

**IN THE SUPREME COURT OF BELIZE, A. D. 2017**

**CLAIM NO. 670 OF 2017**

**In the Matter of the Sands Hotel Trust Settled by George Henry Kevlin Parham as Settlor on the 20<sup>th</sup> February, 2011 (“ The Sands Hotel Trust”)**

**And**

**In the Matter of Section 57 and 58 of the Trusts Act, Chapter 202 of the Laws of Belize and Part 66 of the Supreme Court (Civil Procedure) Rules, 2005**

**In the Matter of Part V of the Supreme Court of Judicature Act, Chapter 191 of the Laws of Belize**

**BETWEEN:**

**(ELLA MARIE PARHAM                      CLAIMANT**

**(**

**(AND**

**(TIMOTHY HAGGERTY                      FIRST DEFENDANT  
(AS TRUSTEE OF THE SANDS HOTEL TRUST**

**(**

**(MARY HAGGERTY                          SECOND DEFENDANT  
(AS EXECUTOR AND PERSONAL REPRESENTATIVE  
(OF THE LATE GEORGE HENRY KEVLIN PARHAM**

-----

**BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA**

**Mrs. Magali Marin Young, SC, along with Mr. Allister Jenkins for the  
Claimant**

**Mr. Eamon Courtenay, SC, along with Ms. Stacey Castillo for the Defendants**

## J U D G M E N T

### Facts

[1] On February 20<sup>th</sup>, 2011 George Henry Kevlin Parham (“The Settlor”) created the Sands Hotel Trust over property in San Pedro, Ambergris Caye, Belize, being Parcels 991, 992 and 997 Block, all of Block 7, San Pedro Registration Section (Parcels 991,002 and 997). The Claimant, Ella Marie Parham, is the Second Wife of the Settlor. The First Defendant, Timothy Haggerty, is the Settlor’s Son in law and he is the Trustee of the Sands Hotel Trust. The Interested Party is the daughter of the Settlor (Wife of Timothy Haggerty) and she is the Living Trustee of the Sands Hotel Trust. The Settlor settled Parcels 991, 992 and 997 in favour of his daughter Mary Parham and his grandchildren. The Settlor also assigned personal property in a Bill of Sale dated 11<sup>th</sup> April, 2011 comprising the Sands Hotel and the Sands Gift. The Claimant is contesting this Trust on the basis that she did not know about nor did she consent to the 1980 and 1984 Wills, Trust and Bill of Sale which had been done by The Settlor. Mrs. Ella Marie Parham claims that she made physical and financial contributions to the acquisition and development of the trust property and therefore the Settlor held this property on a resulting and/or constructive trust for her and for himself. The Defendant contends that there is no resulting or constructive trust as the Claimant is not entitled to anything, and that the Settlor alone owned the trust

property and he made his intentions for the disposition of his property clear by the terms of the trust.

### **Issues**

[2] 1) Whether the Settlor held Parcels 991, 992, 997 and the Sands Hotel in resulting and/or constructive trust for the Claimant and himself?

2) If the court finds that the Settlor held Parcels 991, 992, 997 and the Sands Hotel in resulting and/or constructive trust, whether The Sands Hotel Trust and the Settlor's Wills of 1980 and 1984, so far as they affect Parcels 991, 992 and 997 and the Sands Hotel are valid?

3) Whether the Settlor held the personal Property listed in the Schedule to the Bill of Sale dated the 11<sup>th</sup> April, 2011 in resulting and/or constructive trust for himself and the Claimant?

4) If the Court finds that the Settlor held the personal property listed in the Bill of Sale in resulting and/or constructive trust, whether the said Bill of Sale is valid?

5) Does the Claimant have a beneficial interest in the Hotel and the Properties?

6) If the Claimant has a beneficial interest in the Hotel and the Properties, was George holding the same on resulting and/or constructive trust for Ella Marie and himself?

7) Is the Sands Hotel Trust valid and enforceable?

**Evidence on behalf of the Claimant**

[3] The Claimant testified on her own behalf and called two additional witnesses. Ms. Ella Marie Parham swore two affidavits in support of her Fixed Date Claim. In the first affidavit, Ms. Parham states that she lives on Coconut Drive, San Pedro Town, Ambergris Caye, Belize District. She says that the Sands Hotel Trust was created by George Henry Kevlin Parham (“**George**”), without her knowledge, in 2011, the Defendant being the Trustee, to provide, through the income generated from the properties settled, for the health, education, maintenance and benefit of the Interested Party, Kevlin J. Haggerty, Blythe E. Parham, Maria G. Parham, and Hannah O. Parham, the beneficiaries. The Sands Hotel Trust was created over Parcel, 991,992, and 997, and The Sands Hotel. A copy of the Sands Hotel Trust is exhibited hereto and marked “**EMP 1-1**”.

[4] Ms. Parham says that she and George Parham always operated under the understanding that Parcel 991, 992, 997 and the Sands Hotel was for both of them. She claims that she made substantial financial and non-financial contribution to the acquisition, construction, and maintenance of Parcel, 991, 992, 997 and The Sands Hotel, and that George held Parcel 991, 992, 997, and The Sands Hotel in constructive and/or resulting trust for himself and her. It is her position that George

Parham was not the absolute and only beneficial owner of Parcel 991,992, 997, and The Sands Hotel, therefore the Sands Hotel Trust is invalid.

[5] In or about 1970, Mrs. Elle Marie Parham met George Parham, now deceased, at her home on 105 Davis Street, Orange, Texas, USA. She was having a fish fry party at her home and George dropped some people off to attend the party. Later that day, George came back to pick them up after the party. After that, George kept coming back to her house to visit her.

Mrs. Parham said that she tried to stop George from visiting her home. On several occasions, she asked him to stay away from her home, but George would not listen and he kept returning. On one particular occasion, George visited her home along with his daughter, Mary Haggerty, the Interested Party herein, and her husband, Timothy Haggerty, the Defendant herein. At this time, George was still married to his ex-wife, Tina Parham. Against Mrs. Ella Marie Parham's attempts at having George stay away from her, he would also show up at her clothing shop, Joan Marie Shoppe, in Orange, Texas, USA.

[6] In or about early 1971, George's ex-wife, Tina Parham, threw him out of their matrimonial home, because she found out that he was having an affair with the Claimant, and in or about 1976, George and his ex-wife got divorced. It was when George and his ex-wife separated, that Mrs. Ella Marie Parham decided to close down her clothing shop and dedicate her time to being a Teamster Union Worker.

As a Teamster Union worker, Mrs. Ella Marie Parham drove large 18 wheeler freight trucks across the United States of America, and she was earning very decent wages. She was able to save most of her income. All this while, George continued to pursue and coax her.

[7] In or about late 1971, George asked the Claimant to relocate with him to Belize, and she agreed. He was 55 years old at the time and she was 46 years old. She says that she therefore, quit her job as a Teamster Union Worker truck driver and left for Belize. George and the Claimant got as far as Vera Cruz, Mexico when George fell ill. They stayed in Vera Cruz for four days, and then decided to return to Orange, Texas, USA. After his recovery, George again proposed that they travel to Belize.

[8] In or about early 1972, George and the Claimant once again left for Belize, and this time they arrived and settled in San Pedro Town, Ambergris Caye, Belize. They stayed in San Pedro for about two months and rented a house from one Beta Nunez.

George told Mrs. Ella Marie Parham that he had a parcel of land on which he would build a home for them. This parcel was given to him by the Government of Belize. In or about 1973, George and the Claimant started building on his first lot, now legally described as Parcel 997, Block 7, San Pedro Registration Section

(“**Parcel 997**”), and being one of the parcels that comprise “The Sands Hotel,” a small inn situate in San Pedro Ambergris Caye, that rents rooms to paying guests. A Copy of the register for Parcel 997 is attached hereto and marked “**EMP 1-2.**”

[9] The Claimant and George Parham rented a house to live in San Pedro Town, whilst they built their house. George and the Claimant would go up to Rocky Point, Ambergris Caye to gather large stones for the foundation of the building, and they placed the rocks 3 1/2 feet deep into the foundation. She exhibits a copy of pictures which show the transporting of rocks for the foundation of The Sands Hotel, marked “**EMP 1-3.**”

[10] During the construction of the building that was to be their house on Parcel 997, the Claimant says she would wake up early, and go to purchase the cement early in the morning to have it ready for the mixer every day. When the casting of the beams began, she moved mixed cement in buckets to pour the beams with the help of a young boy. The construction of The Sands Hotel continued up until 2000, but it was never completed since George then began being too ill to continue. The Claimant exhibits hereto pictures of the construction of the Sands Hotel up to the year 2000, marked “**EMP 1-4.**”

[11] Mrs. Parham says that she and George would travel back and forth from San Pedro Town, Ambergris Caye, Belize to Texas, USA. The times they travelled varied, but they would do so approximately every three months, and would stay in the USA for a period of about one month. They did not stay in the USA for more than a month on trips. She says that she and George had no money to continue building, and so they decided to borrow money from Orange Bank, Texas, USA. They both conducted banking with Orange Bank, and the banker knew both of them well. Orange Bank in Orange, Texas, USA, gave George a loan for approximately US\$10,000.00.

[12] In or about 1976, the ground floor of the Sands Hotel on Parcel 997 was completed and George and the Claimant moved into the newly constructed room. It was an open room, so she nailed up a wall panelling as walls/dividers to provide privacy to make the place liveable. In total, four rooms were built in the bottom floor. Out of the four rooms, one was rented to guests, one was used as a storage room and two were occupied by George and the Claimant as their home. George and the Claimant started renting out Room No. 3 to paying guests, and this became an extra source of income for the purchase of additional parcels of land in San Pedro, and for the continuation of the construction of The Sands Hotel.



[13] All this while, the Claimant says that she and George dreamed of one day having a hotel, and they both worked hard towards that dream. In or about 1978, the beams of the 2<sup>nd</sup> floor were poured, and George and the Claimant moved into three of the rooms on the 1<sup>st</sup> floor. In order to be able to continue the construction of the Sands Hotel, they would travel frequently, approximately every three months, to and from the USA to work and earn money. They, however, never stayed for more than a month at a time.

[14] On the 6<sup>th</sup> May, 1978, George and the Claimant travelled to Municipio Del Carmen, Estado de Campeche, Mexico and were married there. Mrs. Parham exhibits “**EMP 1-5**” a true copy of George Parham and Ella Marie Parham’s Marriage Certificate. From 1978 through to 1979, George and the Claimant acquired one lot from George’s cousin, Duran Gonzalez who lived in New Orleans, Louisiana. This was lot No. 2, which now forms a part of and is properly described as Parcel 997. George said he had a 99 year lease on the lot, but Mrs. Parham insisted that they purchase the lot from George’s cousin, and, eventually, they did. Duran Gonzalez got angry because they had purchased the lot, and this infuriated George who told him that he was going to shoot him.

[15] After this incident, George and the Claimant decided to enquire about buying two more lots in front of the Sands Hotel, owned by Arturo Alamilla’s Family. Arturo Alamilla is also known as cousin Tuto (“**Tuto**”). Tuto’s family consented to

the sale and they acquired the said two lots situate in front of the Sands hotel. These two lots are now legally described as Parcel 991, Block 7, San Pedro Registration Section (“**Parcel 991**”) and Parcel 992, Block 7, San Pedro Registration Section (“**Parcel 992**”). Copies of the register for Parcel 991 and 992 are exhibited and marked “**EMP 1-6.**” Presently, there is a one foot setback next to what is now Jaguar Temple. George and the Claimant continued building on the Sands Hotel and renting the rooms to paying guests. Tuto’s wife, Juanita Alamilla, wanted to retain part of the lot so, it was subdivided into three lots. The Sands Hotel was in the middle. Eventually, however, George and the Claimant bought all three lots, and paid for same in two payments as they raised money. Both payments were made to Tuto.

[16] Although the Claimant helped to purchase the other lots, being Parcels 991 and 992, and negotiated for their purchase, the said parcels were registered in the sole name of George, unbeknownst to her.

[17] Mrs. Parham says that she was shocked when she discovered that the two parcels were registered solely in George’s name. In any event, she was content because she and George were married, and it was always understood between George and the Claimant, that they both owned The Sands Hotel and the land whereupon it was built. The Claimant says that she had no reason to distrust that George would not honour their agreement and be fair by her.

[18] In 1985, George suffered a heart attack, which led to his early retirement from Allied Chemical. Mrs. Parham took some time off from her job to spend time with him, but eventually she returned to being a Teamster Union worker in the USA. She continued to work to earn more money to save so that they could continue building their house and The Sands Hotel in San Pedro, Ambergris Caye, and for their basic needs.

[19] In or about 1989, George and Mrs. Ella Marie Parham continued building The Sands Hotel with the help from people who had certain building and construction skills and needed a place to stay. This is how some of the lights were put in and most fixtures were installed. The Sands Hotel was not completed at the time of George's death and it had a total of three floors and a rooftop. It now has twelve rooms, three of which were being used as their residence on the 2<sup>nd</sup> floor. The entire hotel was constructed by cement, done by hand. She exhibits hereto a copy of a picture of the Sands Hotel, marked "EMP 1-7". Between 1990 and 1992, the cement porch was poured and was eventually tiled. During this time, all rooms were being rented, and this was a source of income for both George and the Claimant.

[20] At all material times, the Claimant said that she took care of the housekeeping of The Sands Hotel, cleaned all the rented rooms and did all the laundry. She bought all the hotel's furnishings, some of which were shipped from the USA, bought with money she had saved up. She also bought a snapper riding lawn mower, valued at

US\$2,000.00 from a store that sold mowers in Lumberton, Texas. The lawn mower was shipped in a container with other things shipped by Enrique Staines. Generally, she managed the hotel, handled the room rentals, and George collected the money. George spent most of his time fishing with his friends. And also wanted the Claimant to go fishing with him and run the hotel, simultaneously. If there was something that needed to be done, and it was brought to George's attention, he would hire someone to do it, but would not do it himself. The Claimant managed the employees, for the most part, since George spent most of his time with his friends out fishing during working hours. She had several houses back in Silsbee, Texas, USA, which she rented, and, a portion of that income she received from those investments was applied towards the supplies needed in building The Sands Hotel.

[21] The Sands Hotel was in need of all furniture and furnishings which included: beds, dressers, night stands, wardrobes, sheets, pillow cases, pillows, bedspreads, towels, washcloths, dishes, glasses, silverware, racks to dry dishes, microwaves, toasters, stoves, ceiling fans, refrigerators, sinks, commodes, shower curtains, brooms, mops, mop buckets, cleaning supplies, washing machine, dryer, lawn mower (riding), assorted tools, both electric and hand, building materials such as nails, screws, paint and painting supplies, brushes and roller. A safe was also bought for his residence. In preparation for a small office, office supplies which included, a calculator, Rolodex, and a desk were bought. She also bought assorted lamps, both

wall mounted and free standing, a large dining table, eight accompanying chairs, as well as assorted chairs for each room, at least 2 per room.

[22] As a retiree, George received social security payments from the USA, as did the Claimant. George and the Claimant opened a joint account at the Belize Bank Limited in San Pedro Town, and a portion of their income was deposited into this joint account. The Claimant exhibits copies of the account statements of their joint bank account at the Belize Bank Limited, marked “**EMP 1-8.**”

[23] George and the Claimant also opened a joint account at Orange Bank in Orange, Texas, USA, and a portion of their income also went into this joint account as savings.

[24] In or about 2006, George and the Claimant moved from Orange, Texas, to Houston at 1313 Carpenter Street, Houston, Texas. Later on, in or about 2009, they moved to 2514 Leprechaun Street, Houston, Texas, USA.

[25] On the 21<sup>st</sup> May, 2009, George had become very ill in San Pedro, Ambergris Caye, Belize and was taken to Belize Healthcare Partners Limited in Belize City. After George was released from Belize Healthcare Partners Limited, he was flown to Houston, Texas, and admitted to St. Luke’s Hospital. George had a lot of trouble trying to breathe on the plane and would beg for oxygen.

[26] In 2009, George and the Claimant took their last trip together to Belize because George was too ill and was on oxygen. George suffered from diabetes, chronic congestive heart failure, was dependent on oxygen and was extremely hard of hearing. After George's illness and hospitalization at both Belize Healthcare Partners Limited and St. Luke's Hospital in Houston, his health continued to decline. In May, 2011, George was under hospice care and he began falling more frequently. On one occasion, George fell while trying to get into their van and hit his head very hard on the concrete ground. George was taken by ambulance to St. Luke's Hospital and was admitted and cared for a few days.

[27] George began falling off the commode, falling out of bed at night, and the Claimant would have to ask their neighbours for help to get him off the floor. While living at their home at 2514 Leprechaun Street, Houston, Texas, USA, George would go in his wheelchair along Leprechaun Street, completely naked, and would often be sitting in his wheelchair with only an unbuttoned shirt on. In early 2012, George's personality changed. George was always happy to have company around. In or about March, 2012, Tom and Kathleen Hoffman came over to visit George. George was coming out of the bedroom to have breakfast and when he saw them, he quickly turned his wheelchair around and went back into the bedroom.

[28] On the 1<sup>st</sup> November, 2012, George passed away after a long and hard battle against chronic diseases, which kept him ill through all our years together. The Claimant exhibits as “EMP 1-9”, a copy of the Death Certificate of George Henry Kelvin Parham.

[29] During George’s illness, the Claimant says she was the one who took care of him. From time to time they would visit home health care. She would wrap his legs to care for wounds due to his diabetes, and he would unwrap them. She would have to ask for help from neighbours whenever George would fall off the commode or out of bed. Since George retired from Allied Chemical and Medicare, his medical and hospital expenses were paid for by his insurance from Allied Chemical and Medicare. Any remaining balance was paid for out of the joint account which George and the Claimant held.

[30] George was buried on the 6<sup>th</sup> November, 2012. Shortly thereafter, on the 16<sup>th</sup> November, 2012, the Defendant took the Claimant’s daughter and the Claimant to his attorney’s office in the USA and told them about the George Parham Living Trust, which the Claimant did not know about until that moment.

