

**IN THE SUPREME COURT OF BELIZE A.D. 2020**

**CLAIM NO. 193 of 2020**

**BETWEEN**

**(LCW INVESTMENTS, LLC**

**CLAIMANT**

**(**

**(AND**

**(**

**(BETH CLIFFORD**

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

**(GREEN DEVELOPMENT PARTNERS, LTD**

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

**(BELTWAY INVESTMENT GROUP, INC.**

**3<sup>rd</sup> DEFENDANT**

**BEFORE the Honourable Madam Justice Sonya Young**

**Decision:**

**February 21, 2023**

**Appearances:**

**Andrew Marshalleck SC with Jaraad Ysaguirre for the Claimant**

**Priscilla Banner for the Defendants**

**ORAL JUDGMENT**

1. The Claimant says he executed a Lot Purchase and House Construction Order form dated the 30th of March, 2017. There, he agreed with the 2nd Defendant to purchase Lot No. 259 at Mahogany Bay Village Resort in San Pedro for US\$135,000.00 and the 2nd Defendant as the House Construction Company would construct a house for the Claimant on that lot for US\$645,000.00. There were also

closing costs of US\$7,809.00 to be added to the “*future land purchase and House Construction Contracts.*” The Claimant was also directed by the 2nd Defendant to wire all payments to the 3rd Defendant.

2. The 1st Defendant is a businesswoman and the sole shareholder and Managing Director of the 2nd and 3rd Defendants.

3. The Order Form also provided that the 2nd Defendant had no obligations to the Claimant regarding the lot which the 2nd Defendant did not own but received a commission for introducing purchasers to the undisclosed beneficial landowner.

4. There was a Lot Purchase and House Construction Summary as well which identified Corporate Investments Holding Company Limited as the Land Company. All of the documents identified 5801GOA2105 Inc. as the owner of Lot No. 259. Neither of these entities were parties to any of the documents executed by the Claimant. The Claimant had had no interaction with either of them.

5. By a separate House Construction Agreement dated 17th July 2017 the Claimant and the 2nd Defendant agreed that the 2nd Defendant would construct a Keeping Suite on Lot No. 259. The House Construction Summary page stated a House Price of US\$780,900.00 less the deposit previously made of US\$78,090.00 plus closing costs of US\$7,809.00. The Claimant paid the stated amount due of US\$710,619.00. This definitely included the land price of US\$135,000.00.

6. The Claimant never signed any other contract for the sale of the lot and never received title thereto. There were transfer documents sent from the 2nd Defendant which had been voided. They were for the purchase and sale of shares in an offshore

company that owned Lot No. 259. There was never any proof before the Court that 5801GOA2105 even owned Lot No. 259.

## **7. The Issues as agreed by the parties:**

- I. *Whether the Defendants breached the Order Form and House Construction Agreement by (i) not delivering a Lot Purchase Agreement within 10 days or (ii) by not transferring title to the Lot 259 Keeping Suite?*
- II. *Whether the Claimant validly rescinded the Order Form and House Construction Agreement?*
- III. *Whether the Claimant failed to mitigate their losses, if any?*
- IV. *Whether the Order Form and House Construction Agreement are unenforceable under the laws of Belize and therefore void ab initio?*
- V. *Whether fraudulent representations were made by the Claimant by the Defendants which included the Claimant to enter into the agreement and whether the Claimant was so induced?*
- VI. *Whether the 1<sup>st</sup> Defendant used the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as her agents, or as a façade or as her devices in a scheme devised and executed by the 1<sup>st</sup> Defendant to market and sell land and build Keeping Suites within a resort complex called Mahogany Bay Village Resort thereby making her personally liable on the House Construction Agreement and Order Form?*
- VII. *Whether the Defendants used the funds paid by the Claimant to purchase other underlying lands in the Mahogany Bay Village Resort development and/or used the funds paid by the Claimant to fund other structures and facilities in the development that are not part of Lot 259 and the Keeping Suite?*
- VIII. *Whether the Claimant is entitled to a return of USD\$788,709.00?*
- IX. *Whether the Second Defendant is entitled to specified performance of the agreement and/or damages for breach of contract?*
- X. *Whether the Third Defendant holds funds of the Claimant as trustee for the Claimant and whether the Defendants are obligated to account to the Claimant for the Claimant's funds paid?*

## **8. The Court's finding:**

1. No claim whatsoever has been made out against the 3rd Defendant. The Claim against the 3rd Defendant is dismissed with costs.
2. The Claim against the 2nd Defendant for breach of contract is successful for the following reasons:

### **Whether the Defendants breached the Order Form and House Construction Agreement by (i) not delivering a Lot Purchase Agreement within 10 days or (ii) by not transferring title to the Lot 259 Keeping Suite?**

9. The Order Form is the only document made for the purchase of a lot or land and it was made with the 2nd Defendant. This document is only superseded when there is a Land Purchase Agreement in existence and there is none. Neither of the Defendants has produced such a document so the only agreement in existence is the Order Form and the Court accepts that it is in fact an agreement between the parties.

