



Commercial Contract Mock Mediation and Trial

Training Document

In association
with

3PB
BARRISTERS



The Insurance
Institute of Bristol
Chartered Insurance Institute

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Introduction

On Wednesday 9th October 2019 we ran a Commercial Contract Mock Mediation and Trial in association with 3PB Barristers and the Insurance Institute of Bristol. The event was held at Coopers Hall, Bristol Old Vic.

This bundle includes the legal information provided by the Claimant and Defendant's solicitors and can be used to follow the process in the videos.

The videos of the full mediation and trial sessions can enable viewers to claim up to 1.5 hours of CPD point as part of the CII Member CPD scheme.

Videos are available at www.arag.co.uk/mock-trial



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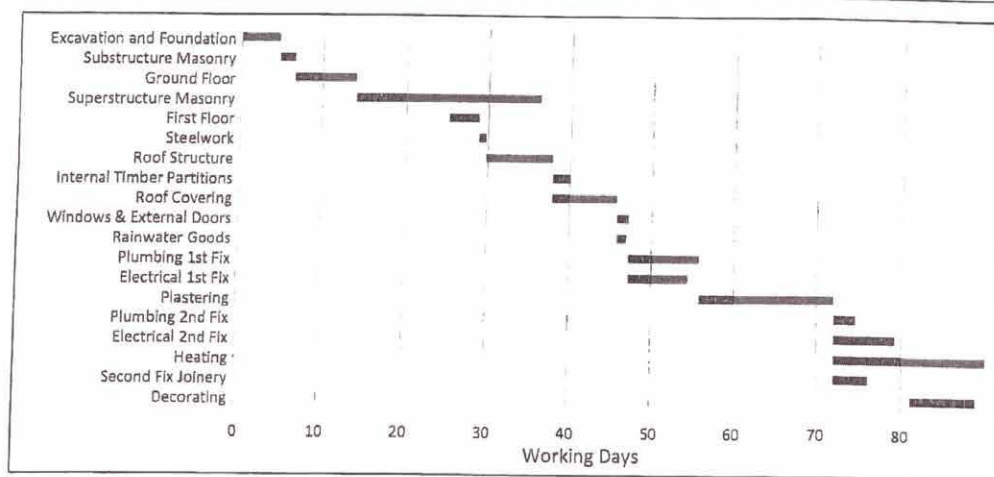
The mock trial and mediation session shows a contractual dispute between a builder and an individual. In this situation ARAG are insuring the claimant under a commercial legal expenses policy.

For assistance to be available under an ARAG policy, a valid claim needs to arise which is subsequently assessed by solicitors to have reasonable prospects of success.

If you would like any further information on mediation or commercial contract disputes please contact us via pressoffice@arag.co.uk

Back page of quotation

Schedule Of Works



Contract

BUILDING CONTRACT

THIS BUILDING CONTRACT (the "Contract") dated this 30th day of June,
2017

BETWEEN:

Colin Clement (Contractor)

- AND -

Danielle Fender (Client)

BACKGROUND:

- A. The Client is of the opinion that the Contractor has the necessary qualifications, experience and abilities to provide services to the Client.
- B. The Contractor is agreeable to providing such services to the Client on the terms and conditions set out in this Contract.

IN CONSIDERATION OF the matters described above and of the mutual benefits and obligations set forth in this Contract, the receipt and sufficiency of which consideration is hereby acknowledged, the Client and the Contractor (individually the "Party" and collectively the "Parties" to this Contract) agree as follows:

Services Provided

1. The Client hereby agrees to engage the Contractor to provide the Client with the following services (the "Services"):
 - Build a house from scratch .
2. The Services will also include any other tasks which the Parties may agree on. The Contractor hereby agrees to provide such Services to the Client.

Term of Contract.

3. The term of this Contract (the "Term") will begin on the date of this Contract and will remain in full force and effect until the completion of the Services, subject to earlier termination as provided in this Contract. The Term of this Contract may be extended with the written consent of the Parties.
4. In the event that either Party wishes to terminate this Contract prior to the completion of the Services, that Party will be required to provide 10 days' written notice to the other Party.

Performance

5. The Parties agree to do everything necessary to ensure that the terms of this Contract take effect.

Currency

6. Except as otherwise provided in this Contract, all monetary amounts referred to in this Contract are in GBP.

Payment

7. The Contractor will charge the Client a flat fee of £125,000 for the Services (the "Payment").
8. A deposit of £10,000.00 (the "Deposit") will be payable by the Client.
9. For the remaining amount, the Client will be invoiced as follows:
 - Project Stage payments to be agreed.
10. Invoices submitted by the Contractor to the Client are due within five days of receipt.
11. The Contractor will be responsible for all income tax liabilities and National Insurance or similar contributions relating to the Payment and the Contractor will indemnify the Client in respect of any such payments required to be made by the Client.

Reimbursement of Expenses

12. The Contractor will be reimbursed from time to time for reasonable and necessary expenses incurred by the Contractor in connection with providing the Services.

13. All expenses must be pre-approved by the Client.

Penalties for Late Payment

14. Any late payments will trigger a fee of 5.00% per month on the amount still owing.

Confidentiality

15. Confidential information (the "Confidential Information") refers to any data or information relating to the business of the Client which would reasonably be considered to be proprietary to the Client including, but not limited to, accounting records, business processes, and client records and that is not generally known in the industry of the Client and where the release of that Confidential Information could reasonably be expected to cause harm to the Client.
16. The Contractor agrees that they will not disclose, divulge, reveal, report or use, for any purpose, any confidential information which the Contractor has obtained, except as authorised by the Client or as required by law. The obligations of confidentiality will apply during the term of this Contract and will survive indefinitely upon termination of this Contract.
17. All written and oral information and material disclosed or provided by the Client to the Contractor under this Contract is Confidential Information regardless of whether it was provided before or after the date of this Contract or how it was provided to the Contractor.

