in five years' time (or 10 years after the work was done) and accordingly the plaintiff would have to "put its hand into its pocket" and so effectively spend £4,492.28 now rather than in 1993. From that sum should be deducted the sum of £585.00, which the plaintiff would have paid had the work been done properly, giving a figure of £3,907.28. The proper measure of damages would be the amount of interest which would have been earned on that sum over the next five years. With regard to the rate at which that interest should be calculated, bearing in mind that it was now nearly two years since the date of the Royal Court's judgment and that the defendant had had the benefit of the intervening period, the appropriate rate of (simple) interest would be ten per cent per annum.

Advocate Yates therefore invited me to award the sum of £1,953.64 by way of general damages.

I then heard Mr. Adrian Burdess, a director of the plaintiff, on oath with regard to the cost of repairs to the roof to deal with the leaks previously referred to. Mr. Burdess explained that the work had been done by a Mr. Peter Marett, who is a painter/decorator. Mr. Marett had been called in five or six times to locate

and fill holes where water was penetrating at a cost of between £80.00 and £100.00 - Mr. Burdess had paid Mr. Marett in cash and had not kept receipts.

Advocate Yates therefore asked me to award the sum of £80.00 by way of special damages and to include also under that head the fees of Mr. John Lyon, an Incorporated Surveyor whom the plaintiff had called in to inspect and report on the state of the roof - Mr. Lyon's fees amounted to £94.61.

Mr. O'Brien did not give evidence but he addressed me on behalf of the defendant. He did not disagree that the work to the roof had not been done properly and accepted that in view of the time and expense that would be involved in attempting to remove the compound, re-roofing would be cheaper and more practical. However, he felt that more competitive quotations could be obtained from others roofers - he suggested that one if not both of the contractors who had quoted for the job would not themselves have done the work but would have sub-contracted it out, thus adding to the cost.

Advocate Yates, in reply, said that the plaintiff had invited three other reputable firms to quote but each had declined.

Having taken time to consider the matter, I have decided that the basis on which the award should be made as suggested by Advocate Yates was in principle a proper one, but I have decided to vary the figures somewhat.

Had the defendant been legally represented, I would have expected the defence to produce its own up-to-date estimate for the re-slating of the roof. As it is, I am prepared to give the defendant the benefit of the doubt and accordingly, I have taken the lower of the two quotations supplied by the plaintiff, namely £4,238.00, and reduced it by 10%, giving a figure of £3,814.00. To that I have added 6% to allow for inflation since the quotation was submitted, producing the sum £4,043.05, from which I have deducted the sum of £585.00, making £3458.05.

I consider that the rate of interest of 10% suggested by Advocate Yates is too high and that the appropriate rate is  $8\frac{1}{2}\%$  per annum. Thus  $8\frac{1}{2}\%$  per annum on the sum of £3,458.05 over a period of 5 years gives a final figure for general damages of £1,469.67.

To that figure must be added, by way of special damages, the sum of £94.61 for Mr. Lyon's fee and the sum of £80.00 for repairs to the roof by Mr. Marett.

Judicial Greffier.