

Mr. Mohabir Anil Nandlall SC, MP  
Attorney General of Guyana and  
Mr. Nigel Ovid Hawke, Solicitor General  
Attorneys-at-Law for the Claimant  
Firm's name: Attorney General's Chambers  
Address: 95 Carmichael Street,  
North Cummingsburg, Georgetown  
Tel. No.: 225-3607  
Email: anilnandlall@hotmail.com

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF  
GUYANA

CIVIL JURISDICTION

2021 - HC – DEM - CIV – SOC -

BETWEEN:

**THE ATTORNEY GENERAL OF GUYANA**

Claimant

- and -

1. **COURTNEY BENN Contracting Services Ltd., a Company duly incorporated under the Companies Act, Laws of Guyana with its registered office situate at Lot 28 ' B' New Providence, East Bank Demerara**
2. **CARICOM GENERAL INSURANCE COMPANY Inc., a Company duly incorporated under the Companies Act, Laws of Guyana with its registered office situate at Lot ' A' Ocean View Drive, Ruimzeight Gardens, West Coast Demerara**

Defendants

Jointly and Severally

**INFORMATION FOR COURT USE**

1. This proceeding is commenced as a:

**Statement of Claim**

Fixed Date Application

2. This proceeding falls under the High Court's

- Appellate Jurisdiction
- Admiralty Jurisdiction
- Commercial Jurisdiction
- Criminal Jurisdiction
- Family Jurisdiction

**Regular Jurisdiction**

(must check one of these boxes and, except where proceeding is under the regular jurisdiction of the Court, must specify the applicable jurisdiction in the General Heading (Form 4A).

3. The proceeding is an

- Admiralty Proceeding in personam
- Admiralty Proceeding in rem
- Probate Proceeding
- Proceeding Judicial Review
- Proceeding relief under constitution
- Proceeding for Administrative Law
- Proceeding for Administration

**Other Proceeding**

(must check one of these boxes and, except where the proceeding relates to the last option so on the General Heading (Form 4A).

4. I certify that the above information is correct, to the best of my knowledge.

Dated this            January, 2021.

  
**Mr. Mohabir Anil Nandlall SC, MP**  
**Attorney- at- law for the Claimant.**

Mr. Mohabir Anil Nandlall SC, MP  
Attorney General of Guyana and  
Mr. Nigel Ovid Hawke, Solicitor General  
Attorneys-at-Law for the Claimant  
Firm's name: Attorney General's Chambers  
Address: 95 Carmichael Street,  
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- 1. COURTNEY BENN Contracting Services Ltd., a Company duly incorporated under the Companies Act, Laws of Guyana with its registered office situate at Lot 28 ' B' New Providence, East Bank Demerara**
- 2. CARICOM GENERAL INSURANCE COMPANY, Inc., a Company duly incorporated under the Companies Act, Laws of Guyana with its registered office situate at Lot ' A' Ocean View Drive, Ruimzeight Gardens, West Coast Demerara**

Defendants

Jointly and Severally

### STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU  
by the Claimant. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Attorney-at-Law acting for you must prepare a Defence in Form 10A prescribed by the Civil Procedure Rules 2016, serve it on the Claimant, and file it, with proof of service at a Registry, **WITHIN TWENTY-EIGHT DAYS** after this Statement of Claim is served on you.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

THIS STATEMENT OF CLAIM has no validity if it is not served within six months of the date below unless it is accompanied by an order extending that time.

Date \_\_\_\_\_

\_\_\_\_\_  
Signature of Registry  
Issued by:  
Address of Registry where issued:  
Supreme Court Registry,  
South Road Georgetown, Demerara.

TO: **COURTNEY BENN CONTRACTING SERVICES LIMITED**, a Company duly incorporated under the Companies Act, Laws of Guyana with its registered office situate at **28 'B' New Providence, East Bank Demerara.**

TO: **CARICOM GENERAL INSURANCE COMPANY Inc.**, a Company duly incorporated under the Companies Act, Laws of Guyana with its registered office situate at **Lot 'A' Ocean View Drive, Ruimzeight Gardens, West Coast Demerara.**

