

IN THE HIGH COURT OF BELIZE, A.D. 2020

CLAIM NO. 370 OF 2020

BETWEEN

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| (LINDA BOWMAN | CLAIMANT |
| (| |
| (AND | |
| (| |
| (PRISCILLA HERRERA | 1st DEFENDANT |
| (as Executrix of the Estate of William | |
| (Henry Bowman | |
| (| |
| (MIZRAIM MONTALVO | 2nd DEFENDANT |
| (as Executrix of the Estate of William | |
| (Henry Bowman | |
| (| |
| (H.T.A. BOWMAN LTD. | 3rd DEFENDANT |

AND

IN THE HIGH COURT OF BELIZE, A.D. 2019

CLAIM NO. 801 OF 2019

BETWEEN

| | |
|---|----------------------|
| (LINDA BOWMAN | CLAIMANT |
| (| |
| (AND | |
| (| |
| (PRISCILLA HERRERA | 1st DEFENDANT |
| (as Executrix of the Estate of William | |
| (Henry Bowman | |
| (| |
| (MIZRAIM MONTALVO | 2nd DEFENDANT |
| (as Executrix of the Estate of William | |
| (Henry Bowman | |

BEFORE THE HONOURABLE MADAM JUSTICE SONYA YOUNG

Decision Date:

17th January 2023

Appearances:

Ms. Priscilla Banner, Counsel for the Claimant.

Ms. Lisette Staine, Counsel for the Defendant.

KEYWORDS: Contract - Terms of a Settlement Deed - Enforcement - Maintenance - Establishment of a Trust - Payment of Health Insurance - Availability - Frustration - Cost on an Indemnity Basis

JUDGMENT

1. On their divorce, Mr. and Mrs. Bowman signed a Deed of Settlement (the Deed) which was to be a road map of their future property and financial arrangements. Mr. Bowman has since died and Mrs. Bowman seeks the Court's assistance in interpreting certain portions of the Deed in relation to payment of her maintenance and for her health insurance coverage.
2. There is no doubt in my mind that by virtue of being signed by Mr. and Mrs. Bowman, the Deed of Settlement became binding on them both as well as their personal representatives and estates. This is reinforced by Clause 8.2 of the Deed and seems to be accepted by all parties.
3. The real issue for consideration in Claim No. 370 of 2020 is whether a Trust was established by Mr. Bowman with H.T.A. Bowman Ltd. as the trustee and

the Claimant as the beneficiary so that H.T.A. Bowman Ltd. is to be held liable in relation to payment of maintenance due to her pursuant to the Deed.

4. Before making a determination on that issue, however, the Court intends to deal with Claim No. 801 of 2019 or the Insurance Claim. Here, the Claimant seeks to ascertain whether the Defendants (Mr. Bowman's Executors) are bound by the Deed to ensure that H.T.A. Bowman Ltd. maintains medical insurance for the Claimant's benefit and to reimburse her for all medical expenses incurred during the period no insurance coverage was secured for her.

The Insurance Claim:

5. Much turns on the specific wording of Clause 4.1 which reads:

“4.1 William Bowman agrees to ensure that H.T.A. Bowman Ltd. or W.B. Incorporated maintains medical insurance for the benefit of Linda Bowman with coverage in the amounts currently provided for under the Capital Life Insurance Comprehensive Major Medical Policy. The present level of coverage being reflected in the Schedule hereto and Linda Bowman being entitled to receive from the (or any other applicable) insurance company or from William Bowman a copy of the insurance policy as renewed or amended from time to time provided nonetheless, that if in any year there is a shortfall of coverage for medical costs incurred, William Bowman shall pay the shortfall to Linda Bowman up to a maximum of BZ\$10,000.00. The said sum of \$10,000.00 shall be the maximum payable during a calendar year. Any sums due for reimbursement of medical expenses to Linda Bowman as beneficiary from the Insurance Company shall be paid to Linda Bowman.”