Ownership of Intellectual Property

18. All intellectual property and related material, including any trade secrets, moral rights, goodwill, relevant registrations or applications for registration, and rights in any patent, copyright, trademark, trade dress, industrial design and trade name (the "Intellectual Property") that is developed or produced under this Contract, will be the sole property of the Client. The use of the Intellectual Property by the Client will not be restricted in any manner.
19. The Contractor may not use the Intellectual Property for any purpose other than that contracted for in this Contract except with the written consent of the Client. The Contractor will be responsible for any and all damages resulting from the unauthorised use of the Intellectual Property.

Return of Property

20. Upon the expiry or termination of this Contract, the Contractor will return to the Client any property, documentation, records, or Confidential Information which is the property of the Client.

21. In the event that this Contract is terminated by the Client prior to completion of the Services the Contractor will be entitled to recovery from the site or premises where the Services were carried out, of any materials or equipment which is the property of the Contractor or, where agreed between the Parties, to compensation in lieu of recovery.

Capacity/Independent Contractor

22. In providing the Services under this Contract it is expressly agreed that the Contractor is acting as an independent contractor and not as an employee. The Contractor and the Client acknowledge that this Contract does not create a partnership or joint venture between them, and is exclusively a contract for service.

Notice

23. All notices, requests, demands or other communications required or permitted by the terms of this Contract will be given in writing and delivered to the Parties at the following addresses:

Colin Clement,

Danielle Fender,

or to such other address as either Party may from time to time notify the other.

Indemnification

24. Except to the extent paid in settlement from any applicable insurance policies, and to the extent permitted by applicable law, each Party agrees to indemnify and hold harmless the other Party, and its respective affiliates, officers, agents, employees, and permitted successors and assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever, which result from or arise out of any act or omission of the indemnifying party, its respective affiliates, officers, agents, employees, and permitted successors and assigns that occurs in connection with this Contract. This indemnification will survive the termination of this Contract.

Modification of Contract

25. Any amendment or modification of this Contract or additional obligation assumed by either Party in connection with this Contract will only be binding if evidenced in writing signed by each Party or an authorised representative of each Party.

Building Contract

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Time of the Essence

26. Time is of the essence in this Contract. No extension or variation of this Contract will operate as a waiver of this provision.

Assignment

27. The Contractor will not voluntarily, or by operation of law, assign or otherwise transfer its obligations under this Contract without the prior written consent of the Client.

Entire Agreement

28. It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Contract except as expressly provided in this Contract.

Enurement

29. This Contract will enure to the benefit of and be binding on the Parties and their respective heirs, executors, administrators and permitted successors and assigns.

Titles/Headings

30. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Contract.

Gender

31. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

Governing Law

32. This Contract will be governed by and construed in accordance with the laws of England.

Severability

33. In the event that any of the provisions of this Contract are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Contract.

Waiver

34. The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Contract by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions.



IN THE COUNTY COURT
AT BRISTOL

Claim No: 3PB12345

BETWEEN:

MR COLIN CLEMENT

Claimant

- and -

MS DANIELLE FENDER

Defendant

SHORT CASE SUMMARY

1. The Claimant, Mr Clement, is a builder. He was contracted by the Defendant, Ms Fender, to build a new house on a plot of land purchased by the Defendant. The Defendant's intention was to move into the house when it was built.
2. The parties entered into a written contract dated 30/6/2017 for the Claimant to 'build a house from scratch' for a flat fee of £125,000. There was no date for completion in the contract, but the quotation provided by the Claimant states that the works should take 90 working days.
3. Following disagreements about the speed at which the project was progressing, the Defendant notified the Claimant orally on or around 14/4/2018 that the contract was being terminated. This was confirmed in writing on 16/4/2018. Either party was entitled to terminate the contract at any point, as per clause 4 of the contract, albeit 10 days written notice was required. There is no provision in the contract for how to calculate what is to be paid under the contract if it is terminated early.
4. The parties are agreed that the works to the house were not complete when the contract was terminated. To date, the Defendant has paid the Claimant the sum of £110,000.
5. The Claimant's claim is for the balance of £15,000 that he claims is due and owing under the contract. The Defendant denies that any money is due and owing under the contract, and that at best, the Claimant has a claim for breach of contract. He also contends that the Defendant has failed to mitigate her loss.
6. The Defendant has brought a counterclaim for unavoidable remedial and finishing costs in the sum of £15,000. These works were completed in December 2018. The Claimant denies he is in breach of contract and contends that if permitted to return to site he would have finished the job and completed the snagging. He also contends that the Defendant has failed to evidence her loss.
7. The Defendant also claims general damages for failure to complete the project on time, on the basis that she has been forced to move her family in with her parents after her tenancy expired on her previous flat. The Claimant denies he is in breach of contract, and contends that general damages are not appropriate in the circumstances.
8. The parties have jointly instructed an expert surveyor, . He has concluded that the works as left by the Claimant contain some minor defects and are unfinished. In his opinion, the cost of remedying the defects and completing the work is £10,000, which he apportions 50/50 between remedial and finishing works.

AGREED LIST OF ISSUES

Claim

1. Has the contract been terminated?
2. If so, was it terminated in accordance with clause 4?
3. What, if anything, is the Claimant entitled to, either as money due and owing or as damages for breach of contract?

Counterclaim

4. Remedial and finishing works – is the Claimant in breach of contract? If so, what is the Defendant entitled to?
5. Claim for general damages – is the Claimant in breach of contract? If so, what is the Defendant entitled to?

