

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 0048

**CITY OF BATON ROUGE AND PARISH OF EAST
BATON ROUGE THROUGH THE GREATER BATON ROUGE
METROPOLITAN AIRPORT DISTRICT**

VERSUS

**AMERICAN HOME ASSURANCE COMPANY AND
J. CALDARERA & COMPANY, INC.**

**On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, Louisiana
Docket No. 493,788, Division "D"
Honorable Janice Clark, Judge Presiding**

**Richard M. Simses
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and

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Intervenor/Appellant
John Bean Technologies Corporation
(successor to FMC Technologies, Inc.)**

**Attorneys for
Defendant/Appellee
J. Caldarera & Company, Inc.**

BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

Judgment rendered **OCT 26 2011**

RHP by JMS
JMS
②

PARRO, J.

In this appeal arising out of an agreement by FMC Technologies, Inc. (FMC) to provide six new passenger boarding gates (jetways) for installation by J. Caldarera & Company, Inc. (Caldarera) at the Greater Baton Rouge Metropolitan Airport, John Bean Technologies Corporation (Bean), successor in interest to FMC,¹ appeals a judgment pursuant to a jury verdict ordering it to pay \$139,938.76 to Caldarera and to remove from Caldarera's premises three used jetways that FMC had agreed to purchase. For the following reasons, we affirm the judgment in part, reverse in part, and render.

BACKGROUND

This appeal involves the last remaining issues arising out of the renovation and construction of the Greater Baton Rouge Metropolitan Airport, on which Caldarera was hired as the completion contractor after the original contractor defaulted and the project was taken over by its surety.² This lawsuit was originally instituted on March 27, 2002, when the City of Baton Rouge and Parish of East Baton Rouge, through the Greater Baton Rouge Metropolitan Airport District (the airport), filed suit for breach of contract against Caldarera. FMC intervened in the litigation on February 28, 2005, to recover outstanding amounts that it claimed Caldarera owed it for six jetways it had furnished, which had been installed by Caldarera at the airport.

FMC, through its Jetway Airport System Division, manufactured and supplied jetways for the air transportation industry. The business relationship between FMC and Caldarera began in December 1999, when FMC entered into negotiations with Caldarera to furnish six jetways for the airport project. Although FMC's original proposal included installation of the jetways by FMC, Caldarera eventually decided that it would be responsible for the installation. Following an exchange of correspondence between the parties, they ultimately agreed that FMC would furnish six jetways for \$1,894,222.58,

¹ Bean was substituted as a party following rendition of the judgment. For this reason and because FMC was the party involved in all the matters involved in this litigation, we will refer to the appellant in this opinion as FMC.

² More detailed information regarding this series of events is provided in two previous appeals concerning the airport project. See City of Baton Rouge v. American Home Assur. Co., 07-1755 (La. App. 1st Cir. 5/2/08), 991 So.2d 48, and City of Baton Rouge v. American Home Assur. Co., 06-0522 (La. App. 1st Cir. 12/28/06), 951 So.2d 1113.

which included a \$65,000 buy-back credit for three existing jetways that FMC was to purchase. The airport authorized Caldarera to obtain the six new jetways from FMC, and a notice to proceed in accordance with the FMC proposal was issued to Caldarera by the airport. On January 18, 2000, Caldarera forwarded correspondence to FMC that served as its notice to proceed with fabrication and delivery of the jetways. FMC eventually delivered the jetways to the airport and invoiced Caldarera as the deliveries were made. Caldarera paid the first two invoices.

However, the deliveries were delayed and Caldarera claimed that the six jetways were defective, requiring it to make time-consuming and costly repairs before and after installation. Also, FMC had informed Caldarera that it would not purchase the three existing jetways. Therefore, Caldarera withheld payment of the final invoice, leaving a remaining balance of \$337,297.77. After making several written demands for payment, FMC filed its petition for intervention, claiming Caldarera owed it this amount for the balance due on the contract. Caldarera answered, alleging it was not liable for this balance, and filed a reconventional demand against FMC for various damages, including the costs of repair work it had performed on the jetways, as well as storage and transportation costs for the three jetways that FMC had refused to purchase and had left at the airport.³ Caldarera's claims far exceeded the balance that it had withheld on the contract.