6. It is clear that the section makes provision for the Claimant to be covered by medical insurance to an already established standard. Since Mr. Bowman has died, the Defendants are bound to ensure the maintenance of coverage for the rest of Mrs. Bowman's life. This is evidenced by Clause 8.2 which binds the parties and their personal representatives and estates, while providing that the agreement ensures only for Mrs. Bowman's lifetime.

7. If perchance, there was a shortfall in a given year, then Mr. Bowman or his personal representatives were to cover same up to a maximum of \$10,000.00. No issue was raised as to whether Mr. Bowman or his personal representatives were bound to ensure medical insurance coverage for Mrs. Bowman otherwise than through H.T.A. Bowman Ltd. or W.B. Incorporated and no determination is being made in that regard.
8. There is no denial by the Defendants that H.T.A. Bowman Ltd. maintained insurance for the Claimant until it lapsed in 2017 when she turned 75 and the existing carrier ceased to cover her. It has never been replaced. Their defence is that they have been unable to get insurance in Belize for the Claimant because she is over the age of 75.
9. The evidence provided by the Defendants was that H.T.A. Bowman Ltd. (W.B. Incorporated no longer exists) was unable to secure insurance in Belize once the Claimant reached 75. However, the clause places no such age or place restriction on that obligation and the Court, being particularly aware of the importance of medical insurance to persons as they age, will not be swayed to imply any such restrictions.
10. In fact, the Court is convinced that the Claimant has demonstrated to the requisite civil standard that there is medical insurance available to an applicant who is over 75, even if it is to be sourced outside Belize (**See the testimony of Onan McLean and Harrison Pilgrim**).
11. While most of Mr. Pilgrim's policies had an application age limit of 75, he did produce one the Vumi Senior VIP (pg1777 of bundle) which indicated a range

of 60-90. Mr. McLean also produced the same policy as an example.

12. On the other hand, the Defendants presented their mere allegation, some correspondence from carriers who did not testify and the termination of the Claimant's insurance by the original carrier then asked the Court to find that the contract had been frustrated so that they can no longer be bound by it in this regard. To my mind, this evidence is sorely lacking.
13. When confronted by the Claimant's evidence, the Defendants can not simply say the term of the settlement has been frustrated because they are unable to source within Belize. If indeed they had provided evidence that they had tried outside Belize and still could not secure a policy that would have been different. Nor can they say that the Claimant did not produce proof that she had applied for and been approved for coverage after reaching the age of 75. The burden of that Clause was always the Defendants', not the Claimant's.
14. So the fact remains, as the Court finds it, that there is the availability of coverage for applicants who have passed the age of 75. Mr. Bowman by signing this Deed intended that the Claimant would be covered for the rest of her life. The *onus* remained always with the Defendants to ensure that this coverage was secured for the Claimant. There was no responsibility on the Claimant to source or secure insurance. So, I reject this argument by the Defendant wholesale in this regard.
15. While even the Claimant accepts that securing coverage may pose some challenges e.g. increased costs, difficulty of sourcing because it is outside Belize etc., it is certainly not proven to be incapable of performance.

Furthermore, whether the particular established standard could or could not be met by whatever medical insurance is available is really of no import at this time as it is not in issue.

16. The agreement has, therefore, not been frustrated but has in fact been breached. The issue remains now how that breach is to be remedied. This requires a consideration of the Claimant's pleadings which seek a declaration that the Claimant be reimbursed for medical expenses incurred.
17. The Claimant accepts that the words "special damages" or "general damages" do not appear in her pleadings but says there is nothing which precludes the Court from ordering that she be reimbursed by the Defendants or from making the declaration sought.
18. She opined that the failure to use certain terminology such as "general damages" or "special damages" was not fatal to a claim for damages. All that was really needed was "*a fair and sufficient indication to the court and the opposing party of the case that is being brought and that the opposing party has to meet.....modern pleading practice should not be and is not constrained by whether the label "general" or "special" damages is given to a particular item of claim.*" - ***Arroyo and others v Equion Energia Ltd [2013] EWHC 3150 (TCC)***.
19. Counsel also relied on ***Whalley and others v PF Developments Ltd and another [2013] EWCA Civ 306*** and proposed that the Court should be persuaded by the approach taken there. Counsel's view was that the claim had made no express reference to being a claim in damages but the court, in overturning the High Court's decision, found that the Claimants had given full

notice of the nature of the heads of loss being asserted so the Defendant had not been taken by surprise and they had raised no objection whatsoever to the assessment in this regard.

