

IN THE COURT OF APPEAL OF BELIZE, A.D. 2022

CIVIL APPEAL NO. 38 OF 2018

BETWEEN:

ALVIN STEPHENSON SR.

APPELLANT

V

AUDREY FAYE PYNE

RESPONDENT

Before the Honourable:

Madam Justice Hafiz Bertram

President (Ag.)

Madam Justice Woodstock-Riley

Justice of Appeal

Mr. Justice Peter Foster

Justice of Appeal

Appearances

Ms Nazira Uc Myles for the Appellant

Mr Anthony Sylvester for the Respondent

12 October 2021 and 9 June 2022

JUDGMENT

HAFIZ BERTRAM P (Ag)

Introduction

[1] This appeal is in relation to the breach of an oral partnership agreement made in 2012 ('the 2012 agreement') between the Appellant, Alvin Stephenson Sr. ('Alvin') a farmer who resides in Willows Bank, Belize District, Belize and the respondent, Audrey Pyne ('Audrey') a Belizean-American Nurse residing in Belize but previously

resided in the United States of America ('US'). Alvin and Audrey were longtime friends and entered into the partnership agreement to rear pigs and chickens ('the business') on Alvin's farm for sale and sharing of profits between them. Audrey sent money from the US to Alvin for the business and Alvin provided the labour.

[2] Alvin's farm was a 20.3 acres leasehold property from the Government of Belize, located at Willows Bank ('the property'). Audrey sent money to pay off the purchase price of the lease property with the promise from Alvin that he would later transfer title to her and her two daughters. After the purchase price was paid off, the property was never transferred to Audrey. In 2017, Audrey terminated the 2012 agreement on the basis that there was fraudulent misrepresentation by Alvin as she never received any accounting from him for the business and the property was not transferred to her. At that time, the business was not operational.

[3] Audrey brought a claim for damages and other reliefs for breach of contract and fraudulent misrepresentations on the 2012 agreement. Audrey claimed an order directing repayment by Alvin for breach of contract in the sum of BZ\$188,800.00, or such sums the court finds to be owing as her venture capital in the business; An order directing repayment by Alvin to Audrey of the value of each of the investments at the date of transfer by Audrey; or alternatively an order directing Alvin to indemnify Audrey for all her investments in the business; A true account and full disclosure of all the assets bought with Audrey's money for the business and of all profits made therefrom; Damages for fraudulent misrepresentation by Alvin against Audrey; A declaration that she is the beneficial owner of the property; injunction and costs. The claim was against Alvin and his two sons but was later withdrawn against the sons (second and third defendant). Alvin denied the claim and stated that the business failed. He admitted to receiving monies from Audrey but not the sum claimed by her.

[4] On 23 November 2018, Abel J, the trial judge ordered Alvin to pay Audrey \$40,000.00 as damages for misappropriation of monies and granted, among other orders, a declaration that Audrey is entitled to the beneficial ownership of the property.

[5] Alvin appealed and the appeal came up for hearing on 12 October 2020. At the conclusion of the hearing, the Court requested counsel on both sides to speak to their

clients about going to mediation. The Court indicated the difficulty with the pleadings and evidence.

[6] None of the parties had carried out a proper accounting of monies sent and received. Further, documents which were disclosed were not put into evidence. Mr. Sylvester and Mrs. Myles indicated to the Court, after speaking to their clients, that they have consented to mediation. The Court then made the following order:

- (1) The Court reserves its decision;
- (2) By consent, the Appellant and Respondent will go to mediation;
- (3) Mr. Sylvester to indicate by letter the Mediator chosen;
- (4) Parties to report to the Court within seven days after mediation.

[7] By letter dated 21 March 2022, the Mediator, Julie-Ann Ellis Bradley informed the Court through the Registrar of the Court, that the Mediation was conducted on 16 March 2022 and "*The parties did not settle.*" This Court therefore, has to now make a determination on the appeal.

