IN THE SUPREME COURT OF QUEENSLAND No. 3658 of 1986

Before Mr. Justice G.N. Williams

BETWEEN:

RODNEY ERIC MORGENSTERN Plaintiff

AND

WILLIAM H. WHITEHEAD Defendant

JUDGMENT - G.N. WILLIAMS J.

Delivered the 3rd day of March, 1989.

CATCHWORDS:

Building contract - remuneration on "cost plus" basis- assessment of reasonable figures.

Counsel: Mr. Grant-Taylor for Plaintiff
Mr. Hack for Defendant

Solicitors: Stephens and Tozer as T/a for Wonderley & Hall for Plaintiff
Grasso Searles & Romano as T/a for P.R. Whitehead Baxter & Associates for Defendant

Hearing date: 6th-10th February, 1989.

IN THE SUPREME COURT OF QUEENSLAND No. 3658 of 1986

BETWEEN:

RODNEY ERIC MORGENSTERN Plaintiff

AND:

WILLIAM H. WHITEHEAD Defendant

JUDGMENT - G.N. WILLIAMS J.

Delivered the 3rd day of March, 1989.

The plaintiff is a registered builder by occupation. He resides in Toowoomba and that is the home base for his building operations. In 1985 he was involved in the construction of a hotel/restaurant complex in St. George, and through that activity the defendant became aware of the plaintiff's business. Some time in 1985 the defendant had commenced building a motel/restaurant complex in Dirranbandi - a township of about 500 people approximately five hours drive south-west of Toowoomba. Shortly before Christmas 1985 the defendant asked the plaintiff to quote on some cabinet work associated with the project, but that quote was not accepted. After Christmas difficulties arose between the defendant and the builder with whom he had contracted for the construction of the complex and that led to discussions between the defendant and the plaintiff with a view to the latter completing the work.

An on-site meeting was held in January 1986 between the plaintiff and his foreman (Ken Murdoch) on the one hand and the defendant and the person who was to manage the complex on the other. At that stage a section - containing units 1 to 7, and reception and residential area - had been substantially completed, and another section - comprising units 8 to 16 - was under construction. The framework for some of the walls of the latter section had been substantially completed. In broad terms the work which had been done by the original builder can be gauged from a series of photographs tendered in evidence.

The plaintiff was shown some plans at that meeting but they were neither detailed nor complete. Those plans were retained by the plaintiff but there were significant departures therefrom as the work subsequently progressed. It would appear that the variations were approved on-site by the building inspector from the relevant local authority, and they were not formally recorded on any plans.

At that on-site meeting the plaintiff was informed that the work he was being asked to do involved the

completion of units 8 to 16 (together with the storeroom and laundry in that section), and also the construction of the external shell of the restaurant/bar complex. He was asked to give a price for carpentry work only. At that first meeting there was no mention of the plaintiff being required to do any work on the section comprising units 1 to 7. The plaintiff returned to Toowoomba and prepared a quote. He then telephoned the defendant and told him that he thought the approximate figure of $45,000.00 would be the labour only cost for completing units 8 to 16 (including the laundry and storeroom) and the shell of the restaurant/bar complex. The defendant then inquired whether that figure also covered the completion of units 1 to 7, including any necessary rectification work; the defendant then said he wasn't happy with what had been done by the existing builder. The plaintiff informed the defendant that his figure did not include anything for that work, and that if the defendant wanted anything done with respect to that first section it would be on an hourly charge basis. In the course of that conversation the defendant engaged the plaintiff to do all carpentry work involved in rectifying what had been done and in completing the project. The defendant asked the plaintiff to dismiss the original builder, but the plaintiff refused to do so, indicating that it was the responsibility of the defendant. Further in the course of that conversation it was agreed that the plaintiff would start work around about the 19th of January, 1986.