[31] The Trustee of the George Parham Living Trust is the Defendant, and it provided for the disposition of the Trust Estate of George upon his death, to myself, as his wife, and to his daughters, Mary Gomez Parham, Gail F. Parham Rexses, and

Iris A. Parham. A copy of the George Parham Living Trust is exhibited as “**EMP 1-10.**” This Trust does not touch and concern Parcels 991, 992, 997 and the Sands Hotel.

[32] On one occasion, the Defendant told the Claimant that he would give her US\$1,000,000.00 if she would walk away from The Sands Hotel and that the Claimant no longer owned or had any rental property at The Sands Hotel.

In light of this, the Claimant visited the offices of Magali Marin Young & Co, and it was not until she retained the services of Magali Marin Young & Co in 2015, that she discovered that the Sands Hotel Trust had been created by George over Parcel 991, 992, 997 and the Sands Hotel, being erected thereon. The Claimant was advised that since George was not the absolute and only beneficial owner of Parcel 991, 992, 997 and the Sands Hotel, he could not have lawfully created the Sands Hotel Trust.

[33] The Claimant says that she has only now commenced this claim as she had to gather all the information and evidence, and this took her some time since it covered many years.



[34] Since George's death, a lot of the Claimant's personal belongings at her home where The Sands Hotel is located in San Pedro Ambergris Caye, have been stolen or simply misplaced when she is not in Belize, which includes, furniture, her gun, her passports, birth certificates, and jewellery.

[35] Based on the foregoing, the Claimant humbly prays that the Court grants the relief sought in the Fixed Date Claim Form.

**Cross-examination of Mrs. Ella Marie Parham**

[36] Mrs. Parham was cross-examined by Mr. Eamon Courtenay SC on behalf of the Defendants. She agreed that she was married to Mr. Parham when he died but she could not recall the date of her marriage or what date Mr. Parham died. She said she did not receive any property or any money after her husband died. She said she did not receive anything from his life insurance and she did not know he had insurance. Mrs. Parham agreed that she receives a monthly payment of \$794.27. She said she does not know to whom the house in Texas belongs; she only knows that she pays the taxes on it. The Claimant said she did not recall receiving \$50,000 from her late husband's savings account. She had a Dodge Van before her husband passed away. She receives \$1000 per month from San Pedro Apartments Limited Partnership. She said she did not receive the proceeds of a promissory note in the sum of \$62,500. The \$794.27 monthly are payments made to her under that promissory note; she had been getting those payments for a while but she did not

know what they were. She agreed that she has health insurance which paid for a back operation that she had had. The Claimant agreed that Mr. Parham was married to someone else before he married her.

[37] When asked about whether Mr. Parham purchased with his own money the land in San Pedro where the Sands Hotel is located, Mrs. Parham said he might have helped her but they got the money together; she said she had money and that she was the one holding their money. Learned counsel suggested that she may not quite remember what happened, and the witness said she remembers some things but she can't recall dates as she did not know that she had to write things down and keep them. She agreed that Mr. Parham considered that the land on which the hotel was built belonged to him alone, but she said the fact was that she helped him to get some of that land. She said she was shocked that he had not put any of the land in her name. She cannot recall when she found that out. Mrs. Parham said that she had asked her husband to put the new land that they had bought in her name, but he refused. She agreed that she knew that Mr. Parham had made a Will but she cannot recall if that was two years after they were married. Mrs. Parham said she cannot remember anything. He had told her about the Will, and she had seen it, but she did not pay much attention to the Will because she thought it was all right and that he made the will for her because she worked with him. She said she knew Mr. Parham loved her and he had told her she could trust him and that he would never leave her.

When asked about the year 1971 in her affidavit as the year when George's ex-wife threw him out of their house after having discovered his affair with the Claimant, the witness said that she did not know. She then went on to contradict her affidavit by saying she had no idea when George and his ex-wife separated and stated that she did not close down her shop because of their separation. The witness appeared confused and stated that she was unable to recall the sequence of events that counsel was questioning her about, saying it had been "*too many years.*" She again contradicted her own affidavit when asked whether she quit her job as a Teamster Union Worker to go and live with George in Belize. She could not recall what date she separated from her first husband, the father of her daughter; she said it was too many years and she could not remember. She could not recall when it was that George asked her to come with him to Belize. She could not recall when it was that George first started to build the hotel. The witness agreed that George hired workers to help build the hotel; she said she was right by his side managing him. The men that George hired did the work of digging in the mud and building the hotel. She said she "*went over to the cement place, making arrangements for the cement to pour it, when one of the boys told her he was going to beat her over the head ...*" Mrs. Parham went on to say that she "*rolled a wheelbarrow and carried sand and rock and went up to Rocky Point and picked up rocks ...*" She agreed that George hired workers in the hotel when it started to operate. She contradicted her own

affidavit yet again by saying that George did not suffer a heart attack; she told him he was sick and he went to the hospital; and found out he had heart trouble. She said she could not remember if George had a heart attack or not. Mrs. Parham said as a Teamster she drove a pickup truck and get to the farm and parts. She was asked about Mr. Parham's daughter Mary. She said she knew her but she did not know Mary was going to be his "*other wife*." She blamed Mary for hiring a young girl to take care of Mr. Parham. The witness said that she also knew Tim Haggerty, Mary's husband, and that he was very good to her. She said Mary put her father (the Claimant's husband) to sleep and she did not want any part of it. She agreed that Mr. Parham cared about her and provided for her. She did not agree that he provided substantially for her in his wills; she said she only received one cheque from Mary for land. She said that she understood that her husband provided substantially for her under his living trust and she was very grateful for that. At this point the witness broke down in tears and the court recessed for a few minutes. Upon returning to court, Mrs. Parham was asked whether the property on which the hotel sits was purchased by George with his own money; she disagreed and said that she and George put their money together. She also did not agree that the money spent building the hotel was George's money alone. She agreed that whatever she and George did at the hotel was done as husband and wife. She said the hotel was for George as well as for her.

[38] Under re-examination, Mrs. Parham was asked by her attorney to explain what she meant by the statement:

*“If I said it was mine, it was mine. If I said it was his, it was his.”*

The Claimant said: *“If he had told me it’s his hotel, I wouldn’t fight him. Why would I fight with him when I knew I wasn’t trying to claim the hotel, I was trying to build the hotel. I wasn’t fighting for my part. I didn’t know I had a part. I worked 38 years right there and Mary didn’t come and work a year out of that. She didn’t come. Now she wants it...”*

**Evidence of Kathleen Hoffman for the Claimant**

[39] Ms. Hoffman says she is of San Pedro Town, Ambergris Caye, Belize. This witness said that she met the Claimant and her late husband (“**George**”) shortly after Hurricane Keith in October 2000. She was introduced to the Claimant by Jo Castleberry, who was a part of a group of women in San Pedro Town, Ambergris Caye, Belize, who got together to play cards every Wednesday. After her first meeting of the card playing women’s group in San Pedro, with the said women’s club, the Claimant introduced her late husband George to the witness, and they all became friends.

[40] The Claimant and George lived primarily in San Pedro, Ambergris Caye, Belize but they would often times go back to the United States of America for a couple months at a time. When in the USA, they resided at the Claimant's house in Orange Texas, USA, which was owned by the Claimant prior to their marriage. The Claimant and George later moved from that address to 1313 Carpenter Street, Houston, Texas, USA, which was about five miles away from Ms. Hoffman's house in Texas, USA. When they moved, the Claimant shipped her furniture from her house in Orange, Texas, USA, to Belize to help furnish the Sands Hotel.

[41] Before George passed away, he told Ms. Hoffman that when he died, the Claimant would be a wealthy woman because of all that they owned and he would leave for her.

[42] When the Claimant and her late husband moved to 1313 Carpenter Street, Houston, Texas, USA, George was confined to a wheelchair for some time and was not able to lift or carry anything. The reason that the Claimant and her late husband moved was to be closer to the Defendants so that they could assist her from time to time with George's care, since George's movements were somewhat limited.

[43] The Claimant and George again moved from 1313 Carpenter Street, Texas, USA to 2514 Leprechaun Street, Houston, Texas, USA, which was on the same street that the Defendants lived. George's health deteriorated rapidly, and the

Claimant sometimes needed assistance with his care. As George's health deteriorated, he was put under hospice care on two occasions. As George's health deteriorated, he would also sometimes take off the wraps that were put on his legs, and the Claimant would have to re-wrap them. Ms. Hoffman often visited the Claimant and George at their addresses on Carpenter Street and Leprechaun Street, Texas, USA, and she did not see the 2<sup>nd</sup> Defendant at their home on any of those occasions. As far as this witness knew and saw, the Claimant was responsible for George's care and she did so care for George before and after he fell ill.

In fact, if George wanted to see the 2<sup>nd</sup> Defendant, he would have to go over to her house on Leprechaun Street in his wheelchair, as she would not come to the Claimant's and George's home, as she disliked the Claimant.

On one occasion in 2012, George was found naked in his wheel chair on Leprechaun Street, Texas, USA, apparently going to the 2<sup>nd</sup> Defendant's house. It became a habit of his to be in his wheelchair naked.

[44] As George's health continued to deteriorate, his behaviour changed as well. George always enjoyed when Ms. Hoffman and her husband visited him, but on one occasion in April 2012, when the witness and her husband stopped by their house for a quick visit, he saw them and quickly turned his wheelchair around and returned to his bedroom. Around this time, he also began to spend more time in his bed.

It was often difficult for the Claimant alone to take care of George, as he was bigger than she was, and was difficult to deal with sometimes, but the Claimant was determined and devoted to him. The Claimant took care of George before and after he fell ill and until he passed away to the best of her abilities.

[45] From what Ms. Hoffman observed and understood, the Claimant was involved with and responsible for the management of the Sands Hotel. She ensured that rooms were cleaned with the help of workers that were hired from time to time, and dealt with the guests when they came to stay at the Sands Hotel.

During the management of the Sands Hotel, the Claimant also ensured that George's and her daily basic needs were met. Ms. Hoffman wishes to repeat that George and the Claimant always operated and conducted themselves as if they both owned the house and the Sands Hotel on the property, and this made sense to the witness since she knew that the Claimant contributed financially to its construction and also used some of her own furniture from the USA to furnish the Sands Hotel.

**Cross-examination of Ms. Hoffman by Ms. Stacey Castillo for the Defendants**

[46] When asked by counsel to describe her relationship with the Claimant, Ms. Hoffman said they are very good friends. She admitted that she was not around when the Sands Hotel, now Parham Plaza, was being built. She said she does not know if the Claimant is a wealthy woman as she does not know the state of her finances. The



witness said that she saw one of Mr. Parham's wills and she agreed that the will made substantial provision for the Claimant; she said the will she saw awarded Mrs. Parham at least a million dollars US and she could not recall what else. She said she accompanied the Claimant to Title Company not in relation to the proceeds of George's will, but in relation to the thirteen houses that were a part of San Pedro Apartments Ltd. She said it was her understanding that San Pedro Apartments Ltd was in relationship with Tim and Mary and George and Marie. She witnessed a payment made to Marie on the sale of one of those houses in the amount of approximately \$62,000.

[47] The witness said she was not aware that Mr. Parham's daughter Mary had been given a medical Power of Attorney to look after him. She said that George was a very big man and from time to time he would fall out of his wheelchair and Ella Marie is a woman of slight stature and she would sometimes need help getting off of the floor and back into the wheelchair. She agreed that Tim and Mary assisted with his healthcare, very sparingly from what she saw.

Ms. Hoffman was not re-examined.

### **Evidence of Abel Guerrero for the Claimant**

[48] Mr. Guerrero states in his Affidavit that he is a long-time friend of George Parham ("**George**") and the Claimant, and that he has been a resident of San Pedro Town, Ambergris Caye, Belize for all of his life. He says that he met the Claimant

and George many years ago, shortly after their relocation to San Pedro Town, Ambergris Caye, Belize. They were both very good friends of his. The Claimant and George began the construction of their house in San Pedro Town after they met and became friends with Mr. Guerrero.

The Claimant was always active in the construction of the said house. She would carry material and whatever was needed to build the house to assist in its construction. She would also assist by pushing a wheelbarrow with cement and other material used to build the house. The Claimant and George began to build the Sands Hotel after the house was completed, and she was also active in its construction.

[49] When the Sands Hotel was completed, the Claimant acted as the boss. She was the manager of the said hotel. Among her responsibilities in managing the Sands Hotel was the cleaning of the rooms of the hotel.

George would go fishing a lot but sometimes the Claimant accompanied him. The Claimant always took very good care of George. She would ensure that their daily basic needs were attended to which would include cooking and cleaning.

[50] When George fell ill, his children were never there. In fact, when George fell ill, it was the Claimant who was solely responsible for his care, and she took very good care of him. Mr. Guerrero said he knew that the property on which their house and the Sands Hotel was situated was in the sole name of George. However, the

Claimant and George worked together and operated as if the house and the Sands Hotel was always owned by both of them.

**Cross-examination of Mr. Guerrero by Ms. Castillo for the Defendants**

[51] Mr. Guerrero said that he was not aware of the year that George and Ella Marie relocated to San Pedro Town. He said that the house of George and the Claimant was located in the centre of town, right opposite the park. Mr. Guerrero said he saw the Claimant actively assisting in the construction of that house many, many times. He said the house and the hotel were one building. He said the “*building was built in stages. First they build their house and they lived there and then they expand for a hotel.*” The witness agreed that workers were hired to build the building. He did not know who took care of the hotel when both George and the Claimant went fishing. He said he was not aware that George provided a directive to Physicians which stated that if he were comatose, incompetent or otherwise mentally or physically incapable of communication he designated Mary, his daughter, to make treatment decisions concerning his medical condition. He said he was not aware that George gave Mary a medical power of attorney appointing her as his agent to make any and all healthcare decisions for him. When asked if he did not have intimate knowledge of the persons involved in George’s healthcare, the witness said the only thing he can say is that when George fell sick, he never saw his children around. It was only Mary that was with him. He agreed with counsel’s suggestion that George

never intended for the hotel and property to be owned by both George and Ella Marie. He also agreed that George owned the Sands Hotel and property separate and apart from Ella Marie.

Under re-examination by Mrs. Young SC, the witness explained that when he said only “Mary” was there when George fell sick, he was referring to the Claimant.

### **Evidence of Mary Parham for the Defendants**

[52] Ms. Parham says she is the 2<sup>nd</sup> Defendant in this Claim and the wife of the 1<sup>st</sup> Defendant, Timothy Haggerty. She says her full name was Mary Gomez Parham and her mother was Gomez from Punta Gorda.

[53] On the 20<sup>th</sup> day of February, 2011, Ms. Parham’s father, George Henry Kevlin Parham (“the **Settlor**”), settled three parcels of land owned by him, namely parcels 991, 992, and 997 Block 7 San Pedro Registration (“the **Properties**”) in trust. The trust is called The Sands Hotel Trust (“the **Trust**”). The Claimant is the widow of the Settlor, and to this witness’s knowledge resides at 2514 Leprechaun St., Houston, Texas 77017, and has lived at this address continuously since 2009. Copies of a utility bill and a property tax receipt showing her address and marked and exhibited as **MP1-1 and MP1-2** respectively. The 1<sup>st</sup> Defendant is the Trustee of the Trust. Ms. Mary Parham says that she is the beneficiary for life of the Trust, with remainder to her children. She says she is informed by the 1<sup>st</sup> Defendant that the Claimant did not travel to San Pedro or stay at the Hotel from 2008 to 2013. From 2013 to present

the Claimant has made infrequent trips to San Pedro and stayed at the Hotel at the invitation of the 1<sup>st</sup> Defendant, who paid her utility expenses while she was there. These visits averaged six weeks per year. The 1<sup>st</sup> Defendant is aware of this because in 2008, when the Settlor could no longer travel to San Pedro, he appointed the 1<sup>st</sup> Defendant as Manager of the Sands Hotel (“the **Hotel**”). As Manager, the 1<sup>st</sup> Defendant was aware of the persons who stayed at the Hotel.

[54] Ms. Mary Parham’s father, the Settlor, was born in Belize City, Belize on November 2<sup>nd</sup>, 1920. The Settlor spent several years of his childhood living in San Pedro, Ambergris Caye, Belize. The Settlor also spent all his summer vacations while in school in San Pedro. After finishing his studies in Belize, the Settlor joined the Navy of the United States of America (“USA”) and left Belize to fight in World War II. After the war ended, the Settlor settled in Orange, Texas, USA with Ms. Mary Parham’s mother, Nina M. Parham, and raised Mary, along with her three other siblings, Iris, Michael and Gail. The Settlor always told Mary that he intended to return to San Pedro and build a hotel, which would symbolize the Parham family presence in San Pedro, as the Settlor’s grandfather, and Mary Parham’s great grandfather, George James Parham, had been living in San Pedro since the 1800’s.

[55] Before construction of the hotel even began, the Settlor told Mary Parham that he intended for the hotel to be passed on to his children and grandchildren. Between the years of 1961 and 1970, in preparation for his return to San Pedro, the Settlor

acquired land in the Habaneros area of Ambergris Caye (“the **Habaneros Properties**”), with the intention of possibly building the hotel there. Copies of a Deed of Conveyance dated 22<sup>nd</sup> March 1961 between James Howell Blake, Junior and the Settlor and marked **MP1-3**, an Assent dated 10<sup>th</sup> April 1968 between William Frederick Parham and Lucilo Prospero Ayuso of one part, William Frederick Parham and Antonia Amalia Canter and the Settlor and marked **MP1-4**, and a Deed of Conveyance dated 4<sup>th</sup> June 1970 between Gonzalo Arturo Durand the Settlor is marked and exhibited as **MP1-5**. All these properties were obtained prior to the Settlor’s marriage to the Claimant.

[56] In 1970 the Settlor decided instead to build the hotel in the center of San Pedro Town. In that year the Settlor acquired a parcel of land described as Lot 2, Block No. 11 situate in the then Village of San Pedro, which after First Registration became Parcel 997 Block 7 San Pedro Registration Section, (“**Parcel 997**”) as his hotel site.

