

IN THE SUPREME COURT OF BELIZE, A.D. 2018

CLAIM NO: 282 of 2017

BETWEEN

JONATHAN BLITZ

CLAIMANT

AND

**COLIN HANNAN
RONAN HANNAN
FERNANDO PAIZ
PLEXAR CAPITAL LLC
GARETH WHYTE**

**1st DEFENDANT
2nd DEFENDANT
3rd DEFENDANT
4th DEFENDANT
5th DEFENDANT**

Keywords: Partnership; Partnership at Will; Partnership Act; Partnership Property;

Novation Agreement

Fiduciary Duty; Breach of Fiduciary Duty; Trust and Confidence of Partners;
Breach of Trust; Buy-out of Partnership interest; Exclusion of Partner from
Partnership; Damages recoverable for wrongful Act;

Tort; Dishonest Assistance; Joint and Several Liability; Test of Dishonesty;
Measure of Damaged for Accessory Liability;

Before the Honourable: Mr. Justice Courtney A. Abel

Hearing Dates: 15th May 2018
16th May 2018
17th May 2018
07th June 2018
22nd June 2018
11th July 2018
17th July 2018.

Appearances:

Mr. Darrell Bradley and Mrs. Julie-Ellis Bradley for the Claimant.

Mr. Eamon Courtenay S. C. and Sol Espejo for the 1st, 2nd, & 4th Defendants.

Mr. Nigel E. Banks and Ms. Stavannie Duncan for the 3rd Defendants

5th Defendant did not appear and was unrepresented.

WRITTEN JUDGMENT
Orally delivered on the 17th day of July 2018

Introduction

- [1] This is a bitterly contested, somewhat, perhaps unnecessarily, involved, claim in which the Claimant is alleging that all of the Defendants breached various commercial, including fiduciary, duties owed to him.
- [2] The Claimant (“JB”), being experienced in the field of project and hotel management, brought this contested claim against the 1st Defendant, Colin Hannan (“**Colin**”), and the 2nd Defendant, Ronan Hannan (“**Ronan**”) (“together **the Hannans**”), relating to a Partnership, Foundry Collective (“FC Partnership”) of which they were partners, with FC Partnership having being engaged in the hotel and hospitality business in Belize until it was dissolved in or around April 2016.
- [3] JB, through the Hannans, got involved as a partner in FC Partnership and they were all involved in developing and managing two luxury resorts in Belize, namely the Ka’ana Boutique Resort & Spa (“**Ka’ana**”), in the Cayo District, and the Itz’ana Resort (“**Itz’ana**”) a hotel and condominium development in Placencia of which the 3rd Defendant, Fernando Paiz (“**Paiz**”) is the ultimate principal beneficial owner via the Paiz Group of companies.
- [4] The 4th Defendant, Plexar Capital LLC (“**Plexar**”) is the immediate owner of the Itz’ana development.
- [5] Apart from alleging that the Hannans breached fiduciary duties owed to him, JB is also alleging that Paiz, Plexar and the 5th Defendant, one Gareth Whyte (“**Whyte**”), dishonestly assisted the Hannans in their breach of fiduciary duties and that he, JB, has suffered loss for which all Defendants are liable to pay him in damages; with special damages being claimed in the sum of US\$3,233,647.00.
- [6] The Defendants are vigorously denying the claim and are alleging that the whole claim is either misconceived or is based on a business relationship which has soured, and that this claim is, in reality, a vindictive continuation of that fouled relationship.

- [7] Because of the many outstanding issues which have been raised, primarily by the Claimants, this court has decided to summarily resolve many of them in the following background; and will then go on to outline the way in which the proceedings have developed; to set out the applicable law; and then the real or central issues of the case – all relating to the allegations of general wrongdoing by the Hannans and specifically the allegations of breaches of fiduciary duties by them - before specifically dealing with them.
- [8] The interpretation of the documentation in the present case has been crucial to this court in reaching a determination of the issues but this court considers that together with an assessment of the witnesses in the case both have combined to enable this court to reach a nuanced view of the otherwise involved and convoluted picture which has been presented by the Claimant.

Background

- [9] In early 2013, Paiz and the Hannans entered into an agreement whereby they would provide development management, hotel management and other services to Itz'ana.
- [10] In order to discharge their functions, it was determined that the Hannans would each hold office as a manager of Plexar.
- [11] In 2014 the Hannans invited JB to join them in the work to be done at Itz'ana. JB agreed to join them. By this time Colin and Hannan were already involved with Itz'ana and Ka'ana.
- [12] The Hannans introduced JB to Paiz.
- [13] By an oral agreement made in about January 2014, JB and the Hannans orally and informally formed the FC Partnership. This partnership had no fixed term or duration and, being a partnership at will, was determinable at any time by any of the partners on giving notice of his intention to do so to all the other partners¹.

¹ See below at paragraph * under the Law.

- [14] They all orally agreed that it would provide project management, hotel management and operations services to clients in Belize including to Itz'ana and Ka'ana.
- [15] Such services had no defined life-span and the Partners were free to terminate FC Partnership at any time.
- [16] The Partnership had no written terms.
- [17] In order to enable JB to obtain a work permit in Belize and to facilitate the discharge of his duties under the partnership, the Hannans, as managers of the Plexar, decided that Plexar would employ JB as an officer of Plexar with the operating title of 'managing director'. This was done and a work permit was obtained on 9th October 2014.
- [18] From 2014 to March 2016 services were being provided to Itz'ana, which was then in the process of construction, development, marketing and the sales of its units.
- [19] Ka'ana was then complete and operational.
- [20] The services provided to *tz'ana and Ka'ana* were provided under two unwritten agreements ("the **Foundry Collective Agreements**"). These agreements were the sole and vital assets of the FC Partnership.
- [21] JB was the man on the ground and responsible for planning and hotel operations of Itz'ana. He was also to lead and direct the operations team that existed on a day to day basis.
- [22] Incidentally, as a side issue, I don't believe JB when he suggested under cross-examination that he was not responsible for overseeing the actual construction of the Itz'ana project. He was clearly responsible, as he admitted, that he was responsible for the demolition of old buildings, the construction of the model units and for the excavation.
- [23] Colin was responsible for sales and marketing and Ronan was responsible for all financial matters.
- [24] On about March 9, 2016 two written letters of agreement were entered into by Plexar and FC Partnership. In these agreements was reflected the oral agreement between the Hannans and JB and they included such items as the

management fees and sales commissions to be paid by Plexar to FC Partnership in respect of the services provided to Itz'ana and Ka'ana.

- [25] However very soon thereafter, JB and the Hannans decided to make changes to the operations of FC Partnership by transitioning from a 'Partnership' to a limited liability company. Everything the Partnership was doing was then to be done by FCL. This included the services the Partnership was providing to Itz'ana and Ka'ana under the agreements with Plexar: and it was therefore decided to assign the FC Partnership Agreements to the new company.
- [26] In April 2016, pursuant to this agreement, they all then caused Foundry Collectively Limited ("**FCL**") to be formed.
- [27] In May 2016, shares in FCL were allotted to JB and the Hannans in equal amounts. The Hannans and JB each had a one third share in FCL and each of them were appointed as directors. They were then, it seems, operating as a limited company and not as a Partnership.
- [28] JB and the Hannans therefore agreed and decided to assign the contracts of the Partnership to FCL.
- [29] JB and the Hannans, as partners in FC Partnership and as directors of FCL agreed to assign the Foundry Collective Agreements to FCL; however, in error, they inadvertently omitted to obtain Plexar's consent. Such consent was required but nevertheless JB and the Hannans conducted themselves as if their business was being operated through the limited liability company FCL.
- [30] By letter dated 28th September 2016 JB's employment as Managing Director with Plexar was extended for 24 months (to 27th September 2018). The remuneration was for BZ30, 000 annually. The place of work was at Itz'ana Placencia. It had a notice period of 5 weeks either way (such notice to be given by either the Employer or Employee).
- [31] In about February 2017, the Hannans proposed to JB that Whyte be invited to participate in the business as an executive director and that he be made an equal shareholder in FCL with 25% ownership interest.