20. Counsel added that the Claimant's witness statement exhibited copies of the medical receipts which had been disclosed in an earlier list of documents. There was ample notice of these receipts which had also been agreed to be entered into evidence by the Defendants. They should not be allowed to rely on a technicality to avoid reimbursement.
21. The Defendants present an opposing view, citing severe prejudice if the Court were to make an award of damages. They insisted that there was only a claim for a declaration which is borne out by the words of the agreed Pre-trial Memorandum as well.
22. Further, there was no issue presented or agreed in relation to damages in the insurance claim. She also referred to the Claimant's own witness statement which merely stated that "*since [her] medical insurance coverage was terminated, [she] ha[d] consequently incurred significant medical expenses, given her medical conditions...*" and she then attached copies of receipts for medical expenses.
23. Counsel for the Defendant was of the view that all of this gave the Defendants no reason whatsoever to believe that there would be a claim for anything other than declaratory orders. Even the disclosure of receipts and tendering them into evidence was insufficient. Consequently, the Defendants pleaded no possible defences and were deprived of both an opportunity to meet the allegations of

loss and damages or to investigate the facts and issues thoroughly. They may even have contemplated a settlement had a claim for damages been made clear.

Court's Consideration:

24. This Court finds that it can neither make the declaration sought nor the award urged by the Claimant.

25. If we return to the pleadings, one would immediately realize that the word “damages” never appears and the Claimant accepts this. Instead, in paragraph 8 under ‘Nature of the Claim’ and paragraph 1 of ‘Reliefs Sought’, she states:

“8. The Claimant seeks declaration as to the true meaning of the Deed and specifically as to whether or not the Defendants should ensure that H.T.A Bowman Ltd. or W.B. Incorporated maintain medical insurance for the benefit of Linda Bowman and reimburse Linda Bowman for medical expenses incurred based on the aforementioned clauses of the Deed.

B. Reliefs Sought

The Claimants’ claim is made pursuant to Part 66 of the Supreme Court (Civil Procedure) Rules for:

1. A Declaration that upon the true construction of the Deed of the Defendants should ensure that H.T.A. Bowman Ltd. or W.B. Incorporated maintain medical insurance for the benefit of Linda Bowman and reimburse Linda Bowman for medical expenses incurred.”

26. She also seeks costs and the generic further or other relief. In her Affidavit in Support, she repeats the same reliefs sought at paragraph 5. At paragraphs 13 to 16, she avers:

“13. I have been advised by my Attorneys-at-law, Courtenay Coye LLP, No I verily believe that the Deed provides me with medical expense and insurance coverage in the amount stated in the Deed for the duration of my life.

14. Notwithstanding the terms of the Deed, the Defendants have declined to honour my claim against the Estate of the said William Bowman.

15. I therefore seek a declaration from the Court that upon the true construction of the Deed the Defendants should ensure that H.T.A. Bowman Ltd. or W.B. incorporated maintain

medical insurance for the benefit of Linda Bowman and reimburse Linda Bowman for medical expenses incurred.

