

Neutral Citation Number: [2021] EWHC 1101 (TCC).

Case No: HT-2019-BHM-000024

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BIRMINGHAM
QUEEN'S BENCH DIVISION
TECHNOLOGY AND CONSTRUCTION COURT

Birmingham Civil and Family Justice Centre
Priory Courts
33 Bull Street
Birmingham
B4 6DS

Date: 28/04/2021

Before

Her Honour Judge Sarah Watson

Between:

Mrs Gurpreet Kang	<u>Claimants</u>
Mr Avtar Singh	
- and -	
Mr Kultarn Singh Pattar	<u>Defendant</u>

Mr Joshua Brown (instructed by **Higgs & Sons**) for the **Claimants**
Mr William Knapman (instructed by **Aspect Law**) for the **Defendant**

Hearing dates: 11 January 2021 to 14 January 2021 and 27 January 2021

JUDGMENT

Her Honour Judge Sarah Watson:

Introduction and background

1. This is a claim for damages for breach of a contract for building work. The Claimants allege the Defendant's work was defective and delayed. The Defendant counterclaims for payment for work carried out and for lost profit resulting from the Claimants' repudiatory breach of contract.

2. The Claimants are the owners of 62 Weston Crescent, Aldridge, WS9 0HB (“the Property”). The Second Claimant is Mrs Gurpreet Kang, who is sometimes referred to by her maiden name, Gurpreet Hayre and occasionally as Gurpreet Kaur, (“Mrs Kang”). She is married to Mr Pavinder Kang (“Mr Kang”). The First Claimant, Mr Avtar Singh (“Mr Avtar Singh”), is Mr Kang’s uncle. Mr Rajinder Singh (“Mr Singh”) is Mr Kang’s father and Mr Avtar Singh’s brother. The Defendant, Mr Kultarn Singh Pattar (“Mr Pattar”) is a builder who carried out building work at the Property.
3. The Claimants bought the Property in August 2017. It was intended to be the family home of Mr and Mrs Kang. The Claimants claim that was also intended to be the home of Mr Singh, Mr Avtar Singh and Mr Hardev Kang, who is Mr Kang’s brother. The Property was a bungalow, which Mr and Mrs Kang intended to extend and improve. Mr Singh approached Mr Pattar to quote for the building work. The Claimants claim that Mr Singh acted as their agent. Mr Pattar claims he was unaware of any agency and understood Mr Singh owned the property and was the sole principal.
4. Mr Pattar provided a quotation by text message sent to Mr Singh on 7 September 2017. He quoted a price of £56,000 for the work that had been discussed, which was to take place between 21 September 2017 and 14 December 2017. The quotation was accepted by Mr Singh. The agreement was reduced to writing in the form of a brief summary of the work to be carried out. The parties agree that the written document accurately reflects what the parties had agreed. I shall refer to this contract as “the Initial Contract”.
5. In November 2017, the Claimants and their family decided to extend the works, to include constructing additional rooms and a dormer. Following further discussions, Mr Singh entered into an oral agreement with Mr Pattar to carry out further work for a price of £118,810 (“the Varied Contract”). Although the parties are largely agreed as to the terms of the Varied Contract, there are disputes as to when it was made, whether it was made by Mr Singh as sole principal or as agent for the Claimants and the precise scope of some of the work included in it.
6. In May or June of 2018, work on the project slowed down and interim payments ceased. There is a dispute between the parties as to why this happened. The Claimants allege that the Defendant failed to carry out the work and to remedy work that was defective and was working on other projects. The Defendant alleges that payments had slowed down and then stopped, as Mr Singh could not fund the project. He alleges that he agreed with Mr Singh that the project be suspended for a period while Mr Singh arranged further funds and that he was to return to site when funds were available to pay for the work to continue.
7. Both parties allege that the Varied Contract came to an end as a result of the other party’s repudiatory breach of contract. The Claimants allege that the Defendant’s failure to attend site and carry out work after 5 June 2018 was repudiation of the Varied Contract. However, their case does not depend on proving repudiatory breach, because they do not claim damages resulting from the termination of the contract. Their claim is for damages

for remedial work required as a result of allegedly defective work, repayment of sums allegedly overpaid for the stage of the work reached and damages for delay.

8. The Defendant denies the Claimants were the contracting parties. However, he alleges that, if the Claimants were the contracting parties, they repudiated the contract by failing to make instalment payments as requested and by failing to invite him to return to complete the work. He alleges he had agreed with Mr Singh that he would return to site to complete the work after a few months, but instead received the Claimants' solicitors' letter before action. He claims lost profit on the remainder of the Varied Contract.

The issues

9. The issues that I must determine include:
 - 9.1. whether Mr Singh acted as agent for the Claimants or as sole principal;
 - 9.2. the terms of the Varied Contract and, in particular, whether the various items in dispute were contractual obligations;
 - 9.3. whether either party was in repudiatory breach of the Varied Contract;
 - 9.4. if the Claimants were in repudiatory breach of contract, whether the Defendant is entitled to lost profit and the amount of that profit;
 - 9.5. if Mr Singh contracted as sole principal, whether the Claimants are liable to the Defendant for the value of works carried out, on the basis of unjust enrichment;
 - 9.6. the value of the works carried out by the Defendant for which he is entitled to payment, after deduction of interim payments made;
 - 9.7. whether the work carried out by the Defendant was defective, as alleged by the Claimants;
 - 9.8. if so, the amount of damages that should be awarded to compensate the Claimants for the costs of remedying any defective work;
 - 9.9. whether the Defendant was in breach of contract as a result of delay to the project;
 - 9.10. if so, whether the Claimants are entitled to the damages they claim for delay, or whether any of the heads of damage claimed are too remote to be recoverable.

The evidence

10. I have read those parts of the bundle to which I have been referred.

11. For the Claimants, I heard evidence from both the Claimants, Mr Kang, Mr Singh and Mr Andrew Cronin, the Claimants' architectural technician. For the Defendant, I heard evidence from the Defendant, Mr Christopher Beebee, an electrician who worked for him, and Mr Jaspal Singh, a friend. I also heard evidence from the parties' expert surveyors, being Mr Andrew Bullock for the Claimants, and Mr Surinder Buray for the Defendant.

The contracting parties and agency

12. Mr Brown and Mr Knapman are agreed as to the law that I must apply. They referred me to the case of *Siu Yin Kwan v Eastern Insurance* [1994] 2 AC 199. An undisclosed principal may sue on a contract made by an agent for the principal acting within the scope of his actual authority, provided the agent intended to act on the principal's behalf. However, in the words of Lord Lloyd of Berwick in that case:

“(5) The terms of the contract may, expressly or by implication, exclude the principal's right to sue, and his liability to be sued. The contract itself, or the circumstances surrounding the contract, may show that the agent is the true and only principal.”

13. There is no doubt, on the evidence before me, that Mr Singh had actual authority from the Claimants to enter into the Initial Contract and the Varied Contract and to act generally as their agents in relation to the project. However, Mr Knapman argues that the circumstances surrounding the Initial Contract and the Varied Contract show that Mr Singh was the true and only principal, so that the Claimants cannot sue on the Initial Contract or the Varied Contract.

14. Mr Pattar's evidence is that Mr Singh told him that he had bought the Property, that he identified the master bedroom that would be his and that Mr Pattar was never told that the Claimants owned the Property. I accept Mr Pattar's evidence that he did not understand the Claimants to own the property, or Mr Singh to be acting as agent for them. However, that does not necessarily mean that the circumstances surrounding the contract indicate that Mr Singh was sole principal. The following facts are relevant to that issue.

14.1. Mr Kang was also involved in the project from the outset. He and Mr Singh met Mr Pattar before the Initial Contract was made. He remained involved throughout the project.

14.2. Mr Kang made all the payments on the Initial Contract before the Varied Contract was made.

14.3. Mr and Mrs Kang visited the property before the Varied Contract was made.

14.4. On 12 January 2018, the Defendant received a copy of the application for planning permission, which named Gurpreet Kaur as the owner of the Property.

14.5. On 16 January 2018, the Defendant received a copy of the appointment of Mr Nick Massey in respect of Building Regulation compliance (Mr Massey having been

recommended by the Defendant). The appointment named Gurpreet Kaur as the owner of the property.

15. The position is complicated by the fact that, in August 2018, at a time after the Claimants allege the Defendant had abandoned the contract, the parties entered into discussions in which Mr Singh asked Mr Pattar to produce a written version of the Varied Contract. Shortly before that document was produced, Mr Singh provided the Claimants' names to be included in the document as the contracting parties, and the Defendant simply incorporated those names into the document he produced.
16. At the time that was done, unknown to the Defendant, the Claimants had already had a survey of the drains completed and were unhappy as to their condition. The Defendant argues that, when he was asked to produce the written document, the Claimants and/or Mr Singh and/or Mr Kang lied to him, by suggesting that the Varied Contract should be reduced to writing so the parties could proceed with it, whereas in fact they intended to bring the contract to an end and wanted the document as evidence of the terms of the agreement for the purposes of potential litigation.
17. Mr Knapman referred me to the case of *Archer v Stone* (1898) 78 LT 34. He argues that, where the contracting party has "told a lie" the contract is unenforceable.

"If he tells a lie relating to any part of the contract or its subject-matter, which induces another person to contract to deal with his property in a way which he would not do if he knew the truth, the man who tells the lie cannot enforce his contract."

18. Mr Knapman has also referred me to the case of *Smith v Wheatcroft* (1878) 9 Ch D 223 where Fry LJ stated (at 228 et seq), —

"Where personal considerations enter into a contract, error as to the person with whom the contract is made annuls the contract; not so where the person sought to be bound would have been equally willing to make the same contract with any other person ...

Whenever the consideration of the person with whom I am willing to contract enters as an element into the contract which I am willing to make, error with regard to the person destroys my consent and consequently annuls the contract. On the contrary, when the consideration of the person with whom I thought I was contracting does not enter at all into the contract, and I should have been equally willing to make the contract with any person whatever as with him with whom I thought I was contracting, the contract ought to stand."