After numerous legal skirmishes between the parties, the case was finally tried to a jury over the course of five days in November 2009. Because the parties could not agree on a unified verdict form, the judge gave the jury both sets of verdict forms provided by the parties. On the verdict form provided by FMC, the jury found that: there was a contract between the parties for FMC to furnish six new jetways for Caldarera to install on the airport project; Caldarera was paid in full by the airport for the installation of the six jetways; Caldarera was not liable to FMC for the \$337,297.77 outstanding balance on the contract that it had failed to pay to FMC; Caldarera was entitled to some payment for transportation and storage of the three jetways that it had

³ Most of these factual details were included in the parties' joint stipulations that were read to the jury.

removed from the airport site; and Caldarera was not entitled to liquidated damages in connection with the contract, but was entitled to back charges in the amount of \$51,698.76.

On the second verdict form that had been submitted by Caldarera, the jury found that: FMC had an obligation to furnish six new jetways in ready-to-install condition for Caldarera to install at the airport; FMC failed to furnish the six new jetways in ready-to-install condition by Caldarera; and FMC promised that the six jetways would be delivered by certain dates, but failed to deliver them by the promised dates and did not notify Caldarera that the deliveries ultimately would be 110 days late. With reference to Caldarera's reconventional demand, the jury found that Caldarera was not entitled to \$500 per day for 110 days of late charges for untimely delivery of the jetways and FMC was not liable under any other damage calculation for the late delivery of the jetways. The jury also found that: not all of the major components of the jetways were furnished new by FMC; some or all of the jetways were defective or required repair; Caldarera repaired or paid for the repair of defects and problems with the jetways; and Caldarera was entitled to payment of \$51,698.76 for these repairs.⁴ The jury further found that FMC had agreed to pay Caldarera \$65,000 for the existing jetways,⁵ but failed to pick them up as agreed, and as a result, Caldarera moved the jetways to its LaPlace property, where it stored them and performed maintenance, blocking, and protection of them. However, the jury found that Caldarera was not entitled to interest for the period during which it expended funds on the storage and protection of the three jetways. The jury found that Caldarera repaired and/or paid for repair of defective jetways, and that FMC benefited from those repairs, but that Caldarera was not entitled to 15% overhead and profit for the repair work.

With respect to particular claims in Caldarera's reconventional demand, the jury found that: Caldarera was not entitled to recover anything for electrical circuitry work; Caldarera was not entitled to \$74,000 to replace the teleradial rotunda and related

⁴ The amount assessed in this response was the equivalent of the jury's assessment of this amount on the other verdict form for "back charges" owed to Caldarera.

⁵ The judge had directed a verdict on this issue, finding that the evidence was clear and convincing that FMC had agreed to purchase the three jetways.

equipment, but was entitled to \$37,000 for that claim; Caldarera was not entitled to \$13,200 for replacement of rooftop air conditioning units furnished by FMC, but was entitled to \$9,896.94 for that claim; Caldarera was not entitled to any amount for interior damage to the jetways or for replacing missing interior components; Caldarera was not entitled to \$4,780 to replace a turning wheel assembly furnished by FMC, but was entitled to \$4,801.82 for that claim; Caldarera was not entitled to recover any amount for repair of roof leaks at the air conditioning units; Caldarera was not entitled to storage costs for the three jetways; and although Caldarera was not entitled to \$53,620 for loading, transporting, blocking, re-blocking, and protecting the three existing jetways, it was entitled to \$23,240 for that claim. Finally, the jury found that Caldarera was not entitled to recover from FMC the \$55,000 in late charges that the airport had imposed on it, and in fact, was not entitled to any recovery from FMC for late charges.⁶

On May 11, 2010, the judge signed a judgment ordering FMC to pay Caldarera \$139,938.76, together with court costs and legal interest from the date of judicial demand. This award included \$65,000 owed by FMC for the purchase of the three used jetways, \$23,240 for Caldarera's transportation, maintenance, and protection of those jetways, and \$51,698.76 for Caldarera's repairs to the six new jetways.⁷ The judgment further ordered FMC to remove the three jetways from Caldarera's premises. Bean was substituted for FMC and filed this suspensive appeal.

