

**IN THE SUPREME COURT OF BELIZE A.D. 2010**

**Claim No. 29 of 2010**

**BETWEEN**

**(EVENT SALES INC.**

**CLAIMANT**

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**And**

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**(**

**(RAFAEL G. REYES**

**DEFENDANT**

**Before:** The Honourable Madam Justice Minnet Hafiz - Bertram

**Appearances:** Mr. Eamon Courtenay S.C.  
and Mrs. Ashanti Arthurs-Martin for the Claimant

Mrs. Magali Marin-Young for the Defendant

**J U D G M E N T**

**Introduction**

1. The Claimant, Event Sales Corporation (hereinafter referred to as “Event Sales”) is a company existing under and by virtue of the laws of Minnesota, United States of America and carrying on the business of purchasing ‘customer returned’ and marked ‘out of stock’ merchandise, primarily clothing apparel and footwear, ‘As Is’ from retailers in the USA., including major retailers such as Target and Marshalls, and then selling the merchandise to buyers both within and outside of the USA.
2. The Defendant, Rafael G. Reyes (“Mr. Reyes”) is a customer of Event Sales carrying on business in Belize City, Belize.

3. Event Sales by claim form dated 15th January 2010 claims against Mr. Reyes the sum of US\$105,367.81 being monies owed for goods sold and delivered to him on various dates.
4. Mr. Reyes denied that he owes Event Sales the sum of US\$105,367.81. He says that he owes US\$34,100.87. In an Ancillary Claim dated 15th February 2010, he claims a set-off of damages in the sum of BZ\$72,465.44 and a further sum of US\$23,645.90 being the difference between the price quoted for the goods purchased and the items shipped. Mr. Reyes has alternatively claimed a right to rescind the sale of the two containers.
5. Event Sales denies that Mr. Reyes is entitled to any of the damages claimed, and maintains that he is indebted to them in the sum of US\$105,367.81.

**Statement of Case**

6. Event Sales claims that Mr. Reyes was their customer and on diverse dates as shown in paragraphs three to seven of their statement of claim, Mr. Reyes purchased merchandise from them as follows:

<b>Date</b>	<b>Amount</b>
	US\$
2 <sup>nd</sup> October, 2008	21,375.80
21st day of October, 2008	21,233.92
24th day of October, 2008	19,028.01
14th day of October, 2008	52,150.00
20th day of November, 2008	44,868.60

7. Event Sales says that Mr. Reyes made partial payments totaling US\$49,980.00 towards his indebtedness to them. As of 19<sup>th</sup> June, 2009 he owes them the sum of **US\$105,367.81** and despite repeated demands he has failed to pay the debt.

### **Defence**

8. Mr. Reyes admits purchasing the goods up to 24<sup>th</sup> October, 2008. He says that in relation to paragraphs 6, 7, and 8 of the Claim for the purchases made on 14<sup>th</sup> October, 2008 and 20<sup>th</sup> November, 2008 that:

- a. In November, 2008, Event Sales Officer, Tony Hofstede told him that they had surplus stock and lacked storage space and offered to sell him two container of summer goods on consignment to be paid by him whenever the goods were sold;
- b. Between the 14<sup>th</sup> and 20<sup>th</sup> November, 2008, he received two pro-forma invoices from Event Sales personnel for the two containers of summer goods with a total price for the goods sold of USD73,372.60 as follows:

Invoice 127290 – US\$36,610.00

Invoice 127525 – US\$36,762.60

US\$73,372.60

- c. Event Sales sent two revised invoices after the goods were shipped as follows:

Invoice 127490R – US\$52,150.00

Invoice 127525R – US\$44,868.60

US\$97,018.60

- d. When he queried the discrepancy, Mr. Hofstede represented that there was an increase in price because they had managed to expand the loading of the two containers beyond what they had

quoted to him, and that the two containers were filled to capacity.

- e. In breach of Event Sales representations, when the goods arrived he said that he noted that the two 40 feet containers were not filled to capacity.
- f. Further, in breach of the representations by Event Sales, the goods shipped were mostly winter clothes and not summer clothes.
- g. He protested the invoices and the quality of the goods and Event Sales represented to him that if he makes payments as the items were sold, he would be issued a credit note to compensate for the containers not being full to capacity and for the fact that winter goods were shipped and not summer goods.
- h. He kept making payments on his account up until June 18<sup>th</sup>, 2009 and refused to make any further payments until he was issued a credit note that was acceptable to compensate for the misrepresentation.
- i. In breach of the representations by Event Sales, no credit note has been sent to compensate for breaches.
- j. He offered to return the merchandise to Event Sales because he had been unable to sell them, and in breach of Event sales representations as to sale on consignment, they demanded payment.
- k. He suffered loss as a result of wasted expenditure, being import cost for winter goods which he has been unable to sell, and therefore, claims damages for cost of importation of goods.

9. Mr. Reyes says that the total balance owing by him as per his statement of account, without any set-off is US\$34,100.87.

