

IN THE SUPREME COURT OF BELIZE, A. D. 2015

CLAIM NO. 384 OF 2015

BETWEEN:

(EDWARD ROUVIER

CLAIMANT

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(NATHALIE NGUYEN QUANG MINH

DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mrs. Yogini Lochan-Cave for the Claimant

Mrs. Tricia Pitts Anderson for the Defendant

J U D G M E N T

Facts

1. The business of Backpackers Paradise was established in or around the year 2007 by Nathalie Nguyen Quang Minh, the Defendant, and her husband in Sarteneja. Ms. Minh and her husband separated in or around 2008. When they separated as part of their mutual agreement, Ms. Minh kept Backpackers Paradise and the parcel of land on which it was situated described as Parcel 1580. Title for said parcel was subsequently transferred to Ms. Minh.

2. In or around 2008, Edward Rouvier, the Claimant, moved to Sarteneja. An intimate relationship eventually developed between Mr. Rouvier and Ms. Minh and they began living together at Backpackers Paradise.
3. Ms. Minh signed a document on April 10th, 2010, giving Mr. Rouvier all her possessions, belongings, house and Backpackers Paradise when she dies. She signed the *“Equity Share and Purchase Agreement”* “ESA” on 8th September, 2014.
4. The relationship between the parties eventually broke down. Mr. Rouvier subsequently demanded payment from Ms. Minh of the sum of BZ\$195,000 pursuant to the Equity Share and Purchase Agreement. Ms. Minh has failed to do so.

Issues

5. The issues as articulated in the Agreed Statement of Facts and Issues dated October 21st, 2016 are as follows:
 - i. Whether the Equity Share and Purchase Agreement was obtained by the Claimant from the Defendant by pressure and the exercise of undue influence over the Defendant.
 - ii. Whether the Equity Share and Purchase Agreement is void on the ground of unilateral mistake.
 - iii. Whether the Equity Share and Purchase Agreement, having been signed by the parties is valid and binding on the parties.
 - iv. Whether the Defendant is estopped from denying the validity of the agreement.

The Court will now examine the evidence adduced by the Claimant and the Defendant and the legal submissions urged on their behalf by their respective counsel in order to determine each of these issues so as to resolve this matter.

Claimant's Evidence

6. Mr. Rouvier gave evidence by his witness statement that he moved to Sarteneja in or around 2008 to pursue a boat building project. Backpackers' Paradise was recommended to him as a place where he could stay. The business was established in 2007 by Ms. Minh and her husband on a property situate in Sarteneja Village, Corozal District. After Ms. Minh and her husband separated in or around 2008, Backpacker's Paradise including the portion of land on which it was located was conveyed to Ms. Minh. Mr. Rouvier was treated as a paying guest during his initial stay, after which he did masonry work for the business and he was allowed to stay in a cabin for free.

7. Mr. Rouvier said an intimate relationship began between Ms. Minh and himself where the parties began living together and sharing the living expenses as a normal couple. He also said that during this time Ms. Minh expressed to him that she needed support for her personal life and also for the running of the business after her separation from her husband. Ms. Minh and her husband were in the process of separating their assets and Backpackers was conveyed to her. She told Mr. Rouvier that she found it difficult to manage all tasks by herself, more specifically the tasks previously undertaken by her husband, including the maintenance of the business. As a result, Mr. Rouvier stepped in and helped Ms. Minh to run Backpackers as she was clearly in

need of assistance. He says that he brought new ideas to the table to improve the business which included improving the marketability of the business by, amongst other things, creating a dynamic website with a Content Manager System for the business. He bought the domain name for the website and he and Ms. Minh were featured on that website as jointly running the business. That website has since been taken down due to the current litigation; however he exhibits a copy of the Backpackers Paradise archived website “ER 1” as evidence of same.

8. Mr. Rouvier said that he completely redid the website and added new pictures and information. He was introduced to Mr. Eliserio Rivero the owner of Thunderbolt Water Taxi by Ms. Minh to discuss promotions on the website. He says that Ms. Minh introduced him to Mr. Rivero as her business partner and he alone held all discussions with Mr. Rivero regarding the website on behalf of the business. He also represented the business at BTIA (Belize Tourism Industry Association) meetings to promote Eco-tourism and a realistic alternative sustainable tourism for “*out of the path*” or remote areas like Sarteneja.
9. Mr. Rouvier said that Backpackers was commonly referred to by Ms. Minh and by himself as “*our business*” and as time went on he invested more of his time, money and energy in the business. It was orally agreed between the parties that Mr. Rouvier and Ms. Minh would be equal partners in the business and property and that they would pursue together the harmonious development of the business on the land in Sarteneja Village registered as Parcel No. 1580. Mr. Rouvier states that he provided

most of the financing. Ms. Minh at all times encouraged his investment in the business and assured him that he was an equal partner. As a result of those assurances, Mr. Rouvier said that from in or around 2010, he began making more substantial and permanent investment in Backpackers by making extensive changes to the infrastructure of the business.

10. He describes in detail in his witness statement the following contributions which are outlined below that he personally made to the improvement of Backpackers' business:

- i. Creating a Backpackers Logo to be placed on all things related to the business to improve its branding and exposure;
- ii. Purchasing a new horse buggy for the business and painting the logo on the buggy a photo of which is exhibited as "ER2";
- iii. Upgrading the plywood sign for the business which he had designed himself and organized to be printed on vinyl aluminum boards by a printing company in Orange Walk; the signs are still being used by the business;
- iv. Construction of a two-storey building comprising of a concrete workshop on the ground floor used for maintenance, storage and furniture production and a wooden house on the upper floor used as a private dwelling (with the possibility of being converted into a dormitory);
- v. Addition of a detached unit containing compost toilet and a large shower;
- vi. Overall upgrading of the electricity, communications and water distribution network;

- vii. Tiling of the floors in the restaurant, cabins and communal room;
- viii. Refitting of the septic tanks for the main communal bathroom and shower;
- ix. Construction of an additional living room in the back of the restaurant;
- x. Extensive landscaping.

As Ms. Minh has failed to honor the agreement and pay him the money due to him under the ESA, he has brought this claim against her for breach of contract.

11. Under extensive cross-examination by Mrs. Pitts Anderson for the Defendant, Mr. Rouvier admitted that when he first arrived in Sarteneja, he was unemployed with no work permit. He disagreed with Learned Counsel's suggestion that he stayed at Backpackers free of cost. Mr. Rouvier said that he initially paid for his accommodation but later an arrangement was made with Ms. Minh that he could stay in exchange for doing work in the business. It was put to the witness that he discovered that Ms. Minh had recently divorced her husband and was crying a lot as she was distraught. He said he was not sure. He agreed that the Defendant continued to run the business after her husband left for about two weeks. He had offered to help her because he saw she was in a distressed condition. He said in the beginning he was doing easy jobs as an action of help to Ms. Minh. When asked whether he told Ms. Minh after he offered to help her that he changed from merely helping her, to wanting something in return, Mr. Rouvier said that he and Ms. Minh talked together after a few weeks or months of being together. They agreed they both owned the place after they shared their time and dedication. The easy jobs he did included cleaning up the storage area for the

bicycles. He arrived at Backpackers in June 2008. He agreed that when he first arrived at Backpackers the business was already in operation; however he said that business was slow. There were cabanas, communal area and restaurant there. He agreed that he knew that owners needed an Environmental Compliance Plan and a Public Health Standard Inspection in order to run that type of business. He did not know that a report was also needed from the Fire Department. He was aware that the licence for Backpackers would not be renewed unless there was compliance with the Belize Tourist Board (BTB) requirements.