19. Mr Knapman argues that the Claimants cannot rely on the written document that was produced following the Claimants' misrepresentation, and the Claimants are estopped from relying on the document as a result of the misrepresentation. However, even if there was misrepresentation as to the purposes for which the Defendant was being asked to produce the written document, I am not satisfied on the evidence that, but for that

misrepresentation, he would not have agreed to name the Claimants in the document in place of Mr Singh. When Mr Singh asked him to include the Claimants' names in the document, he did so without query or enquiry. Similarly, he was not concerned by the fact that the name of the owner of the property or the client on documents relating to planning or Building Regulation approval was not that of Mr Singh. The evidence suggests that the Defendant was more or less indifferent to which members of the family were the contracting parties.

20. Mr Knapman also argues that there is no consideration for the variation in the name of the contracting parties appearing on that document. However, the Claimants' case is not that the written document varied the terms of the Varied Contract, or that there has been a novation. It is that Mr Singh at all times contracted as agent for the Claimants. The Claimants rely on the document as evidence of the terms of the Varied Contract, which they accept was an oral contract. They do not allege that the written document amounted to a variation or novation of the Varied Contract. The issue of consideration does not arise.
21. I find that were there were no circumstances surrounding the Varied Contract from which I should conclude that Mr Singh was the true and only principal. I find that the Claimants were undisclosed principals and are entitled to sue, and can be sued, on the Varied Contract.

The terms of the Varied Contract and incorporation of construction drawings

22. The Claimants' position is that the Varied Contract was made in March 2018, after the Claimants' architectural technician, Mr Andrew Cronin, had sent construction drawings to Mr Pattar on 22 February 2018 and 12 March 2018. The Defendant's position is that the Varied Contract was made in January 2018 or early February 2018, shortly after planning consent had been obtained and before Mr Cronin provided his detailed construction drawings to the Defendant.
23. The date is important because there is a dispute as to whether the construction drawings and a Building Regulation Specification produced by Mr Cronin were incorporated into the Varied Contract so that the Defendant was obliged to carry out work precisely in accordance with those drawings and specification. The Claimants allege that the Defendant started work before the drawings were received, when he should have waited for the detailed construction drawings.
24. In the letter of claim dated 9 April 2019, the Claimants' solicitors alleged:

“The plans were approved by the Walsall Council (sic) on 11th January 2018. Following approval, the Clients requested further works and updated cost was agreed at £118,810.”

25. That is consistent with the price being agreed only shortly after the planning permission was obtained, which was on 11 January 2018, and not between two and three months later, after the Building Regulation plans or construction plans had been sent to the Defendant.

26. Before they were amended, the Particulars of Claim alleged:

“16 On 11 January 2018, the architectural plans were approved by Walsall Council. In view of this approval, the Claimant requested that the Defendant undertake certain further works not originally specified.

17 That same month, in January 2018, Mr Singh, acting on behalf of the Claimants, made payment of £10,000 to the Defendant...”

27. The Re-Amended Particulars of Claim read as follows:

“In March 2018, the Defendant was provided with a number of documents, which together set out the scope and specification of the varied works...”

19 Thereafter, in March 2018, the Defendant...agreed with Mr Singh.... that he would undertake the Varied Works”

28. The original letter of claim and Particulars of Claim are both consistent with the Defendant’s recollection as to the timing of the formation of the Varied Contract.

29. Significant payments were made during January and February 2018. Interim payments had been made pursuant to the Initial Contract. The parties are in dispute as to what work was carried out between November and January, while planning permission was being sought. However, after the planning permission was obtained, on 11 January 2018, significant payments were made. The first payment was £5,000 and was made on 18 January 2018, some seven days after the planning permission was granted. A further £5,000 was paid on 25 January 2018. A further £7,000 had been paid by 16 February 2018. £10,000 was paid on 2 March 2018 and a further £6,000 on 16 March 2020. That means that a total of £17,000 was paid between the grant of planning permission and the first set of construction drawings being sent to the Defendant, and a total of £33,000 was paid between the grant of planning permission and the second set of drawings being sent to the Defendant. If, as the Claimants allege, the Varied Contract was not made until mid to late March 2018, after the second set of drawings had been sent to the Defendant, it is difficult to understand why such significant payments were made to the Defendant during January and February, and why the Defendant had done so much work on site to entitle him to those payments.

30. The evidence as to payment strongly supports the Defendant’s contention that the parties had reached agreement shortly after the planning permission had been granted, and before the detailed drawings were produced.

31. At paragraph 21 of his witness statement, Mr Singh states as follows:

“Following the approval from Walsall Council, Mr Pattar continued with the build and we continue to pay him as agreed. He promised us he would complete his work (i.e. the more extensive works that we had obtained permission to do) in April/May 2018 and the house would be met ready to move into.”

32. There is no mention in Mr Singh’s witness statement of drawings being sent to Mr Pattar before agreeing the Varied Contract. The suggestion that the work was to be completed in April or May 2018 is inconsistent with the Varied Contract having been made in late March 2018. That would leave very little time for this substantial building project to be completed.
33. Mr Cronin’s evidence is that, after meeting in February 2018, it was agreed that the Defendant would do the work under a building notice, though he was later asked to produce plans for Building Regulation approval. It is clear from this that, initially, Mr Cronin expected the work to be carried out under a building notice rather than by his producing detailed Building Regulations drawings. That is also consistent with the Defendants’ case, that the agreement for the Varied Contract had been formed before detailed construction drawings were provided to him.
34. Further, in about August 2018, the parties prepared written draft contracts in an attempt to document the Varied Contract. Neither parties’ drafts (including that produced by Mr Kang) defined the work to be done by reference to the drawings.
35. I find that the Varied Contract was made shortly after the planning consent was received but before the Defendant received construction drawings from Mr Cronin, and that the construction drawings were not incorporated into the Varied Contract. I find that the Varied Contract was to carry out the work orally agreed between Mr Singh and Mr Pattar based on the planning permission drawings and discussions between Mr Singh and Mr Pattar as to the work that was to be done. Mr Pattar accepts that he was under a duty to carry out that work in accordance with relevant Building Regulations.
36. Mr Brown submits that the question of whether the drawings were incorporated into the Varied Contract when it was formed is academic, because the Defendant was obliged to follow the construction drawings issued to him in order to comply with the Varied Contract in any event. In his oral testimony, Mr Pattar fairly conceded that he expected to receive structural drawings and to follow them. He agreed with Mr Brown’s suggestion to him that otherwise he would not get Building Regulation approval at the end of the work and would not be doing the work properly.
37. However, he did not concede that he was obliged to alter work already completed in accordance with the Varied Contract where the drawing details issued to him were inconsistent with what he had already built. Nor did he concede that he was obliged to follow the drawings rather than express instructions from Mr Singh. He said that a lot of the work was dictated by Mr Singh. Mr Pattar’s evidence, which I accept, is that Mr Singh was present on site on most days and was involved in the detail of the work. His

evidence is that his understanding from his discussions with Mr Singh and from the knowledge that Mr Singh displayed was that Mr Singh had experience of building work and gave specific instructions during the course of the work. I find that the Varied Contract required (and entitled) the Defendant to carry out work as expressly orally agreed with Mr Singh, including where that work was inconsistent with drawings provided by Mr Cronin. I find the basis of the Varied Contract was to do work as agreed between Mr Singh and Mr Pattar.

38. In my judgment, if the construction drawings show details that are inconsistent with work that had already been carried out pursuant to the Varied Contract and in accordance with express instructions from Mr Singh before the construction drawings were issued, the Defendant cannot be held to be in breach of contract by not complying with the drawings. If the work complies with what was agreed with Mr Singh and with Building Regulations, the fact that later drawings provide different details did not require the Defendant to alter the work he had already done. I find that, under the Varied Contract, the Defendant was only obliged to follow drawings after they were made available to him, and he was not obliged to follow them where they were inconsistent with Mr Singh's express instructions.
39. That appears also to have been the view of the parties at the relevant time. For example, the staircase was not installed as shown on the original plans for planning permission, but in a different location. The Claimants suggested that was a decision made unilaterally by the Defendant. I do not accept that. It is not credible that the Defendant would have unilaterally moved the staircase location, which included relocating a wall, without Mr Singh's instructions to do so. When Mr Cronin discovered the staircase was not in the location shown on his plans, he drew new plans in an attempt to reconcile the plans with what had been built. It was not suggested that the Defendant was obliged to move the staircase to the location shown on Mr Cronin's plans.
40. There is also an issue between the parties as to the terms of the Varied Contract with regard to interim payments. The Initial Contract included an obligation to pay interim payments of £4,000 per week. The Defendant's pleaded case is that the Varied Contract contained the same provision the payment of £4,000 per week. The Claimants deny that the obligation to pay £4,000 per week continued when the Varied Contract was made. They allege in the Reply that the Defendant would make requests for payment which the Claimants would meet. The Claimants deny a failure to meet any request for payment made.
41. Mr Pattar's evidence was that, when the Varied Contract was made, Mr Singh had said he would pay lump sums when he received funds which may not necessarily be weekly. In his oral evidence, he said that the parties liaised over interim payments and that sometimes they would be a little more or less, but they would be roughly £3,000 per week.
42. I accept Mr Pattar's evidence and find that the Varied Contract included a provision for interim payments which need not be made exactly every week but would be made

frequently enough to enable the Defendant to fund the work, expected to be at the rate of about £3,000 per week. I find that the Varied Contract included an obligation to make interim payments of about £3,000 per week, but that there would be some flexibility as to those payments. I am satisfied that the parties expected the Defendant to fund the work from interim payments.

