IN THE SUPREME COURT OF BELIZE, A.D. 2020

CLAIM NO. 146 of 2020

BETWEEN

(GARDEN MEDICAL CENTRE LTD.	**CLAIMANT**
(	
(AND	
(	
(FARREN NORMAN RUIZ d.b.a.	**DEFENDANT**
(F&R ENTERPRISE	

BEFORE the Honourable Madam Justice Sonya Young

Decision:

6th May, 2021

Appearances:

Ms. Misty Marin Counsel for Claimant.

KEYWORDS: Assessment of Damages - Contract - Breach - Quantum - Measure – Mitigation.

DECISION

1. This is a decision on the assessment of damages following a default judgment on a Claim for breach of contract. Briefly, the Defendant was a supplier of medical equipment and supplies. The Claimant says it contracted with the Defendant for the supply and delivery of a new Mini Vidas Blue Compact

Automated Immunoassay System, reagents and testing kits at a cost of $31,844.82. The supply of reagents and kits was to be ongoing.

2. A down payment of $15,000.00 (pleaded) or $$15,922.41 (evidenced by receipt exhibited to affidavit) was made on the 5th September, 2018. It was agreed that the machine, reagents and testing kits would be delivered within two (2) to three (3) weeks of that payment. In accordance with an agreed schedule of training, in the use of the machine (exhibited), the Defendant also agreed to provide training to the Claimant's personnel.

3. About two (2) months after the down payment had been made the Defendant delivered a used machine, one supply of reagent and testing kits and there was no training whatsoever (pleaded) or training was not completed (affidavit evidence).

4. The Claimant says it decided to accept the machine on the condition that it worked well and the Defendant agreed to provide the first set of reagents free of cost and to postpone payment of the outstanding cost because of the inconvenience caused (undated letter of agreement exhibited).

5. The Defendant, however, partially installed the software, ran some tests and began, but never completed, the training. Attempts to contact him thereafter proved futile. No further reagents or kits were received and the Claimant paid nothing further to the Defendant. On its own but without success, the Claimant attempted to source the reagents and kits.

6. As a result the machine could not be used. It could not be sold either since the Defendant alone had its passwords. The Claimant resorted to tendering out the

service which the machine should have been able to perform had the Defendant complied with the contract. Eventually, a new machine was purchased.

7. The Claimant seeks general damages for the breach and special damages in the sum of $55,562.00 for the acquisition of the new machine, the return of the deposit made and the outsourcing of the laboratory services. There is also a Claim for interest on the damages and costs.

The Assessment:

8. This Claimant ought to be placed in the same position he would have been in had the contract been performed - ***Robinson v Hartman [1843 - 60] All ER 383***. He was also under a duty to take all reasonable steps to mitigate his loss. He is not to Claim any damages which is caused by his own neglect to take such steps. Nor is he entitled to any damages which do not flow naturally from the breach or was reasonably contemplated by the contracting parties as a potential result of the breach - ***Hadley v Baxendale [1843 - 60] All ER 461***.

9. In this case, the Claimant had not made a full payment although he has claimed the full purchase price. There was, in fact, only a part payment of $15,922.41 and there will be a refund of that sum. I am unsure on what basis he seeks to recover that which he has not lost (full price).

10. He also claims damages in the sum of $19,524.50 for having to outsource medical tests which the machine would have been able to perform. This is a total amount calculated over a period of November, 2018 to October 2019. While this Court accepts the outsourcing as a possible natural result of the

breach, a wronged party is under a duty to mitigate. He must also be vigilant and can not simply sit back and allow cost to accumulate.

11. There is no evidence to prove why the Claimant had not sought assistance with the machine otherwise than from the Defendant or even replaced the machine long before November, 2019.

12. The Claimant simply says it tried to source the reagent and kits but could not. How long this particular exercise took is unknown. The Claimant then said it sourced a new machine in January, 2019 but never completed payment until November, 2019. I do not know that such a delay could have been or would have been contemplated by both parties on entering into this contract.

13. It must be reminded that the Claimant still retained $15,922.41 in payment on the original machine. The new machine sourced cost $21,037.50. This would mean, according to the Claimant, that it took 10 months to accumulate $5,115.09.

14. To my mind, it is unreasonable to expect the Defendant to compensate the Claimant for almost a year of outsourcing. Moreover, if the contract had been properly performed, the Claimant would have been paying for testing kits and reagents during this period but no effort was made to inform the Court of what that cost was or to even deduct that cost from what had been paid to outsource.

15. This Court finds three months to be an adequate period as that is when the Claimants found a replacement machine. The amount spent on outsourcing

for that period (November 2018 to January 2019) was $5,220.00 and that sum will be awarded to the Claimant as damages.

Determination:

It is Ordered:

1. Special damages are awarded to the Claimant in the sum of $21,142.41 with interest at the statutory rate of 6% from the date of judgment herein until payment in full.
2. Cost is awarded on the prescribed basis in the sum of $3,171.36

SONYA YOUNG

SUPREME COURT JUDGE