**Ancillary Claim**

10. Mr. Reyes in his ancillary claim repeats his defence and claims:
- (a) Damages in the sum of BZ\$ 72,465.44 as specified in the claim.
  - (b) Damages for difference in price quoted and the invoice items shipped in the sum of US\$ 23,645.90;
  - (c) Damages;
  - (d) In the alternative and in addition to his claim for damages, a declaration that he has a right to rescind the sale of the two containers;
  - (e) Interest and cost.

11. **Issues arising from the claim and counterclaim for determination are:**

- 1. Whether in November, 2008, Event Sales offered to sell Mr. Reyes two container of summer goods and if so, whether the sale was on consignment to be paid by him whenever the goods were sold.
- 2. Whether the goods purchased in November, 2008 were mostly winter clothes and if so, the quantity of winter clothing.
- 3. Whether Mr. Reyes was entitled to a credit note for the purchases made in November, 2008 from Event Sales.
- 4. Whether Event Sales is entitled to the sum of US\$105,367.81 being the balance owing by Mr. Reyes.
- 5. Whether Mr. Reyes is entitled to nominal damages for the winter clothing he received in the November, 2008 shipments, and if so, quantum.

6. Whether Mr. Reyes is entitled to the damages claimed in the ancillary claim.

### **Witnesses**

12. The witness for the Claimant is Mr. Anthony (Tony) Hofstede. The witnesses for the Defendant are Mr. Rafael Reyes and Mr. Hector Coye.

### **Documentary evidence**

13. The documentary evidence are the exhibits to the witness statements and all the disclosures which were put into evidence by the consent of the parties.

### **Issue 1:**

**Whether in November, 2008, Event Sales offered to sell Mr. Reyes two container of summer goods and if so, whether the sale was on consignment to be paid by him whenever the goods were sold.**

14. There are two questions raised under this issue, being (1) Whether there was an agreement between the parties for the sale of two containers of **summer goods**; (2) Whether Event Sales offered to sell Mr. Reyes two containers of **summer goods on consignment**.

### Offer to sell summer goods

15. Mr. Reyes in his defence and ancillary claim stated that in November, 2008, Event Sales Officer, Tony Hofstede told him that they had surplus stock and lacked storage space and offered to sell him two containers of summer goods on consignment to be paid by him whenever the goods were sold. Mr. Reyes in his witness statement stated that based on the

representations made for the sale of summer goods on consignment he accepted to have Mr. Hofstede sell him the two containers of goods.

16. In the Defence to the Ancillary claim Event Sales stated that they shipped summer clothes and though they did not inspect the clothes after receiving same from the supplier, they used the time of shipping which is the month of November, 2008 when surplus summer goods were being sold off. The Stock Lists of the goods in dispute exhibited as “AH 1” and “AH 2” and which forms part of the disclosures, No. 45 and No. 47 of the Claimant’s bundle, show that the goods were received from Marshalls on 1<sup>st</sup> September, 2008 and 1<sup>st</sup> October, 2008 by Event Sales.
17. Mr. Hofstede in his witness statement stated that while Event Sales may from time to time be in a position to ensure that a particular load contains mostly merchandise of a particular season as may be requested by the client, it cannot and as a matter of policy, it does not guarantee that all the merchandise will be of one season.
18. In oral evidence, Mr. Hofstede said that Event Sales would contact Mr. Reyes whenever they had Marshalls product from September, October and November because most of the goods were in fact summer product and after having received four previous containers and partial shipment from Marshalls, Mr. Reyes was aware that it was an important time to ask for the product which he requested. He admitted under cross-examination that Mr. Reyes was interested in summer goods that would be available at that particular time from Marshalls. Further that Mr. Reyes was expecting spring and summer goods when he made the purchase in November, 2008.
19. In my view, it is clear from the evidence that Mr. Reyes was interested in summer goods because of the period within which he placed his order when there is summer goods available. Further, Mr. Hofstede has

admitted that Mr. Reyes was interested in summer clothes. As such, the court finds that the agreement between the parties were for the sale of summer goods.

#### Offer to sell summer goods on consignment

20. Event sales at paragraph 9 of the defence to the ancillary claim says that it has never conducted business on consignment with Mr. Reyes. It was always agreed that Mr. Reyes would pay for goods shipped and this was not dependent in any way on whether he was able to sell the goods.
21. Mr. Hofstede denied that the payment arrangement was on a consignment basis. He said that Event Sales has never sold any goods on consignment. Further, that Mr. Reyes would receive an invoice for goods sold 'as is' and he would pay by wire transfer. He said that Mr. Reyes had been a good customer for over five and half years and normally, he would pay after the goods were shipped to him because he had explained to them that there were delays with payments because there were problems converting Belize dollars to US dollars.
22. The evidence of Mr. Hofstede, who I find to be a very credible witness, is supported by the Invoices before the court which shows that the goods were being sold 'as is' to Mr. Reyes. The court does not find Mr. Reyes evidence credible that an offer was made by Mr. Hofstede to sell him the goods on consignment. I find that there was no offer to sell the goods on consignment.