12. It was put to Mr. Rouvier that the Equity Sharing Agreement (ESA) was to protect his equity in Backpackers; he replied that the agreement was to protect his interest as well as the interest of Ms. Minh. He agreed that he meant for the agreement to reflect what he claimed to have put into Backpackers, that is, all his investment, time and energy as well as that of the Defendant. He said he believed that it was the Defendant and her husband who had built the cabanas on the property. Mr. Rouvier agreed that the valuation of the property had been done at his request and he was the one who paid Mr. Cansino for the valuation. The valuation only reflected what was on the ground as of 2014. He agreed that the value of \$80,000 for the cabanas and restaurant placed on the valuation by Mr. Cansino reflected the estimated value of what had been on the property before alleged improvements he made. He agreed that there was nothing in the valuation to distinguish the portion of her contribution to the equity from his. Mr. Rouvier said that was not a source of concern for either Ms. Minh or for him. In the alleged discussion with Ms. Minh for the ESA, there was no business

analysis or forecast as to what was the value of Backpackers as a business. He agreed that the agreement did not take into account the fact that the Defendant had to get a hotel licence and to keep the business running; there was also no inventory of the equipment, tools, capital, etc. in the valuation. He said this ESA was a valuation of the assets only. He said he had no receipts to show what value he put into the cabanas. When he entered the ESA with Ms. Minh he understood it to mean that if she defaulted on the agreement, she would be liable to pay him \$195,000. He said that he never saw any bank records to indicate to him that Ms. Minh had \$195,000. He was asked whether he or Elsner Cruz (the person who drafted the agreement) pointed out to the Defendant that if she defaulted she would have to pay \$195,000; he said the same would apply if he defaulted. He disagreed with learned counsel's suggestion that there were no discussions between Ms. Minh and him as to the terms of the ESA. He also disagreed that the ESA was wholly his idea and meant to reflect only his equity in Backpackers.

13. Mr. Rouvier was questioned as to whether he paid any bills for the business; he said that the business paid its own bills. He said it was not true that there was no partnership between him and Ms. Minh. He said it was not true that Ms. Minh ran the business as a sole proprietor. He denied that he became a signatory on the account with Ms. Minh when she was advised she needed a second signatory and he was with her. He agreed that he never deposited money into the account; his response was that neither of them did because it would take too long to go into Corozal to deposit money. The business account was a credit card account where paying guests would

deposit their money. He said that he signed cheques for the business; he agreed that he never disclosed the cheques in his witness statement. Mr. Rouvier agreed that the ESA did not make any reference to salary or stipend that each party is to receive, nor did it refer to what would happen if one party died. There was no step taken to renew the hotel licence in the names of both Mr. Rouvier and Ms. Minh jointly as partners of Backpackers; he said there was no time to do that. He agreed that it was Ms. Minh who took care of renewing the hotel licence and paying property taxes. He said he attended BTIA (Belize Tourism Industry Association) meetings, but denied that he did so for his own benefit as a boat builder. He agreed that he shared his time between Backpackers and his own boat building business. He disagreed that all his time was consumed with developing and promoting his own bio epoxy business that he had no time to contribute to Backpackers. He agreed that the help he gave Ms. Minh was out of love and affection, but he said that was merely for the first few months of their relationship; the ESA was made after years. He said that while he constructed the workshop and used it for the sales and development of his epoxy glue, he also used the workshop to do maintenance work for Backpackers. Learned Counsel said that it was one Juan Palmero who did maintenance work for Backpackers and not Mr. Rouvier; he disagreed. He said it was not true that he had exclusive use of the workshop and upper flat; he said Ms. Minh lived with him in the two-storey building. He said that he recalls a few Backpackers guests complaining about the electricity and water systems which he says were shoddily done and dangerous; he later upgraded these systems. While he never got a Public Health Inspector to check the premises, he

said upgrading these systems was the thing to do as the health of guests was in jeopardy.

14. Mr. Rouvier disagreed that he was the one who told Ms. Minh that she needed to sign the agreement on that day. He doesn't recall if he left Backpackers and went to get Elsner Cruz and brought him to Backpackers with the agreement for the Defendant to sign. He also can't recall if it was on a small bench that Ms. Minh signed the agreement. He disagreed with the suggestion that he and Ms. Minh never signed the ESA in the presence of Juan Guerrero; he said they did everything in the legal way. He was asked whether he or Elsner Cruz ever suggested to Ms. Minh to take the agreement and get independent legal advice. Mr. Rouvier replied that he thinks that they mentioned this in discussions years before. He also said that he forwarded the agreement to Ms. Minh months before and to her family. He denied that the only discussion he had with Ms. Minh arose out of concern that he might lose his house that was on her land, and that there was no partnership or equity between them. He disagreed with the suggestion that his intention from the beginning was to exact from the Defendant 50% interest without putting in any equitable contribution.

15. Mr. Rouvier was re-examined by his counsel Mrs. Yogini Lochan-Cave. He clarified that he paid Mr. Cansino for the valuation because Ms. Minh did a valuation years ago with the same Valuator; he decided to pay him. When asked about the figures in the ESA, he explained that after a few years of his investment and after much discussion, he and Ms. Minh decided to do that sharing agreement to reflect that they both were

50/50 owners in the place. When asked about not advising the Defendant to get separate advice or hiring her own lawyer with respect to the ESA, Mr. Rouvier replied that Mr. Cruz advised both parties that the ESA would be enough, and Ms. Minh mentioned that getting a lawyer would cost a lot of money.

16. The next witness for the Claimant was Elsner Cruz. He testified that he has known Ms. Nathalie Minh as a villager of Sarteneja from around 2000. He has known Mr. Edward Rouvier since in or around 2008. Mr. Cruz states that he assisted the Defendant's husband in 2008 on finalizing a subdivision project. Parcel 1580 was conveyed to Ms. Minh. On completion of the process he personally delivered the land certificate for the said parcel to Ms. Minh and received his remuneration from her. Backpacker's Paradise is located on that parcel of land (Parcel 1580). Ms. Minh and Mr. Rouvier also acquired an additional 3 acres of land adjacent to Parcel 1580, and they both contacted Mr. Cruz in 2011 indicating that they wished to subdivide the land into two parcels of 1.5 acres each with Ms. Minh having one parcel and Mr. Rouvier having the other parcel. The witness said that he provided services in relation to that transaction for both Ms. Minh and Mr. Rouvier up to completion and delivery of their individual land certificates for the two (2) parcels of land. He further testified that it was during these discussions regarding that subdivision transaction that the parties briefly mentioned to him that they would require his assistance in reflecting their joint investment in Backpackers. He agreed to assist them.

