

**IN THE SUPREME COURT OF BELIZE, A.D. 2012**

**CLAIM NO: 278 of 2012**

**BETWEEN**

**LELA BREWER**

**CLAIMANT**

**AND**

**PRICILLA SUE DEATON  
OSCAR D. ROMERO**

**1<sup>st</sup> DEFENDANT  
2<sup>nd</sup> DEFENDANT**

**Keywords:** Sale of Real Estate; Agreement for the Sale of Real Estate; Breach of Real Estate Agreement; Fraud by Falsifying Documents; Conveyance of Property; Power of Attorney for Sale of Real Estate; Deed of Release and Discharge; Conversion of Monies.

**Before:** The Honourable Mr. Justice Courtney A. Abel

**Hearing Dates:** 17<sup>th</sup> June 2014  
19<sup>th</sup> June 2014  
19<sup>th</sup> February 2015

**Appearances:**

Ms. Pricilla Banner for the Claimant

Mr Estevan Perera for the 1<sup>st</sup> Defendant

Mr. Kareem Musa for the 2<sup>nd</sup> Defendant

**JUDGMENT**  
**Delivered on the 19<sup>th</sup> day of February 2015**

**Introduction**

- [1] This case involves for resolution a dispute with considerable conflicting factual testimony at its core. It concerns a business venture between 2004 and 2010 involving the three parties of this claim (“the Parties”).
- [2] All of the Parties invested in a 5 acre parcel of land located in Commerce Bight in the Stann Creek District of Belize (“the Property”).
- [3] It is undisputed that the Parties, who were parties to the Agreement, are more particularly:
- (a) The Claimant, a retiree and resident of Oklahoma USA.
  - (b) The 1<sup>st</sup> Defendant, a businesswoman with contacts in Belize, also of Oklahoma USA, who was a very good friend of the Claimant, and who introduced and involved the Claimant in the venture.
  - (c) The 2<sup>nd</sup> Defendant, who is and was a realtor living in and conducting business in Belize, and who introduced the 1<sup>st</sup> Defendant to the business opportunity which arose in relation to the Property, and was at the date of the Agreement a very good friend of the 1<sup>st</sup> Defendant.
- [4] The Parties hoped to benefit from the undoubted business opportunity which the venture offered them.
- [5] The venture resulted in an oral agreement (“the Agreement”), of which more will be said later, evidenced by a written Deed of Conveyance of the Property into their common names dated 17th March 2004.
- [6] Particularly arising for determination in this case are the vexed questions around the bona fides of the following documents and/or transactions:
- (a) A Power of Attorney allegedly signed and witnessed by a Notary Public in Oklahoma USA by the Claimant on the 10th November 2005;

(b) An Affidavit allegedly signed by the Claimant before the same Notary on the 10 November 2005 authorising the 2nd Defendant to apply for the subdivision of the Property;

(c) A Power of Attorney allegedly signed by the Claimant before a Notary Public on the 10th November 2005 appointing the 1st Defendant to act on the Claimant's behalf in relation to the Property

(d) A Managers Cheque drawn on the Washington Mutual Bank in the sum of US\$60,000.00 in the name of the Claimant which has the signature of the 1<sup>st</sup> Defendant on it as having being received by her on the 27<sup>th</sup> February 2006, and;

(e) A Deed of Release and Discharge dated 10th March 2006 and which is purported to have been signed by the Claimant before a Notary Public on the 7<sup>th</sup> March 2006 in the State of Oklahoma and County of Tulsa.

[7] Central to this case for determination are allegations of breach of the Agreement and of fraud (including by the falsification of many of the above mentioned documents and other misconduct relating thereto) all of which resulted in the parties being severely at odds.

[8] What appears to also be undisputed is that the Claimant reposed a lot of trust and confidence in the 1<sup>st</sup> Defendant and it is a question for determination, and also central to this case, whether this trust and confidence was betrayed.

### **The Court Proceedings**

[9] These proceedings have a somewhat complicated history, almost as involved as the facts of the case, which I will attempt to summarise.

[10] The Claimant filed a Claim Form and Statement of Claim against the 1<sup>st</sup> Defendant alone on the 18<sup>th</sup> May 2012 which was defended by the 1<sup>st</sup> Defendant by a Defence filed on the 17<sup>th</sup> September 2012 in which the 1<sup>st</sup> Defendant made allegations in relation to the subject transactions against the 2<sup>nd</sup> Defendant (shifting the responsibility from her to him for any liability).