#### Conclusion

23. The court finds that the agreement between the parties were for the sale of summer goods . Further, the court finds that Event Sales did not offer



to sell Mr. Reyes, in November of 2008, the said goods on consignment to be paid by him whenever the goods were sold.

**Issue 2:**

**Whether the goods purchased in November, 2008 were mostly winter clothes and if so, the quantity of winter clothing.**

24. Mr. Reyes' defence is that in breach of the representations by Event Sales, the goods shipped were mostly winter clothes and not summer clothes. Event Sales at paragraph 7 of the defence to the Ancillary Claim says that the goods shipped were summer goods. This was so because the shipments in question were made in the month of November, 2008 when surplus summer goods were being sold off and winter goods were in highest demand. Further, that there could be no surplus winter goods just before winter.
25. Mr. Reyes at paragraph 7 of his witness statement stated that whilst unloading the goods he saw that they were of winter quality and informed Mr. Hofstede about this. He stated that Mr. Hofstede told him that he would follow up on this matter with his warehouse people since he did not have the information on hand about the containers. In cross-examination, Mr. Reyes said that 50% of the container was winter clothing and the other 50% were clothes that were useless. Further, that the court saw 50% of the clothes at the locus. This is because there was a leak at one of his warehouses and the clothes got damaged and were thrown away.
26. In cross-examination, Mr. Reyes said that he usually gets an independent person to do a video of the damaged or winter clothes and would send the compact disc (CD) to Mr. Hofstede. However, in this case he did not do so because when he offered to do that, Mr. Hofstede told him not to do so because of their relationship. Further, that Mr.

- Hofstede told him that he would talk to his people and get back to him on a credit note. In further, cross-examination, he said that he did not keep a video even when he threw away the clothes because Mr. Hofstede told him that it was not necessary.
27. Mr. Coye, Customs Broker and witness for the Defendant, at paragraph 7 of his witness statement said that the type of clothing in the boxes were for cold weather and many pieces were torn and damaged. He admitted in cross-examination that he cannot tell how many torn items he saw. He also admitted that he cannot tell that a majority of the items were torn. In re-examination he said he saw that there were many thick jackets in the shipment. He also saw clothes for Belize weather.
  28. Mr. Hofstede's evidence is that seven months after the containers were shipped and after many requests were made for Mr. Reyes to pay his bill that he informed Event Sales that most of the goods were winter clothes. Before that, Mr. Reyes did not say that that there was a problem with the merchandise in terms of damage, quality or season. Further, that before the said complaints, Mr. Reyes had agreed to pay the bill in full. He kept paying part-payments and later he refused to answer phone calls and e-mails.
  29. He further testified that when he was informed seven months later of the winter goods he told Mr. Reyes that since most of the items were winter clothes he would take back the goods. However, a day later, he said that he called Mr. Reyes and told him that he cannot do so because they would have to pay the duty. He said he told Mr. Reyes that if most of the items were winter goods he would try to resell them in the United States instead of having Mr. Reyes ship the goods back to them.
  30. Mr. Hofstede testified that he did not know whether the disputed goods were from Marshalls because he was never given any verification in any shape or form by Mr. Reyes. He said that in the past Mr. Reyes sent him

Compact Disc that showed pictures of damages and other things so that he could verify that there was a credit issue. Further, that the clothes received from Marshalls are sold by pieces and Mr. Reyes received an inventory of the pieces of clothing in each box. In re-examination, Mr. Hofstede said that the majority of the goods are summer or spring clothes.

Submissions by Mrs. Martin for Event Sales

31. Mrs. Martin submitted that the Defendant has failed to establish that he received mainly winter goods. He had no pictorial evidence although in prior instances where there was a dispute he had taken pictures, and all that remains from the two containers which purportedly contained winter goods were a few boxes of clothing. Further, that most of the items viewed on the locus visit were not winter clothing, thereby suggesting that contrary to the Defendant's evidence, the majority of the items received could not have been winter goods.
32. Mrs. Martin contended that Mr. Reyes has relied on the evidence of the customs broker, Hector Coye, to corroborate his evidence that the goods were winter clothing. However, when Mr. Coye's evidence was tested under cross-examination it became evident, that Mr. Coye had not inspected the goods in any sufficient manner to say that they consisted mainly of winter clothing. Mr. Coye admitted that he did not take the items out and so could not say how many items of clothing were damaged, he could not say that majority of the items were torn, and he could not say that the items of clothing were not suitable for Belize, otherwise than a reference to a jacket.

Submissions by Mrs. Marin-Young for the Defendant

33. Learned Counsel, Mrs. Young submitted that Event Sales breached its representations as to the quality of the goods that they were selling and

shipping to Mr. Reyes. Further, that he had in fact raised the concern with them and they failed to address the same even though they had represented that they would have issued a credit note to compensate him for this loss.

34. Mrs. Marin-Young submitted that when the court visited the warehouse of Mr. Reyes, it became evident that the goods were indeed winter goods. Further, Mr. Reyes explained that the goods in those containers were only some of the goods that were sold to him because he had to dispose of a portion that became wet in his storage facility.

