

IN THE SUPREME COURT OF BELIZE, A. D. 2015

CLAIM NO. 155 OF 2015

BETWEEN:	(CHARLES WILLIAMS	CLAIMANT
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	(AND	
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	(YACHT CLUB RESORTS DEVELOPMENT CO. LTD	FIRST DEFENDANT
	(BELIZE YACHT CLUB LTD INC.	SECOND DEFENDANT
	(SERGIO TORRES	THIRD DEFENDANT

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BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Ms. Iliana Swift of Courtenay, Coye and Co. for the Claimant
Mr. Michel Chebat, SC, for the First Defendant
No appearance for the Second or Third Defendant

D E C I S I O N

Facts

1. This is a consolidated claim for the return of money had and received. The Claimant, Charles Williams, is a businessman and online investor. The First Defendant, Yacht Club Resorts Development Co. Ltd., is a company duly registered under the Laws of Belize. The Second Defendant, Belize Yacht Club Ltd. Inc. is a foreign company duly registered under the laws of the State of Florida, USA. The Third Defendant, Sergio Torres is a Director of the First and Second Defendant companies. In Claim No. 155 of 2015, the Claimant says that he had an oral agreement with Sergio Torres where he would invest US \$550,000.00 through Yacht Club Resorts Development Co. Ltd. in a condominium development project known as Sand Villas 2 being developed by the First Defendant. In addition, the Claimant would be entitled to 25% of all profits derived from Sand Villas 2. He paid US \$475,700.00 to the Defendants but they failed to invest or cause to be invested the Claimant's funds in Sand Villas 2. The Claimant seeks payment of the sum of US \$475,700.00 owed by the Defendants to the Claimant as money had and received by the Defendants between October 2012 and February 2013. In Claim No. 156 of 2015, the Claimant says that he transferred US\$ 503, 580 to the Defendants for the purchase of a Condominium Unit at Sands Villas Development. No written agreement has been executed between the parties; the Defendants have not yet delivered the condominium unit, nor have they returned the monies to the Claimant despite his demands. The Claimant seeks the return of the sum of US \$503,580.00 as money had and received by the Defendants for and to the use of the Claimants.

Issues

2. i) Whether there was an agreement between the 1st Defendant and the Claimant for the Claimant to invest US \$550, 000.00 in Sands Villas Condominium Development.
- ii) Whether the said sum of US \$550,000.00 was received by the 1st Defendant or for its benefit.
- iii) Whether the 1st Defendant entered into a contract for the sale of a condominium in Sands Villas to the Client in the sum of US \$503,500.00?
- iv) Whether the sum of US \$503,500 was received by the Defendant or for its benefit?

The Evidence for the Claimant

3. At trial, the Claimant was the sole witness. He had given a witness statement saying that he was a businessman who arrived in Belize for vacation in March 2012. On or about July 2012 he had conversations with Sergio Torres, Director of the First and Second Defendant companies who informed him that there were condominiums for purchase at Sands Villas. He was told that the owner of the condominiums was Yacht Club Resorts Development Co. Ltd and he was shown documents to that effect. He told Sergio he wanted to purchase one of the condominiums, and although the price was US \$700,000.00, Sergio agreed to sell the Claimant one for the reduced price of US \$500,000.00. He received a copy of the Sales Agreement between Yacht Club and himself for the purchase of Unit 18 on or about 3rd August, 2012. A copy of the draft agreement had been sent to him via email by Julia Torres, Sergio's sister who was Director of Sales at Sands Villas (Tab 1).

4. On or about 4th August, 2012, Mr. Williams received a further email from Julia Torres which attached the Offer to Purchase (Tab 2) and instructions on mode of payment to Regions Bank. He and Sergio signed the Offer to Purchase on or about that same date. On or about 5th August, 2012, Julia Torres emailed him the wiring instructions for Regions Bank (Tab 3). The Bank Account was in the name of the Belize Yacht Club which was consistent with the Sales Agreement that payment should be made to Belize Yacht Club. Pursuant to the Sales Agreement and Offer to Purchase, he transferred a total of US \$503,580.00 to Belize Yacht Club DBA Sands Villas Bank Account Number 8190186968 at Regions Bank in Florida, USA.

