

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 425 of 2022

BETWEEN:

Richard Kreis

Claimant

AND

[1] Terry Beck

[2] Becker Coconut Belize Ltd.

Defendants

Appearances:

Mr. Allister Jenkins for the claimant

Defendants absent and unrepresented

Written Submissions: for the claimant filed on February 07, 2024

2024: January 18;

April 12

Judgment

Liability for damages, Oral Contract, Rescission of Contract

[1] **GOONETILLEKE, J.:** The Claimant, Richard Kreis, a Canadian national now resident in Belize, filed this claim seeking damages of **One Hundred and Fifty Thousand U.S. Dollars (US \$150,000.00)** from the 1st defendant and for **Thirty-Seven Thousand and Five Hundred U.S. Dollars (US \$37,500.00)** jointly and severally from the 1st and 2nd defendants for a shareholder loan granted to the 2nd defendant, which formed part of the **One Hundred and Fifty Thousand U.S. Dollars (US \$150,000.00)** claimed from the 1st defendant.

Background

- [2] The 1st defendant, a Canadian national residing in Belize had incorporated the 2nd respondent's corporation, Becker Coconut Belize, a tour business, in Belize. He was its sole shareholder and managing director. The 1st defendant was also a shareholder in another company, Becks Belize Limited, a golf cart rental business which was also incorporated in Belize by the 1st defendant.
- [3] The claimant and the 1st defendant had been acquainted in Canada previously and in conversations and negotiations between them which took place on Facebook and by email had agreed for the claimant to invest in the 1st defendant's businesses in Belize and obtain shares in the businesses and for the claimant to move to Belize in November 2021 and help the 1st defendant to run these businesses.
- [4] Consequently, the claimant transferred **One Hundred and Fifty Thousand U.S. Dollars (US \$ 150,000.00)** in four (4) separate and equal payments of **Thirty-Seven Thousand and Five Hundred U.S. Dollars (US \$37,500.00)** to the claimant by wire transfers, in Canada. One (1) tranche of **Thirty- Seven Thousand Five Hundred U.S. Dollars (US \$37,500.00)** was used as a shareholder's loan to the 2nd defendant company. The claimant thereafter moved to Belize in or about May 2021.
- [5] The claimant states that he was not issued with shares in any of the 1st defendant's businesses and that there have been no payments made in terms of the Shareholder's Loan Agreement with the 2nd defendant's company. In the circumstances, he states that he terminated the agreement with the 1st defendant and now claims **One Hundred and Fifty Thousand U.S. Dollars (US \$150,000.00)** from the 1st defendant and **Thirty-Seven Thousand Five Hundred U.S. Dollars (US \$37,500.00)** from the 1st and 2nd defendant's jointly and severally, such sum being part of the **One Hundred and Fifty Thousand U.S. Dollars (US \$150,000.00)** given to the 1st defendant.
- [6] The defendants jointly filed a defence and acknowledged that the payments of the said sums were made. However, the defence denied that the sums were for shares in the 1st defendant's businesses (in the plural). In the defence, it is stated that the 1st

defendant being the majority shareholder in the 2nd defendant and its managing director, wanted to sell his **fifty-one per cent (51%)** stake in that business and that the claimant agreed to invest in that business by purchasing shares in it. The defence states that the only other business owned by 1st defendant is Beck's Belize Ltd. which is a golf cart rental business which the 1st defendant jointly owns with his ex-wife and that in terms of a court order, he is prohibited from disposing of his wife's **fifty per cent (50%)** shareholding of that business or its assets and that therefore, the investment of the claimant was only in respect of the 2nd defendant company.