F. Conclusion

16. In light of the above, I pray that this Honourable Court grants the reliefs as prayed.”

27. What is essential for a plea in breach of contract is the existence of an agreement, the relevant term or terms of that agreement, an allegation of breach of the relevant term or terms, and the consequences arising from the breach.
28. Having considered the Claimant’s pleadings, which set the parameters of her case, I find that she has substantially pleaded an agreement, the relevant terms and the breach. None of which have been denied by the Defendants. Their defence of frustration has already met with failure so that performance has not been excused.
29. What this Court finds lacking in the pleadings is the consequences of the breach which is the precise loss which the Claimant now asks the Court to order - that is all the medical expenses incurred.
30. While there is rarely a breakdown of general and special damages in a breach of contract claim, where the cost of the loss has already incurred by the time of trial, that sum must be properly pleaded and particularized. The Defendant and the Court must know precisely what is being claimed. And to recover the particular loss, one must also prove same.
31. The decision in *Whalley and others v PF Developments Ltd and another [2013] EWCA Civ 306* on which Counsel for the Claimant attempted to rely is

of no great assistance here. In *Whalley*, a case which dealt with assessment of damages following a default judgment and not a full trial, the Court of Appeal did accept and award damages in the nature of special damages which went beyond those pleaded. These additional heads only became apparent in the Claimant's witness statements which had been served under an order for the sequential (not simultaneous) service of witness statements by the parties.

32. The court was satisfied that although the additional heads did need to be specifically pleaded, there was sufficient in the witness statements served, which made it "*crystal clear the heads of damages that the Claimant was claiming.*" Further, there had been no clear contention by the Defence whether through the Defendant's evidence or submissions that the Claimant could not advance the claim for the additional special damages. It was the judge who took this point himself.
33. The court concluded that the Defendant had had full notice and had taken no steps either to strike out the parts dealing with the additional sums, answer the additional claims in their own witness statement or articulate a fulsome argument against them.
34. On the contrary, in the case at bar, the Defendant has argued most strenuously against an award being made. While I can accept that there was a reference to a loss experienced by the Claimant in the Statements of Case - "*reimbursement for medical expenses*", damages in the nature of the special damages were certainly not particularized in part or at all. This certainly goes beyond a lack of terminology and reflects a lack of pleading altogether.

35. Moreover, this Court had ordered the simultaneous filing of witness statements so there would be no possible saving grace there even if there was some limited pleaded claim in the nature of special damages. It must not be forgotten that a witness statement may certainly add to and aid pleadings, it is by no means a substitute for pleadings.
36. Counsel for the Defendants made reference to *Attorney General of Belize v George Betson et al and Rupert Marin v George Betson et al Belize Civil Appeal Nos 26 and 28 of 2007 paragraph 4* which reinforced that there is no such thing as pleading an implicit cause of action. It is explicit pleadings which guarantee a level playing field and accord with the rules of court. I do not, however, find this to be a case of pleading an implicit cause of action. The cause of action breach of contract is clear and a remedy is an essential element. If there has been a breach, it can not be fair to send the wronged party away empty handed.
37. The Court also reminds that compensatory damages are intended to restore and make whole. The Deed required the payment of insurance premiums and any overage up to a certain sum. There was no agreement to pay all medical expenses nor was there any evidence before the Court that the bills presented by the Claimant would all have been covered by insurance.
38. In their oral submissions, Counsel for the Claimant agreed that 100% of the medical bills (as sought in the declaration) may not be fair in the circumstances of insurance coverage which entailed deductibles, co-payments, maximum allowable and the like. This highlights the problem even more.

39. What is obvious is that the Claimant could have chosen to seek and secure coverage on her own. A wronged party is under a duty to mitigate their loss and a sum is recoverable only if it is not as unreasonable in the circumstances as to amount to a failure to mitigate. This issue of mitigation was obviously never raised by the Defendants in their Defence because the Claim, as pleaded, did not demand it.
40. However, the Court is also allowed to make an order which it feels does justice in a case. A declaration can not be made for the entitlement to be reimbursed for all the medical expenses when the Deed only required insurance coverage with a set overage and it is accepted by both sides that the insurance would not have covered all medical expenses. Nor can the Court make an alteration to ensure the payment of what ought to have been an award of specifically particularized damages.
41. This does not, however, preclude an award of nominal damages, which is a remedy available to the Court. The Court considers that the Deed allowed for payment of an overage up to \$10,000.00. The clear intent was that the premiums would be paid with only that additional sum when necessary. On page 1884, the cost of insurance for an employee only in 2001 was \$65.22. That was some 21 years ago. Considering inflation, the premiums must have increased so a conservative sum is considered of \$500.00 per month which would total \$6,000.00 per year. The Court awards nominal damages in the sum of \$16,000.00 per year to the Claimant.