- [11] The Claimant then added the 2<sup>nd</sup> Defendant to the Claim by an amended Claim Form and Statement of Claim filed on the 26<sup>th</sup> September 2012.
- [12] The 1<sup>st</sup> Defendant on the 26<sup>th</sup> September 2012 then filed an Ancillary Claim Form against the 2<sup>nd</sup> Defendant (subsequently amended on the 22<sup>nd</sup> October 2012) in which she made repeated and added allegations against him which the 2<sup>nd</sup> Defendant vigorously defended in a Defence filed on the 24<sup>th</sup> October 2012 and in an Ancillary Defence filed on the 1<sup>st</sup> November 2012.
- [13] In the events which have subsequently transpired the Ancillary Claim has been withdrawn so this claim has not been considered by the Court.
- [14] Pursuant to directions given on a number of occasions in the management of the case:
- (a) The Claimant filed on the 20<sup>th</sup> November 2012, a List of Documents for Specific and Standard disclosure; and on the 3<sup>rd</sup> March 2013 a Supplemental List of Documents.
  - (b) On the 21<sup>st</sup> November 2012 the 1<sup>st</sup> Defendant filed a List of Documents and there was a further List of Documents (Standard Disclosure) filed by the 1<sup>st</sup> Defendant on 4<sup>th</sup> April 2014.
  - (c) The 2<sup>nd</sup> Defendant filed, on the 21<sup>st</sup> November 2012, a List of Documents giving Standard Disclosure.
- [15] The Claimant was the only one witness for her case, and filed two Witness Statements, the first on the 28<sup>th</sup> February 2013 and the second on the 24<sup>th</sup> March 2014.
- [16] The 1<sup>st</sup> Defendant was the only witness for her case, and she filed two Witness Statements, the first on the 12<sup>th</sup> March 2013 and the second on the 4<sup>th</sup> April 2014.
- [17] The 2<sup>nd</sup> Defendant was the only witness for his case, and filed his only Witness Statement on the 10<sup>th</sup> December 2012.
- [18] The parties, pursuant to directions given, filed the following Pre-Trial Memoranda:

- (a) The Claimant filed the first on 14<sup>th</sup> May 2014 and the 2<sup>nd</sup> on the 19<sup>th</sup> May 2014.
  - (b) The 1<sup>st</sup> Defendant filed hers on the 19<sup>th</sup> May 2014.
  - (c) The 2<sup>nd</sup> Defendant filed his on the 20<sup>th</sup> May 2014.
- [19] The trial of the Amended Claim took place on the 17<sup>th</sup> June 2014 and the court heard Oral Arguments on the 19<sup>th</sup> June 2014.
- [20] In addition to Oral Arguments the court had the benefit of Written Arguments from Counsel for the Parties which was filed on the Claimant's behalf on the 16<sup>th</sup> July 2014, the 1<sup>st</sup> Defendant's behalf on the 19<sup>th</sup> June 2014 and the 2<sup>nd</sup> Defendant's behalf on the 9<sup>th</sup> July 2014.
- [21] The Parties have agreed that the costs should be awarded to the successful party in the maximum sum of \$10,000 which may be ordered \$5000.00 against each of the Defendants (if the Claimant is successful)
- [22] The central issue is who the court should believe which will turn on the credibility of the parties and of the central documents in the case.

### **The Issues**

- [23] As already noted there are large number of factual issues to be resolved by the court that arise on the pleadings and from the testimony of the witnesses, which include the following:
- (a) Whether at the time of the Conveyance of the Property to the parties the Claimant was aware that the 2<sup>nd</sup> Defendant was a party to the Agreement.
  - (b) Did the Claimant authorize (in writing by Power of Attorney or otherwise) either or both of the Defendants to subdivide the Property into 15 lots and/or to sell 2.5 acres (8 subdivided lots) of the Property?
  - (c) Whether in or about 2006, following the sale of 2.5 acres of the Property, the 1<sup>st</sup> Defendant informed the Claimant that it had been sold cheaply and at a loss or whether the 2<sup>nd</sup> Defendant informed the Claimant that less was

received from the sale of 2.5 acres of the Property than could have been obtained but it was sold at a profit

