IN THE SUPREME COURT OF BELIZE A.D.2012

CLAIM NO. 222 OF 2012

BETWEEN

SOL BELIZE LIMITED **CLAIMANT**

AND

BEEZ IMPORTS LIMITED **DEFENDANTS**
ZEEB EXPORTS LIMITED

Before: Hon. Mde Justice Rita Joseph-Olivetti

Appearances: Mrs. Deshawn Arzu Torres of Youngs Law Firm of counsel for the Claimant.

Mr. Philip Zuniga S.C.of counsel for the Defendants.

J U D G M E N T

Dated: 2013: December 11

(Hearing dates: 2013: Sept. 25, Oct.3)

[Contract- Debt- Claim for monies due and owing- whether Claimant has established the debts – Claimant relying on accounts without supporting documents and contested promissory notes

Evidence -Promissory Notes not adduced in evidence at the trial- whether Claimant can rely on notes as they were part of pre-trial disclosure

Evidence –Whether Promissory Notes can be admitted into evidence as notes executed before notary public but notarial act not stamped as provided for by the Stamp Duties Act Cap. 64 s. 60-

Bill of Exchange - Promissory Notes- Documents stating payment to be made "on or before the 30day of January2012 and continuing weekly until the debt is paid in full"- Documents giving option to repay before certain date stated- whether documents promissory notes- Bills of Exchange Act Cap 245 ss. 11, 85 (1) & 91.

Economic Duress- Promissory Notes – whether obtained under duress- whether enforceable]

1. **Joseph- Olivetti J: -** Maybe after all there is some truth in the old adage- never put all your eggs in one basket. Sol Belize Limited ("Sol") is a major importer and seller of fuel in Belize, Central America. They allege here that the Defendants, BEEZ Imports Limited ("BEEZ") and ZEEB Exports Limited ("ZEEB") are indebted to them in the amounts of $612,185.00 and $907,484.14 respectively for fuel and that their principal signed two promissory notes acknowledging the debts. Both BEEZ and ZEEB deny that they are so indebted and say further that the two promissory notes relied on were obtained by duress and cannot be relied on as admissions / proof of the debts. They also counterclaim for damages as a result of Sol's breach of contract in disclosing information on price to their customers and the customers ceasing to trade with them and for accounts.
2. The main issues arising, having regard to the pleadings, the joint pre-trial memorandum, the evidence and the written submissions can be summarized as follows: -

    i. Whether Sol obtained the execution of the promissory notes through duress and if so whether the notes are enforceable;

    ii. Whether Sol is entitled to payment of the sums claimed.

3. First, however, a preliminary issue as directed by the court shall be considered. This is whether stamp duty is payable on the promissory notes.

4. Learned Counsel for Sol, Mrs. Arzu Torres contends that section 60 of the Stamp Duties Act Cap 64 ("the SDA")only speaks to the stamping of a notarial act and that there is no requirement at law for a promissory note itself to be notarized or stamped. Additionally, that section 62 of the Act deals with stamp duties on receipts (which included promissory notes) but was repealed by the General Sales Tax Act Cap. 45 s.100 and so is not applicable.
5. Learned Senior Counsel for the Defendants, Mr. Philip Zuniga argues first that the promissory notes are not before the court as neither the originals nor copies were put into evidence or even identified by Sol's witnesses. And, the fact that Mrs. Arzu Torres handed in the originals to the court in relation to the court's queries on stamp duties does not remedy this. In any event, that both notes were notarized and these notarial acts attract stamp duty by virtue of s.60 of the SDA. As the duties were not paid the instruments cannot be relied on nor can evidence of them be received. He cited **Halsbury's Law of England Vol. 17 4th edn** para 227.
6. First, the notes were not put in evidence by any of Sol's witnesses. Mr. Cortes spoke of the notes but he did not identify them or ask that they be admitted into evidence. In my judgment, the mere fact that a document has been disclosed pre-trial as part of required standard disclosure does not mean that it automatically becomes evidence at the trial. The Supreme Court (Civil Procedure) Rules 2005("CPR2005") r. 28 contains no provision to that effect. Rule 28speaks to pre- trial disclosure of relevant documents not to their automatic admission in evidence at trial. And further, CPR 2005 r. 29. 2 (a) makes it abundantly clear that the general rule is that any fact which needs to be proved at trial must be proved by the oral evidence of witnesses given in public. The short answer follows that the promissory notes were not adduced into evidence and that no more need be said of them. However, I will consider the other challenges posed to the notes in the event that I am mistaken in this.