[57] In or around 1974 the Settlor met the Claimant and they began to have an affair. The Settlor and his first wife separated in 1975 contrary to the evidence of the Claimant in paragraph [12] of the First Affidavit of Ella Marie Parham (“the **Affidavit**”). The Settlor was employed with Allied Chemical Co. in Orange, Texas until 1976 when he was declared to be disabled because of a heart condition, and retired thereafter. A copy of the Attending Physician’s Statement of Disability and exhibited as **MP1-6**. The Settlor did not have a heart attack in 1985, which lead to

his retirement, as was averred by the Claimant in paragraph [38] of the Affidavit. In or about that same year, 1976, the Claimant divorced her second husband. The Settlor divorced his first wife in 1977. Contrary to paragraph [18] of the Affidavit, the Settlor did not move to Belize until 1977.

[58] The Hotel was built on Parcel 997. The Settlor's aunt transferred Parcel 997 to him and Gonzalo Arturo Durand, the Settlor's first cousin, by way of a Deed of Gift prior to his marriage to the Claimant. A copy of the Deed of Gift dated 11<sup>th</sup> July 1970 showing the transfer of the property and exhibited as **MP1-7**.

[59] In 1977, prior to his marriage to the Claimant, the Settlor acquired his cousin's interest and became the sole owner of Parcel 997. This property was not given to the Settlor by the Government of Belize, as averred by the Claimant in the Affidavit in paragraph [19]. A copy of an Abstract of Title which was done with respect to Parcel 997 and exhibited as **MP1-8**. In 1982 the Settlor purchased two lots adjacent and to the east of the Hotel, described as Lots 7 and 8 Block 11 situate in the then village of San Pedro, which after First Registration became Parcels 991 and 992 Block 7 San Pedro Registration Section ("**Parcel 991**" and "**Parcel 992**" respectively) from Apolonio A. Alamilla and George B. Alamilla. The transfer was effected by way of a Deed of Conveyance dated 15<sup>th</sup> September 1982. A copy of the Deed of Conveyance showing the transfer of the property and marked **MP1-9** is now produced and shown to me and exhibited hereto. Copies of Abstracts of Title which

were also done with respect to Parcel 991 and 992 and exhibited as **MP1-10** and **MP1-11** respectively.

[60] The Settlor started construction of the Hotel in 1977 and married the Claimant in 1978. To the best of Ms. Mary Parham's knowledge, the Settlor and the Claimant never borrowed money to finance the construction of the Hotel. As a child of the Great Depression of the 1930's, the Settlor was adamantly opposed to borrowing money for any purpose. The Settlor sourced the funding for the construction of the Hotel. He had a monthly pension from Allied Chemical Co, which was later purchased by Honeywell. A copy of the documentation evidencing the benefits received by the Settlor from his employer and exhibited **MP1-12**. The Settlor also received monthly disability payments from Social Security. A copy of a Social Security Benefit Statement showing that the Settlor received income through this medium is exhibited as **MP1-13**. The Settlor also earned substantial amounts of money by brokering commercial fishing boat sales and land sales. The Settlor generated funds through the sale of the Habaneros Properties. Copies of a Deed of Conveyance dated 28<sup>th</sup> September 1977 between the Settlor and Richard Baney and marked **MP1-14**, an Agreement dated 31<sup>st</sup> October 1980 between the Settlor and Inland West Development Corporation and marked **MP1-15** an Agreement dated 19<sup>th</sup> April 1988 between the Settlor and James Lee Osborn and marked **MP1-16**, and an Agreement dated 20<sup>th</sup> November 1990 between the Settlor and William Hayden



and marked **MP1-17** and are exhibited.

[61] The Settlor was the sole purchaser of Parcel 991 and Parcel 992. He used his own funds for the purchase of these parcels. Specifically, the funds generated from the sales of the Habaneros Properties were used to make this purchase. The Settlor ensured that only his finances were used to obtain the properties, as he intended for these parcels to be his separate property. To the best of this witness's knowledge, the Claimant did not contribute her personal funds to the construction or furnishing of the Hotel.

[62] In 1980 the Settlor verbally agreed to leave the Property and the Hotel to Ms. Mary Parham in exchange, firstly, for Ms. Mary Parham's undertaking to never let him be put in a nursing home, and secondly to take care of his medical needs as he aged. The Settlor had informed this witness that he was concerned because the Claimant had threatened to place him in a nursing home if he ever became unable to walk. In a will executed by the Settlor in 1980, the Settlor declared that he purchased Parcel 997 as his separate property. Further, he recorded his intentions with respect to the ownership of the Properties and the Hotel. A copy of the will recording the Settlor's wishes and is now exhibited as **MP1-18**. The will states at clause 7:

*"I am the owner of property situated in San Pedro Village, Ambergris Cay, Belize, Central America, on lot 2, block 11. All of the aforesaid property was either acquired by me before my marriage to Ella M. Parham or*

*purchased by me as my separate property out of moneys which were my separate moneys before my marriage to Ella, and therefore such property is held by me as my separate property. I am in the process of constructing a hotel on said premises and hope that I will have completed same so that it will be an operating hotel prior to the time of my death. If, however, I have not completed same, then I direct my Executrix named herein to proceed with the completion of same and to do so with whatever funds may be in my estate for such purpose. I do hereby devise and bequeath said land and hotel, including all small motorboats, sailboats, land rovers, etc., necessary for the operation of same, to my daughter Mary Parham.”*

[63] In a subsequent will executed by the Settlor in 1984, the Settlor reaffirmed that he acquired Parcel 997 before he married the Claimant. In this will the Settlor also made provision for Parcels 991 & 992, and declared that those parcels were purchased by him as his separate property with money from the sale of lands on Ambergris Caye which belonged to him before his marriage to the Claimant. In this will he again leaves the Properties and the Hotel to his daughter Mary Parham. A copy of the will showing these declarations and intentions is exhibited as **MP1-19**. Clauses eight (8) and nine (9) of the will state:

*“(8) I am the owner of property situated in San Pedro Village, Ambergris Caye, Belize, Central America, on lot 2, block 11. All of the aforesaid*

*property was either acquired by me before my marriage to Ella M. Parham or purchased by me as my separate property out of moneys which were my separate moneys before my marriage to Ella, and therefore such property is held by me as my separate property. I am in the process of constructing a hotel on said premises and hope that I will have completed same so that it will be an operating hotel prior to the time of my death. If, however, I have not completed same, then I direct my Independent Executrix named herein to proceed with the completion of same and to do so with whatever funds may be in my estate for such purpose. I do hereby devise and bequeath said land and hotel, including all small motorboats, sailboats, land rovers, etc., necessary for the operation of same, to my daughter, Mary Parham.*

...

*(9) I am the owner of two lots located in front of and to the east of my hotel. These lots are known as parcels 7 & 8 in block 11 at San Pedro Village, Ambergris Caye, as recorded in Register 9 entry 181 at the survey Department. These lots were purchased by me in 1982 with money from the sale of land in Belize on Ambergris Caye which I owned before I married by wife Ella. I therefore consider these lots to be my sole and*

*separate property. I give, devise and bequeath said lots to my daughter Mary...”*

[64] In his last will and testament, which was executed in 1989 and republished in 2005, the Settlor gave the Properties to Mary Parham along with the Hotel and the gift shop situate on the property. A copy of the will showing this intention is exhibited as **MP1-20** and a copy of the Republication of said will is exhibited as **MP1-21**. As a further attempt to safeguard Mary Parham’s future ownership of the Property and the Hotel after his death, the Settlor settled the Sands Hotel Trust, naming Mary Parham as the beneficiary for life, thus removing Parcels 991,992 and 997 and the Hotel from his estate.

[65] The Settlor was an industrious individual. He was knowledgeable about construction, as he built his own house in Orange, Texas USA. He designed the Hotel himself without the assistance of an architect. Much of the construction of the Hotel was done by him personally, especially the plumbing and electrical systems. When construction required a large amount of manual labor, the Settlor hired and supervised crews of workers. These workers only spoke Spanish, and the Claimant could not speak Spanish, and consequently she could not communicate with them or supervise them. The Claimant was not involved in either the actual construction or the supervision of the construction of the Hotel.

[66] The Claimant contributed very little to the management of the hotel. The Settlor hired housekeeping staff to clean the rooms. He made reservations, collected the rent and did all the maintenance and repairs himself. The Claimant was incapable of operating a business because of her hoarding disorder and other mental issues. For these reasons and for the special love and affection he had for Mary Parham, the Settlor intended for this witness to be the sole beneficial owner of the property.

[67] Contrary to the Claimant's evidence in paragraph [56] of the Affidavit, Ms. Mary Parham and her husband were the Settlor's principal caregivers throughout his ailment. The Claimant's involvement was minimal. The Settlor wanted to ensure that the Claimant had sufficient income to meet all her needs for the rest of her life after he passed away. To ensure that she was taken care of, the Settlor left her the following:

- i. His interest in the San Pedro Apartments Limited Partnership worth US\$250,000.00 which now provides her with between US\$1,000.00 – US\$2,000.00 per month. Copies of a balance sheet and several receipts of the proceeds of the partnership are now exhibited as **MP1-22**.
- ii. His life insurance in the amount of US\$50,000.00.
- iii. The proceeds from a promissory note of US\$62,500.00 which she received after the Settlor's death.
- iv. A promissory note in the amount of US\$100,440 from which she now

receives US\$794.27 per month. A copy of the Promissory Note dated 1<sup>st</sup> October 2014 and marked **MP1-23** is now produced and shown to me and exhibited hereto.

- v. A mortgage-free 3,847square foot house in an exclusive neighborhood in Houston, Texas which he left in her name. This tax statement showing the particulars of the house is exhibited as **MP1-2** herein.
- vi. Savings accounts in US bank accounts worth approximately \$50,000.00.
- vii. A Chevrolet and a Dodge Van; and
- viii. Health insurance for the rest of her life.

In addition to the above, the Claimant receives US\$1,600.00 per month from Social Security. Based on the foregoing, the witness is advised by her attorneys and verily believes that the Claimant had no beneficial interest in the Properties, and as such, no resulting or constructive trust was created in her favor and that the Sands Hotel Trust is valid and enforceable. She therefore prays that this Court refuses the relief sought by the Claimant.

**Cross-examination of Mary Parham by Mrs. Marin Young SC for the Claimant**

[68] Ms. Mary Parham said she is a Retired Professor and mother of four children. She retired in 2002 due to disability as she had breast cancer. She resided in Houston,

Texas up to 2002. The witness said she lived in California from 1973 until 1983 when her second child was born and she then returned to live in Texas. She said that she could not recall how much time she would spend in Belize between the period 1973 and 1983. She was either studying for her PhD or being pregnant during those years, and she would go to Orange to visit her parents as that is where they were living at that time. After her father moved to Belize in 1981, she came to Belize to visit him. She said she would never forget that trip to Belize as that was when she came to show her father his first grandchild in 1981 summer. The witness said that she would spend approximately one month every year visiting her dad after he moved to Belize in 1981. She said that every year she, her children and her husband all went to Belize every summer of their entire lives to visit her father. They also visited him for Christmas sometimes. The witness agreed that she did not live in Belize for the majority of that time when the Sands Hotel was being constructed.

[69] At the time of her parents' divorce, her mother received the home in Orange County, Texas, and her father owned and controlled everything else that was owned at that time. The witness reluctantly conceded that her father may have met Ella Marie even before the year 1974. She agreed that at the time her parents got divorced, she and her siblings were all over the age of 18 years. It was a confusing time, as Ella Marie had said, her father was back and forth asking her mother to take

him back and then leaving again. She said her father never really wanted a divorce as he was a strict Catholic.

[70] Ms. Mary Parham agreed that there are three properties where the Sands Hotel is located: Parcel 997, 991 and 992. She agreed with counsel that as stated in the Abstract of Title that the property was acquired by her father and his cousin one Gonzalo Arturo Durand in 1970 from their great aunt Antonia Amalia Garter also known to the family as Tia Coot. In 1977, Mr. Durand conveyed his half interest to her father, and the witness agreed that this would have been after his divorce from her mother, Tina Parham. In 1991, her father George Parham applied for First Registration of Title in order to convert his title to registered title. And on 20<sup>th</sup> February, 2011 her father George Parham transferred that title to her husband Timothy Haggerty as Trustee of the Sands Resort Hotel Trust, on the same day that the trust was created. Turning to Parcels 991 and 992, Ms. Mary Parham agreed that the Abstract of Title shows that her father George Parham acquired that property on 15<sup>th</sup> September 1982. He later applied for First Registration of his title in 1991. On February 20<sup>th</sup>, 2011 her father transferred this property to the witness's husband Timothy Haggerty as Trustee of the Sands Hotel Trust. Referring to the Abstract of Title for Parcel 992, Ms. Mary Parham agreed that her father acquired that parcel from one Apolonio Alamilla also known as Tio Tuto. Both parcels 991 and 992 were acquired from Tio Tuto. Her father acquired registration of title for Parcel 992 in



1991; the parcel was later transferred to Mr. Haggerty as Trustee of the Sands Hotel Trust on 20<sup>th</sup> February, 2011, the same day as the creation of the Trust. Ms. May Parham agreed that the Sands Hotel sits on three parcels of land. When her father relocated to Belize, he did so with the Claimant, Ella Marie. She also agreed that construction of the Sands Hotel took place at the time of that relocation and that the hotel was built during the time her father was living with Ella Marie Parham. They were living in the same building where the hotel was built. After a brief recess, the witness corrected her evidence by stating that contrary to what she had said to the court earlier, the hotel was not located on all three parcels; it was really on parcel 997 alone with a huge lawn and property in the front. The witness said she did not know where parcels 992 and 991 were located. She knew they were contiguous and they provide the lawn for the hotel as her father would use it to store things.

[71] Ms. Mary Parham said she did not know whether her father paid for construction supplies using a bank account or cash. She said her father took the contents of his motor repair shop and sold everything off before he left her mother. The witness said her father would not have wired money to Belize as he was very old fashioned. She said she could not say whether or not Ella Marie handed money to any of the workers. She also could not say whether or not Ella Marie physically assisted in the construction of the hotel as she was not in Belize for 11 of the 12 months of the year. Ms. Mary Parham agreed that her father handed over

management of the hotel to her husband at around 2008. She also agreed that Ella Marie was living with her father at that time. She was not aware that prior to 2008 her father had incorporated a company along with Ella Marie called the Sands Hotel Ltd. After turning over management to Mr. Haggerty, Mr. Parham did not return to Belize. He was very ill since he had had open heart surgery in 2004. He moved across the street from Ms. Mary Parham and her husband in 2009. He primarily resided with Ella Marie Parham up until his death in 2012. She agreed that Ella Marie was her father's companion from the time he got together with him until his death.

[72] She was questioned about her father's three Wills and a Republication of Will. The witness agreed that she was named as the Executrix in all these documents. She was asked to read the last sentence in paragraph 8 of the 7th clause of the 1980 Will:

*“My wife Ella, however, is to have a life-interest of one-half (1/2) of the net income (after expenses of operation) therefrom from the time of my death until the time of her death, the balance of such income to go to my daughter Mary Parham.”*

The witness agreed that the income referred to in this paragraph is income from the hotel, and that paragraph manifested an intention by her father to provide for Ella Marie from that income.

[73] Ms. Mary Parham was then questioned about her father's 1984 Will and asked to read the 7<sup>th</sup> clause paragraph 8:

*“If, however, I have not completed the same, then I direct my Independent Executrix named herein to proceed with the completion of same and to do so with whatever funds may be in my estate for such purposes. I do hereby devise and bequeath said lands and hotel, including all small motorboats, sailboats, land rovers, etc. necessary for the operation of same, to my daughter Mary Parham. My wife Ella, however, is to have a life interest in three-fourths of the net income (after expenses of operation) therefrom the time of my death until the time of her death, the balance of such income to go to my daughter, Mary Parham. If Mary should sell said hotel before my wife's death, then I grant one-half of the proceeds of the sale to go to my wife Ella.”*

[74] Ms. Mary Parham was then asked about her father's 1989 Will at the following paragraph:

*“I give my wife ELLA M. PARHAM a life interest in one quarter (1/4) of the net income after expenses of operation for the Hotel and Gift Shop from the time of my death until the time of her remarriage or death, whichever one occurs first, the balance of such income I give to my daughter Mary Parham. If Mary should sell hotel and gift shop*

*before my wife's remarriage or death, then I direct that one-quarter (1/4) of the proceeds of the sale go to my wife and the remaining (3/4) go to my daughter Mary."*

[75] This witness agreed that the republication of her father's will in 2005 manifested an intention consistent with his earlier wills for his wife Ella to acquire some interest as described therein. She admitted that she is the Executrix of her father's estate and that she did not take steps to probate the 1989 will. Ms. Mary Parham agreed that her father's health deteriorated significantly in 2011; she disagreed that her father became bedridden. At the time of his death, her father no longer owned the hotel, as it was in the Sands Hotel Trust. She agreed that at there was nothing from the hotel to give to Ella after George passed away in 2012. The witness said that the Trustee was her husband and she was the Beneficiary of the trust so there was nothing in the trust for Ella Marie's benefit. Ms. Mary Parham agreed with counsel's suggestion that one year before her father died the trust wiped away any interest that Ella was to receive under the 1989 will. Ms. Mary Parham admitted that she has not paid Mrs. Ella Marie Parham millions of dollars, but she stated that Mrs. Ella Marie Parham has received between \$500,000 and one million dollars since George' Parham's death and in addition she has a \$400,000 house that she lives in for free. The witness referred to a list of assets including a \$350,000 house with a 600 square foot apartment next to it; she said that Mrs. Ella Marie

Parham can sell the house and move into the one bedroom apartment if she chooses. She agreed that Ella Marie no longer has an interest in the hotel. She agreed that she has not seen any Release where Ella Marie has signed releasing her interest in the hotel. Ms. Mary Parham said that she does not know who prepared the trust document and that her father was living in Houston at the time. Ms. Parham said that her father had his own lawyers and he was a brilliant man who knew what a trust was. The witness agreed that through 3 wills and 1 republication Mr. George Parham had manifested an intention for a span of 28 years that Ella was to acquire an interest in the hotel. She said that a lot happened in 17 years but she agreed that up to 6 years prior to his demise, her father's republication of his 1989 will showed the same intention. In 2011, her father transferred every single piece of personal item to this trust to the exclusion of Ella Marie.