- (d) Did the Claimant in fact sign the Deed of Release and Discharge dated 10<sup>th</sup> March 2005 or was the Claimant misled or duped into signing this Power of Attorney in favour of the 1<sup>st</sup> Defendant for the purpose alleged by the Claimant, to retrieve the cheque for the purchase price of 2.5 acres of the Property?
- (e) Which of the Defendants handled the proceeds of sale of 2.5 acres of the Property and what part of such proceeds was sent/delivered to the Claimant, \$7,500.00 as alleged by the Claimant or \$40,000.00 as alleged by the 1<sup>st</sup> Defendant?
- (f) Did the Claimant, in or about July 2009 discover that the Property had not been sold cheaply or at a loss as alleged by the Defendants?
- (g) Which of or did both the Defendants arrange for the Deed of Release to be prepared and executed by the Claimant and who procured the signature of the Claimant on the Deed of Release?
- (h) Did the Claimant duly execute the Deed of Release dated 10<sup>th</sup> March 2006, and thereby agree to accept \$50,000.00 as full and final satisfaction of her interest under the Agreement?
- (i) Was either or both of the Defendants culpable in their dealings with the Claimant and guilty of the fraudulent conduct alleged by the Claimant?
- (j) Was the Claimant's name removed from the Property and if so by whom and for what reason?
- (k) Did the Claimant duly receive the cashier's cheque for US\$60,000.00 for her own use and benefit on the 27<sup>th</sup> February 2006 as alleged by the 1<sup>st</sup> Defendant?

### **Approach Adopted by the Court**

- [24] The Court has to attempt to unravel the conflicting evidence in the case and allocate responsibility and culpability (including with respect to the allegation of fraud) for any wrongdoing which may have existed.
- [25] If this court were to set out and seek to resolve individually all the conflicting evidence this judgment would be unduly long and unwieldy.
- [26] So, having seen and heard the witnesses, and carefully reviewed the issues (separating them into the core or primary questions from the collateral questions of fact which have to be determined) and considered them alongside the undoubted or uncontested factual matters, as well as the pleaded cases of the parties, the court felt very comfortable in summarily arriving at the following background facts by making, as appropriate, summary findings of fact in relation to the collateral matters (matters susceptible to summary determination).
- [27] By this process the Court was able to arrive at a somewhat more detailed background of the case before considering and attempting to resolve the more difficult and central/core questions for resolution and as an aid to such resolution.
- [28] A peculiar aspect of the case for determination at the outset was a consideration of the fact that the Claimant and the 1st Defendant were friends and knew each other, and the 1st Defendant and the 2nd Defendant were friends and knew each other, and a determination of the question which arises: whether the Claimant and the 2nd Defendant were initially acquainted or even knew of the existence and involvement of the other in the venture and the Agreement.

### **Detailed Background & Summary Findings of Fact**

- [29] I have found, after careful consideration of the Claimant's and 2<sup>nd</sup> Defendant's evidence<sup>1</sup>, that the Claimant and the 2<sup>nd</sup> Defendant were not acquainted and did not initially know each other and I also accept the evidence of the 2<sup>nd</sup> Defendant

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<sup>1</sup> As one of the first if not the primary findings of fact which I had to make and which I did on the basis of a careful consideration of all the evidence in the case including both the Claimant and 2<sup>nd</sup> Defendant's allegations in the case which I found to be credible (including that I could see no credible reason why the 2<sup>nd</sup> Defendant would want to fabricate this evidence) and therefore have accepted.

that the 1<sup>st</sup> Defendant did not initially want the Claimant to know of the 2<sup>nd</sup> Defendant's involvement in the venture and the Agreement for reasons which may or may not ever be known or be determined by the court.

