COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity

2025/CLE/gen/00412

BETWEEN

JOHN "JACK" PLATTS

Claimant

AND

ANTONIO MATRES

First Defendant

AND

ANTONIO MATRES LLC

Second Defendant

Before: **Assistant Registrar Adrienne Bellot (Acting)**

Appearances: **Jacy Whittaker for the Claimant**

No appearance for or on behalf of the Defendants

Heard on written submissions

RULING – ASSESSMENT OF DAMAGES

Judgment in Default of Appearance - Assessment of damages – breach of construction contract – effect of judgment in default of defence – classification of damages as special damages or general damages – indemnity costs vs. party by party costs

The Claimant commenced this action against the First Defendant (and the Second Defendant company of which the First Defendant is beneficial owner) for breach of contract, fraudulent misrepresentation and alternatively unjust enrichment and tortious interference

Introduction

1. The Claimant obtained Judgment in Default of Appearance against the Defendants on 2nd September, 2025. The Claimant then applied to have damages assessed and the Defendants were ordered to pay the Claimant such sums as may be assessed by a Registrar for general and special damages and an amount of interest to be decided by the Court.

2. It is a well-established principle of Civil Procedure that the effect of judgment in default of defence is that inherent to default judgment is the finding that the defendant is liable. The Bahamian Court of Appeal adopted the principle in **Ruffin Crystal Palace Limited v Laniccini Brthwaite [2013] 1 BHS J. No. 65**. See also **Pugh v Cantor Fitzgerald International [2001] EWCA Civ 307** per Lord Justice Ward citing with approval the "underlying principle" preventing defendants from raising issue inconsistent with the default judgment.

Factual background

3. Having failed to enter an appearance in the action, the Defendants also failed to participate in this assessment, although the Court is satisfied that they were duly served in the action and notified of this assessment. As such, the facts are undisputed.

4. In or about March 2024, the Parties entered into an agreement for the Defendants to provide interior design services for the Claimant's home in Lyford Cay ("the Design Agreement"). Under the Design Agreement, the Defendants were to have provided design plans and certain furniture by June 30, 2024 for a total of US$45,000.00.

5. In May 2024, the Defendants proposed extending their role to the management of the construction and renovation of the Claimant's home. On or about May 31, 2024 the parties then entered into a construction agreement for the Defendants to oversee the construction/renovation of the home ("the Construction Agreement") at a cost of US$454,500.00. The Construction Agreement was to be completed by September 2024.

6. During the months following, the Defendants repeatedly made false representations to the Claimant, who was not present on the island during that time, as to the progress of the work. The Defendants also made repeated requests for additional payments. By the end of 2024, the Claimant had paid the Defendants amounts totaling more than US$1,000,000.00.

7. Neither the Design nor the Construction Agreements were ever completed and the standard of work was highly defective. As a result, the Claimant engaged additional labour to carry out emergency remediation tasks and a new contractor to complete the work.

Claimant's evidence and submissions

8. The Claimant relied on his own Affidavit filed 31st March, 2026 and his Counsel's legal arguments were set out in his Written Submissions filed 20th April, 2026.

9. In his affidavit, Mr. Platts set out the details relating to the facts as hereinbefore described, including the terms of the Agreements, the sums paid to the Defendants and the Defendants' failure to deliver the contracted services.

10. The Claimant seeks the following relief in his Statement of Claim:

    - Special damages in the sum of US$1,102,062.66, the particulars of which are summarized as follows:

US$ Amounts	Sub-head of special damages for defective performance
20,000	Costs paid for emergency labour to conduct temporary electrical fixes and other remediation to secure hazardous conditions left by the Defendants.
454,500	This amount corresponds to the amount of the construction contract and includes the initial deposit and subsequent payments for invoices for purported construction services
126,900	Purportedly for doors and windows
95,000.17	Purportedly for furniture, customs duties and additional fees
739.49	Travel expenses for unnecessary site visit
11,360	Unverified VAT, import duties and processing fees
48,903	Purportedly for bedroom set and other verified costs
769	Travel expenses for unnecessary site visit
95,600	Unapproved and unverified construction extras
83,271.98	Unexplained charges