## CLAIM

A. **The Claimant claims from the Defendants, jointly and severally, the following: -**

- (i) Damages in excess of one hundred million dollars (\$100,000,000) against the First named Defendant for breach of Contract dated 18<sup>th</sup> August, 2018, for the Re-construction of the St. Roses High School and the Addendum dated the 23<sup>rd</sup> December, 2019, for the Reconstruction of the St. Roses High School, Church Street, Georgetown;
- (ii) The sum of forty one million, two hundred thirty thousand four hundred thirty five dollars (\$41,230,435) as liquidated damages from the First Named Defendant, calculated at ten percent (10 %) pursuant to the provisions of the Contract dated 18<sup>th</sup> August, 2018 and the Addendum dated the 23<sup>rd</sup> December, 2019, for the Reconstruction of the St. Roses High School, Church Street, Georgetown;
- (iii) The sum of \$ 105,812,929 (one hundred and five million, eight hundred and twelve thousand, nine hundred and twenty nine Guyana dollars) due, owing and payable by the First Named Defendant under Performance Bond issued by the Second Named Defendant for the Contract dated 18<sup>th</sup> August, 2018 and the Addendum dated the 23<sup>rd</sup> December, 2019, for the Reconstruction of the St. Roses High School, Church Street, Georgetown;
- (iv) Aggravated damages in the sum of one hundred million dollars (\$100,000,000) for the First Named Defendant's breach of the

Contract dated 18<sup>th</sup> August, 2018 and the Addendum dated the 23<sup>rd</sup> December, 2019;

- (v) An Order for Restitution from the First named Defendant in the sum of sixty seven million three hundred and thirty seven thousand five hundred and thirty eight Guyana dollars (\$67,337,538), constituting an Advance payment made by the Government of Guyana to the First named Defendant for which there were no works done;
- (vi) Alternatively, an Order of Restitution against the Second Named Defendant for all monies owing on the Advance Guarantee and Performance Bond to the Government of Guyana;
- (vii) Interest in accordance with Section 12 of the Law Reform Miscellaneous Act, Chapter 6:02, Laws of Guyana
- (viii) Such further or other Orders as the Court deems just and reasonable;
- (ix) Costs.

**B. The facts relied upon are as follows: -**

1. The Claimant is the Attorney General of Guyana, the Principal Legal Advisor to the Government of Guyana in accordance with Article 112 of the Constitution of Guyana, is also the keeper of public's conscience and by virtue of section 10 of the State Liability and Proceedings Act, Chapter 6:05, Laws of Guyana, is duly authorized to enforce any claim by the State.
2. The First Named Defendant, Courtney Benn Contracting Services Ltd., is and was at all material times a Company duly registered and existing under the

Companies Act, Laws of Guyana with its registered office situate at Lot 28 'B' New Providence, East Bank Demerara and engaged in the business of operating as a building contractor.

3. The Second Named Defendant is and was at all material times a limited liability Company registered under the Companies Act, Laws of Guyana with its registered office situate at Lot 'A' Ocean View Drive, Ruimzeight Gardens, West Coast Demerara, and whose business includes but is not limited at the issuance of Performance Bonds and Guarantees and other such issuances of warranty required for building contracts.
4. On the 18<sup>th</sup> August, 2018, in the County of Demerara, Republic of Guyana, the Government of Guyana entered into a written contract (hereinafter referred to as 'the Contract Agreement') through the Ministry of Education (hereinafter referred to as "the Employer") with the First Named Defendant (also referred to as "the Contractor") for the Re-construction of the St. Roses High School, Church Street, Georgetown, in accordance with and under such terms and conditions set out in the said written contract, more specifically styled, the General Conditions of Contract (GCC) with the Fixed Contract Price of the sum of \$352,709,745 (three hundred fifty two million, seven hundred nine thousand, seven hundred and forty five) Guyana dollars.
5. On the 23<sup>rd</sup> December, 2019, the Government of Guyana executed an Addendum to Agreement through the Ministry of Education with First named Defendant to increase the contract sum by \$59,594,612 (fifty-nine million, five hundred and ninety four thousand, six hundred and twelve Guyana dollars) and, as a consequence thereof, increased the original contract sum to \$412,304,357 (four hundred and twelve million, three hundred and four thousand, three hundred and fifty seven Guyana dollars).