### **Determination**

35. I did not find Mr. Reyes' evidence credible that fifty percent of the disputed goods were winter clothing. It is for Mr. Reyes to prove the quantity of clothing he received by giving evidence as to how many pieces of clothing he received in each carton box and how many pieces were winter clothing.
36. Further, the court respectfully disagrees with Learned Counsel, Mrs. Young's submissions that when the court visited the warehouse of Mr. Reyes, it became evident that the goods were indeed winter goods. This is not an accurate account of what was viewed by the court. Two containers of goods were shipped by Event Sales and what the court saw were several boxes of clothing in each container. Mr. Coye's evidence is that there were 638 boxes in one container and in the other there were 602 boxes. These boxes according to Mr. Reyes were repacked and it is my view that what the court saw at the warehouse represented a very minute amount of what was shipped by Event Sales.
37. The said carton boxes viewed by the court had an assortment of clothing which included summer clothes and some of the clothing appeared to be winter clothes because of its thickness. However, as

submitted by Mrs. Martin, most of the items viewed at the locus were not winter clothing, thereby suggesting that contrary to the Defendant's evidence, the majority of the items received could not have been winter goods.

38. Mr. Reyes received an inventory showing the amount of clothing in each cartoon box that was shipped, yet he failed to prove the amount of winter clothing that he received. Further, Mr. Reyes' excuse for not making a video is not believable. Previously, he made videos and it is very suspicious that he did not do so when he received two containers that contained mostly winter clothes. I did not find him to be credible when he said that Mr. Hofstede told him not to make the video. Further, I find that he was not credible when he said in cross-examination that fifty percent of the clothes were destroyed because his warehouse was leaking. In further cross-examination he said that he sold one eighth of the container which I find also, to be untruthful.
39. Mr. Coye's evidence is not helpful to the court. In cross-examination, he said that it was not possible to tell the amount of items in each of the boxes that were shipped in the container and further only sixty percent of the boxes were opened by Customs to verify the contents. I did not find his evidence credible as he must have known that each box had an inventory as to the amount of pieces of clothing, therein.
40. Mr. Reyes bought the clothes by pieces and he failed to prove how many pieces were winter clothes. The court accepts that Mr. Reyes did receive some winter clothing but he has failed to prove that most of the clothing were winter clothing and in particular, he failed to prove the quantity of winter clothing received. Accordingly, the court finds that the goods shipped were not mostly winter clothing and further, Mr. Reyes failed to prove the quantity of winter clothes received in the two containers shipped in November, 2008.

**Issue 3:**

**Whether Mr. Reyes was entitled to a credit note for the purchases made in November, 2008 from Event Sales.**

41. Mr. Reyes in his defence said that when he protested the invoices and the quality of the goods, Event Sales represented to him that if he makes payments as the items were sold, he would be issued a credit note to compensate for the containers not being full to capacity and for the fact that winter goods were shipped and not summer goods.
42. Mr. Hofstede's evidence is that there was no discussion about credit note. However, he would have offered a credit memo if he had the facts from Mr. Reyes. The evidence of Mr. Hofstede which I believe is that the discussion was in relation to the return of the shipment which decision lasted only for a day and thereafter a decision to resell to someone else if the shipment was indeed winter clothes. This discussion was seven months after the shipment was received by Mr. Reyes.
43. In further evidence, Mr. Hofstede explained the circumstances under which Event Sales would issue credit notes to Mr. Reyes. These are, (1) If Mr. Reyes does not receive the amount of pieces of clothing mentioned in the inventory or (2) Where there was not a full container when goods from their California vendor, Mervyns are shipped. The goods in this case are sold by weight and not by pieces; (3) Evidence of damages and other products received.
44. Mr. Hofstede testified that normally Mr. Reyes would immediately upon receipt of the goods inform Event Sales that there was an issue with the goods and they would verify with the Vendor and based on that, they would issue a credit. He said that they would refer to the weight of the container so as to verify how much goods were shipped.

No proof of quantity of clothes not received

45. Mr. Reyes did not provide Event Sales with proof of the quantity of clothes that he did not receive and so he was not entitled to a credit note under such circumstances.

No evidence of winter clothes received

46. At paragraph 3 of Mr. Hofstede's witness statement, he said that since the merchandise is delivered to and sold by Event Sales 'As Is' by container load, as a practical matter they do not go through merchandise piece by piece to determine seasonality. Further, while Event Sales may be in a position to ensure that a particular load contains mostly merchandise of a particular season they cannot guarantee that all the merchandise will be of one season. This evidence shows that it is possible for some winter clothes to get into the container. In such cases however, it is for Mr. Reyes to provide the evidence of the winter clothes received. The goods shipped were from Marshalls and these goods were sold by pieces. As shown above, he has not provided to Event Sales any proof as to the quantity of winter clothes that he received and photographs of same as he has done in the past which Event Sales could have used to verify whether the clothes indeed came from Marshalls. As such, I find that he was not entitled to a credit note for winter clothes that he received from Event Sales for the November, 2008 shipment.