Claimant's Statement of Costs

N260

Statement of Costs (summary assessment)

In the COUNTY COURT AT BRISTOL	
Court	
Case Reference	3PB12345

Judge/Master

Case Title

Claimant's

Statement of Costs for the hearing on 09/10/2013

(interim application/fast track trial)

Description of fee earners*

- (a) (name) (grade) (hourly rate claimed)
- (b) (name) (grade) (hourly rate claimed)
- (c) (name) (grade) (hourly rate claimed)
- (d) (name) (grade) (hourly rate claimed)

(B) (£217.00)

Attendances on (party)

Personal attendances

(a) (number)	5.00	hours at £	217.00	£	1,085.00
(b) (number)		hours at £		£	0.00
(c) (number)		hours at £		£	0.00
(d) (number)		hours at £		£	0.00

Letters out/emails

(a) (number)	5.00	hours at £	217.00	£	1,085.00
(b) (number)		hours at £		£	0.00
(c) (number)		hours at £		£	0.00
(d) (number)		hours at £		£	0.00

Telephone

(a) (number)	5.00	hours at £	217.00	£	1,085.00
(b) (number)		hours at £		£	0.00
(c) (number)		hours at £		£	0.00
(d) (number)		hours at £		£	0.00

Claimant's Statement of Costs

Attendances on opponents (including negotiations):

Personal attendances

(a) (number)		hours at £		£	0.00
(b) (number)		hours at £		£	0.00
(c) (number)		hours at £		£	0.00
(d) (number)		hours at £		£	0.00

Letters out/emails

(a) (number)	7.00	hours at £	217.00	£	1,519.00
(b) (number)		hours at £		£	0.00
(c) (number)		hours at £		£	0.00
(d) (number)		hours at £		£	0.00

Telephone

(a) (number)	3.30	hours at £	217.00	£	716.10
(b) (number)		hours at £		£	0.00
(c) (number)		hours at £		£	0.00
(d) (number)		hours at £		£	0.00

Attendance on others:

Personal attendances

(a) (number)		hours at £		£	0.00
(b) (number)		hours at £		£	0.00
(c) (number)		hours at £		£	0.00
(d) (number)		hours at £		£	0.00

Letters out/emails

(a) (number)	5.00	hours at £	217.00	£	1,085.00
(b) (number)		hours at £		£	0.00
(c) (number)		hours at £		£	0.00
(d) (number)		hours at £		£	0.00

Telephone

(a) (number)		hours at £		£	0.00
(b) (number)		hours at £		£	0.00
(c) (number)		hours at £		£	0.00
(d) (number)		hours at £		£	0.00

Claimant's Statement of Costs

Site inspections etc.

(a) (number)		hours at £		£	0.00
(b) (number)		hours at £		£	0.00
(c) (number)		hours at £		£	0.00
(d) (number)		hours at £		£	0.00

Work done on documents, as set out in schedule:

3,406.40

Attendance at hearing:

(a) (number)		hours at £		£	0.00
(b) (number)		hours at £		£	0.00
(c) (number)		hours at £		£	0.00
(d) (number)		hours at £		£	0.00
(e) Fixed costs				£	

(a) (number)		hours travel and waiting time £		£	0.00
(b) (number)		hours travel and waiting time £		£	0.00
(c) (number)		hours travel and waiting time £		£	0.00
(d) (number)		hours travel and waiting time £		£	0.00

Sub Total £ 9,981.50

- (A) Solicitors and Chartered Legal Executives with over eight years post qualification experience including at least eight years litigation experience.
- (B) Solicitors and Chartered Legal Executives with over four years post qualification experience including at least four years litigation experience.
- (C) Other solicitors and Chartered Legal Executives and fee earners of equivalent experience.
- (D) Trainee solicitors, paralegals and other fee earners.

"Chartered Legal Executive" means a Fellow of the Chartered Institute of Legal Executives (CILEx). Those who are not Fellows of CILEx are not entitled to call themselves Chartered Legal Executives and in principle are therefore not entitled to the same hourly rate as a Chartered Legal Executive.

Claimant's Statement of Costs

Brought forward £ 9,981.50

Counsel's fees (name) (year of call)

Dr Zhen Ye (2016)

Fee for [advice/conference/documents]

£

Fee for hearing

£

1,650.00

Other expenses

Court fees

£

Others (give brief description)

£

Total

£

11,631.50

Amount of VAT claimed

on solicitors and counsel's fees

£

2,346.40

on other expenses

£

Grand Total £

13,977.90

The costs stated above do not exceed the costs which the Defendant is liable to pay in respect of the work which this statement covers. Counsel's fees and other expenses have been incurred in the amounts stated above and will be paid to the persons stated.

Defendant

Signed

03/10/2019

Dated

Name of Partner signing

Name of firm of solicitors

Claimant's Statement of Costs

Schedule of work done on documents

Item	Description of work (one line only)	(A) hours	(B) hours	(C) hours	(D) hours	Total £
1	Drafting Pleadings	3				651.00
2	Reviewing Defence	3				651.00
3	Review Directions	2				434.00
4	Drafting Claimant's List of Documents	1				217.00
5	Reviewing Defendant's Disclosure	1				217.00
6	Drafting Claimant's Witness Statement	1				217.00
7	Drafting Pre-Trial Checklist	2				434.00
8	Reviewing Defendant's Witness Statement	0.5				108.50
9	Instructions to Counsel	1.5				325.00
10	Drafting Statement of Costs	0.2				43.40
11	Reviewing Bundle and Case Summary	0.5				108.50
12						
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27						
28						
29						
30						
Total						3,406.40