- [7] It is also stated in the defence that the agreement of the parties was for instalments in regard to the shareholder loan given by the claimant to be paid back to the claimant by settling it off against the claimant's living expenses in Belize, which was done.
- [8] The defence also states that part of the agreement was that the claimant obtain a work permit to work in Belize and help the 1st defendant to run the business, which the claimant allegedly failed to do. The defence also stated that the claimant brought a 3rd party to live with him which increased the cost of living of the claimant which had to be funded by the defendants. In those circumstances, the defendants counterclaimed for damages of **Twelve Thousand Belize Dollars (BZD 12,000.00)** for labour and work to manage the business and **Forty-Eight Thousand Belize Dollars (BZD 48,000.00)** as living expenses paid on the claimant's behalf.
- [9] This matter was taken up for case management on 11th November 2023. The claimant was represented, and the 1st defendant appeared in person. Directions were given for witness statements to be filed and the trial was set for 18th January 2024. The 1st defendant who was present in court indicated that due to his financial situation, he may not be able to retain an attorney to represent him at the trial. The court indicated that he should obtain legal aid or take suitable steps to represent himself.
- [10] Prior to the trial, the 1st defendant wrote to the Registry stating that he would not participate in the trial. The defendants were absent and unrepresented at the trial. Consequently, the attorney for the claimant moved that the Court proceed in the absence of the defendants. Therefore, in terms of **Rule 39.4(b)** of the **Supreme Court**

(Civil Procedure) Rules 2005, the Court being satisfied that the defendants were aware of the trial and had notice of the relevant dates and were absent, directed that the trial proceed in the absence of the defendants.

[11] The claimant, Richard Kreis, and his witnesses, Ms. Rebecca Prediletto and Mr. Yahiya Mohamed Harmouche gave evidence on behalf of the claimant. No evidence was led for the defence. As the defendants were absent and unrepresented and as no witnesses gave evidence for the defence, the witness statements filed on behalf of the defence are disregarded as they have not been proved in court. As there has been no evidence to support the counterclaim of the defendants, the counterclaim is disregarded.

[12] The court is left with having to consider whether the claim has been proved with evidence that is available before the court.

[13] From the pleadings, the following facts are not in dispute:

- (i) The claimant paid and the 1st defendant received **One Hundred and Fifty Thousand Dollars (US \$150,000.00)**;
- (ii) 2nd defendant and the claimant entered into a Shareholder's Loan Agreement on or about the 1st of April 2021, for a sum of **Thirty-Seven Thousand and Five Hundred U.S. Dollars (US \$37,500.00)** to be repaid in **Eighty-Four (84)** monthly instalments of **Four Hundred and Forty-Six U.S. Dollars and Forty-Three Cents (US \$446.43)** commencing on the 1st of November 2021.
- (iii) No shares in any companies owned by the 1st defendant have been transferred to the claimant as of the date of the claim.
- (iv) The claimant has not obtained a work permit to work in Belize.

Issues

- [14] The following issues arise to be determined by the court:
- A. What were the terms of the contract?
 - B. Was there a novation of the contract by the claimant paying the **One Hundred and Fifty Thousand U.S. Dollars (US \$150,000.00)** ahead of time and moving to Belize earlier than previously agreed?
 - C. Was there a failure on the part of the 1st and/or the 2nd defendant to perform the contract?
 - D. Was there a failure on the part of the claimant to perform the contract?
 - E. Was there a valid termination or rescission of the contract?
 - F. Is the claimant entitled to damages? If so, how much?

Analysis

[15] **First Issue: what were the terms of the contract?** The contract between the claimant and the 1st defendant is not contained in a single document but has to be ascertained from the communications between them contained in emails and exchanges on Facebook which have been produced as Annex 1 to the second amended statement of claim.

[16] The offer to invest emanated from the 1st defendant. The offer was for the claimant to invest in the businesses of the 1st defendant and for the claimant to be a working partner. To this end, the email of 12th March 2021 from the 1st defendant states the terms on offer and states that the two businesses of the 1st defendant in Belize were valued as follows:

"Carts appraisal came in between \$ 299,000 - \$ 349,000 USD as a market Evaluation. Tours Appraisal came in at \$ 49,000 to \$59,000 USD.... Thus, I am ready to take on a working partner shareholder...we can talk...but **if you want in as a partner...equitable 50/50 partner**...then I am so excited... **I will just market value my companies at \$300,000 USD for our purposes.** Could be low but fair. **I would be asking for \$150k USD**...or \$200k Cdn...**the \$150k investment would be in the form of a Shareholder's Loan...that would be taken out monthly to live on. Depending upon the performance of the company...should be a 5-8 year payout... but the company will pay our bills.** By doing this, we do not have to pay tax. 1.75% Business Tax...paid monthly...doing tax right now... and we charge 12.5% GST which we remit and remains a neutral or positive for the company. That's it.