DISCUSSION

Standard of Review

In this case, neither party has challenged the jury's factual findings. The assignments of error all address the trial judge's alleged legal errors. With regard to questions of law, the appellate review is simply a review of whether the trial court was legally correct or legally incorrect. Hidalgo v. Wilson Certified Exp., Inc., 94-1322 (La.

⁶ This response was similar to the jury's answers to previous questions regarding late charges and liquidated damages.

⁷ This amount includes \$37,000 for replacement of the telerial rotunda and related equipment, \$9,896.94 for replacement of rooftop air conditioning units, and \$4,801.82 for replacement of a turning wheel assembly.

App. 1st Cir. 5/14/96), 676 So.2d 114, 116. On legal issues, the appellate court gives no special weight to the findings of the trial court, but exercises its constitutional duty to review questions of law and render judgment on the record. In re Mashburn Marital Trust, 04-1678 (La. App. 1st Cir. 12/29/05), 924 So.2d 242, 246, writ denied, 06-1034 (La. 9/22/06), 937 So.2d 384. A legal error occurs when a trial court applies incorrect principles of law and such errors are prejudicial. Legal errors are prejudicial when they materially affect the outcome and deprive a party of substantial rights. When such a prejudicial error of law skews the finding of a material issue of fact, the appellate court is required, if it can, to render judgment on the record by applying the correct law and determining the essential material facts *de novo*. Evans v. Lungrin, 97-0541, 97-0577 (La. 2/6/98), 708 So.2d 731, 735. If only one of the factual findings is tainted by the application of incorrect principles of law that are prejudicial, the appellate court's *de novo* review is limited to the finding so affected. Picou v. Ferrara, 483 So.2d 915, 918-20 (La. 1986); Rideau v. State Farm Mut. Auto. Ins. Co., 06-0894 (La. App. 1st Cir. 8/29/07), 970 So.2d 564, 571, writ denied, 07-2228 (La. 1/11/08), 972 So.2d 1168.

Jury Interrogatory Issue

The crux of FMC's appeal is that the trial court erred by failing to give the jury a properly worded jury interrogatory on its claim, instead sending two sets of verdict forms to the jury after directing a verdict on one of Caldarera's claims, which resulted in an invalid judgment that should be reversed by this court. FMC urges this court to review the facts of this case *de novo*, claiming the trial court committed "plain and fundamental" error in its manner of presenting the interrogatories to the jury and in failing to properly apply the law to the facts, as found by the jury.

The jury interrogatory that underlies this controversy was one of several submitted to the court by FMC on October 20, 2009, and asked:

Do you find that J. Caldarera & Company failed to fulfill its contractual obligation to FMC Technologies, Inc., by failing to pay the outstanding balance and therefore is liable to FMC Technologies, Inc., for \$337,297.77 due on the contract?

Evidence was presented to the jury on November 3-6, 2009, and both parties rested their cases late Friday morning, November 6. Both parties had orally moved for

directed verdicts in their favor; Caldarera had also filed a memorandum in support of its motion before court convened on November 6, and FMC's counsel had not yet seen that brief. Therefore, the trial judge told both attorneys to fax directly to her whatever they wanted the court to consider over the weekend, and to get together and resolve any differences they had concerning jury instructions and verdict forms. Court was then adjourned for the weekend and scheduled to resume with closing arguments at 1:30 p.m. on Monday, November 9, 2009.

When court was convened on Monday afternoon, the trial judge advised counsel that she had reviewed the memoranda submitted by both parties, and after considering the evidence, had decided to grant the motion for directed verdict filed by Caldarera with respect to FMC's purchase of the three used jetways. All other motions for directed verdict were denied. Having granted the directed verdict concerning FMC's obligation to purchase the three used jetways for \$65,000, the court noted that the verdict forms would have to be revised to delete all items pertaining to that claim. She also stated that the verdict forms should be merged and made more concise.