Defendant's Statement of Costs

N260

Statement of Costs (summary assessment)

In the COUNTY COURT AT BRISTOL	
Court	
Case Reference	3PB12345

Judge/Master

Case Title

DEFENDANT'S

Statement of Costs for the hearing on 9 OCTOBER 2019

(interim application/fast track trial)

Description of fee earners*

(a) (name) (grade) (hourly rate claimed)	(A) (£300.00)
(b) (name) (grade) (hourly rate claimed)	(D) (£118.00)
(c) (name) (grade) (hourly rate claimed)	
(d) (name) (grade) (hourly rate claimed)	

Attendances on (party)

Personal attendances

(a) (number)	4.00	hours at £	300.00	£	1,200.00
(b) (number)		hours at £		£	0.00
(c) (number)		hours at £		£	0.00
(d) (number)		hours at £		£	0.00

Letters out/emails

(a) (number)	3.00	hours at £	300.00	£	900.00
(b) (number)	1.00	hours at £	118.00	£	118.00
(c) (number)		hours at £		£	0.00
(d) (number)		hours at £		£	0.00

Telephone

(a) (number)	3.00	hours at £	300.00	£	900.00
(b) (number)		hours at £		£	0.00
(c) (number)		hours at £		£	0.00
(d) (number)		hours at £		£	0.00

Defendant's Statement of Costs

Attendances on opponents (including negotiations):

Personal attendances

(a) (number)		hours at £		£	0.00
(b) (number)		hours at £		£	0.00
(c) (number)		hours at £		£	0.00
(d) (number)		hours at £		£	0.00

Letters out/emails

(a) (number)	2.00	hours at £	300.00	£	600.00
(b) (number)	4.00	hours at £	118.00	£	472.00
(c) (number)		hours at £		£	0.00
(d) (number)		hours at £		£	0.00

Telephone

(a) (number)	3.00	hours at £	300.00	£	900.00
(b) (number)	0.30	hours at £	118.00	£	35.40
(c) (number)		hours at £		£	0.00
(d) (number)		hours at £		£	0.00

Attendance on others:

Personal attendances

(a) (number)		hours at £		£	0.00
(b) (number)		hours at £		£	0.00
(c) (number)		hours at £		£	0.00
(d) (number)		hours at £		£	0.00

Letters out/emails

(a) (number)	1.00	hours at £	300.00	£	300.00
(b) (number)	4.00	hours at £	118.00	£	472.00
(c) (number)		hours at £		£	0.00
(d) (number)		hours at £		£	0.00

Telephone

(a) (number)		hours at £		£	0.00
(b) (number)		hours at £		£	0.00
(c) (number)		hours at £		£	0.00
(d) (number)		hours at £		£	0.00

Defendant's Statement of Costs

Site inspections etc.

(a) (number)		hours at £		£	0.00
(b) (number)		hours at £		£	0.00
(c) (number)		hours at £		£	0.00
(d) (number)		hours at £		£	0.00

Work done on documents, as set out in schedule:

3,505.00

Attendance at hearing:

(a) (number)		hours at £		£	0.00
(b) (number)		hours at £		£	0.00
(c) (number)		hours at £		£	0.00
(d) (number)		hours at £		£	0.00
(e) Fixed costs				£	

(a) (number)		hours travel and waiting time £		£	0.00
(b) (number)		hours travel and waiting time £		£	0.00
(c) (number)		hours travel and waiting time £		£	0.00
(d) (number)		hours travel and waiting time £		£	0.00

Sub Total £ 9,402.40

- (A) Solicitors and Chartered Legal Executives with over eight years post qualification experience including at least eight years litigation experience.
- (B) Solicitors and Chartered Legal Executives with over four years post qualification experience including at least four years litigation experience.
- (C) Other solicitors and Chartered Legal Executives and fee earners of equivalent experience.
- (D) Trainee solicitors, paralegals and other fee earners.

"Chartered Legal Executive" means a Fellow of the Chartered Institute of Legal Executives (CILEx). Those who are not Fellows of CILEx are not entitled to call themselves Chartered Legal Executives and in principle are therefore not entitled to the same hourly rate as a Chartered Legal Executive.

Defendant's Statement of Costs

Brought forward £ 9,402.40

Counsel's fees (name) (year of call)

JACK WEBB (2016)

Fee for [advice/conference/documents]

£

Fee for hearing

£

1,650.00

Other expenses

Court fees

£

Others (give brief description)

£

Total

£

11,052.40

Amount of VAT claimed

on solicitors and counsel's fees

£

2,210.48

on other expenses

£

Grand Total £

13,262.88

The costs stated above do not exceed the costs which the CLAIMANT is liable to pay in respect of the work which this statement covers. Counsel's fees and other expenses have been incurred in the amounts stated above and will be paid to the persons stated.

CLAIMANT

Signed

03 OCTOBER 2019

Dated

Name of Partner signing

Name of firm of solicitors

Defendant's Statement of Costs

Schedule of work done on documents

Item	Description of work (one line only)	(A) hours	(B) hours	(C) hours	(D) hours	Total £
1	Review Pleadings	1				300.00
2	Draft Defence	2				600.00
3	Review Directions	0.5				150.00
4	Drafting Defendant's List of Documents		1			118.00
5	Reviewing Claimant's Disclosure	0.5				150.00
6	Drafting Defendant's Witness Statement	5				1,500.00
7	Drafting Pre-Trial Checklist		1			118.00
8	Reviewing Claimant's Witness Statement	0.5				150.00
9	Instructions to Counsel	0.5				150.00
10	Drafting Statement of Costs	0.2				60.00
11	Reviewing Bundle and Case Summary	0.5	0.5			209.00
12						
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16						
17						
18						
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29						
30						
Total						3,505.00