[8] The main issues argued in the appeal were whether the learned judge erred when he (a) awarded \$40,000.00 to Audrey as damages for misappropriation of monies; and (b) granted a declaration that Audrey is entitled to the beneficial ownership of 20.3 acres of land in Willows Bank, the property.

[9] In my view, the appeal should be partly allowed as the trial judge erred in (a) awarding \$40,000.00 to Audrey as damages for misappropriation; and (b) granting a declaration that Audrey is the beneficial owner of the property. I am of the view that Audrey has an equitable interest in the property and this should also be assessed by the Supreme Court. Further, I am of the view that Alvin breached the 2012 agreement as he failed to give a true account of the business to Audrey for each year that it was in operation, that is, from 2012 to 2017 and is liable in damages for that breach which must be assessed by the Supreme Court.

The Background

[10] Audrey and Alvin, by the 2012 agreement, agreed to rear and sell chicken and pigs and share the profits. It was an expressed term of the agreement that Audrey would provide all the finances and Alvin would provide all the labour expertise and knowledge to operate the business. It was also agreed between the parties that the profits of the business would be saved in an account in Belize in the name of the business to be shared between them. Audrey planned to let her share accumulate and would use it to build a retirement home in Belize. Additionally, it was agreed between herself and Alvin that Audrey would send money to pay off the purchase price on the leasehold property with the promise that he will transfer it to her later.

[11] Audrey sent money for the business and money to pay off the purchase price of the property. She has never received profits from the business and the property was not transferred to her as agreed. In 2017, after learning that the business no longer exists, she rescinded the agreement and sued Alvin by a claim filed on 19 December 2017. Audrey claimed that between June 2012 and December 2014, she gave, sent or wired to Alvin approximately BZ\$188,800.00 towards the establishment, upkeep and daily operations of the business. At paragraph 15 of her statement of claim she claimed that the following items were purchased or obtained for the business with her money:

- (a) 400 head of pigs weighing between 50 to 150 pounds;
- (b) 300 live chicken weighing between 5 to 8 pounds;
- (c) A chicken plucker (refurbished) silver in colour and valued at \$1000;
- (d) A feed maker for the animals purchased from Spanish Lookout green and silver in colour and valued at \$1500;
- (e) A power saw purchased from universal hardware at the price of \$350.00;
- (f) Real property being 20 acres in Willows Bank, Belize District held under Ministers Fiat Grant No. 84 of 2016;
- (g) A black laptop valued at \$1400.00; and
- (h) Toilet set valued at \$350.00.

Under the heading of particulars of loss and damage Audrey claimed the value of the above (in paragraph 15) as her particulars of loss or alternatively the claim for BZ\$188,800.00. Further, the value of the property.

The claim in relation to damages for fraudulent misrepresentation

[12] Audrey also claimed that the business ran its course under the management of Alvin for some time until she began to suspect wrongdoings by him in February of 2015. In 2015, Alvin represented to her by telephone conversations that the business was going well and that all livestock were intact. In 2016, he told her by telephone that the business was losing because of the death and sickness of the livestock. She confronted him and the business came to an end in 2017.

[13] She claimed that the representations were in fact false and that Alvin was (a) in breach of the agreement because he failed to give a true account of the business to her for each year that it was in operation, that is, from 2012 to 2017 and (b) Alvin refused and failed to transfer the title of the property to Audrey and her daughters as agreed.

[14] Further, that Alvin made the representations fraudulently, in that he knew they were false or did not believe them to be true, or was reckless, not caring whether they were true or false. The particulars of fraud being:

- (a) In 2015, Alvin sold or otherwise disposed of the livestock and equipment of the business without Audrey's consent;
- (b) In August 2017, Alvin failed to transfer the property to Audrey and her two daughters, having used Audrey's money to purchase the property and having promised to convey it to them. Further, he knew that he could not do so, as his children and ex-wife were still living on the property.

[15] Audrey claimed that after she discovered that the representations made by Alvin were false, she rescinded the business partnership agreement by letter delivered to Alvin dated 20 September 2017, and requested an account for the business. Further, she claimed the value of the 20.3 acres property.