5. On or about August 20th, 2012, Mr. Williams received an email from Julia in which she attached a copy of Sales Agreement with his particulars provided in it (Tab 4). Records of wire transfers were kept by Xunan Nunez, an accounts employee of Yacht Club. He says that several conversations were held between Xunan, Sergio and himself via phone, in person and by email to confirm the wire transfers. On or about 6th September, 2012, the Claimant emailed Xunan a list of recent wire transfer for the sum of US \$41,050.00 and he provided confirmation to Sergio and Xunan upon their request via email. A copy of the list is attached at Tab 5. On or around June 2014 he met with Sergio and they discussed the Sale Agreement as the Unit had still not been completed and he had still not obtained title to the unit. Sergio indicated to Mr. Williams that the original contract between Sergio and himself was on Yacht Club's company file. On or about 5th July, 2014, he received an email from Sergio in which he indicated that Unit 18 would be completed with funds received from sales from Island Club Resort (Tab 6). On July 14th,

2014, Sergio emailed Chebat & Co, instructing the firm to assist him in obtaining title to Unit 18 of Sands Villas (Tab 7). He later met with Michel Chebat Attorney at law who assured him that he would initiate the transfer process whenever Mr. Williams desired to do so. After that meeting Mr. Williams remained in close contact with Mike Singh, Director of the First and Second Defendant companies, regarding the completion of Unit 18. He says that he was assured at all times that he would receive a completed unit as he had already paid the purchase price. On January 12th, 2015, Mike Singh informed the Claimant that the company was still obligated to complete Unit 18 for him; however the debt incurred pursuant to the Investment Agreement would be settled by Sergio personally (Tab 8).

6. In relation to his investment in Sands Villas 2, Mr. Williams says that on or about September 2012, he was approached by Sergio and informed him that they were undertaking another condominium project known as Sand Villas 2. He was told that they needed an investment to commence the project, so Sergio offered to him to invest US \$550,000.00 in Sand Villas 2, In exchange for this investment, Sergio told him he would receive 25% of the profit of Sand Villas 2. As a result of his oral agreement with Sergio, Mr. Williams commenced wiring fun to Region Bank in the name of Belize Yacht Club DBA Sands Villas Bank Account Number 81901186968. On or about October 29th, 2012, he wired US \$300,000.00 to regions bank in Florida. On or about 14th November, 2012, he received another email from Sergio asking when he would be able to make the transfer for the further US \$250,000.00 as per their agreement (Tab 9). On November 16th, 2012 Mr. Williams received a further request from Sergio US \$60,000.00 and on

November 19th, 2012 he wired US \$60,063.61 (Tab 10). On or about Spring 2013, he was informed by Sergio that the Sands Villas 2 project had some issues which were delaying its commencement, but that the project was still going ahead. He did not receive any further requests for wire transfers. In Summer of 2013, he was informed by Sergio that the Sands Villas 2 project would not proceed because the money he had sent for that project had been spent on other properties belonging to Yacht Club. As a result of Sergio's disclosure they amended their agreement and the US \$526,121.00 that he invested in Sands Villas 2 would now be repaid from future sales of Yacht Club. He kept in contact with Sergio regarding the repayment of the monies owed and spoke to him several times per week, where Sergio assured him that the repayment would be made by Yacht Club.

7. On 15th January, 2015 Mr. Williams said he communicated with Sergio via Whats App messenger regarding the debt and he indicated that he would speak to Mike about it and how it would be repaid. On or around 16th January, 2015, he received a letter from Sergio signed by him in which he confirmed that all the funds Mr. Williams had wired to him to Regions Bank pursuant to his agreement to purchase Unit 18 and to invest in Sands Villas 2 (Tab 11). Copies of all wire transfers made pursuant to his agreement with the Defendants are found at Tab 12. Despite all his efforts and the assurances provided by Sergio Torres and Mike Singh, to date Mr. Williams has not received anything in return for the US \$503,580.00 paid for Unit 18 and the sum of US \$526,121.00 paid as an investment in Sand Villas 2. Unit 18 has not been completed and Sand Villas 2 never commenced construction.