Claimant's Witness Statement

IN THE COUNTY COURT
AT BRISTOL
BETWEEN:

Claimant, 1st, 23/8/2019
Claim No: 3PB12345

MR COLIN CLEMENT

Claimant

and -

MS DANIELLE FENDER

Defendant

**WITNESS STATEMENT
OF COLIN CLEMENT**

I, Colin Clement of [REDACTED], will say as follows:

1. I live at [REDACTED] and work as a sole trader in the construction industry. I make this witness statement from facts and matters within my own knowledge. Where I refer to facts and matters outside my own knowledge, I identify the source of those facts and matters.
2. In or around April 2017 I received a call from the Defendant, Danielle Fender, to ask me to provide a quotation for building a new house on a former garden at [REDACTED].
3. I provided a quotation for £125,000 on 15th June 2017. This was generated for me by a company called Guess-a-quote, an estimating company that I use [REDACTED] with customer estimates, based on the architectural plans provided to me by the Defendant.
4. At the back of the quotation was a Schedule of Works giving an estimated programme and overall duration of 90 working days. This was also done by Guess-a-quote as part of the estimating exercise and it shows a typical length of build for this type of project, but it makes assumptions about the activities (like some of the activities happening all at the same time) and it makes no allowance for any delays or unforeseen circumstances arising during the build.
5. The Defendant accepted my quote, and I delivered a General Services Agreement ('the Contract') to the Defendant by hand on 30th June 2017.
6. The duration of the Contract was set out at Clause 3:

Term of Agreement

3. The Term of this Agreement ('the Term') will begin on the date of this Agreement and will remain in full force and effect until the completion of the Services, subject to earlier termination as provided by this Agreement. The Term of this Agreement may be extended with the written consent of the Parties.

4. In the event that either Party wishes to terminate this Agreement prior to the completion of the Services, that Party will be required to provide 10 days' written notice to the other Party.

7. My understanding was that I was to complete the build within a reasonable period of time because no other timescale was discussed. Usually a customer would tell me from the start if they had a deadline in mind. I thought that it would take approximately seven months to complete based on my experience. 1

Claimant's Witness Statement

8. Having signed the contract and received the deposit in the middle of July 2017, I was due to start work at the beginning of August 2017. Unfortunately the project was delayed as the Defendant needed a build over notice from Wessex Water. We couldn't start until this was in place, and the build was delayed for about 4 weeks.
9. After that, the project progressed satisfactorily, apart from some delays for the bad weather, and delays due to not having a mains power supply at the site.
10. I went away on a pre-booked holiday to Australia over Christmas 2017, and was away for 3 weeks. I informed the Defendant of this holiday when I quoted for the work, and that my son would handle the site, which he did.
11. However, it was clear from Spring 2018 that the Defendant was not happy with the speed that construction was going. Whenever she came over to visit, I could hear her muttering under her breath about how slowly we were going. Whenever she asked me about it, I said we were going as quickly as we could, given the bad weather and lack of power.
12. On 14th April 2018, I was away on a weekend break with my family. The Defendant telephoned me and said she had been to the Property, and that she didn't think I'd done anything since she'd visited 2 weeks earlier. We got into an argument, with her yelling at me about having to live with her parents because I'd taken so long, and she told me that the contract was over and I shouldn't go back to the Property on Monday.
13. On the Monday, the Defendant sent me an email confirming that the contract was terminated with immediate effect, and that she had changed the locks on the Property. She also told me that she had left my tools out on the road to collect. I rushed over to the Property to collect them, and thankfully managed to recover everything.
14. The Defendant has paid me £110,000 for the work, with the last payment being made on 24th December 2017. I am due the rest of the money under the contract, as the Property was nearly complete, and the Defendant didn't terminate the contract properly.
15. In terms of the counterclaim:
 - a. I don't agree that the work has been carried out poorly. There is some snagging to be done, but that would have been done if I had been allowed to complete the contract properly.
 - b. I don't agree that the project was delayed. As I've said above, I thought the works would take about seven months, and we were on course to finish in May 2018. No deadline for the works was ever discussed.

STATEMENT OF TRUTH

I believe the contents of this witness statement are true.

Signature:

Date:

Defendant's Witness Statement

On behalf of: DEFENDANT
Witness: D FENDER
Number: 1
Exhibits DF1
Date: 12/08/2019

IN THE COUNTY COURT AT BRISTOL

Claim No.: [REDACTED]

BETWEEN

MR COLIN CLEMENT

Claimant

- and -

MS DANIELLE FENDER

Defendant

**WITNESS STATEMENT OF
DANIELLE FENDER**

I, Danielle Fender of [REDACTED], Bristol will say as follows:

1. I make this witness statement in response to the Claimant's claim against me for damages, and for related claims, counterclaims and orders. All the matters to which I refer hereinafter are true and within my own knowledge or true to the best of my information and belief. Where I have been provided with information by someone else I state this to be the case and truly believe such information to be true.

BACKGROUND

2. In 2017, I received a sum of money as inheritance from my grandfather. I decided with my partner to use it to purchase a plot of land on sale in [REDACTED], Bristol and build a house on it for our family to live in ("the Property"). [REDACTED] an architect, Michael Pringle, to draw up plans for the works. Once planning permission was obtained, Michael introduced us to the Claimant. On the basis of the plan and planning permission the Claimant prepared an estimate and schedule of works, in which he quoted £125,000 for completion within 90 days of work commencing. I was pleased with this because the lease on my then flat was due to expire on 28 February 2018.
3. On 30 June 2017 we contracted with the Claimant to complete the works for £125,000 ("the Contract").