57,588.60	Incorrect customs and shipping charges
1,761.22	Duplicated site visit charges
6,783.43	Shipping fees paid by Claimant directly to shipping company to have furniture released, despite having already paid Defendants for these charges
68,885.77	Purported shipping and handling costs
30,000	Estimated amount paid to other contractors providing other services to cover costs associated with delays caused by the Defendants

- General damages for the loss of use, inconvenience, and distress;
- Aggravated damages in an amount to be assessed;
- Exemplary damages to punish the Defendants for their willful, malicious and fraudulent wrongdoing and to deter similar conduct;
- Interest on all sums awarded at the statutory rate;
- Costs of this action on a full indemnity basis, or alternatively on the usual party to party basis plus applicable VAT on costs;
- Such further or other relief as the Court deems just.

Special damages

11. Special damages are quantifiable damages which the Claimant has already incurred at the time of trial as a result of the loss. Lord Diplock explained the nature of special damages in **Ilkew v Samuels [1963] 2 All ER 879**:

> **"Special damage in the sense of a monetary loss which the plaintiff has sustained up to the date of trial must be pleaded and particularized…it is plain law…that one can recover in an action only special damage which has been pleaded, and of course, proved."**

12. In **Michelle Russell v Ethylyn Simms and Darren Smith 2008/CLE/gen/00440**, Sir Michael Barnett CJ explained similarly at paragraph 43:

> **"It is settled law that special damages must be pleaded and proven. The Court of Appeal in Lubin v Major [No. 6 of 1990] said:**

> **43. "From the above reasoning, it is clear that what the learned Registrar is saying, correctly in our view is that a person who alleges special damage must prove the same…"**

13. With respect to the special damages particularized in the Statement of Claim, the Claimant set out details relating to these payments in his Affidavit. Included in the payments particularised is the amount of US$30,000 that the Claimant claims to have incurred due to delays caused to other work carried out by other contractors, due to the actions of the Defendants. This item is in the nature of general damages rather than special damages, being an estimated, unquantifiable amount. Accordingly, this amount is rejected as an item of special damages.

14. Except for the US$30,000 referred to above, the amounts claimed as special damages are quantifiable amounts, the details of which were set out in the Claimant's affidavit. However, the Claimant acknowledged that he was unable to produce documented verification of an additional US$45,450.00 of the amount claimed. Otherwise, the evidence stands uncontroverted and is accepted by this Court. This Court awards $US1,026,612.66, which reflects the sums proven by the Claimant under this head of damages.

15. With respect to the claim for remediation by the new contractor in the amount of US$20,000.00 included in the US$1,026,612.66, I am convinced by the evidence that the Defendants' work was effectively of no value and even required remediation before the desired work could begin. Accordingly, the remedial work was justified and the expense proven

16. In his Affidavit, the Claimant also asserted a claim for "special and/or general damages" for the cost of remediation and completion by the new contractor in the amount of US$3,972,681.98. Such damages must be considered special damages since it is a quantifiable amount that has already been incurred by the Claimant. While this head of damages was posited in the Claimant's Affidavit, it was not claimed in the Statement of Claim. Therefore, having not been specifically pleaded and particularized as required by settled law as set out above, it follows that this head of damages is not recoverable. It is to be noted that even if this amount had been pleaded, this sum may not have been recoverable in any event, however it is not necessary for the Court to consider this issue.

General damages

17. As it relates to the claim for general damages for the loss of use, inconvenience, and distress, the conventional approach is to award a sum based on comparable awards.

18. According to his Affidavit, the Claimant's home was left in a defective and uninhabitable state for several months, he was deprived of the use and enjoyment of the property, was put to considerable personal inconvenience, distress, and embarrassment and was forced to endure the 2024 holiday season with his home in a state of disrepair with no clarity as to where his money had gone.