8. Under cross-examination by Michel Chebat, SC, on behalf of the First Defendant, Mr. Williams said he had been doing business as an online investor for about eight years. The witness was shown a series of emails and he admitted that they all came from Julia Torres and Sergio Torres. He also stated he received some emails from Xunan Nunez. He agreed that the wire transfers were sent to Belize Yacht Club DBA Sands Villas Belize, and agreed that none were sent to Yacht Club Resorts Development Co. Ltd. He agreed that Belize Yacht Club is different from Yacht Club Resorts Development Co. Ltd. as two separate entities. He did not agree with the suggestions that the agreement he had was between himself and Sergio Torres. He agreed that he had many discussions with Sergio Torres about ways to settle the debts owed to him. He disagreed that it had been made clear to him that the investments he had made with Sergio were personal between Sergio and him. Upon being shown an email sent to him by Mike Singh dated January 12th, 2015, he agreed that Mike Singh is not a party to this claim. He disagreed that Mike Singh never told him he was a partner in this endeavor. He insisted that both Sergio and Mike told him they were partners in this venture. When asked why he never denied in the series of email exchanged that Sergio was personally responsible for the debt, Mr. Williams said that was because his business was with the company and not with Sergio personally. He said that he communicated with Sergio after receiving the email from Mike which asserted that the other investments were between Sergio and William personally; he said that he made it clear to Sergio via Whats App that this was not a deal between them personally, and he later filed this suit. He finally agreed that it was Sergio who offered him the investment and who invited him to invest in Sand Villas.

9. He agreed it was an oral agreement followed by email exchanges between Sergio and himself. He disagreed that he sent at least US \$235,000.00 to Sergio for a partnership in Club Quinta; he said that money was not sent to Regions Bank or to Belize Yacht Club DBA Sands Villas, it was sent somewhere else. Mr. Williams said that Yacht Club Resorts offered him investments and one of its Directors asked him to send money to them. He has no recollection of signing any contract with them for the condominium. He agreed that the unsigned agreement he put before the court contains the terms and conditions upon which he had agreed to purchase the condo. He never sent them a notice terminating that contract to buy the condo. He cannot recall if there was any completion date in the agreement.

Under re-examination by Ms. Swift, the witness said that he was left with the understanding that Sergio as Director controlled the decisions of Yacht Club Resorts. He got that from communicating with Mike Singh and also Beverly Wade who was an employee and later became a Director.

Evidence for the First Defendant

10. The First Defendant called one witness, Mrs. Maria Smith a Director of Yacht Club Resorts. She said in her witness statement that she is a Director of Yacht Club Resorts Development Co. Ltd. and that she has held that position in the company since 2013. She is familiar with the Claimant due to his repeated demands of the company for title to Unit 18 at Sands Villas and monies he claims were invested by him. All negotiations for the purchase/sale of Unit 18 and any payments received from the Claimant were

done by the 3rd Defendant himself. As the Director of the 1st Defendant, Mrs. Smith was vested with the power to settle, negotiate, and fulfill any arrangements made by the 1st Defendant with potential purchases or investors. At no point in time under her supervision did the 1st Defendant receive any funds to its account from the Claimant and/or his agents. She says that as is shown by all the Claimant's documents, all negotiations were between himself and the 3rd Defendant, and all monies received were by the 2nd Defendant and the 3rd Defendant; all acknowledgement of having any negotiations with the Claimant are made by the 2nd Defendant. On or about July 2014 the Claimant's request for assistance was entertained in trying to clear up where his funds were invested and to investigate whether he would receive title for the Unit 18 and some of these communications were by emails and by phone calls. After consultation, the 1st Defendant decided to give the Claimant title to Unit 18 despite it not having received payment from him as there were many uncertainties surrounding that unit. The 1st Defendant still maintains its decision to surrender title to the Claimant; however it strongly denies receiving any monies from the Claimant whether for the purchase of the unit or for any other investment.

