IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE COMMERCIAL DIVISION

CLAIM NO. SU2022CD00044

BETWEEN	**MB DEVELOPMENT & INVESTMENTS LIMITED**	**CLAIMANT**
AND	**A & A LIME HALL DEVELOPMENT COMPANY LIMITED**	**DEFENDANT**

Assessment of Damages – Judgment and order of 17th February 2026 – Whether loss of profits caused by delay in completion – Foreseeability of loss.

Shanique Scott instructed by Bishop & Partners for the Claimant

Patrick Peterkin instructed by PeterMc & Associates for the Defendant

G. Ashmead (Judicial Counsel)

Heard: 30th June & 14th July 2026.

IN CHAMBERS (VIA VIDEOCONFERENCE)

Cor: Batts, J.

[1] On the 17th February 2026, consequent on the breach of an "unless order," judgment was entered for the Claimant against the Defendant. Orders for specific performance and an assessment of damages were made. On the 14th July 2026, after hearing evidence I assessed damages and made the following orders:

> *"a) Damages assessed at $22,588,377.59.*

b) Interest thereon at the rate of 3% per annum from the 14th July 2026 until the date of payment.

c) Costs to the Claimant to be taxed or agreed."

I promised then that my reasons would be put in writing at a later date. This judgment fulfils that promise.

[2] It is unnecessary to recite the history of this litigation or the circumstances that resulted in judgment being entered and an assessment of damages and specific performance being ordered. It suffices to note that the claim related to an agreement for sale dated 12th October 2021 between the Claimant and the Defendant. The witness statements of Mr. Hopeton Baines filed on the 19th June 2026 and the expert evidence of Mr. Renaire Bender filed on the 5th June 2026 provide sufficient information. The Defendant called no witnesses at the assessment of damages. Although cross-examined there was no real challenge to the facts asserted in the evidence presented.

[3] I nevertheless considered the evidence and am satisfied on a balance of probabilities that the witnesses are truthful. It is apparent that the Claimant entered into a contract to purchase property from the Defendant. I accept that the intention was to construct a residential development on the said property. I specifically accept paragraphs 11, 12 and 13 of Mr. Baines' witness statement as truthful:

"11. At the time of the negotiations and execution of the Agreement, it was known that MB Development was a property development company and that the Property was being acquired for development purposes. In fact, I first became aware of the Property when I received a text message from Rachel Allen, a real estate agent, enquiring whether I would be interested in purchasing it. Ms Allen

informed me that she had contacted me because she knew that I was involved in the construction and development industry and was actively searching for land suitable for a development project.

12. Following my initial discussions with Ms Allen, she subsequently advised me that the Defendant's representative, Arlene Gaynor, had asked her to forward a voice note to me outlining a number of reasons why the Property would be suitable for development and why I should consider purchasing it for that purpose.

13. The Property was therefore marketed to me as a development opportunity and, throughout the negotiations leading to the execution of the Agreement, it was understood that MB Development intended to acquire the Property for the purpose of undertaking a residential development project."

[4] I accept also that had the Defendant completed the contract the proposed development would have commenced in or about April 2022. It was at all material times reasonably foreseeable, and the Defendant ought to have foreseen, that a failure to complete the agreement would cause delay to the development with consequential loss.

[5] It was urged upon me that property values increase over time and hence the return on investment should increase. However, Mr. Bender's unchallenged expert opinion, which I accept, is that this is not sufficient to offset the loss caused by increased costs of construction. Furthermore, as he indicated, the return on this type of investment has not kept pace with inflation and there has been a softening of the market. In this regard I accept his calculation and opinion that the loss

amounts to $22,588,377.59. In preparing this judgment I note that the expert credited the interest earned of $2,596,802.65. The amount of the judgment ought therefore to be reduced by that sum. Judgment should be for $20,241,594.94.

[6] The Defendant's effort to deny knowledge of the intended use is rather pathetic. In the first place the Claimant's name was a slight clue. But furthermore, the voice notes put in evidence clearly show that the Defendant's principal, was aware of the purpose. Therefore, any delay in completion would foreseeably cause financial loss.

[7] For these reasons therefore I assessed damages in the amount previously stated.

David Batts
Puisne Judge.