So, approximately \$1500 USD a month for housing – fixed costs includes internet etc...we would be roommates and split at \$750 USD per month. The company can pay this and we will have a working office...then we could draw an additional \$ 1000 per month or \$250 USD a week as our shareholders' draw – which is more than enough running around money. In essence, we would put as much through the company as possible and live off the shareholder's draw of Housing, Entertainment, Company Vehicles, and still have \$ 1000 USD a month for each of us to do what we want...

My proposal is:

1. \$ 37,500 USD or approx. \$ 50 k Cdn on April 1st, 2021, to cement the deal ...
2. July 1 - \$37.5 k USD
3. Oct 1- \$ 37.5 K

4. Jan 1- \$37.5K fully paid by 2022 which allows you to get here in November...settle in, we can do our training together...

*The transition would be pretty seamless...**we would apply for your remote working or temporary work permit here upon arrival... you need to get a local police report etc...easy...and then WE would be ready to roll fully engaged by 2022...So, \$ 150k or approx. \$200k Canadian should secure your next 5 years plus**...Hope this makes sense my friend. It does to me...but has to you. The Down Payment early secures out deal... I will work on the shareholders' loan agreement...and give me the opportunity to stay and work this summer ...with ample backup during the slow season...My sister is with RBC and can facilitate any banking transaction in Canada or can go directly to my USD account in the US or other. Whatever works for you...best...Sis can get it done...as I need to move monies down here for company bills etc..." [Emphasis added]*

[17] There is no evidence to suggest that the claimant did any due diligence in regard to the value of the companies, the assets and liabilities of the companies, cash flow, or the existing shareholders of the company but took the representations of the 1st defendant at face value.

[18] The claimant then duly transferred **Thirty-Seven Thousand Five Hundred U.S. Dollars (USD \$37,500.00)** to the US account of the 1st defendant on 31st March 2021.¹ This sum is acknowledged by the 1st defendant on 1st April 2021, in a Facebook conversation: "*we can talk money live... But you have skin in the game...Transferred*"

¹ Annex 2, of the amended statement of claim

*funds have already been received...Amazing...system works great...Your end was well executed..."*²

[19] Thereafter, another tranche of **Thirty-Seven Thousand Five Hundred U.S. Dollars (USD \$37,500.00)** was transferred by the claimant to the 1st defendant on the 14th of April 2021. A further tranche of **Thirty-Seven Thousand Five Hundred U.S. Dollars (USD \$37,500.00)** was transferred by the claimant to one named Donna Shuruell, on the 29th of April 2021, who according to the claimant in answer to the Court, was the 1st defendant's sister. A final tranche of **Thirty-Seven Thousand Five Hundred U.S. Dollars (USD \$37,500.00)** was transferred by the claimant to one named Christopher Beck, on the 29th of April 2021 who according to the claimant in answer to the Court, was the son of the 1st defendant. Thus, a total of **One Hundred and Fifty Thousand U.S. Dollars (\$150,000.00 USD)** had been transferred to the claimant and or his nominees by the 29th of April 2021.

[20] In answer to the Court, the claimant while giving evidence stated that he believed that some of these monies were transferred to the 1st defendant's sister and son in order to avoid tax liability in Canada. It is significant to note that none of the monies were transferred directly to a company account of any of the businesses owned by the 1st defendant. It is also significant to note that receipt of the above sums is not denied. Paragraph 11 of the amended statement of defence states: "*...the defendants admit receiving US\$ 150,000 from the claimant by way of four instalments of US \$ 37,500 each on the dates stated in the second amended statement of claim...*"

[21] It is also necessary to piece together the agreement by examining the statement of defence which is the only material available from the defendants as no evidence was tendered on behalf of the defence. In this regard, it is instructive to reproduce paragraph 22 of the amended statement of defence which reads as follows:

"Paragraph 13 of the claimant's second amended statement of claim is admitted in so far as the First defendant prepared a Shareholder Loan

² Annex 1, of the amended statement of claim

Agreement in respect of the initial US \$ 37,500. However, the defendants maintain that this was only done to ensure that the parties had something in writing documenting this initial payment. It was agreed that once the entire US\$ 150,000 was paid by the claimant to the first defendant, for and on behalf of the second defendant, a new shareholder Loan Agreement would have been executed by the claimant and the second defendant and the latter would supersede the prior agreement in respect of the US\$ 37,000. However, the claimant and the second defendant failed to subsequently execute a Shareholder Loan Agreement in respect of the US\$ 150,000.”