Termination and repudiatory breach

43. The Claimants' case does not require a finding that the Defendant was in repudiatory breach of contract because they do not claim damages for repudiation. However, they allege that the Defendant repudiated the contract by abandoning work on 5 June 2018 and failing to return to complete the work or address remedial issues, despite requests to do so.
44. The Defendant admits that work ceased around 5 June 2018 but alleges that this was at Mr Singh's request, and because the Claimants were in breach of contract by failing to make interim payments, that he was told by Mr Singh that he did not have sufficient funds and that he agreed with Mr Singh to suspend the work and resume it when funds were available, expected to be in three or four months' time. He further alleges that, in breach of the Varied Contract or in breach of the agreement to suspend and later resume the works, no further payment was made. He claims damages for his lost profit on the remainder of the contract resulting from the Claimants' repudiation.
45. The first issue that I need to decide is whether, in or about May 2018, the payments had ceased because the work had slowed down and the Claimants were unhappy with progress so that they considered further payment was not due, or whether the Claimants ceased to make payments because of lack of funds, as the Defendant alleges.
46. Mr Singh's evidence in his witness statement is that, from June and July 2018, the Defendant slowly stopped attending the Property, using excuses. At paragraph 28 of his witness statement, he complains that the Property was left like a building site from the first week of July. I find that complaint odd, since the Property was in fact a building site and, if the Claimants were expecting work to continue, they would be expecting the Property to be a building site.
47. In his oral evidence, Mr Singh accepted that the Defendant had not abandoned site on 5 June 2018. He said that allegation had come from Mr Kang. He said that Mr Pattar had been asked to leave site so they could carry out the concreting work (pouring a concrete slab to the ground floor). He said that the Defendant was working on the first floor and that Mr Singh had asked him to leave site for two weeks and come back a fortnight later, after the concrete had dried.
48. It is clear from Mr Singh's evidence, which is consistent with Mr Pattar's evidence on this issue, that Mr Pattar left site on 5 June 2018 at Mr Singh's request so other contractors could lay the concrete slab.

49. Despite the fact that Mr Singh and Mr Pattar were in the habit of communicating by text and WhatsApp messaging, there is no evidence of any request by the Claimants to the Defendant to return to site to resume work after the concreting work had been done, at the end of June 2018.
50. Mr Singh gives evidence in his witness statement that he asked the Defendant to board up the house and remove all rubbish at the property in August and that he texted him on 23 September 2018 and was ignored. He says he reminded the Defendant on 4 October, but he received no response. Documentary evidence in the form of the Defendant's telephone records show that, within a couple of minutes of receiving Mr Singh's message of 4 October 2018, he telephoned Mr Singh. In cross examination, Mr Singh accepted there had been a phone call.
51. It is clear that regular payments were made between January and March 2018. In January, £10,000 was paid; in February, £7,000 was paid and in March, £16,000 was paid. A total of £33,000 was paid between mid-January and mid-March. The last substantial payment was £6,000 which was made on 16 March 2018. After that, only two payments were made, each of £2,500, one on 4 May 2018 and one on 12 May 2018. No further payments were made.
52. Mr Knapman produced a helpful schedule showing the payments made during the course of the project and the amounts that should have been paid, both on the Claimant's case (which is that work was put on hold between November 2017 and the grant of planning permission in mid-January 2018) and on the Defendant's case (which is that work continued during that period and therefore payments should have continued). The schedule based on the Claimants' case assumes payments of £4,000 per week in accordance with the Initial Contract until December 2017 and payments of £3,000 per week from mid-January 2018, when planning permission was obtained. By 5 June 2018, when the Claimants claim the Defendant abandoned site, the deficit was £33,700.
53. Mr Pattar's evidence is that Mr Singh told him that he was struggling to fund the project and that he had lost a court case. Mr Kang suggested that this might be a reference to a Children Act case, and the costs associated with it. Mr Singh denies that he had a need for money for legal costs and denies saying so to Mr Pattar. The Claimants deny lack of funds was the reason for non-payment. They allege they ceased to pay because the work slowed down and the Defendant was refusing to carry out further work and remedial work.
54. There is a message dated 20 April 2018 in the bundle in which Mr Singh messaged Mr Pattar as follows: "*I am trying to sort pessa*". The parties agree that "pessa" means money. The only payments made after that message was sent were two payments of £2,500 each on 4 May 2018 and 12 May 2018. That message is obviously consistent with the Defendant's evidence and inconsistent with the Claimants' case that it was lack of progress, not lack of funds, that caused the payments to slow down in May 2018.

55. The parties are agreed that a meeting took place at the Soho Road Gurdwara between Mr Singh, Mr Pattar and Mr Jaspal Singh, a friend of Mr Pattar. Mr Jaspal Singh was known to both parties and was involved as an intermediary to see if he could help the parties. The parties are agreed that the purpose of the meeting was to seek to find a way forward with the project. The Defendant says the meeting took place on 31 July 2018. His evidence is that, at that meeting, Mr Singh acknowledged that he was in financial difficulties in funding the project and asked Mr Pattar to fund it himself through a loan, so that progress could be made. Mr Singh's evidence is that the meeting took place on 30 April 2018, that the parties agreed a schedule of work under which the work would be completed by 31 July 2018, and that he did not ask for assistance in funding the project.
56. The Defendant called Mr Jaspal Singh to give evidence as to the meeting. Mr Jaspal Singh had provided information to the Defendant's solicitor over the telephone but had declined to sign a witness statement prepared by the solicitor following that call. The Defendant obtained permission to serve a witness summary and Mr Jaspal Singh was served with a witness summons to attend the hearing remotely, which he did. Unfortunately, Mr Jaspal Singh's evidence was not helpful. He said that he had other concerns, and that he could not recall what had happened at the meeting. I place no weight on Mr Jaspal Singh's evidence.
57. The parties are agreed that Mr Singh took a photograph of Mr Pattar's diary in which he made notes of what was discussed. The parties are also agreed that the notes identify work remaining to be carried out and a weekly schedule for that work, which Mr Pattar estimated would take about 8 weeks. Mr Pattar's evidence is that, when he made clear that he was unable to fund the project himself through a loan, Mr Singh said he needed time to arrange funds and that he would give Mr Pattar four weeks' notice of when he would be in funds and that Mr Pattar would then go back and finish the work. Mr Pattar's evidence is that at that time, it was envisaged that the works would be completed by January 2019.
58. Mr Singh's evidence is that that meeting took place on 30 April 2018. However I note that date is before work ceased on site, and it is therefore unclear why there would be a need to discuss the future of the project with Mr Jaspal Singh as an intermediary at that time. Mr Singh's evidence is that the 8 week work schedule identified in the diary note indicates that the work was to be completed by 31 July.
59. Both parties gave oral evidence as to the date of the meeting. Mr Pattar was adamant the date at the top of the page (31 July) was the date of the meeting. It was put to him that some of the work shown as outstanding had already been done by 31 July, such as the drains, velux window and roofing works, so the meeting must have been on 30 April. He explained that those works were incomplete: the external drainage works were not complete, the velux window had been installed incorrectly and the roofing work was incomplete.
60. Mr Singh's evidence on this point was unimpressive. He suggested at one point that a 12 week schedule was agreed, ending on 31 July, and at another point that the reason that the

page showing the 8 week work schedule was headed 31 July was because that was 8 weeks from 30 April. The document shows a programme of 8 weeks. There is an obvious inconsistency between the meeting being on 30 April and an 8 week work schedule as identified in the document ending on 31 July.

61. One of the pages photographed shows a payment record, which includes a payment made on 15 May 2018, which is after 30 April 2018. When he was asked how that was possible, if the meeting had taken place on 30 April, Mr Singh said that was the date stamp on the photograph on his phone. He then suggested the picture of that page may not have been taken on the same date as the page showing 8 week work schedule, and that the photograph of the page referring to the payment of 15 May had been taken later, in May or June. He said that one of the photographs showed the book being held, and the grill of the car in the background, indicating that photograph was taken in the car, whereas the photographs of the work schedule taken in the Gurdwara was taken with the book flat on the table. It was pointed out that the photograph of that page appeared to show the diary being held in exactly the same way, and possibly to show the same background, as the page he accepts was not photographed on 30 April. He first suggested that he was sitting opposite the Defendant, who lifted the book across the table. Then, when he was unable to explain how that was consistent with the position of the hand holding the book, he said that he was sitting to the left of the Defendant, at the end of the table, and Mr Pattar turned the book to him and he took the picture. My clear impression was that Mr Singh was altering his evidence as he gave it, as he realised the documentary evidence was inconsistent with his version of events.
62. I prefer the evidence of Mr Pattar on this issue. I find that the meeting was held on 31 July, and that is why the note is headed "31 July". I find that Mr Singh did ask Mr Pattar to assist with funding the project and, when Mr Pattar said he could not do that, Mr Singh and Mr Pattar agreed that Mr Singh would contact Mr Pattar when he had funds to enable the work to restart, that he would give about 4 weeks' notice of that so that Mr Pattar could then come back to site and finish the work. I find the parties did agree to suspend the work on the basis that the Defendant would complete the work when the Claimants gave him notice that they were in a position to resume payments, which was expected to be in a few months' time.
63. I also accept Mr Pattar's evidence that, following that meeting, he was asked to produce the written document recording the work included in the Varied Contract and that he understood it was to be used to define the scope of the work when it resumed.
64. The Claimants allege that they made requests for the Defendant to return to site to complete defective work. There is no documentary evidence supporting this, despite there being considerable evidence of friendly messages between Mr Singh and Mr Pattar. It is clear that, at least on 31 July 2018, Mr Pattar was discussing the programme for the work and returning to site to finish the work. That is inconsistent with his having repudiated the contract.