At this point, the jury was brought in for closing arguments. Following the arguments, the trial judge held a charge conference with the attorneys and discussed the proposed jury instructions submitted by the parties. Certain instructions were deleted; many others were revised. Eventually an agreement was reached on the instructions that would be given to the jury. The trial judge then indicated her disappointment that the attorneys had not modified and merged the verdict forms, as she had asked them to do. Beginning with the verdict form submitted by FMC, the parties were able to agree on the first question, with a minor revision, and agreed to delete the second question. The third interrogatory is the one that forms the basis of this appeal. The colloquy concerning that question proceeded as follows:

The Court: Delete number two. Okay, number three is good.

Mr. Shields [Caldarera's counsel]: Well, there are two things wrong, your Honor.

The Court: What?

Mr. Shields: The amount is now wrong, and, secondly – or actually, first,

it's too complicated to say, fulfill its contractual obligations, either they paid, or they didn't pay, and we agree that we didn't pay.

Mr. Lavelle [FMC's counsel]: Your Honor, I would –

The Court: Okay, wait a minute. Do you find that Caldarera failed to pay.

Mr. Shields: But we admitted it in the trial. It's not an issue. All right, we'll leave it in, your Honor. We would take out the words, fulfill its contractual obligation.

The Court: I took that out already. I got, do you find that Caldarera failed to pay the balance due. That's an issue.

Mr. Lavelle: Take out the number then –

The Court: Wait, failed to pay.

Mr. Shields: Your Honor, can we add after the word, balance –

The Court: Wait a minute, after the outstanding balance due on the contract. Okay.

Mr. Shields: Your Honor, we would like to add the words – after the word, balance, we would like to add FMC alleges is, so it reads, balance FMC alleges is due.

The Court: Due.

Mr. Shields: Of and then put –

The Court: No, we're not going to do that. We're going to do, do you find that Caldarera and Company failed to pay the outstanding balance due on the contract.

Mr. Shields: Why not just balance due of and then the figure?

The Court: All right. Balance due of –

Mr. Lavelle: Your Honor, I would suggest that we just say the balance due and then – and then the next question would – could be, do you find that J. Caldarera and Company [is] liable to FMC Technologies –

The Court: That's what I wanted to do before Mr. Shields decided –

Mr. Shields: The next one should be – logically, your Honor, the next one should be, how much, if you –

The Court: Yes, if you find. Or do you find – do you find that Caldarera owes FMC \$337,297.77? Yes or no. Pretty simple.

Mr. Lavelle: Well –

Mr. Shields: It's two sixty-two, your Honor, something like that; it's a new figure.

The Court: You want to change the figure or leave the figure in there.

Mr. Lavelle: Why don't we put in a blank and let them put in the figure. Because even though the judge found directed verdict on the contract existing, we still had our argument about –

The Court: All right. Do you find that -- Okay, let me take that out. If so, what amount, what amount if any do you find.

Mr. Lavelle: Yes, your Honor.

The Court: What amount if any, do you find Caldarera owes FMC –

Both counsel acquiesced to this change, but continued quibbling and objecting to other suggestions and revisions. Finally, the trial judge asked for a clean copy of both verdict forms and stated:

I'm going to merge these two documents, and I'm sending them to the jury. ... I'm going back to the original draft that you each submitted. I'm sending them both in their entirety. I'm going to merge them, and we're going to be finish[ed] with this debate. ... We're wasting too much time. ... Therefore, the court is going to accept the instructions offered by each side, merge them inasmuch as they do not confuse the jury, and although one or two questions may state it in a different manner, they each have some substance, but to go line by line over a twelve page article at this juncture would deprecate the solemnity of the process and further waste additional time while the jury is sitting in the jury room

The jury was returned to the courtroom, and the trial judge read the stipulations of the parties and the jury instructions that had been agreed upon during the charge conference. The trial judge then read the verdict forms that had been submitted by both parties, without any of the alterations that had been discussed during the charge conference, and retired the jury for deliberations. Counsel for FMC objected to all the interrogatories that had been submitted by Caldarera.