[76] After her father's death, the witness said the hotel belonged to her and her husband so they started to remodel the rooms to be rented out to guests. She said that all of Ella Marie's things were placed in storage for her. The two rooms previously used by Ella Marie and George as their residence have since been remodelled into hotel rooms. Ms. Mary Parham said that she has invited Mrs. Ella Marie Parham to stay on the first floor for the rest of her life so she does not have to climb stairs. She said that while the rooms she has offered to Mrs. Ella Marie are not quite as large as the ones Ella Marie and George previously occupied, it is a large room with its own

kitchen and bathroom and easy access to town. The witness said Ella Marie was given access to the furnishings kept in storage two days prior to this hearing date because they were not in San Pedro to be able to obtain access from the owner. She also said that she wanted Ms. Ella Marie Parham to see her things in storage and would like her to remove these items because they have to pay \$800 US per month as storage fees. She does not know how the purchase money for Mrs. Ella Marie Parham's residence in Texas was obtained. She knows that Mrs. Ella Marie Parham owned her own house in Orange County, Texas before she started to live with Mr. George Parham.

[77] Ms. Mary Parham said that the Sands Hotel is a valuable piece of property after she and her husband remodelled it completely. However, at the time of her father's death, the hotel was not worth anything. The witness agreed that at the time of George Parham's death there was already a three story building on the land; she said that was falling down. She said that her husband spent a lot of time and money repairing concrete ceiling which had been falling from the second floor down to the first floor, repairing electrical on the building which was 30 or 40 years old. She said that she suspects any buyer would tear down the building to build something else there. She agreed that it is in the center of San Pedro Town. She did not agree that land in San Pedro is very valuable as she has been trying to sell the Habaneros property but have not received an offer of anything more than \$1500 as it is

swampland. She agreed that her father had left other properties for her and for her sisters. It was not prime beach front property; some of it faces the sea, most of it is swamp by the lagoon. She agreed that at the time of his death, in addition to the hotel, her father owned other property on San Pedro that she and her other siblings are entitled to under his Will.

[78] In a brief re-examination, the witness added to her explanation of what took place when her father left her mother. He sold every item including expensive tools, and a boat that he had had out of a huge garage and sold them. He also took 20,000 dollars out of a joint account he had had with her mother. He received a disability pension from the Los Angeles Human Development Corporation and Social Security disability payments. He also sold land from the Habaneros land some of which he sold for \$300,000. She confirmed that she and her husband are paying the owner of the storage facility US\$800 per month to keep Ms. Ella Marie Parham's items in storage.

### **Evidence of Timothy Haggerty on behalf of the Defendants**

[79] Timothy Haggerty stated in his affidavit that he lives in Houston Texas. Mr. Haggerty is the 1<sup>st</sup> Defendant in this Claim.

On the 20<sup>th</sup> day of February 2011 Mr. Haggerty's father-in-law, George Henry Kevlin Parham ("the **Settlor**"), settled three parcels of land owned by him,

namely parcels 991, 992, and 997 Block 7 San Pedro Registration (“the **Properties**”) in trust. The trust is called The Sands Hotel Trust (“the **Trust**”). Mr. Timothy Haggerty is the Trustee of the Trust, and the 2<sup>nd</sup> Defendant herein, his wife (“**Mary**”), is the beneficiary for life of the Trust, with remainder to her children. From in or around 1980, the Settlor expressed his intentions to leave the property upon which the Sands Hotel (“the **Hotel**”) is located, the Hotel itself, along with other items necessary for the operation of the Hotel to Mary. These intentions appear in the Settlor’s wills made in 1980, 1984, and 1989, and appearing as Exhibits **MP1-18, MP1-19, and MP1-20** in the First Affidavit of Mary Parham sworn on the 15<sup>th</sup> day of February, 2018.

[80] The Settlor’s intention for Mary to have certain chattels and personal property appears in the Settlor’s Wills as follows:

- a. In the seventh clause of the will executed by the Settlor in 1980 at subsection (8), the Settlor bequeaths “*said land and hotel, including all small motorboats, sailboats, land rovers, etc., necessary for the operation of same, to [his] daughter Mary Parham*”; and
- b. In the seventh clause of the will executed by the Settlor in 1984 at subsection (8), the Settlor bequeaths “*said land and hotel, including all small motorboats, sailboats, land rovers, etc., necessary for the operation of same, to [his] daughter Mary Parham.*”



[81] The Settlor goes on to set out the reason he bequeaths certain items to Mary on the first and second pages of the will he executed in 1989. The will provides as follows:

*“IN CONSIDERATION of and gratitude for my daughter Mary's investment, assistance and encouragement in my hotel business in San Pedro, I GIVE my freehold properties situate in San Pedro, Ambergris Caye, Belize , being Lot No. 2, Block 11, and Lots 7 and 8, Block 11, together with the said Hotel and Gift Shop situate thereon known as the SANDS HOTEL and the SANDS GIFT SHOP, including all small motorboats, sailboats, vehicles and other ancillary stock, equipment and facilities necessary for the operation of the said Hotel and Gift Shop to my daughter Mary Parham the real property in fee simple absolute and the personal property absolutely.”*

To safeguard Mary's future ownership of the Properties and the Hotel after his death, the Settlor settled the Trust, naming Mary as the beneficiary for life, thus removing Parcels 991,992 and 997 and the Hotel from his estate.

[82] Mr. Haggerty states that after settling the Trust, the Settlor informed him that he realized that the Trust did not make provision for certain personal property and or chattels, which were purchased by the Settlor out of his separate finances, and consequently owned solely by the Settlor. The Settlor stated again that he wished for

these items to be owned by Mary. Consequently, out of an abundance of caution, the Settlor executed a Bill of Sale, Assignment, Transfer and Assumption which transferred certain rights and items listed in Exhibit A thereto to Mr. Haggerty in his capacity as Trustee of the Trust, to ensure that Mary received ownership thereof. A copy of the Bill of Sale, Assignment, Transfer and Assumption dated April 11, 2011, is marked and exhibited as **TH-1**. The Settlor executed the Bill of Sale, Assignment, Transfer and Assumption as the sole owner of the items listed in Exhibit A thereto, as indicated in the signature block of the Bill of Sale, Assignment, Transfer and Assumption.

[83] Based on the foregoing, Mr. Haggerty says he has been advised by his attorneys and he verily believes that the Claimant had no beneficial interest in the items listed in Exhibit A of the Bill of Sale, Assignment, Transfer and Assumption, and as such, no resulting or constructive trust was created in her favour with respect to these items. The witness says he is further advised by his attorneys and he verily believes that the Bill of Sale, Assignment, Transfer and Assumption is valid and enforceable.

**Cross-Examination of Timothy Haggerty by Mrs. Magali Marin Young**

**SC on behalf of the Claimant**

[84] Mr. Haggerty was questioned about whether the three Parcels of land (Parcel 997, 991 and 990) have been transferred to him by virtue of the Settlement Deed

executed by Mr. George Parham on February 20<sup>th</sup>, 2011. The witness agreed that the land had been transferred to him as Trustee pursuant to the trust deed. He also agreed that George appointed him to be manager of the Sands Hotel from around 2008. Mr. Haggerty said he was present in the doctor's office when Mr. Parham asked his doctor in 2008 whether he can travel to Belize. The doctor told Mr. Parham that he had two choices: 1) Go to Belize and have a good quality of life or 2) stay in the US and live longer. Mr. Haggerty said that Mr. Parham chose not to return to Belize for health reasons so he could be near his health providers; he never returned to Belize after 2008.

[85] The witness said that it was an attorney in Belize who drafted the Trust Deed. George Parham was not able to travel back to Belize to sign this trust deed. Mr. Haggerty was not present when Mr. Parham gave instructions for the trust deed; he was not sure how Mr. George Parham gave instructions to his attorney. He said George used to email a lot. He said he cannot recall the circumstances under which the bill of sale was signed. He knows it was signed in Texas and George gave it to him to sign. George also gave Mr. Haggerty the Settlement Deed to sign. Mr. Haggerty denied that he was the one who gave the attorney instructions to prepare the trust deed and the bill of sale. He agreed that the trust deed and the transfer of land were both signed on the same day. The witness could not recall where the documents were signed but he knows that Ella Marie was not present. The witness

said he guessed that instructions given to this attorney in Belize by George in the US would have been by telephone or by email.

[86] Mr. Haggerty agreed that at the time he took over management of the hotel, there was already a three-storey structure on the land; he disagreed that the hotel was operational at that time. The hotel had been operational between 1999 and 2008 where rooms had been rented for a fee. The witness explained that during those years George travelled to Belize from time to time but they spent most of their time in the US. If someone walked in off the street they may have rented a room to that but Mr. Haggerty said he did not consider that to be operational as a hotel. He agreed that at the time that he took over he and Mary had been travelling to Belize from the time the hotel was being built up to the present. George and Marie had had a residence in the building where the hotel is situated. After George died, their furniture stayed on the second floor. He agreed that Ella Marie's furniture was removed from the residence which was remodelled and rented out as rooms. When pressed by counsel, the witness stated that Ella Marie was not on the same area that she had occupied when George was alive; she now occupied an area on the ground floor because she can no longer climb stairs. This area is not the same floor space. It does not have the same number of bedrooms nor does she have a guest room.

[87] In the 1970s when the hotel was being built, Mr. Haggerty agreed that he and his wife Mary were primarily living in California. As he was working on his dissertation, he was travelling to Belize for research, not for vacation. He would stay in Belize for one month per year during the time that the Sands Hotel was being built. He agreed that Ella Marie has no interest in the hotel pursuant to the trust deed and she resides there due to permission given by him as trustee. He also agreed that his wife Mary had signed a promissory note in favour of Ella Marie for \$100,440 which is paid to Ella Marie in instalments of \$794.27 per month. Mrs. Ella Marie Parham received money San Pedro Apartments from which could be considered a part of Mr. Parham's estate; he and his wife did not receive anything from that apartment partnership. He explained that he and his wife created a partnership and George contributed 50% of his own funds and became a 50% partner which he gave to his wife Marie. Mr. Haggerty and his wife remain 50% partners at this time.

[88] Mr. Haggerty stated that while George and Marie continued living together until the time of George's death in 2011, things definitely changed in their relationship between 2005 and 2011. It was his evidence that George did not want to be around Ella Marie, he was staying in a different room, he complained about her all the time. They had a very, very rocky relationship for the last years. He said that George did not relocate and never came to live with him and his wife on a fulltime basis, but he would come to live with them from time to time. The witness

said that he and his wife would visit George on a daily basis. He said he did not go into the kitchen to prepare food for George, but he and his wife would take George out to eat a couple times per week. He agreed that other than the times when George complained about Marie, George and Marie resided together and had meals together.

[89] Mr. Haggerty said his visits to George's house would last from 15 minutes to an hour as he would get involved with George's projects and help him out around the house. He would be with George for several hours once or twice per week. He agreed that despite the complaining, George continued living with Marie; to the best of the witness's knowledge, George never made a police report or sought a protection order against Marie. Mr. Haggerty said that while George spoke to him frequently about divorcing Ella Marie, he said he had already gone through the trauma of one divorce which had been very hurtful for him, and he didn't want to do it again. He denied counsel's suggestion that his evidence regarding the problems in Ella Marie and George's relationship is made up. The witness denied that it is convenient for him to say that George and Marie had marital problems because he, his wife and his children stand to lose if the trust fails. He agreed that George's doctor had given him options and that George could have relocated to San Pedro he did not.

[90] Mr. Haggerty said that George did not choose to stay in Texas with Marie until his death; he said that George decided to stay with his daughter Mary and with him because they provided health care for him in Texas. He explained that he and his wife Mary arranged all of George's doctor's appointments, arranged for his bypass surgery, accompanied George to all his doctor's appointments and transported him to and from those appointments. Mr. Haggerty agreed that he and Mary did not personally provide day-to-day care of George; they hired caretakers and visiting nurses to do so. These visiting nurses would provide George with medical assistance as needed as well as help him with bathing etc. He agreed that since Ella Marie was small in size she could no longer lift George up when he became wheel chair bound, and that was why they needed to hire extra help up until the last days of George's life. He agreed that George would fall from time to time and Ella Marie would not be able to pick him up. The witness also agreed that Ella Marie was the one person who was there with George looking after him, providing his meals and calling for help if he had fallen. Mr. Haggerty explained that there was only one period of time where George was in Hospice; it was during the last six months of his life before he died in 2011. Apart from hospice care, through Medicare, caretakers would come and take care of George not for 24 hours but for several hours a day per week. They would come to bathe him and clean him up as he qualified for that benefit under Medicare. Other than hospice care and those benefits, Mr. Haggerty agreed with

counsel that Ella Marie was George’s primary companion and caregiver and that for the most part Ella Marie was referred to as “Marie.” He said he had no knowledge of a company incorporated in 2007 by the law office of Oscar Sabido called Sands Company Ltd. where the company was set up to operate a hotel where George and Ella Marie were the subscribing shareholders. The witness agreed that at present, the second floor of the hotel which was formerly the residence of George and Ella Marie Parham is presently being rented and earning income.

Under brief re-examination by Ms. Castillo, Mr. Haggerty described one incident where screamed at Ella Marie to “*Stay out of this*” during one of his visits to the doctor, when she had tried to interject a comment. Mr. Haggerty said George did not want Ella Marie to be involved in his care.

**Legal Submissions on behalf of the Claimant**

***The Sands Hotel Trust and the Bill of Sale***

[91] Up until the time that the Claimant retained the services of her attorneys, the Claimant was not aware that the Sands Hotel Trust<sup>1</sup> had been created on the 20<sup>th</sup> February, 2011. At the time of the creation of the Sands Hotel Trust, the Claimant was also not present to witness the signing of the same. It was not until after the

---

<sup>1</sup> Page 19 of the Trial Bundle



claim herein that the Claimant became aware of George's Wills of 1980<sup>2</sup>, 1984<sup>3</sup>, 1989<sup>4</sup> and the Republication of 2005<sup>5</sup>. In each of the Wills and the Republication, George expressly provided that the Claimant was to acquire an interest in the Sands Hotel. It was also not until after the claim that the Claimant became aware of the Bill of Sale<sup>6</sup> which was created on the 11<sup>th</sup> April, 2011. The Bill of Sale purportedly assigned all the personal property which comprise the Sands Hotel Trust to the 1<sup>st</sup> Defendant in his capacity as trustee of the Sands Hotel Trust<sup>7</sup> and not in his personal capacity.

[92] Up until the end of trial on the 3<sup>rd</sup> October, 2019, the assets which comprise the Sands Hotel Trust, being Parcels 991, 992, 997 and the personal property contained in the Bill of Sale, were still vested in the 1<sup>st</sup> Defendant in his capacity as Trustee of the Sands Hotel Trust<sup>8</sup> and has not been transferred to any other person or the purported beneficiaries under the Sands Hotel Trust. Under the Sands Hotel Trust, the 2<sup>nd</sup> Defendant and her children with the 1<sup>st</sup> Defendant are the sole beneficiaries, to the exclusion of the Claimant. By the creation of the Sands Hotel

---

<sup>2</sup> Page 232 of the Trial Bundle

<sup>3</sup> Page 239 of the Trial Bundle

<sup>4</sup>Page 249 of the Trial bundle

<sup>5</sup> Page 255 of the Trial Bundle

<sup>6</sup> Page 294 of the Trial Bundle

<sup>7</sup> Paragraph 11 of the First Affidavit of Timothy Haggerty

<sup>8</sup> Abstract of Title for Parcels 991, 992 and 997 at page 148 to 149 of the Trial Bundle

Trust, the Claimant has been deprived of her beneficial interest in Parcels 991, 992 and 997.

### **Statutory Scheme**

[93] Section 5(1) of the *Trusts Act* [TAB 1] recognizes that a trust “*may be created by oral declaration, or by an instrument in writing (including a will or codicil), by conduct, by operation of law, or in any other manner whatsoever.*” Thus, the *Trusts Act* recognizes that a trust may be created by conduct or operation of law like a constructive or resulting trust.

[94] Section 5(4) of the *Trusts Act* also states that, “*a trust (other than a trust by operation of law) respecting land situated in Belize shall be unenforceable unless evidenced in writing,*” so that a trust over land may be created by operation of law over land, though it is not evidenced in writing.