19. In cases of breach of contract, damages are recoverable for physical inconvenience and discomfort to the senses (sight, touch, hearing, smell) caused by the breach, as well as mental suffering directly related to physical inconvenience and discomfort. However, as noted in **Watts v Morrow [1991] 1 WLR 1421 at 1445,** damages under this head ought to be modest.

20. In **Andrew Harrison and others v Shepherd Homes Limited [2011] EWHC** 1811, the UK High Court awarded £1,500 for five (5) months of distress, inconvenience and loss of amenity to each of the claimants who were purchasers of defective homes from the Defendant developer company. In **Prakash Vyas and Minaxi Vyas v Raj Goraya t/a Taj Construction Roofing [2016] EWCA Civ 1095**, the claimants commenced an action against the defendant for failure to complete building works carried out in the claimants' home. On appeal, the claimants sought an increase to the trial judge's award for physical inconvenience and discomfort and in making its determination, the panel cited with approval the Court of Appeal's decision in **West & West v Finlay [2014] EWHC 868** that an award for physical inconvenience would not ordinarily exceed £3,000.

21. I accept that the Defendants' breach of the Design and Constructions Agreements was the direct cause of the Claimant's discomfort and inconvenience. Having reviewed the authorities, this Court awards BSD$2,000.00 for the Claimant's inconvenience and discomfort caused by the Defendant's defective performance.

22. In addition to the breach of contract, the Claimant also alleged fraudulent misrepresentation, unjust enrichment and tortious interference, and by virtue of the Default Judgement, the Defendants are deemed to have admitted the allegations of facts posited in relation to these causes of action. This notwithstanding, the separate causes of action relate to the same set of facts, and no damages are awarded separately.

Exemplary and aggravated damages

23. Exemplary damages are punitive in nature, as the object of this award is to punish the defendant for reprehensible conduct. Punitive damages are not recoverable in actions for breach of contract since the primary objective is to compensate the innocent party, not to punish the wrongdoer. However, exemplary damages ought to be distinguished from aggravated damages, which is a form of compensatory damages. This was established in **Addis v Gramaphone Co. Ltd. 1909 AC 488**. However, as the Claimant in this case has alleged additional causes of actions, including fraudulent misrepresentation, unjust enrichment and tortious interference, separate from the breach of contract, and having obtained default judgment, this rule does not by itself disqualify the Claimant from recovering exemplary damages under other causes of action.

24. Nevertheless, this Court does not consider that this case is one in which exemplary damages are appropriate. This determination is made after applying the well-established law that exemplary damages are only awarded in cases of: (i) oppressive, arbitrary or unconstitutional acts by government servants, (ii) where the defendant's conduct had been calculated by him to make a profit for himself which might well exceed the compensation payable to the Claimant; and (iii) where expressly authorised by statute: **Rooks v Barnard 1964 AC 1129.** The only category relevant to the instant case is (ii), and I do not find that the Defendants' conduct was calculated to make a profit well exceeding the compensation payable to the Claimant. I decline to award exemplary damages.

25. This Court also refuses to award aggravated damages to the Claimant. Aggravated damages are compensatory in nature and are designed to provide additional compensation where the manner in which the wrong was committed, or the motive of the defendant has caused the claimant mental distress, injury to feelings, humiliation, or was an affront to dignity beyond that which ordinarily flows from the wrong itself: **Rookes v Barnard [1964] AC 1129**.While the Claimant claims in his Affidavit to have suffered distress and embarrassment and was forced to endure the holiday season with his home in a state of disrepair with no clarity as to where his money had gone, it is my finding that the compensatory damages already awarded adequately compensates the Claimant for his distress.

Costs

26. The Default Judgment of September 2, 2025, fixed costs at US$7,500.00 up to the point of the Default Judgement, and the Claimant now seeks costs of the assessment.

Mr. Whittaker also asserted that costs should be awarded on an indemnity basis due to the Defendants' deceit, their persistent refusal to engage in these proceedings and the resultant burden of tracing funds remitted overseas imposed on the Claimant.

