

**THE SUPREME COURT OF BELIZE, A.D. 2017**

**CLAIM NO. 229 of 2016**

**JEFFREY STIEGLITZ**

**CLAIMANT**

**AND**

**ALEXANDRA NICHOLSON**

**DEFENDANT**

**BEFORE the Honourable Madam Justice Sonya Young**

Hearings

26.4.2018

10.5.2018

Decision

1.6.2018

Ms. Pricilla J. Banner for the Claimant.

Mr. Said Musa, SC for the Defendant.

**Keywords: Contract - Agency – Trespass – Concession – Breach of Duty – Accounting – Damages - Injunction**

**SUPPLEMENTAL JUDGMENT**

1. The Court delivered a judgment in this matter on the 19<sup>th</sup> October, 2017. Therein it was ordered that a full and proper account be taken by an agreed expert of the finances associated with the Reef Village Condo between 2011 and January 2015, and Bermuda One Condo between 2011 and March 2015. The parties were directed to agree the terms of reference, provide the expert with all information and assistance required and produce all relevant books,

bank records, writings and other documents. Mr. Wilbert Rhaburn, Accountant was, by their consent, appointed as the expert.

2. On the 18<sup>th</sup> April, 2018, Mr. Rhaburn wrote to the Court stating that he had received documents from the Defendant only but he was unable to comply with the Court Order and the terms of reference. He explained that the information presented was unreliable, according to International auditing standards and his own experience as an auditor. He summarized that *“(D)ue to the deficiencies in the source documents provided and the absence of other supporting documents to support the reliability and completeness of the accounting records, I am unable to provide the full and proper accounting as ordered.”*
3. The result of this is that there was no additional evidence for the court to consider in making a final determination.. It also became obvious to the court that no accounting had been done by Ms. Nicholson as she alleged or she would have presented those accounts to the Auditor.
4. The issues which remained for the court’s consideration were
  1. Whether Ms. Nicholson converted rental received from Bermuda One and/or Reef Village to her own use between 2011 and 2015.
  2. Did Ms. Nicholson mismanage Reef Village.
  3. Is Dr. Stieglitz entitled to any remedies including damages and in what quantum.

**On the Counterclaim:**

5.
  1. Did Ms. Nicholson expend the sum of \$59,373.90 on the maintenance and management of Reef Village and Bermuda One.
  2. If she did incur such expenditure is she lawfully entitled to be repaid by Dr. Stieglitz.

**Whether Ms. Nicholson converted rental received from Bermuda One and/or Reef:**

6. The Court finds that Ms. Nicholson did receive money for the rental of both Condo's during the relevant periods for which she did not account to Dr. Stieglitz. Under cross-examination she admitted to collecting \$50,000 in rent between 2012 and early 2013. Dr. Stieglitz says he has not received same and I found no reason to doubt him. The Court therefore finds, on a balance of probability, that Ms. Nicholson has converted the sum of \$50,000. Proof of conversion and failure to account are clear breaches of an agent's duty to his principal. Ms. Nicholson has breached her duty and an award of damages in the sum of \$50,000 will be made against her.

**Other Remedies:**

7. The Claimant has also asked for an account and he is entitled to one. The Court may order a general account solely on the basis of Ms. Nicholson's wilful default. However from the state of the evidence now before the Court it seems that an exercise of this nature would be futile. The expert's own words speak volumes. Had the Claimant perhaps sought to demand information from the Defendant whether through specific disclosure (Part 28) or a request for information (Part 34) or properly made the interim application for an account to be taken his victory may not have been this hollow.
8. The Court, having already awarded damages for breach of duty can find no good reason to make a declaration that Reef Village was mismanaged. It will serve no useful purpose. Issue two therefore falls away.

9. The Court has already found that the Defendant trespassed on the Bermuda One from 19<sup>th</sup> September, 2014 to 19<sup>th</sup> March, 2015. He is entitled to damages for the six months of trespass. He need not show that he could have rented the property during this period nor that Ms. Nicholson has profited while in possession see *Inverugie Investments Ltd. v Hackett [1995] 1 WLR 713*. Ms. Nicholson in correspondence to Ms. Stieglitz states the rental of Bermuda One as US\$1000 per month. Dr. Stieglitz himself offered nothing. The Court accepts this as the fair market rental of the property. An award of US\$6,000 or BZ \$12,000. is accordingly made for the six month trespass.
10. Incidental to the trespass, Dr. Stieglitz claimed \$356.00 for security at Bermuda One. No evidence whatsoever was led in this regard. Similarly, his claim of \$2,823 as reimbursement for rental on 24<sup>th</sup> November, 2015, lacks evidential support. In fact, counsel made no submissions whatsoever regarding these two claims. They are rejected in their entirety.
11. Finally, there was a claim for electricity payments between September 2012 to May 2015. Counsel in her submissions urged that he be given *“a fair sum to compensate him for the loss he suffered in the increased electricity bills for the rentals for which he did not receive any revenue from the Defendant.”*
12. The Court has found that Ms. Nicholson trespassed on Bermuda One for the period September 19<sup>th</sup>, 2014 to March 19<sup>th</sup>, 2015. During this time Dr. Stieglitz says he did not use the condo nor did he authorize its use. I find these bills during this period to be a proven consequential loss occasioned by the trespass and I award the proven sum of \$2,700.79 in special damages. Beyond this, I know of no principle which allows me to give a fair amount for electricity in lieu of payment for authorized rental.