7. Section 60(1) (a) of the SDA[1] provides for the stamping of every notarial act. Mrs. Arzu Torres is correct that the SDA does not require that a promissory note itself be notarized or stamped. However, the notes appear to have been executed before a notary public (as it turns out, on the face of the notes, Mrs. Arzu Torres herself) but the notarial acts were not stamped as required by s. 60 of the SDA. This to my mind affects the validity of the notarial acts themselves, not the notes. Had the notes been required to be notarized or stamped then by virtue of s. 30 of the SDA they could not be relied on for any purpose unless this were done. As it is, had Sol put the notes into evidence, Sol could have relied on them, subject to my ruling on the duress and other issue raised about their validity. Now to the main issues.

Court's Findings and Analysis.

8. **First, the main facts.** Sol is a wholesale supplier of fuel in Belize, Central America. It buys fuel in bulk from Puma Energy (formerly ESSO Petroleum) from Puma's fuel terminal at Loyola, Belize City and then they on sell to customers directly from that terminal. BEEZ and ZEEB are both limited liability companies incorporated in Belize owned by Mr and Mrs Jose Alberto Aldana who are both directors. At all times Mr. Aldana conducted the business of both companies. They had no other employees.
9. Sol commenced doing business with BEEZ pursuant to a **written supply agreement** dated 1 October 2010. (This is contrary to Sol's pleading at para. 2 of their statement of case ('S/C') that they had an oral agreement with BEEZ made in October 2010for the purchase of fuel on a credit basis).

[1] s. 60.-(1) There shall be paid- (a) on every notarial act, not being a protest of a bill of exchange or promissory note, a duty of .... $1.50 (b) on every protest of a bill of exchange, or promissory note, the same duty as on the bill or note: Provided that the maximum duty payable on such protest shall be... $1.50 (2) A notary who does or executes any notarial act or protest which is liable to duty but is not duly stamped shall incur a fine of fifty dollars.ept as between the banker and the payer;

10. However, Sol through their then general manager, Mr. Jose Habet and BEEZ, through Mr. Aldana, varied the agreement to provide for payment of all fuel bought, 30 days after delivery. The agreement had no provision that BEEZ provide a bond but it must have been orally agreed to subsequently as BEEZ provided to Sol a surety bond on 14 January 2011.However, scarcely a month thereafter BEEZ's insurers, Home Protector Insurance Company Limited, cancelled the bond on 31 January 2011 and returned the premium of $6,040.48 to BEEZ. (See letter from Home Protector exhibited as JA 2 to Mr. Aldana's witness statement.) Thus, Sol has not established their allegation in para.4 of their S/C that the policy was cancelled for <u>non- payment of premium.</u>

11. Notwithstanding the cancellation of the bond it appears that the arrangement to sell on credit continued although BEEZ did not provide another bond and there is no evidence that they were required to do so. However, sometime in November 2011, Mr. Habet at the request of Mr. Aldana agreed to continue the business through Mr. Aldana's new company, ZEEB. This appears to be because of BEEZ's financial difficulties as they also agreed that any debt owed by BEEZ would be transferred to ZEEB. However, it does not appear that they generated any paperwork to record this, to document the amount owed by BEEZ then or that Sol made any demands for payment at that time.