- [32] JB did not particularly like Whyte and did not understand, and has never quite, understood the fascination which the Hannans appeared to have for this young 'energy worker' (described by Counsel for the Claimants as a "20 year old self-possessed energy worker"²), to use a euphemism for someone who, apparently, the Hannans superstitiously believed had special or mystical powers; and therefore and at first, JB strenuously disagreed with him becoming a member of FCL or indeed the FC Partnership.
- [33] JB, ultimately, seemed to have come around to the idea of Whyte joining the business but on condition that for Whyte to become a shareholder his, Whyte's interest, was obtained through transfers of some of Colin's and Ronan's shares, so that JB could retain his 1/3 ownership interest and not be diluted. It would appear that this created something of an impasse in the discussions which likely led to the relationship between the Hannans and JB breaking down, and leading to the present claim.
- [34] But that is going ahead of ourselves as in any event, around the same time, February 2017, FCL entered into negotiations with Plexar and the parent company of Ka'ana, Cahabon Holdings Limited ("**Cahabon**"), for a variation of the fees and commissions payable under the FC Partnership Agreements.
- [35] It was agreed and intended by JB and the Hannans that the new agreement would be entered into by FCL as a novation of the FC Partnership Agreements substituting FCL for Foundry Collective.
- [36] From about March 2017 Ronan had arranged to go to Guatemala to meet with Mr. Paiz and there was a proposed agenda for the meeting. One of the items on the agenda was to discuss and to negotiate the terms of an agreement which JB had approved for the transfer of the agreements with Plexar to FCL.
- [37] In about late March 2017 (31st) there was a meeting of the Board of FCL attended by the Hannans and JB. It was within the context of the impasse in relation to Whyte which existed between the Hannans and JB that the

² See Paragraph 9 of the Written Submissions on behalf of the Claimant.

Hannans then expressed to JB that they found his performance unsatisfactory and that they found his attitude to them disrespectful. They gave him a written memorandum outlining their concerns. This must have had the effect of pouring oil on troubled waters.

- [38] There was then a further discussion about how Whyte could be brought into FCL and with what shareholding (one quarter share or dividing the Hannans' share equally with Whyte). The deadlock, perhaps unsurprisingly was maintained and JB continued to resist a suggestion by the Hannans that he be diluted with the Hannans not agreeing that JB have a larger share than each of them.
- [39] Before, and without the transfer of any shares in FCL to Whyte taking place, the Hannans asked JB to reconsider the original proposal (each having an equal share holding) and suggested that the issuance of the new shares to Whyte be put to a vote. This never happened, as JB did not agree, as he clearly realized that he would be out-voted.
- [40] By the beginning of April it was clear that the negotiations, and the relationship between the Hannans and JB, had broken down, with the two sides not being prepared to give one inch.
- [41] JB was scheduled to shortly travel abroad on honeymoon on the 12th April 2017 which clearly must have heightened the urgency of the situation for the partners to reach some kind of resolution.
- [42] By the 4th April 2017, there was a further meeting and discussions between the Hannans and JB, with the result that they had all agreed in principle (which agreement may be inferred by their conduct or course of dealing) on a buyout of JB's shares - subject to a valuation. Also at the very latest by this date it is clear to this court that all trust and confidence had been lost between the Hannans on the one hand and JB on the other hand.
- [43] It was therefore, objectively, clear and obvious now that there would be a parting of the ways and that JB was on his way out, and possibly with Whyte being on his way into both the FC Partnership (as a partner) and the FCL (as a shareholder).

- [44] But JB, no doubt recognising the reality of the situation, continued to be in electronic and telephonic communication with Ronan and Paiz as he, JB, attempted at negotiating the terms of the buyout. This negotiation included discussions with Ronan on the 7th April 2017. On this latter occasion Ronan informed JB that he would not be attending his wedding as planned – surely a clear sign that indeed the Hannans and JB were irrevocably going in separate directions. Apparently, however, there was an understanding that nothing would be mentioned about the breakup of the Partnership to Paiz at their meeting to be held on the 9th April 2017.
- [45] At the meeting which took place on the 9th April in Guatemala between Ronan and Paiz, at which was discussed a possible novation agreement and about which, one of the things Paiz insisted on was that payment under the contract was subject to liquidity with which JB did not agree. Also the percentages were changed. Also discussed, it appears contrary to the agreement between JB and the Hannans, and perhaps not surprisingly, was the difficulties which was taking place between JB and the Hannans.
- [46] According to the Defendants a written Agreement was entered into on April 9, 2017 (“the **Novation Agreement**”) between Plexar and FCL. The Agreement is stated to be agreed and accepted the 7th day of March 2017 and it is purported to be signed for and on behalf of Plexar (by Paiz) and FCL on the 9th April 2017.
- [47] Within the Agreement the ‘purpose’ is stated to record terms of the meeting held in Managua, Nicaragua on the 22nd February 2017 between Ronan Hannan and Paiz. It apparently agreed 1% increase in previously agreed Real Estate Sales Commission Agreement from 2% up to 3% on all real estate sales, subject to available liquidity, 50% of all sales commissions due to FCL for sales in contract to be paid prior to 30th June 2017.
- [48] JB considers that this agreement was not entered into at this time but was in fact a fake – entered into much later. JB has little or no evidence to present to this court as to the falsity of this document but he questions its validity. His suspicions are aroused because the document was not shown

to him until well into the present proceedings and JB therefore believes that it was signed for the purpose of these proceedings. This court, on balance, is unable to find that this document is false or was invalid as nothing of any substance was presented to this court upon which this court could come to the conclusion that either situation is the case.

- [49] There was a further meeting involving the Hannans and JB on the 10th April 2017 at which a valuation was suggested by the Hannans which was unacceptable to JB. At this meeting JB was informed about the meeting on the 9th April with Paiz and JB was upset when he found out that, contrary to the agreement, Ronan had mentioned the difficulties between JB and the Hannans.
- [50] There appeared to be a further impasse and Paiz was notified. It was clear that Paiz was committed to working with the Hannans if the FCL was dissolved.
- [51] It was in this somewhat unresolved situation of a complete impasse, lack of trust between the Hannans and JB and the unresolved situation about the terms of the buyout that JB left Belize on honeymoon on the 12th April 2017 and was physically away from Belize until the 2nd week in May 2017.
- [52] There is a rather unfortunate letter written by JB (while he was away on his honeymoon) to Paiz dated 15th April 2017. In this email communication JB addressed the “internal issues” which the Hannans and JB had been experiencing and expressed the view that he considered that it should not have been brought to the attention of Paiz but then went on to raise the termination of the agreements with Plexar and any “*transition arrangements*”, and the possibility of Plexar being prepared to “*fund, guarantee or otherwise contribute to financially to such a transition*”. He offered to meet with Paiz after the 8th May. After expressing certain views JB went on to state as follows:

“I do not intend to sit back and allow my hard work and contribution to the project to be undermined or my reputation to be smeared in any way. I guess what I am saying is that

there are many ways that this can payout out and I am willing to go the amicable route and urge you to do the same for the sake of your investment.”