65. The only specific requests to return to site identified by the Claimants relate to the Claimants' request that he board up the site and remove rubbish. Far from being a request to continue with the works, that appears to be a request to ready the site for a period when work would not be continuing.
66. Mr Pattar left his tools and materials on site. The photographs on which the Claimants rely include photographs showing Mr Pattar's cement mixer on site. Mr Pattar's evidence was that had been left inside the building and had been taken out of the building by someone while he was not on site, and also that materials such as insulation that he had left on site to use on the project had been removed by others. A builder leaving his tools, including his cement mixer, on site is not consistent with his having abandoned site and not intending to return to complete the work. Nor is it consistent with his favouring other work over that of the Claimants. The fact that he left tools and materials on site, particularly his cement mixer, is evidence that supports his position.
67. Mr Pattar's evidence, which I accept, is that he did not have other work to do at this time and went to London to try and obtain work to fill the void caused by this project stalling. He had no interest in not continuing with the work.
68. Mr Pattar's evidence is the first he was aware that he would not after all be invited to return to site to complete the work and receive payment for the balance of the price was when he received the Claimants' solicitors' letter of 9 April 2019. Until then, he expected to be invited to return when funds permitted.
69. With the benefit of hindsight, he now believes that, at the time when he was being asked to reduce the Varied Contract to writing, far from intending to proceed with the contract, the Claimants wanted documentary evidence of the terms of the contract for use in litigation against him. His reason for this conclusion is because, very shortly before he was asked to produce a written version of the Varied Contract, the Claimants had in fact obtained a drain survey which revealed debris in the drains. Mr Pattar was unaware of that at the time.
70. Mr Pattar's evidence is that he met Mr Singh at Costa and was presented with a contract which he was asked to sign without reading it. He refused to do this. He now believes that this document was probably the document headed "Building Contract for Owner Occupier" which was prepared by Mr Kang. Mr Kang's evidence was that he had produced this document before Mr Pattar had produced the written document recording the terms of the Varied Contract, because Mr Pattar had delayed in producing that document. I do not accept Mr Kang's evidence. The wording of Mr Kang's version is very close to that produced by Mr Pattar, and the areas which have been altered are those which are contentious, such as the scope of the drainage works, where Mr Kang included more onerous requirements than were included in the document produced by Mr Pattar. I find that Mr Kang had Mr Pattar's document when he prepared his own draft, and he altered the wording where he felt it would assist the Claimants on contentious issues such as the scope of the drainage works. I find that Mr Kang's aim in seeking to reduce the Varied Contract to writing was for the purpose of possible litigation, and that the

Claimants misled Mr Pattar in leading him to believe that the purpose of the document was to enable the work to continue.

71. In conclusion, I find that I find that the parties agreed to suspend the work to enable the floor slab to be laid and because Mr Singh told Mr Pattar that funds were not available to continue with the works. I find that the parties agreed that the work would be suspended for a few months and Mr Singh would give about 4 weeks' notice to Mr Pattar when funds were available so he could complete the work. I find that, at some point after that agreement to suspend the work due to lack of funds, the Claimants made a decision not to invite the Defendant to complete the work but instead to pursue a claim against him. I find that, by failing to make any further payment and failing to invite the Defendant to resume work, the Claimants were in repudiatory breach of contract. The Defendant was not in repudiatory breach of contract.
72. It follows that the Defendant is entitled to his lost profit on the remainder of the contract. I will consider the quantification of that lost profit below.

The Claimants' claims for damages for delay

73. The Claimants' claim for damages for delay does not depend on their claim for repudiatory breach. However, it is based on the allegation that the Defendant failed to carry out work after 5 June 2018, causing delay to the project. The Claimants allege that the work should have been completed so that the Claimants would have been able to move into the Property in August 2018. I have found that the Defendant left site in early June at Mr Singh's request. I have also found that there was an agreement between the Defendant and Mr Singh to suspend the work until money was available to pay for work to continue. Any failure to carry out work after 5 June 2018 was not the result of the Defendant's breach of contract. The Defendant was not in breach of contract and the Claimants are not entitled to the damages they claim for delay or for distress and inconvenience.

Valuation of work completed and remedial work

74. Before considering individual items in dispute, it is convenient to consider the approach taken by the experts to the valuation of completed works and any remedial work resulting from any breaches of contract on the Defendant's part to carry out the work in accordance with the contractual obligations.
75. I have the benefit of a joint report from the experts. They prepared their joint statement before writing their individual reports on points of disagreement. Helpfully, they reached a large measure of agreement as to the valuation of the completed work and the valuation of some of the remedial work. It is my understanding that they have valued the work completed based on appropriate market rates for the work, rather than attempting to attribute a value to the completed work by reference to the contract price. I make no criticism of the experts in doing this. I can only assume they were instructed to do so. In

addition, there was no breakdown of the contract price, only a total price of £118,810, so any attempt to value the work in any other way would have required the experts to make assumptions as to the amounts to attribute to different elements of the work.

76. I do not know whether the approach adopted is likely to benefit either of the parties or neither. I do not know whether the experts would have reached a higher or a lower figure for the completed works had they been asked to value the works completed by reference to the contract price. However, the only evidence I have as to the value of works completed and value of remedial works is that contained in the experts' reports, and that is the evidence I will use in my assessment of the sums due, being the best evidence available to me.
77. In carrying out their valuation of completed work, the experts valued the work actually carried out by the Defendant, not the work that would have been carried out had the contract been completed in accordance with the Claimants' case. For example, the Claimants' position is that the staircase supplied was of no value and had to be replaced. Mr Bullock has not included anything in his valuation of the completed work, on that basis. Despite making no allowance in the value of work completed for the staircase, the Claimants seek remedial costs for replacing the staircase. As a matter of principle, the Claimants cannot recover the full remedial cost of work without giving credit for the amount that (according to the experts' valuations) the Claimants would have to have paid had the work been completed satisfactorily.
78. Mr Brown did not formally concede that would amount to a double recovery, on the basis that, if the remedial costs in fact exceed the contractual price for the works because the Defendant's price was low, the Claimants should not lose the benefit of the bargain they achieved from the low contract price and might be entitled to remedial costs that exceed the price for the work. However, in the absence of any breakdown of the contract price for the various elements of the work, whether from the parties or the experts, the only evidence available to me as to the amount that the Claimants would have had to pay had the work been completed satisfactorily is the value of the work identified in the experts' reports and there is no evidence from which I can conclude that the remedial costs would be higher than the contract price for that work.
79. In principle, therefore, where the Claimants have not paid or made allowance for the price they would have to have paid for the work, they are not entitled to the costs of remedying the work as well.

The expert evidence

80. I wish to make a few observations at this stage with regard to the experts who gave oral evidence. Both parties have criticised the independence of the other's expert.
81. Mr Buray conceded in his oral evidence that he had done some consultancy work for Mr Pattar on a couple of occasions previously. It was suggested that he was not independent

as a result. In addition, on occasion, he provided explanations in answering questions that were based on what he had been told by the Defendant. I was asked to conclude that he was not independent. However, having heard Mr Buray give evidence, I have no concerns that he did not understand his duty to assist the court or that he lacked independence. Both experts in this case have clearly discussed the case with their respective clients in addition to obtaining instructions from the solicitors. It is clear from the reports that Mr Bullock has also discussed the case with his client. Where Mr Buray has relied on what he had been told, he has made clear that his comments are based on his instructions. He was not seeking to give factual evidence but simply report his understanding of events based on those instructions. He accepts that issues of fact are for me to decide. In short, I had no concerns that Mr Buray lacked independence and I found him a clear, coherent, knowledgeable and helpful expert witness.

82. Mr Bullock had been involved for the Claimants at an early stage including, as it appears from the Claimants' pleadings, in advising them as to the value of the work carried out by the Defendant and the quality of the work. He introduced the Claimants to their solicitors. His advice is referred to in the first letter of claim sent by the Claimants' solicitors to the Defendant on 9 April 2019. It is apparent to me that, just as Mr Buray had done, Mr Bullock had discussed matters with his clients outside of the formal process of solicitors instructing an expert. However, I am satisfied that he was doing his best to assist the court and was mindful of his duties to the court.

Mr Singh's involvement on site

83. The parties are not agreed as to the extent of Mr Singh's involvement in giving day to day instructions with regard to the work. I have accepted Mr Pattar's evidence is that he understood from Mr Singh that he had numerous properties and had been involved in developing them and that he appeared to have a good understanding of building work.

84. Although Mr Singh was at pains to deny that, the evidence of the Claimants, Mr Singh and Mr Kang was consistent with them owning numerous properties between them. It was clear from Mr Singh's evidence that he visited the builders' merchants and bought materials and that he was involved in the detailed specifications, such as with regard to the choice of render.

85. I find that Mr Singh did visit the site regularly, was giving instructions, and that Mr Pattar understood that Mr Singh had a good understanding of the work.

Staircase

86. The staircase was built in a location different from that shown in the original planning drawings. The Claimants' position is that the Defendant relocated the staircase without reference to Mr Cronin. The Defendant's position is that he relocated the stairs in accordance with the instructions from Mr Singh and that, when the stairs were built, he realised there was a problem with head height and the stairs needed to be altered. He seeks £3,300 for installing the stairs and altering them. I accept Mr Pattar's evidence that

he moved the staircase in accordance with Mr Singh's instructions. I find the suggestion that the Defendant moved the stairs, which included moving a wall, without instructions to do so, to be incredible.