- [30] In or about 2004, the Parties entered into the Agreement, to purchase the Property for the sum of US\$20,000.00 with the Claimant contributing half of the purchase price and the Defendants contributing equally the other half of the purchase price.
- [31] Under the Agreement, the Property was to be owned in common by them reflecting the shares of their contribution, and when the Property was eventually to be sold the Parties were to receive a return on their investment commensurate with their contributions and shares.
- [32] Pursuant to the Agreement, the Claimant paid to the Defendant one half of the purchase price, being the sum of US\$10,000.00, and the Defendants paid the balance of the purchase price in equal amounts.
- [33] The Property was on the 17<sup>th</sup> March 2004 duly purchased as agreed and as evidenced by the abovementioned Deed of Conveyance, and conveyed into the names of the Parties as agreed.
- [34] At the time of the conveyance, I accept that the Claimant was not aware that the 2<sup>nd</sup> Defendant was entered as a joint owner in the Deed of Conveyance along with herself and the 1<sup>st</sup> Defendant. So although there is undoubtedly an agreement in relation to the Property entered into by the parties in 2004 for them to purchase the Property for the sum of US\$20,000.00 as an investment and for resale, all the parties did not know each other (except for the 1st Defendant).
- [35] The Defendants eventually agreed, at the instigation of the 2<sup>nd</sup> Defendant, that the best way to resell the Property at a profit would be to subdivide it into lots and they agreed to do so.
- [36] Thereafter the 2<sup>nd</sup> Defendant, as the person resident in Belize and the expert in land transactions within Belize, handled all the day to day aspects of the dealings with the Property in Belize including, by interfacing directly with the 1<sup>st</sup> Defendant and advising her of whatever was needed from the Claimant to effect



any such dealing, as well as giving the 1<sup>st</sup> Defendant the proceeds of sale of any transaction concerning the Property and making arrangement for its subsequent dissemination.

[37] The 1<sup>st</sup> Defendant, likely on the advice of the 2<sup>nd</sup> Defendant, arranged for the Claimant to sign the Power of Attorney and Affidavit, and to have them signed by the Claimant and witnessed by the Notary Public, Penny Northcross, in Oklahoma USA on the 10<sup>th</sup> November 2005.

[38] This Power of Attorney granted to the 1<sup>st</sup> Defendant a full general power to act on the Claimant's behalf in relation to the Property (including to accept payment on the Claimant's behalf). The Affidavit authorized the 2<sup>nd</sup> Defendant to apply for a subdivision of the Property.

[39] I am prepared to accept and to consider this case on the basis that the Claimant (who likely had health issues in the USA at the time with which she was concerned) trusted and relied on the 1<sup>st</sup> Defendant to act on her behalf and the Claimant would have signed anything the 1<sup>st</sup> Defendant asked her to sign, even without examining it carefully (and that in fact this is what more than likely happened) and the Claimant genuinely may not have recalled signing such documents. The result was that the Claimant's evidence to this court (that she did not sign these documents) may have been genuinely but mistakenly made.

[40] Specifically, I do not accept the allegation of the Claimant that the 1<sup>st</sup> Defendant informed the Claimant that she (the 1<sup>st</sup> Defendant) required the Claimant to execute a Power of Attorney for the purpose of retrieving the check for the purchase price since the Property was held in the names of both the Claimant and the 1<sup>st</sup> Defendant.

[41] Neither do I believe the Claimant is accurate where she stated that she executed the signature pages for a Power of Attorney in favour of the 1<sup>st</sup> Defendant for the just mentioned stated purpose. It is possible that this happened but more likely that it did not.

- [42] Thus with the Power of Attorney and Affidavit in hand the 2<sup>nd</sup> Defendant proceeded to subdivide the Property into 15 lots (numbered 1 – 15 including beachfront lots) which was done by the end of November 2005, and sure enough, shortly thereafter in early January of 2006 the 2<sup>nd</sup> Defendant found a purchaser who bought eight (8) lots constituting 2.5 acres (or 1/2) of the Property<sup>2</sup> (“the 8 sold lots”) for the purchase price of US\$80,000.00.
- [43] The purchaser of the 8 sold lots was Degala Sands Limited (“the Purchaser of the 8 sold lots”), then being managed by Mr. Denise Kolb, who in due course duly paid for the lots, the agreed sum of US\$80,000.00.
- [44] This payment of the purchase price was made by way of a down payment of US\$16,000.00 to the 2<sup>nd</sup> Defendant and then by cashier’s cheque No. 092912071 dated 24<sup>th</sup> February 2006 in the sum of US\$60,000.00 which was payable to the Claimant, and then US\$4,000.00 cash.
- [45] The cheque in the sum of US\$60,000.00 was made out to the Claimant because the 1<sup>st</sup> Defendant, acting on behalf of the Claimant, advised the 2<sup>nd</sup> Defendant that the Claimant would accept this sum (US\$60,000.00)<sup>3</sup> in full and final settlement and satisfaction (and by way of buy-out) of her interest under the Agreement. This sum would be made out of the purchase price of US\$80,000, leaving the Defendants with the remainder of the Property (7 lots) plus repayment of their investment of US\$20,000.00.
- [46] After the sale of the 8 sold lots there remained, therefore, 7 lots (lots 2, 3, 4, 5, 6, 7 and 8) of the Property in the name of the Parties.
- [47] I accept that by this time the 2<sup>nd</sup> Defendant had no contact with the Claimant and acted on the advice of the 1<sup>st</sup> Defendant. The 2<sup>nd</sup> Defendant insisted on having a Deed of Release from the Claimant personally which the 1<sup>st</sup> Defendant got the 2<sup>nd</sup> Defendant to prepare and the 1<sup>st</sup> Defendant then made arrangements for the