[53] JB concluded the email expressing the concerns about the Hannans making “*decisions in trying to push me out prematurely*” and expressed confidence that they would “*resolve this issue fitting our respective statuses and reputations in the industry.*”

[54] I say this email is unfortunate because it is clear that JB gave Paiz two options, the first being an amicable route, which he urged, and then he went on to suggest that any other route would affect his “investment”. Paiz testified that he took this to be a veiled threat, which in the circumstances of the case, including the nature of the communication, this court summarily finds it was intended to be, and clearly was, and is, and this court finds that this was indeed a reasonable interpretation for Paiz to make.

[55] Communications then followed between JB, the Hannans and Paiz.

[56] By email dated 17th April 2017 in response to an email from JB, Paiz wrote:

“I have read your mail with care and lots of concern. I truly hope you can resolve this internal issue amongst the partners of the Foundry.. and this process and its outcome truly should have no direct bearing on the services to be provided by Foundry,

I should remain in the sidelines as long as possible, as my relationship is with the Corporation and not with any of you as individuals.

Having said that, you must understand that indeed my whole Belize project started with the Hannans and the majority, if not all, of our contact, negotiations, and agreements have been with them.

I have all of you in the highest regard possible... and this should not change. Pls do you best to reach an amicable agreement, as there are no “winners” when you take a different route.

With kind regards”

- [57] JB was then advised that there was no company, including FCL, carrying on the business so JB reverted to the position that that it was the FC Partnership that has the Foundry Collective Agreements and not FCL.
- [58] The Hannans sent an email to JB on 26th April 2017 confirming their receipt of a letter from his attorney and suggesting, quite reasonably in the view of this court, that an internationally recognised firm of accountants be appointed to conduct the valuation of FC Partnership; but JB did not respond but instead later commenced the present proceedings.
- [59] JB’s employment with Plexar was terminated by Paiz by letter dated May 1, 2017. There is some dispute as to the precise date that JB received this letter but it certainly appears from the evidence that by 8th May 2017 JB was indeed notified of such termination. The letter stated as follows:

“Dear Jonathan,

Reference is made to your email dated 15th April 2017, and the contents therein.

In the circumstances, I no longer feel it is in the best interest of Plexar Capital LLC (“the Company”) that you should continue to act as its managing director. It this regard, acting as representative of the sole member, Integrity Investments Corp., for and on behalf of the Company, I hereby terminate your employment as managing director with the Company with immediate effect.

Over the coming days a ire for US\$17,,308 will be sent to your personal bank account, which constitutes all accrued

entitlements including the five (5) weeks' notice pay(or payment in lieu of notice as provided under the contract).

Separate and apart from the foregoing, I would also like to raise concerns regarding Foundry Collective. It is my understanding that no real progress has been made in resolving this internal dispute amongst the partner in Foundry Collective. I reserve the right to act in the best interest of the Company in connection with our continuing relationship with Foundry Collective.

Notwithstanding the foregoing, I personally would like to thank you for your commitment to the project over the last 3 years and I wish you well in all your future endeavors.

Sincerely

Fernando Paiz

Authorized Representative of integrity Investment Corp

Sole member of Plexar Capital LLC”

- [60] The reason for the termination was clearly the untenable situation which had by then been reached between the Hannans and JB, including what has already been described, and the unresolved buyout arrangements.
- [61] At this time the only possible assets of the FC Partnership were the alleged agreements with Plexar. This is a much vexed question but this court is prepared for the purpose of this Judgment to consider that the agreements remained an asset at all times of FC Partnership and not that of FCL – on the basis that the consent of Plexar was required to any as assignment and, apart from the Novation Agreement (below³) was not legally given.
- [62] Also in relation to the Partnership all of its income had been distributed to the Partners (but expenses, including of legal fees, may have been outstanding).
- [63] JB returned to Belize from his honeymoon around 8th May 2017. Shortly thereafter his email access was terminated.

³ See paragraph * below.

- [64] It is undisputed, indeed agreed that the FC Partnership, insofar as it involved the Hannans and JB, was dissolved by notice dated the 15th of May, 2017, the date of the service of the Claim on the Hannans. Consequent to such disillusionment the affairs of this Partnership will have to be wound up.
- [65] It is clear from the uncontested testimony of Mr. Fabian Blanchard, the IT Contractor engaged by Plexar to provide IT services to the Itz'ana and Ka'ana projects, that first on an unknown date, and then again at or about 16th / 17th May 2017, JB obtained, through him, a lot of documents (in excess of 40 documents) stored in the Google Vault, which is an archive of all emails and records of Itz'ana and Plexar business.
- [66] It is also clear that by the 16th / 17th May 2017 the dispute between the Hannans and JB had spread to others with whom they were working, including Mr. Fabian Blanchard, the IT Contractor, who testified that he found himself caught in limbo, which put him in an undesirable position such that he believed the environment they had to work in was no longer acceptable nor productive. He therefore resigned by email dated 16th May 2016, effective 17th may 2016.
- [67] On 17th May 2017 Plexar sent notices to third parties suppliers, and business partners advising that JB was no longer employed by Plexar or Itz'ana. Management fees were also discontinued to be paid to JB on the instructions of the Hannans.

The Court Proceedings

- [68] On the 15th May 2017 the JB instituted this Claim before an accounting firm could be appointed to conduct the valuation. The Claim Form was supported by a Statement of Claim.
- [69] On the 12th June 2017 the Hannans filed a Defence.
- [70] On the 11th July 2017 JB filed an Amended Claim Form & Statement of Claim.
- [71] On the 21st July 2017 JB filed a 2nd Amended Statement of Claim.
- [72] JB brings this claim against the Defendants seeking:

- a. An order that the partnership between JB and the Hannans be dissolved.
- b. An order that the affairs of the partnership be wound up.
- c. An order that all necessary Accounts and Inquiries be taken and made including a determination of any loss or damage suffered by JB arising from the actions and omissions of the Hannans taken together with the Paiz, Plexar and Gareth White.
- d. Upon the taking of the accounts and the making of the inquiries, an order that the Hannans pay to JB any damages found to be due to him.
- e. That a Receiver be appointed for the aforesaid purposes.
- f. Special damages in the sum of US\$3,233,647.00.
- g. Interest on any sums found due and payable to JB at the rate and from the period the Court shall deem fit.
- h. Such further or other reliefs as the Court may deem fit.
- i. Costs.

[73] JB claims further and or alternatively against Paiz, Plexar and Whyte:

- (a) A declaration that Paiz, Plexar and Whyte are jointly and severally liable to JB for damages as the Court may determine or assess as constructive trustees on the ground of dishonest assistance in each of the Hannans' breaches of fiduciary duty/breaches of trust.
- (b) And/or an order that all necessary Accounts and Inquiries be taken and made including a determination of the loss or damage JB suffered arising from Paiz, Plexar and Whyte dishonest assistance in each of the Hannans' breaches of fiduciary duty/breaches of trust.
- (c) An order that Paiz, Plexar and Whyte pay to JB any sum found to be due to JB.
- (d) Interest on any sum found due and payable to JB.