6. The increase in the contract sum of \$59,594,612 (fifty-nine million, five hundred and ninety four thousand, six hundred and twelve Guyana dollars) was to facilitate the cost for the construction of the Deep Foundation works which included the driving of two hundred and twenty four (224) timber piles and preparation of the reconstruction site by the First Named Defendant.
7. The Addendum amended Clause 34 of the Special Conditions of the Contract (SCC) which permitted a fifteen percent a (15%) mobilization advance to be paid to the First named Defendant to be increased to twenty percent (20%) and this resulted in the First named Defendant being paid an additional sum of sum of \$29,554,410 ( twenty nine million, five hundred and fifty –four thousand, four hundred and ten Guyana dollars).
8. In compliance therewith, the First Named Defendant received from the Government of Guyana an Advance Payment in the sum of \$118,711, 657 (one hundred eighteen million, seven hundred eleven thousand, six hundred and fifty seven Guyana dollars) under the terms of the Contract.
9. As a consequence of the Addendum, the Contract was extended for a period twenty (20) months and as such, the completion of the Contract was thereof scheduled to be executed no later than the 23<sup>rd</sup> August, 2021.
10. In consequence thereof, the First Named Defendant undertook to have the Performance Bond issued by the Second named Defendant for and on behalf of the First named Defendant in favour of the Ministry of Education reflect the new completion date for the reconstruction works for the St. Roses Secondary School.



11. With the knowledge and upon the concurrence of the First named Defendant, the reconstruction works at the St. Roses Secondary School was supervised at all material times by the Project Manager, Mr. Ron Eastman, a civil works engineer attached to the Ministry of Education.
  
12. Pursuant to the terms of the Contract the First Named Defendant duly submitted a Work Execution Schedule/ work program to both the Ministry of Education and the Project Manager containing the schedule of works for the duration and completion of the reconstruction works of the St. Roses Secondary School.
  
13. In breach of its obligations under the Contract, the First named Defendant failed and/or neglected to complete the scope of works in accordance with the Contractual Work Execution Schedule which was submitted thereof.
  
14. In August, 2020, upon the request of the Ministry of Education, the Project Manager did an assessment of all the works done by the First named Defendant under the Contract and concluded in breach of the said Contract and the Work Execution Schedule, the First named Defendant had only executed a total of nine percent (9%) of the whole works after a period of approximately nine (9) months elapsed.
  
15. The aforesaid assessment by the Project Manager also concluded of all the works executed by the First Named Defendant was only the driving of piles and the reconstruction works for the St. Roses Secondary School was not furthered in any way.

16. It will be contended that the First named Defendant's failure and neglect to comply with the Work Execution Schedule constituted a fundamental breach of the terms of the Contract.

17. As a consequence thereof, the Claimant wrote to the First named Defendant for and on behalf of the Ministry of Education in the following terms:

2<sup>nd</sup> November, 2020

Company Secretary  
Courtney Benn Contracting Services Limited  
Lot 28 B New Providence  
East Bank Demerara  
Guyana

Dear Company Secretary,

**Re: Termination of Contract for the Re-construction  
of the St. Roses' High School**

I act on behalf of the Government of Guyana.

The Government of Guyana through the Ministry of Education, executed a written agreement with your Company on the 8<sup>th</sup> August, 2018 for the Construction of the St. Roses' High School located at Camp and Church Streets, Georgetown, in accordance with the terms specified in the said contract.

The contract was executed for the sum of \$352,709, 745.00 (three hundred and fifty – two million, seven hundred and nine thousand, seven hundred and forty-five) Guyana dollars and was supposed to be completed on or before 8<sup>th</sup> April, 2020.

The Government of Guyana then executed an addendum to the contract dated the 23<sup>rd</sup> December, 2019 to facilitate the driving of piles by your company. The contract was extended for a period twenty (20) months and is now scheduled to be completed by the 23<sup>rd</sup> August, 2021. The Contract sum was then increased to the sum of \$ 412,304, 357.00 (four hundred and twelve million, three hundred and four thousand, three hundred and fifty- Seven ) Guyana dollars.

Thus far, your company has only completed nine percent (9%) of the schedule of works. *As a consequence, your company has committed a fundamental breach of the terms of the contract and as a*

*result thereof the Government of Guyana hereby exercises its right to terminate the contract with immediate effect.*

The grounds for termination are as follows:

- (a) *Breach of Clause 40.2 (a) for failing to comply with the schedule of works;*
- (b) *Breach of Clause 40.2 (g) read along with the special conditions of the contract for inordinate delay in the completion of works under the contract.*

The Government of Guyana will enforce the provisions in the contract regarding the enforcement of ten (10%) of the contract sum as liquidated damages and the surrendering of the performance security as a consequence of your company's fundamental breach of the contract.

In addition thereto, the Government of Guyana reserves its right institute legal proceedings against your company for compensation for breach of contract.