The plaintiff sent a number of his men from the St. George job to Dirranbandi to start the subject work, but he had some discussions in the meantime with representatives of the Builders' Registration Board in Toowoomba. That resulted in his recalling his men to Toowoomba and deferring starting work. An on-site meeting was then held between the parties and a representative of the Builders' Registration Board. The upshot of that meeting was that it was agreed that the plaintiff should be engaged on a full contract basis, as the registered builder employing all sub-contractors, to complete all the work involved in the

project. It was agreed that the defendant would supply some specified materials. During that conference the defendant asked the plaintiff would the $45,000.00 still cover units 8 to 16 and the restaurant/bar complex shell. The plaintiff replied that it would still be around that figure for the carpentry segment of the construction work.

The work undertaken by the plaintiff was never more precisely defined. He said in evidence that a lot of rectification work had to be carried out on what had previously been done with respect to units 8 to 16, but that work was not detailed in the evidence. The plaintiff said in evidence in chief with respect to units 8 to 16: "A lot of rectification work to bring the building back into line, what section of the building was there, to bring it back into line and then sort of start the completion of it."

He did give more detail in evidence with respect to the "terrific amount of rectification work" that had to be carried out on units 1 to 7. I find that the rectification work with respect to units 1 to 7 is substantially detailed in the document prepared by the plaintiff which became ex. 52. That was prepared in the course of an on-site inspection by the plaintiff and the proposed manager of the complex, and I find that it lists all the significant defects which had to be rectified. I am satisfied that the plaintiff would have done a small amount of work which went beyond matters particularised in that list, but I accept the list in preference to the plaintiff's evidence where the latter departs from the former.

In terms of the agreement between the parties much of the timber used in the construction was supplied by the defendant; it was milled from trees grown on a property he owned in the vicinity. I accept the plaintiff's evidence that much of it was green and that created problems in the construction. Because the timber was green it was more likely to bow than seasoned timber and that gave rise to many of the defects which the plaintiff had to rectify with

respect to units 1 to 7. I am satisfied that the requirement that the plaintiff use the timber supplied by the defendant created unexpected problems, prolonged the job, and in general made it more expensive than it might otherwise have been.

In further and better particulars of his claim delivered 7th November, 1988 the plaintiff alleged that in terms of the agreement he was to complete the project on a "time cost" basis. Throughout the hearing counsel for each party used the expression "cost-plus" to describe the agreed basis upon which the plaintiff was to be remunerated. The plaintiff had given an estimate for the labour component necessary for completion of a substantial part of the work, but no quote was given for the total job, and there was no agreement as to price. In the circumstances I find that the agreement between the parties stipulated for remuneration on a "cost-plus" basis; that is, the plaintiff was entitled to recover his outlays with respect to materials and sub-contractors, an amount representing the reasonable cost of supplying the necessary labour, and a component representing reasonable profit on the overall job.

The work commenced in February 1986 and was completed by June 1986. On the evidence no complaint was made by the defendant during that period with respect to the time taken to complete the project. The evidence does not establish any complaint with respect to time taken or quality of workmanship prior to the commencement of the action. By 20th June, 1986 the defendant had paid $107,852.00; but it is unclear in what circumstances those payments were made. The plaintiff was unable to say whether or not progress payments were made against invoices specifying work completed to the date thereof and giving details of calculation. In cross-examination counsel for the defendant put details of six cheques totalling $68,152.00 to the plaintiff who responded that such payments may have been made. The significant point is that the evidence does not establish that by making progress payments prior to 20th

June, 1986 the defendant acknowledged any particular method of calculating the amount due to the plaintiff for work done.

The plaintiff prepared invoice 25 on 20th June, 1986 and it was forwarded to the defendant. In summary it claimed:—

Sub-contractors:	$ 44,149.20
Materials:	$ 41,203.50
Labour:	$ 94,053.25
TOTAL:	$179,405.95

After making allowance for $107,852.00 paid to date it claimed a balance owing to 13th June, 1986 of $71,553.95. However in particulars of claim delivered 16th January, 1989 it is said that whilst the total $179,405.95 is correct, the break up is erroneous. The correct break up is said to be:—

Sub-contractors:	$ 44,149.20
Materials:	$ 39,671.87
Labour (5,144.5 hrs. at $18.58 per hour per man):	$ 95,584.81

The evidence contains no clear explanation for the change.