[16] The reliefs claimed by Audrey were:

- (a) An order directing repayment by Alvin for breach of contract in the sum of BZ\$188,800. or the sum the court finds to be owing as Audrey's capital in the business;
- (b) An order directing repayment by Alvin to Audrey of the value of each of the investments at the date of transfer by Audrey; or alternatively an order directing Alvin to indemnify Audrey for all her investments in the business;
- (c) A true account and full disclosure of all assets bought with Audrey's money for the business and all of the profits made therefrom;
- (d) damages for fraudulent misrepresentation against Alvin;
- (e) A declaration that Audrey is the beneficial owner of the property in the name of Alvin; or alternatively a declaration that Audrey has an equitable interests in the property equal to her investment ;
- (f) An injunction preventing Alvin from selling, leasing, subdividing, mortgaging or dealing in anyway with the property in Alvin's name until the conclusion of the matter;
- (g) Interests on any sum found due from Alvin to Audrey at such rates and for such period as may be just by way of compensation pursuant to section 166 of the Supreme Court of Judicature Act, Chapter 91 , from the 20th of September 2017 until payment or judgment;
- (h) Costs and or other relief.

The defence

[17] Alvin denied the agreement existed and if it is so, he denied breaching the agreement or caused loss or damage in the sum of \$188,000.00. Alvin stated that the money sent to him was for the investment into the business. Further, he and Audrey were in a common-law relationship and had agreed to set up a joint business. She would put the money and he would put the labour and other kind of inputs. He believed that the business would be prosperous and they would share the profits equally. Alvin stated that the business failed and they lost all their investments.

[18] Alvin stated that the business of rearing the chicken and pigs were on land which he owned or had rights to use. Further, he promised Audrey that as his common law wife he would give her, upon his death, the 24 acres property he has

received from his father and the 20.3 acres of property that belonged to him. Further, that he made a will in 2012 and made these provisions for Audrey. Alvin stated he has not revoked the will and it was never his intention that the properties were to pass to her when he was alive.

[19] Alvin admitted that the following monies were invested by Audrey:

- (a) \$6,000.00 to clear down 24 acres of land which was in the name of Robert Stevenson;
- (b) \$2,100. to pay 7 workmen;
- (c) \$3,000. to pay four persons to spray the land;
- (d) Audrey bought 300 pounds of corn seeds for \$450
- (e) \$1,500. to plant the corn seeds on the lease property;
- (f) \$5,000. towards the purchase price of the lease property;
- (g) \$2,000. to re-survey the lease property;
- (h) \$3,000. to purchase piglets from the prison;
- (i) \$3,000. to purchase 22 pigs from Mr. Thompson;
- (j) \$450. to buy corn seeds to be planted on a farm at Rancho Dolores;
- (k) \$1,500. to plant 200 pounds of corn seeds;
- (l) \$300. For the purchase of baby chicks;
- (m) \$350.00 for chain saw;
- (n) A laptop for \$2,800.00;
- (o) \$1,500.00 for a feedmill;
- (p) \$1,000. For a used chicken plucker;

The judgment of the trial judge

[20] The judge gave an oral decision on 6 June 2018. The written judgment was later handed down on 30 July 2019. The following Order was made by the judge:

- (i) Alvin to pay Audrey \$40,000 as damages for misappropriation of monies;
- (ii) A declaration that Audrey is entitled to the beneficial ownership of the 20.3 acres property;
- (iii) Alvin holds the property as trustee for Audrey until the transfer is effected;

- (iv) An injunction against Alvin from selling, leasing, sub-dividing, mortgaging or dealing in any way with the property;
- (v) Alvin to pay Audrey 50% of the prescribed costs in the sum of \$5,625.00.
- (vi) In relation to the property, the judge ordered that Audrey is granted permission to apply to the Court to carry out the terms of the Order.

[21] Under the heading of “Costs” the trial judge said the following:

“[73] This court will give Audrey Payne 50% of her prescribed costs, because the claim against the other defendants was withdrawn, quite appropriately, in the view of the court, and partly because Audrey Payne has not wholly succeeded in her claim for \$188,000.00.