[22] Paragraph 23 of the amended defence sets out the position of the defence:

“Paragraph 14 of the claimant’s second amended statement of claim is vehemently denied. There was never any loan agreement between the Claimant and the First Defendant. The entire US \$150,000 was the subject of a Shareholder Loan Agreement between the Claimant and the Second Defendant and the latter alone is responsible for paying the same”.

I reject this assertion for three reasons: firstly, there was no money paid by the claimant directly into the account of the 2nd defendant, and at all times the money remained with the 1st defendant and or his nominees. Secondly, no shares of the 2nd defendant were issued to the claimant. Thirdly, the offer of the claimant by email of 12th March 2021 makes no mention of the investment only in regard to the 2nd defendant’s company. The valuation of **Three Hundred Thousand U.S. Dollars (US \$300,000.00)** is for both companies owned by the 1st defendant and the offer was to give on that basis a 50/50 partnership valued at **One Hundred and Fifty Thousand U.S. Dollars (US \$150,000.00)**.

[23] The claimant moved to Belize in or about May 2021, after the **One Hundred and Fifty Thousand U.S. Dollars (\$150,000.00 USD)** had been paid to the claimant and or his

nominees. However, the Shareholder's Loan Agreement with the 2nd defendant company in respect of the first tranche of **Thirty-Seven Thousand Five Hundred U.S. Dollars (\$37,500.00 USD)** is dated 1st April 2021. The terms of this Agreement recognise that **Thirty-Seven Thousand Five Hundred U.S. Dollars (\$37,500.00 USD)** has been received by the 2nd defendant's company and that it will pay the claimant back in **eighty-four (84)** monthly instalments consisting of **Four Hundred and Forty-Six U.S. Dollars and Forty-Three Cents (US\$ 446.43)** or **Eight Hundred and Ninety-Two Belizean Dollars and Eighty-Six Cents (BZD \$892.86)** without penalty or interest. A further clause in that agreement permits the borrower to pay back the claimant in full or to make additional payments at any time without penalty, based on the performance of the company.

[24] Taking all the above into account, the terms on offer by the 1st defendant can be deduced as follows; invest **One Hundred and Fifty Thousand U.S. Dollars (\$150,000.00 USD)** for a 50/50 equity partnership in the businesses of the 1st defendant which the 1st defendant had jointly valued at **Three Hundred Thousand U.S. Dollars (\$300,000.00 USD)**. The claimant was to invest by means of a shareholder's loan in order to avoid tax liability. Repayment was to be over a five (5) to eight (8) year period. The payment would be structured so that rent expenses of approximately **Seven Hundred and Fifty U.S. Dollars (\$750.00 USD)** would be paid by the company together with the benefits of company transport and facilities such as computers and internet. In addition, there would be a shareholder's draw of **One Thousand U.S. Dollars (\$1,000.00 USD)** per month. The claimant was also expected to move to Belize in November 2021, obtain a work permit and work in the business. The acceptance of the offer by the claimant would be effected by the initial consideration of **Thirty-Seven Thousand Five Hundred U.S. Dollars (\$37,500.00 USD)** to be paid on 1st April 2021.