The next invoice is dated 27th June, 1986, but that would appear to be in error because it records a payment by the defendant of $20, 000.00 on 30th June, 1986. It is clear that the defendant paid $20,000.00 after receiving invoice no. 25, thus leaving a balance claimed by the plaintiff of $51,553.95. By invoice no. 26 the plaintiff claimed an additional $3,976.37 with respect to sub-contractors and materials and added a further claim described as “percentage profit” in the sum of $8,970.00. Thus by that invoice the plaintiff claimed a balance due and owing of $64,500.32.

That amount was not paid and the action was commenced by specially endorsed writ issued 29th August, 1986, approximately two months after the completion of the work. By that writ the plaintiff claimed an amount owing of $70,241.33 calculated as follows:—

Charge for work and labour done and materials supplied	$202,112.33
Less amount paid	$131,871.00
Balance due	$ 70,241.33

It was agreed that the defendant had paid to Beeson's Electrical on behalf of the plaintiff the sum of $4,019.00 in addition to payments noted in invoices 25 and 26, and therefore there was agreement that the defendant had paid the total sum of $131,871.00. It will be noted that the plaintiff's total charge alleged in the writ, namely $202,112.33, was in excess of the total charge evidenced by invoices 25 and 26, namely $192,352.32. The difference, as indicated by invoice 28 dated 12th August, 1986, is made up of additional amounts for materials and sub-contractors totalling $9,165.45, and labour charges for the final trip to Dirranbandi amounting to $594.56.

The plaintiff's claim was finally amended by way of amendment to the statement of claim dated 3rd February, 1989. The claim made at the outset of the trial was for $73,630.32, which was the balance owing of an alleged total cost of $205,501.32. In order to arrive at those figures a further $868.22 was claimed for labour (one man for two weeks), a sum of $1,705.00 being a payment to St. George Plant Hire, and a consequential increase of $815.77 was made to the claim for profit (from $8,970.00 to $9,785.77).

It is convenient to deal first with the amounts claimed as being payments for materials and payments to sub-contractors. The issues here ultimately came down to a question of the plaintiff discharging the onus of proof.

In the course of the trial the defendant admitted in full the following claims made by the plaintiff as being payments for materials:—

Buchan Concrete	$1,480.00
Beesons Electrical	$4,019.00
Widman's Trusses	$2,736.66
Traditional Tiles	$ 25.00
Wildmans Doors	$ 885.22
Laminex Industries	$1,925.37
G.W.F. Fabrications	$ 35.00
St. George Plant Hire	$1,705.00

The plaintiff originally claimed the sum of $17,813.92 for materials obtained from K. and R. Plumbing but in the course of the trial conceded that the amount of $11,477.28 admitted by the defendant was the appropriate figure.

With respect to other claims for the supply of materials the defendant admitted all which were supported by an invoice. As noted above the work was completed in June 1986 and the plaintiff prepared final accounts between then and the month of August. The action was then commenced on 29th August, 1986. In those circumstances it is not unreasonable to expect that the plaintiff would have kept all invoices relating to materials obtained for this job and be in a position to detail accurately the compilation of his claim. In most instances the difference between the plaintiff's claim and the amount admitted by the defendant was small. It is appropriate to deal with the following as a bracket of items:—

SUPPLIER	PLAINTIFF'S CLAIM	ADMITTED BY DEFENDANT
G. James Glass	$ 189.36	$ 171.22
Dunlop I.B.C.	$ 1,429.99	$ 1,207.80
Firemaster	$ 870.00	$ 760.00
Showerite	$ 1,996.00	$ 1,886.00
Simons Pty Ltd	$13,540.27	$12,278.77

I am satisfied that the plaintiff did not establish in any instance the difference between the amount of invoices

as admitted by the defendant and the amount of his claim. He attempted in evidence to give an explanation of what the difference could have represented; it could have been a trade discount which he was granted by his supplier but which he did not pass on to the defendant, it could have been for some additional materials for which there was no invoice, or it could have been for freight. In the circumstances I hold that the plaintiff has not discharged the onus of proving any amount over and above the invoice prices with respect to materials from those suppliers which is properly chargeable to the defendant. I allow the amounts admitted by the defendant.