[95] Section 7 and 8 of the *Trusts Act* provides the circumstances in which a trust is invalid and unenforceable and what property may be held on trust as follows:

*“7-(2)(b)(iv) A trust shall be invalid and unenforceable to the extent that the Court declares that, the settlor was, at the time of its creation, incapable under the law in force in Belize of creating such a trust.*

*8(4) Where a settlor declares a trust respecting property he does not own at the time of the declaration, then, the trust is incompletely*

*constituted at the time of the declaration and no rights or duties arise thereunder;”*

[96] Section 57 of the *Trusts Act* expressly gives the Court jurisdiction in matters concerning a trust:

*“The Court has jurisdiction in respect of any matters concerning a trust where*

-

*ix. the proper law of the trust is the law of Belize;*

*x. a trustee of the trust is resident in Belize;*

*xi. any property of the trust is situated in Belize;*

*xii. any part of the administration of the trust is carried on in Belize.”*

[97] Section 58 of the *Trusts Act* sets out the general statutory powers of the Court on an application to the Court:

*“58(1) On the application of a trustee, a beneficiary, a settlor or his personal representatives, a protector (in the case of a trust established for a charitable purpose) the Attorney General or, with leave of the Court, any other person, the Court may,*

*(a) make an order in respect of -*

*(i) the execution, administration or enforcement of a trust;*

*(ii) a trustee, including an order as to the exercise by a trustee,*

*the appointment, remuneration or conduct of a trustee, the*

*keeping, and submission of accounts, and the making of payments, whether into Court or otherwise;*

*(iii) a protector, including an order appointing a protector;*

*(iv) a beneficiary, or any person connected with a trust;*

*(v) any trust property, including an order as to the vesting, preservation, application, surrender or recovery thereof;*

*(b) make a declaration as to the validity or enforceability of a trust;*

*(c) direct the trustee to distribute, or not to distribute, the trust property;*

*(d) make such order in respect of the termination of the trust and the distribution of the property as it thinks fit;*

*(e) rescind or vary an order or declaration under this Act, or make a new or further order or declaration.”*

[98] Part 66 of the *Supreme Court (Civil Procedure) Rules, 2005* (“CPR”) [TAB 2] enables a party to institute administrative claims in relation to trusts and determining questions in relation to trusts as follows:

“66.1(1) This part deal with -

*(a) claims for -*

*(i) the administration of the estate of a dead person; or*

*(ii) the execution of a trust under the direction of the court;*

*and such claims are referred to as administration claims; and  
(b) claims to determine any question or grant any relief relating to the  
administration of the estate of a dead person or the execution of a trust.*

*66.2(1) An Administration claim or claim under Rule 66.4 may be brought*

*by*

*(a) any executor or administrator of the relevant estate;*

*(b) any trustee of the relevant trust; or*

*(c) any person having or claiming to have a beneficial interest in the  
estate of the dead person or under a trust.”*

**[99]** Sections 32 and 38 of the *Supreme Court of Judicature Act* (“**SCJA**”) [**TAB**  
**3**] requires the Court to apply equitable principles in all civil matters:

*“32. If a plaintiff or petitioner claims to be entitled to any equitable  
estate or right, or to relief on any equitable ground against any deed,  
instrument or contract, or against any right, title or claim whatever  
asserted by any defendant or respondent in the cause or matter, or to  
any relief founded upon a legal right, which formerly could only have  
been given by a court of equity, the Court or judge shall give to the  
plaintiff or petitioner the same relief as may now be given by the High  
Court of Justice in England in a suit or proceeding for the like purpose  
properly instituted.”*

*“38. The Court, in the exercise of the jurisdictions vested in it by this Act, shall, in every cause or matter pending before it, grant, either absolutely or on such terms and conditions as the Court thinks just, all such remedies whatever as any of the parties thereto may appear to be entitled to in respect of any legal or equitable claim properly brought forward by them in the cause or matter, so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of those matters avoided.”*

[100] Section 143 of the **Registered Land Act** [TAB 4] provides:

*“143.—(1) Subject to subsection (2) of this section, the court may order rectification of the register by directing that any registration be made, cancelled or amended where it is satisfied that any registration, including a first registration, has been obtained, made or omitted by fraud or mistake.*

*(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents or profits and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake*

*in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.*

### **Submissions**

#### **Jurisdiction**

[101] The Claimants have addressed the issue of jurisdiction for completeness, but the two crucial questions this Court must answer is:

- (1) Does the Claimant have a beneficial interest in Parcels 991, 992, and 997 under a constructive trust/resulting trust? If yes, then it would mean that George held titles for these properties upon trust for himself and the Claimant, and that he did not hold the legal and beneficial interest absolutely.
- (2) If the Court answers the first question in the affirmative, then the following question is, could George have validly settled Parcels 991, 992, and 997 under the Sands Hotel Trust? If the answer is “No”, then the Sands Hotel Trust is invalid and the Court must then give consequential orders.

[102] To be clear, this claim is being brought pursuant to the Court’s equitable jurisdiction under Section 18 and Part IV of the SCJA. It is not a claim being made pursuant to section 148A of the SCJA, the jurisdiction of which may only be invoked during divorce proceedings. It is also not brought pursuant to section 16 of the

*Married Women's Property Act* (“**MWPA**”), which simply provides a summary manner upon which a husband or wife “may” approach the court to have it determine any question as to title to any property. The substantive law to be applied under section 16 of the MWPA is the rules of equity, as section 16 of the MWPA conveys no rights, but simply provides the procedural option for married persons to have the court determine any interest between them in relation to any property acquired by them.

[103] The reason that it is important to be very clear as to which jurisdiction is being invoked is to disabuse the Court that any issue of abatement arises as a result of the death of George. The jurisdiction being invoked is clearly the Court’s jurisdiction to administer the rules of equity and the equitable principles relating to the creation of a resulting and/or constructive trust. Sections 57 gives the Court jurisdiction over trusts created in Belize or in respect of property situate in Belize and over the administration of trusts generally.

[104] The Claimant in this case alleges that she is a beneficiary under a constructive trust and/or resulting trust over Parcels 991, 992, 997 and the Sands Hotel, and that George held title to the said properties on trust for himself and the Claimant. As a beneficiary, she therefore seeks a declaration as to the validity and enforceability of the said trust under section 58 of the *Trusts Act*.



[105] The Claimant says that if the Court agrees with her, that George held Parcels 991, 992, 997 and the Sands Hotel on constructive and/or resulting trust, then the Court would have to also pronounce on the validity of the Sands Hotel Trust. The Claimant says that section 58 of the *Trusts Act* sets out the general statutory powers which may be exercised by this Honorable Court upon an application and the procedure for an application by someone who does not fall within any of the categories listed in section 58 of the *Trusts Act*. It by no means provide an exhaustive list of all of the Court's powers in cases such as these where the principles of equity and the common law are being invoked. This means that if the Court finds that it cannot make some or any of the orders sought pursuant to section 58 of the *Trusts Act*, the Claimant has, nonetheless, invoked the Court's equitable jurisdiction under Part IV of the SCJA and the Court MUST apply equitable considerations pursuant to section 32 and 38 of the SCJA.

[106] The Court has jurisdiction to do so under its equitable jurisdiction under Part IV of the SCJA and also because the Claimant's claim is also an Administrative Claim pursuant to Part 66 of the CPR, which permits the Claimant, being a party having or claiming to have an interest in a trust, i.e., the resulting and/or constructive trust in relation to Parcels 991, 992, 997 and the Sands Hotel, to apply to Court for the determination of questions. It is also the case that the Claimant claims an interest in the assets which comprise the Sands Hotel Trust.

[107] The High Court of St. Christopher and Nevis applied the equivalent of Part 66 of the CPR of Belize in *Spas Dimitrov Roussev et al v Leman Nominee Company Limited* CLAIM NO. NEVHCV 2016/0137 [TAB 5] in which the Applicants sought, *inter alia*, an interim appointment of a trustee to replace the existing trustee. The Court said at paragraph 18:

*“CPR Part 67.1 (1)(b) provides that:*

*‘This Part deals with ...claims to determine any question or grant any relief relating to the administration of the estate of a deceased person or the execution of a trust.’*

*This appears to be sufficiently wide in scope to encompass the case at bar, especially when read with CPR 67.2(2) which provides that such claims may be brought by:*

*any person having or claiming to have a beneficial interest in the estate of a deceased person or under a trust.”*

[108] At paragraph 20, the Court in *Spas Dimitrov* also opined that CPR Part 67.1 of St. Christopher and Nevis is not limited in scope and includes any claim involving questions as to execution of any trust. The Court concluded that CPR Part 67.1 offered a clear basis for the applicant therein to bring the claim.

[109] The Claimant says that similarly, rule 66.1 and 66.2 of the CPR of Belize is not limited in scope and also provides basis for the claim herein. The Claimant seeks

the determination of questions in relation to a resulting and/or constructive trust and in relation to assets which were purportedly settled by George in the Sands Hotel Trust, assets in relation to which the Claimant claims an interest and which are now vested in the 1<sup>st</sup> Defendant as trustee.

[110] Importantly and admittedly, the Claimant also says that notwithstanding the provisions of section 58 of the *Trusts Act*, this Court retains an inherent jurisdiction to entertain claims of this nature, a jurisdiction recognized in the *Spa Dimitrov* case.

[111] In the case at bar, the Claimant is seeking the Court's intervention both in relation to the constructive/ resulting trust over Parcels 991, 992, 997 and the Sands Hotel and in the Sands Hotel Trust, since the trust assets which comprise the Sands Hotel Trust were beneficially owned by the Claimant and the late George on a resulting and/or constructive trust. The late George could not therefore settle the trust assets and create the Sands Hotel Trust. Thus, in addition to the powers under section 58 of the *Trusts Act*, the Court also has an inherent equitable jurisdiction over all trusts.

[112] The Claimant says she is a beneficiary of a common intention constructive trust over Parcels 991, 992 and 997 that was formerly owned by George. She also has a beneficial interest in Parcels 991, 992 and 997 which subsist despite the

transfers to the 1<sup>st</sup> Defendant as he is not a bona fide purchaser for valuable consideration.

**Question 1: Does the Claimant have a beneficial interest in Parcels 991,992, and 997 under a constructive trust/resulting trust?**

**Constructive Trust**

[113] The Claimant asserts, firstly, that the late George held the Parcels 991, 992, 997, the Sands Hotel and the personal property comprising the Sands Hotel on constructive trust for himself and the Claimant, as there was a common intention that the Claimant would have a beneficial interest in the same, and the Claimant duly acted upon that common intention to her detriment.

[114] The Claimant further asserts that when George purported to create the Sands Hotel Trust, comprising of Parcels 991, 992, and 997, and the Sands Hotel, he breached the constructive trust upon which he held the beneficial title to the said properties. As trustee of the constructive trust upon which he held the beneficial title to the said parcels, George could not, then, have validly created trusts over the parcels for which he was not the sole beneficial owner.

[115] In establishing that a constructive trust exists, the Court noted in *Stack v Dowden* [2007] UKHL 17 [TAB 6], that the first hurdle is that there must be a common intention between the parties, though the Court was not concerned with the first hurdle in that case.

[116] In *Drake v Whipp* [1996] 1 FLR 826 [TAB 7], the Court opined, that all that is required for the creation of a constructive trust is that there should be a common intention that the party who is not the legal owner should have a beneficial interest and that that party should act to his or her detriment in reliance thereon.

### *Common Intention*

[117] In establishing that the partners had a common intention, the first question asked is whether there was any arrangement, agreement or understanding reached between the parties that the property is to be shared beneficially. Lord Walker in *Stack v Dowden* also noted that a "common intention" trust could be inferred even when there was no evidence of an actual agreement. The Court in that case was of the opinion that -

*“The law has indeed moved on in response to changing social and economic conditions. The search is to ascertain the parties' shared intentions, actual, inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it.”*

[118] The Court in *Stack v Dowden* also approved a passage from the Law Commission's (UK) discussion paper on Sharing Homes (2002, Law Com No 278, para 4.27):

*“If the question really is one of the parties' 'common intention', we believe that there is much to be said for adopting what has been called a 'holistic approach' to quantification, undertaking a survey of the whole course of dealing between the parties and taking account of all conduct which throws light on the question what shares were intended.”*

[119] In the subsequent case that went before the House of Lords in *Jones v Kernott* [2012] 1 AC 776 [TAB 8], their Lordship took the time to summarize and clarify their ruling in *Stack v Dowden*, albeit in that case, the issue was joint interest in a family home that was vested in both the parties, and not vested in one of the spouses. The judgment of Lord Walker and Lady Hale at paragraph [52] summarizes it thus:

*“52. This case is not concerned with a family home which is put into the name of one party only. The starting point is different. The first issue is whether it was intended that the other party have any beneficial interest in the property at all. If he does, the second issue is what that interest is. There is no presumption of joint beneficial ownership. But their common intention has once again to be deduced objectively from their conduct. If the evidence shows a common intention to share beneficial ownership but*

*does not show what shares were intended, the court will have to proceed as at para 51(4) and (5) above.”*

[120] Once a court determines that there was a common intention to share, but there is no evidence as to what proportion, the court would have to impute an intention as to the proportion the parties are to share. In approving Chadwick LJ in *Oxley v Hiscock* Lord Walker and Lady Hale in *Jones v Kernott* at paragraph [3] noted that “*In deducing what the parties, as reasonable people, would have thought at the relevant time, regard would obviously be had to their whole course of dealing in relation to the property.*” Thus, the Court must have regard to their whole course of dealing in relation to the property at hand.

[121] Lord Walker and Lady Hale in *Jones v Kernott* noted at paragraph [34] that:

*“However, while the conceptual difference between inferring and imputing is clear, the difference in practice may not be so great. In this area, as in many others, the scope for inference is wide. **The Law recognizes that a legitimate inference may not correspond to an individual’s subjective state of mind.** As Lord Diplock also put it in *Gissing v Gissing* [1971] AC 886, 906:*

*‘As in so many branches of English law in which legal rights and obligations depend upon the intentions of the parties to a transaction, **the relevant intention of each party is the intention which was***

*reasonably understood by the other party to be manifested by that party's words or conduct notwithstanding that he did not consciously formulate that intention in his own mind or even acted with some different intention which he did not communicate to the other party.*” [Emphasis Added]

[122] This is important to note, so that even though a party may manifest an intention differently, it is what the other party reasonably understood by the other's words and conduct. The evidence of the Claimant is that when she and George first moved to San Pedro, Ambergris Caye, Belize, George told her that he had a parcel of land, Parcel 997, on which he would build a home for himself and the Claimant.<sup>9</sup> After George and the Claimant built the ground floor of the Sands Hotel, the Claimant and George moved into the newly constructed room,<sup>10</sup> which they lived in as their home. During cross-examination, the 2<sup>nd</sup> Defendant admitted that George and the Claimant were living in a couple of the rooms which became their home in the structure which comprise the Sands Hotel. This was, in fact, the home which George told the Claimant he would build for them in Belize. At the very least, therefore, the Claimant says that there was a common intention that the home which

---

<sup>9</sup> Paragraph 19 of the First Affidavit of Ella Marie Parham

<sup>10</sup> Paragraph 26 of the First Affidavit of Ella Marie Parham



was built on Parcel 997 and which George and the Claimant lived throughout their time in Belize together would be beneficially owned by the Claimant and George.

[123] The Defendants may argue that George's intentions were sufficiently made clear in his Wills of 1980, 1984 and 1989, i.e., that he intended Parcels 991, 992, 997 and the Sands Hotel to be his own separate property. The Claimant says, however, that the intention that she was to have an interest in the said properties were also made clear in the said Wills where George consistently made provisions for the Claimant, showing the intention that she was to acquire an interest. The Wills of 1980, 1984 and 1989 provide as follows:

*“1980:*

*My wife Ella, however, is to have a life interest of on half (1/2) of the net income (after expenses of operation) therefrom from the time of my death until the time of her death, the balance of such income to go to my daughter Mary Parham.*

*1984:*

*My wife, Ella, however, is to have a life interest in three fourths (3/4) of the net income (after expenses of operation) therefrom from the time of my death until the time of her death, the balance of such income to go to my daughter Mary Parham. If Mary should sell said hotel before my wife's*

*death, then I direct that one half (1/2) of the proceeds of the sale go to wife, Ella.*

1989:

*I GIVE my wife ELLA M. PARHAM a life interest in one quarter (1/4) of the net income after expenses of operation of the Hotel and Gift Shop from the time of my death until the time of her remarriage or death whichever one occurs first, the balance of such income I GIVE to my daughter MARY PARHAM. If Mary should sell said hotel and gift shop before my wife's remarriage or death then I direct the one quarter (1/4) of the proceeds of sale go to my wife Ella and the remaining three fourths (3/4) go to my daughter Mary."*

[124] During cross-examination, the 2<sup>nd</sup> Defendant was asked whether the 1980 Will manifested George's intention to provide for the Claimant from income of the Sands Hotel, to which the 2<sup>nd</sup> Defendant said, "Yes." The 2<sup>nd</sup> Defendant was also asked whether she agreed that, consistently, as shown in all three Wills and the Republication, George manifested an intention that his wife was to acquire an interest in the Sands Hotel, to which the 2<sup>nd</sup> Defendant said, "Yes." When pressed further, the 2<sup>nd</sup> Defendant admitted that for 28 years, and up to 6 years prior to the death of George, there was a manifestation that the Claimant was to acquire an interest in the Sands Hotel.

[125] The Claimant says that contrary to what the Defendants assert, the Wills do show an intention that the Claimant was to acquire an interest in the Sands Hotels which comprise Parcels 991, 992, 997 on which it sits and the personal property therein. The Wills therefore provide evidence of the common intention between George and the Claimant that the Claimant was to have a beneficial interest in Parcels 991, 992, 997 and the Sands Hotel.

[126] The Claimant also submits that the conduct of the parties throughout their marriage also shows their common intention. Subsequent to relocating to Belize, the Claimant and George always operated under the understanding that Parcels 991, 992, 997 and the Sands Hotel was for both of them.<sup>11</sup> That was the nature of the arrangement between the Claimant and George.

[127] As noted above, the Court takes a holistic approach to ascertaining the common intention of the parties, and financial contributions go a long way in establishing that common intention. In fact, as it regards this expenditure, the Court in *Grant v Edwards* [1986] 2 ALL ER 426 [TAB 9] held that if it is found to have been incurred, such expenditure will perform the twofold function of establishing the common intention and showing that the Claimant has acted upon it.

---

<sup>11</sup> Paragraph 5 of the First Affidavit of Ella Marie Parham

[128] The Claimant made numerous financial contributions towards the development of Parcels 991, 992, 997 and the Sands Hotel. She assisted George financially in the acquisition of the other lots, being Parcels 991 and 922, and she used monies which she had earned while working as a Teamster Union Worker truck driver towards furnishing and developing the Sands Hotel. All the furniture for the Sand's Hotel was bought by the Claimant. The Claimant also used the money which she earned towards the basic needs of the late George and herself, especially since George was retired since 1975. During cross-examination, when it was put to the Claimant that the property on which the Sands Hotel sits was bought by George with his own money, the Claimant emphatically disagreed and stated that both she and George put their money together and she went to New Orleans, USA, to "Tuto" and paid him half of the money.