Summer clothes sold “as is”

47. In relation to summer clothes, these are sold ‘as is’ and as such, it is my view that Mr. Reyes would not be entitled to credit notes for any damages to these items. Mr. Hofstede’s evidence is that Event Sales carries on the business of purchasing ‘customer returned’ and marked ‘out of stock’ merchandise , primarily clothing apparel and footwear, ‘As Is’ from retailers in the USA. At paragraph 4 of his witness statement he said that in or about July 28, 2003, Mr. Reyes approached Event Sales with a view to establishing a business relationship for the sale and shipment of merchandise from them to him in Belize for use in its business, the ‘Kriol Wagons’ . He stated that he explained to him that all sales would be on an “As Is” basis and no guarantees were made as to the product sold. Mr. Reyes therefore intimated he would be more comfortable with merchandise received in October and November and Event Sales endeavored to try to provide the same as far as possible.
48. Mr. Hofstede further stated at paragraph 5 of his witness statement that on or about April 20, 2006, Mr. Reyes personally visited Event Sales warehouse in Minneapolis, Minnesota to inspect some of Event Sales merchandise. As such, he was therefore, fully aware that due to the nature of their business it is not possible for them to inspect goods sold hence the reason goods are sold “As Is”. Mr. Hofstede further stated that having viewed Event Sales operations, Mr. Reyes did not cease business with them. Further, every invoice issued by them to Mr. Reyes expressly states that the merchandise is sold “As Is”.
49. There is no doubt as can be seen by the evidence that Mr. Reyes purchased goods from Event Sales on an ‘as is’ basis. The evidence of Mr. Hofstede from paragraph one to five of his witness statement shows that the merchandise is sold on an ‘as is’ basis. Mr.



Hofstedes' evidence is supported by the invoices which show the merchandise was sold to Mr. Reyes on an 'as is' basis. The Commercial Invoices exhibited at "T.H. 2", "T.H. 3", "T.H. 4" "T.H. 5", and "T.H. 6" all show that the goods were sold on that basis.

#### The term 'as is'

50. The said Invoices from Event Sales show the quantity of clothing, price for each piece, total amount, and under the heading of 'description' it shows where Event Sales got the clothing and it shows that the merchandise is sold 'AS IS'. This term 'as is' translates into 'with all faults'. In sales transactions the term is used when the seller wants to offer the goods in their present and existing condition. The term gives notice to buyers that they are taking a risk on the quality of the goods. However, the buyer is free to inspect the goods before purchase, but if any hidden defects are discovered after purchase, the buyer has no recourse against the seller. As such, any implied or express warranties that usually accompany goods for sale are excluded in an "as is" sale. See **MacLeod v ENS (1982) 3 W.W.R. 653** cited by Learned Counsel, Mrs. Martin, where Cameron JA explained the concept of sale of goods "as is". Mr. Reyes purchased summer goods 'as is' and therefore, the court finds that he was not entitled to credit notes for damaged summer goods.

#### Conclusion

51. Mr. Reyes has failed to provide Event Sales with proof of the quantity of clothes that he did not receive for the November, 2008 shipments. Further, he failed to provide them with proof of the quantity of winter clothing he received in the said shipments. As for damage to any

summer clothing, the amount of which was not proven, he is not entitled to damages since he bought on an 'as is' basis. Accordingly, the court finds that Mr. Reyes was not entitled to a credit note for the purchases made in November, 2008 from Event Sales.

**Issue 4:**

**Whether Event Sales is entitled to the sum of US\$105,367.81 being the balance owing by Mr. Reyes.**

52. Event Sales claims that Mr. Reyes owes them **US\$105,367.81**. as shown by Mr. Hofstede in his witness statement. Mr. Hofstede at paragraphs 7 and 8 of his witness statement stated that Mr. Reyes paid his invoices in a most timely fashion and the parties had a reasonable successful business relationship until April 24<sup>th</sup>, 2008, being the last time Mr. Reyes account had a zero balance. After that, he made only partial payments towards further purchases that he made and had no complaints about the merchandise. Mr. Hofstede exhibited at **"TH1"** a copy of the Statement of Account for 2008/2009 which shows the balance to be **\$105,367.87**.
  
53. At paragraphs 9 to 13 of Mr. Hofstede's witness statement, he stated that on or about the 2<sup>nd</sup> day of October 2008, Mr. Reyes purchased **US\$21,375.20** in merchandise from Event Sales. A copy of Invoice No. 127225 is exhibited and marked **"TH2"**. On or about the 21<sup>st</sup> day of October, 2008, he purchased **US\$21,233.92** in merchandise from Event Sales. A copy of the Invoice No. 127352 is exhibited as **"TH3"**. On or about the 24<sup>th</sup> day of October, 2008, Mr. Reyes purchased **US\$19,028.01** merchandise from Event sales. A copy of the Invoice No. 127383 is exhibited as **"TH4"**. On or about the 14<sup>th</sup> day of October, 2008, he purchased **US\$52,150.00** in merchandise from Event Sales.

A copy of the Invoice No. 127490R is exhibited as “TH5”. Then on, or about the 20<sup>th</sup> day of November, 2008, Mr. Reyes purchased **US\$44,868.60** in merchandise from Event Sales. A copy of the Invoice No. 127525R is exhibited as “TH6”.