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<sup>2</sup> Lots 1, 9, 10, 11, 12, 13, and 15.

<sup>3</sup> The sum of US\$10,000.00 as repayment on her investment of US\$10,000.00 and an additional US\$50,000.00 profit.

Claimant to sign it. All of this was done behind the back of the Claimant whose evidence I accept in this regard.

[48] The Claimant alleges that in or about 2006, in the absence of any agreement between the Parties (the Claimant and the Defendants) to sell the Property, the Defendant informed the Claimant that the Property (all 5 acres) had been sold “cheaply” and at a loss and that she only received \$7,500.00. While the Defendants (specifically the 1<sup>st</sup> Defendant) insist that the Claimant received in her name a cheque for \$60,000.00 which she deposited into her account for her own use and benefit.

[49] On balance, I have concluded that in or about 2006, following the sale of the 2.5 acres of the Property, the 1<sup>st</sup> Defendant informed the Claimant that it had been sold cheaply, in that less was received from the sale of 2.5 acres of the Property than could have been obtained. But I am not satisfied, on balance, that the 1<sup>st</sup> Defendant informed the Claimant that such 2.5 acres had been sold at a loss. Frankly I have concluded that at this stage the Claimant still trusted the 1<sup>st</sup> Defendant and was not paying particular attention to what she was being told by the 1<sup>st</sup> Defendant such that much reliance can be placed on her testimony in this regard.

[50] The question of the payment of the US60,000.00, and the signing of the Deed of Release and Discharge is the most worrying and puzzling aspect of the case and in my view cannot be determined summarily as the evidence has to be carefully reviewed and weighed, as such matters may be determinative, one way or the other, of how the court should consider what transpired subsequently, and the case as a whole.

[51] The Claimant alleges that in or about July 2009, she then decided to take action when she discovered:

(a) that the Property had not been sold “cheaply” or at a loss as alleged by the 1<sup>st</sup> Defendant, and

- (b) that on or about 12th February, 2006 a survey was requested by Oscar D. Romero to subdivide the Property into 15 lots, which was authenticated on 16th February, 2006, and,
- (c) that in or about 2009, eight of the lots being lot nos. 1, 9, 10, 11, 12, 13, 14 and 15, which made up the Northern portion of the Property, were sold for a total sum of US\$80,000.00 (despite the BZ\$75,000.00 stated on the Conveyance) and transferred on or about the 20th April, 2006 to DeGala Sands Limited, a company with office situate at 26 Doyle Street, Belmopan, Cayo District,
- (d) that in or about 2009 she discovered that her name had been fully removed from the Deed of Conveyance relating to the Property sold to DeGala Sands Limited and the 7 remaining lot nos. 2, 3, 4, 5, 6, 7, and 8,
- (e) that in or about 2009 she also discovered that a Deed of Release and Discharge dated 10<sup>th</sup> March, 2006 was filed in the Lands Registry purportedly between herself, the 1<sup>st</sup> Defendant and 2<sup>nd</sup> Defendants, releasing and discharging them from any obligation to account to her for the sale or part thereof of the Property purportedly in consideration of the sum of US\$40,000.00 and acquitting and discharging the Defendants from any obligation to the Claimant under the Agreement.

[52] The facts relating to the alleged discoveries of the Claimant were undoubtedly true but the question for determination is the Claimant's credibility about being kept in the dark by the Defendants about their relationship, as well as knowledge of the foregoing transactions and of her due execution of the Deed of Release and Discharge.