17. A few years later in 2013, Ms. Minh and Mr. Rouvier contacted Mr. Cruz again asking him to formally draft an agreement to reflect their investment in Backpackers. During the initial meeting, Mr. Cruz said that he spent a couple hours with both parties at their home trying to understand what they wanted and questioning both as to the reason for the said agreement. Since the title for the land that the business was on was solely in Ms. Minh's name, Mr. Cruz said it was always necessary to state that it was only Ms. Minh who could give direct instructions to proceed in doing any agreement involving Parcel 1508. He made this point very clear to them. Ms. Minh speaks less English than Mr. Rouvier. The parties spoke to each other in French, then in English or Spanish to Mr. Cruz. The witness said that the parties indicated to him that they have both jointly invested in the business and they would wish an agreement that acknowledges each party's investment in the business was 50%. They also indicate that they wished the agreement to state that should either of them cease being involved in the business, the party who was leaving the business should be paid his/her 50% investment. Subsequent meetings followed with a view to completing the agreement during which Mr. Cruz would provide drafts from the discussion for the previous meeting for their approval. All new terms agreed to, he would add on to the main draft. He said he had at least three meetings with the parties at their home before the main draft was completed. He recommended that a valuation be done since the 50% investment was to be determined based on the property located at Parcel 1580. He recommended that Mr. Armin Cansino do the valuation and Ms. Minh agreed as she knew him already. After the main draft was completed in or around

June 2014, it was sent to both Ms. Minh and Mr. Rouvier. She authorized the valuation in Mr. Cruz's presence and agreed that Mr. Rouvier would pay for it. After Mr. Cansino completed the valuation report, a hard copy of the report and of the agreement was given to Ms. Minh by Mr. Cruz, and he forwarded an electronic copy to Mr. Rouvier. Mr. Cruz says that he was told by both parties that they each needed some time before signing the agreement as they had both submitted the draft agreement to their parents for their input.

18. In August 2014, Mr. Cruz testified that they all sat again and discussed the valuation report and the draft agreement. Both parties agreed to incorporate the figures from the valuation report into the agreement. He complied with their request and exhibits an email "IC 1". He states that this was the only change that the parties requested be done to the main draft of the agreement at that time. Thereafter the parties requested the removal of a paragraph indicating that there was no mortgage on the property and a paragraph stating that both parties must upkeep the property and maintain it at an acceptable level. He states that he communicated with the Claimant and the Defendant on numerous occasions via email regarding the agreement, but due to the time that has passed "EC 1" is the only email he could retrieve. Once both parties were satisfied and had no more changes to make to the agreement, Mr. Cruz prepared the agreement for their signatures on September 1st, 2014; the agreement bears that date, but the parties were not available to sign it on that date.

19. Mr. Cruz says that Mr. Rouvier and Ms. Minh came to his house on September 8th, 2014 to sign the agreement. He printed 3 copies of the agreement and signed all three copies. He then told them that they had to sign before a Justice of the Peace. He recommended Mr. Juan Guerrero as someone who had witnessed the signing of these clients before. Ms. Minh and Mr. Rouvier left his house and later returned with the signed copies. They looked through to make sure all were properly signed and Mr. Cruz then kept a copy, and each of the parties kept a signed copy. Mr. Cruz says in conclusion that at all times Ms. Minh was well aware of the contents of the agreement and understood what was being discussed as she actively participated in these discussions. She was also informed that it was only with her consent, agreement and instructions that the agreement could be made.

20. Mr. Cruz was cross-examined extensively by Mrs. Pitts Anderson on behalf of Ms. Minh. He said that he has experience in the purchasing and selling of property since 2007. He was asked whether it has been the best practice for a purchaser and a seller to have separate positions; he said he thinks they have a right to that position. He did not agree with learned counsel's suggestion that the bulk of the ESA in question concerned land; Mr. Cruz said it concerned the partners' investment in the business sitting on the property. He said that all times the proprietor of the property was involved in the discussions that led to the agreement. When asked about whether he did not think it prudent to advise the Defendant to get representation for herself, Mr. Cruz said that during his discussions with the parties they were made aware that whatever they wanted to do could have been done by an attorney. However, they

both insisted that they just wanted to have an agreement between themselves and they authorized him to proceed. He agreed that generally a partnership agreement would include reference to profit and loss of the business, but he said that the parties were trying to record what they had done up to that point on an amicable basis. He said he did not advise the parties on the effect of the partnership agreement, nor did he advise them about maintaining the books of the business or about salaries derived from the business. He said that the valuator Mr. Cansino was contacted with the consent of Ms. Minh. Mr. Cruz said that when the valuation exercise was carried out on the property, Mr. Rouvier, Ms. Minh and he were all present. He insisted that as the agreement went through different drafts, copies were always sent to the Claimant and the Defendant so that they could forward the drafts to their parents.

21. On the day the agreement was signed, both parties came to Mr. Cruz's house where he signed it and sent them to a Justice of the Peace. He disagreed that he and Edward went to Backpackers taking along the agreement and told Ms. Minh that the document was a guarantee acknowledging Ed's ownership of the house and the costs he was to recover if the house was sold. He recalls Ms. Minh visiting his home one year after the agreement was signed to tell him that she was having problems with Edward. He told her that they were both adults and that he was a friend to both of them, and they should sort out their problems as adults.
22. Under brief re-examination the witness clarified that he put a date on the agreement because he thought that they would have been signing the document the following

week, and corrections were made on that draft. He also explained that he was approached by Mr. Rouvier with regard to an agreement between the parties, and he told Mr. Rouvier that nothing could be done if Nathalie was not on board as it was his responsibility to let Nathalie know since she was the proprietor of the parcel where the business was run.

23. The final witness for the Claimant was Juan Guerrero, Justice of the Peace. He said that he has been a justice of the Peace since 1999. He has known Ms. Nathalie Minh since 2004 and Mr. Rouvier since 2008. In September 2014, Ms. Minh and Mr. Rouvier visited his home requesting that he witness their signing three copies of an agreement entitled "*Equity Share and Investment Protection Agreement*". He said that the parties read over the agreement in his presence and signed it. They each indicated that they were freely and willingly executing the agreement, and at no point in time did either of them indicate to him that they did not agree to the terms or that they were being pressured into signing. After they each signed, he affixed his signature and stamp, and they left his home.