12. I accept Mr. Aldana's testimony that the arrangements or payment plan Sol, through Mr Habet, had with BEEZ was that BEEZ would pay to Sol,00.20 cents more for each gallon purchased or pay a monthly minimum of $25,000.00 and that except for one month, more than the monthly payment was made. He was not cross-examined about that arrangement. He said that this was working well that is why Sol agreed to transfer any debt to ZEEB.I also accept Mr. Aldana's testimony that Sol through Mr Habet had agreed that Sol would not disclose to his company's customers the price at which they purchased the fuel from Sol.

13. Now, to Sol's certain knowledge, the Defendants' business was to sell the fuel they bought from Sol to their customers in Guatemala so the sales were tax free. See Mr. Cortes at para. 6. Mr. Aldana explained and this is not in issue that the fuel was put directly into their customers' trucks from the Loyola terminal. To facilitate this Mr. Aldana had obtained Sol's permission to leave the trucks overnight at Sol's facility. After the fuel trucks were loaded Mr. Aldana accompanied them to the border and payment was made to him **in cash** at the border in Guatemalan currency (Quetzals) which he converted to Belize currency at the border and then paid Sol. However, prior to going to the border, as the sales were tax exempt, Sol issued delivery notes of the fuel purchased to Mr. Aldana and he used those notes that same time to make up the necessary customs declarations to enable the fuel to be exported. He said and I accept that he did not keep copies of those delivery notes as he gave them to the Customs Department and so the Defendants did not keep a record of the amount of fuel bought from Sol. All records of sales were kept by Sol. A copy of the type of documentation he prepared for Customs was tendered in evidence by Mr. Lin, Sol's current general manager and no issue was taken on them.
14. Mr. Aldana testified that sometimes he made large cash payments to Mr. Habet in his office, not to the cashier, and that such payments were sometimes $ 200,000.00, $300,000.00, $ 400,000.00 or $500,000.00 a week. The fact that large payments were made to the manager and not to the cashier is credible having regard to how payments were made by the Defendants' customers and too, the court can take judicial notice of the well known commercial reality that in business dealings where large cash transactions are concerned that ordinarily cashiers are not asked to handle such but they are conducted by the managers or senior staff behind closed doors.

15. Mr. Aldana further testified that Mr. Habet never gave him receipts for the cash upon payment explaining that he had to first ensure that Sol's Bankers accepted the cash deposits before issuing receipts and that receipts came late or not at all. The court can also take judicial notice of the fact that in these time where concerns about money laundering abound that banks have a ceiling on cash deposits.

16. Further, I accept Mr. Aldana's evidence as he was not challenged on this that on a Friday in November 2011 he paid $216,000.00 in cash to Mr. Habet, that on the following Monday Mr. Habet telephoned him and requested him to come to his offices. He did so. Mr Habet informed him that his office had been robbed, and the money he had paid stolen. Mr Habet told him that he was leaving for Miami and would sort it out on his return. He also told Mr. Aldana that he had not reported the robbery to the Police. Mr. Aldana heard nothing further from him about that payment and Sol have ventured nothing about Mr. Habet's whereabouts to this court. He on the face of it had he been available would have been Sol's best witness.

17. Mr. Aldana said he paid a total of $2,606,447.23 to cover cheques returned although he seems to say that there were no dishonoured cheques. Reviewing his evidence as a whole I infer that these were all payments he made by cheques and cash, some of which were to cover returned cheques. He exhibited copies of those cheques and two copies of cash receipts from Sol which show payments from 11 December 2010 to 16 December 2011. These two receipts amounted to $53,510.00 and $405.00 respectively each bearing the same date of 16 May 2011.See JA3 -receipts #45072 and #45083.