11. Ms. Iliana Swift on behalf of the Claimant cross-examined Mrs. Maria Smith. The witness said she was not sure when Sergio Torres was a Director of Yacht Club Resorts but it was before she came on board. She could not say if Mr. Torres had entered into negotiations on behalf of Yacht Club Resorts with Mr. Williams for the purchase of a condominium at Sands Villas. She agreed that according to the agreement Mr. Williams provided the purchase price of the condo was US \$500,000.00. She cannot say whether

Julia Torres had provided to Mr. Williams an offer to purchase a condominium. She agreed that Ms. Torres provided instructions to Mr. Williams that the purchase price was to be wired to Regions Bank in Florida and she also provided the bank account number. She has no idea whether Sergio Torres provided Mr. Williams a draft of the sale agreement. She agreed that the parties to the sale agreement are Yacht Club Resorts Development Co. Ltd. and Charles Williams. Upon being shown a copy of the contract, she agreed that the first signature required would be that of Sergio Torres, and the purchase price was US \$500,000.00. She has no knowledge of wire transfers sent by Mr. Williams to a bank account in Florida and is unable to verify the transfers. She agreed that even though the company has no record of receiving US \$500,000.00 Yacht Club Resorts is willing to give title to the unit to Mr. Williams valued at that amount. Mrs. Smith she has no record that Yacht Club Resorts had undertaken a second project known as Sands Villas 2 in September 2012. She cannot comment as she does not know whether Sergio Torres had made any offer to Mr. Williams on behalf of Yacht Club Resorts to invest in Sand Villas 2. She disagrees that Yacht Club Resorts received the sum of US \$526,000.00 from the Claimant. She cannot say whether those funds were wired to a bank account in Florida based on instructions of a Director of the First Defendant.

Under re-examination by Mr. Chebat SC, the witness clarified that the draft agreement provided by Sergio Torres to Mr. Williams does not state that Sergio Torres was signing as a Director on behalf of Yacht Club Resorts Ltd. She further clarified that she has no record Yacht Club Resorts receiving either US \$503,000.00 or US \$526,000.00 from the

Claimant and Yacht Club Resorts does not have or operate any bank account at Regions Bank.

Legal Submissions on behalf of the Claimant

12. Ms. Swift contends on behalf of the Claimant that the evidence shows that between October 11th, 2012 and April 8th, 2013 the Claimant, Mr. Williams wired US \$978,500.00 to a bank account number 8190186968 at Regions Bank in Florida based on representations made by the Third Defendant Sergio Torres. That account was in the name of the Second Defendant, Belize Yacht Club Limited Inc. She says that at all times it was understood between the Claimant and Torres that the wiring of funds was for the First Defendant, Yacht Club Resorts Development Co. Ltd. The payments were made pursuant to two separate agreements. In Claim No. 155 of 2015, the Claimant's evidence is that in September 2012 he entered into an oral agreement with Torre to invest through Yacht Club Resorts the sum of US \$550,000.00. Upon Torres' instructions he wired a total of US \$475,700.00 to the bank account at Regions Bank in Florida. In Claim No. 156 of 2015, the Claimant says that pursuant to an agreement to purchase a condominium from Yacht Club Resorts, he wired US \$503,580.00 to that same account in Regions Bank in Florida. While Yacht Club Resorts agreed to honour the agreement for the purchase of Villa Unit 18, to date no transfer has been made to the Claimant. Ms. Swift states that the sum total of the sole witness for the Defence Martha Smith is that the First Defendant has no record of payments by the Claimant and the company is unaware of any such payments. The Claimant submits that it is difficult to accept that this is a truthful statement when the First Defendant was willing to provide a

Condominium to the Claimant. Yacht Club Resorts would have the court believe it was willing to provide a condo to the Claimant without having received payment from the Claimant.