[25] **Second Issue: Was there a novation of the contract by the claimant paying the One Hundred and Fifty Thousand U.S. Dollars (US 150,000.00) ahead of time and moving to Belize earlier than previously agreed?** The original offer was for the claimant to make the payment in four (4) tranches over a period of time, the last

payment to be made in January 2022 and for him to move to Belize in November 2021, sometime after the third payment. The claimant had however completed all payments for his investment in the 1st defendant's businesses by 29th April 2021 ahead of the initial schedule, and he moved to Belize in May 2021. Although the defence states that the claimant breached the contract by moving to Belize earlier than initially agreed, there is no evidence to suggest that either the 1st or the 2nd defendant protested these payments made ahead of time. On the contrary, the 1st defendant or his nominees continued to hold these monies and the 1st defendant accepted the move of the claimant to Belize in May 2021. The 1st defendant made arrangements for the claimant's accommodation and made payments for the rent and his expenses from company monies. These actions suggest that impliedly the terms were modified and accepted by the 1st parties to the effect that all four (4) payments would be made by the end of April 2021 and the claimant would commence living and working from May 2021. The other obligations of the contract between the parties remained unchanged.

[26] **Third Issue: Was there a failure on the part of the 1st and/or the 2nd defendant to perform the contract?** From the exchange of communications listed above, the offer emanated from the 1st defendant and was accepted by the 2nd defendant by making payment. The contract was therefore initially between the 1st defendant and the claimant. However, subsequently, there is a separate contract between the 2nd defendant and the claimant in regard to **Thirty-Seven Thousand Five Hundred U.S. Dollars (US \$37,500.00)**.

[27] Though the defence takes up the position that the contract was entirely between the 2nd defendant and the claimant, I have rejected that position in paragraph [22] above for the reasons stated therein. The defence also takes up the position that once the entire **One Hundred and Fifty Thousand (US \$150,000.00)** was transferred, the shareholder's Loan Agreement was to be modified to reflect the entire sum. This did not materialise and no shares were issued. The defence also takes up the position that the Shareholder's Loan Agreement for the entire amount was not executed and the shares were not issued due to the failure of the claimant to obtain a work permit and to work with the 1st defendant. Having examined the terms of the contract as apparent

from the exchange of messages and the pleadings, there is no stipulation or representation in the offer made that the issuance of shares or the Shareholder's Loan Agreement was to take place after the claimant obtained a work permit. On the contrary, the work permit would take time to obtain and even under the original timetable for payment, the payments would have been made before the claimant commenced work. Therefore, I hold that the claimant obtaining a work permit is not a condition precedent to the issuance of shares or the execution of the Shareholder's Loan Agreement. The 1st defendant has therefore failed to perform the contract by not issuing shares in the 1st defendant's businesses to the claimant and by not executing a Shareholder's Loan Agreement in that regard for all the monies invested by the claimant.

[28] The defence has also taken up the position that it was necessary to get Central Bank clearance for the share transfer. The law in this regard is stated in **section 9 of the Exchange Control Regulations**. What is required in terms of that regulation is to notify the Central Bank in writing of such share transfer prior to the share transfer. This requirement is therefore not an impediment to the share transfer contemplated. All that is required is for prior notice to be given to the Central Bank. The onus on giving such notice is on the transferor, which in this instance would have been with the 1st defendant. I, therefore, reject the defence presented that the shares could not be transferred due to regulatory reasons or that it was the onus of the claimant to obtain permission from the Central Bank for such transfer.

[29] Though there is a Shareholder's Loan Agreement between the claimant and the 2nd defendant in respect of the first tranche of **Thirty-Seven Thousand Five Hundred U.S. Dollars (US \$37,500.00)**, no shares have been issued to the claimant. Hence the liability in regard to the lack of performance of that contract would fall jointly on the 1st and 2nd defendants. The position would have been different if the shares were transferred in which event the liability would have been only with the 2nd defendant.

[30] In terms of the Shareholder's Loan Agreement, the **Thirty-Five Thousand Five Hundred U.S. Dollars (US \$37,500.00)** was to be paid back in 84 (eighty-four)