42. A declaration is also made as prayed that the Defendants are to ensure that H.T.A. Bowman Ltd. maintains medical insurance for the benefit of Linda Bowman.

43. Costs will be ordered on the prescribed basis since no other basis was claimed.

The Maintenance Claim:

THE ISSUES:

1. Is the Deed legally binding on the Defendants?
 - a. Are the First and Second Defendants legally bound as the personal representatives of the Deceased?
 - b. By virtue of Clause 3.3 of the Deed, is the Third Defendant legally bound by the establishment of an expressed Trust or its constructive acceptance of the office of trustee?
2. Does the Deed expressly provide for monthly maintenance payments to be secured by the establishment of a trust for the Claimant as beneficiary of the Trust with H.T.A. Bowman Ltd. designated as a trustee?
3. Alternatively, was an equitable/constructive Trust created over the citrus proceeds in the event the Estate refuses or is unable to make payment?

Is the Deed legally binding on the Defendants?

a. Are the First and Second Defendants legally bound as the personal representatives of the Deceased?

44. The Deed clearly states that William Bowman and his personal representatives are to make monthly maintenance payments to Linda Bowman on the first day of each month (Clauses 3.1 and 8.2 read together). There can be no issue about this. The First and Second Defendants are legally bound.

- b. By virtue of Clause 3.3 of the Deed, is the Third Defendant legally bound by the establishment of an expressed Trust or its constructive acceptance of the office of trustee?**
- 2. Does the Deed expressly provide for monthly maintenance payments to be secured by the establishment of a trust for the Claimant as beneficiary of the Trust with H.T.A. Bowman Ltd. designated as a trustee?**
- 3. Alternatively, was an equitable/constructive Trust created over the citrus proceeds in the event the Estate refuses or is unable to make payment?**

45. As it relates to the Third Defendant, it is really Clauses 3.3 and 3.4 which require the Court's attention in these proceedings and must be construed. They provide as follows:

"3.3 The monthly maintenance shall be secured for the duration of the life of Linda Bowman by the establishment of a trust by virtue of which:

(a) The monthly maintenance shall be paid from proceeds of citrus deliveries by H.T.A. Bowman Limited or W.B. Incorporated.

(b) In default of such proceeds being forthcoming from citrus proceeds, the monthly maintenance may be raised from property pledged as such security of sufficient and adequate value and validly charged to ensure the payment or collection of the monthly maintenance and any arrears in respect thereof and future payments.

3.4 The parties hereby identify the following property intended to be pledged and charged as security for the monthly payments in pursuance of Clause 3.3 above:

Property of H.T.A. Bowman Ltd comprised in Transfer Certificate of Title dated the 7th of June 1955 recorded at the Land Titles Unit Belmopan in the Land Titles Register Volume 1 Folio 82 being approximately 50 acres and known as Section 6."

46. The Claimant contends that on the true construction of the Deed, the maintenance payments are secured by the establishment of a Trust for the Claimant as beneficiary with H.T.A. Bowman Ltd. as trustee. Further, such a

Trust had either been expressly created binding H.T.A. Bowman Ltd. or alternatively, by their actions or long acquiescence, H.T.A. Bowman Ltd. has constructively accepted the office of trustee and are thereby bound by the terms of the Trust.