87. Mr Cronin's evidence is that, when he visited site, he discovered the staircase had been moved from the location shown in the planning drawings. His evidence is that his original design had been revised by the client to reposition the stairs, but the stairs had been installed using a standard flight with a 42° pitch flight with a winder box instead of stairs with a 35° pitch, to match the pitch of the roof above the stairs. His evidence is that he produced plans to regularise the position. Mr Cronin's drawing, dated 5 February 2018, shows the stairs in the new location, near the front door.
88. Mr Knapman submits that I should find that, at the time the staircase was built, the Defendant had the benefit of Mr Cronin's drawing, so that any defects were the result of the inadequacy of Mr Cronin's plans and not the fault of the Defendant. In closing, he referred me to a photograph of the hallway, but the photograph had not been shown to any of the witnesses and I am unable to conclude from it that the stairs were not built until after Mr Cronin's plan was produced.
89. Mr Buray's evidence is that the staircase shown on Mr Cronin's plan of 5 February 2018 was not capable of being built as drawn without breaching the head height requirements under the staircase in the hall, and so the design was defective. Whilst I accept Mr Buray's evidence that the staircase shown on Mr Cronin's plan would not comply with Building Regulations, there is no evidence before me that the Defendant built the staircase to Mr Cronin's design. It is my understanding that Mr Buray's evidence as to the head height problem under the stairs was based on the fact that Mr Cronin's plan appears to show a straight staircase, whereas the staircase the Defendant built included a winder box. Even if the Defendant had Mr Cronin's plan, therefore, it appears he did not build the stairs in accordance with it.
90. Mr Bullock's evidence is that the stairs, as altered, were not supported securely at first floor level, the newel post was undersized and incorrectly secured and in general the stairs and stair components had been poorly installed so that the staircase needed to be replaced. The Claimants' evidence and that of Mr Cronin is that it has in fact been replaced.
91. I find that, Mr Singh having asked Mr Pattar to move the stairs, Mr Pattar took it upon himself to arrange for the design and construction of stairs. The stairs he constructed were unsuitable for the pitch of the roof and needed to be altered. I also find that the stairs, as altered, were not satisfactory and needed to be replaced.
92. I find that the Defendant is not entitled to payment for the staircase, which did not comply with Building Regulations and had to be replaced. The Claimants make no allowance for the cost of the staircase actually installed and also seek £1,750 by way of remedial work for a replacement staircase. However, the Claimants are not entitled to recover remedial

costs of replacing the staircase in addition to giving no credit for the amount they would have had to pay to the Defendant. That would amount to a double recovery. I therefore make no allowance in the valuation of the work for the staircase and make no award for remedial costs for its replacement.

Wiring

93. The Defendant claims £4,310 for wiring work. The Claimants argue the value of the work carried out is no more than £1,000.
94. The parties are agreed that the Varied Contract included rewiring the Property. The parties are also agreed that the Claimants changed their plans as to the wiring and asked the Defendant for a revised quotation for a more extensive specification. They were unhappy with the quotation provided and decided to get the wiring work done by another contractor. As a result, the wiring work that the Defendant had done was removed, with the wiring being stripped out. The Defendant claims that he stripped out the wiring. He referred me to photographs showing the wiring that had been removed in the back garden. The Claimants claim their new contractors stripped out the wiring. There is no documentary evidence as to the work done by the Claimants' electrical contractors. I accept Mr Pattar's evidence. I find that he removed the wiring that his contractor, Mr Beebee had installed.
95. Mr Beebee's evidence was that he had done around 60 to 70% of the first fix of the wiring for which he had quoted, which was for a standard bungalow. I accept his evidence. He was clearly an honest witness. I find that the Defendant had completed about 65% of the first fix wiring to the ground floor.
96. Mr Bullock estimated the cost of part of the first fix wiring at £1,000 but did not give any explanation as to how he arrived at that figure. There is documentary evidence from Mr Pattar's diary that Mr Beebee was paid £1,500 for his work. In addition, Mr Beebee gave evidence that he was assisted by the Defendant to supply labour for the more basic work, as he expected in a project of this type. Mr Buray's evidence is that the cost of the first fix wiring for a standard bungalow of this type would be around £4,000, a reasonable cost for isolating and stripping out the old wiring was £450 and a reasonable cost of stripping out the first fix wiring would be around £450. I will allow 65% of £4,000 plus £900 for stripping out the old wiring and stripping out the wiring installed by Mr Beebee, which is £3,500.

Piping to radiators

97. The Varied Contract included a heating system using conventional radiators. During the course of the project, the Claimants decided instead to install underfloor heating. The Defendant claims that he had installed PVC "push fit" piping for the radiators throughout the Property and later stripped this out on the instructions of the Claimants. Mr Bullock did not see the piping and did not accept photographs he was shown in cross examination showed piping. I am satisfied that this piping was installed. The report prepared by the

Claimants' adviser criticised the Defendant for having located some of the piping incorrectly. Piping is visible in some of the photographs. I am satisfied that the Defendant did install piping for the radiators, which was later removed. Mr Buray valued the work, based on the Defendant's evidence as to the work that had been completed, at £3,400, consisting of £1,600 for the first fix plumbing to the radiators, £800 for stripping that plumbing out, and £1,000 for materials. I accept Mr Buray's evidence and will allow £3,400 for this item.

Overheads and profit

98. The experts are not agreed as to the level of mark up for overheads and profit that it is appropriate to award in this case. Mr Buray argues for 20% and Mr Bullock for 15%. Mr Bullock's evidence is that 15% overhead and profit margin would be the maximum allowable for contractor "working from a van without any overheads". Mr Buray referred to the Defendant's justification of 20% by reference to the following breakdown: 15% profit and 5% overheads which he states is an industry standard made up of contractors' all risks insurance, plant on site, scaffolding, home office, vehicles to and from site builders merchants, fuel for plant vehicles, sundry plant on site, insurance and road tax on vehicles, administration and finance costs. The Defendant was cross-examined as to his overheads and costs. He accepted that he did not have contractors' all risks insurance. However, that does not mean he has no overhead. A contractor who does not insure is self-insured and bears the risk of loss of tools, materials and the risk of a claim against him in respect of damage to the works. In response to questions about his administrative costs, it was suggested that, as he did not charge VAT, his administrative costs were low. His evidence was that he hired a storage unit to store his tools and materials, he had an office at home, that he had the usual costs such as internet access, printers, telephone calls and stationary. It was put to Mr Pattar that he did not use scaffolding on site. He gave evidence that he did use acrow props and what he described as scaffolding tables when working at height, such as installing the steels.

99. I am satisfied that Mr Pattar had the usual administration and overhead costs of a small builder. I accept Mr Buray's evidence that 20% is a reasonable amount to charge for profit and overheads and not an unusual mark up for the type of work Mr Pattar was doing. I accept his evidence that, in his experience, builders would not work for a 15% mark-up and that 20% to 25% is more usual. I will allow 20% for overheads and profits. It follows that, in relation to the total value of the works that is agreed between the experts (£71,551) the Defendant is entitled to a further £3,111, being the difference between the agreed profit percentage of 15% and the profit percentage of 20%.

Remedial works

Drains

100. The most significant area of contention between the parties as to the scope of the work included in the Varied Contract is whether the Defendant was obliged to replace the existing clay drain that ran within the building with new drains running outside the envelope of the building. The original building had a drain run running to the North East

of the building, assuming the plans are oriented so that North is at the top of the page. The extension would cover two manholes that had been outside the original building. The parties are agreed that a manhole had to be moved so there was an external manhole. The Defendant's position was that the other manhole would simply be enclosed.

101. The Claimants allege that the Defendant was obliged to install an entirely new drainage run, so that it ran outside the building envelope, in accordance with a drawing that Mr Cronin eventually produced in 2019, as part of a remedial scheme when the Claimants were advised the drains should be replaced. The Claimants do not allege that the drawing was provided to the Defendant at the time but allege that the Varied Contract required a new drainage system as shown on that drawing. The 2019 drawing shows new drainage runs, marked in green, running from the new services to a new drain laid outside the building. The Claimants' position is that, even though that drawing was not available at the relevant time, the scope of the work included the work shown on it.
102. The Defendant denies that he was required to lay new drains. His evidence is that he expressly agreed with Mr Singh that he would connect new services such as outlets from the kitchen and bathrooms to the existing clay drain, move one manhole that was being built over so that it was external and create a rodding access at the front of the building so that it was possible to rod through to the new manhole. He denies that he was obliged to install entirely new drainage runs as shown on the 2019 drawing. He denies he was obliged to replace the clay drain with new drain, or to relocate the drain runs in the way the Claimants allege.
103. Mr Singh's witness statement is silent as to what he agreed with Mr Pattar with regard to the drains. Given that he is the person who made the Varied Contract with Mr Pattar, I find that omission surprising. In his oral evidence, when he was asked about whether the parties' attempts to document the Varied Contract in August were consistent with the Claimants' case, he said that the obligation to replace the drains was in the Initial Contract.
104. The Initial Contract does not appear to include an obligation to do the work the Claimants now allege. The wording of the document recording the Initial Contract included: "*relocation of drainage point in garden*". It also included the installation of 3 bathrooms, the relocation of a family bathroom and fitting of a new kitchen and a new boiler system. It says nothing else about the drainage or plumbing. From this, it appears that the Initial Contract is consistent with the Defendant's understanding of his obligations under the Varied Contract, and Mr Singh's evidence that the Initial Contract included the obligation to lay a new drain run is incorrect.
105. Mr Kang also gave no evidence in his witness statement as to what was agreed, which is less surprising, since he had not entered into the agreement with Mr Pattar.
106. When asked how his February 2018 drawing should be interpreted, when it refers to moving the manholes, Mr Cronin's evidence was that moving the manholes meant moving the drains. He conceded that the drawings could have been more detailed but

said that this had been discussed with the builder on site. His evidence in his witness statement was that, before the production of Building Regulation drawings, the Defendant had ignored any reference to drainage. It is not clear what he meant by that, as he did not explain what it was that Mr Pattar is alleged to have ignored. Mr Cronin's evidence was that he had discussed the need to move the drains with Mr Pattar on site, before he produced his drawings in February or March. It is not clear when he alleges this conversation took place. In his oral evidence, he said that, even when he was called out to do what he described as "the orangery walkover" there were two manholes in the footprint of the extension and Mr Pattar was advised that those drains needed to be outside of the building. It is my understanding that the reference to the "orangery walkover" is to a visit he made to site to advise whether the Initial Contract works could be carried out without planning permission, and therefore it is likely that the conversation to which he refers took place at time before the Varied Contract was contemplated. However, at that time, it appears that the Initial contract only required the relocation of a drainage point and did not require a new drainage run.