### **Disputed Matters**

#### The Disputed Documents Generally

[53] In relation to the allegedly Notarised documents before the court, the court had to take a position on them individually and collectively. This I had to do bearing in mind the seriousness of the allegation of fraud which was being made by the

Claimant against the 1st and/or the 2<sup>nd</sup> Defendant and bearing in mind the burden of proof and the high or stringent standard of proof which was on the Claimant.

- [54] Having taken all the relevant facts and matters into consideration this court is unwilling to find that such documents were not authentic.
- [55] The reasons for arriving at this conclusion include the fact that the signatures (including that on the cheque which was not notarised), were not challenged during the course of the proceedings leading up to the trial.
- [56] Also, at the trial, there was not such a challenge of the documents in a way that would allow this court to properly conclude that such signatures were not the Claimant's and were not duly and properly on them.
- [57] Specifically in arriving at this conclusion this court considered that under applicable rules of court the Claimant is deemed to have admitted the authenticity of such documents, which were duly disclosed to her under such rules of court, as she did not serve the required notice that the documents must be proved at trial.
- [58] Also this court is unwilling to give much weight to the Claimant's allegation that her signatures were forgeries as the documents were purported to have been witnessed by a Notary Public, a public official, in circumstances where the Claimant accepted that she in fact did sign some documents (or a document) before a Notary Public in Oklahoma, and also as there was no challenge raised by the Claimant by calling an appropriate expert witness, such as a handwriting expert, in a way that would allow the Claimants allegation to be properly tested.
- [59] The court was therefore placed in an invidious position of having to assess the veracity of the Claimant's evidence, on her testimony alone, without any supporting evidence in relation to such a serious allegation which the Claimant was making to the court.
- [60] In these circumstances the court feels compelled to conclude, summarily, and for the reasons just given, that the signatures on the documents which the Claimant challenges, and their veracity and authenticity, could not be questioned and as such conclude these signatures were not properly executed by the Claimant.

[61] It follows that this court has concluded that the Claimant, in writing, and by the disputed Power of Attorney did authorize either or both of the Defendants to subdivide the Property into 15 lots and/or to sell 2.5 acres (8 subdivided lots) of the Property. This conclusion was arrived at on the facts and circumstances of the present case and the court felt that, on balance, it could properly come to no other conclusion.

The payment of the US\$60,000.00.

[62] The facts surrounding the payment of the US\$60,000.00 were much contested and somewhat troubling and central to this case.

[63] The Claimant denies having received more than \$7,500.00 and denies having signed the Deed of Release and Discharge and deposited the sum of \$60,000.00.

[64] Unfortunately the Claimant's evidence was somewhat discredited under cross-examination as she failed to mention in her original Witness Statement anything regarding the US\$60,000.00 cheque written in her name. Also in her second witness statement the Claimant referred many times to having, on the 7<sup>th</sup> March 2006, "cashed" this cheque (by receiving monies from her account from the teller) for the 1<sup>st</sup> Defendant. It was only at the trial, in amplification of her witness statement, that the Claimant for the first time testified that she in fact deposited the cheque into her account in return for cash which she retrieved from her safety-deposit box and gave such cash to the 1<sup>st</sup> Defendant in exchange for the cheque (that she "ran it through her account").

[65] There is much difficulty about this evidence as to whether it was US\$60,000.00 or US\$40,000.00 that the Claimant received but on balance, and given the burden of proof on the Claimant, I have determined that her evidence is not credible and being unsupported cannot be sustained.

[66] I am therefore not satisfied that the Claimant has proved her allegation that she did not receive the cheque for the sum of US\$60,000.00.

### The signing of the Deed of Release and Discharge

[67] I am satisfied that, on a balance of probabilities and on the evidence it was the 1<sup>st</sup> Defendant who arranged for the Claimant to sign the Deed of Release and Discharge and who was present with her on 7<sup>th</sup> March 2006 in Tulsa, Oklahoma, USA when the Claimant did duly execute this deed before the Notary Public. The Claimant accepts that this signature on the document is hers but alleges that it is fake. I do not consider that the Claimant has discharged the burden on her to prove her case in this regard. I have therefore found that the 1<sup>st</sup> Defendant did in fact procure the signature of the Claimant on this Deed of Release.