Defendant's Witness Statement

THE WORKS

4. I inspected the progress of the works every few weeks or so. Within 3-4 weeks of works commencing I became concerned at the speed of progress (or lack thereof). The Claimant would frequently go on holiday without notice and without arranging for the works to continue in his absence. This further delayed completion.
5. This gave me grave cause for concern. I contemplated terminating the Contract. I did not do so because I knew that would involve instructing new builders, which would be a major increase in cost. I thought it best to preserve the working relationship with the Claimant and allow him to finish the works. Regrettably, the date of completion slipped further and further away.
6. Then, in or around December 2017, the Claimant went on holiday to Australia. He had told me he would be gone for 3 weeks. In fact, he was off site for 6 weeks. The Claimant told me that his son would manage the site in his absence. Practically no progress was made during this period. When the Claimant did return, progress continued at a snail's pace. Works had taken far longer than 90 days. We were well past the expected completion date, which would have been 5 November 2017.
7. In fact, work was so delayed that my tenancy at my previous flat expired, and myself, my partner and our 3 children had to move to my parents' house in Gloucester.

WORKMANSHIP

8. During this time delays were not my only concern with the Claimant's work; he also appeared completely incompetent. There were so many problems with the works I honestly cannot recall them all.
9. I do remember that the Claimant kept complaining that he did not have access to electricity. I would note that firstly, most of his power tools seemed to be p[REDACTED] only, that I told him from the start he could use the outside socket from [REDACTED] after I came to an agreement with the people living there.

TERMINATION

10. As a result of the delays and incompetence highlighted above, I began to take a more active interest in the works. On 14 April, which was a Saturday, I was in the area, and decided to visit the Property to see how works were going. When I arrived, it was clear to me that nothing had happened since I had last visited a couple of weeks earlier.
11. I was furious, as I felt I was being taken for a ride by the Claimant. I telephoned him to give him a piece of my mind. He gave as good as he got, and I ultimately told him not to come back to the Property on the Monday.
12. On 16 April 2018, I had some other contractors remove the Claimant's tools and materials and place them on the road, and I had the locks changed. I then emailed the Defendant and let him know that the contract was ended.

THE STATE OF THE PROPERTY

13. The full scale of the Claimant's defective workmanship has now become apparent, and is listed extensively in the report of Mr Smith.
14. As of December 2018, following extensive rectification work, we moved into the Property. We are still discovering problems with the Claimant's workmanship to this day, and are not enjoying living in what was meant to be our dream home.

Defendant's Witness Statement

LOSS

15. We have done our best to keep the remedial work down, performing some of it ourselves and with the assistance of friends. So far, the unavoidable costs are £15,000.
16. I am also claiming general damages for distress and inconvenience due to the delay in being able to move into my own home. We had to stay at my parents' house in Gloucester from March 2018 to December 2018. My three children, my partner and I had to share 2 bedrooms, and we had to get up very early to drop my children at school in Bristol before going to work ourselves. The whole experience was very upsetting, and I continue to be very upset by the state of the Property now that we live in it.

STATEMENT OF TRUTH

I, Danielle Fender, do hereby confirm that the content of this, my witness statement, is true to the best of my knowledge and belief.

Dated this 12th day of August 2019

Danielle Fender

Claimant's Skeleton Argument

IN THE COUNTY COURT AT BRISTOL

Claim No: 3PB12345

B E T W E E N

MR COLIN CLEMENT

Claimant

- and -

MS DANIELLE FENDER

Defendant

CLAIMANT'S SKELETON ARGUMENT

Suggested Pre-reading (15 minutes)

Agreed Case Summary ('ACS')

Short Case Summary

Building Contract dated 30 June 2017 (the '**Contract**')

Witness Statement of Colin Clement ('**WS/CC**')

Witness Statement of Danielle Fender ('**WS/DF**')

1. INTRODUCTION

- 1 This is the Claimant's ('C') claim against the Defendant ('D') for damages for breach of contract made in writing on 30 June 2017 between the parties relating to the construction of a new house adjoining to D's existing house.

2. FACTS

- 2 Please see Agreed Case Summary and Short Case Summary

3. Legal principles

- 3 Breach of Contract is the existence of an agreement where there is a failure to keep the promises or agreement or failure to live up to his or her responsibilities of a contract.
- 3 The remedy that is available in a contract which is damages is due to the losses or costs which incurred because of another party's wrongful act. Damages are the payment in one form or a remedy which is provided by the common law to provide financial compensation or loss or debt where there has been a breach of contract.

4. ISSUES

- 4 The parties have agreed that the issues of the claim are:
 - 4 Has the contract been terminated?

Claimant's Skeleton Argument

- 4 If so, was it terminated in accordance with Clause 4
- 4 What, if any, is the Claimant entitled to, either as money due and owing or as damages for breach of contract?
- 4 In addition, the parties also have agreed that the issues of D's counterclaim are:
 - 4 Remedial and finishing works—is C in breach of the contract? If so, what is D entitled to?
 - 4 Claim for general damage—is C in breach of the contract? If so, what is D entitled to?

Has the contract been terminated under the contractual clause?