monthly instalments and that amount could be paid in full or additional payments could be made prior to the end date, without penalty. The position of the defence is that approximately **Two Thousand U.S. Dollars (US \$2,000.00)** were paid as monthly expenses in regard to the claimant and that thus far **Twenty-Four Thousand U.S. Dollars (US\$ 24,000.00)** of the loan amount has been paid back. The claimant while giving evidence was questioned by the Court on this aspect and he stated that he was prepared when negotiating for a settlement to accept **One Hundred and Fifty Thousand U.S. Dollars (US \$150,000.00)** minus **Twenty-Five Thousand U.S. Dollars (US\$25,000.00)**, which might have been expended on his behalf. I, therefore, accept the position of the defence that approximately **Twenty-Four Thousand U.S. Dollars (US \$24,000.00)** would have been paid back to the claimant by way of benefits received from the initial **Thirty-Seven Thousand Five Hundred U.S. Dollars (US \$37,500.00)** loaned. Thus, a balance of **Thirteen Thousand Five Hundred U.S. Dollars (US \$13,500.00)** remains unpaid on this loan for which the 1st and 2nd defendants are jointly and severally liable. Even though the 2nd defendant may make payment in full or may make additional payments, the 2nd defendant is obliged under the Shareholder Loan Agreement to make monthly payments to the claimant which it has failed to do. As the 2nd defendant has not made these payments there has been a breach of terms of the Shareholder's Loan Agreement.

[31] **Fourth Issue: Was there a failure on the part of the claimant to perform the contract?** The exchange of communication between the 1st defendant and the claimant makes it clear that part of the Agreement was for the claimant to work in the businesses so that the 1st defendant could share his workload and profits. In order to work in Belize, the claimant would have had to obtain a work permit. The Agreement, as indicated in the email communications between the parties, makes it a joint responsibility to apply for such a permit. However, the claimant cannot absolve himself of this responsibility as the work permit has to be his. The evidence of Mr. Harmouche, the third witness for the claimant, was that he was engaged by the 1st defendant to assist in processing this work permit for the claimant but that subsequently, the 1st defendant told him not to go ahead with processing this permit and asked for a refund of the money he had paid Mr. Harmouche in that regard. The claimant should have

been more diligent in pursuing the application for the permit even in the absence of Mr. Harmouche. The claimant was aware that he had to work as part of the Agreement. This is why the pleadings of the claimant and his witness statement bring out the fact that the claimant engaged in work to help out the 1st defendant, a position the 1st defendant denies.³

[32] The 1st defendant takes up the position that the claimant told people that he worked for the 1st defendant. The defence states that the 1st defendant warned the claimant not to make such statements as this would be tantamount to working without a permit. The lack of diligence on the part of the claimant to pursue the work permit and the reluctance of the 1st defendant to allow the claimant to say he worked in the business indicates that all was not well with the partnership. However, I hold that while the claimant has not diligently pursued his obligation to obtain a work permit that fact is not and could not be made a reason for not transferring the shares in the businesses of the 1st defendant to the claimant. If there was a lack of participation or contribution to the work of the business by the claimant, that was a matter to be addressed in remuneration or the shareholder's draw.

[33] **Fifth issue: Was there a valid termination or rescission of the contract?** Annex 10 to the witness statement of the claimant is a letter dated 12th May 2022 by the claimant's attorney addressed to the 1st defendant demanding the return of **One Hundred and Fifty Thousand U.S. Dollars (US \$150,000.00)** for the failure among other matters, to transfer the shares in the 1st defendant's businesses. This was followed up with a letter dated 29th June 2022, addressed to the 1st defendant rescinding the agreement for failure to allow the claimant access to the businesses owned by the 1st defendant, for failure to transfer shares in the business of the 1st defendant and for failure to provide a shareholder's loan agreement in respect of **One Hundred and Twelve Thousand and Five Hundred U.S. Dollars (US \$112,500.00)** (i.e. **One Hundred and Fifty Thousand Dollars (\$150,000.00)** minus **Thirty-Seven**

³ Paragraphs 18-27 of the witness statement of Richard Kreis and paragraphs 14, 15 and 27 of the amended defence and counter claim.

Thousand and Five Hundred Dollars (\$37,500.00) for which there is a Shareholder Loan Agreement).

[34] The issuing of shares in the claimant's businesses and the provision of the Shareholder's Loan Agreement in relation to the entire **One Hundred and Fifty Thousand U.S. Dollars (US \$150,000.00)** are fundamental terms of the agreement/contract between the claimant and the 1st defendant. The 1st defendant has failed to fulfil these terms. The 1st defendant has therefore breached the fundamental terms of the contract. As held in the celebrated case of *Hong Kong Fir Shipping Co. Ltd. v Kawasaki Kisen Kaisha Ltd.*⁴, failure to fulfil a fundamental term of a contract entitles the innocent party to rescind the contract. I, therefore, hold that the claimant is entitled in law to rescind the contract and has validly done so through his attorney by letter dated 29th June 2022.