27. The general rule on costs is that the unsuccessful party pays the costs of the successful party. This notwithstanding, the Court has a wide discretion for determining who gets costs and the amount of costs to be paid. In any event, the discretion ought to be exercised judicially and in accordance with established principles and with regard to the facts of the case and factors relevant to the case, matters relating to the litigation, the conduct of the parties during litigation and the circumstances leading to the litigation: see Buckley L.J. in **Scherer v Counting Instruments Ltd. [1986] 2 All ER 529 at 536-537**.

28. The Court's discretion on costs is codified in section 30(1) of the Supreme Court Act:

> **"Subject to this or any other Act and to rules of court, the costs of and incidental to all proceedings in the Court, including the administration of estates and trusts, shall be in the discretion of the Court or judge and the Court or judge shall have full power to determine by whom and to what extent the costs are to be paid."**

29. This discretion on costs is also set out in Rule 71.9 of the Supreme Court Civil Procedure Rules.

Indemnity costs

30. The Court's power to order that costs be paid on an indemnity basis as opposed to the usual party to party basis was acknowledged in **E.M.I Records Ltd v Ian Cameron Wallace Ltd and another [1983] 1 Ch 59**. This position was then cited with approval in The Bahamas by Sawyer CJ in **Levine v Callendars & Co. et al 1998 BHS J. No. 75**.

31. Having established the Court's discretion in this regard, there is no fixed definition of the exact circumstances that must be present for an indemnity costs order to be appropriate. However, in **Bowen-Jones v Bowen-Jones and others [1986] 3 All ER 163** it was held that the circumstances must be exceptional. The test was described in **Connaught Restaurants Ltd. v Indoor Leisure Ltd. [1992] C.I.L.L 798** as the presence of factors that take the case outside the run of normal litigation.

32. Newman J in **Wailes v Stapleton Construction and Commercial Services Ltd and Unum Ltd [1997] 2 L.L.R. 112** put the test for indemnity costs concisely:

> **"There may be cases otherwise, falling short of such behavior in which the Court considers it appropriate to order indemnity costs. The threshold of qualification which a party would appear to have to establish is that there has been, on the party to be impugned by such an order, some conduct which can be properly categorized as unreasonableness of such a high degree that it can be categorized as exceptional. There are varying ways in which the court of litigation, parties to it could be categorized as having behaved unreasonably, but one would not, simply as a result of that, decide that they should pay costs on an indemnity basis"**

33. In my judgment, the Defendants' conduct was not so exceptional as to justify an indemnity costs order. The Defendants exercised their right not to participate in these proceedings. Further and in any event, the Claimant's obligation to prove damage would not have been displaced had the Defendants filed a Defence. Accordingly, the Court declines the request for costs on an indemnity basis in respect of the proceedings post Default Judgment.

34. Having regard to the nature of this assessment, that it was uncontested and that it was heard on the papers, the Claimant is awarded $6,000.00 for his costs for this stage of these proceedings post Default Judgment.

Interest

35. The Civil Procedure (Award of Interest) Act gives the Court discretion to award interest on damages at such rate as it thinks fit on the whole or any part of the damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment. Taking the total sum of US$1,026,612.66 awarded for special damages, interest is awarded on this sum at the prime rate of 4.25% with simple interest running from 1st January 2025, being US$63,593.73 calculated as at 16th June 2026.

36. The Civil Procedure (Award of Interest) Act also provides for interest to be paid on every judgement debt from the date of the award until paid. Accordingly, the Defendants shall pay interest on US$1,098,206.393 (US$1,026,612.66 special damages, US$2,000 general damages, US$63,593.73 interest and US$6,000 costs) at the statutory rate until paid.

Conclusion

37. The Claimant is therefore awarded the following:

(i) US$1,026,612.66 in special damages;

(ii) US$2,000 in general damages;

(iii) Interest in the amount of US$63,593.73;

(iv) Costs in the amount of $6,000.00 for proceedings post Default Judgment; and

(v) Interest on US$1,098,206.36 at the rate of 6.25% until paid.

Dated this 16th day of June, 2026

Adrienne Bellot
Assistant Registrar (Acting)