Learned Counsel for the Claimant cites Goff and Jones ***The Law of Restitution*** on the principles of money had and received:

“Quasi-contract is that part of restitution which stems from the common indebitatus counts for money had and received and for money paid, and from quantum meruit and quantum valebat claims. The action for money had and received lay to recover money which the claimant paid to the defendant, on the ground that it had been paid under a mistake or compulsion, or for consideration which had wholly failed. By this action, the claimant could also recover money which the defendant had received from a third party, as when he was accountable or had attorned to the claimant in respect of the money, or the money formed part of the fruits of an office of the claimant which the defendant had usurped. The action also lay to recover the money which the defendant had acquired from the claimant by a tortious act; and in the rare cases, where the defendant had received money which the claimant could identify as his own at the time of the receipt and for which the defendant had not given consideration, the claimant could assert his claim by means of this action.”

Ms. Swift argues that the Claimant has specifically pleaded and proven that a total of US \$978,850.00 was wired transferred to Bank Account 819018968 at Regions Bank Florida on the instructions of Torres on behalf of Yacht Club Resorts. She says that in an email dated January 12th, 2015 from Yacht Club Director Mike Singh, there was a clear acknowledgment that it was liable for the completion of Villa 18 for the Claimant. In the email, there is an attempt to place the liability solely on Torres for the payment of US \$503,580.00; but it is telling that at all times it was for the same bank account that the Claimant wired funds to. Secondly, Ms. Swift contends that as a Director of Yacht Club Resorts, Sergio Torres was an agent of the company who had ostensible authority. The First Defendant is liable to the Claimant in the sum of US \$978,580.00 as money had and received and should return same. As Belize Yacht Club and Sergio Torres have been duly served in these proceedings but have failed to acknowledge service or take any part in the case, Ms. Swift asks that the court enter judgment against these defendants in both claims.

In the alternative, Ms. Swift seeks a declaration against Yacht Club Resorts that the sum of US \$503,580.00 is held on constructive trust for the Claimant and an order for an account and/or order that the Claimant is entitled to trace the sum/trust property through all the Defendants' accounts and into any assets identified as trust property.

Legal Submissions on behalf of the First Defendant

13. Mr. Chebat, SC, on behalf of the First Defendant Yacht Club Resorts Development Co. Ltd. that there is no written agreement between the First Defendant and the Claimant

for the purchase by the Claimant of a Condominium. There is an offer to purchase made between the Third Defendant and the Claimant. The First Defendant denies that it received any funds from the Claimant. The law will compel a person who has received monies which in equity belong to another, to pay them over to that other. The liability to repay arises where there is an element of unjust enrichment. In **Norwich Union Fire Insurance Society v Williams N Price Ltd** [1934] AC 455, the Court said that *“It is true that in general the test of intention in the formation of contracts and the transfer of property is objective: that is, intention is to be ascertained from what the parties said or did. But proof of mistake affirmatively excludes intention. It is however, essential that the mistake relied on should be of such a nature that it can properly be described as a mistake in respect of the underlying assumption of the contract or transaction or as being fundamental or basic”*.

Mr. Chebat, SC, says that in the present case the evidence shows that there were never any discussions with the Claimant and the First Defendant in reference to any investment by the Claimant. The evidence overwhelmingly shows that all discussions were between the Claimant and the Third Defendant. Essentially, there was no agreement between the Claimant and the First Defendant as the Claimant alleges. There was no privity of contract. The First Defendant ought not to be subjected to liabilities under an agreement to which it is not a party.

Mr. Chebat, SC, argues that the Claimant has not provided any documentary proof that he had an agreement with the First Defendant to invest in its project; he had an oral

agreement with the Third Defendant. The evidence shows that wiring instructions were provided by the Third Defendant to the Claimant. The Claimant in Claim No 155 of 2015 does not plead that the First Defendant took part in any negotiations for the supposed investment or that the First Defendant made any arrangements with him to receive funds from him pursuant thereto. The evidence reveals is that all communications were between the Claimant, the Third Defendant Sergio Torres and his sister Julia Torres. The Claimant admitted under cross-examination that he did not send any monies to the First Defendant, and he admitted that Belize Yacht Club Ltd. Inc., the Second Defendant, was a distinct entity from Yacht Club Resorts Development Co. Ltd. The evidence proffered by the Claimant failed to establish any nexus between the First Defendant and the bank account known as "*Belize Yacht Club doing business as Sands Villas*".