[74] The value of the claim which this court has ordered is obviously \$40,000.00 which excludes the land which is valued at BZ\$5,000.00. So I will make an addition in favour of Ms. Payne of BZ\$5,000.00. So that’s \$45,000.00.”

The appeal

[22] By Notice of Appeal issued on 20 December 2018, Alvin appealed the judgment of the trial judge delivered orally on 6 June 2018, and the Order perfected on 3 December 2018. The written judgment was handed down on 30 July 2019. The grounds of appeal are:

1. That judgment is substantially against the weight of the evidence.
2. The judge erred when he ruled that Audrey is entitled to \$40,000.00 damages for misappropriation of monies due to her by Alvin. There is no or sufficient evidence for the judge to make a determination of misappropriation. Misappropriation was not claimed as a cause of action nor was any evidence adduced to this effect. Misappropriation must be specifically pleaded and proven.
3. Additionally the judge erred when he ruled that Audrey is entitled to \$40,000 damages for misappropriation of monies due to her by Alvin. That even if the damages were awarded for breach of contract which was claimed,

Audrey proved little or no damage caused amounting to \$40,000. Audrey is only entitled to monies proven to be paid under the contract or as admitted by Alvin in his defence.

4. The judge erred when he concluded that in the face of the evidence Audrey is the beneficial owner and entirely the owner of the property and that Alvin is holding the same as trustee for her until the transfer to her is effected.

[23] The relief sought by Alvin was:

1. The setting aside of the orders made by the trial judge;
2. A declaration that Alvin is the beneficial owner of the property;
3. An Order that Audrey is entitled to damages for breach of contract in the sum of \$28,300.00
4. That Alvin be paid costs of the court below and Court of Appeal.

[24] Mrs. Myles at paragraph 5 of her skeleton arguments stated that grounds 2 and 3 would be dealt with together and ground 4 separately. Ground 1 in its overall application to the other grounds will be addressed as each ground is explored.

[25] The issues to be considered are: (1) Whether Audrey is entitled to damages for misappropriation of monies due to her by Alvin; (2) Whether Audrey is entitled to damages for breach of the 2012 agreement; (3) Whether the judge erred when he ordered that Audrey is entitled to the beneficial interest in the property;

Whether Audrey entitled to damages for misappropriation of monies due to her

[26] The issue considered by the trial judge in relation to fraud was "*Whether Alvin Stephenson misappropriated, to use my term, assets including livestock and other produce of the farm for his own use and benefit?*" The judge accepted Mr. Pook's evidence, the witness for Alvin, that the pigs were not getting fed because of a lack of feed and some may have died from starvation. He also accepted Mr Pook's evidence that there may have been a year's drought and 'army worm' might have eaten some of the corn crops for about one year. That no account had been given for the other years.

[27] At paragraph 52 of the judgment, the judge noted that having heard the witnesses and assessed them, he concluded Alvin turned dishonest. During cross-examination he was evasive and not truthful. He made the following findings:

(i) Alvin was dishonest when he put the property in his name since Audrey paid “entirely for the land at his request.” He found from the documentary evidence that Alvin paid \$3,380.00 but he collected from Audrey \$5,000. (para 54);

(ii) If the evidence of Alvin, contrary to the court’s findings does not point to dishonesty, the court was satisfied that Alvin certainly was far from transparent with Audrey about his dealings;

(iii) Nevertheless, the judge found that Alvin “misappropriated a significant amount of the funds.” – (para 57).

(iv) At paragraph 58 of the judgment, the judge noted that it was difficult to say how much was misappropriated because Alvin has never accounted to Audrey and that's another reason that draws serious suspicion around him. Further, if he had attempted to be transparent, it would dispel a lot of any suspicion that is around him. The Court concluded that a lot of the pigs were sold and the monies were kept.