That leaves four specific claims with respect to materials to be resolved. The plaintiff made the following claims with respect thereto:—

Toowoomba City Power Tools	$246.32
Campbell's	$ 62.11
Telecom Hole Digger Hire	$ 90.00
Two vanity basins	$280.00

In respect to the first three items the defendant did not admit that anything was owing, but was prepared to allow $200.00 with respect to the vanity basins. The plaintiff was unable to produce any invoices specifying materials obtained from either Toowoomba City Power Tools or Campbell's. He was able, by referring to cheque butts, to show payments to those suppliers, but there was nothing to indicate that they were properly a charge against the defendant. The plaintiff sought to base his claim on the proposition that during the relevant period he would not have obtained anything from such suppliers with respect to any other job. In all the circumstances I am not satisfied that the plaintiff has discharged the onus of proving that materials were obtained from either Toowoomba City Power Tools or Campbell's which were properly chargeable to the defendant. Apparently some stump holes had to be dug with respect to the restaurant complex, and ordinarily the plaintiff would have hired a post hole digger or similar piece of machinery to do that work. None was readily

available in Dirranbandi, but there was a gang of Telecom workers there with a post hole digging machine. Apparently an arrangement was made between the plaintiff and those Telecom workers for the latter to do the job in return for some cartons of beer; hence the charge of $90.00. It was conceded that no valid contract could have been made between the plaintiff and Telecom with respect to the work and in the circumstances I am not prepared to allow the item of $90.00. With respect to the vanity basins the evidence was a little complicated. It seems to me the defendant is correct in saying the actual cost of the vanity basins was about $200.00 but that did not include anything for fitting. Whilst it is not entirely clear that fitting and associated work would have cost $80.00, I hold on the balance of probability that the plaintiff has made out his case and I allow $280.00 under this head.

That gives a total for materials of $40,872.32.

The defendant admitted the following claims with respect to sub-contractors in full:—

C. Mason - Painter	$ 500.00
R. Beeson - Electrician	$11,947.00
Maunsells Transport	$ 160.35

Again the defendant was prepared to admit payments to sub-contractors which were supported by an account or invoice. The following table indicates the extent to which the defendant was prepared to admit claims for sub-contractors made by the plaintiff:—

SUB-CONTRACTOR	PLAINTIFF'S CLAIM	ADMITTED BY DEFENDANT
A. Pedersen - Plumber	$6,883.50	$6,351.50
G. Jefferies - Plumber	originally $3,891.50 amended during trial to $3,854.00	$3,654.00
S. Rae - Tiler	$5,194.20	$4,435.20
I. Sloan - Plasterer	$2,430.00	$2,330.00
E. Twidale	$4,298.00	$3,842.00

Painter St. George Excavations	$1,393.75	$ 893.75

In most instances the plaintiff maintained in evidence that the difference was represented by the cost of board and keep for the men on site. However the amounts involved do not suggest any particular basis for such a charge and I have come to the conclusion that such evidence was no more than an attempt to justify the difference between the amount claimed and the amount supported by documentary evidence in the form of accounts or invoices. Whilst it is true that in some instances the plaintiff could demonstrate payment of a sum greater than the account or invoice that does not of necessity mean that the extra amount was properly chargeable against the defendant. In all the circumstances I find that on the balance of probability the plaintiff has not made out an entitlement to more than the amount established by account or invoice admitted by the defendant in each instance.

There were two further claims made by the plaintiff with respect to sub-contractors which the defendant did not admit at all:—

D. Paynter Freight	$1,000.00
Freight	$ 250.00

With respect to Paynter the plaintiff gave evidence of a contra item relating to work by the plaintiff on other sites for Paynter and gave that as the explanation for the absence of an invoice. I hold that the plaintiff has not established that such items are properly chargeable against the defendant.