- (e) Costs and such further or other orders as may be just.
- [74] A CMC was held on the 24th July 2017 at which CMC directions were given and the CMC was adjourned to 30th October 2017.
- [75] On the 2nd October 2017 a Defence was filed by the Paiz
- [76] On the 19th October 2017 A reply to Defence of the Hannans and Paiz were filed.
- [77] On the 30th October 2017 the previous CMC was continued and further directions were given (including in relation to further pleadings, strike out applications, disclosure, witness statements, and for mediation).
- [78] On the 6th November 2017 Amended Defences were filed by the Hannans, Paiz and Whyte.
- [79] On the 13th November 2017 an Amended Reply to Defence of the Defendants was filed.
- [80] Witness statements were then filed on behalf of all the parties between 12th January 2018 & 15th January 2018.
- [81] A further CMC was held on the 5th February 2018.
- [82] A further CMC was held on the 19th February 2018 at which further directions were heard and certain pre-trial directions were given.
- [83] On the 5th March 2018 a pre-trial Conference was held at which further pre-trial directions were given.
- [84] On the 2nd May 2018 further pre-trial directions were given including in relation to pre-trial applications.
- [85] On the 7th May 2018 the application was granted to remove Courtenay Coye from the record as representing the 5th Defendant.
- [86] At the trial JB gave contested evidence on behalf of himself. This court has not generally formed a very favourable impression of the Claimant who this court felt was unduly evasive, somewhat unbalanced in his opinions and also not lacking in vindictiveness. Indeed this court has concluded, based on the evidence of JB, his demeanor in the witness box (and even in the court during the course of the present proceedings) that the present claim is nothing less than a lashing out at all the Defendants, including and

particularly Paiz and Plexar as part of his professed strategy to seek to take aim at Paiz's investment at the Ka'ana and Itz'ana being the only significant and substantial assets within Belize which could yield a financial return. That Whyte has been added as a willful attempt to lash out at him and not for any useful purpose.

[87] Mr. Fabien Blanchard, the IT contractor engaged by Plexar, also gave unchallenged evidence for JB, such evidence largely outlining his duties and his work with the Hannans as well as having produced certain documents obtained from the computer system under the management of JB as well as having outlined the IT access which he gave and withdrew from JB on the instructions of the Hannans.

[88] Ronan testified on behalf of himself and his brother Colin and was subjected to extensive cross-examination. This court is prepared to accept that Ronan may have had a somewhat unusual fascination with Whyte but has to determine whether this led him and his brother to any acts of dishonesty or breach of fiduciary or any other duty owed to JB.

[89] Mr. Paiz testified on his own behalf and was extensively cross-examined. Having seen and heard Paiz this court has formed a distinctly and very favorable impression of him as a witness of fact and of truth. As a result this court considers his evidence very credible and to be believed. Wherever his opinion differs from that of JB this court has generally, unless otherwise stated, preferred the evidence of Paiz.

[90] On the 7th June 2018 and by consent of JB & the Hannans it was ordered as follows:

1. That the partnership of Foundry Collective between JB and the Hannans is dissolved by notice dated the 15th of May, 2017, the date of the service of the Claim on the Hannans.
2. That the affairs of the partnership of Foundry Collective be wound up.
3. That any averments contained in the Defence of the Hannans filed on the 6th November be struck out in so far as they

contradict the admissions made in the Defense of the Hannans dated 12th June 2017.

4. Costs of this application to be cost in the Partnership and for the avoidance of doubt the partnership does not include the Paiz or Gareth Whyte.
5. Notice of Application to Strike-Out the Claimant's Claim on 2nd October 2017 by the Hannans, Plexar and Gareth Whyte has been withdrawn with no order as to cost.
6. Notice of Application to strike-Out the Claimants' Claim filed on behalf of Paiz on 26th October 2017 is dismissed with no order as to cost.
7. Matter adjourned to 22nd June 2018 at 9:00 for half day continuation of the oral submissions.

[91] Accordingly there is no longer an issue as to whether FC Partnership should be dissolved, an account be taken, and a receiver appointed – it is now clear that all of these is or will have to be the case.

[92] Also accordingly there is no longer an issue as to whether the Hannans may resile from their formal admission as it relates to the existence of a partnership as contained in their Defence.

[93] Oral Submission continued on the 11th July 2018.

Issues

[94] Whether from about March, 2017 and thereafter, in breach of their fiduciary duty and/or in breach of trust, the 1st and 2nd Defendants –

- 1) Used their directorships of the 4th Defendant, Plexar Capital LLC to destroy the sole and vital asset of FC Partnership.
- 2) Introduced and held out Whyte, as a “partner” of FC Partnership over the objections of the Claimant.
- 3) Hindered and prevented the setting up of proper books of accounts of FC Partnership and conducted the business of the partnership as if the same was an integral part of the business

of Plexar Capital LLC.

- 4) Made secret payments to Whyte as if he was a partner of FC Partnership and incurred expenses on his behalf all from the funds of or due to the partnership over the objections of JB.
- 5) Made secret payments to themselves exceeding the sum of Sixty Thousand Dollars Currency of the United States of America (US\$60,000.00) without the knowledge and approval of JB.
- 6) Secretly colluded with and made proposals to Paiz which would form the basis of a new management and consultancy service contract with him and his group of companies including Plexar; the contract being more favourable to Paiz and detrimental to FC Partnership; the proposed secret contract was to be signed by the Hannans, Paiz and Plexar once JB is removed and excluded from FC Partnership.
- 7) The acts and omissions of the Hannans were not made for any legitimate commercial or other purposes of the partnership business of FC Partnership. Their purpose was –
 - a) to remove and exclude the Claimant as a partner from Foundry Collective; and
 - b) to destroy the sole and vital partnership asset of Foundry Collective – the management and consultancy services arrangement made with the 3rd Defendant, Fernando Paiz and his group of companies; and
 - c) to form a new partnership with the 5th Defendant, Gareth Whyte, as a partner with the 1st and 2nd Defendants, and to take over the management and consultancy services arrangement with the 3rd Defendant and his group of companies on terms more favourable to the 3rd Defendant and detrimental to Foundry Collective.
 - d) to secure a greater financial gain or benefit for

themselves at the expense of the Claimant.

- [95] Whether the Paiz, Plexar and Whyte dishonestly assisted the Hannans in the aforesaid breach of fiduciary duties owed to the Claimant.
- [96] Whether JB has suffered loss consequent upon the alleged breaches and dishonest assistance?
- [97] Whether the Defendants are jointly and severally liable to JB in damages for their respective breaches and or dishonest assistance as may be appropriate and the measure and quantum of any such damages.

The Law

Partnerships

- [98] A partnership may be entered into for an undefined time and is known as a partnership at will and any partner may determine it at any time on giving notice of his intention to do so to all the other partners⁴.
- [99] The service of a claim form for the dissolution of a partnership will be treated as an immediate notice to dissolve the partnership⁵ and the partnership will be dissolved as soon as the notice is communicated to all the partners⁶.
- [100] Under and by virtue of the **Partnership Act**⁷ the mutual rights and duties of partners, whether ascertained by agreement or defined by this this Act, may be varied by the consent of all the partners, and such consent may be either express or inferred from a course of dealing⁸.
- [101] All property of the partnership is to be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement⁹.

⁴ Halsbury's Laws of England/Partnership (Volume 79 (2014))/1 Duration of Partnership. See also Section 28 of the Partnership Act.

⁵ See *Unsworth v Jordan* [1896] W..N. 2(5) as referred to in Lindley & Banks on Partnerships, 19th Edition by Roderick I'Anson Banks paragraph 14-27

⁶ Ibid see Lindley & Banks on Partnerships paragraph 24-28.

⁷ Chapter 259 Revised Edition 2011, Laws of Belize.