24. Under cross-examination, Mr. Guerrero said that he and the Claimant are friends and that he has built a boat for him. He admits that he did not see Elmer Cruz sign the agreement. He agreed that as a Justice of the Peace it is the practice that all parties to the document should sign in his presence. Although it is not required that the parties read the document, Mr. Guerrero always ask them to read it in his presence and he asks if they understood what they have written and signed. He disagreed with

Learned Counsel's suggestion that it was Mr. Rouvier and Mr. Cruz, and not Mr. Rouvier and Ms. Minh who brought the agreement to his house to be signed. He said that he did not read the entire agreement just the first page. He said he did not sign the agreement because he is friends with Mr. Rouvier and wanted to help him; he signed because he is a Justice of the Peace and whoever comes to find his help, he is willing to help them.

Defendant's Evidence

25. The sole witness for the Defendant was Ms. Nathalie Nguyen Quang Minh. Ms. Minh testified that she is a business woman living and residing in Sarteneja Village at Backpackers Paradise. In late 2005, she and her husband Christian jointly began construction of a hostel for backpackers. The business was established on February 1st 2007 as shown by the Certificate of Registration marked "Exhibit NNQM1." The business is licensed by the Belize Tourist Board to provide tourist accommodation "Exhibit NNQM2".
26. Ms. Minh states that she and her husband with the help of others built Backpackers Paradise and she has been physically involved in building and the day to day running of the establishment along with her employees. Her administrative tasks included but were not limited to, reception and reservations, providing 24 hour service to guests, cooking and providing three meals a day for guests, garbage disposal, cleaning of rooms and entire premises, laundry service, raising chickens for the restaurant, care for horses used for horseback riding on the premises, payment of utility bills, social

security contributions, Belize Tourist Board payments and other like administrative tasks; and hiring, training, managing and supervising staff. Ms. Minh exhibits at “NNQM 3” a copy of her land certificate indicating her ownership of Parcel 1580.

27. Ms. Minh states that the Claimant arrived in Sarteneja with all his belongings in his backpack; he had nowhere to stay. Out of compassion she offered Mr. Rouvier accommodation at Backpackers free of cost. She states that she financially supported Mr. Rouvier with all his general expenses, providing him with food, doing his laundry and paying his medical bills. Sometime after his arrival, an intimate relationship developed between Mr. Rouvier and Ms. Minh, and they began to live together in her living quarters situated next to the restaurant. Even then she says that she continued to financially support Mr. Rouvier and pay for all their living expenses without any assistance from him.

28. Ms. Minh says that she never agreed with Mr. Rouvier to pursue a harmonious development of her business. She continued to manage the day to day affairs of Backpackers Paradise. Mr. Rouvier was not involved in the running or administration of Backpackers Paradise nor did he work in exchange for his accommodation. She also states that as a gesture, Mr. Rouvier offered free of cost, in his spare time to re-tool her website that had been built by her brother in Switzerland. She says that Mr. Rouvier did this not as a part of any agreement that he would be an equal partner in the business. He was interested in building a sailboat and wanted to eventually establish a sailboat business to offer excursions, fishing trips and utilize the boat to

sell fruits and vegetables in San Pedro, Ambergris Caye. Ms. Minh said that Mr. Rouvier focused his time and energy on that venture, and out of her love and affection for him, she continued to financially and morally support Mr. Rouvier so that he could focus on his venture.

29. Sometime around 2011, Ms. Minh states that Mr. Rouvier expressed a desire to build a workshop on the grounds of Backpackers Paradise. The workshop was completed in 2011. Ms. Minh says that workshop was not built to provide working space or as a workshop for Backpackers Paradise. The sole purpose for which the Claimant built the workshop was to build his boat and other boat parts, and to store his boat building tools and other equipment. He used the workshop for that purpose and his own activities. After Mr. Rouvier built his workshop he added an upper flat as his private living quarters. Prior to constructing the upper flat, Ms. Minh says that Mr. Rouvier was living with her in her studio next to the restaurant. But Mr. Rouvier complained about the limited space and the proximity of her studio to the business. He wanted more living space and space to put a table, computer and other things. Mr. Rouvier assisted Ms. Minh in extending the studio to make the living space more comfortable for both of them; it was never agreed that between the parties that he did so as an investor in Backpackers Paradise. The studio was still not suitable for Mr. Rouvier, so on his own initiative he decided to construct the upper flat of the workshop as his house. When the upper flat was complete, Mr. Rouvier used it exclusively as his house. During their relationship she spent time there with him for obvious reasons, but she says she spent the majority of her time in her studio. Ms. Minh asserts that

she and Mr. Rouvier never had any agreement to build the upper flat as their home or as a part of Backpackers Paradise, nor was it acknowledged as Mr. Rouvier's investment in the business. The upper flat was used solely as Mr. Rouvier's house save and except for one occasion in January 2015 when he agreed for it to be used as a dormitory for customers of Backpackers Paradise. She says she paid him for its use.

30. Ms. Minh stated that as Mr. Rouvier complained about the lack of privacy and discomfort of using a communal bathroom, on his own initiative he built a detached composting toilet and shower. This was not an investment in Backpackers nor did it form part of the accommodations as he prohibited guests from using his toilet and shower. Backpackers Paradise had access to amenities such as water, electricity and telephone. When Mr. Rouvier built his workshop, he chose to extend these facilities to his premises to suit his needs. Ms. Minh insists that at no time did she give him any assurances that by doing so he was investing in Backpackers Paradise as an equal partner.

31. The floor of the communal room was tiled and the walls re-screened. Ms. Minh bought all the materials and paid Juan Palmero, a laborer from Sarteneja Village to do the work. She spent \$4,400 in tiling the communal room and \$1,000 to re-screen it. Mr. Rouvier did not provide any financial or physical assistance with these projects. Ms. Minh also incurred cost of tiling the restaurant and cabanas at Backpackers Paradise. She stated that Mr. Rouvier provided assistance when the works were being done but she truly believed that he did so gratuitously because they were in a

relationship and as an expression of gratitude for the support she gave him since his arrival at Backpackers Paradise. One of the cabanas was refitted to include a bathroom, a sink and a small verandah. She says that the Claimant did this on his own initiative and not as an investment in Backpackers but because his parents were to visit and he thought her studio was too small to accommodate all of them. The Claimant also suggested changes to the septic system so she bought all the materials and he provided the physical labor. She believed he did so as an expression of gratitude to her for supporting him since his arrival. At no time was there any agreement between them where his assistance was acknowledged or accepted as an investment by him in the business.

32. Ms. Minh states that when Mr. Rouvier arrived at Backpackers Paradise the land had already been cleared leaving some fruit trees on the property. She hired and paid maintenance workers from Sarteneja to cut the grass, trim the trees and other similar tasks. Mr. Rouvier only kept the area in front of his house clean and planted crops and fruits he desired.

33. Mr. Rouvier became a signatory on the account that was opened in the name of Backpackers Paradise because Ms. Minh was advised that in order to open a business account she needed a second signatory. She had trust and confidence in Mr. Rouvier so she suggested that he become a signatory. She had approached Scotia Bank because she needed a point of sale merchant device to process credit card payments at Backpackers Paradise. Ms. Minh states that the account was not opened with any

intention that Mr. Rouvier was recognized or acknowledged as an equal partner in the business.