In the circumstances the plaintiff is entitled to $34,113.80 with respect to sub-contractors.

The defendant did not dispute the claim for $11,572.00 for cabinet work nor the claim for $1,350.00 being the labour cost for fitting the bar.

The only remaining item in dispute is the general labour cost.

As can be ascertained from the resume above the final claim with respect to labour was made up of the following:—

5,144.5 hrs. at $18.58 per hour per man (Invoice 25 as amended by particulars)	$95,584.81
Extra labour for one man for two weeks at $434.11 per week	$ 868.22
Labour on final trip - 32 hrs. at $18.58 per man hour (Invoice 28)	$ 594.56
TOTAL:	$97,047.59

The defendant disputed that the specified number of man hours was worked on the project, and he also disputed the reasonableness of a charge of $18.58 per hour.

According to evidence from the plaintiff and his wife, the plaintiff kept record in a small notebook of the hours actually worked by each man on the job. There were seven people in all who worked on the project; the plaintiff himself, his foreman K. Murdoch, four other tradesmen carpenters, and one apprentice namely his son John. They would work for ten successive days and then have four days off. The plaintiff's evidence is that when he returned to Toowoomba from time to time he gave the notebook to his wife who in turn wrote up the wages book. The wages book does not reflect the true position. The notebook has not been kept. When written up the wages book showed each employee working a five day week - it did not reflect the fact that the men worked ten days straight and then had four days off. That, in my view, is a significant discrepancy, and that makes it unsafe to act on the wages book alone in determining the number of hours worked.

As the further and better particulars delivered 7th November, 1988 demonstrate, in order to arrive at the number of hours allegedly worked on the project the plaintiff deducted 549 man hours for statutory holidays. He attempted in evidence to give an explanation of that, and

it further highlights the artificiality of the calculation made by the plaintiff.

The wages book purports to record time worked by the six employees not including the plaintiff. If one tallies the hours for them as shown in the wages book one arrives at the figure of 4,561.5 hours. If one assumes that the plaintiff worked as many hours as his foreman (according to Murdoch the plaintiff was only there about two-thirds of the time) one would add in a further 767 hours giving a total of 5,328.5 hours. I cannot relate that to either of the figures of 6,110.5 hours or 5,144.5 hours referred to in the particulars and the evidence.

In invoice 25 where $94,053.25 was claimed for labour and in invoice 28 when the additional $594.56 was claimed for labour on the final trip, no particulars of the number of hours worked or rate charged were given. No such break-down was included in the original statement of claim nor in further and better particulars supplied on 3rd March, 1987. One sees such particularity for the first time in the further and better particulars delivered 7th November, 1988. In the calculation there detailed the starting point was 6,110.5 hours at $18.58 per hour. It is interesting to note how the figure so derived ($113,533.09) after deduction of the four amounts therein specified gives the figure of $94,053.25 as stated in invoice 25; that was seen by the plaintiff to be important because such a specific allegation was made in those particulars. But, as pointed out above, in the later particulars delivered 16th January, 1989 the figure of $94,053.25 is said to be incorrect, and the assertion is made that the correct calculation with respect to labour was 5,144.5 hours at $18.58 per hour, giving $95,584.81. I cannot on the evidence find any correlation between the 5,144.5 hours particularised on 16th January, 1989 and the 6,110.5 hours particularised on 7th November, 1988, and I cannot correlate either figure to particulars in the wages book.

It is also interesting to observe that in the earlier calculations by the plaintiff of labour cost there was an allowance for accommodation supplied by the defendant of $1,531.56. Again that does not appear to be arrived at after any particular calculation and one is left with the impression that at some stage the plaintiff saw a discrepancy of that amount and attributed such an explanation to it. That specific claim was abandoned during the trial.

Against that background I am not prepared to find that 5,144.5 man hours were spent on the project.