Following its deliberations, the jury returned with its verdict. To question number three on the verdict form, the jury answered "No," thus indicating that Caldarera did not have to pay FMC \$337,297.77. In addition to the directed verdict that FMC owed Caldarera \$65,000 for the three used jetways, the jury found it owed \$51,698.76 in back charges for various specific items of repair work and equipment replacement Caldarera had done, plus \$23,240 for transporting, storing, blocking, and maintaining the three used jetways, a total of \$139,938.76.

FMC contends the trial judge erred in awarding this amount to Caldarera, because the \$337,297.77 that Caldarera had withheld from the total contract amount

owed to FMC was for the purpose of reimbursing Caldarera for funds it had expended on exactly the items for which the jury found FMC should pay Caldarera \$139,938.76. Since the amount found by the jury was less than the contract balance amount withheld by Caldarera, the court should have found that a balance of \$197,359.01 was owed by Caldarera to FMC. FMC contends that, because question number three on the verdict form did not include a blank space where the jury could specify a different amount that Caldarera should pay FMC, there was no place for the jury to make this computation and award FMC the balance owed on the contract, after deducting the amounts FMC owed Caldarera. Therefore, although the jury's findings were reasonable, the court misapplied those findings in rendering judgment.

Caldarera argues that, to the contrary, the jury clearly was not confused by the multiple jury verdict forms or by the wording of question number three. The jury simply found that Caldarera was not liable to FMC for the amount withheld on the contract, but that FMC was liable to Caldarera for \$139,938.76. Therefore, the court's award of this amount was appropriate.

A somewhat similar situation was discussed by the Louisiana Supreme Court in the recent case of Wooley v. Lucksinger, 09-0571, 09-0584, 09-0585, 09-0586 (La. 4/1/11), 61 So.3d 507. In that case, the trial judge held a charge conference outside of the jury's presence after the submission of all of the evidence to the jury and discussed with counsel their proposed special interrogatories and any objections. The proposed jury interrogatories of both parties were untimely and the parties had been unable to reach any type of agreement as to form or content. In fact, the supreme court noted that the record "reflects the fierce disagreement of the parties, both as to the form and as to the specific questions for the jury." Wooley, 61 So.3d at 577 n.176. Accordingly, the trial judge drafted the jury interrogatories herself, using as a basis the language of LSA-C.C.P. art. 1812, which discusses the appropriate use of special verdict forms requiring a special written finding upon each issue of fact. Before closing argument in the Wooley case, the trial judge read to counsel the interrogatories which would be presented to the jury, and counsel for both parties were allowed to express objections

on the record. The supreme court concluded that the trial judge had fully complied with the provisions of LSA-C.C.P. art. 1812(B), informing the parties within a reasonable time before their closing argument of the special jury **interrogatories** and allowing the parties to record their objections.⁸ Id. However, the supreme court further found that with regard to the codal requirements on jury **instructions** in LSA-C.C.P. art. 1793(B), the district court's actions fell short of compliance.⁹ The trial judge informed counsel she would not use the entirety of the proposed jury instructions of either of the parties, although she had considered them. Then, although the trial judge told counsel generally the nature of the charges she would give, she ordered counsel to proceed with closing arguments without giving them an indication of the precise content of the final jury instructions. Id.

In the matter before us, however, the trial judge did not hold the charge conference with the attorneys until **after** they had presented closing arguments to the jury. This is clear legal error, as this procedure did not comply with the provisions of either Article 1793(B) or Article 1812(B).

The supreme court in Wooley further noted, however, that the finding of legal error did not end the analysis, explaining:

On appellate review of a jury trial the mere discovery of an error in [or about the manner of] the judge's instructions does not of itself justify the appellate court conducting the equivalent of a trial *de novo*, without first measuring the gravity or degree of error and considering the instructions as a whole and the circumstances of the case.