[129] The 2<sup>nd</sup> Defendant stated in her first affidavit that the Claimant did not contribute her personal funds to the construction or furnishing of the Sands Hotel.<sup>12</sup> During cross-examination, however, the 2<sup>nd</sup> Defendant admitted that from 1973, and after the Claimant and George relocated to Belize, she would only spend approximately one month in Belize, so that for majority of the time when the Sands Hotel was being constructed, the 2<sup>nd</sup> Defendant was not there. The 2<sup>nd</sup> Defendant admitted that she does not know whether the supplies for the construction of the Sand

---

<sup>12</sup> Paragraph 32 of the First Affidavit of Mary Parham

Hotel was paid using a bank account or cash. The Claimant says that all this shows that the 2<sup>nd</sup> Defendant has no personal knowledge of the source of funds for the construction of the Sands Hotel and cannot say whether the Claimant, in fact, contributed to the construction and furnishing of the Sands Hotel.

[130] The Claimant further submits that the fact that she and George opened and saved a portion of their money in joint bank accounts at Belize Bank, in San Pedro, Ambergris Caye, Belize, and at Orange Bank, Orange, Texas, USA is of some significance as it relates to their common intention that the Claimant had a beneficial share in the properties. In fact, in *Abbott v Abbott* [2007] UKPC 53 [TAB 10], the Court noted that the partners in that case organized their finances entirely jointly, having only a joint bank account into which everything was paid and from which everything was paid, and they also undertook joint liability for the repayment of a mortgage loan and interest. The Court said that this has always been regarded as a significant factor. This account was used to pay their living expenses and utilities and expenses consumed when in Belize and in occupation of Parcels 991, 992 and 997.

[131] The Court in *Stack v Dowden*, also outlined some of the factors for consideration when ascertaining the intention of the parties, and included the arrangement of finances of the parties, i.e., whether separately or together or a bit of both. While the joint accounts in Belize and Texas, USA were not the sole accounts

of the Claimant and George, in this case, certainly it has some significance from which the Court may properly draw the conclusion that the partners had a common intention, that common intention being that the Claimant should have a beneficial interest in Parcels 991, 992, 997 and the Sands Hotel, where the Claimant and George lived and operated together. In fact, part of the medical bills for George was paid out of the said joint account in the USA.<sup>13</sup>

[132] Separate and apart from all the substantial financial contributions by the Claimant, the Claimant also made non-financial contributions. These contributions include the management of the Sands Hotel, which included housekeeping, room rentals, and management of the employees of the Sands Hotel while George was out fishing with his friends. In fact, the Claimant at all material times took care of the housekeeping of the hotel, cleaned all the rented rooms and did all the laundry, while George collected the money from the Sands Hotel. When George fell ill, the Claimant also took care of him. The 1<sup>st</sup> Defendant admitted that the Claimant provided meals for George and that the Claimant was George's primary caregiver when very ill.

---

<sup>13</sup> Paragraph 57 of the First Affidavit of Ella Marie Parham

[133] During the cross-examination of Mr. Abel Guerro, he remained consistent with his evidence that the Claimant did assist in the construction of the Sands Hotel and that he, in fact, saw her assisting in construction many times. He also testified that when George fell ill he didn't see George's children and only the Claimant was there. Even the evidence of the 2<sup>nd</sup> Defendant is that after their relocation to Belize, and even after George fell ill, George and the Claimant always resided together.

[134] The Courts have taken a holistic approach to ascertaining the common intention of the partners, and certainly, this includes a consideration of the non-financial contributions which the Claimant has made, conduct which evidences the common intention between the Claimant and George.

[135] In light of the intention as delineated in the George's Wills of 1980, 1984, and 1989, and the foregoing conduct, the Claimant submits that she and George did have a common intention that the Claimant would have, and did, in fact, have a beneficial interest in Parcels 991, 992, 997 and the Sands Hotel. For all intents and purposes, the house and the Sands Hotel were considered "*their*" properties.

### **Credibility**

[136] The Defendants may assert that the Claimant is not a credible witness as she appeared to be confused and could not remember a lot of the details in her first affidavit as it relates to dates.

The Claimant is an 89 year old woman, and her affidavit evidence was sworn to and filed one year and ten months ago. Where the Claimant could not remember, she was candid with the Court and explained that she could remember some things but not dates. While the Claimant was not able to recall specific dates, she nonetheless remained consistent with her evidence and claim, that she worked the hotel and that the Sands Hotel was both George's and her property, the understanding between George and herself.

[137] Whereas the Claimant's forgetfulness could be explained away because of her age, the 2<sup>nd</sup> Defendant's attitude and behavior towards the Claimant was manifest, and her evidence in this regards must be measured against her attitude towards the Claimant. Her resentment towards the Claimant was demonstrated by her choice of words in answer to any questions pertaining to the Claimant during trial; she went out of her way to portray her in a negative light.

### **Detrimental Reliance**

[138] The Claimant submits that having shared a common intention with George that she would have a beneficial interest in the Property, she acted to her detriment in reliance thereon, as noted above by her financial and non-financial contributions towards the acquisition and development of Parcels 991, 992, 997 and the Sands Hotel.



[139] The dictum of the Court in *Grant v Edwards*, as aforementioned, is such that if expenditure is found to have been incurred, such expenditure will perform the twofold function of establishing the common intention and showing that the Claimant has acted upon it. The aforementioned non-financial contributions of the Claimant also plays a significant role in establishing that she has acted to her detriment. The Claimant therefore says that the aforementioned conduct does not only establish the common intention between George and the Claimant, but that the Claimant has also acted to her detriment. This is a case in which the Court can properly conclude and order that the late George held Parcels 991, 992, 997, the Sands Hotel and the personal property comprised therein, in constructive trust for himself and the Claimant.

### **Resulting Trust**

[140] The Claimant further submits, in the alternative, that George held Parcels 991 and 992 in resulting trust for the Claimant and himself.

[141] The Honourable Chief Justice Kenneth Benjamin in *Shawn Sparks (Personal Representative for the Estate of Terry M. Sparks) v Melissa Jude Luca* Claim No. 372 of 2009 [TAB 11] highlighted the circumstances in which a resulting trust can arise at paragraph 32, referring to the dictum of Lord Brown- Wilkinson in *Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] A 669:

*"Under existing law a resulting trust arises in two sets of circumstances: (A) where A makes a voluntary payment to B or pays (wholly or in part) for the purchase of property which is vested either in B alone or in the joint names of A and B, there is a presumption that A did not intend to make a gift to B: the money or property is held on trust for A (if he is the sole provider of the money) or in the case of a joint purchase by A and B in shares proportionate to their contributions. It is important to stress that this is only a presumption, which presumption is easily rebutted either by the counter-presumption of advancement or by direct evidence of A's intention to make an outright transfer: see: Underhill and Hayton pp, 317ff, Vandervell v IRC [1967] 1 All E R 1 at 8, [1967] 2 AC 291 at p 312ff and Vandervell's Trusts (No. 2), White v Vandervell Trusts Ltd. [1974] 1 All E R 47 at 64ff [1974] Ch 269 at p 288ff. (B) Where A transfers property to B on express trusts, but the trusts declared do not exhaust the whole beneficial interest: ibid [1968] 3 All E R 651, [1970] A C 567. Both types of resulting trusts giving effect to the common intention of the parties. A resulting trust is not imposed by law against the intentions of the trustee (as is a constructive trust) but gives effect to his presumed intention."*

[142] The Claimant says that a resulting trust arises in respect of Parcels 991 and 992, because she contributed towards the acquisition of the said two properties. In particular, the Claimants says at paragraphs 33, 36, and 37 of her first affidavit:

*“33. After this incident, George and I decided to enquire about buying two more lots in front of the Sands Hotel, owned by Arturo Alamilla’s Family. Arturo Alamilla is also known as cousin Tuto (“Tuto”). Tuto’s family consented to the sale and we acquired the said two lots situate in front of the Sands hotel. These two lots are now legally described as Parcel 991, Block 7, San Pedro Registration Section (“Parcel 991”) and Parcel 992, Block 7, San Pedro Registration Section (“Parcel 992”)...”*

*“36. Although I helped to purchase the other lots, being Parcels 991 and 992, and negotiated for their purchase, the said parcels were registered in the sole name of George, unbeknownst to me.”*

*“37. I was shocked when I discovered that the two parcels were registered solely in George’s name. In any event, I was content because we were married, and it was always understood between George and I, that we both owned the Sands Hotel and the land whereupon it was built. I had no reason to distrust that George would not honour our agreement and be fair by me.”*

[143] As noted above, during cross-examination, the Claimant specifically stated that she personally went to New Orleans, United States of America to pay Tuto for half of the properties that were being purchased from him. The 2<sup>nd</sup> Defendant tried to contradict this evidence, but produced no documentary evidence, and she admitted that she was not around when the purchase took place.

[144] The Claimant says that having paid half of the purchase price for Parcels 991 and 992, and the fact that George registered the said parcels in his name only, he held the said parcels in resulting trust for the Claimant and himself. Certainly, there is no presumption of a gift or advancement which arises in this case, and the Defendants do not allege the same in defence of the claim in resulting trust.

**Retrospectivity of the Declaration**

[145] If the Court finds that George held Parcels 991, 992, and 997 on a common intention constructive trust in favour of himself and the Claimant, it would mean that the beneficial interest was created at the time of the detrimental reliance by the Claimant. The claimant says that the detrimental reliance would date back to the mid 1970 during the construction of the structure on Parcel 997 and when Parcels 991 and 992 were purchased.

[146] *Lewin on Trust* 19<sup>th</sup> Edition [TAB 12] at paragraph 7-011 at the last sentence summarizes that a common intention constructive trust has retrospective effect because “*The trustees’s possession of the property is coloured from the first by the trust and confidence by means of which he obtained it, and any subsequent appropriation to his own use is in breach of that trust.*”

[147] In *Lloyd’s Bank Plc v Rosset* [1989] Ch 350 [TAB 13] at page 385H, Nicholls LJ found that the Wife’s interest was retrospective to the date of her detrimental reliance - that is, when she acted to her detriment.

“*Despite this, on the facts found there was a common intention that the wife should have a beneficial interest in the property, and before completion the wife did acts which would have made it inequitable for the husband to have denied that beneficial interest. On those facts I think that the wife had some equitable interest in the property before completion, carved out of the husband's interest just described.*”

[148] The authors of *Underhill and Hayton: Law of Trust and Trustees* 19<sup>th</sup> Edition [TAB 14] are also of this view when at paragraph 30.51, they explained in giving an example of that:

“*Previously it was accepted that where M expressed an intention to confer an ownership share on W, but failed to comply with the Law of Property*

*Act 1925, s 53(1)(b), the imposition of a common intention constructive trust in W's favour could vindicate the express oral trust by giving her the interest that she would have had if M's express trust had been declared in signed writing<sup>1</sup>. W's interest was therefore assumed to be retrospective<sup>2</sup>, but the date of the oral declaration could not be the date when her interest arose because the trust was then unenforceable<sup>3</sup>. If there was no detrimental reliance by W before M mortgaged the home to X then just as M was not subject to an enforceable trust at that time, so neither was X, who derived title from M. The priority of X over W crystallised at this stage so as not to be affected if W subsequently acted to her detriment or subsequently persuaded M to sign a memorandum evidencing the trust within the Law of Property Act 1925, s 53(1)(b). However where X acquired a mortgage after W acted detrimentally and W subsequently alleged that she had an interest that bound X, the courts assumed without argument that any interest established in due course by W would indeed bind X<sup>4</sup>."*

**[149]** In *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] 2 All ER 961 [TAB 15] the House of Lords noted when a constructive trust of the kind being asserted in the case at bar arises. The House of

Lord referred to the constructive trust of the kind herein as an institutional constructive trust arising by operation of law at page 34 of the decision:

*“Under an institutional constructive trust, the trust arises by operation of law as from the date of the circumstances which give rise to it: the function of the court is merely to declare that such trust has arisen in the past. The consequences that flow from such trust having arisen (including the possibly unfair consequences to third parties who in the interim have received the trust property) are also determined by rules of law, not under a discretion...”*

[150] The Learned Authors of *Lewin on Trusts* explained the concept of an institutional constructive trust, which the Claimant says is the type of constructive trust which exists in the case at bar, at paragraph 7-011:

*“A distinction must be drawn between the constructive trust which arises by the operation of law, and the imposition by the court of the liability “to account as constructive trustee” by way of remedy. In the former case, the court vindicates the relief granted by reference to a pre-existing trust or other fiduciary relationship. Such constructive trusts are often called institutional trusts, arising from some pre-existing fiduciary relationship before and apart from any breach of trust or of duty...”*

[151] The Claimant submits, therefore, that the constructive trust pursuant to which George held title to Parcels 991, 992, 997 and the Sands Hotel existed from the time that the Claimant and George formed a common intention that the Claimant would have an interest in the said properties, and there was detrimental reliance on that common intention by the Claimant. The Claimant is simply asking this court to declare that that constructive trust arose in the past.

**Question No. 2: If the Court answers the first question in the affirmative, then the following question is, could George have validly settled Parcels 991, 992, and 997 under the Sands Hotel Trust?**

**Invalidity of the Sands Hotel Trust**

[152] Since George held the Parcels 991, 992, 997 and the Sands Hotel upon a common intention constructive trust for himself and the Claimant or alternatively, Parcels 991 and 992 in resulting trust for himself and the Claimant, he could not, as a settlor, create the trust he purported to do under The Sands Hotel Trust, as both the legal and beneficial interest in Parcels 991, 992, 997 and the Sands Hotel were not vested in him absolutely. The beneficial title was held jointly by him and the Claimant from the time the Claimant acted to her detriment on or about 1973. The Sands Hotel Trust, which was created the 20<sup>th</sup> February, 2011, is therefore not valid and enforceable by virtue of section 7 of the *Trusts Act*, since George was, in law,



incapable of creating the trust, not being possessed with the both the legal and beneficial interest.

[153] The person enabled by law to declare a trust has to be the absolute and beneficial owner thereof. Sir John Romilly MR explained this principle in reference to the case of *Tierney v Wood* [1854] 19 BEAV 329 [TAB 16]:

*“The first question raised is whether Alexander Wood is the person who is, by law, enabled to declare the trusts of these lands.*

*The second question is whether, if he be, this is a declaration of trust, and such a one as can be acted upon.*

*[335] There is no question, but that on the purchase of this property by Alexander Wood and the conveyance thereof to the Rev. M.A. Tierney, a resulting trust arose in favour of Alexander Wood, which, as it expressly expected by the 8<sup>th</sup> section of the Statute of Frauds, does not require to be evidenced by any writing. In the year 1836, therefore, and previous to the signing of this document, the property in question was vested in M. A. Tierney, in fee, in trust for Alexander Wood, in fee simple. Alexander Wood, therefore, was the beneficial owner of this property, and Mr. Tierney had the mere naked legal interest in it.*

...

*...Those authorities shew that the proper person to create the trust in personal property is the person in whom the beneficial interest of the property is vested, and the trust being created by the beneficial owner, the trustee is bound, and, if disposed to refuse, may be compelled to obey.”*

[154] That decision was approved by Fry J in *Kronheim v Johnson* [1877] 7 Ch D 60 [TAB 17]:

*“I accede to the proposition that the Plaintiff was the person by law enabled to declare the trust. I am of opinion that Tierney v. Wood (1) amounts to a decision that the beneficial owner is the person who is by law enabled to declare the trust. Lord Romilly there says (2), ‘That the person to create the trust, and the person who is, by law, enabled to declare the trust, are one and the same, and that, consequently, the beneficial owner is the person by law enabled to declare the trust.’ I come, therefore, to the conclusion that the Plaintiff was the person by law enabled to declare the trust, and that, unless she did so by some writing signed by her, no valid settlement of the property could be effected.”*

[155] Since George was not the only beneficial owner of Parcels 991, 992, and 997 as far back as the 1970s and 1980s, he was therefore incapable by himself of creating The Sands Hotel Trust in 2011. When the Sands Hotel Trust was created on the 20<sup>th</sup>

February, 2011, the common intention constructive trust pursuant to which George held Parcels 991, 992, 997 and the Sands Hotel, already existed. The 1<sup>st</sup> Defendant admitted that the Claimant was neither present when the settlement deed for The Sands Hotel Trust was signed by George nor was she aware of its existence. The institutional constructive trust having arisen, George could not have created the Sands Hotel Trust, since he did not have absolute title to Parcels 991, 992, 997 and the Sands Hotel at the time of the declaration. As such, the Sands Hotel Trust is incompletely constituted and no rights or duties arise thereunder pursuant to section 8 of the *Trusts Act*, as noted above.

[156] There was also a breach of the constructive trust by the purported creation of the Sands Hotel Trust and upon title to the said parcels being vested in the 1<sup>st</sup> Defendant as trustee of the Sands Hotel Trust. If the Sands Hotel Trust is declared to be invalid, it must mean that the transfer of title to Parcel 991, 992, and 997 to the trustee, the 1<sup>st</sup> Defendant, pursuant thereto, is invalid. Despite the transfer to the 1<sup>st</sup> Defendant as trustee, the Claimant can nonetheless assert her equitable interest in Parcels 991, 992, 997, and the personal property listed in the Bill of Sale. This is because the transfer by George to the trustee was in breach of the constructive trust under which George held title to said properties.

[157] The evidence of the Claimant is that she purchased the furniture for the Sands Hotel and the items which comprise the Sands Hotel Gift shop and T-shirt which she operated.<sup>14</sup> The Claimant also provided an inventory of her other personal items that were left in her home at the Sands Hotel at paragraphs 15 and 16 of the Second Affidavit of Ella Marie Parham and in particular, EMP 2-1 and EMP 2-2.

[158] While the furniture was purchased by the Claimant and sent from the Claimant's home in Texas, United States of America to Belize to furnish the Sands Hotel, the Claimant asserts that the same comprised the Sands Hotel and as such both she and George owned the personal items beneficially, in constructive trust, as noted above. George could not thereafter have alienated the property by virtue of the Bill of Sale, since he alone was not the legal and beneficial owner of the same. The said Bill of Sale is therefore in breach of the constructive trust that existed and the Court is therefore empowered to set aside the Bill of Sale.