[68] In the circumstances, I have found that the Claimant duly executed the Deed of Release dated 10<sup>th</sup> March 2006, and thereby agreed to accept \$60,000.00 in full and final satisfaction of her interest under the Agreement and thereby relinquished any interest that she may have had in the Property.

### Other Disputed Matters Pertaining to the Agreement

[69] I have concluded that in or about July 2009, the Claimant had been alerted to the fact that it was necessary for her to pay careful attention to the Agreement and had been alerted, rather than discovered, the true facts and circumstances relating to the Agreement and venture including that:

- (a) On or about 12<sup>th</sup> February, 2006 a survey was requested by Oscar D. Romero to subdivide the Property into 15 lots, which was authenticated on 16<sup>th</sup> February, 2006; and
- (b) In or about 2009 that eight of the lots, being lot nos. 1, 9, 10, 11, 12, 13, 14 and 15 which made up the Northern portion of the Property, were sold for a total sum of US\$80,000.00 (despite the BZ\$75,000.00 stated on the Conveyance) and transferred on or about the 20<sup>th</sup> April, 2006 to DeGala Sands Limited, a company with office situate at 26 Doyle Street, Belmopan, Cayo District.

- (c) In or about 2009 the Claimants name had been fully removed from the Deed of Conveyance relating to the Property sold to DeGala Sands Limited and the 7 remaining lot nos. 2, 3, 4, 5, 6, 7, and 8.
- (d) In or about 2009 a Deed of Release and Discharge dated 10<sup>th</sup> March, 2006 was filed in the Lands Registry purportedly between herself and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants releasing and discharging them, from any obligation to account to her for the sale or part thereof of the Property purportedly in consideration of the sum of US\$40,000.00 and acquitting and discharging the Defendants from any obligation to the Claimant under the Agreement.

[70] The Claimant may have been deliberately kept in the dark, by the Defendants (particularly the 1<sup>st</sup> Defendant) and there is very real evidence and suspicion hovering over the 1<sup>st</sup> Defendant's overall conduct towards the Claimant; but I consider that if the 1<sup>st</sup> Defendant did in fact misbehave towards the Claimant this was so through the instrumentality of the Claimant's implicit trust of the 1<sup>st</sup> Defendant (for which the Claimant has to take a large part of the responsibility) as it is not now possible in the circumstances of this case to go behind the documents which the Claimant signed and which may have allowed any deception to be carried out or effected.

[71] Generally, the court placed great reliance on the veracity of the documents in the case (often notorised and not properly challenged as suspicious documents) and preferred the evidence of the 2<sup>nd</sup> Defendant and the Claimant (in that order) in arriving at its conclusions. The court did not decide the case necessarily on the credibility of the 1<sup>st</sup> Defendant whose overall conduct raised many unanswered questions.

[72] The fatal flaw of the Claimant's case was her lack of proof of her own case.

Claim for US\$15,000.00

[73] I have found no or no sufficient evidence supporting the Claimant's claim to be entitled to payment of the sum of US\$15,000.000 which she alleged was loaned to



the 1<sup>st</sup> Defendant for investment in property located purportedly at the Mayan Estates, Corozal District.

### **Conclusions**

[74] I therefore have concluded, on balance, that neither of the Defendants were culpable in their dealings with the Claimant nor was either or both of them guilty of the fraudulent conduct alleged by the Claimant, and such is the finding of this court.

[75] Specifically, I have found that neither of the Defendants has breached the Agreement with the Claimant, whether as alleged in the Statement of Claim or otherwise, nor have they, or either of them, committed a fraud against the Claimant as alleged.

[76] I have also found that the Claimant has not suffered any loss or damage as a result of any breach of the Agreement or any fraud.

[77] It follows from the above findings that the Defendants were entitled to remove the Claimant's name from the Property.

### **Costs**

[78] As the Claimant has been wholly unsuccessful and pursuant to the agreement of the parties I order that the Claimant shall pay each of the Defendants their costs in the sum of \$5,000.00.

### **Disposition**

[79] For the reasons given above, the orders of this court is that the Claimant's claims for Declarations, Orders, Damages, Costs and Interest are dismissed with costs in the sum of \$5,000.00 to be paid by the Claimant to each of the Defendants.

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**The Hon Mr. Justice Courtney A. Abel**