The plaintiff's charge out rate of $18.58 per hour was calculated as follows. There were six tradesmen and one apprentice in all on the job. At the time one could have charged $20.00 per hour for a contract carpenter in Dirranbandi and half that figure for an apprentice. On that basis, dividing a total of $130.00 by seven, one arrives at a charge out rate of $18.58 per man overall. That calculation is a very rough and ready one and is not based on the refinements to be found in the calculation approved by the Master Builders Association (see ex. 66). Counsel for the defendant elicited in evidence particulars which would enable a calculation to be made using the Master Builders Association formula. On that basis counsel arrived at a weighted average figure of $12.03 per man hour for labour cost. That really does no more than highlight the artificiality of the plaintiff's alleged charge out rate and demonstrates that more has to be done in order to arrive at a reasonable figure for the labour component of this work.

That such is so is also demonstrated by other evidence. From the plaintiff's records a document was prepared setting out the wages paid to each employee (other than the plaintiff) and tax deducted therefrom and paid to the Australian Taxation Office. Exhibit 55 was compiled showing all relevant particulars. Initially some amounts were shown as “blank” because the cheque butt did not

reveal the amount, but during addresses counsel were agreed as to the amount of each of the cheques so involved. With the concurrence of counsel I made the agreed alterations to ex. 55 and it is now a complete document. It establishes that wages paid (including tax deductions) with respect to the Dirranbandi job totalled $44,447.59. K. Murdoch, the foreman, received $6,492.86 net and it would not be unreasonable to allow the plaintiff a similar amount for wages, that is before calculation of profit component. That would, in broad terms for purposes of the exercise, bring the amount of wages actually paid up to around $53,000.00 as against a total amount claimed of $97,047.59. Such a difference could not be justified as reasonable profit.

The amount actually paid by way of wages does not include the cost to the plaintiff of transporting the workers to and from Dirranbandi. The plaintiff would clearly be entitled to recover those travelling costs, but the evidence does not contain sufficient detail to enable a precise calculation to be made. The evidence clearly establishes that the plaintiff was also responsible for providing at least some "keep" to the workmen who camped at the Dirranbandi site. Again the evidence does not descend to particularity with respect to that cost. Clearly it is more expensive to keep workmen on a job site at Dirranbandi than at their home base in Toowoomba and there are a number of contingency items of expenditure which would be incurred because of the location at which the work had to be carried out. The evidence does not permit a precise calculation of such costs, but the Court must determine what total figure was reasonable to charge for labour in all the circumstances of the case.

If one starts with the figure of $53,000.00 for wages it would, at best for the plaintiff, be reasonable to add 20 per cent for contingencies to cover all of the matters referred to in the preceding paragraph other than actual travelling expenses. That means that approximately $10,600.00 should be added for such contingencies.

It would appear that in addition to the gang returning to Toowoomba after each ten day work period, the plaintiff would have had a number of trips to Toowoomba himself because of his overall administrative responsibility. Again the evidence does not permit one to calculate the precise cost of all trips involved. It is difficult to justify any precise figure but the evidence does not permit me to conclude that any sum in excess of $10,000.00 could be justified.

On that basis I am of the view that a charge of $72,500.00 could be justified for labour costs working from the amount actually paid by way of wages.

The accuracy of that assessment can be checked by a calculation based on a reasonable number of hours for carrying out the work in question multiplied by a reasonable charge out rate per hour. Engineers, architects, and quantity surveyors are regularly called upon to determine the number of hours' work involved in a particular construction, working either from plans and specifications or from the building as constructed. This exercise is carried out every time a quote for building construction is given based on plans and specifications, and is also involved in the certification of a progress payment as being due. In this case the witnesses Maloney and Kerven each made such a calculation, and each was in my view an expert capable of giving opinion evidence thereon. The task in this case was made difficult because of factors such as the absence of detailed plans, the requirement that the plaintiff use green timber supplied by the defendant, and the distances involved. In my view the evidence of both Maloney and Kerven demonstrates that the plaintiff's claim for 5,144.5 hours was manifestly excessive. Of the two experts I preferred the evidence of Maloney. His estimate in Appendix A of ex. 65, as amended in oral evidence, gives a figure of 2,589 hours for the work involved in units 8 to 16 together with the restaurant/bar complex. Maloney assessed that there were 135 hours spent in carrying out rectification work on units 1 to 7. The plaintiff's figure

for that work was 235. In the circumstances I will allow the plaintiff's figure because longer time than normal was probably taken because of the difficulties in rectifying defects due to the use of the green timber.