107. The plans produced by Mr Cronin in February and March 2018 did not show any drainage details. Mr Cronin's evidence was that his focus at that time was on the steels, not on the drains. The only reference to drainage is on a drawing produced on 5 February 2018, which was sent to the Defendant on 22 February 2018. It contains an arrow pointing to one of two dotted rectangles (which I understand are intended to identify the existing manholes that were within the building, as extended) and an annotation next to the arrow "*manholes to be relocated outside extent of extension and new connections made*". Whilst the annotation to the plan refers to "manholes" not "manhole", the arrow points to only one manhole.
108. In his oral evidence, Mr Buray was asked to comment on that drawing. He accepted that it referred to two manholes but said that it would not make sense to move the manhole to the exterior, as the drains veered off to the North East corner. He agreed that the manhole on the right hand side would need to be relocated. That is the manhole to which the arrow in Mr Cronin's drawing points. It is the manhole that the Defendant accepts he agreed he would move.
109. In my judgment, the plan of 5 February was sufficiently consistent with Mr Pattar's understanding as to his obligations that it would not cause him to understand that Mr Cronin expected him do more than he agreed with Mr Singh, which was to connect to the existing drain run, move a manhole outside and create a rodding access to the front.
110. Mr Cronin's oral evidence was that there was a need for a build over agreement from Severn Trent if a drain is built over, as the drain is an asset belonging to Severn Trent. His evidence was that he would expect a builder to understand his duties in this regard. Mr Bullock also gave evidence that a build over agreement or build over notice was required as the drain was Severn Trent's asset.
111. Mr Buray's evidence was that Mr Cronin and Mr Bullock were simply incorrect in saying that a build over agreement was required in this case, because the drains under the

new extension were private drains, and not part of Severn Trent's adopted drains. Whilst he agreed with Mr Cronin and Mr Bullock that what had formerly been private drains were adopted by Severn Trent as a result of legislation, his evidence was that did not include the start of a drain run, which was not shared with another property. It is only where the drain becomes shared with at least one other property that it becomes part of Severn Trent's assets. Documentary evidence from Severn Trent obtained for the purposes of closing submissions made clear to me that Mr Buray is correct that, since the drains under the Property were private and not shared with any other property until further downstream, no build over agreement was required. Much of the Claimants' criticism of the Defendant's treatment of the drains, which was based on the need to move the drains outside to comply with Severn Trent's requirements, therefore, appears to be misconceived. I find that there was no requirement to move the drain runs to meet Severn Trent's requirements. There is no reason why Mr Pattar ought to have understood that the drains needed to be moved outside the envelope of the building based on the requirements of Severn Trent.

112. There is no issue between the parties that, as a matter of law, the parties' post contractual conduct is admissible in evidence as to the terms of an oral agreement. The Claimants rely on this principle in support of the argument that the court should take account of the written document produced by the Defendant in August 2018 recording the terms of the Varied Contract. It reads as follows: "*new plumbing and drainage throughout the property*". The Defendant contends that the word "*new*" qualifies "*plumbing*" but not "*drainage*". His evidence I, which I accept, is that he had expressly agreed with Mr Singh that he was to connect to the existing drain run.
113. It is clear from the evidence that Mr Pattar produced that written document at the request of the Claimants, and under time pressure. They were pressing him to produce a contract. He understood (as I have found, because he was misled) that it was needed to enable the contract to move forward. It is also clear to me that, at that time, the Claimants knew, but the Defendant did not, that they had had a drain survey carried out which had revealed blockages and debris in the drain run. The document was post-contractual and of no contractual effect. Whilst it does contain an ambiguity, as to whether the drains were to be new or only the plumbing (and, necessarily, any new connections to the drain), I am satisfied that Mr Pattar is truthful in his evidence as to what was agreed when the Varied Contract was formed. I am not persuaded that the ambiguity in the document he produced in August means he had in fact agreed to do the work the Claimants allege.
114. Mr Kang produced a different draft contract, as I have found, after he had received Mr Pattar's document. I find that, mindful of the fact that there was a blockage in the drain run that had been identified in the survey that Mr Kang had received a few days earlier, Mr Kang sought to improve on the wording of the document produced by the Defendant, in an attempt to ensure that the Defendant would be liable for the problems found. The version produced by Mr Kang is strikingly similar to that produced by Mr Pattar, in terms of the description of the work, but it does contain some differences. In relation to the drainage, Mr Kang's document reads as follows

“New plumbing and drainage throughout whole property with it all being tested and inspected thoroughly with accessible manholes and rodding access for all the house”.

115. Even knowing that there were problems with the drainage, Mr Kang did not include in his document any reference to the obligation to relocate the drainage run to the outside of the building.
116. The Defendant asked me to take into account, as part of the post-contractual conduct, the fact that the Claimants laid a concrete slab over the entire ground floor after the Defendant had made connections to the old clay drain and had not laid new drains. I have found that Mr Singh was regularly on site. There is no evidence that Mr Singh made any complaint that Mr Pattar was connecting to the original clay drain or suggested he should be laying a new drain run elsewhere. The Claimants laid a concrete slab over the drains shortly after the Defendant had made the new connections to the old clay drain. I consider it unlikely that they would have incurred the cost of pouring the slab over drains they knew were not in compliance with the contract. To do so would make no sense at all.
117. Mr Brown submitted that the reason the Claimants did that was because the Defendant had indicated that he would later drill out the slab to lay the drain. However, I believe that confuses two concrete slabs. Mr Cronin gave evidence that when he questioned why Mr Pattar had laid a patio slab when drains needed to be laid, Mr Pattar said he would diamond drill the concrete to do so. That was the patio slab, not the floor slab. Mr Pattar’s position is that referred to the area where the manhole would be placed, in the corner of the garden, close to the neighbour’s property. That would involve removing a small area of concrete. There is photographic evidence that, at the time the Defendant left site, he had carried out excavation work for this to be done but had not actually installed the new manhole. The Defendant did not say he would drill out the slab within the building to lay drains. It would make no sense at all for work to be carried out in that way.
118. Mr Kang’s oral evidence on this point was that the drains had been laid between 1 June 2018 and 5 June 2018. He said that the Defendant had laid underground soil and waste pipe drainage, some pipes on the first floor. He confirmed that he knew the Defendant had not finished the work. Mr Kang also explained that, before the extension was built, the manhole was outside but after the extension being built it was inside the property. He said that this manhole had to be laid outside the perimeter after discussion on site with Mr Cronin. That explanation of the work that was required is more or less consistent with the Defendant’s version, which is that his obligation was to move the manhole to outside the perimeter of the building.
119. The Claimants’ evidence is that, before pouring the slab, they asked Mr Pattar whether the drains has been pressure tested, and he confirmed that they had. The Defendant’s evidence is that he confirmed they had been tested, but he was never asked whether they had been pressure tested, which they had not. I prefer the Defendant’s evidence on this point. I find that Mr Pattar had tested the drains, in the sense of checking that they flowed, but that he did not say they had been pressure tested.

120. For all these reasons, I prefer the evidence of the Defendant and Mr Buray to that of the Claimants' witnesses and Mr Bullock. I find that the Defendant's obligation did not include carrying out the drainage works in a way consistent with the drawings produced by Mr Cronin in 2019, to relay the main drainage run outside the building. I find that his obligation was to lay new drains connecting to the existing drain run, install a manhole to the exterior of the property and a rodding access to the front of the property, as the Defendant contends.

121. Whilst the main focus of the Claimants' case in relation to the drains is the alleged contractual obligation to lay a new drain, I note that the drain survey identified debris in the drain. It appears that some of that debris may be dust and debris from cutting into the clay pipe. Mr Buray's evidence, which I accept, is that that could have been washed through the system and did not necessitate relaying the drains. It is not clear exactly what, if any, other debris was found in the drains. However, I note that the Defendant did not lay the floor slab. If other building debris was found in the drains, I cannot be satisfied that it was the result of the Defendant's work, as opposed to contractors who laid the slab after the Defendant had been asked to leave site.

122. Mr Bullock's evidence in his report is that there was no means of access to the drains other than a single rodding access at the front of the building, that the building control officer had not inspected the connections and the drain survey revealed bends and deviations. His report recommends laying a new drainage system. I do not doubt that was sound advice. However, I note that he does not identify any specific failure to comply with Building Regulations. Mr Buray's evidence was that, whilst it would have been preferable to replace the existing clay drain with a new drain, there was no requirement to do so or that it be re-routed to ensure an accessible drainage system that could be rodded and kept clear. His evidence was that the connections to the run could include rodding access. The drains could be rodded from the rodding accesses that the Defendant accepts he was to provide. Mr Buray's evidence was that the run was sufficiently straight to meet the requirements that it flow freely. Mr Buray's evidence was clear and coherent, and I accept it.

123. I find that the Defendant was not in breach of contract in relation to the drains.

Dormer cheeks

124. The Claimants allege the Defendant was in breach of contract by failing to fit a bell bead to the bottom of the dormer cheeks, failing to install a separation membrane between the render and the plywood forming the dormer cheeks, failing to install metal lathing, and because the render was under 10mm thick when it should have been 12mm thick. They claim £1,608 for remedial work of replacing the dormer cheeks.

125. The Defendant's position with regard to the bell bead is that he was not obliged to include a bell bead as it was not specified, though he was willing to provide one when Mr Cronin suggested one should be included and he would have fitted one by removing some

render and fitting the bead had he remained on site. With regard to the membrane, the Defendant's position was that waterproofing was included in the render and a membrane would have been applied within the dormer, so the work was unfinished. As far as the depth of the render is concerned, the Defendant conceded in his oral evidence that the work was unfinished and that he would have applied a further coat of render to reach the required depth to complete the work.