[159] The Learned Editors of *Underhill and Hayton Law of Trusts and Trustees* highlighted this point succinctly at paragraph 99.13:

*“Where trust property is transferred to a third party recipient by a trustee acting in breach of trust, and the property still exists in its original form in the recipient's hands, the beneficiaries can assert a subsisting equitable*

---

<sup>14</sup> Paragraph 45 and 46 of the First Affidavit of Ella Marie Parham; Paragraph 12 of the Second Affidavit of Ella Marie Parham;

*interest in the property unless the recipient is bona fide purchaser for value without notice of the beneficiaries interest, or other defences apply (eg laches or acquiescence). Even if the recipient has acted in good faith, he must yield up any trust property that remains if he has not given value in exchange for the property. This proprietary liability is not dependent on proof of fault and although it has been said that the recipient holds the property on constructive trust, the beneficiaries' proprietary claim must be distinguished from the personal claim in knowing receipt which they can also bring against him, to make him personally accountable for the property as a constructive trustee."*

[160] Lord Browne Wilkinson in *Westdeutsche Landesbank Girozentrale* noted at page 27 of the decision:

*"Once a trust is established, as from the date of its establishment the beneficiary has, in equity, a proprietary interest in the trust property, which proprietary interest will be enforceable in equity against any subsequent holder of the property (whether the original property or substituted property into which it can be traced) other than a purchaser for value of the legal interest without notice."*

[161] The Claimant therefore asserts that she has a subsiding equitable interest in Parcels 991, 992 and 997 which subsides in the hands of the 2<sup>st</sup> Defendant, who is not a bona fide purchase for valuable consideration without notice. Those properties were transferred to him gratuitously and pursuant to the Sands Hotel Trust.

**Reliefs**

[162] If the Court agrees that there is a common intention constructive trust in relation to Parcels 991, 992 and 997, then the Claimant asks that the Court so declares and in what portion the court is able to infer and/or impute based on the whole conduct of the Claimant and George throughout their marriage and ownership of those said properties. Such a declaration would have to be made retrospective to the date of the detrimental reliance, which the Claimant says predates the settlement deed of The Sands Hotel Trust. And if this is the case, the settlement deed would have to be declared as invalid as George would not have been the sole beneficial owner so as to be able to settle the said property as he did. If the settlement deed is invalid, then the transfer of title from George to the 1<sup>st</sup> Defendant, as trustee of the Sands Hotel Trust would also have to be invalid.

[163] The Claimant reiterates the fact that the 1<sup>st</sup> Defendant is still possessed of the trust assets as trustee, as noted above, and there has not been any sale to a bona fide purchaser for valuable consideration without notice. The 1<sup>st</sup> Defendant is also not a bona fide purchaser for value without notice nor is this being asserted by the

Defendants. Having established that a constructive trust under which George held title to Parcels 991, 992, and 997 existed, the Claimant may seek to enforce her proprietary interest in equity against the 1<sup>st</sup> Defendant to whom the said properties were transferred by George, the constructive trustee. The Court can therefore find that the 1<sup>st</sup> Defendant holds title to the said parcels on the basis of the constructive trust for the Claimant in such shares as the Court determines.

[164] In the alternative, the Claimant says that the Court may order the rectification of the register in respect of Parcels 991, 992 and 997 pursuant to section 143 of the *Registered Land Act* upon declaring that the Sands Hotel Trust is invalid and in breach of the constructive trust upon which George held title to the same. This is especially so since, if declared invalid on the basis of the constructive trust and the principles outlined above, the transfer was effected on the mistaken view of the law that George was possessed with both the legal and beneficial title absolutely. The rectification would result in the said parcels reverting to the Estate of George. The Claimant says further that section 143(2) of the *Registered Land Act* does not aid the 1<sup>st</sup> Defendant who is not in possession of Parcels 991, 992 and 997 based on some valuable consideration.

### Notice

[165] The Claimant further states that the Defendants had full knowledge, at the time of the creation of the Sands Hotel Trust, and at the time that the Claimant was

dispossessed, that the Claimant was in occupation of the Sands Hotel. The 1<sup>st</sup> Defendant admitted the following:

- (1) That before he took over management, George and the Claimant had their residence in the structure which comprises the Sands Hotel;
- (2) That after George died, the Claimant's and George's furniture were left on the second floor and other places throughout the building, being the Sands Hotel;
- (3) That the Claimant's furniture were removed from the residence in the Sands Hotel;
- (4) That the residence in the Sands Hotel was remodeled and is now being rented;
- (5) That the Claimant was put in Unit No. 5 on the ground floor of the Sands Hotel; and
- (6) That the Claimant was not given the same floor space as she and George had in the residence when George and the Claimant were living there.

### **Conclusion**

[166] In light of the foregoing, the Claimant says that there was a common intention that the Claimant and the late George both had a beneficial interest in Parcel 991, 992, 997 and the Sands Hotel which they both regarded as their property. On the basis of that common intention, the Claimant made significant contributions towards



the acquisition, development and management of the said parcels and the Sands Hotel. The late George therefore held Parcels 991, 992, 997 and the Sands Hotel in constructive trust for the Claimant and himself.

### **Legal Submissions on behalf of the Defendants**

#### **Unreliability of the Claimant's Evidence**

[167] The Claimant has set forth a timeline which is replete with inaccuracies. The Defendants set out below documentary evidence which directly disproves evidence put forward by the Claimant. George and Ella Marie could not have settled in Belize in or about early 1972 as stated in [18] of the First Affidavit of Ella Marie Parham and [6] of the Skeleton Arguments. According to the Original Petition for Divorce filed by the Claimant, she and her ex-husband did not separate until the 27<sup>th</sup> of April 1973.<sup>15</sup> Additionally, according to George's Original Petition for Divorce, George and Nina separated and ceased to live together as husband and wife on 15<sup>th</sup> December, 1976.<sup>16</sup>

[168] George was also a fulltime employee of Allied Chemical Co, in Orange, Texas until the 13<sup>th</sup> of September 1976 when he ceased to work there because of a disability.<sup>17</sup> Parcel 997 was not obtained from the Government of Belize as stated in

---

<sup>15</sup> Trial Bundle p. 364 Original Petition for Divorce, tendered as **MP-2 @ [3]**

<sup>16</sup> Trial Bundle p. 377 Original Petition for Divorce, tendered as **MP-4 @ (iii)**.

<sup>17</sup> Trial Bundle p. 184, **MP1-6** of the First Affidavit of Mary Parham exhibited at @ [20]

[19] of the First Affidavit of Ella Marie Parham and at [7] of the Skeleton Arguments. George received the lot by way of a Deed of Gift<sup>18</sup> from his aunt, Antonia Ganter. George and the Claimant could not have started to build the house in 1973 as stated in the First Affidavit of Ella Marie Parham and at [8] of the Skeleton Arguments, as George was still living in the United States and working with Allied Chemical Co, in Orange, Texas. He was also still living with his former wife, Nina Parham. The Claimant states that George and his former wife divorced in or around 1976. George and Nina were divorced on 11<sup>th</sup> of July, 1977 as per the Divorce Decree.<sup>19</sup>

[169] George never acquired any lots from Arturo Alamina as stated in the First Affidavit of Ella Marie Parham and at [17] of the Skeleton Arguments. He acquired Parcel 991 and 992 from Apolonio Alamilla.<sup>20</sup>

[170] The Claimant states at [56] of the First Affidavit of Ella Marie Parham and [29] of the Skeleton Arguments that the Claimant was the one who took care of him, with some help from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. The Claimant has significantly understated Mary's role in relation to her father's healthcare. George issued a Directive to Physicians dated 9 December 2000<sup>21</sup>, designating Mary to make any

---

<sup>18</sup> Trial Bundle p. 185, **MP1-7** of the First Affidavit of Mary Parham exhibited at @ [20]; See also Trial Bundle p. 193, **MP1-8** of the First Affidavit of Mary Parham exhibited at @ [23]

<sup>19</sup> Trial Bundle p. 388, tendered as MP-5

<sup>20</sup> Trial Bundle p. 204, **MP1-10** of the First Affidavit of Mary Parham exhibited at @ [24]

<sup>21</sup> Trial Bundle p. 391 tendered as **MP-6**

decisions concerning his medical condition. George also granted Mary a Medical Power of Attorney executed on the 9<sup>th</sup> of December, 2000<sup>22</sup>.

[171] The Claimant addresses the issue of the Claimant's credibility at [87] of the Skeleton Arguments. It should be noted that the errors pointed out above were brought to the Claimant's attention in the Affidavit of Mary Parham sworn on the 15<sup>th</sup> day of February, 2018. Trial commenced on the 2<sup>nd</sup> of October, 2019, more than a year after the affidavit was served on the Claimant. No effort was made to correct those errors in amplification.

[172] Aside from flawed timelines, the Claimant's evidence also demonstrates that she either misled the court, or that she simply has no recollection or knowledge of material and significant matters in relation to this claim. The Skeleton Arguments state that it was not until after the claim that the Claimant became aware of George's wills of 1980, 1984, 1989 and the Republication of 2005.<sup>23</sup> In cross-examination, the Claimant testified that George told her about the 1980 will, and admitted that she had seen it.<sup>24</sup>

---

<sup>22</sup> Trial Bundle p. 394 tendered as **MP-7**

<sup>23</sup> [33]

<sup>24</sup> Transcript p. 18 l. 10-16

[173] During cross-examination, the Claimant also vehemently denied that she received any of the items listed in Mary's First Affidavit @ [47]<sup>25</sup>:

*“Q. The next one is the proceeds of a promissory note, \$62,500.00.*

*A. I don't know about that. Like they didn't say what was what.*

*Q. What it was for?*

*A. What it was for.*

*Q. I see.*

*A. I'm sorry.*

*Q. That's fine.*

*THE COURT: But did you receive it? Did you get it? Did you receive it?*

*THE WITNESS: Did I get what?*

*Q. The \$62,500.*

*A. No, I didn't get any money. I have sat there with nothing and no word from them.<sup>26</sup>”*

[174] However, the Claimant's witness, Ms. Kathleen Hoffman, gave evidence that she accompanied the Claimant to collect a payment of roughly US\$62,000 in relation to the San Pedro Apartments:

---

<sup>25</sup> Trial Bundle p. 153

<sup>26</sup> Transcript p. 13

*“A. I'm not aware that that was part of any of the wills. I know that there is a separate company called the San Pedro Apartments Limited and I have seen paperwork where that at one time had 13 houses under that. And it was my understanding that that occurred, that that San Pedro Apartments Limited was in relationship with Tim and Mary and George and Marie. I did witness (inaudible) Title Company a payment made to Marie on the sale of one of those houses.*

*Q. Thank you. Are you aware of the amount of that payment?*

*A. It was in the neighborhood of \$62,000.00, I believe. I couldn't be totally certain but to my recollection it was around \$62,000.00.<sup>27</sup>”*

**[175]** The Court is asked to draw the inference that the Claimant indeed received these funds, as the figure stated by Ms. Hoffman is a mere US\$500 off from the figure stated at [47](c) of the First Affidavit of Mary Parham.

**[176]** The Claimant's evidence in relation to her position as a Teamster Union Worker dramatically changed during cross examination. In her first affidavit, she deposed that she *“decided to close down [her] clothing shop and dedicate [her] time to being a Teamster Union Worker. As a Teamster Union worker, [she] drove large*

---

<sup>27</sup> Transcript p. 11

*18 wheeler freight trucks across the United States of America, and [she] was earning very decent wages. [She] was able to save most of [her] income.”<sup>28</sup>*

[177] This position significantly shifted during cross examination:

*Q. What type of work you did with the Teamsters?*

...

*Q. I see. What kind of work?*

*A. Oh, I drove a pickup truck and get to the farm and 15 parts. I almost got fired because they asked me to haul some gas (inaudible) in the car and I said no but I regretted it.<sup>29</sup>”*

[178] These contradictions cannot be attributed to age only. It demonstrates the Claimant’s attempts to embellish her claim, and her failure to put all relevant information before this Honourable Court. This renders her evidence unreliable. It would be unsafe for this Honourable Court to make the orders sought by the Claimant based on such unreliable evidence.

[179] The Claimant boldly asserts at [89] of the Skeleton Arguments that the 2<sup>nd</sup> Defendant’s attitude and behavior towards the Claimant was manifest. It is submitted that the examinations during trial revealed quite the contrary, as the Claimant openly made sarcastic and unkind comments about the 2<sup>nd</sup> Defendant as follows:

---

<sup>28</sup> Trial Bundle p. 9 First Affidavit of Ella Marie Parham @ [13]

<sup>29</sup> Transcript p. 31

*Q. I just want to ask you about one thing. You know his daughter Mary?*

*A. Oh, of course. I couldn't help but know she was there.*

*Q. It's true - -*

*A. I didn't know she was going to be his other wife.<sup>30</sup>*

[180] The Claimant went so far as to aggress the 2<sup>nd</sup> Defendant in open court, forcing the Court to intervene and reprimand her for her behavior:

*“A. ...I worked 38 years right there and Mary didn't come and work a year out of all that. She didn't come. Now, she wants it. I'd hide my face too. That's it. Now, look at me like you're supposed to.”<sup>31</sup>*

The Claimant clearly exhibited hostile behavior towards the Second Defendant.

### **Legal Submissions**

#### **No Constructive Trust was Created**

[181] According to Halsbury's Laws of England, a constructive trust arises where:

*“(1) there was a common intention that both parties should have a beneficial interest; and*

---

<sup>30</sup> Transcript p. 32

<sup>31</sup> Transcript p. 36

*(2) the claimant has acted to his detriment or significantly altered his position in reliance upon that common intention.*”<sup>32</sup>

[182] Subject to any express declaration of trust, where property is purchased in one party’s name, the beneficial ownership is presumed to reflect the legal title so that there will be sole beneficial ownership unless and until the contrary is proved. This presumption ousts any presumption of resulting trust. The first and fundamental question which must always be resolved is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or exceptionally at some later date, been any express actual agreement, arrangement or understanding reached between them that the property is to be shared beneficially.<sup>33</sup>

[183] The Claimant has provided no evidence of any discussions leading to any agreement, arrangement, or understanding in relation to the sharing of the property beneficially. In such circumstances, the court can infer common intention based on the conduct of the parties. However, *“If the conduct does not justify the court in drawing the necessary inference, the court cannot impute to the parties a common*

---

<sup>32</sup> Halsbury’s Laws of England 5<sup>th</sup> Edn (Trusts and Powers) Vol 98 (2019)) @ 117 [TAB 1]

<sup>33</sup> Halsbury’s Laws of England 5<sup>th</sup> Edn (Trusts and Powers) Vol 98 (2019)) @ 149 [TAB 2]



*intention which they did not have by forming its own opinion as to what reasonable persons in the position of the parties would have intended.*”<sup>34</sup>

[184] The Claimant relies on the principle established in *Jones v Kernott*<sup>35</sup>, whereby the relevant intention of each party is the intention which was reasonably understood by the other to be manifested by that party’s words or conduct, notwithstanding that he did not consciously formulate that intention in his own mind or even acted with some different intention that he did not communicate to the other party.

[185] Lord Walker of Gestingthorpe and Baroness Hale of Richmond held in their judgment as follows:

*“It is always salutary to be confronted with the ambiguities which later emerge in what seemed at the time to be comparatively clear language. The primary search must always be for what the parties actually intended, to be deduced objectively from their words and their actions. If that can be discovered, then, as Mr Nicholas Strauss QC pointed out in the High Court, it is not open to a court to impose a solution upon them in contradiction to those intentions, merely because the court considers it fair to do so.*

---

<sup>34</sup> Halsbury’s Laws of England 5<sup>th</sup> Edn (Trusts and Powers) Vol 98 (2019) @ 149[TAB 2]

<sup>35</sup> [2012] 1 AC 776

*In a case such as this, where the parties already share the beneficial interest, and the question is what their interests are and whether their interests have changed, the court will try to deduce what their actual intentions were at the relevant time. It cannot impose a solution upon them which is contrary to what the evidence shows that they actually intended. But if it cannot deduce exactly what shares were intended, it may have no alternative but to ask what their intentions as reasonable and just people would have been had they thought about it at the time. This is a fallback position which some courts may not welcome, but the court has a duty to come to a conclusion on the dispute put before it.”<sup>36</sup>*

[186] The evidence before the court and the evidence that arose at trial reveal that there was never any common intention that both George and the Claimant should have a *beneficial interest* in the Properties. In fact, George expressly recorded by way of several wills that he owned the Properties separately numerous times. The Claimant gave evidence that “*George told her that he had a parcel of land, Parcel 997, on which he would build a home for himself and the Claimant.*”<sup>37</sup> However, it is not enough for the parties to have shared an intention to share the use of the property. As was held in *Lloyds Bank Plc. v Rosset and Another* -

---

<sup>36</sup> Ibid @ [46] - [47]

<sup>37</sup> Trial Bundle p. 9 First Affidavit of Ella Marie Parham @ [19]

*“The question the judge had to determine was whether he could find that before the contract to acquire the property was concluded they had entered into an agreement, made an arrangement, reached an understanding or formed a common intention that the beneficial interest in the property would be jointly owned. I do not think it is of importance which of these alternative expressions one uses. Spouses living in amity will not normally think it necessary to formulate or define their respective interests in property in any precise way. The expectation of parties to every happy marriage is that they will share the practical benefits of occupying the matrimonial home whoever owns it. But this is something quite distinct from sharing the beneficial interest in the property asset which the matrimonial home represents.<sup>38</sup>”*

[187] The Claimant’s evidence is essentially that George promised to provide a home for her. The Claimant has failed to go a step further and prove that she and George intended to share a beneficial interest in the Properties. George expressly negated any such intention multiple times by way of provisions in his will and his conduct.

---

<sup>38</sup> Ibid @ 127 - 128

[188] George recorded in his 1980 will that he “*is the owner of property situated in San Pedro Village, Ambergris Cay, Belize, Central America, on lot 2, Block 11. All of the aforesaid property was either acquired by me before my marriage to Ella M. Parham or purchased by me as my separate property out of moneys which were my separate moneys before my marriage to Ella, and therefore such property is held by me as my separate property.*”<sup>39</sup> He then devised the property and the hotel to Mary.