54. Mr. Hofstede’s evidence as stated at paragraph 14 of his witness statement is that as of November 21<sup>st</sup>, 2008, Mr. Reyes owed Event Sales a total sum of **US\$175,327.87**. Further, despite several demands, written and oral and Mr. Reyes’ promises to pay, he made only partial payments totaling **US\$69,960.00**. This is confirmed by the Statement of Account exhibited at “TH1” which shows all the partial payments made and the balance owing as **\$105,367.87**.
55. Mr. Reyes in his defence stated that the total balance owing by him as per his statement of account, without any set-off is **USD34,100.87**. He has admitted in cross-examination that he did not pay anything on the last two containers which amounts to **US\$ 97,018.60**.

#### Revised Invoices

56. In relation to the last two containers, the court has to determine whether Event Sales is entitled to the entire sum claimed since Mr. Reyes questioned the quantity of goods received by him. In his defence and ancillary claim he says that Events Sales represented to him that there was an increase in price of the goods sold because the two containers were full to capacity. Event Sales in their defence to the ancillary claim says that the invoice had to be revised because Mr. Reyes requested additional items in the containers.
57. Mr. Reyes in his witness statement stated that in November, 2008 he received by e-mail from Event Sales Invoice number 127490 for the sum of **US\$36,610.00** and on November 20, 2008 he received by email

another Invoice number 127525 for the sum of US\$36,762.60. He further stated that after the goods were shipped by Event Sales, he received two revised invoices, that is, Invoice 127490R for USD52,150.00 and Invoice 127525R for USD 44,868.60. When he queried the revision he was informed by Mr. Hofstede that the increase was because they expanded the loading of the two containers beyond what they quoted and that the two containers were full to capacity.

58. Mr. Reyes at paragraph 4 of his witness statement stated that the two containers arrived in Belize on 9<sup>th</sup> December, 2008 and one was offloaded at a warehouse in Belize City and the other at a warehouse in Benque Viejo Town, Cayo. He stated that he observed that the two containers only occupied two thirds in length and three quarters in height of the containers. He stated that after offloading the containers, he informed Mr. Hofstede of his findings in regards to the containers not being full to capacity. Further, Hector Coye, witness for Mr. Reyes stated at paragraph 5 of his witness statement that when the containers were opened, he observed that they were not full to capacity with boxes.
59. Mr. Hofstede's evidence is that goods are shipped either by quantity or by pieces. When goods are purchased from Marshalls they are identified by the pieces. However, when goods are purchased from their California vendor, Mervyns the goods are sold by quantity by looking at weight of the container and not pieces. The goods in dispute, the total of which are shown by "TH 5" and "TH 6" exhibited by Mr. Hofstede were from Marshalls, shipped in December and were sold by piece and not quantity. "TH 5" shows 37,250 pieces and "TH 6" shows 32,049 pieces. It also shows the cost of each item and the total cost of the goods.
60. Mr. Hofstede in his evidence explained how the date is known when the goods are received from Marshalls and how the number of pieces of clothing in each box are verified. He testified that the same inventory received from Marshalls which is generated by Marshalls office would

be included in the cartoon that Mr. Reyes received. Event Sales puts a date on the document when it is received from Marshalls, takes a copy of same and places it back into the cartoon which is shipped to Mr. Reyes.

Submissions for Event Sales

61. Learned Counsel, Mrs. Martin submitted that the allegation by Mr. Reyes that Event Sales had represented that the containers were full has been denied. However, she contended that the allegation is of no moment since the goods were sold per piece, and not by the container load. Further, the Invoices marked "TH5" and "TH6" show that the goods in question were sold per piece. The price would not therefore have varied whether the container was full to capacity, or not.
62. Learned Counsel further submitted that there is no assertion by Mr. Reyes that he did not receive the number of items stated on each Invoice. Further, if this was so, as had happened in the past, Event Sales would have verified what was shipped based on the Invoice enclosed in the package and if indeed there was a discrepancy they would have issued a credit note to Mr. Reyes.

Submissions for Defendant

63. Learned Counsel, Mrs. Marin-Young submitted that Event Sales has failed to prove that the revised invoices accurately reflect the amount of goods that it represented were sold to Mr. Reyes. Learned Counsel referred the court to Mr. Hofstede's oral evidence which shows that he has no knowledge as to what is loaded in the containers. Further, that his employees does not load the containers as they were loaded at Mervyns and Marshalls' warehouse and he admitted that he personally could not tell the Court what in fact left his warehouse. Learned Counsel further, referred the court to Mr. Hofstede's evidence where he said that

he did not prepare the invoices issued to Mr. Reyes and he did not prepare the bill of lading which only stated an estimate of the weight of the goods for shipping purposes. As such, Mrs. Marin-Young submitted that Mr. Hofstede cannot say whether the containers were in fact fully loaded to have justified the unilateral revision to invoices number 127490R and 127525R, the difference in the revision being USD\$23,646.00.