34. The buggy which was exhibited by Mr. Rouvier in his witness statement was purchased by both parties as a means of transportation; it was not bought as an investment in Backpackers Paradise. Both parties used it to get around the village, Mr. Rouvier used it to transport items to and from his workshop and Ms. Minh used it to take guests to the port.

35. The document that Mr. Rouvier discloses as Ms. Minh's Will was only made because she trusted the Claimant and in the event of her death her husband would get Backpackers Paradise. She says Mr. Rouvier convinced her to name him as her beneficiary to avoid this. She says she is certain that when she signed the Will only she and the Claimant were present.

36. Ms. Minh reiterates emphatically that at no point in time did she promise, represent or encourage Mr. Rouvier or give any assurances that he would be an equal partner in the business. He was never involved in the management or administration of the business, or in charge of maintenance or development of the business' infrastructure, advertising and promotion. Ms. Minh alone managed the staff and daily running of the business. She alone paid all bills and all costs associated with the business as evidenced by a bundle of receipts "NMQM 4". At all times during the relationship between the parties it was understood and recognized that Backpackers Paradise was

Ms. Minh's business and her life's work, while Mr. Rouvier focused on his sail boat projects and activities.

37. In 2014, Mr. Rouvier became concerned that he had his house on Ms. Minh's property and that he would lose his house if the relationship between the parties ended. He expressed that he wanted some type of guarantee that in such an eventuality he would still own his house. Ms. Minh assured him that she would give him a guarantee in writing for his house; in the event the business was sold he would recover the cost of his house. Mr. Rouvier agreed and suggested that a valuation be done to determine the value of his structures. Ms. Minh denies that she and Mr. Rouvier hired Mr. Cruz to prepare the agreement in recognition of Mr. Rouvier's investment in the business. She asserts that Mr. Rouvier went alone to see Elsner Cruz; she trusted and believed he was going to instruct Mr. Cruz to prepare a guarantee to secure Mr. Rouvier's ownership of his house on her land. In July 2014, Mr. Rouvier showed her a document which he said was a contract of guarantee for his house; he never gave her the document but merely showed it to her. She admits that she never read the document because she trusted Mr. Rouvier and just said "*Okay, Mi Amor.*" She denies receiving previous drafts from either Mr. Cruz or Mr. Rouvier. In September 2014 Ms. Minh learnt that her niece was ill in Geneva, Switzerland and decided to visit her family there. When she told Mr. Rouvier of her plans to travel he insisted that she must sign the guarantee for his house before travelling just in case there was an accident and she died then he would have the rights to his house. She was in a hurry and very stressed and Mr. Rouvier left then returned with Mr. Cruz who brought a document

with him that Ms. Minh believed was the guarantee acknowledging Mr. Rouvier's ownership of his house. Mr. Cruz told her that was what the document was and she therefore signed the document. She left the country and exhibits her passport showing her departure from Belize on September 8th, 2014 "NMQM 5". Ms. Minh says that had she not been misled by Mr. Rouvier and Mr. Cruz as to the nature and effect of the document, she never would have signed it. She says Mr. Juan Guerrero Justice of the Peace was not present when she signed.

38. The relationship between the parties deteriorated where they argued constantly and Mr. Rouvier threatened to leave Backpackers Paradise taking \$200,000 with him. Ms. Minh says she thought he was just crazy and she wondered why he would say this. The relationship ended in early 2015 and he began to harass her by sending her threatening and offensive messages. He later sent a letter to her demanding she give him land or money. His attorney later wrote demanding \$195,000 so she went to Mr. Cruz to ask why Mr. Rouvier was doing this. Mr. Cruz said she had to pay because his house was on her property. Upon retaining her own attorney, she finally requested and obtained a copy of the agreement referred to in the letter from Mr. Rouvier's attorney. Ms. Minh states that she never intended to sign an Equity Sharing Agreement and that she believed she was signing a guarantee to protect Mr. Rouvier's ownership of his house on her land. She strongly believes it would be unconscionable for Mr. Rouvier to claim that he is an equal partner or investor in her life's work as a result of any physical assistance he may have given her during their intimate relationship, when there was no such agreement between them. She asks that this

court set aside the agreement on the ground that it is void as it was induced by undue influence or in the alternative unilateral mistake, and dismiss Mr. Rouvier's claim with costs to her.

39. Under cross-examination by Mrs. Lochan Cave for the Claimant, Ms. Minh said that she came to Belize in 2005. She is a graduate of the University of Neuchatel in Switzerland where she earned a Diploma in Biology. She admitted that in order to earn her diploma she had to present a paper on the Shipstern Nature Reserve in Belize. Ms. Minh says that that document was not done by her in English; she wrote for her diploma in French and her Professor wanted a version in English so he wrote it in English. She got married after working at Shipstern for two years and she and her husband started Backpackers Paradise. She considers herself a business woman and from the inception she was involved with reservations and receiving guests. She says she always spoke to her guests in Spanish so she does not know if they speak English; she disagreed that she would converse in English with her guests on a regular basis. Ms. Minh agreed that prior to separation from her husband, she and her husband alone discussed how to divide up all that they owned together. After the discussions, she got sole control of the business while she gave her husband 24 acres of land. She adamantly denied counsel's suggestions that she speaks, reads and understands English very well. She agreed that she would have no problem signing a document guaranteeing Mr. Rouvier's ownership of his house. She agreed that monies were to be paid to Mr. Rouvier for his house in the event the land was sold. She said that Mr. Rouvier offered to get Mr. Cruz to draft a document of guarantee for his house

sometime between January and March 2014. When he showed her the document in July 2014, she agreed that she chose not to read it, nor did she request a copy. She further agreed that when Mr. Rouvier gave her the document to sign in September 2014 she did not read the document. She said this was because the document was in English and she trusted him. She also did not seek to get the document translated because she trusted Mr. Rouvier and Mr. Cruz who had told her what the document was about, so she did not think it was necessary. She said that the document looked the same as the one she had been shown in July 2014, but that she only checked the first page because she trusted them. Ms. Minh never asked for a copy that she had signed although she signed two copies. After she returned from her trip abroad she never requested a copy. She disagreed with Learned Counsel's suggestion that the reason she never requested a copy of the agreement was that she always had a copy in her possession. When asked if she knew Mr. Cruz personally prior to signing this agreement, Ms. Minh said yes she knew him a little. Mr. Cruz had handled a subdivision of land for her and her husband where she received Parcel 1580 on which the business was located. She agreed that she knew Mr. Cruz before Mr. Rouvier came to Sarteneja; she had met him through her husband. She and Mr. Rouvier acquired further lands in Sarteneja in 2011 and they hired Mr. Cruz to subdivide the land. She also knew Mr. Guerrero before the agreement was signed as he was a friend of her husband's friend; she reiterates that Mr. Guerrero never witnessed her signing of the agreement. She disagreed that Mr. Guerrero had witnessed her signature on previous land transactions for her. She denied that she and Mr. Rouvier approached Mr. Cruz