Mr. Chebat, SC, refer to the letter exhibited as Tab 11 which the Claimant received from Sergio Torres acknowledging receipt of funds wired to Regions Bank pursuant to his agreement to purchase Unit 18 and to invest in Sands Villas 2. The letter makes no mention of Yacht Club Resorts Development Co. Ltd. There is no evidence provided to the Court to find other than that the amounts allegedly invested were for a partnership between the Claimant and the Third Defendant Sergio Torres.

In relation to the Sale Agreement for Unit 18, Mr. Chebat, SC, says that the Claimant relies on an offer to purchase signed between him and Sergio Torres as evidence of the agreement. In addition, the Claimant relies on an unsigned agreement which he says contains the terms and conditions under which he purchased the said condominium.

The evidence coming from the First Defendant in this regard is that all the negotiations for the purchase/sale of Unit 18 and any payment received from the Claimant was received by the Third Defendant personally. The uncontested evidence of the First Defendant is that it received no money from the Claimant and that all monies if any were actually received by the Second and Third Defendants. The First Defendant says that after consultation, it determined that it would provide the Claimant with title to Unit 18 because there were too many uncertainties surrounding the unit, despite the fact that it had received no monies from the Claimant for the purchase thereof. The evidence is that all agreements were done by and between the Claimant and the Third Defendant who from the evidence appeared to be in a partnership. The Claimant has failed to show any connection between the First Defendant and the Second Defendant. The evidence shows that the Second Defendant was controlled by the Third Defendant. The Claimant has failed to show that there was any privity of contract between himself and the First Defendant or that the First Defendant has in any way been enriched by or benefited from the deposits the Claimant alleges that he deposited into the account of the Second Defendant. In the premises, the Claimant has on a balance of probabilities failed to establish his case and his claims ought to be refused.

Decision

14. I am grateful to both Counsel for their submissions in this matter. On the first issue as to whether there was an agreement between the First Defendant and the Claimant for the Claimant to invest US \$550,000.00 in Sands Villas Condominium Development, I find that there was no such agreement between the Claimant and the First Defendant. All

the evidence (email conversations, record of wire transfers, oral evidence) clearly shows that the agreement was between the Claimant and the Third Defendant Sergio Torres who received monies sent by the Claimant into the account of the Second Defendant. I therefore enter judgment for the Claimant against the Second and Third Defendants for the sum of US \$550,000.00. On the second issue as to whether the said sum of US \$550,000.00 was received by the First Defendant or for its benefit, I find the answer is no. Any funds received were for the use and benefit of the Second and Third Defendants; as Mr. Chebat, SC, has rightfully submitted the evidence has established no nexus between the First Defendant and the account in Florida where the sums were deposited by the Claimant. On the third issue as to whether the First Defendant entered into a contract for the sale of condominium in Sands Villas to the Claimant in the sum of US \$503,500.00, and the fourth issue as to whether the said sum of US \$503,000.00 was received by the First Defendant or for its benefit, I find in favour of the Claimant on both issues. The best evidence of this agreement comes from the email dated January 12th, 2015 to the Claimant sent by Mike Singh, Director of the First Defendant where he acknowledges that:

“The only obligation that the company has on our books for you is for the completion of unit 18. I reconfirmed this with Sergio again today that any other investment beyond this was in a partnership with you and him and he will take responsibility for that.”

I therefore order that the sum paid by the Claimant for the purchase of Unit 18 be returned to him in full by the Third Defendant, or that title to Unit 18 be given to him by the Third Defendant.

Each party to bear its own costs.

Dated this Monday, 31st day of July, 2017

**Michelle Arana
Supreme Court Judge**