10. In the 4th paragraph of her witness statement the first Defendant states that "*As Director of GDP and Beltway, I have reviewed the business files and documents relating to the property purchase transaction which occurred between GDP and the Claimant.*" She admits that there was a property transaction between these two parties. In the Order Form there was never any order made by the Claimant or accepted by the 2nd Defendant for the purchase of shares in a company. Why or under what circumstances the agreement for purchase of shares was voided is of no moment to the matter at hand.

11. For what it is worth the Court finds that the Claimant did not request that the share transfer agreement be voided. In fact, this Court would be at pains to

comprehend how the Claimant, having already signed documents, could then unilaterally give directions to someone who was an employee of Mahogany Bay Management Ltd. (for which the first Defendant is a director) to void signed documents and those directions would simply be followed. It is even more preposterous that these instructions were given verbally as the Defendants seem to be alleging.

12. It is also quite noteworthy that the reason for voiding on the face of the document stated nothing about this action having been taken at Mr. Williams' behest which to my mind was material. Nor is there any written record of Mr. Williams making this request. This is the very same Mr. Williams who had been agitating for the transfer for quite some time and checking to make sure all was in order with his signature and that of his wife. Having already paid the entire purchase price, what difference could the date possibly make to this man.

13. The Order Form states that the Land Company and the House Construction Companies are unrelated, and this is acknowledged by the Buyer. But the Construction Agreement once executed is incorporated into the Order Form by virtue of paragraph B2. Together they become "*the Agreements.*"

14. They would, to my mind, be contradictory since the Construction Agreement requires payment for the Lot as well as for the Construction. Why would an unrelated entity require payment for property which does not belong to it and which is owned by some entity with which there is no relation. How could the 2nd Defendant, an unrelated entity somehow agrees a purchase price for property which does not belong to it.

15. How could the 2nd Defendant be said to have no responsibilities with regard to purchase of the land when that company under the construction agreement was responsible for receipt and disbursement of the purchase price and gave instructions for which account the purchase price should be deposited into. This incidentally was the same account the construction price was to be deposited into. Further, non-payment of the Land deposit within 3 business days of the Order Form would render that agreement null and void (Clause A2).

16. There is no gain saying that there must have been some relation between the seller of the lot and the construction company since the Order Form itself is clearly titled Lot Purchase and House Construction Order Form. It conveys the certain impression that this Order Form will enable both of these things to be done. You may later have to enter into separate agreements for the specifics of achieving each object but for now, this is sufficient. This was no memorializing of terms and conditions for payment for the house construction as it falsely purported, in its first statement, to be.

17. Beth Clifford also explained how the 2nd Defendant usually purchased land on a per lot basis from Corporate Investments Holdings Company Ltd (CIHC) when it needed a Buyer for a house. The Claimant was a buyer, and the lot was owned by a company, the sole shareholder of which was CIHC. Why was the Claimant's lot not bought by the 2nd Defendant as was usually done? This was a development, and the purchase process must have been repetitive. There was no need to move away from the usual and no reason was given why this was done. Rather the Claimant was left to this date without a land purchase agreement or title to the lot.

18. Incredibly, the House Construction Agreement also requested payment for the land. What was originally the land and house construction cost had mysteriously become only the house construction cost and was certainly higher than the house construction cost stated in the Lot Purchase and House Construction Summary. How is an unrelated entity able to accomplish this?

19. The 2nd Defendant also agreed in the Order Form to disburse the Land deposit according to the terms of the Land Purchase Agreement. There is still no existing agreement, but the land purchase deposit has somehow apparently been disbursed.

20. By clause 3.6 the Claimant was to furnish the 2nd Defendant with a copy of its title to the property before commencement of the Active Job Life. Active job life was defined at Clause 1.1.4 *“as the time period commencing with active bidding of the Work and ending upon Substantial Completion and turnover of the House to the Buyer.”*

21. So serious was a default in production of such a document that it was deemed a material breach Clause 11.1.1. However, the Claimant has never produced a title, but the 2nd Defendant has gone ahead to build a Keeping Suite. The 2nd Defendant must have known that the Claimant was not the lot owner.