Wooley, 61 So.3d at 578, citing Adams v. Rhodia, Inc., 07-2110 (La. 5/21/08), 983 So.2d 798, 804. The test for appellate review set out in Adams is addressed to erroneous jury instructions, not potentially confusing or incomplete special verdict forms. Yet that analysis is instructive in the situation we are reviewing. It states:

⁸ Louisiana Code of Civil Procedure article 1812(B) states:

The court shall inform the parties within a reasonable time prior to their argument to the jury of the special verdict form and instructions it intends to submit to the jury and the parties shall be given a reasonable opportunity to make objections.

⁹ Louisiana Code of Civil Procedure article 1793(B) states:

The court shall inform the parties of its proposed action on the written requests and shall also inform the parties of the instructions it intends to give to the jury at the close of the evidence within a reasonable time prior to their arguments to the jury.

[W]hen a jury is erroneously instructed and the error probably contributed to the verdict, an appellate court must set aside the verdict. ... Ultimately, the determinative question is whether the jury instructions misled the jury to the extent that it was prevented from dispensing justice.

Adams, 983 So.2d at 804. The appellate court should not set aside a trial judge's framing of questions to be posed to the jury absent an abuse of discretion. Id.; Wooley, 61 So.3d at 574.

In the case before us, there was no error in the jury instructions, nor were there any objections to the instructions, because counsel and the court had worked through them during the charge conference and were in agreement. The error is in the court's failure to advise counsel before closing arguments concerning the precise content of the verdict forms and in the court's refusal to modify a key interrogatory on the verdict form, after initially agreeing to make such a modification.

After reviewing the verdict forms and the jury's responses to the specific questions, we are impressed by the jury's ability to harmonize the two sets of verdict forms and reach a consistent and cogent conclusion on each item of damages for which the parties were claiming recovery. However, once the jury had determined that Caldarera did not have to pay FMC the amount of the contract balance it had withheld, the logical follow-up question would have been whether some lesser amount should be paid. This would have allowed the jury to consider whether some portion of the contract balance should be paid to FMC, after taking into consideration the amounts FMC owed Caldarera for repairs, storage, and replacement parts. Yet, even without this follow-up question, it is possible to determine the exact amounts found by the jury and it is possible to render a judgment in accord with the verdict. Therefore, we do not find that the omission of this follow-up question constituted an abuse of discretion by the district court.

But our inquiry cannot end there. Caldarera contends that the judgment accurately reflects the jury's verdict that it was not liable to FMC and must be upheld. FMC argues the court ignored the facts and the law by failing to apply the amounts owed by FMC as a credit or setoff against the balance owed to FMC by Caldarera.

Louisiana statutory law and jurisprudence recognize three kinds of setoff, or

compensation: legal, which is effected by operation of law; contractual, which is effected by the will of the parties; and judicial, which is effected by the courts. Richard v. Vidrine Auto. Serv., Inc., 98-1020 (La. App. 1st Cir. 4/1/99), 729 So.2d 1174, 1178. Compensation takes place by operation of law when two persons owe to each other sums of money or quantities of fungible things identical in kind, and these sums or quantities are liquidated and presently due. LSA-C.C. art. 1893; Buck's Run Enterprises, Inc. v. Mapp Const., Inc., 99-3054 (La. App. 1st Cir. 2/16/01), 808 So.2d 428, 431. In such a case, compensation extinguishes both obligations to the extent of the lesser amount. LSA-C.C. art. 1893. A claim is liquidated when the debt is for an amount capable of ascertainment by mere calculation in accordance with accepted legal standards. Buck's Run, 808 So.2d at 431-32. Compensation of obligations may take place also by agreement of the parties, even though the requirements for compensation by operation of law are not met. LSA-C.C. art. 1901; Buck's Run, 808 So.2d at 432. Judicial compensation takes place when a court decides two parties are mutually indebted to each other and adjusts the amounts owed in fixing the judgment. Buck's Run, 808 So.2d at 432; see LSA-C.C. art. 1902.¹⁰ The most usual case in which judicial compensation arises is one where the conditions for legal compensation do not exist and the party who is sued on a debt files a reconventional demand. In these cases, the trial court finds for each party and renders judgment for the difference between the amounts found to be owed. Standard Roofing Co., Inc. v. Ragusa Bros., Inc., 338 So.2d 119, 122 (La. App. 1st Cir. 1976).