47. The effect of this Trust would be that Mr. Bowman transferred his legal and beneficial interest in the citrus proceeds to the Third Defendant to hold on trust for the Claimant to the extent of the indebtedness to the Claimant. She added that Ms. Samira Bowman agreed that H.T.A. Bowman Ltd. had taken steps internally to ensure the Company had lawfully complied with the Deed.
48. Any failure to register the Trust is of no import as no special formalities are needed since the property is not an interest in land.
49. The Defendants are of the opposing view mainly because H.T.A. Bowman Ltd. was no party to the Deed which William Bowman entered into in his personal capacity and not as a director of H.T.A. Bowman Ltd.
50. William Bowman did not own the proceeds of citrus deliveries (the business conducted by H.T.A. Bowman Ltd.) which were assets of H.T.A. Bowman Ltd. More importantly, H.T.A. Bowman Ltd. had not agreed to be bound by these alleged trust arrangements or they would have made a declaration of trust under company seal as had been done for the equitable mortgage.
51. The Claimant counters that the facts constitute an exception to the doctrine of privity of contract where a trust of promise had been created or where there are covenants made in marriage settlements. She says one of those exceptions exists

as Mr. Bowman had settled a Trust in favour of the Claimant by virtue of Clause 3.3 with the Third Defendant designated as trustee.

52. Mr. Bowman had the authority to bind H.T.A. Bowman Ltd. by virtue of being a director of the Company and holding the majority shares, and H.T.A. Bowman Ltd. complied with the obligations set out in the Deed for approximately 18 years. Even after his death and his shares were transferred to Sarita Bowman, H.T.A. Bowman Ltd. continued to comply as if it were bound.

Court's Consideration:

53. This Court finds that Clause 3.3 speaks to the “establishment” of a trust by William Bowman but this could only have been an intention to establish a trust. William Bowman was certainly unable to bind a third party in this way. H.T.A. Bowman Ltd. is a separate legal entity. Mr. Bowman may have been a director and majority shareholder, but he certainly was not the sole shareholder of the Company.
54. He could not have owned the proceeds of deliveries or held an exclusive or any right to them as they are clearly company assets. While he may have been entitled to dividends if the Company made a profit, he was definitely not entitled to the proceeds of the enterprise.
55. He did not sign the Deed in his dual capacities i.e. personal and as a director of the Company. He was therefore not acting as agent of the Company, and in any event, directors ought to act as a board unless certain powers have been delegated.

56. There is no evidence before this Court that such a power had been delegated to Mr. Bowman. The circumstances of this personal arrangement would not lend itself to the appearance that Mr. Bowman had the authority to act on behalf of the Company in declaring or settling a trust of this nature.
57. There is no evidence that for 18 years H.T.A. Bowman Ltd. behaved as if the terms of the Trust were being complied with. The evidence is that Mr. Bowman paid the maintenance himself right up until his death. This is no indication that Mr. Bowman had in fact established the Trust as he intended. It would certainly be very wrong for the Court to accept H.T.A. Bowman Ltd.'s compliance with other terms of the Deed as a blanket acceptance of all that was stated therein particularly the establishment of a trust.
58. It is noteworthy though that the Property referred to at sub paragraph (b) which belonged to H.T.A. Bowman Ltd. was indeed formally pledged by H.T.A. Bowman Ltd. according to the terms of the Trust. It is therefore quite telling that some trust document was not similarly prepared which settled any interest Mr. Bowman may have had in the proceeds of citrus sales on H.T.A. Bowman Ltd. to be held for the Claimant's benefit.
59. This cuts both ways however because it is indicative of what Mr. Bowman was able to do as it related to H.T.A. Bowman Ltd. He was able to use property which belonged to H.T.A. Bowman Ltd. in this very personal manner clearly with the consent of H.T.A. Bowman Ltd.
60. The Defendant also reminds that **Section 8(4) of the Trust Act Cap 202** provides that:

Where a settlor declares a trust respecting property he does not own at the time of the declaration, then-

(a) the trust is incompletely constituted at the time of the declaration and no rights or duties arise thereunder; but

(b) if the settlor subsequently receives property which was the intended subject matter of the declaration of trust, the Court shall at the instance of the beneficiary or the trustee (and whether the beneficiary has given consideration for the declaration of trust or not) compel the settlor to transfer that property to the trustee or to hold that property on the terms of the trust.