18. Business between Sol and ZEEB went on as usual until early January 2012. By that time Mr Habet was no longer manager and Mr Cortes-Kirsch ("Mr.Cortes") came on board as interim general manger around 6/7 December 2011.Mr Cortes, prior to that worked for Sol's parent

company (Sol Investments Ltd with headquarters in Barbados) first as a consultant (1 April 2010- May, 2012) with his base at his home in Panama and then he became an employee on 1 July 2012- special projects manager. However, whilst still a consultant he acted as the general manager of Sol from 5 December 2011- 30 April 2012.

19. Mr. Cortes, just about a month after his appointment as general manager took a wholly unjustified and oppressive measure against the Defendants on January 6 or 7 2012. He detained two delivery trucks of the Defendants' customers which were on Sol's premises. I infer from the fact that Mr Cortes said that ZEEB'S last purchase of fuel was on 6 January 2012 that those trucks were loaded with fuel. And Mr Cortes refused to release them despite repeated requests from Mr Aldana. He insisted that he would not do so without the authority of the owners. And this, when he knew full well that the trucks were there at the request of Mr.Aldana. He said he acted in that manner to protect Sol from any liability to the owners. He caused those vehicles to be detained from about the 6 to 27 January 2012. At the end of that period Mr. Aldana signed the contested promissory notes on behalf of the Defendants, the truck owners provided proof of ownership/authority as Mr. Cortes requested, Mr. Cortes got legal advice and Mr. Cortes released the vehicles. An interesting picture emerged as to exactly what transpired during that period.

20. Mr. Cortes detailed the circumstances in which he detained the trucks and the promissory notes were signed. He insisted that the execution of the promissory notes had nothing to do with the fact that he had unlawfully detained the fuel trucks of the Defendants' customers. And he reiterated that although the trucks were only released after the signing of the promissory notes the two events were unrelated.

21. I must say that I prefer Mr. Aldana's version to Mr. Cortes' account as his account does not strike me as credible in all the circumstances. Mr Cortes would have us believe that

suddenly, out of the blue so to speak, Mr. Aldana offered to sign these notes acknowledging substantial debts without any formal demands for payments having been made or any prior discussions between the parties having been held or prior presentation of accounts by Sol.(I observe that he spoke of meetings to discuss the debts with Mr. Aldana but gave no details and Mr. Aldana denied that there were any such meetings).I also note that Mr. Aldana said he signed those notes at Sol's office late in the evening well after 6 p.m. and no application was made to contradict him. An ordinary commercial transaction is seldom done after regular office hours unless there is some terrible urgency and to my mind regular debt collection is far removed from that category.

22. I have considered Mr. Cortes' version carefully. After detaining the trucks Mr. Cortes said (para 12 of his witness statement) that despite several attempts he was not able to contact Mr. Aldana until late January and (para. 13)that while attempting to contact Mr. Aldana he received 3 sets of incomplete documents from Mr. Guidel in relation to the trucks which aroused his suspicion. He put into evidence those documents and they are dated 24 January 2012 –JC3. Therefore, it follows that by his own testimony Mr. Cortes between 6-7 January to 24 January had had no contact with Mr, Aldana. Yet, on16 January 2012 Mr Cortes sent an email to Sol's lawyers asking them to prepare a promissory note. See JC 3

23. The basis of this request, as stated in his letter, was that one of their major customers, ZEEB may become delinquent, the balance owed was $1.519, 669.25 and that the owner had agreed to sign a promissory note. The letter stated further that Mr. Aldana had agreed to pay $30,000.00 weekly and an additional $0.40 which is not on invoice, on current purchases and that if ZEEB discontinued purchases for whatever reason the balance owed will become payable at once. Nothing was said about interest.

24. So the question- when did Mr. Aldana meet with Mr. Cortes to discuss the alleged debts and to agree to sign this note? It must be inferred from his explanation and his documents that Mr Cortes says prior to the 16 January 2012 and Mr Aldana said he never had any discussions or any such agreement. I believe Mr. Aldana as I found him a more credible witness than Mr. Cortes and Mr. Cortes' explanation taken together with his documents defy logic. Therefore, the court finds that no such meeting and agreement took place. Instead, I find that Mr. Aldana went to Mr. Cortes' office some time after the trucks were detained and that Mr.Cortes made it clear that he would not release the trucks to him without him signing a promissory note and Mr. Cortes then shrewdly went on to have the note prepared.