Caldarera admitted that it withheld \$337,297.77 from the balance it owed FMC on the contract, because of amounts it believed FMC owed it for defective equipment, repairs it was forced to make, delays in deliveries, and FMC's reneging on its agreement to purchase the three used jetways. The jury's answer that it was not liable **for that amount** to FMC does not completely address the factual situation in this case. The

¹⁰ Article 1902 of the Louisiana Civil Code states:

Although the obligation claimed in compensation is unliquidated, the court can declare compensation as to that part of the obligation that is susceptible of prompt and easy liquidation.

court, in its directed verdict, and the jury, in its responses to the questions on the verdict forms, found that FMC had breached its contract with Caldarera and should pay Caldarera \$139,938.76. Therefore, applying the law correctly, the court should have rendered judgment for the difference between the amounts found to be owed, namely \$337,297.77 owed by Caldarera and \$139,938.76 owed by FMC. We conclude that the trial court incorrectly applied the law to the facts found by the jury in confecting its judgment. The judgment should have recognized that when all of the damages attributable to FMC's breach of contract were considered, there was still a balance owed by Caldarera on its contract with FMC. The judgment of the court should have set off the amount owed by FMC against the contract balance withheld by Caldarera.

Accordingly, this court must reverse that portion of the judgment of the trial court that ordered FMC to pay Caldarera \$139,938.76. Since the jury's factual findings were not challenged and this court has all the information needed to render a correct judgment, we will render judgment declaring compensation, such that the obligations of FMC and Caldarera are extinguished to the extent of the lesser amount, resulting in Caldarera being ordered to pay FMC \$197,359.01, plus legal interest from the date of judicial demand. See LSA-C.C. arts. 1893 and 1902.

Removal of the three used jetways

FMC also complains that the court erred in ordering it to remove the three used jetways from the premises of Caldarera, claiming that this amounts to an order for specific performance that was not prayed for and went beyond the court's authority in this case. We disagree. Caldarera's reconventional demand asserted that FMC was liable to it for \$926,700 for the costs of loading, transporting, and storing the three used jetways that it had failed to remove from the airport, despite Caldarera's repeated requests that it do so. It sought additional damages for ongoing storage and protection costs to shield the jetways from the effects of weather, especially hurricanes. Clearly, the obligation of FMC to take possession of the jetways it had agreed to purchase was at issue in this case. Moreover, Caldarera's Chief Executive Officer, Joseph Caldarera, testified that "there's no question there's an agreement to pick up the [jetways]. ...

[T]he specifics of how to pick them up, you offer a credit to [take] the [jetways] back."

Brian DeRoche, the corporate representative of FMC, confirmed that understanding, stating:

The original deal is ... [FMC] would buy back those bridges. ... We would come in – when we – when [FMC] started the installation, we would bring in the [jetway] on a trailer; the new [jetway]. We would unload the old [jetway] on that same trailer and take [it] out.

FMC's agreement to purchase and take possession of the three used jetways was supported by the evidence, and Caldarera requested relief for its failure to honor those agreements. Accordingly, we find no error in the portion of the judgment ordering FMC to remove the three used jetways from Caldarera's premises.

CONCLUSION

Based on the foregoing, we reverse the portion of the judgment that ordered FMC to pay Caldarera \$139,938.76, together with court costs and legal interest from the date of judicial demand. We hereby render judgment, ordering Caldarera to pay FMC \$197,359.01, plus legal interest from the date of judicial demand. In all other respects, the judgment is affirmed. Trial court costs for this matter and costs of this appeal are assessed equally to both parties.

REVERSED IN PART AND RENDERED; AFFIRMED IN PART.