22. The overall transaction was for the purchase of the lot and the construction of the Keeping Suite. Mr. Williams of LCW went to visit the development; he discussed the purchase of a lot and a Keeping Suite. He was presented with a Lot Purchase and House Construction Order Form where he was to enter into two additional contracts within ten (10) days. One for the land and another for the house. This Court will not allow the 2nd Defendant to hide behind the title of House Construction Company when the Order Form and even the Construction Agreement

have revealed it to be much more than that. It has still not explained why it required payment for land and closing costs to facilitate the construction of a building only. The Court notes that non-payment of any part of the “House Price” or “Amount Due” could result in termination of work and a declaration that the Buyer was in default.

**Whether the Claimant validly rescinded the Order Form and House Construction Agreement?**

23. The Claimant could not have been expected to go seeking out the Lot Owner to make arrangements for its sale. That was never the arrangement made. Implied in that Order Form is the obligation on the part of the 2nd Defendant that the Lot purchases Agreement would be presented to the Claimant within ten days. This was not done in clear breach of the Order Form and this Court so finds. This was a fundamental breach of the Agreement made under the Order Form and allows the Claimant to rescind the agreement or treat the contract as discharged. The letter sent on the 5th of August, 2019 validly accepted the 2nd Defendant’s renunciation as a breach.

**Whether the Claimant failed to mitigate their losses, if any?**

24. The Claimant did not fail to mitigate his losses. He was asked to sell property for which he was not the legal owner and he declined.

**Whether the Order Form and House Construction Agreement are unenforceable under the laws of Belize and therefore void ab initio?**

25. The issue of non-payment of stamp duty is without merit. This agreement did not seek to transfer any shares out property but rather to make arrangements for a contract for the sale of a lot. When that contract was entered into, then the issue of payment of stamp duty may become relevant.

**Whether fraudulent representations were made by the Claimant by the Defendants which included the Claimant to enter into the agreement and whether the Claimant was so induced?**

26. The Court having considered the evidence finds that no fraudulent misrepresentation whatsoever has been made out.

**Whether the 1<sup>st</sup> Defendant used the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as her agents, or as a façade or as her devices in a scheme devised and executed by the 1<sup>st</sup> Defendant to market and sell land and build Keeping Suites within a resort complex called Mahogany Bay Village Resort thereby making her personally liable on the House Construction Agreement and Order Form?**

27. Beth Clifford indeed seems to be the common denominator in this entire matter, but this Court could not find that there was a fraud perpetrated which would allow the corporate veil of the 2nd and/or 3rd Defendants to be pierced to make her personally liable.

**Whether the Defendants used the funds paid by the Claimant to purchase other underlying lands in the Mahogany Bay Village Resort development and/or used the funds paid by the Claimant to fund other structures and facilities in the development that are not part of Lot 259 and the Keeping Suite?**

28. The Court could find no evidence to support this allegation.

**Whether the Claimant is entitled to a return of USD\$788,709.00?**

**Whether the Second Defendant is entitled to specified performance of the agreement and/or damages for breach of contract?**

29. The Claimant is entitled to the entire purchase price and construction price back including closing costs because that is in fact his loss as at the date, he accepted the renunciation. He is not the legal owner of the lot so he can lay no claim to the Keeping Suite which was to be built on it. It is reminded that that Keeping Suite ought not to have been built until the Claimant furnished his title which he has never been able to do. The 2nd Defendant's counterclaim for specific performance or damages for breach of contract is accordingly dismissed.

**Whether the Third Defendant holds funds of the Claimant as trustee for the Claimant and whether the Defendants are obligated to account to the Claimant for the Claimant's funds paid?**

30. The Court could find no evidence of this allegation.

**Dispositions:**

1. The Claims against the 1st and 3rd Defendants are dismissed with costs in the sum of US\$25,000.00 to each Defendant as agreed.
2. Judgment for the Claimant.
3. Damages for breach of contract are awarded to the Claimant against the 2nd Defendant in the sum of US\$788,709.00.

4. The Counterclaim is dismissed.
5. Costs to the Claimant against the 1st Defendant on the Claim and Counterclaim in the sum of US\$50,000.00 as agreed.

**SONYA YOUNG**  
**HIGH COURT JUDGE**