- 4 C argues that the Contract had not been terminated under the contractual clause because:
 - 4 The Contract contains a termination provision, that is, Clause 4;
 - 4 The provision, if operate correctly, brings C's employment under the Contract to an end but do not terminate the contract as even where C's employment is terminated the Contract goes on to provide what should then occur in terms of the payment etc.,
 - 4.3.3 In order to operate Clause 4, it must be strictly be complied with;
 - 4.3.4. Clause 4 requires a party who intends to terminate the Contract to send a 10-day notice to the other side;
 - 4 It is C's case that C accepted D's repudiatory breach and terminated the Contract on 16 April 2018.
 - 4.3.5. On D's email date 16 April 2018, she expressed that the Contract was terminated with immediate effect without giving a 10-day notice (WS/CC, para 13).
 - 4 There is an implied term of the Contract that D would not hinder or prevent C from carrying out his obligation in accordance with the terms of the Contract and therefore, the Contract was not terminated under Clause 4 of the Contract.
 - 4.3.6. Therefore, the Contract was not terminated under Clause 4 of the Contract.
- 4 from executing the works in a regulated and orderly manner (*Milburn Services Ltd v United Trading Group (UK) Ltd (1995) 52*)
- 4 By changing the locks of the Property and leaving C's tools on the road to collect, D prevented C from access the site to carry out his obligation in accordance with the terms of the Contract (WS/DF, para 12).
- 4 C rushed to the site and collected his tools from the road, thereby accepting D's repudiation and treating the Contract as an end (WS/CC, para 13).

Claimant's Skeleton Argument

- 4 If the Court is minded to consider that D terminated the Contract by the Call or the Email, her action of denying C's access to the Property and leaving C's tools on the road is a breach of Clause 21 which states that in the case of D terminating the Contract, C is entitled to recover from the site/premises where the services were carried of any materials or equipment which is the property of C or where agreed between the Parties, to compensation in lieu of recovery.

What is C entitled to, money due and owing or damages for breach of contract?

- 4 C argues that he is entitled to the damages in respect of loss of gains which he has been deprived of by D's repudiatory breaches on the grounds that it is a rule of common law that if a party sustains a financial loss as a result of breach of contract, this party is to be placed in the same position with respect to the damage as if the contract had been performed. (*Golden Strait Corporation v Nippon Yusen Kubishika Kaisha, 'The Golden Victory'* [2007] UKHL 12.)

- 4 If the Contract had been performed, C would be paid £125,000 in total, including £110,000 that had been paid on 24 December 2017. Therefore, it is C's case that he is entitled to the outstanding balance of £15,000, which is both money due and owing and damages for breach of contract.

- 4 D may argue that even if D wrongfully terminate the Contract prior to completion, C would be entitled to be paid for work done. It is, however, C's case that:

- 4 The Property was nearly complete, and there was only some snagging to be done (**WS/CC, para 14**); and

- 4 But for D's obstruction, C would have completed the said snagging to be entitled the full payment;

- 4 If the Court is minded to treat the Contract as terminated by D, C submits that he is entitled to be paid for work done and loss of profit on the work in the total sum of £15,000.

Remedial and finishing works—is C in breach of the contract? If so, what is D entitled to?

- 4 C argues that C was not in breach of the Contract on the grounds that:

- 4 the Contract does not include a contractual date for completion; neither had C been told there was a definite deadline (**WS/CC, para 7**);

- 4 D has failed to provide any evidence to prove that C knew her tenancy agreement would expire on February 2018; therefore, there was a definite deadline;

Claimant's Skeleton Argument

- 4 The Schedule of Works was made before the Contract. Contract as Clause 28, the entire agreement clause, prevents parties relying on it from being liable for any statements or representations except as expressly set out in the Contract. Therefore, the Schedule of Work has not been incorporated in the Contract
- 4 the Project was delayed for four weeks as D needed a build over notice from Wessex Water (**WS/CC para 8**);
- 4 there were further delays caused by bad weather and lack of mains power supply at the site which were out of D's control (**WS/CC, para 9**); and
- 4 C informed D that he would be away for three weeks over Christmas 2017 when he quoted for the work and his son handled the site during his absence (**WS/CC, para 10**).

4.11.

- 4 C submits that D is not entitled to damage and loss for remedial and finishing works, as but for D's repudiatory breach of the Contract, C would be able to finish the project within a reasonable period of time, and there would not need for D to carry out any remedial and finishing work.

4.12. Claim for general damage—is C in breach of the contract? If so, what is D entitled to?

- 4 Non-pecuniary and non-property damage loss falling short of personal injury have traditionally been thought to be subject to a general bar to recovery (*Addis v* 4.13 *Gramophone Company Ltd* [1909] UKHL 1)) which narrow exceptions apply (*Ruxley Electronics & Construction Ltd v Forsyth* [1995] UKHL 8, Lord Lloyd);
- 4 D argues that the 'house' was to be her 'dream home'. However, she has failed to provide any evidence to prove that she specifically asked C to finish the project within a specific period of time so that she and her partner could move with the pleasure and peace of mind.

5. CONCLUSION

- 5 For the reasons set out above, C claims for damages for breach of contract in the sum of £15,000 and interests, and ask the Court to dismiss D's counterclaim.

ZHEN YE
3PB Barristers
3 Paper Buildings, Temple
zhen.ye@3pb.co.uk

Defendant's Skeleton Argument

IN THE COUNTY COURT AT BRISTOL

Claim No.: 3PB12345

BETWEEN

MR COLIN CLEMENT

Claimant

- and

MS DANIELLE FENDER

Defendant

DEFENDANT'S SKELETON ARGUMENT

Purpose of Hearing

1. To determine liability and quantum in a claim and counterclaim arising out of a contract to create a dwelling-house, entered into by the parties on 30 June 2017.