(v) The judge found that the real cause of the failure of the venture eventually and the total failure of the venture, if indeed it did totally fail resulted from acts beyond the control of either Audrey or Alvin. Further, the court found that such loss of livestock was largely due to misappropriation and dishonesty by Alvin. (para. 60)

[28] Although the trial judge found that there was an agreement between Audrey and Alvin, there was no expressed finding of breach of contract or that Audrey was entitled to damages for breach of contract or damages for fraudulent misrepresentation. The closest the judge came to making a pronouncement on liability is at paragraph 72 of his judgment where he said:

“[72] Now, in relation to the amount of \$40,000. which this court has ordered, in the event that it's not clear, that is by way of **damages for fraud perpetrated by Mr. Stevenson on Audrey Payne by way of misappropriation**, and in

relation to which I am ordering repayment of monies due to the Claimant.”
(emphasis added)

[29] Learned counsel, Mrs. Myles submitted that misappropriation must be specifically pleaded and proven and this was not a cause of action in this case. I agree with Mrs. Myles. Mr. Sylvester submitted that the judge did not use the word ‘misappropriation’ in the legal sense. Accepting that is so, the cause of action by Audrey was damages for breach of contract and fraudulent misrepresentation. Even if the award by the judge is made under the claim of damages for fraudulent misrepresentation, that part of the claim, in my view, cannot succeed, as will be discussed below.

[30] The finding of an agreement between Alvin and Audrey is not in dispute by the parties. The judge found that there was fraud and the reason for that was that Alvin turned dishonest and awarded damages for fraud and a declaration that Audrey is entitled to the beneficial interest in the property. These are the crux of the complaint by Alvin.

[31] Alvin takes issue with the \$40,000.00 damages awarded for fraud. This Court ought not to interfere with the finding of fraud and the orders made by the trial judge except where there are clear grounds for doing so. The trial judge may have awarded damages under this heading although misappropriation not pleaded. I will therefore consider the claim for damages for fraudulent misrepresentation and whether that had been proven by Audrey.

The law in relation to misrepresentation

[32] In **Halsbury’s Laws of England, Misrepresentation (Volume 76 (2019))** at para 701, the learned authors said:

“701. Misrepresentation as a ground for the rescission of a contract or the award of damages.

A misrepresentation is a positive statement of fact or law, which is made or adopted by a party to a contract and is untrue. It may be made fraudulently, carelessly or innocently. Where one person ('the representor') makes a misrepresentation to another ('the representee') which has the object and result

of inducing the representee to enter into a contract or other binding transaction with him, the representee may generally elect to regard the contract as rescinded.”

[33] Audrey claimed damages for fraudulent misrepresentation and the trial judge awarded damages for fraud in the form of misappropriation as he put it. In **Derry v Peek** (1889) 14 App Cas 337, fraudulent misrepresentation is stated as:

“A misrepresentation is made fraudulently if when the person makes it, the representor knows that the representation is untrue or is reckless as to whether it is true or not. A person who deceives another fraudulently and thereby causes loss is liable in damages for the tort of deceit.”

Fraudulent misrepresentation not proven in relation to 2012 agreement

[34] Audrey claimed that in 2015 Alvin represented to her by telephone conversations that the business was going well and that all livestock were intact. In 2016, he told her by telephone that the business was losing because of the death and sickness of the livestock. She claimed that the representations were in fact false and that Alvin was (a) in breach of the agreement because he failed to give a true account of the business to her for each year that it was in operation, that is, from 2012 to 2017.

[35] Audrey claimed that Alvin made the representations fraudulently, in that he knew they were false or did not believe them to be true, or was reckless, not caring whether they were true or false. The particulars of fraud being:

- (a) In 2015, Alvin sold or otherwise disposed of the livestock and equipment of the business without the consent of Audrey;

[36] In order to succeed in damages for fraudulent misrepresentation, Audrey had to prove that Alvin made false statement of facts and this was done fraudulently. Thereafter, she had to prove that she was induced by the false statements to enter into the 2012 agreement. The 2015 and 2016 statements which Audrey relied upon

were made after the 2012 agreement and therefore it was not possible that she was induced by those statements to enter into the agreement. In my opinion, the representations relied upon by Audrey in claiming damages for fraudulent misrepresentation cannot succeed. The appropriate claim is damages for breach of contract.