126. The planning permission drawings show timber cladding to the dormers, not render. Mr Cronin did not produce detailed drawings for rendered dormer cheeks. The Claimants' position is that the Defendant should have asked Mr Cronin for drawings or details specification after he decided (for whatever reason) to use render. The Defendant's evidence is that Mr Singh changed his mind and instructed him to render the dormer cheeks, as he wanted the dormer cheeks to match the rest of the building. Mr Singh's evidence in cross-examination was that he expected Mr Pattar to stick to the plans and that he had not asked for a change to render. I preferred Mr Pattar's evidence to Mr Singh's on this point. His evidence was clear and coherent. There is no evidence of any complaint made when Mr Pattar rendered the dormers that he had not done what the Claimants had instructed him to do. Mr Pattar would have no interest in altering his clients' plans without authority. I find that Mr Singh did instruct Mr Pattar to depart from the plans and render the dormers.
127. The Defendant accepted in his oral evidence that he was under an obligation to ensure that the render was applied properly. However, he did not accept that he had failed to do so, only that some of the work was incomplete.
128. Mr Cronin's evidence is that he attended site after the dormers had been rendered and sketched a bell bead and was told that the Defendant had never done that before and that they used a mastic sealer. Mr Pattar's evidence was that, when he had spoken to Mr Cronin about the bell bead he had apologised and said it was not a problem to cut it back and re-render in that area if required. He did not accept it was a defect that there was no bell bead but said he would fit one if that is what was required by Mr Cronin.
129. I am satisfied that the Defendant did not intend to use a bell bead but was willing to provide one at Mr Cronin's request by cutting back the render and installing it. I note that the joint expert's valuation of the work was for "*apply chicken wire to plywood dormer cheeks and sand/cement render as instructed by Claimant - £825*", which I note is about half the cost of the claim for remedial work. It is my understanding that the experts valued the work the Defendant had actually carried out, not the value of the work had it been completed in accordance with the specification for which the Claimants contend. It appears therefore that the valuation of the work completed has not included the provision of bell beading. Mr Buray accepted in his evidence that bell beading was an appropriate treatment for dormer cheeks, but he did not accept that a competent builder would be expected to provide such detailing without instructions to do so.
130. There is no evidence before me of any requirement of The Building Regulations to include a bell bead, or that failure to provide one is a breach of the obligation to use

reasonable skill and care. I am satisfied that bell beading was not specified by Mr Singh, and failing to provide one was not in itself a breach of the Varied Contract.

131. In any event, as the valuation of the completed work did not include bell beading, to allow remedial costs for installing bell beading would be to award remedial costs for work for which the Claimants have not paid, and amount to a double recovery.
132. Mr Bullock's evidence is that there was no building paper or membrane between the dormer cheeks and the bonding mesh so that the render was in direct contact with the plywood. His evidence was that a membrane would stop direct contact with the plywood would prevent cracking as a result of movement, and that cracks had already begun to appear. His evidence was that, without a membrane between the render and the ply, further cracking would occur.
133. Mr Buray's evidence was that the render was doing its job and that the cracks were hairline cracks that can be expected from thermal movement, that the damage should be categorised as "0" and should not be treated other than by filling prior to decoration. His evidence was that remedial costs of about £50 would be sufficient to remedy the hairline cracks that had appeared.
134. There is no evidence before me that that the Defendant's treatment of the dormers, in using a waterproof render and not using a membrane contravened Building Regulations or that it was below the standard to be expected of a builder exercising reasonable skill and care. The Claimants have not discharged their burden of proving that the Defendant was in breach of contract as a result of failing to install such a membrane. I accept Mr Buray's evidence that a cost of about £50 to remedy the hairline cracks is sufficient to remedy the defect that did exist. I will allow £50.
135. As far as the depth of the render is concerned, I accept the Defendant's evidence that a further coat of render would have been applied where necessary to achieve the required depth. In any event, as it appears that the experts' joint report valued the render actually applied, not the cost of the render had it been to the required depth, the Claimants' claim for remedial work for applying more render without valuing the work completed as though it was the required depth would amount to a double recovery.
136. In summary, therefore, I find that the Claimants are not entitled to the cost of remedial work to apply bell beading, to install a membrane or to increase the depth of the render. I will allow £50 for the cost of dealing with the hairline cracking.

Flooring sheets

137. The Claimants claim £2,070 remedial costs for flooring sheets to address the fact that the flanges of the steel beams protruded about 5 mm above the flooring sheets. The proposed remedy is to install an overlay of plywood sheeting before floor coverings are laid. Mr Cronin and Mr Bullock gave evidence that the joist sizes were standard sizes and, in order to ensure that the top of the joists were at the correct height so the steel

beam did not protrude above them, there should have been an adjustment made. Mr Cronin suggested the Defendant should either have provided timber cross-battening or a proprietary suspended ceiling system. As far as I am aware, there is nothing on the drawings to suggest that a proprietary suspended ceiling system or timber cross battening was required. The Claimants point to a drawing in at page 1090 in the bundle and alleged the Defendant failed to follow that drawing. That drawing is drawing number L (2 –) FP – 03 revision B, which appears to be dated 2019, which is after the work was carried out. I am unable to understand how that drawing shows that the Defendant was to provide a proprietary suspended ceiling so that the beam did not protrude beneath the ceiling on the ground floor or to provide battening above the joists.

138. Mr Buray's evidence was that the designs were inadequate in that the detailing did not show how the Defendant was to address the fact that the joists were less deep than the beam. His evidence was that this could be dealt with either by packing the underside of the beam, in which case the beam would protrude below the ceiling, or by boarding above the joists so that the boarding would be in line with the top of the beam. His evidence was that either solution involved some cost and neither solution was shown on plans made available to the Defendant.
139. I accept the Defendant's evidence that Mr Singh made clear to him that he did not want the beam protruding beneath the ceiling on the ground floor. I accept Mr Buray's evidence that packing the beams in the way as Mr Cronin suggests the Defendant should have done would have led to a discrepancy between the level of the bottom of the joists and the bottom of the beam so that the beam would protrude below the ceiling unless a suspended ceiling system was used. I accept Mr Buray's evidence that either the ceiling would need to be suspended or there would need to be packing between the top of the joists and the flooring. I cannot see that either solution was indicated on the plans made available to the Defendant.
140. The Claimants have failed to discharge their burden of proving that the Defendant was in breach of contract by failing to pack the beam so as to raise the level of the joists and provide a suspended ceiling system as Mr Cronin suggests he should have done. It follows that the Claimants are not entitled to remedial costs for this item.

Wallplate

141. The Claimants claim £280 and allege that the timber wallplate was unsupported and new ceiling joists insecure. Mr Buray's evidence was that the wallplate was existing and it was not the Defendant's responsibility to carry out any work to the wallplate, in the absence of any contractual requirement to do so. The Claimants' position is that it is the Defendant's responsibility to secure the wallplate as part of his duty to exercise reasonable care and skill during the works. Whilst I accept that a builder exercising reasonable skill and care would ensure the wallplate was secure, I accept Mr Buray's evidence that this was not included in the scope of the Varied Contract and has not been valued in the work undertaken. I find this was incomplete work which the Defendant would have carried out had he remained on site but for which he would have been entitled

to make a charge as it was not included in the Varied Contract. It follows that the Claimants are not entitled to the costs of securing the wallplate as remedial work, as that would amount to a double recovery.

Timber purlins

142. The Claimants claim £400 for this item. Mr Bullock's evidence was that timber purlins were left unsecured and propped on loose pieces of timber and it was necessary to bolt the purlins together using timber connectors. The Defendant's evidence was that the purlins had to be cut to deal with the defective design of the staircase. I have found that the Defendant installed a staircase without detailed designs and took responsibility for that design. Whilst I have not allowed any remedial costs for replacing the staircase, on the basis that the Claimants had not paid for installing the staircase, the Claimants are entitled to the cost of remedying the purlins that were cut to accommodate the staircase. I will allow the sum claimed of £400.

Roof and floor timbers

143. The Claimants claim £400 for the cost of securing roof and floor timbers that had not been securely fixed. Mr Buray's evidence was that the Defendant had confirmed to him that the timbers had been secured in accordance with the Building Regulations. It is clear that Mr Buray had not witnessed the issues that Mr Bullock identified, and his valuation of the work will have assumed that there was no need to complete this work. The Defendant's position is that this is incomplete work rather than defective work. I accept Mr Bullock's evidence that there was a need to do work to secure timbers and I also accept his evidence that a reasonable cost of that work is £270, and I will allow £270.

Timber packing

144. The Claimants claim £450 for the removal of timber packers in various locations supporting the floorboards over openings and on top of block walls. The Defendant's position is that this was work in progress and not completed work that was defective. Mr Buray's evidence was that he had not seen the packing of which the Claimants complain. In his oral evidence, he confirmed, having seen the photographs, that the packing was not acceptable although he understood from the Defendant that it was unfinished work. His evidence was that it would be at the most a day's work to rectify or complete this work by laying a few blocks, which he would value at £200 to £250. I accept that this is unfinished work and I accept Mr Buray's evidence that between £200 and £250 would be a reasonable cost for completing this work. I will allow £225.

Stairs and landing

145. The Claimants claim £1,750 for replacing the stairs. I have dealt with this issue above. Having allowed nothing for the cost of installing the stairs, awarding damages for rectifying the stairs by installing a new staircase would amount to a double recovery to which the Claimants are not entitled and I will make no award for this item.

Blockwork and brickwork

146. The Claimants claim £1,100 as a result of pad stones not being secured and pointed in and gaps and voids in the brick and block work evidenced in photographs in the bundle. I am satisfied, based on the video evidence, that pad stones were on site waiting to be installed by the Defendant when he left site. I have seen the pad stones in the videos. I am satisfied that this is incomplete work rather than work that was completed but was defective. I have seen photographs showing gaps in the mortar between blocks which would need to be filled. In particular, the Claimants rely on voids where joists have been removed. Mr Buray's report indicated he had not seen the gaps and voids within the block work but it is usual for gaps to be filled before applying plasterboard and he would expect the rectification would take a labourer one day to complete, for which he allowed £200. Mr Bullock did not explain how he has arrived at a figure of £1,100, which appears to be about a full week's work. I prefer the evidence of Mr Buray that £200 is a reasonable figure to fill the voids and I will allow a further £200 for securing and pointing in the pad stones. I will allow £400 in total for this item.