[35] **Sixth Issue: Is the claimant entitled to damages? If so, how much?** As I have held above that the claimant is entitled to rescind the contract due to the fundamental breach of the contract by the 1st defendant, the claimant is entitled to damages⁵. As held in *Anglia TV v. Reed*⁶, the objective of damages is to put the innocent party in a position in which he would have been if the contract had been properly performed or restore the innocent party to the position he would have been if the contract had not taken place subject to any benefit the innocent party would have derived at the time of the rescission of the contract.

[36] The 1st defendant and or his nominees have had the benefit of the monies transferred by the claimant since at least the 29th of April 2021. Even if it is assumed that the claimant did not fully contribute his efforts and work to the output of the 1st defendant's businesses, any sum that can be considered due to the 1st defendant in this regard would be set off by the interest earned on the monies transferred by the claimant to the 1st defendant. There is nothing in the defence that indicates what happened to

⁴ [1962] 2 QB 26

⁵ Lombard North Central Plc v. Butterworth [1987] QB 527

⁶ [1972] 1 QB 60

these monies that were provided by the claimant nor is there any evidence that these monies were transferred to Belize and invested in the businesses of the 1st defendant, in Belize. On a balance of probability, these monies still lie in the possession of the claimant and/or his nominees.

[37] The 1st defendant is therefore liable to pay **One Hundred and Twelve Thousand Five Hundred U.S. Dollars (US \$112,500.00)** to the claimant with interest thereon at the rate of **six per cent (6%)** per annum from the date of this judgment.

[38] 1st and 2nd defendants are jointly and severally liable to pay the claimant **Thirteen Thousand Five Hundred U.S. Dollars (US \$13,500.00)**⁷, together with interest thereon at a rate of **six per cent (6%)** from the date of this judgment.

Costs

[39] As the claimant has succeeded in this claim, he is entitled to costs.

[40] The 1st defendant shall pay **seventy-five per cent (75%)** of the costs of the claimant as he is liable for **One Hundred and Twelve Thousand Five Hundred U.S. Dollars (US \$112,500.00)** out of **One Hundred and Fifty Thousand U.S. Dollars (US \$ 150,000.00)** which amounts to $\frac{3}{4}$ of the total amount.

[41] The 1st and 2nd defendants shall be jointly and severally liable for the balance costs which amount to **twenty-five per cent (25%)** of the costs of the claimant.

IT IS HEREBY ORDERED THAT:

- (1) The 1st defendant shall pay to the claimant **One Hundred and Twelve Thousand Five Hundred U.S. Dollars (US \$112,500.00)** together with interest thereon at the rate of **six per cent (6%)** per annum from the date of this judgment;

⁷ being the sum of **Thirty-Seven Thousand Five Hundred U.S. Dollars (US\$ 37,500.00)** minus **Twenty-Four Thousand U.S. Dollars (US \$ 24,000.00)** expended on the rent and benefits received by the claimant.

- (2) The 2nd defendant shall pay to the claimant **Thirteen Thousand Five Hundred U.S. Dollars (US \$13,500.00)** together with interest thereon at a rate of **six per cent (6%)** per annum from the date of this judgment and on the failure of the 2nd defendant to pay such sum the 1st defendant shall pay to the claimant **Thirteen Thousand Five Hundred U.S. Dollars (US \$ 13,500.00)** or such sum unpaid by the 2nd defendant, together with interest thereon at a rate of **six per cent (6%)** per annum from the date of this judgment;
- (3) The 1st defendant shall pay **seventy-five percent (75%)** of the costs of the claimant;
- (4) The 1st and 2nd defendants shall jointly and/or severally pay **twenty-five per cent (25%)** of the costs of the claimant;
- (5) The costs of this claim are to be assessed by the Registrar.

Rajiv Goonetilleke
High Court Judge