[37] A representee is entitled to rescind a contract which has been entered into by false misrepresentation and where the representation is made fraudulently the representee is entitled to the remedies of rescission and damages. In this matter Audrey is not entitled to rescission and damages under the claim for fraudulent misrepresentation since she could not satisfy the elements of fraudulent misrepresentation.

[38] The claim for fraudulent misrepresentation had not been proven as shown above. Therefore, the award of \$40,000.00 by the trial judge was erroneous. As such, it is my view, that this Court has reason to interfere with the award of damages made by the trial judge. The order for damages of \$40,000.00 awarded by the trial judge to Audrey for misappropriation of monies should therefore, be set aside.

Whether Audrey entitled to damages for breach of the 2012 agreement

[39] The trial judge at paragraphs 45 - 48 of his judgment found that there was an agreement between Audrey and Alvin. That it was a partnership agreement and it is 50/50 split in the absence of any writing. Further, that the terms of agreement were that Audrey would finance the operations and Alvin would provide the knowhow on the ground (labour). The judge found generally that Audrey did supply or contribute the monies required for the business. (para 47). At paragraph 48, the judge found that Alvin *“at first certainly did contribute, as he was required to, any land and labor and expertise and other resources that he had to provide in relation to the agreement.”*

[40] There is no dispute that there was an oral agreement between the parties and as I understand the arguments in this Court, the parties seem to be in agreement that this is a case of breach of contract and Alvin is liable in damages for that breach. Alvin accepted he received monies from Audrey for the business but not the amount

Audrey claimed. In his defence, he stated that he received \$28,300.00, the amount he stated that Audrey should receive in the appeal before this Court.

[41] The case for breach of contract was not properly pleaded and certainly not properly conducted at trial. Mr. Sylvester submitted that the matter should be remitted to the court below for an assessment of damages but did not specify on what aspect of the contract claim. In relation to breach of contract Audrey sought the following relief:

- (a) an order directing repayment by Alvin for a breach of contract in the sum of BZ\$188,800. or the sum the court finds to be owing as Audrey's capital in the business;
- (b) an order directing repayment by Alvin to Audrey of the value of each of the investments at the date of transfer by Audrey; or alternatively an order directing Alvin to indemnify Audrey for all her investments in the business;
- (c) a true account and full disclosure of all assets bought with Audrey's money for the business and all of the profits made therefrom.

[42] The trial judge was faced with a difficult task because Audrey could not prove the liquidated sum of BZ\$188,800.00. That sum was not pleaded as special damages and there was no evidence that this amount of money was sent by Western Union or otherwise. But even if it was pleaded as general damages, there was no documentary evidence admitted into evidence to show that the sum of \$188,000.00 was sent to Alvin. Alvin admitted in oral evidence that he received money from Audrey for investment in the business and the total received being \$36,000.00. (Para 20 of the judgment). The judge obviously did not believe Alvin and made no order for this amount to be repaid to Audrey as damages for breach of contract.

[43] Audrey claimed that she suffered loss and damage, the particulars of loss being the sum of \$188,800.00 or alternatively the value of the items stated at paragraph 15 of the statement of claim. The trial judge under the heading of 'Costs' stated that Audrey had not wholly succeeded in her claim for \$188,000.00. At paragraph 66 of the judgment under the heading of "What damages, if any, or relief this Court should grant?", the judge concluded "that at the very least assuming that

Audrey Pyne had invested \$160,000.00 in Alvin Stephenson's favour," The trial judge then proceeded to make a mathematical calculation to arrive at \$40,000.00 for damages for misappropriation. The assumption by the judge is without any basis. Audrey under cross-examination said she sent \$160,000.00 without proving how she arrived at that figure. The judge applied that figure based on an assumption.