⁸ See Section 21 of the Partnership Act.

⁹ See Section 22 of the Partnership Act.

[102] The interest and duties of partners, as well certain rights and their accountability, are provided for in the following sections of the **Partnership Act**:

“26. The interests of partners in the partnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement express or implied between the partners, by the following rules-

(a) all the partners are entitled to share equally (emphasis added) in the capital and profits of the business,...

(e) every partner may take part in the management of the partnership business;...

(g) no person may be introduced as a partner without the consent of all existing partners;

27. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.

.....

30. Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

31.-(1) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property, name or business connection.

(2) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound-up, either by any surviving partner or by the representatives of the deceased partner.

32. If a partner, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business.”

Fiduciary Duty & Partnerships

[103] A person owes and is subjected to fiduciary duties because he is in a relationship with another person in which such fiduciary duties arise. Partners owe fiduciary duties to each other as well as directors in relation to a company.

[104] It is uncontroversial, even if disputed by the Hannans, that such fiduciary duties include the following:

- (a) A duty by each partner, to promote the best interests of the firm over personal interest of each partner;
- (b) A duty to carry out the firms' interest solely for the benefit of the firm;
- (c) A duty to act honestly and in good faith in relation to the firm's business;
- (d) A duty of fairness and loyalty to each other;
- (e) A duty of care in the conduct of the firm's business.

[105] Where all trust and confidence has broken down between the partners of a partnership, and it is plain and obvious that it is necessary for the partners to part ways, or where partners acknowledge such a situation has arisen, it is not permissible for any partner to unfairly or unreasonably not accede to a reasonable offer or mechanism (such as a valuation of the interest of the minority partner by an international firm of accountants for the purpose of determining the terms of a buy-out) that would result in such parting of ways, regardless of where the fault may lie in the breakdown, it may be unfair, and the court ought not to sanction, any partner being locked into the partnership as a minority partner¹⁰.

¹⁰ This is analogous to the situation in the UK company law case of O'Neil v. Phillips [1999] 1 WLR 1092 at p. 1104

[106] No damages are recoverable, however, where a wrongful act, such as the exclusion of a partner, causes the dissolution of a partnership at will¹¹.

Dishonest Assistance

[107] Dishonest assistance in relation to a claim for breach of fiduciary duty or breach of trust gives rise to a claim sounding equity, in which the person found to have dishonestly assisted such a breach is fixed with joint and several liability with the fiduciary whose misconduct he or she has assisted¹².

[108] In relation to the cause of action of 'dishonest assistance' the authoritative and leading Privy Council case of **Royal Brunei Airlines Sdn Bhd v Tan**¹³ is instructive as it clarifies that the test of dishonest is not a subjective one; but is based on an objective standard. It also makes clear that dishonest assistance, is indeed a tort recognizable at law. The issue between the parties in this case was whether 'the breach of trust which is a prerequisite to accessory liability must itself be a dishonest and fraudulent breach of trust by the trustee'.

[109] Lord Nicholls, in delivering the leading decision of this case, held that a breach of trust by a trustee need not have been a dishonest act on the part of the trustee. Rather, it is sufficient that an accessory has acted dishonestly for that accessory to be fixed with personal liability for the breach.

[110] The case also makes clear that the trustee's own state of mind is not important. Lord Nicholls described the nature of the test for dishonesty as

"... acting dishonestly, or with a lack of probity, which is synonymous, means simply not acting as an honest person would in the circumstance. This is an objective standard."

[111] It is therefore now clear that a Court is not asked to determine what the Defendant actually thought but instead what an honest person would have

¹¹ See *Connell v Slack* (1909) 28 N.Z.L.R. 560 cited in Lindley & Banks on Partnerships, 19th Edition by Roderick I'Anson Banks paragraph 24-21 Page 804.

¹² See Remedies for dishonest Assistance by Steven B. Elliott and Charles Mitchell, the Modern Law Review, Vol 67, No. 1 (Jan., 2004 pp 16-47. See Page 16

¹³ [1995] 2 AC 378, 386 to 392.

done if they had been placed in the same circumstances as the defendant. The case also makes it clear that fraud, recklessness or lack of probity is not a necessary ingredient in a finding of dishonesty. Finally the decision also makes clear that even though imprudence, without more, is not dishonesty, it may be carried recklessly in a manner which calls the honesty of the person making the decision into question, particularly if the transaction serves another purpose in which that person has an interest of his own.

[112] In relation to dishonesty the following views as expressed by Lord Nicholls is instructive:

“Dishonesty

Before considering this issue further it will be helpful to define the terms being used by looking more closely at what dishonesty means in this context. Whatever may be the position in some criminal or other contexts (see, for instance, R. v. Ghosh [1982] 1 QB 1053), in the context of the accessory liability principle acting dishonestly, or with a lack of probity, which is synonymous, means simply not acting as an honest person would in the circumstances. This is an objective standard. At first sight this may seem surprising. Honesty has a connotation of subjectivity, as distinct from the objectivity of negligence. Honesty, indeed, does have a strong subjective element in that it is a description of a type of conduct assessed in the light of what a person actually knew at the time, as distinct from what a reasonable person would have known or appreciated. Further, honesty and its counterpart dishonesty are mostly concerned with advertent conduct, not inadvertent conduct. Carelessness is not dishonesty. Thus for the most part dishonesty is to be equated with conscious impropriety.

However, these subjective characteristics of honesty do not mean that individuals are free to set their own standards of honesty in particular circumstances. The standard of what constitutes honest conduct is not subjective. Honesty is not an optional scale, with higher or lower values according to the moral standards of each individual. If a person knowingly appropriates another's property, he will not escape a finding of dishonesty simply because he sees nothing wrong in such behaviour.

In most situations there is little difficulty in identifying how an honest person would behave. Honest people do not intentionally deceive others to their detriment. Honest people do not knowingly take others' property. Unless there is a very good and compelling reason, an honest person does not participate in a transaction if he knows it involves a misapplication of trust assets to the detriment of the beneficiaries. Nor does an honest person in such a case deliberately close his eyes and ears, or deliberately not ask questions, lest he learn something, he would rather not know, and then proceed regardless.”

[113] It is also noteworthy that Lord Nicholls also laid down the measure of damages for accessory liability (in relation to dishonest assistance) thus”

“Drawing the threads together their Lordships' overall conclusion is that dishonesty is a necessary ingredient of accessory liability. It is also a sufficient ingredient. A liability in equity to make good resulting loss attaches to a person who dishonestly procures or assists in a breach of trust or fiduciary obligation. It is not necessary that, in addition the trustee or fiduciary was acting dishonestly, although this will usually be

so where the third party who is assisting him is acting dishonestly.....”

[114] The more recent English Court of Appeal decision of **Novoship (UK) Ltd & Ors vs. Nikitin & Ors**¹⁴ made clear that even the conduct of negotiations could be held to be dishonest where Longmore LJ states as follows:

“These cases were considered by Peter Smith J in JD Wetherspoon plc v Van den Berg & Co Ltd [2009] EWHC 639 (Ch). He concluded at para 518 that misuse of trust property was not a pre-requisite to a liability to account for profits for dishonest assistance in a breach of fiduciary duty. He reasoned thus:

"In my view in a case for accessory liability there is no requirement for there to be trust property. Such a requirement wrongly associates accessory liability with trust concepts. That has led to difficulties which were addressed by Lord Millett in Paragon Finance. Accessory liability does not involve a trust. It involves providing dishonest assistance to somebody else who is in a fiduciary capacity [and] has committed a breach of his fiduciary duties. The consequences of those breaches (as this case shows) might have different consequences. One might be that the fiduciary has received a bribe. Another is that the fiduciary has made a profit in breach of his fiduciary duty. Another possibility is that assets are available into which it can be shown were acquired in breach of the fiduciary duty. Third party recipients are also

¹⁴ [2014] EWCA Civ 908 paras 49 through to 84.

potential candidates. Finally the breach of fiduciary duty might only sound in damages. In all of those cases I can see no logic or grave difficulty where the fiduciary is involved who has committed a breach of his fiduciary duty that an accessory who acts dishonestly in relation to those breaches should not be liable. It must not be forgotten that in most cases the breach can only occur as a result of the activities of the assistor."