Maloney assessed the actual number of hours spent in constructing the building, and did not allow for travelling time to and from Toowoomba. In Mr. Grant-Taylor's address he submitted that an allowance of 770 hours should be made for that; 11 return trips for seven men at 10 hours per trip. In the circumstances I will add that to Maloney's calculation.

Maloney did not allow anything for rectification work on units 8 to 16, and as indicated above the plaintiff was unable to indicate with any precision the rectification work carried out. However it was reasonable to expect that some not inconsiderable amount of time was spent on that work. Further, given the nature of the job, there were many problems which arose and which occasioned delay and/or the expenditure of a greater number of hours than normal in completing the work. A general allowance should also be made in calculating the reasonable number of hours worked for items such as the post hole digging (the Telecom item I have disallowed) and incidentals. Taking all of those factors into consideration I am of the view that a total of 750 hours should be added into the calculation.

That gives a total of 4,344 hours which should be rounded off to 4,500 hours. Having regard to all of the evidence from Maloney and Kerven I am of the view that a reasonable time to allow for all of the work if the job was being costed on an hourly basis is 4,500 hours.

I have already outlined how the plaintiff's charge rate of $18.58 per hour was calculated and contrasted the figure of $12.03 arrived at by the calculation preferred by the defendant. Whilst the formula devised by the Master Builders Association is to be preferred some allowance must be made in this case for the fact that the men were working away from their home base and additional costs were

involved with respect to transportation. Further, overhead administration costs for the project would be greater because of the distance factor; though no detail was given in the evidence it would appear that the plaintiff had to make a number of trips between Toowoomba and Dirranbandi associated with the overall management of his business and this contract. In consequence I am of the view that the amount of $12.03 per hour should be increased to reflect those considerations. Again the material does not enable me to make a precise calculation; rather I must make a reasonable allowance for such factors. I have come to the conclusion that in all the circumstances a rate of $16.00 per hour was a reasonable charge to make. On the assumption that 4,500 man hours were involved that would mean an additional return to the plaintiff of about $18,000.00, a figure which would be more than adequate compensation for the factors I have referred to.

It follows that, approaching the calculation of labour cost on a man hours by rate basis, one arrives at a figure of $72,000.00; 4,500 man hours by $16.00 per man hour. That confirms, in my view, that the figure previously assessed for labour cost of $72,500.00 is reasonable, and that is the figure which I allow.

On my findings the plaintiff is therefore entitled to the following:—

Materials	$ 40,872.32
Sub-contractors	$ 34,113.80
Cabinet work	$ 11,572.00
Installation of bar	$ 1,350.00
Labour	$ 72,500.00
TOTAL:	$160,408.12

The plaintiff claimed five per cent profit margin on the total cost of the project. Bearing in mind the profit and/or contingency components included in the calculation of the above figures, a five per cent profit margin is reasonable and the defendant did not dispute the plaintiff's entitlement to that. Five per cent of

$160,408.12 is $8,020.40 and when that is added in the total cost for the project is $168,428.52. From that has to be deducted the total amount already paid by the defendant of $131,871.00. That leaves a balance due and owing to the plaintiff of $36,557.52. The plaintiff is therefore entitled to judgment for $36,557.52, subject to any necessary adjustment after determination of the issues relating to alleged faulty workmanship. I have already ordered that the parties exchange particulars of defects in Scott Schedule form and propose making an order that a referee inspect the subject property and make findings with respect to the matters particularised in that Schedule.