### **Determination**

64. The statement of accounts from Event Sales exhibited at “TH 1” shows that Mr. Reyes had a zero balance in 2008. Mr. Reyes has questioned the two revised invoices for US\$52,150.00 and US\$44,868.60 being US\$97,018.60 in total. He did not question the other purchases as shown on the statement of account. The court therefore, has to determine whether Event Sales is entitled to the total sum of US\$97,018.60 for the last two containers of goods shipped to Mr. Reyes.
65. The two revised invoices to Mr. Reyes are for the two shipments in December of 2008. Mr. Reyes’ evidence is that he was informed by Mr. Hofstede that the two containers were filled to capacity. However, when he received the containers they were not filled. Event Sales in their defence to the ancillary claim says that the invoice had to be revised because Mr. Reyes requested additional items in the containers.
66. Mr. Reyes and Mr. Coye’s evidence that the container was not filled to capacity does not assist the court at all. The clothes were sold by pieces and there is no evidence as to the quantity of clothes received by Mr. Reyes. He did not produce the documents which he received in each carton box which is the inventory list showing the pieces of clothing in each box.

67. Mr. Hofstede for Event Sales did not address in his witness statement that Mr. Reyes requested additional items in the container as stated in their defence to the ancillary claim. In cross-examination, he told the court that while he does not physically prepare invoices, he is responsible for making sure that the documents are prepared properly by the accounting department. This does not address the issue as to what additional items were shipped to Mr. Reyes.
68. Mr. Hofstede could not say if the additional items were put on the container. This is so, as Event Sale received these goods from Marshalls and they shipped same to Mr. Reyes without verifying the amount of pieces. This is the reason why credit notes are issued upon proof of any complaints. Mr. Hofstede said that the Marshalls inventory came directly from Event Sales warehouse and while he cannot personally verify that the goods were loaded onto the containers, he is responsible for the amount of pieces that go into the container which is verified by looking at the inventory list.

### **The court's analysis of the documentary evidence**

69. The documents exhibited as No. 45 and No 47 in the Disclosure Bundle for the Claimant are Inventories or Stock Lists in relation to Invoice No. 127490R and Invoice No. 127525R which are the two invoices in dispute. The Inventories show: the goods are from Marshalls, the Stock number, the Pallet number and the number of cartoon boxes in each pallet. The inventories also show the number of pieces of clothing in each cartoon box.
70. The Invoice number 127490R dated 11/14/2008 for US \$52,150.00 shows that 37,250.00 pieces of clothing were shipped. The Bill of Lading shows that 40 pallets were shipped. The inventories disclosed show the number of the pallet and the number of boxes on the

- particular pallet. For this Invoice the documentary evidence shows that there were 27 pallets and 679 boxes of clothing. The amount of pieces of clothing in the **679 boxes** amounted to 37,299 pieces. The Invoice however, had 37,250.00. The price for each piece of clothing as stated on the Invoice is US\$1.40.
71. The Invoice number 127525R dated 11/20/2008 for US \$44,868.60 shows that 32,049 pieces of clothing were shipped. The Bill of Lading shows that 40 pallets were shipped. The inventories disclosed shows the number of the pallet and the number of boxes on the particular pallet. The documentary evidence for this Invoice shows that there were 29 pallets and 624 boxes of clothing. The amount of pieces of clothing in the **624 boxes** amounted to 32,054.00 pieces. The invoice however, had 32,049.00 pieces of clothing. The price for each piece of clothing as stated on the Invoice is US\$1.40.
72. The total cartoon boxes as shown by Event Sales inventories are **679** plus **624 = 1,303.00 cartoon boxes.**

Cartoon boxes actually received as shown by Belize Custom Entry

73. Mr. Coye, Customs Broker and witness for the Defendant exhibited the two Belize Customs Declaration Forms dated 12<sup>th</sup> December, 2008 for the two containers in dispute shipped by Event sales. For Customs Declaration number 116834 exhibited as "HC 1", **602 cartoons** of clothing were shipped in one container. As for Customs Entry number 116836, **638 cartoons** of clothing were shipped in the other container. The total cartoons shipped as shown by the Customs Declaration are **602 plus 638 = 1,240.00 cartoon boxes.**



Difference between Event Sales Inventories and Customs Declaration

74. When the court compared the inventories from Event sales with the Customs Declaration, there is a discrepancy in relation to the amount of boxes that were shipped. The Inventories show **1,303.00 cartoon boxes** and the customs declarations show **1,240.00 cartoon boxes**. The difference of boxes as shown on the inventories and those shipped is **1,303.00 – 1,240.00. = 63 boxes**. This evidence proves that Mr. Reyes received 63 boxes less than what is shown on the Inventory lists provided by Event sales.