[115] It is clear that where the dishonest assistant is sued for losses, a causal connection is required¹⁵. In this regard the case of **Casio Computer Co Ltd v Sayo**¹⁶ where it is noted as follows:

"...in a claim for dishonest assistance it is not necessary to show a precise causal link between the assistance and the loss.... Loss caused by the breach of fiduciary duty is recoverable from the accessory. This is the relevant causal connection for this purpose."¹⁷

[116] As submitted by Counsel for the Claimants it is also important to appreciate the special position in which a fiduciary finds himself. Counsel rightly notes that the essence of the relationship between a fiduciary and beneficiary is that the latter has placed his trust in the former. The core duty of the fiduciary is single minded loyalty to his beneficiary. Thus the breach of duty does not consist in the making of a profit by the fiduciary, but in the keeping of it for himself. That is not a breach of a personal obligation; it is an abuse of the trust and confidence placed in him or her by his/her principal who put him/her in a position to make the profit because s/he trusted him or her not to serve his or her own interests.

¹⁵ Grupo Torras SA v Al-Sabah [2001] CLC 221 at para 119

¹⁶ [2001] EWCA Civ 661

¹⁷ Ibid at para 15.

[117] The case of **Target Holdings Ltd v Redferns**¹⁸ is also instructive, in which Lord Browne-Wilkinson concluded that:

"Equitable compensation for breach of trust is designed to achieve exactly what the word compensation suggests: to make good a loss in fact suffered by the beneficiaries and which, using hindsight and common sense, can be seen to have been caused by the breach."¹⁹

Whether from about March, 2017 and thereafter the Hannans breached any fiduciary duty and/or trust owed to the Claimant?

The Facts

[118] In all the multiplicity of documents and facts which have been presented to this court, apart from an assessment of the witnesses in the case, this court has carefully considered the meeting of the Hannans and JB between 31st March and 4th April 2017 as well as the email exchange between JB and Paiz between 15th April 2017 and 17th April 2017 as being instructive and pivotal. Also this court has considered the uncontested evidence of the witness, Fabian Blanchard, the IT manager, as being indicative of the situation which had been reached by the partnership.

[119] This court has already made something of findings of facts in relation to the situation between or expressed its views about the position which the parties had reached between 31st March and 4th April 2017 as well as in relation to the email exchange between JB and Paiz between 15th April 2017 and 17th April 2017.

[120] The situation described by Fabian Blanchard vividly described the untenable situation of the FC Partnership as at 17th May 2017 and moving forward which he described as constituting an unbearable environment such that he was obliged to resign his position as IT Manager. It is now undisputed that by 16th/ 17th May 2017 the FC Partnership had been

¹⁸ [1996] AC 421.

¹⁹

dissolved yet JB, it appears, was intent, in apparently total disregard of any damage it might be doing to the Itz'ana and Ka'ana projects, Paiz's investments in Belize, to pursue his own purpose of collecting information and disseminating information²⁰ and to the detriment of the projects in Belize.

[121] All of these have guided the court in considering the submissions of the Counsel for the parties.

Submissions

[122] Counsel for the Claimants submit that breaches of fiduciary duties and breach of trust are established on the part of the Hannans as appears from largely private communications between them, Whyte and their Attorney, obtained from the witness the IT manager, in which they were undoubtedly having discussions, even planning or organizing for the inevitable parting of ways, which would have been on the card since February 2017, and had become clear from late March early April 2017.

[123] In this context reliance had been placed by Counsel for the Claimant on the difficulties in their business relationship which was being discussed in private without JB and the need to act quickly (while JB was away for four weeks getting married) to transition into a new business relationship and model, the possible terms of the buyout and how to deal with any difficulties.

[124] Counsel for the Claimant also prays in aid discussions with Paiz in the absence of JB (on the 9th of April 2017) and the terms reached in relation to the Novation Agreement and all the event which transpired leading up to the firing of JB by Paiz and Plexar to ground a case of collusion and dishonest assistance by the latter as well as Whyte. A veritable laundry-list of items which Counsel submits proves breach of fiduciary duty and breach of trust.

²⁰ See the letter dated 17th May 2017 "To whom it may concern" from the Hannans and Paiz to be found a page 234 of the trial bundle.

- [125] What Counsel does not refer to is the fact that JB was also negotiating, especially with Paiz, and in communication with the IT Manager, to establish favorable terms of his inevitable transition from the FC Partnership and the terms of his buyout, as well as set-up a basis in the event that discussions did not go via "*the amicable route*", and was planning, no doubt to set the stage to attack or threaten Paiz and Plexar's "*investment*", whether by court action or otherwise.
- [126] Counsel for JB Claimant submits that on the facts the case of dishonest assistance is made out against Paiz, Plexar and Whyte and asks this court to believe JB's version and interpretation of events which are all set out in extenso.
- [127] The case for the Hannans and Plexar had common cause and were argued by the same Counsel.
- [128] It is submitted by Counsel for the Hannans that insofar as the Hannans and JB operated a partnership then it was a partnership at will which has been determined and in any event JB is not entitled to any damages (for wrongful exclusion of JB as a partner) and has not proved any loss and the claim of breach of fiduciary duty/trust is misconceived based as it is on future loss and is speculative.
- [129] Counsel for the Hannans and Plexar submitted that in any event there is no partnership as the parties had transition from FC Partnership to FCL and that there is an equitable assignment of the assets of the partnership to FCL which is not a party to the present claim and that the Novation Agreement is valid and is effective for the benefit of FCL.
- [130] Finally it is submitted by Counsel for the Hannans and Plexar that there is no breach of Fiduciary duty as all trust and confidence had been lost between JB and the Hannans and the parties had indeed agreed on a buyout and all that remained was sorting out the terms with JB unreasonably refusing to agree to terms (a reputable accounting firm) which would have resulted in suitable buyout terms and the Hannans did not

breach any fiduciary duty to JB but acted reasonably and fairly in the circumstances.

- [131] On behalf of the Plexar its Counsel submits that as there is no breach of fiduciary duty there could not be any dishonest assistance. Further that Plexar did not act dishonestly. In addition the alleged conduct of Plexar did not exist and was in any event not tortious.

Determinations

- [132] This is the central question involved in this case.

[133] Having seen and heard the witnesses and considered the documents and the submissions of the parties, and also based on the facts that this court has already summarily found, this court has determined that there may have been problems with the business relationship between JB and the Hannans other than the Hannans attempt to insert Whyte into the FC Partnership. But that the Hannans insistence of Whyte becoming a member of FCL was the last straw, as it were, that broke the camel back. That this latter matter was indeed the primary source of JB's discussions with the Hannans between the 31st March and the 4th April 2017, during which period it was all but agreed that the Hannans would buy-out JB out of the FC Partnership/FCL.