to assist in drafting the agreement in 2013, and that she was present during all meetings in which the terms of the agreement were discussed. She knew that a valuation was being conducted but she never read the valuation. When asked whether she was concerned as to what the value of Mr. Rouvier's house was as per the valuation, Ms. Minh said no she wasn't concerned because it was his house. She said that she never had any agreement to share her business with Mr. Rouvier. She said she never gave a copy of the agreement to her parents to read as neither of them speak English. She never met with Mr. Cruz and Mr. Rouvier to discuss this agreement, and a copy of the agreement was never emailed to her. She never went to Cruz's house to sign the agreement; she says that Mr. Cruz and Mr. Rouvier came to her house. Ms. Minh agrees that Mr. Rouvier did some work for the business including adding new pictures to the website, redoing the business sign, creating a new logo, painting the buggy, and helping the workers renovate a cabana. She agreed he was a signatory on the business account but this was because she needed another signatory and he was the only person she trusted in Belize, not because he was an equal partner in her business. She disagreed with counsel's suggestion that she was denying Mr. Rouvier's interest in the business because they went through a bitter breakup of their relationship.

Issue One

40. Whether the Equity Share and Purchase Agreement was void on the Ground of Mistake and should therefore be set aside.

Legal Submissions on behalf of the Claimant on Issue One

Mrs. Lochan on behalf of the Claimant submits that there is no evidence that Mr. Rouvier was aware that Ms. Minh was laboring under any alleged mistake or that he sought to misinform Ms. Minh as to the nature of the agreement. Ms. Minh has admitted that she saw the agreement in July 2014 and that she looked at the first page of the final copy of the agreement that she signed in September 2014. Mrs. Lochan posits the question why would Ms. Minh be given the opportunity by Mr. Rouvier to review a copy of the agreement in advance if he was trying to misinform her? In addition, an independent party was consulted to ensure a proper agreement was drafted and an appraiser was hired to value the property which Ms. Minh has agreed she was aware of. It is important to note that both the consultant and the appraiser were persons known to Ms. Minh and whom she had done business with before. Mrs. Lochan cites ***Baggallay LJ in Tamplin v. James*** 15 Ch D 215 at 217 on the legal principle of mistake:

“But where there has been no representation and where there is no ambiguity in the terms of the contract, the Defendant cannot be allowed to evade the performance of it by the simple statement that he has made a mistake. Were such to be the law the performance of a contract could rarely be enforced upon an unwilling party who was also unscrupulous.”

41. Learned Counsel argues that Ms. Minh indicated under cross examination that she is a business woman who is a University Graduate from the University of Neuchatel. She agreed that she considers herself a businesswoman and that she has been running her business since 2008. It is the Claimant’s case that Ms. Minh holds a Master’s

Degree in Biology (denied by the Defendant) and he has exhibited a document prepared by the Defendant as she pursued her degree (Exhibit ER7). The submission is that since Ms. Minh is a highly educated and seasoned business woman the likelihood that she was acting under a mistake is non-existent. In addition, Ms. Lochan Cave argues that the Defendant agreed that when she separated from her husband they entered into discussions by themselves and she was able to get sole control of Backpackers. This lends support to the Claimant's position that Ms. Minh is a woman experienced in negotiating an agreement.

42. While Ms. Minh admits that the signature on the Equity Sharing Agreement is hers, she claims in her Defence and Counterclaim that she executed the alleged agreement under a total mistake as to its true content and effect and in a bona fide belief that she was executing an agreement of a wholly different kind. Mrs. Lochan Cave cites ***Saunders v. Anglia Building Society*** 1971 A.C. 1004 where the court held that the plea of *non est factum* is not available to anyone who signed without taking the trouble to at least find out the general effect of the document. Nor could it be available to a person whose mistake was really a mistake as to the legal effect of the document. There must be a radical or fundamental difference between what he signed and what he thought he was signing. The burden of proving *non est factum* is on the party disowning his signature; this includes proof that he took care. There is no burden on the other party to prove want of care. Learned Counsel cites Lord Reid at p.1016 of the judgment:

“So there must be a heavy burden of proof on the person who seeks to invoke this remedy. He must prove all the circumstances necessary to justify its being granted to him, and that necessarily involves his proving that he took all reasonable precautions in the circumstances. I do not say that the remedy can never be available to a man of full capacity. But that could only be in exceptional circumstances: certainly not where his reason for not scrutinizing the document before signing the document before signing it was that he was too busy or too lazy. In general, I do not think he can be heard to say that he signed in reliance on someone he trusted.”

Mrs. Lochan Cave contends that in order for the Defendant to succeed in this plea, it is not enough for her to plead that she was misinformed about the contents and nature of the document. She must also prove that she took reasonable precautions to ascertain the content of the document. Mrs. Lochan Cave also relies on Claim No. 699 of 2008 ***Bruce Sanchez v. Pamela Robateau Martinez*** where the Defendant asserted (in her defence against a claim for money due to the Claimant under a written agreement) that she thought that she was signing an employment contract instead of a contract to lease the Claimant’s business. In rejecting the Defendant’s plea of *non est factum*, Muria J. found the Defendant to be an intelligent and educated person with business experience and a seasoned business woman. His Lordship stated:

“In this case, the Defendant is a person of full age and understanding who can read and write, and who signed a document that was intended to have legal consequences on her. If she did not take the trouble to read it, but simply signed

it relying on the word of another (the claimant as she said) as to the nature of the document, then in my judgment she cannot be heard to say that it is not her document. By her action in signing it, she represented to the world at large, and especially to those in whose hands it may come, that it is her document. She cannot now go back on it and disavow her signature, and say that the document is not hers.”

43. Mrs. Lochan Cave says that in the case at bar the Defendant is also a fully educated business woman who says that she chose not to read the document before signing it. Based on Ms. Minh’s own version of the evidence she would have had ample opportunity to ascertain the contents of the document months prior to signing it but she did not take care to do so. Under cross examination she accepted that she had been shown a copy of the document by the Claimant in July 2014. She says he did not give her a copy nor did she ask for one; she also said she did not read it because she trusted him. It is submitted that on the Defendant’s own case, she appeared to be indifferent or unconcerned as to the contents of the agreement. She asserted that she thought that the agreement was to guarantee the Claimant’s ownership of the house on the land and that he would recover the cost of his house in the event the land was sold. By her own evidence, she was not concerned to look at the valuation or to ascertain how much money she would have to give the Claimant.