No proof of additional items shipped by Event Sales justifying increase

75. Mr. Hofstede is not responsible for the packing of the container and so he could not give any evidence to verify the amount of boxes that were indeed shipped. Event Sales failed to prove the additional items that were shipped by them thereby justifying the increase in the price of the goods by USD\$23,646.00. The court accepts the Belize Customs Declaration as being sufficient evidence to verify the amount of boxes received. The court however, not having any evidence of the pallet number that was not received cannot say how many pieces of clothing were not shipped to Mr. Reyes.
76. Mr. Reyes received 1,240.00 cartoon boxes but the court has no evidence as to the pieces of clothing received. On a balance of probabilities, the court finds that the Invoices sent to Mr. Reyes before the revision show the amount of clothing shipped. That is, Invoice 127490 for USD36,610.00 and Invoice 127525 for USD36,762.60 for a total sum of **USD73,372.60**. It follows that Event Sales is not entitled to the difference of **US\$23,646.00** on the revised invoices.

## **Balance on accounts**

### Mr. Reyes accounting

77. Mr. Reyes said that he kept making payments until 18<sup>th</sup> June, 2009 and this date is confirmed by “T.H. 1” of Event Sales accounting. He testified that before the shipment of the last two containers he owed the Claimant **USD34,100.87**. In cross-examination he admitted that he has paid nothing on the last two shipments. When asked, *‘What did you pay for the last two containers?’* He responded, *“I have not paid anything. That is the issue. He is saying that I owe him. He wants me to pay him”*.
78. The finding of the court above is that the last two containers shipped amounts to a total of **USD73,372.60**. Based on Mr. Reyes admission of owing USD34,100.87 and not paying anything on the last two containers his debt, according to his accounting would be US\$107,473.47. However, the court is not satisfied with Mr. Reyes’s accounting.

### Event Sales Accounting

79. Event Sales accounting shows that \$105,367.87 is the total owing. The court’s finding is that the discrepancy is **US\$23,646.00**, which is difference between the revised invoices and the invoices before they were revised. As such, the court will deduct this figure from the total as shown on Event Sales statement of account. That is, **\$105,367.87 less US\$23,646.00 = US\$ 81,721.87**. As such, the court finds that Event Sales is entitled to the sum of **US\$81,721.87** being the debt owed by Mr. Reyes.

**Issue 5 :**

**Whether Mr. Reyes is entitled to nominal damages for winter clothing received in the November, 2008 shipments, and if so, quantum.**

80. It is for Mr. Reyes to prove the amount of winter clothes he received and since he has not done so, it is my view that he is entitled to nominal damages. In the case of **Greer v Alstons Engineering Sales and Services Ltd. (2003) UKPC 46**, which was cited by Mrs. Marin Young this shows that a Defendant is entitled to nominal damages where he has suffered a loss but has not proved the quantum. It can be seen from Event Sales Invoices that the price for one piece of clothing is US\$1.40. The court certainly did not see more than 100 pieces of winter clothing at the *locus*. As such, I believe that a reasonable sum to be awarded is 100 x US\$1.40 = **US\$140.00**. Mr. Reyes is awarded US\$140.00 as nominal damages for winter clothing received in the November, 2008 shipments. This amount will be set-off on the debt owed to Event sales.

**Issue 6:**

**Whether Mr. Reyes is entitled to the damages claimed in the ancillary claim .**

81. As a result of the findings of the court, the ancillary claim is dismissed.

**Costs**

82. The evidence shows that Mr. Reyes was dissatisfied with the last two containers but failed to provide the Claimant with the evidence of the amount of pieces of clothing received and also evidence of the winter clothing. Further, the evidence of Event Sales shows that he refused to answer numerous emails and phone calls in relation to his debt. Although,

he has partially succeeded in this claim, it is my view that he should pay the cost of the claim.

Costs is awarded to the Claimant in the sum of US\$15,987.28 /BZ\$31,974.56

### 83. **Summary of findings**

The findings of the court are:

1. The agreement between the parties were for the sale of summer goods . Further, the court finds that Event Sales did not offer to sell Mr. Reyes, in November of 2008, the said goods on consignment to be paid by him whenever the goods were sold.
2. The goods shipped were not mostly winter clothing and further, Mr. Reyes failed to prove the quantity of winter clothes received in the two containers shipped in November, 2008.
3. Mr. Reyes was not entitled to a credit note for the purchases made in November, 2008 from Event Sales.
4. Event Sales is not entitled to the difference of **US\$23,646.00** on the revised invoices.
5. Event Sales is entitled to the sum of **US\$81,721.87** being the debt owed by Mr. Reyes.
6. Mr. Reyes is awarded **US\$140.00** as nominal damages for winter clothing received in the November, 2008 shipments. This amount is set-off on the debt owed to Event Sales.
7. Event Sales is awarded **US\$81,721.87** less **US\$140.00**  
**= US\$81,581.87.**

8. The ancillary claim is dismissed.
9. Costs is awarded to the Claimant in the sum of US\$15,987.28.  
/BZ\$31,974.56

84. **ORDER**

The Claimant is awarded the sum of US\$81,581.87/BZ\$163,163.74 as damages with interest at the rate of six per cent *per annum*.

Cost is awarded to the Claimant in the sum of US\$15,987.28.  
/BZ\$31,974.56

Dated this 19th day of February, 2013

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Minnet Hafiz-Bertram  
Supreme Court Judge