61. The Court agrees that even if the Trust had been declared by Mr. Bowman in the Deed, it had not been completely constituted as he simply did not own the Property at that time. His Executors are in the very same position at this time for the very same reason stated above - the proceeds are company assets. This gift therefore remains imperfect.
62. Ordinarily, the Claimant would be able to rely on the stated exception to the doctrine of privity of contract that a trust of promise had been created by the Deed. She did provide consideration in the settlement of the Property and maintenance claims before the Court. Equity would have stepped in to compel Mr. Bowman or his Estate to transfer the subject of the Trust. However, the subject of the Trust did not belong to Mr. Bowman and does not belong to him now.
63. The second exception of a covenant in a marriage settlement is inapplicable as it extends to spouse and children of the family.

64. For these reasons, this Court can not find that an express Trust was in fact created which would bind the Third Defendant to the Deed. But it does not end here.
65. The Claimant says if this is so, then H.T.A. Bowman Ltd. holds the citrus proceeds on constructive Trust for the Claimant's benefit in the event the Estate refuses to or is unable to make payments.
66. This is a stretch. If no Trust has been created, then what right does the Claimant have to property which never belonged to the deceased in the first place? As stated before, the income would have been an asset rightly belonging to H.T.A. Bowman Ltd., not the deceased.
67. Attention now turns to whether H.T.A. Bowman Ltd. accepted the office of trustee constructively by either doing acts which align only with the character of trustee or through long acquiescence.
68. While the Defendant agrees that acceptance of the office could be inferred by acts done, those acts must be in connection with the administration and done in the capacity of trustee - **Lewin on Trusts 19th ed Sweet and Maxwell para 12-024 and 12-026.**
69. The Defendants state that the payments made by H.T.A. Bowman Ltd. to the Claimant were loans to the deceased's Estate as the Estate was not liquid. Moreover, the Third Defendant's long acquiesce by complying with other terms of the Deed is vastly different to complying with a specific term.

70. Having perused the evidence, the Court finds there is sufficient to establish on a balance of probabilities that H.T.A. Bowman Ltd. did carry on as if it was bound by the terms of this intended Trust. It must not be forgotten that the proceeds were to be held as security for payment but the primary duty to pay remained with Mr. Bowman (and his Estate).
71. So prior to Mr. Bowman's death, he paid the maintenance from his own personal account. After his death, monies continued to be paid out from that account by standing order until the account was depleted and the Estate informed Mrs. Zeida Bowman, Mr. Bowman's widow that they were unable to pay. She then started paying from her own account. She understandably felt obligated. Her testimony was most telling. But Mrs. Zeida Bowman is the business Manager or Managing Director and shareholder of H.T.A. Bowman.
72. She admitted under cross-examination that there had been no loan (as had been stated by her in her witness statement and by Mrs. Herrera) made to the personal representatives of William Bowman's Estate to cover the maintenance sums. Her emails to the Claimant also stated quite clearly that H.T.A. Bowman Ltd. felt itself bound to cover this monthly sum, i.e. a Trust had in fact been established.
73. H.T.A. Bowman Ltd. was certainly no party to the settlement Deed. But it was accepted in evidence through Mrs. Zeida Bowman that H.T.A. Bowman Ltd. had taken steps internally to comply with the Deed. This could only have been on the basis that Mr. Bowman had made the necessary arrangements for the Trust to be established.

74. What other reason could there be for a stranger to comply with the specific terms of that Deed. Demonstrating that H.T.A. Bowman Ltd. would have behaved in a specific way had the Trust been established needs no greater proof than its own compliance.
75. This Court finds that H.T.A. Bowman Ltd. by its own action constructively accepted the trusteeship, thereby completely constituting the Trust. H.T.A. Bowman Ltd. therefore holds the maintenance sum on trust for the Claimant in the event that the Estate is unable to meet the payment. The Claimant is allowed to seek to enforce the terms of the Trust against H.T.A. Bowman Ltd. and this includes the sale of the pledged piece of land.
76. The Court accepts that the Trust has not been registered but there still remains an equitable Trust which could be given effect as it subsists to date. The Defendants must forthwith register the said Trust as required by law and the Court will so order.