Ducting

147. The Claimants claim £400 on the basis that they instructed the Defendant to install ducting from the pillars in the garden wall to the distribution board for lighting to the patio garden wall. The Claimants claim that the conduit was too small for the cabling. In oral evidence, Mr Bullock conceded that the cabling might go through the ducting but it was not possible to get the cable through to the distribution board because it must have been crushed. It appears from this that the problem with the cabling conduit is not that it was of inadequate dimensions but that it had become compressed so the cable could not pass through it. I note that the Defendant did not carry out the laying of the concrete floor. That was carried out by other contractors. On the balance of probabilities, I find it more likely that the crushing of the ducting took place when the concrete floor was laid than that it was crushed before the Defendant left site. I will not make any allowance for this item.

Site conditions and security

148. The Claimants claim £550 for clearing debris and rubbish that had been left in the garden, including piles of sand at the front of the property. They also complain that the property was left insecure. They rely on evidence of messages showing the Claimants requested the Defendant to attend the property after July 2018 to clear the site and that the Defendant did not do so.

149. The Defendant's evidence was that Mr Singh asked him to attend site to secure the property for the winter. His evidence was that he telephoned Mr Singh and said that he would be prepared to do so without labour charge but required the Claimants to pay for the materials and that they did not do so. Although Mr Singh's evidence was that, having asked Mr Pattar to attend site and having reminded him of that request, he heard nothing

from him, Mr Singh conceded in his oral testimony that Mr Pattar had telephoned him within a couple of minutes of receiving a text message from him. I accept Mr Pattar's evidence that he did indicate that he would secure the site but that he required payment for the materials to do so.

150. Securing the site whilst work was suspended was not part of the Varied Contract. I find that Mr Pattar was not in breach of contract by failing to secure the site in circumstances where he had requested payment to do so and had not been paid.

151. As far as failure to remove rubbish from the site is concerned, I note that the text message on which the Claimants rely, on 13 August 2018, reads as follows:

“What your plans for moving the sand in front of the house? The lads will have all the other rubbish removed by Wednesday, we have an old bath and all double glazing units to remove?”

152. From this, it appears that the request was for the Defendant to remove sand and that others were removing other rubbish. Mr Pattar's evidence was that the debris on site shown in the photographs on which the Claimants rely was largely debris left by other contractors and some materials left by the Defendant to continue with the work when he expected to return.

153. Whilst I am satisfied that Mr Singh requested sand to be removed, I am not satisfied that the Defendant's failure to do so amount to a breach of the Varied Contract. At the point the requests were made, the Defendant was expecting to return to site and there would be no reason for him to remove his sand from site without charge in order to comply with the Varied Contract.

154. It follows that I am not persuaded that there was any breach of contract by the Defendant entitling the Claimant to damages for lack of security or failure to remove materials from site.

Living room joists

155. The Claimants claim £800 for this item. The living room joists were laid along the length of the room with a double joist bolted together in the centre. The Claimants claim that the joists should run across the room, as shown in Mr Cronin's drawings, and that the floor had deflected by 30 mm at mid span because they were over spanned as a result.

156. The Defendant's evidence was that Mr Singh expressly instructed him to lay the joists in the orientation he did because he wanted to install a media screen and, had the joints been laid across the room, it would not have been possible to accommodate the screen within the ceiling void. I accept Mr Pattar's evidence on this point. The joists were installed in December 2017, some two months before the drawing on which the Claimants rely, showing the joists running from side to side.

157. Further, Mr Buray's evidence is that, even as installed, the joists were adequate. The Claimants rely on a video showing the joists but I am unable to find based on that video that there was unacceptable deflection. There are no calculations provided to explain why the joists were inadequate as installed.

158. The Claimants have not satisfied their burden of proving a breach of contract on the part of the Defendant.

Dormer oversized

159. The Claimants claim £2,562.50 for this item. The dormer was oversized compared with the planning permission drawings. The Defendant claims that he was instructed by Mr Singh to build the dormer the size that he did and that normally that would attract an additional claim for the cost of doing so. The Claimants deny that Mr Singh instructed the Defendant to increase the size of the dormer. I accept Mr Pattar's evidence that he was expressly instructed by Mr Singh to increase the size of the dormer. It seems to me unlikely that the Defendant would unilaterally have increased the size of a dormer window without the client's agreement, and at no additional cost.

160. Further, the only evidence that supports this claim is a spreadsheet showing costs claimed. There is no supporting order, contract, invoice or evidence of payment to rectify this work. There is no expert evidence as to the cost of remedying this item. Indeed, I had not understood until closing submissions were made that this remained part of the Claimant's claim. There is no evidence from the experts as to why it is necessary to carry out the remedial work, what remedial work was required, or how the costs have been calculated.

161. I make no award for this claim.

End bedroom unsupported

162. The Claimants claim £575 for this item. Mr Bullock's evidence is that there was a lack of floor structure support above the end bedroom to the right of the en-suites. The Defendant's position is that the specification for the work agreed with Mr Singh did not include this work. Further, the Defendant argues that, since the work has not been included in the valuation of completed work by the experts, allowing remedial work for this unfinished element of work would amount to a double recovery. Whilst it is unclear to me whether the specification for the work did or did not include this item, I am satisfied that it was not included in the valuation agreed by the experts. To allow remedial costs would be to award damages for work for which the Claimants have not paid, which would amount to a double recovery. I will make no award for this item.

Rear roof canopy

163. The Claimants claim £550 for remedying the rear roof canopy. Mr Cronin and Mr Bullock both gave evidence that the joist extensions to the flat roof for the rear roof

canopy were not secure and that the overhang of 1 m exceeded what was shown in the drawings. The drawings do show a roof canopy extending beyond the exterior walls. The Claimants argue that the canopy should have been cantilevered back into the property but this could not be done because of the height at which the Defendant had installed a steel beam above the kitchen opening. It is common ground that the steel beam was installed before the structuring drawings had been produced.

164. Mr Cronin's evidence was that he told the Defendant in February 2018 the canopy could not be anchored back into the property.
165. Mr Buray's evidence was that the cantilevered roof canopy was a design flaw. His evidence was that it was not the Defendant's fault that the canopy could not be cantilevered into the building because the beam could not have been installed at any lower height because it would have impinged on the bifold doors beneath it. The beam was installed immediately above the bifold doors. There was nowhere else for the Defendant to place the beam. If it was not possible to cantilever the joists as a result of the location of the beam, that was the result of the design, and not the fault of the Defendant.
166. The Claimants were unable to explain to me so that I was able to understand in what way the Defendant breached the contract. They did not point to any drawing or other specification from which the Defendant ought to have been able to conclude that he should have installed the beam and the canopy in some other way. Mr Buray's evidence was that he could not see anything on the drawings to show how the overhang was to be cantilevered into the building and that there was no detail to suggest anything other than a joist hanger be used to secure the joists.
167. I find that, whilst the Defendant did not wait for detailed design drawings before installing the beam above the bifold doors, he carried out the work in accordance with the drawings available at the time and Mr Singh's instructions and the location of the beam he installed was not in breach of the Varied Contract. I also find that the drawings eventually provided did not provide details of how the joists were to be cantilevered. The Claimants have failed to satisfy me that the Defendant's work was in breach of the Varied Contract.

The Defendant's claim for lost profit

168. The Defendant claims lost profit on the remainder of the contract works which, but for the Claimants' repudiation of the contract, he would have earned. I have already found he is entitled to his lost profit. The price of the contract works was £118,810. The experts' agreed valuation of the work included extras of £2,201 for the stripping and boarding of the existing side extension roof and forming an opening in the existing cavity wall, installing lintels and timber studding to create a walk-in wardrobe area. The total value of the contract, as varied in accordance with the experts' agreed figure for variations, is £121,011. I have determined the value of the work completed, for which the Defendant is entitled to payment, to be £82,942, inclusive of his profit and overhead

margin of 20%. The remaining value of the contract, which the Defendant did not complete, was £38,069. I have also found that the Claimant’s reasonable profit margin was 20%. I calculate that, of the remaining contract value of £38,069, the proportion of that sum that represents the Defendant’s 20% profit margin is £6,344.

169. A summary of my findings is set out in the table below.

Item	Decision
Value of work completed	
Value of completed work agreed between the experts	£71,552
Staircase	Nil
Wiring	£3,500
PVC push fit piping to radiators	£3,400
Difference between agreed profit of 15% and profit allowed at 20% on the value of works agreed between the experts	£3,111
Profit of 20% on the disputed items awarded (totalling £6,900)	£1,380
Subtotal: value of completed work before allowance for remedials	£82,943
Remedial work	
Drainage	Nil
Dormer cheeks	£50
Flooring sheets	Nil
Wallplate	Nil
Timber purlins	£400
Roof and floor timbers	£270
Timber packing	£225
Stairs and landing	Nil
Blockwork/brickwork	£400
Ducting	Nil
Site condition/security	Nil
Living room joists	Nil
Dormer oversized	Nil
End bedroom unsupported	Nil
Rear roof canopy	Nil
Subtotal remedial works allowed	£1,345
Balance payable to the Defendant for the Varied Contract works completed, net of remedial costs allowed	£81,598
Less: paid on account	£69,300
Balance due to the Defendant after payment already received	£12,298
Defendant’s lost profit on balance of the contract price of £38,069	£ 6,344
Total due to the Defendant	£18,642

170. The Claim is dismissed. The Defendant is entitled to judgment on the Counterclaim in the sum of £18,642.