Please arrange to have the site cleared immediately.

Please be guided accordingly

Yours Faithfully

SGD

Mr. Mohabir Anil Nandlall, MP

Attorney General and Minister of Legal Affairs

18. As a consequence, the Ministry of Education caused the contract to be terminated on the 2<sup>nd</sup> November, 2020 which amounted to fundamental breaches of the Agreement on following grounds:

*Breach of Clause 40.2 (a) for failing to comply with the schedule of works and Breach of Clause 40.2 (g) read along with the special conditions of the contract for inordinate delay in the completion of works under the contract.*

19. As a result of the matters aforesaid, the Government of Guyana suffered loss and damage.

## **PARTICULARS OF BREACH**

- (a) Failure to comply with the work program or schedule of works;
- (b) inordinate delay in the completion of the works in breach of Clause 40 of the Contract;
- (c) neglect on the part of the First named Defendant in complying with the terms of General Conditions of the Contract (GCC);
- (d) failure comply with the terms of the Performance Bond;

20. By reason of the breach by the First Named Defendant, the Government of Guyana has suffered loss and damage especially since the First Named Defendant received an advance payment of the sum of \$118,711, 657 (one hundred and eighteen million, seven hundred and eleven thousand, six hundred and fifty seven Guyana dollars ) but with the valuation of the works executed being \$51,374,119 (fifty one million, three hundred and seventy four thousand, one hundred and nineteen Guyana dollars) executed under the Contract.

21. On the 6<sup>th</sup> August, 2018 the First named Defendant executed a Performance Bond (' the Bond') in the sum of \$105,812,929.00 ( one hundred and five million, eight hundred and twelve thousand, nine hundred and twenty nine Guyana dollars) conditioned for the due performance by the First Named Defendant of a written contract made between the Government of Guyana and First Named Defendant dated 18<sup>th</sup> August, 2018 and amended by Agreement dated the 23<sup>rd</sup> December, 2019 for execution of reconstruction works and their completion by the 23<sup>rd</sup> August, 2021.

22. The First Named Defendant failed and/or neglected to perform the Contract or complete the reconstruction works as per the schedule of works and by reason of matters set out above, the Claimant suffered further loss and damage.

#### **PARTICULARS OF DAMAGE**

(a) The Performance Bond executed by the First Named Defendant for \$105,812,929 (one hundred five million, eight hundred nineteen, nine hundred twenty nine dollars) and issued by the Second Named Defendant;

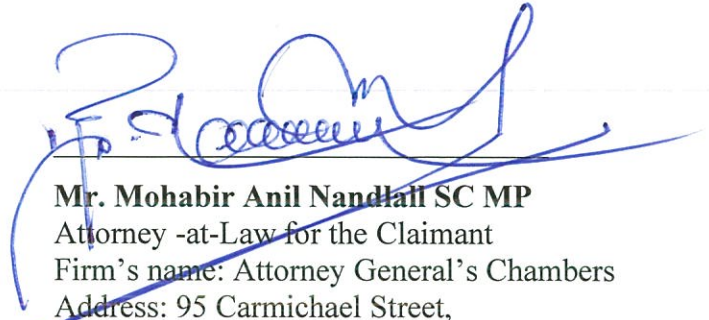
(b) The sum of sixty seven million three hundred and thirty seven thousand five hundred and thirty eight Guyana dollars (\$67,337,538), being the recoverable value on the Advance payment made by the Government of Guyana to the First named Defendant for which there were no works done;

(c) Liquidated damages pursuant to the Special Conditions of the Contract (SCC) in the sum of forty one million, two hundred thirty, four hundred thirty five dollars (\$41,230,435.00) calculated at 10% of the contract sum.

23. The actions of the Defendant have impacted the interest of the public in the non-completion of the St. Roses Secondary School.

24. The exigencies of the common good should prevent the First and Second Named Defendants from being unjustly enriched based on the advances received under the Contract Agreement.

25. In the circumstances, the Claimant prays that the Orders set out and sought in the Statement of Claim be granted by the Honourable Court.

A handwritten signature in blue ink, appearing to read 'Anil Nandlall', is written over a horizontal line. The signature is fluid and cursive.

**Mr. Mohabir Anil Nandlall SC MP**

Attorney -at-Law for the Claimant

Firm's name: Attorney General's Chambers

Address: 95 Carmichael Street,  
North Cummingsburg, Georgetown

Tel. No.: 225-3607

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