25. I accept Mr. Aldana's explanation that the trucks' permits to remain in Belize were to expire on 28 January 2012 and that if they exceeded that permission they would be impounded with consequent loss to their Guatemalan owners and the consequent disruption of the Defendants' business. Of course, Mr. Aldana and his company would be held responsible for their loss. I also accept that their customers were very upset and that he (Mr. Aldana) received threats from them. Further Mr. Cortes had told the customers' representatives at a meeting they all had at Mr. Cortes' office in relation to the release of the trucks that Mr. Aldana could not be trusted. Thus, Mr. Aldana would have been under enormous pressure to have the trucks released.

26. Mr. Aldana signed the single promissory note on 24 January 2012. But he advised Mr. Cortes that he was no longer the director. It transpired that Mr. Aldana had removed both himself and his wife as directors on 17 January 2012. See JA 1. Mr. Cortes therefore had separate promissory notes prepared and Mr. Aldana signed them both although he had disputed the amounts. That for BEEZ is dated 26 January 2012 and that for ZEEB, 27 January 2012.

27. Mr Cortes released the trucks on 27 January 2012 after the notes were executed. However, that was too late to save the Defendants or rather ZEEB's business as it appears that the detention spelled the end of their business as their Guatemalan customers, not surprisingly, ceased to do business with them. In addition, Mr.Aldana testified that Sol had released to their customers the price at which he was getting the fuel from Sol despite his understanding with Sol through Mr Habet that this should not be disclosed to them.

28. Now I turn to the issues as they relate to the enforceability of the promissory notes **ex abundantia** despite my earlier ruling that they were not put into evidence.

Issue 1- Whether Sol obtained the execution of the promissory notes through duress and if so are the notes enforceable.

29. Having regard to my findings aforesaid, in my judgment, the notes were obtained under duress or unfair pressure brought to bear by Sol acting though Mr Cortes on Mr. Aldana. I harbour no doubt that Mr. Cortes extracted the promissory notes from Mr. Aldana using his unlawful detention of the trucks as leverage. And, it does not matter that Sol itself made no threats to Mr. Aldana. Mr. Cortes' wholly unjustified detention of the trucks resulted in Mr. Aldana's said customers making threats to Mr. Aldana as their business had been jeopardized by Mr. Cortés's actions. Because Mr. Cortes was aware of the nature and manner of the business carried on he, I readily infer, could be under no delusion as to the devastating effects his acts of detention would have on the Defendants' business-I daresay that is why he embarked on that ostensibly clever device in the first place.

30. I also agree to with Mr. Zuniga's submissions that the oppressive nature of the promissory notes is evident on their very face. Both are dated one day apart, and as Mr. Zuniga puts it,

"purport a promise to pay $30,000.00 within 3 days of signature and thereafter $30,000.00 weekly. In other words $60,000.00 within 3 days and $60,000.00 weekly." This in light of the fact known to Sol that BEEZ had ceased business, and that ZEEB's only business was that of buying fuel from Sol and on selling it.

31. I note Ms. Torres' reference to **Halsbury's Laws of England** Vol 9(1) 4th edn para 711 on economic pressure where it is stated that in modern times the traditional view that the compulsion under which a person acts through fear for his property was not a good ground for avoiding a contract has been resiled from and that now the courts have accepted the general availability of a defence of duress of goods to an action for breach of contract recognizing that this is really a new rule leading to the application of a new name ,economic duress. And that the new rule has been held to apply where B was induced to contract by a threat by A to commit an unlawful act. However the principle has been held not to apply where B's consent was not vitiated by the pressure or where B had impliedly affirmed the contract or had a reasonable alternative or had acceded to legitimate commercial pressure.