[44] The award of \$40,000.00 as damages for misappropriation is not without issues. The judge accepted that there was some difficulty in terms of damages because of lack of accounting and lack of transparency by Alvin. The judge also accepted evidence that there may have been some drought for a year in relation to the planting of the corn and some of the pigs may have died but not all of them. The judge could not put a figure on it. Despite the difficulty facing the court, the judge awarded damages for misappropriation and concluded as follows:

66. [B]ut in Solomonian kind of state, this court has concluded, that at the very least, assuming Audrey Payne had invested \$160,000 in Alvin Stephenson favor, let's attribute some of the reasonable losses to at least 50% of that, that would still give her \$80,000. Some of that monies were including the land, and, when one discounts the value of the land, which this court will deal with separately, again in favor of Mr Stephenson a further deduction could be made, making a further reduction from 80,000 to about 40,000. This court will therefore arrive at a figure and make an order against Mr Alvin Stephenson, for the sum of \$40,000 which this court finds he is liable to repay her.

67. This court has arrived at these figures in a somewhat summary way giving the benefit of any doubt, or lack of probability, to Alvin Stephenson. It's not scientific. There is nothing precise about this. This court has arrived at these conclusions having seen and heard the witnesses. It's this court assessment, having erred on the side of caution in Mr Stephenson's favor.

.....

[72] Now, in relation to the amount of \$40,000 which this court has ordered, in the event that it's not clear, that is by way of **damages for fraud perpetrated by Mr Stevenson on Audrey Payne by way of misappropriation, and in**

relation to which I am ordering repayment of monies due to the Claimant.” (emphasis added)

[45] In my opinion, Audrey did not prove that she invested \$160,000.00 into the business and Alvin certainly did not prove amount of loss in the business. Though the trial judge believed there was loss, he did not believe there was a total failure of the business and he had no evidence of such loss.

[46] The other relief sought for breach of contract was not determined by the trial judge, that is:

- (a) an order directing repayment by Alvin to Audrey of the value of each of the investments at the date of transfer by Audrey; or alternatively an order directing Alvin to indemnify Audrey for all her investments in the business;

[47] Paragraph 15 of the claim list the investments but not all the items are valued. The evidence on record for the determination of 46 (a) above are deficient and as such this Court cannot make an award for such repayment or indemnification. In my view, this Court ought not to accept the assumption of \$160,000.00 investment by Audrey into the business as stated by the trial judge. That was not proven. Mr. Sylvester argued that the finding of the trial judge was based on credibility as he found that at the beginning Alvin complied with the contract but later turned dishonest. It was on this basis he awarded damages. While this is so, the case for fraud by way of misappropriation or fraudulent misrepresentation had not been proven and the damages awarded for misappropriation must be set aside.

[48] In my view, the evidence in this case shows that there was a breach of the contract terms and Audrey is entitled to damages for breach of contract. Audrey sent money for the business and Alvin provided the labour. The business eventually cease to exists and Audrey had not received any accounting as to her investments in the business. Alvin's defence was that the business failed but the trial judge did not find this evidence to be credible. Audrey had requested receipts for purchases time and time again but received absolutely no accounting from Alvin. In my view, Alvin breached the terms of the agreement as he failed to give a true account of the

business to Audrey for each year that it was in operation. He is, therefore, liable in damages for breach of contract.

[49] This Court is unable to assess damages for breach of contract as the matter was conducted in a very incomplete manner. There is not sufficient evidence of the loss suffered by Audrey, that is the value of her investments. The matter should therefore be remitted to the Supreme Court for assessment of damages.

Whether the judge erred when he ordered that Audrey is the beneficial owner of the property

[50] The judge ordered that Audrey is entirely the owner of the property and Alvin was holding the same as trustee for her until the transfer is effected. He found that Alvin had agreed to purchase the piece of land for Audrey and he committed fraud of the worst kind. He stated that Alvin was totally dishonest when he put the land in his own name. In my view, the judge misunderstood the nature of the agreement between Audrey and Alvin. He was not purchasing the property from the Government of Belize for Audrey. He was completing the purchase of the property with Audrey's money with the promise that he will transfer the property to her later. Audrey had claimed damages for fraudulent misrepresentation. In relation to the property, under the heading of fraudulent misrepresentation, Audrey claimed that:

“In August 2017, Alvin failed to transfer the property to Audrey and her two daughters, having used Audrey's money to purchase the property and having promised to convey it to them. Further, he knew that he could not do so, as his children and ex-wife were still living on the property.”