44. Mrs. Lochan Cave contends that the Defendant is well versed in the English language, and suffered from no incapacity in reading the document herself. She relies on the following pieces of evidence to buttress this contention:

- 1) The Defendant says that in working at the reservations desk in her business since 2007, she only came across guests who spoke Spanish, German, French and Italian but not English. Learned Counsel submits that the Defendant is not speaking the truth as it is highly unlikely that for nine years of operation not a single guest who spoke only English stayed at the hostel.
- 2) The Defendant's reply to the letter sent to her by Mr. Rouvier is in English. It is also handwritten (ER 10). Under cross-examination Ms. Minh said that she translated it on Google and then copied it onto a paper in her own handwriting. Ms. Minh had previously accepted that she and Mr. Rouvier both speak French and that is in fact their first language. The question therefore arises why would she go through the trouble of replying in English, if she does not know how to communicate in English. She could have easily written her response in French and it would have been understood by the Claimant. The Claimant submits that the Defendant replied in English because she knows fully well how to read and communicate in English. Further, even if we are to accept that she is not versed in English and had to utilize Google Translator in order to craft the reply, it is submitted that the Defendant is quite apt at communicating in

English using this method. Thus, if we are to accept that she is not versed in English this would not have impeded her from ascertaining the contents of the agreement. It is important that she did not say that she did not read the document because she was forced to sign the document at that particular moment, but because she did not think it was necessary. As such no one prevented her from ascertaining the contents of the document; she chose not to utilize Google Translator to ascertain the contents of the agreement.

- 3) The procedure to be followed when a witness does not speak English is laid down in Blackstone's Civil Practice 2012 para 49.16. For any statement of case or witness statement filed by a party who does not speak English. That party should first make a statement in his own language followed by a translation into English. The translator must then make an affidavit verifying the translation and exhibiting the translations and the foreign language document. The Claimant submits that as this procedure was never adopted when the Defendant was properly represented by Counsel raises a strong inference that there was no need for such a translator.
- 4) The Claimant says that the Defendant has tried her best to convince the court that she does not communicate in English but the Claimant exhibits a Will which the Defendant accepts as her Will (Exhibit ER 7). It is handwritten and in English. No mention was made by the Defendant of Google Translator to craft this document. Why would she choose to write

her Will in English if she is not versed in English rather than her first language.

- 5) The Defendant has accepted that the documents at “ER 4” and “ER 5” are copies of her Sound Cloud and Facebook pages. All comments on those pages are in English. Even if she was not versed in English how is she able to maintain website pages in English? The website for Backpackers is also in English so how is she able to maintain the social media pages in English? The Claimant submits that the Defendant is being less than forthcoming about her understanding of the English language. Taking the Defendant’s case at its highest, the Claimant submits that the Defendant has not satisfied the threshold for invalidating the agreement. She has provided no evidence of bad faith on the part of the Claimant, nor evidence that would lead to the conclusion that he sought to misinform her or knew that she was misinformed. Her evidence shows that she took no care whatsoever to ascertain the contents of the agreement though she was given ample opportunity to do so. The Defendant’s plea of mistake must therefore fail.

Legal Submissions on behalf of the Defendant on Issue One

45. Mrs. Pitts Anderson submits that the Defendant signed the Equity Share and Purchase Agreement under a mistake. In her submissions, learned Counsel sets out the legal principle of unilateral mistake as a ground for setting aside a contract. A unilateral mistake is where one party is mistaken and the other party knows or ought to have known of the error. The mistake might be as to the terms or subject matter of the

agreement between the parties or where one party is mistaken as to the identity of the other party where identity is fundamental to the contract. In discussing the issue of rectification where a unilateral mistake has been made by one party to a contract, Ms. Anderson cites **Commission for New Towns v. Cooper** (GB) Ltd [1995] CH 259 where the court held that knowledge of a Claimant's mistake can be inferred by a Defendant from the circumstances:

“Rectification could be granted on the basis of unconscionable conduct in circumstances where one of the parties to a contract intended the other to be mistaken as to the terms of their agreement and diverted his attention from discovering the mistake by making false and misleading statements, with the result that he in fact made the very mistake intended, notwithstanding that the former did not actually know but merely suspected that the latter was mistaken and that it could not be shown that the mistake was induced by any misrepresentation. In the absence of any express misrepresentation, where a false representation was made for the purpose of inducing the other party to adopt a certain course of conduct and the representation was such as to influence a person behaving reasonably to adopt that course of conduct, that representation did have that effect.”

46. Mrs. Pitts Anderson contends on behalf of Ms. Minh that both Mr. Rouvier and Elsner Cruz represented to Ms. Minh that the agreement was a guarantee in writing for Mr. Rouvier to secure his house on her land. It is Ms. Minh's testimony that she repeatedly told Mr. Rouvier that she would have no problem signing any document for his house

so Mr. Rouvier must have been aware of Ms. Minh's mistake. Any assistance that Mr. Rouvier gave to Ms. Minh in her business was done out of natural love and affection where there is an intimate relationship between the parties. There was never any intention to create any legal relationship. Learned Counsel also argues that there was unconscionable behavior on the part of Mr. Rouvier. While he spoke of the ESA being 50/50, the agreement is clearly lop sided as it did not accurately and fairly reflect Ms. Minh's equity in the business which existed prior to Mr. Rouvier's arrival. She also argues that it was sharp practice for the Claimant to hasten to get the Defendant to sign the ESA. It was also reckless for Mr. Rouvier not to ensure that Ms. Minh obtained independent legal advice before signing the agreement. As Ms. Minh was under a mistake when she signed the agreement, there was no *consensus ad idem* between the parties, therefore the contract is invalid.

Decision of the Court on Issue No. One

47. I agree with the submissions made on behalf of the Claimant on this first issue in their entirety. Upon observing the parties in Court, I am satisfied that Ms. Minh is a competent, highly educated and experienced business woman. I am also satisfied that while English is not her first language, she is able to read and write English quite well. I have perused her hand written Will "Exhibit ER 7", her messages on her social media pages "Exhibit ER 4" as well as the handwritten letter dated "Exhibit ER 10" which she sent to Mr. Rouvier which have all assisted me in reaching that conclusion. Some of Ms. Minh's personal statements that she made on her Facebook page by way of example are as follows: On March 20th "Next free party from DJ Naty will take place

in Sarteneja at Backpackers Paradise for the Easter Weekend. Bush Party the Friday 25th of March and after party the 27th March. Love and Music”; On February 19th, “Party tonight, feel very excited, I will meet the DJ to talk about coming back to play next time at the secret garden!”

In addition, I fully agree with Mrs. Lochan Cave that Ms. Minh had sufficient opportunity to seek independent legal advice before signing the agreement, as by her own admission she was shown a copy of the agreement in July 2014, she never read it nor did she ask for a copy to read it, and she signed it several months later in September 2014. She said that she is accustomed to using Google to help her translate so I find that she could have used Google to assist her in deciphering the agreement before she signed it. *Non est factum* will not assist her as I find she was extremely reckless in not bothering to even read the agreement. The Title of the Document is *“Equity Share and Purchase Agreement”* which to my mind is a title that makes it very clear on the face of the document that it is intended to have legal consequences; so even if (as Ms. Minh asserts) she believed that she was merely signing a document to guarantee payment to Mr. Rouvier for the value of his house on her land, the title of that agreement is the first thing that should have alerted her to the essential need for her to read the document thoroughly before signing it. I am guided by the words and I adopt the reasoning of Lord Pearson in ***Saunders v. Anglia Building Society*** 1971 AC 1004 at page 1032 helpfully cited by Mrs. Lochan Cave as follows:

“I must however, deal specifically with the broad principle stated by the Master of the Rolls as his conclusion from the investigation of the law at pp 36-37:

'...whenever a man of full age and understanding, who can read and write, signs a legal document which is put before him for signature - by which I mean a document which, it is apparent on the face of it, is intended to have legal consequences - then, if he does not take the trouble to read it, but signs it as is, relying on the word of another as to its character or contents or effect, he cannot be heard to say that it is not his document. By his conduct in signing it he has represented, to all those into whose hands it may come, that it is his document; and once they act upon it as being his document, he cannot go back on it, and say it was a nullity from the beginning...'