[134] This court considers that it was when JB realized that he would be out-voted, if the matter was put to a vote to break the deadlock between him and the Hannans that JB resolved to sell his interest in the partnership and entered into negotiations with the Hannans for the sale of his shares in FCL to them and agreed to a valuation of his shares by an independent expert.

[135] It seems to this court that in the unfortunate and untenable situation of an impasse and an agreement between the end of March and early April 2017, for the buyout of JB, subject to valuation, that the FC Partnership, as it had been constituted by the Hannans and JB, was, for all intents and purposes, at an end.

[136] It is also the view of this court that, without allocating blame for the total breakdown in the relationship that between the partners of FC Partnership (Hannans and JB), and in the event which had happened, this court is

unable to unravel, who did what to whom and who was at fault leading to the break-up of FC Partnership. This court considers that that is a collateral issue which would have required a separate trial in and of itself and which is unlikely, in any event, to have resulted in a clear result.

[137] Clearly the Hannans were intent to insert Whyte into FC Partnership and this was objected to by JB; but there was also clearly a context of dissatisfaction with JB and his performance and attitude which was a constant and severe irritant to the Hannans which resulted in them wanting, for whatever reason, to insert Whyte into the business relationship.

[138] Like a marriage, which partnership is often likened to (causing some to describe them as a 'leaky ship') it is often difficult if not impossible in any meaningful or satisfactory or rational way to allocate blame for the breakdown in such a relationship because blame is often on both sides. Whyte likely was only a catalyst.

[139] What this court has found is that the relationship between the Hannans and JB had been eroded because of differences of opinion, focused principally about the participation of Whyte in the FC Partnership and/or FCL, but there were other interpersonal underlying issues in relation to which this court has found it difficult to allocate any blame or responsibility.

[140] What is clear to this court is that the need certainly existed for some form of resolution to take place, which, it would appear, would have involved the Hannans, as family members, remaining together, and being in the majority, and enjoying the support of Paiz, with or without Whyte, on one side, and with JB, the minority and the outsider, being on the other side – possibly being forced to withdraw– and being bought out.

[141] This court has determined that for all intents and purposes FC Partnership and FCL were fractured and destabilized by disagreements (primarily focused on the unresolved participation of Whyte and his status in both business entities) with an agreement for the buyout of JB from both entities subject only to a valuation of his interest in both and a determination of how he would be paid.

- [142] Thus, it was apparent to this court, by agreement between the 31st March and the 4th April 2017, that JB had to all intents and purposes effectively been sidelined from the partnership, with the only outstanding issues for determination being the valuation of his interest in both entities for the purpose of determining the terms of his buyout.
- [143] Also it is clear to this court, based on all of the evidence in the case, that such a resolution, if anything was to be salvaged of the business with Plexar and Paiz, needed to take place soon rather than later. This court considers that this is indeed the commercial reality of the situation, which had arisen, and recognised and agreed to by all the partners, but on the basis of an agreement of a reasonable payout to JB of his interest in the FC Partnership and FCL.
- [144] This is the context within which this case has to be considered and the facts and circumstance have to be interpreted.
- [145] It is within this context that this court has to examine the evidence to determine whether there was anything dishonest done by the Hannans or breach of duty done by them towards JB.
- [146] Based on this context it is, however, clear to this court from the documents and the evidence that the Hannans were clearly planning for the day, even hastening it, when JB would be out of FC Partnership.
- [147] It is also clear to this court in considering all the evidence that, the Hannans were indeed prepared to use Paiz, in any way possible, in that regard.
- [148] Also undoubtedly the Hannans did consult with their (or FC Partnership's) Attorney, Christopher Coye, to see how this determination of the Partnership should be done.
- [149] This court does not, however, consider that any such consultation was in any way dishonest or improper, but indeed, from a commercial point of view, this court has reached the conclusion that it was indeed necessary to salvage something from the ashes of the FC Partnership, and in this regard for the Hannans to take advantage of the relationship which had existed

between them, Paiz and Plexar which clearly trumped any relationship which the latter two had with JB.

[150] This court has to determine whether the Hannans were engaged in any acts of dishonesty or breach of fiduciary or any other duty owed to JB.

[151] Looking at the case from the context outlined, from the commercial realities of planning for the demise of the Partnership, and the reconstruction of the business in which the Hannans had been engaged before the entry of JB, it is also clear to this court, and this court is unable to find, that there was any improper collusion between the Hannans and Paiz.

[152] On the contrary it seems to this court, having considered all the evidence in the case that both the Hannans and Paiz were seeking to negotiate in their own respective best interests in relation to the situation which would emerge from the transition from FC Partnership to whatever new situation would emerge. The email from Ronan to Whyte dated 13th April 2017²¹ would suggest that the Hannans and Whyte were trying to 'leverage' any advantage they had over Paiz. Rather than colluding they were acting as competitors.

[153] Within this context and viewed from this standpoint this court has been unable to find any improper collusion or dishonest conduct by Paiz, Plexar and/or Whyte.

[154] This court also summarily has been unable to find any misconduct by Paiz in terminating JB's employment with Plexar as this court is of the view that in the circumstances of the unfortunate and the veiled threat from JB in his email of the 15th April 2017, this court has formed the view that Paiz's response was not only restrained but was reasonable, measured and proportionate. Such conduct was the independent action of Paiz acting on his own commercial best interest. This court has formed the view of Paiz that it is inconceivable that such a worldly and seasoned businessman could be led by the Hannans to do anything which was not synchronized with his own commercial best interest.

²¹ See page 277 of the Trial Bundle

- [155] Nor could this court find any dishonest or improper collusion between the Hannans on the one hand and Paiz, Plexar or Whyte on the other. This court could find no reasonable basis, and found no reasonable case, against Plexar or Whyte entitling JB to join them in the present claim. Unfortunately it was necessary for the full facts of the case to emerge in the present proceedings for the utter transparency of this situation to be fully realised by this court.
- [156] This court has concluded that Paiz has been added to the present claim because he is the person with deep pockets and it was hoped by JB that, by the lever of the present proceedings, he would supply the finance to guarantee or supply the funds to pay off JB as part of any buy-out.
- [157] This court considers that all that has to be resolved is the terms of the separation or divorced of the parties – which is largely an accounting exercise to be accompanied with a plan as to where the funds would be found to finance the payout.
- [158] This court could find no, or no sufficient evidence, that the Hannans use the directorship for Plexar to destroy the sole and vital assets of FC Partnership. On the contrary this court has found the situation of FCL somewhat bemusing, and has concluded that indeed the Hannans and JB, as well as Paiz and Whyte, would have been equally unclear of the factual and legal situation of FCL. If indeed the sole and vital assets of FC Partnership, being the Agreements with Plexar, was destroyed, this court is of the view that it was the failure of the partners, all of them, to properly manage their disagreement and dispute, which would have had the effect of destroying the partnership's financial relationship with Plexar such that the agreements with Plexar could not be serviced. One clear evidence of this is the terrible situation that the witness, Fabian Blanchard, the IT consultant, was put in, forcing him to resign.
- [159] This court has found the position of FCL something of a red herring, a distraction, to the present claim. FCL is not a party to the present claim and

any evidence relating to Whyte being a director of it, which could not be found, is a side issue.

[160] In relation to the allegation that the Hannans hindered and prevented the setting up of proper books of accounts of FC Partnership. This court find this is somewhat misplaced, as JB, as a partner, could have taken steps to setting up such accounts, and there is no evidence that he did so. This allegation cannot amount to a breach of fiduciary duty.