That was the basis of the claim for fraud in relation to the property which had not been proven by Audrey. Further there was no claim by Audrey for specific performance.

[51] The Order sought in relation to the property was for a declaration that Audrey is the beneficial owner of the property in the name of Alvin or alternatively a declaration that Audrey has an equitable interests in the property equal to her investment. Audrey's claim was that she sent \$5,000.00 to complete the purchase price as she

planned to build a house on the property and retire in Belize. Alvin promised Audrey to transfer title to her when she comes to Belize but this was never done. When Audrey came to Belize she asked Alvin for the title to the farm and he gave her the document so that she could make arrangements for the title to be transferred to her. A deed of conveyance was drafted by Audrey's attorney for the transfer of title of the farm to her. After documents were prepared for the transfer, Alvin refused to sign them. She later made arrangements to return to the US and when she arrived at the Belize airport she was detained and taken to the Ladyville police station. She was requested to return the original title to the property to Alvin. She made arrangements for the title to be returned to him and the police let her go so that she could take the flight to go back to work in the US.

[52] There is no doubt that Alvin breached his promise to Audrey in relation to the transfer of the property to her. But, the question is whether this was done fraudulently. The trial judge found at paragraphs 62 and 63 of his judgment that there was fraud by Alvin. That there was a complete betrayal of trust which was compounded by Alvin calling the police on Audrey and stopping her from going back to the US to do her job until he could get the title to the property. Further, that there is no evidence that Alvin purchased the property with monies other than Audrey's funds. As a result, the trial judge declared that Audrey is entitled to the beneficial ownership of the property and that Alvin held it as constructive trustee for her, until the transfer is effective.

[53] In my view, the judge erred in making the order in relation to the property on the basis of fraud. The case of fraud has not been proven. Alvin held the leasehold interest for many years from the Government of Belize and had a legal right to the title after completion of the payment of the purchase price. Audrey, in my view, is entitled to an equitable relief in relation to the property. That is, a declaration that she has an equitable interest in the property equal to her investment as claimed by her in the alternative. The extent of the equitable interest cannot be determined by this Court as there is no evidence of a valuation of the property and the development of the property by Alvin and his family prior to the agreement for Audrey to send money to pay off the purchase price. The documentary evidence in relation to valuation of the property was not put into evidence. This aspect of the claim should therefore be remitted to the Supreme Court for assessment.

Costs

[54] On the issue of costs, it is my view, that each party should bear its own costs in this court and the court below. Alvin was partly successful in this Court. Audrey is entitled to an equitable interest in the property and damages in her alternative claim for breach of contract. The claim for damages by Audrey for breach of contract in the sum of \$188,800.00 and damages for fraudulent misrepresentation were not proven by her.

Disposition

[55] For these reasons, I would propose the following order:

1. The appeal is partly allowed.
2. The Orders of the trial judge are set aside except for the injunction order which will be varied;
3. The Respondent is entitled to damages for breach of contract;
4. A Declaration that the Respondent has an equitable interest in the property;
5. The matter is remitted to the Supreme Court for:
 - (i) Assessment of damages for breach of the contract;
 - (ii) Assessment of the extent of the Respondent's equitable interest in the property;
6. The Supreme Court to determine at Case Management Conference whether to order additional evidence to be filed for 5 (i) and (ii) above.
7. The injunction to continue until the determination by the Supreme Court of the extent of the Respondent's equitable interest in the property.
8. Each party to bear its own cost.

HAFIZ BERTRAM P (Ag.)

Woodstock- Riley JA

[56] I have read the judgment of the President (Ag.) and agree with the orders proposed and the reasons for judgment.

WOODSTOCK-RILEY JA

FOSTER JA

[57] I had the opportunity to read the judgment of the learned President (Ag.), Hafiz Bertram and I concur with her reasons and the orders made.

FOSTER JA