13. The Court will also make an order as prayed for a permanent injunction against Ms. Nicholson as it relates to Bermuda One.

**Did Ms. Nicholson expend the sum of \$59,373.90 on the maintenance and management of Reef Village and Bermuda One:**

14. If Ms. Nicholson is successful on her counterclaim, the sum will be set off against any award made in the Claimant's favour on the claim.
15. Ms. Nicholson claims \$59,373.90 as sums expended in the performance of her management responsibility for Reef Village and Bermuda One. She does not explain why she did not take her expenses from the funds she received from the rentals. It is highly unlikely that, even as a friend, you would expend almost \$60,000 between 2011 and 2015 and never once bother to ask about it or agitate for payment. In the vast number of emails she sent to both Dr. and the then Mrs. Stieglitz she speaks of incurring expenses, but never of recouping her expenditure. This is suspicious to say the least.
16. It leads any reasonable minded person to believe that she was somehow either recovering these sums (if they were in fact incurred) or they were not incurred at all. Next, the court considered Ms. Nicholson's evidence that she had paid over \$14,000 in cash and \$4,000 through a bank account to the Stieglitz's. If she was paying over what she honestly earned in rental, this would mean that the two condos yielded an aggregate of \$18,000 over the three plus years. Why then, as a Property Manager, would you incur, to your own detriment, expenses which more than doubled what the properties were generating.

17. Further, Ms. Nicholson admits that part of the amount she claimed was a loan made to the then Mrs. Stieglitz. Making such a claim here is untenable. Mrs. Stieglitz is no party to this matter nor is there any reason offered or proven why Dr. Stieglitz ought to accept or assume responsibility for Mrs. Stieglitz's debt.
18. When pressed under rigorous cross-examination Ms. Nicholson suddenly and for the first time, revealed that she was entitled to a 20% commission which she said had been verbally agreed (by whom, continues to be a mystery) but of which, Dr. Stieglitz was aware. This commission, she informed, she kindly reinvested for the maintenance of the condo.
19. She next said that what she sent to the Stieglitz's was only their 80%. She rounded all this out by stating that she had in fact been partially paid for the expenses she had incurred but was adamant that she never used any of the rental income to cover the expenses. Then, she said she had paid some out of pocket and some she deducted. Finally, she explained that it was an investment for her and she hoped to be reimbursed through rentals. She seemed confused but the Court was not.
20. When the Court considered Ms. Nicholson's many inconsistent statements, her demeanour in the witness box, how evasive she was and how, when it seemed convenient, she pretended to be obtuse, I found her to be a less than credible witness. She portrays herself to be a selfless friend who treated the condos as she would her own. I dare say she treated the income they generated as her own as well. She has failed to prove any part of her counterclaim to the requisite standard. It is therefore dismissed in its entirety with costs to the Ancillary Defendant.

**Determination:**

**On the Claim:**

1. Judgment for the Claimant.
2. Damages are awarded for breach of duty in the sum of \$50,000.
3. Damages are awarded for trespass of the Bermuda One Condo for the period 19<sup>th</sup> September, 2014, to 19<sup>th</sup> March, 2015 in the sum of BZ\$12,000.00 (General Damages) and \$2,700.79 Special Damages.
4. Interest shall be awarded on these sums at the rate of 3% from 19<sup>th</sup> September, 2014 to the date of judgment herein and thereafter at the statutory rate of 6% per annum until payment in full.
5. A permanent injunction is granted restraining the Defendant, her servants, agents or assigns from interfering with the Claimant's management, possession and control of the Bermuda One Condo.
6. Costs to the Claimant in the agreed sum of \$15,000.

**On the Counterclaim:**

The counterclaim is dismissed. Costs shall be on the claim.

**SONYA YOUNG  
JUDGE OF THE SUPREME COURT**