32. In my judgment in all the circumstances I have no doubt that Mr Aldana's consent was vitiated by the unlawful acts of Mr. Cortes, which resulted directly in the Defendants' customers in response to those unlawful acts making threats including threats of violence against Mr. Aldana. In all the circumstances, therefore I find that Mr. Aldana had no viable alternative to secure the trucks' release in a timely manner. I therefore find that Mr. Aldana signed those notes under duress and accordingly the notes are not enforceable as free and voluntary admissions or acknowledgements of the Defendants' indebtedness to Sol. I turn now to consider another **challenge** raised to the promissory notes.

33. **Other challenge to the promissory notes.** For completeness I should here refer to the additional challenge to the promissory notes posed by Mr. Zuniga. Mr. Zuniga advances that

the notes are not in law valid notes as they are void or unenforceable because they do not contain provisions, **'to pay on demand or at a fixed or determinable future time, a sum certain in money'** as provided for by s.85 (1) of the Bills of Exchange Act Cap 245 ("the BEA") as both notes provide for payment "of 30,000.00 **on or before** the 30th day of January, 2012." thus making the date of payment uncertain"**.** Counsel relied on **Williamson and others v. Rider [1962] I All E R 268** where it was held that **'a document in which the person signing agrees unconditionally to pay a sum certain in money <u>on or before</u> 31 December 1956'** is not a promissory note within the English Bills of Exchange Act, 1882, s. 83 (1) because the option to pay at an earlier date creates an uncertainty or contingency in the time of payment contrary to the provisions of s. 11.' He also cited **Claydon &Anr. v. Bradley a & Anr [1987] 1 All E R. 522.** And he contends that ss. 11 and 83 (1) of the English Bills of Exchange Act 1882 are on all fours with ss.11 and 85 (1) of the BEA.

34. In my judgment Mr. Zuniga is correct. Section 85 (1) of the BEA provides:-

> **" 85 (1) A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a <u>fixed or determinable future time</u>, a sum certain in money, to or to the order of, a specified person or to bearer."** (Emphasis mine)

35. Section 11 of the BEA provides:-

> **"11.-(1) A bill is payable at a determinable future time within the meaning of this Act which is expressed to be payable- (a) at a fixed period after date or sight; (b) on or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain. (2) An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect."**

36. And section 91 of the BEA provides:-

> **“91.-(1) Subject to the provisions in this Part, and except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes.”**

37. Both notes speak of payment **“on or before the 30day of January2012 and continuing weekly until the debt is paid in full”**. Having regard to the conjoint effect of sections 11, 91 and 85 (1) of the BEA and the cases cited this formula as used in both notes creates an uncertainty in the time for payment rendering the documents not promissory notes within the meaning of S. 85(1) of the BEA and so void. Indeed, this formula patently creates even more uncertainty in the time of payment than in the 2 cases cited[2].

Whether Sol is entitled to payment of the sums claimed?

38. Mr. Zuniga submitted in essence that Sol have not proved their case **as pleaded**. In short that Sol has not put in sufficient evidence before the court to establish that Sol sold to BEEZ 1,237,840 gallons of regular gasoline, 106,100 gallons of super gasoline and 547,480 gallons of diesel between 1 October 2010 and 18 November 2011and that BEEZ owes $612,185.11. See para 3 and 5 of their S/C. Further that Sol have not established as pleaded that they sold 315,825 gallons of regular gasoline and 180,030 gallons of diesel to ZEEB for which ZEEB owes $907,484.14. See paras.7 of the S/C.

39. In brief ,Ms Torres counters that the accounts put into evidence by Ms Marin on behalf of Sol were not challenged and therefore established the Defendants’ indebtedness to Sol.