Background

2. On 30 June 2017 the parties entered into a contract whereby the Claimant agreed to "build a house from scratch" at [REDACTED], Bristol ("the Works") in consideration for £125,000.00 ("the Contract"). No completion date was specified in the Contract, though the Claimant's quotation of 15 June 2017 stated that work should take 90 working days.
3. Clause 4 of the Contract provides as follows: "(4) In the event that either Party wishes to terminate this Contract prior to the completion of the Services, that party will be required to provide 10 days' written notice to the other Party." (emphasis added)
4. On 16 April 2018 the Defendant emailed the Claimant to terminate the Contract forthwith. At this date the Works had not been completed, and the Defendant had paid the Claimant £110,000.00. The Claimant brings this claim for the balance of £15,000.00 which he alleges is due and owing under the Contract.
5. The Defendant denies that any money is due and owing, and counterclaims: (a) the sum of £15,000.00 in unavoidable finishing and remedial costs; and (b) general damages to be assessed for stress and inconvenience suffered as a result of the Works not being completed timeously.
6. Mr [REDACTED], Single Joint Expert Surveyor, has provided a report concluding that: (a) the Works completed by the Claimant contain minor defects and are in part unfinished; (b) the cost of completing the Works is £10,000.00; (c) that cost is apportioned equally between remedial works and finishing works.

Agreed Matters in Issue

The Claim

- a. Has the Contract been terminated;
- b. Was the Contract terminated in accordance with Clause 4;

Defendant's Skeleton Argument

- c. What (if anything) is the Claimant entitled to, either as money due and owing or as damages for breach of contract;

The Counterclaim

- d. Is the Claimant in breach of contract;
- e. What is the Defendant entitled to as a matter of special damages and general damages?

Submissions – the Claim

Has the Contract been terminated? & Was the Contract terminated in accordance with clause 4?

7. The Contract was terminated on 14 April 2018 following the Defendant's exercise of her right to terminate at common law following repudiatory breach. The Claimant was in repudiatory breach in failing to complete the works within a reasonable period of time; an implied term of the Contract (for which see below). The Defendant accepted this repudiation and the Contract was thereby terminated during the telephone conversation of 14 April 2018.
8. Alternatively, the Contract was terminated on 16 April 2018 following the Defendant's exercise of her right to terminate pursuant to Clause 4 of the Contract. The Defendant communicated her termination of the Contract to the Claimant, by email, on 16 April 2018 ("the Termination Notice")
- a. An email is a written communication. The Termination Notice therefore satisfies the requirement within Clause 4 that notice be given in writing;
- b. In order for the Defendant to have emailed the Claimant it is clear that the Claimant must have notified the Defendant of his email address. The Termination Notice therefore satisfies the requirement within Clause 23 as to the address of notices.
9. The Termination Notice purported to terminate forthwith. It therefore did not satisfy the requirement within Clause 4 that 10-days' notice be given ("the Period Requirement"). This does not invalidate the Termination Notice as the Period Requirement is an intermediate term only. The Claimant is, at most, entitled to damages arising from the Defendant's breach of the Period Requirement.
10. Alternatively, the Contract was terminated on 26 April 2018 following the Defendant's exercise of her right to terminate pursuant to Clause 4. Notwithstanding that the email sent on 16 April 2018 purported to terminate forthwith, its effect was to give the Claimant notice of intention to terminate 10 days hence.

What is the Claimant entitled to?

11. If the Court concludes that the Defendant is in breach for failing to satisfy the Period Requirement, the Claimant will be entitled to damages arising from the loss of a 10-day notice period only (subject to remoteness).
- a. there is no evidence of any indirect loss occasioned by the loss of the notice period;
- b. there is no direct, intrinsic value to the notice period;
- c. there is no evidential basis upon which to quantify any such intrinsic value. Page 2 of 3

Defendant's Skeleton Argument

12. In any event, the claim at its highest is limited to £10,000.00 in light of the recognition by Mr Smith that, as at the date of termination, some £5,000.00 of 'completion' works remained outstanding.

Submissions – the Counterclaim

Is the Claimant in breach of contract?

13. It was an implied term of the Contract that the Claimant would complete the Works in accordance with a reasonable standard of care and skill. The Claimant has failed to do so, as recognised by Mr Smith and alleged by the Defendant, and is in breach.
14. It was an implied term of the Contract that the Works would be completed within a reasonable period of time. The Claimant failed to do so, prompting the Defendant's Termination Notice, and is in breach.

What is the Defendant entitled to?

(1) SPECIAL DAMAGES

15. The Defendant will say that the cost of completion and remedial works was £15,000.00. In conducting those works the Defendant took reasonable steps to mitigate her loss: by performing some of the work herself; through the assistance of friends; and at a time when she and her young family were living in her parents' house in Gloucester.
16. The Defendant has met the standard of reasonableness required. The fact that Mr Smith has identified a less-expensive course of action does not, of itself, demonstrate that the Defendant has failed to mitigate. This has been long recognised: "...*the law is satisfied if the party placed in a difficult situation by reason of the breach of a duty owed to him has acted reasonably in the adoption of remedial measures, and he will not be held disentitled to recover the cost of such measures merely because the party in breach can suggest that other measures less burdensome to him might have been taken*" (*Banco de Portugal v Waterlow* [1932] A.C. 452 at [506])(emphasis added)

(2) GENERAL DAMAGES

17. The object of this Contract was to "*build a house from scratch*". In truth, the 'house' was to be the Defendant's 'dream home'. A major, or important, object of the Contract was to provide the Defendant and her family with the pleasure and peace of mind that naturally flows from owning such a home. Instead, the Claimant's breach of Contract resulted in a "*very upsetting*" and inconveniencing experience for the Defendant and her family.
18. In those circumstances, per *Farley v Skinner* [2001] UKHL 49, an award of general damages (to be assessed) is warranted.

JACK WEBB

3PB Barristers
Royal Talbot Hotel
Victoria Street
Bristol, BS1 6BB

jack.webb@3pb.co.uk



www.arag.co.uk