[189] In George’s subsequent will in 1984, he reaffirmed that he acquired Parcel 997 before he married the Claimant. In this will he also made provision for Parcels 991 & 992, and declared that those parcels were purchased by him as his separate property with money from the sale of lands on Ambergris Caye which belonged to him before his marriage to the Claimant. In this will George again leaves the Properties and the hotel to Mary.<sup>40</sup>

[190] In his last will and testament, which was executed in 1989 and republished in 2005, George devised the Properties to Mary along with the Hotel and the gift shop situate on the property.

[191] Since 1980, George ensured that he continuously recorded that the properties were purchased by him with his separate funds, and maintained his intention that Mary should receive the Properties.

---

<sup>39</sup> Trial Bundle p. 234-235 **MP1-18** First Affidavit of Mary Parham @ [35]

<sup>40</sup> Trial Bundle p. 241-242 **MP1-19** First Affidavit of Mary Parham @ [36]

[192] The Skeleton Arguments wrongfully assert that the abovementioned wills evidence an intention that the Claimant was to have an interest in the said properties. The Claimant relies on the provisions in the wills as extracted in [73] of the Skeleton Arguments in support of its assertion. However, these extracts make reference to provisions in George’s wills granting Ella Marie certain interest in the net income of the operation of the hotel business, and at no point in time grants her proprietary interest in the Properties.

[193] The Claimant’s own evidence reveals that she did not share any common intention with George that they held the Properties jointly. When asked whether George considered the land on which the hotel was built to be his alone, she agreed:

*“Q. What I want to suggest to you is Mr. Parham at all times considered the land on which the hotel is built to belong to him and him alone.*

*A. That was his idea.”<sup>41</sup>*

[194] The Claimant and George were married in 1978. George’s first will was made in 9<sup>th</sup> October, 1980, which means that he made his intentions in relation to the ownership of the Properties clear two years after his marriage to the Claimant. The Claimant herself gave evidence that she never pursued any beneficial interest in the

---

<sup>41</sup> Transcript p. 16

property, and simply assisted her husband in operating the property. In re-examination, Learned Counsel for the Claimant asked:

*“Q. Just now, Ms. Ella, you were asked by My Learned Friend if the hotel was George's and you said ‘I said it was mine, it was mine. If I said it was his, it was his.’ What do you mean by that?*

*A. If he had told me it's his hotel, I wouldn't fight with him. Why would I fight with him when I knew I wasn't trying to claim the hotel, I was trying to build the hotel. I wasn't fighting for my part. I didn't know I had a part.”<sup>42</sup>*

[195] The Claimant’s own witness, Mr. Abel Guerrero, gave evidence that George owned the Sands Hotel solely:

*“Q. I put it to you that George never intended for the hotel and property to be owned by both him and Ella Marie.*

*A. I think so, yes.*

*Q. I put it to you that George owned the Sands Hotel and the property it is situated on separate and apart from Ella Marie.*

*A. Yes, he owned it solely.”<sup>43</sup>*

---

<sup>42</sup> Transcript p 36

<sup>43</sup> Transcript p. 52

[196] The Claimant has provided account statements of a joint account held by her and George<sup>44</sup>, but it is submitted that these statements are of no import, as the Claimant has not established that these joint funds were used for the improvement or preservation of the Properties. In summary, it is submitted that the Claimant has not discharged the burden of proof required of her<sup>45</sup> to establish any common intention of beneficial ownership of the Properties.

**The Claimant did not act to her detriment in reliance on any alleged common intention**

[197] Without prejudice to the Defendants' position that there was no common intention of joint beneficial ownership of the Properties, in the event that the Court finds that there was indeed common intention, it is submitted that the Claimant has not satisfied the second limb of the test to establish a constructive trust, being that the Claimant has acted to her detriment or significantly altered her position in reliance upon that common intention.

[198] According to **Underhill and Hayton Law of Trusts and Trustees**<sup>46</sup>,

*“In order to show that W acted to her detriment in reliance upon the common intention there has to be some ‘link’ or ‘referability’ between the common intention and the conduct claimed to have been based upon*

---

<sup>44</sup> Trial Bundle p. 59, **EMP1-8** First Affidavit of Ella Marie Parham @ [47]

<sup>45</sup> **Stack v Dowden** [2007] 2 AC @ [56]

<sup>46</sup> p 560 @ 30.25 [TAB 4]

*that common intention. Where the express common intention was that W was to acquire over the years a fair share based on her financial contributions to the costs of the acquisition or improvement of the house... then W obviously needs to prove that she made such contributions.”*

[199] It is submitted that the quality of evidence produced by the Claimant would not satisfy this requirement. The Claimant has not submitted any proof of her alleged purchasing of items for the hotel, such as receipts, nor has she submitted any records of her alleged income which she supposedly used to assist with the purchase of the Properties. She submitted no cancelled checks from her personal account evidencing, which may have evidenced her alleged spending of her personal funds.

**No Resulting Trust was Created**

[200] The Claimant avers that a resulting trust arises with respect to parcels 991 and 992 only, as she contributed towards the acquisition of the said two properties. Such a resulting trust would be categorized as the first circumstance described by Lord Brown-Wilkinson in *Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] A 669 as stated in [95] of the Skeleton Arguments.

[201] This first circumstance presumes that the Claimant paid in part for the purchase of the property, which is now vested in George’s estate alone. As stated



above, the Claimant failed to produce any or any sufficient evidence of payment toward the purchase of the Properties. She did not state how much funds she advanced towards the purchase price. She also did not present any bank records or documentation evidencing the use of her personal funds for the purchase of the Properties. Therefore, the Court is not in a position to properly find that any resulting trust arose.

[202] The Skeleton Arguments aver at [98] that the Claimant paid half of the purchase price for Parcels 991 and 992. Based on a review of affidavits and the examinations, no such evidence was ever given. The relevant line of questioning was as follows:

*“Q. I want to suggest something to you. You tell me whether you agree or not. The property on which the hotel sits was bought by George with his own money. Do you agree or disagree?”*

*A. I disagree. I disagree. We put our money together and bought it.*

*Q. The hotel itself –*

*A. I went to New Orleans to Tuto and paid him half of the money and told him I'd pay it later the rest of it.”<sup>47</sup>*

---

<sup>47</sup> Transcript p. 34

[203] The “*half*” referred to in the questioning referred to half of the purchase price, and did not state that the Claimant contributed half of the purchase price. Moreover, the parcel on which the Hotel sits is Parcel 997, which was gifted to George by his aunt. Parcels 991 and 992 were acquired from Apolonio Alamilla, referred to by the parties as “Tuto”. Upon a close analysis of the Claimant’s response, when referring to the transaction, she states “*we put our money together and bought it*”, and does not say whether she and George contributed to the payment equally. She then goes on to say “*I went to New Orleans to Tuto and paid him half of the money and told him I'd pay it later the rest of it.*”

[204] Earlier in her cross examination, the Claimant was expressly asked about the money used to purchase the land on which the Sands Hotel sits. Her response was equivocal:

*“Q. Now, Mr. Parham bought land on which the Sands Hotel sits?”*

*A. Well, he didn't buy. I took care of it because I thought it was valuable and I told him to shut down the work. We are going to Louisiana to buy that property.*

*Q. The property in San Pedro where the hotel is, Mr. Parham bought it with his own money?”*

A. *He might have helped me. I don't know. We got the money together. We went to Louisiana to Tuto and paid him. I had the money. I mean, I was holding the money, our money cause I wanted to pay for it.*<sup>48</sup>

[205] The Claimant starts her answer by stating “*He might’ve helped me. I don’t know.*” She thereafter twice refers to the funds as “*the money*” as opposed to “*her and George’s money.*” It can be inferred that she only assisted in effecting the transaction, and not necessarily having contributed her own funds for payment. However, the Court cannot even be certain of this because the Claimant herself states that she does not know.

***The Trust was lawfully settled and cannot be invalidated***

[206] The second question posed by the Claimant was, “*If the Court answers the first question in the affirmative, then the following question is, could George have validly settled Parcels 991, 992, and 997 under the Sands Hotel Trust?*”

The Defendants respectfully submit that the court cannot answer the first question in the affirmative.

[207] As per *Stack v Dowden*<sup>49</sup>, “*Where the title to a dwelling house is taken in one name only, the presumption is that there is sole ownership in the name of the proprietor.*” It is submitted that the Claimant has failed to displace this presumption,

---

<sup>48</sup> Transcript p. 16

<sup>49</sup> [2007] 2 AC @ 8 (Tab 6 of the Skeleton Arguments)

because she has not established a common intention that she should hold the Properties beneficially with George. As such, the state of affairs remains as George's estate having sole legal title to the Properties.

[208] George, having been the sole absolute and beneficial owner of the Properties during his lifetime, possessed the power to settle the Properties in trust, and in fact did so. No breach of constructive trust could have arisen, as no constructive trust existed. Consequently, the Trust remains valid and enforceable, as having been created in accordance with the provisions of the Trusts Act.

[209] The Claimant seeks relief in the form of rectification of the register pursuant to section 143 of the Registered Land Act. With respect, it is submitted that this remedy is only allowed in the circumstances as stated in that section, namely where registration has been obtained by fraud or mistake. No fraud or mistake has been alleged in this claim. Consequently, the relief sought should not be granted.

### **Conclusion**

[210] The Claimant holds no beneficial interest in Parcels 991, 992, 997. The Defendants have presented overwhelming evidence to show that George never intended for the Properties to be held beneficially by the Claimant. In the premises, there are no grounds to invalidate the Sands Trust. The claim should be dismissed with costs to the Defendants.

## **Decision**

[211] I wish to thank both counsel for the extensive submissions made in this matter which have greatly assisted this court in reaching its decision. Having examined the issues in light of all the evidence presented and in the context of the written submissions which provide guidance on the law in the context of the arguments raised on behalf of the Claimant and the Defendant in order to determine this dispute between the parties, and having closely examined all the evidence presented in this case e.g. the photographs of the hotel, the joint bank accounts of Ella Marie and George Parham, the affidavits as well as the viva voce evidence of all the witnesses, the three Wills, The Republication of Will, the trust document, I am unable to find any evidence of a common intention between George Parham and Ella Marie Parham which would ground the constructive trust or the resulting trust argued for on behalf of the Claimant. As correctly stated by Mr. Courtenay SC in his submissions on behalf of the Defendants, Halsbury's Laws of England (Edition) states that a constructive trust exists where -

*“(1) there was a common intention that both parties should have a beneficial interest; and*

*(2) the claimant has acted to his detriment or significantly altered his position in reliance upon that common intention.”*

There are two limbs that must be satisfied in order for the courts to find that a constructive trust exists. The evidence from the Claimant has been contradictory and her allegations that she contributed to the acquisition of these properties are unsubstantiated. This is clearly due in large part to the fact that the Claimant is a person of advanced age and as she honestly admitted in the witness stand, a long time has passed since the 1970's, so she simply cannot remember the details and the timeline of pertinent events. While the court is both cognizant of and respectful of the delicate state of the Claimant's memory due to her advanced age, the quality of her evidence is so poor that the Court cannot safely rely on her testimony which is essential to establish her claim. The witness could not recall e.g. what year she and George were married, what year George died, whether or not she had received any money from George's estate, when it was she found out George had made a will, etc. For the court to find that a resulting trust existed in favor of the Claimant, since the legal title was in the name of George Parham alone, it was essential for the Claimant to produce evidence of her contributions to the acquisition of these properties of a high standard to rebut the strong legal presumption that George Parham was the sole owner of these properties since the legal titles were in his name alone; the Claimant has failed to produce any such evidence. There was evidence of a joint bank account between George and Ella Marie, but there was no nexus proven between that account and the building of the hotel and/or the purchase of the lots in

question. There were no receipts provided by the Claimant to establish any type of financial contribution allegedly made by her to the acquisition of the properties in question.

[212] What is very clear from the evidence from both the Claimant and the Defendants is that the late George Parham made extensive provision for his wife Ella Marie to live a comfortable life for as long as she lived after his death. The evidence showed that while he did not leave her a beneficial interest in the Sands Hotel and Lots 997, 992 and 993 as she had anticipated, Mr. Parham kept the promise he had made to Mrs. Parham to provide for her by making sure that his wife Ella Marie Parham received the following after his death:

- i) His interest in the San Pedro Apartments Limited Partnership worth US\$250,000.00 which now provides her with between US\$1,000.00 – US\$2,000.00 per month. Copies of a balance sheet and several receipts of the proceeds of the partnership are now exhibited as **MP1-22**.
- ii) His life insurance in the amount of US\$50,000.00.
- iii) The proceeds from a promissory note of US\$62,500.00 which she received after the Settlor's death.
- iv) A promissory note in the amount of US\$100,440 from which she now receives US\$794.27 per month. A copy of the Promissory Note dated 1<sup>st</sup> October 2014 and marked **MP1-23** is now produced and

shown to me and exhibited hereto.

v) A mortgage-free 3,847square foot house in an exclusive neighborhood in Houston, Texas which he left in her name. This tax statement showing the particulars of the house is exhibited as **MP1-2** herein.

vi) Savings accounts in US bank accounts worth approximately \$50,000.00

vii) A Chevrolet and a Dodge Van; and

viii) Health insurance for the rest of her life.

I also take note of the Claimant's witness Ms. Kathleen Hoffman who testified that she saw one Will where George Parham awarded Ella Marie Parham at least one million US dollars among other things; it was Ms. Hoffman's evidence that George made substantial provision for Ella Marie while he was alive and after his death.

[213] As rightly stated by Mr. Courtenay SC in his submissions, the evidence from all three wills and the republication of will show that George Parham's intention was that after his death, Ella Marie was to enjoy a life interest **in the net income** from the operation of the hotel (which he solely owned while he was alive). It was also Mr. Parham's intention that his daughter Mary Parham would become the beneficial owner of the properties after his death. At no point in time was it Mr. George



Parham's intention that he and his wife Ella Marie Parham shared ownership of the hotel and the three lots; it is clear from the wording of the wills and the republication of will that George Parham never considered Ella Marie's interest in those properties to be proprietary. This has been very clearly established as far back as the date of his first will in 1980, and his intention was consistently demonstrated by the terms of his wills in 1984 and 1989 as shown in Exhibits **MP1-18, MP1-19 and MP1-20**. The witness Mary Parham has given evidence, which I accept as true, that it was her father's dream to establish the Sands Hotel as a tribute to his own father's legacy and to the Parham family name since his grandfather had been living in San Pedro since the 1800s; I also accept as true the evidence of Mary Parham that her father George Parham intended that these properties remain for his children and grandchildren. I find that these properties were intended by Mr. Parham to remain as Parham family property; Lot 997 on which the hotel sits had been gifted to Mr. Parham from his aunt, and the other two lots had been bought by him with his personal funds alone. It is also clear from the language of the wills that George Parham stated clearly that these properties were purchased by him alone with his own money, to the exclusion of his wife Ella Marie. Mr. Parham's clearly states in his 1980 will that he *"is the owner of property situated in San Pedro Village, Ambergris Cay, Belize, Central America, on lot 2, Block 11. All of the aforesaid property was either acquired by me before my marriage to Ella M. Parham or*

*purchased by me as my separate property out of moneys which were my separate moneys before my marriage to Ella, and therefore such property is held by me as my separate property.”*<sup>50</sup>

[214] Mr. Parham made it patently clear in his wills that these properties were intended by him to be for his children and grandchildren. He said in paragraph 8 of Clause 7 of his 1980 Will that if he were to die before completing construction of the hotel, then his Executrix Mary Parham was to complete the construction with any funds in his estate for such purpose. I have noted and accept as true the evidence that George Parham was a very industrious person and an ambitious and astute businessman. His daughter Mary Parham has produced evidence of conveyances of other properties in San Pedro acquired by him between 1961 and 1970, long before his marriage to the Claimant; the sale of these “Habaneos Properties” generated substantial income for Mr. George Parham as the prices per properties sold as shown by three of these conveyances exhibited are US\$13,000 in 1977, US\$33,000 in 1988 and US\$50,000 in 1990. I find that the evidence shows that there was never any common intention between Ella Marie and George that they were to own the three lots and the hotel jointly; on the contrary, the evidence points overwhelmingly to the fact that George Parham owned these properties by himself and he was therefore

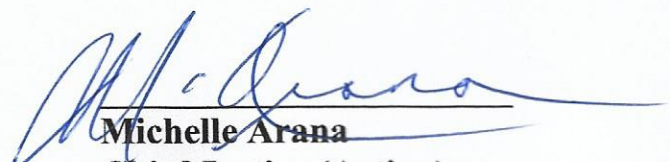
---

<sup>50</sup> Trial Bundle p. 234-235 **MP1-18** First Affidavit of Mary Parham @ [35]

legally entitled to dispose of them as he desired. The Claimant herself said in her own evidence that she would not have argued with George if he had told her that these lots and the hotel were his alone. The Claimant's witness Mr. Guerrero (who personally knew both George and Ella Marie since the 1970s) also said that George never intended for the Sands Hotel and property to be jointly owned by George and his wife Ella Marie. I therefore find that, based on the evidence before me, the Claimant has failed to establish on a balance of probabilities that her late husband Mr. George Parham held Parcels 991, 992, 997 and the Sands Hotel in resulting and/or constructive trust for the Claimant and for himself. Having found that the Settlor did not hold the Parcels 991, 992 997 and the Sands Hotel in resulting/constructive trust for the Claimant and that Mr. George Parham owned those properties solely, I find that the Claimant Mrs. Ella Marie Parham has no beneficial interest in these properties and that the Sands Hotel Trust and the Bill of Sale are valid and enforceable.

The Claim is dismissed with costs to the Defendants to be agreed or assessed.

Dated this 31<sup>st</sup> day of March, 2021

  
Michelle Arana  
Chief Justice (Acting)  
Supreme Court of Belize