[2] In Claydon the formula used was – “**by July1983**”and that was held by the English Court of Appeal to contain an option to pay at an earlier date than the fixed date and the uncertainty or contingency crated thereby as to time for payment meant that there was not the unconditional promise to pay at a fixed or determinable future time which was necessary to make a document a promissory note under .s. 83 of the Act.

40. In the light of my ruling on Sol's failure to put the notes into evidence it follows that Sol cannot rely on the notes as admissions or acknowledgements of the debts and must establish the debts by other cogent evidence.

41. I agree with Mr Zuniga having regard to the evidence adduced by Sol that Sol have not established their case. They have not proved that BEEZ and ZEEB purchased the amounts of fuel they claim in their pleadings or any other specific amount for that matter and that they owe for those purchases as claimed as none of Sol's witnesses gave evidence of the amounts allegedly sold. And, further, even the accounts relied on by Sol do not refer to any quantities sold and Sol did not put in evidence the invoices referred to in the accounts which might have helped to establish exactly what was sold.

42. Further, Sol have not established what is owing and for that matter could hardly have gone on to do so having failed to prove what was sold in the first place. In addition by para. 11 of their S/C, Sol allege that BEEZ paid **$980,101.34 in cheques which were dishonoured.** BEEZ admits making the payments but denies that the cheques were dishonoured. However, Sol did not adduce into evidence any of those returned cheques and the court can take judicial notice of the widely recognized fact that banks return dishonoured cheques to the payee i.e. the person presenting the cheques, here Sol. I note Sol appears to have made standard pre- trial disclosure of some cheques but did not see fit to adduce them into evidence. On the other hand, Mr. Aldana produced as already noted photocopies of bank drafts and 2 receipts documenting payments made to Sol. Further, on Sol's statement of accounts only 2 cheques are noted as returned on page 11 as far as I can make out. No attempt was made by Ms. Marin or any other witness of Sol to explain the accounts. Perhaps, understandably Ms. Marin did not do so as she did not prepare the accounts being merely the conduit for adducing them into evidence.

43. With respect to any monies owed I note that Mr. Aldana does not say that his companies are not indebted to Sol but that he disputes the amounts claimed and the Defendants in their Defence put Sol to proof of that indebtedness. Further it is clear that Sol accept as I have found that Mr. Aldana also made some cash payments to Mr. Habet and Ms. Marin testified that the accounts she presented only referred to monies that she actually received. Therefore, it is clear that the accounts do not reflect the accurate state of affairs between the parties. Clearly Sol substantial reliance on the promissory notes and the notes having been declared void and unenforceable they were left in the lurch and so have failed to establish their claim on a balance of probabilities. The claim is therefore dismissed. I now turn to the counterclaim.

44. **The Counterclaim**: - has it been established? I note that Mr. Zuniga did not address the counterclaim and take that as tacit acceptance that his clients did not establish their claim. Mrs. Arzu Torres submits that the counterclaim should be dismissed.

45. In any event, I find that although Mr. Aldana spoke of loss as a result of Mr. Cortes divulging information about prices to their customers contrary to their oral agreement not to do so, Mr Aldana has not given any evidence of losses sustained by the Defendants. I therefore find that the claim has not been established.

Costs.

46. The Defendants are to have their prescribed costs in accordance with CPR 2005 r.64.5 and Sol are to have their prescribed costs on the counterclaim in accordance with the same provision.

Summary of Conclusions

47. I now sum up the orders made herein. The promissory notes were not put into evidence and therefore cannot be relied on. Alternatively, the promissory notes are void as they are not

promissory notes within the definition of "promissory note" under Section 85 (1) of the BEA, as they are not payable on demand or at a fixed or determinable future time. Further and alternatively the promissory notes were obtained by duress and are unenforceable. Sol have failed to establish their claim and the claim is dismissed with prescribed costs to the Defendants. The Defendants' counterclaim is likewise dismissed with prescribed costs to Sol.

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Rita Joseph-Olivetti

Supreme Court Judge Ag.

Supreme Court of Belize, Central America