Costs:

77. The Claimant is entitled to her costs. She claims it on an indemnity basis in the maintenance claim as against the First and Second Defendant. She based this claim on clause 7.1 of the Deed which states:

“7.1 In the event that William Bowman fails:

a. to pay any amounts due hereunder or

b. to comply with any covenant or fulfill any obligation contained in this Deed

and such default continues for a period of 30 days, Linda Bowman may apply to the Court or take such steps as she may be entitled to undertake and pursue for the purpose of enforcing the overdue payment or any such unfulfilled obligation and in such event William Bowman shall be liable for (a) interest on any overdue payments at the rate of prime at the Bank which Linda Bowman usually utilizes and (b) the legal fees and costs incurred in pursuance of the enforcement proceedings”

78. The First and Second Defendants resist such an order stating that the **Belize Judicature Act Cap 91** and its **Civil Procedure Rules** do not allow for such an order to be made.
79. This Court finds that it does have jurisdiction to make an indemnity order pursuant to **Rule 64.2(1)** which reads:
- “64.2 (1) Where the court has any discretion as to the amount of costs to be allowed to a party, the sum to be allowed is -*
- (a) the amount that the court deems to be reasonable were the work to be carried out by a legal practitioner of reasonable competence; and*
- (b) which appears to the court to be fair both to the person paying and the person receiving such costs.”*
80. When this is read in conjunction with **Rule 64.2(3)** which demands that the Court consider all the circumstances in determining what is reasonable, it becomes quite clear that the Court does have the jurisdiction to order cost to be assessed on such a basis as it determines to be fair and reasonable. I am strengthened in this view as costs on the indemnity basis has not been specifically excluded by either the Act or the Rules.
81. This Court must consider the Agreement freely made between the parties and strive to give effect to its terms. This would mean that prescribed cost would not be applicable and an order for costs to be assessed on an indemnity basis would be fair and reasonable in the circumstances.
82. There was no claim for a cost order on an indemnity basis in the insurance claim. The Court will therefore make an order for cost her to be on the prescribed basis.

DISPOSITION:

Claim No. 801 of 2019:

1. It is declared that the Defendants are to ensure that H.T.A. Bowman Ltd. maintains medical insurance for the benefit of Linda Bowman.
2. Nominal damages are awarded to the Claimant in the sum of \$16,000.00 per year from February 2017 to the date of this judgment.
3. Costs to the Claimant on the prescribed basis. The Court will rely on Counsel on both sides to calculate and agree this sum.

Claim No. 370 of 2020:

1. It is declared that the Claimant as beneficiary under the Trust declared and settled by William Bowman under Clause 3.3 of the Deed is entitled to the proceeds of citrus deliveries of the Third Defendant as security for the monthly maintenance payments due to her pursuant to the Deed.
2. In accordance with Clause 3.3 of the Deed, the Third Defendant is to hold the proceeds of its citrus deliveries on trust for the Claimant as security for monthly maintenance payments to be made to her in accordance with the Deed.
3. In accordance with Clause 3.3(b) and 3.4 of the Deed, the Third Defendant is to sell the Property and the proceeds of sale, after payment of charges and expenses incurred in connection with the sale is to be used to satisfy future monthly maintenance payments which become due to the Claimant pursuant to the Deed.
4. The Property is to be valued by a valuator agreed by the parties and thereafter conduct of the sale is committed to Apex Trust Corporation Ltd., agent for the Claimant.

5. Costs on the indemnity basis to be assessed against the First and Second Defendants and costs on the prescribed basis against the Third Defendant. The Court will rely on Counsel on both sides to calculate and agree this sum

SONYA YOUNG
HIGH COURT JUDGE