

BETWEEN

LAGAN BITUMEN LIMITED

PLAINTIFF

AND

WEEDS WEST GLOBAL SOLUTIONS, S.A.

DEFENDANT

**EX TEMPORE JUDGMENT of Ms. Justice Reynolds delivered on the 18th day of January, 2019**

1. This is an application for assessment of damages, the plaintiff having already obtained an order for judgment in default of appearance (Mr. Justice Barniville) on the 30th July, 2018.

2. At the outset, the Court granted liberty to amend para. 6 of the Statement of Claim in circumstances where it is clear from the footnote thereto that the sum intended to be relied upon by the plaintiff is €198,000 and not the sum of €220,300, and indeed where such amendment is to the defendant's benefit.

**Background**

3. In the within proceedings, the plaintiff entered into a contract with the defendant to purchase a "big bag filling unit" and the defendant agreed to sell, deliver, install and commission the said unit for a total consideration of €220,300.

4. The specific requirements with which the unit was to adhere were expressly outlined in the contract.

5. It was agreed that the plaintiff would discharge the contract sum as follows:-

(i) 30% in advance;

(ii) 60% before delivery;

(iii) 10% after start up.

**The evidence**

6. Pursuant to the terms of the contract, the plaintiff paid the sum of €198,000 to the defendant having received delivery of the unit.

7. However, despite the said sum having been paid, the defendant has failed, refused and neglected to comply with its contractual obligation to deliver the unit in accordance with and which adhered to the specific requirements as outlined in the contract.

8. The plaintiff's operations director gave evidence of protracted communications with the defendant in relation to problems with the unit, the principal one being the misdesign of the heat exchange unit. Further, there was no operational follow-up after the machine was delivered despite repeated assurances from the defendant that all of these issues would be resolved.

9. After significant forbearance by the plaintiff, it became manifestly clear that the defendant had no intention of rectifying the ongoing problems with the machine. Thereafter, the plaintiff instructed its solicitors to issue the within proceedings.

10. Having encountered insurmountable difficulties in serving the proceedings on the defendant, the plaintiff obtained an order for substituted service on the 22nd January, 2018 (Mr. Justice Meenan).

11. The Court is satisfied that the defendant was properly served with all relevant documentation in accordance with that order and further that the defendant was adequately served with notice of today's hearing date.

**Conclusion**

12. In the circumstances, I have no hesitation in awarding the plaintiff the sum of €198,000, by way of repayment of the moneys paid by the plaintiff to the defendant for the said unit.

13. The plaintiff is not pursuing any further claim for damages and has agreed to absorb all further losses associated with the said unit. The unit remains on the plaintiff's property and is of limited salvage value. Further, there are storage issues with its continued presence on the plaintiff's property.

14. I will therefore direct that the defendant be afforded a period of twelve weeks from the date of service of this Order to collect the said unit and in the event of their failure to do so, liberty thereafter to the plaintiff to dispose of it.

15. In addition, the plaintiff is entitled to its costs.