[161] This court is of the view that in the winding—up of FC Partnership, an accounting will clearly have to be taken, and no or no sufficient evidence has been presented to this court in the present proceedings and this court is therefore unable to determine whether any secret payments have been made to Whyte or the Hannans.

[162] There is no or no sufficient evidence before this court of any management or consultancy service or contract between the Hannans and Paiz. On the contrary it appears to this court that the Hannans are no longer working with Paiz, as a result of the things which have happened and which are the subject of the present proceedings, as the Hannans are no longer working with Paiz as at the time of that Ronan testified to this court.

[163] In relation to the accounts this court is not satisfied with the estimate of losses which JB alleges was sustained by him as a result of the alleged joint and individual actions of the Hannans for the following reasons:

- (a) These losses are entirely self-serving and self-interested and as such unreliable and unsatisfactory.
- (b) It is premised upon a false basis namely periods or terms which are not realistic in terms of the agreement of the parties (i.e. 05/21/17, 67 months, to the year 2022).
- (c) There needs to be a proper accounting of FC Partnership which is properly done within the winding up of this Partnership (which has by consent of the Hannans and JB been ordered by this court) and not done in the present proceedings.

Whether the Paiz, Plexar and Whyte dishonestly assisted the Hannans in any breach of fiduciary duties owed to JB (the Claimant)?

- [164] Looking at the case within the context of the facts found and outlined above, from the commercial realities of planning for the inevitable demise of the Partnership, and the reconstruction of the business in which the Hannans had been engaged before the entry of JB, it is also clear to this court, and this court is unable to find, that there was any collusion between the Hannans and Paiz.
- [165] On the contrary it seems to this court, having considered all the evidence in the case that both the Hannans and Paiz were seeking to negotiate in their own respective best interests in relation to the situation which would emerge from the transition from FC Partnership to whatever new situation would emerge. The email from Ronan to Whyte dated 13th April 2017 would suggest that the Hannans and Whyte were trying to 'leverage' any advantage they had over Paiz. Rather than colluding they were acting as competitors.
- [166] Within this context and viewed from this standpoint this court has been unable to find any collusion or dishonest conduct by Paiz, Plexar and/or Whyte.
- [167] This court also summarily has been unable to find any misconduct by Paiz in terminating JB's employment with Plexar as this court is of the view that in the circumstances of the unfortunate and the veiled threat from JB in his email of the 15th April 2017, this court has formed the view that Paiz's response was not only restrained but was reasonable, measured and proportionate.
- [168] Nor could this court find any dishonest or improper collusion between the Hannans on the one hand and Paiz, Plexar or Whyte on the other.
- [169] This court considers that all that has to be resolved is the terms of the separation or divorced of the parties – which is largely an accounting exercise to be accompanied with a plan as to where the funds would be found to finance the payout.

**Whether JB has suffered loss consequent upon the alleged breaches
and dishonest assistance?**

[170] This court has already determined that there is no breach by the Hannans of any duty; and in addition that the case of dishonest assistance has not been made out by JB, the Claimant.

[171] As such this is the end of the matter and this court, as a consequence, is obliged to find that JB has not, and could not have, therefore, suffered any loss consequent upon the alleged breaches of dishonest assistance.

[172] In the even that this court is wrong about its findings this court has dermined that any such breach, in view of the flimsy partnership at will which existed in relation to FC Partnership, this court would find that any loss is 'de minimis'.

**Whether the Defendants are jointly and severally are liable to JB in
damages for their respective breaches and or dishonest assistance
as may be appropriate and the measure and quantum of any such
damages?**

[173] This court has already found that the FC Partnership was indeed a partnership at will and that any partner could determine it at any time on giving notice of his intention to do so to all of the other partners.

[174] This court has also determined that no damages are recoverable where a wrongful act, such as the exclusion of a partners, causes the dissolution of a partnership at will²².

[175] The fundamental claim by JB against the Hannans is for the claimed expulsion, by conduct, of JB from the partnership and colluding with Paiz and Plexar for the termination of the Contract which Plexar had with JB. This court has found otherwise.

[176] This partnership at will, which the Hannans and JB had in the FC Partnership, is one of the most flimsy kind of partnership known to the law and as such passes to each partner little or no significant rights and very

²² See above at paragraph *.

little, if any liability for damages. In the circumstance of the present case this court is unable to find that any damages are recoverable, in any event, for any of the claimed wrongful acts by the Hannans against JB. Certainly not for the alleged exclusion of JB which has in any event not been found by this this court.

[177] JB is obviously entitled to a one third share in the FC Partnership once accounts are carried out during the course of its dissolution which this court has ordered. In addition JB is obviously entitled to any sums found due to him as part of the income due to the Partnership prior to or as earned during the currency of the partnership. But this is something which this court is not prepared to order in the present proceedings as it is something which is properly done in the course of its winding-up.

[178] In relation to the accounts which has been presented to this court by JB, this court is not satisfied with the estimate of losses which JB alleges was sustained by him as a result of the alleged joint, an individual, actions of the Hannans for the following reasons:

- (a) These losses are entirely self-serving and self-interested and as such unreliable and unsatisfactory.
- b) It is premised upon a false basis namely periods or terms which are not realistic in terms of the agreement of the parties (ie 05/21/17, 67 months, to the year 2022).
- (c) There needs to be a proper accounting of FC Partnership which is properly done within the winding up of this Partnership (which has by consent of the Hannans and JB been ordered by this court) and not done in the present proceedings.

Costs

[179] Because the 3rd, 4th and 5th Defendants have wholly succeeded they are entitled to their costs as may be agreed or otherwise to be assessed.

Disposition

[180] This court will therefore by consent of JB & the Hannans order as follows:

1. That the partnership of Foundry Collective between JB and the Hannans is dissolved by notice dated the 15th of May, 2017, the date of the service of the Claim on the Hannans.
2. That the affairs of the partnership of FC Partnership be wound up.
3. That costs of this application be cost in the Partnership and for the avoidance of doubt the partnership does not include the Fernando Paiz or Gareth Whyte.
5. That Notice of Application to Strike-Out the Claimant's Claim on 2nd October 2017 by the Hannans, Plexar and Gareth Whyte has been withdrawn with no order as to cost.
6. Notice of Application to strike-Out the Claimants' Claim filed on behalf of Paiz on 26th October 2017 is dismissed with no order as to cost.

[181] Further this court doth dismiss the claim for damages against the Defendants; but specifically orders:

- 1) that all necessary Accounts and Inquiries be taken in FC Partnership including to determine what is due to the Hannans and JB as equal partners under the partnership agreement entered into on or about January 2014 and dissolved as aforesaid on the 15th of May, 2017 and taking into account what has been paid to each of the partners.
- 2) That each partner shall render true accounts and full information of all things affecting the partnership and for any benefit derived by him without the consent for the other partners from any transaction concerning the partnership, or from any use by him of the partnership property, name or business connection, to all the other partners or their legal representatives.
- 3) If any partner, without the consent of the other partners had carried on any business of the same nature as and competing with that of the firm, he must account for any pay over to the firm all profits made by him in that business.
- 4) Upon the taking of the accounts and the making of the inquiries, the

Court orders FC Partnership and the 1st and 2nd Defendants pay to the Claimant any sums found due and owing to the Claimant.

- 5) That a Receiver be appointed for the purposes aforesaid.
- 6) The Claim for general damages is dismissed.
- 7) The court will hear the parties further on a date to be fixed in relation to the question of costs as between the 1st and 2nd Defendants.

The Hon. Mr. Justice Courtney A. Abel

20th July 2018