Having reviewed the evidence I find that the plea of *non est factum* does not succeed; the Defendant by her own admission signed the document without even reading it in reckless disregard as to its contents, so she must now bear the consequences.

Issue No. 2 Whether the Equity and Share Purchase Agreement was exerted and obtained by the Claimant from the Defendant by pressure and the exercise of undue influence over the Defendant

Legal Submissions on behalf of the Claimant on Issue No. 2

48. Mrs. Lochan Cave argues on behalf of the Claimant that the Defendant having pleaded the issue of unilateral mistake and adducing evidence to attempt to support that claim, the Defendant cannot then properly present an argument that she was unduly influenced to sign the agreement. The principles of unilateral mistake and undue

influence are diametrically opposed and as such cannot stand together. The submission is that even if the Defendant pleaded undue influence alone, she has not adduced any evidence to support such a finding.

Mrs. Lochan Cave refers to ***Chitty on Contracts*** 28th Ed. Vol 1 at p. 434 which cites ***Bank of Credit and Commerce International SA v. Aboody*** (1990) 1 QQQQB 923 where the classes of undue influence are discussed by Lord Browne Wilkinson.

“Class 1 Actual Undue Influence

In these cases it is necessary for the Claimant to prove affirmatively that the wrongdoer exerted undue influence on the complainant to enter into that particular transaction which is impugned.

Class 2 Presumed Undue Influence

In these cases the complainant only has to show, in the first instance, that there was a relationship of trust and confidence between the complainant and the wrongdoer of such a nature that it is fair to presume that the wrongdoer abused that relationship in procuring the complainant to enter into the impugned transaction. In Class 2 cases therefore there is no need to produce evidence that actual undue influence was exerted in relation to the particular transaction impugned: once a confidential relationship has been proved, the burden shifts to the wrongdoer to prove that the complainant entered into the impugned transaction freely, for example by showing that the complainant had independent advice. Such a confidential relationship can be established in two ways:

Class 2A: Certain relationships (for example solicitor and client, medical advisor and patient) as a matter of law raise the presumption that undue influence has been exercised.

Class 2B: Even if there is no relationship falling within Class 2A, if the complainant proves the de facto existence of a relationship under which the complainant generally reposed trust and confidence in the wrongdoer, the existence of such relationship raises a presumption of undue influence. In a Class 2B case therefore, in the absence of evidence disproving the undue influence, the complainant will succeed in setting aside the impugned transaction merely by proof that the complainant reposed trust and confidence in the wrongdoer without having to prove that the wrongdoer exerted actual undue influence or otherwise abused such trust and confidence in relation to the particular transaction impugned.”

Mrs. Lochan Cave argues that there had been no evidence of actual undue influence put forward by the Defendant to substantiate any claim for undue influence. As such the Defendant would have to make out a case for presumed undue influence and the burden is on the Defendant as the party impugning the agreement. Learned Counsel for the Claimant then challenges each particular of presumed undue influence alleged on behalf of the Defendant.

49. The first particular of undue influence relied on by the Defendant is that she and the Claimant were involved in an intimate relationship. Ms. Lochan Cave submits that the fact that there was an intimate relationship between Mr. Rouvier and Ms. Minh does

not automatically raise a presumption of undue influence as this is not a special Class 2A relationship (for example solicitor and client, medical advisor and patient) where as a matter of law the presumption of undue influence arises due to the nature of the relationship between the parties. For Ms. Minh to successfully argue undue influence, she would have to demonstrate that *de facto* she did leave decisions on financial and other affairs to the Claimant thereby bringing herself within Class 2B, where the relationship between Ms. Minh and Mr. Rouvier was such that she reposed confidence and trust in him. As support for this argument, learned counsel relies on ***Barclays Bank PLC v. O'Brien & Anor*** 1994 1 AC where it was held that even in a relationship of husband and wife there was no presumption of undue influence. Lord Browne Wilkinson set out what was necessary to be proven in order to bring a relationship within the Class 2B category in a case involving a husband and wife:

“Although there is no Class 2A presumption of undue influence as between a husband and wife, it should be emphasized that in any particular case a wife may well be able to demonstrate that de facto she did leave decisions on financial affairs to her husband thereby bringing herself within Class 2B i.e. that the relationship between husband and wife in particular case was such that the wife reposed confidence and trust in her husband in relation to their financial affairs and therefore undue influence is to be presumed. Thus, in those cases which still occur where the wife relies in all financial matters on her husband and simply does what he suggests, a presumption of undue influence within Class 2B can be

established solely from proof of such trust and confidence without proof of actual undue influence.”

Mrs. Lochan Cave contends that the Defendant has to prove that there was a relationship of trust and confidence between her and the Claimant to such an extent that decisions were left solely up to him, she did what he suggested and the influence was such that it affected the free exercise of her will. In ***Inche Noriah v. Shik Allie Bin Omar*** (1929) AC 127 the court found that there was a relationship of trust and confidence in which it was presumed that undue influence was exerted between a nephew and his aunt, where the aunt was an old and feeble woman who was unable to leave the house and relied entirely on her nephew for everything even food and clothing and the management of her affairs were left to him so that she had no knowledge of her own affairs or as to the value of her properties. Mrs. Lochan Cave argues that in the case at bar, the Defendant has merely made a bald assertion that she reposed trust and confidence in the Claimant without any evidence to substantiate such a relationship. She has never led evidence to show that she relied solely on the Claimant’s advice or directions. On the contrary, Ms. Minh has led evidence that she is an astute business woman who maintained sole control of her business to the exclusion of Mr. Rouvier. It is submitted that Ms. Minh even tried to paint a picture of Mr. Rouvier as being a person who was fully dependent on her for his food, lodging, and finances. She clearly stated that she maintained control of her business and never allowed him to have any say in how it was run because it was her business. This was not a relationship where trust and confidence were reposed in the

Claimant to such an extent that the Defendant's will was overborn; the Claimant states that both parties were equal partners in the business on a level playing field.

50. Mrs. Lochan Cave also challenges the second particular raised by the Defendant in her plea to establish undue influence: that the Claimant caused the agreement to be prepared in English knowing that the Defendant's first language is French. In addition to relying on earlier submissions on this point, the Claimant also relies on the evidence of Elsner Cruz. Mr. Cruz said that during the discussions with the parties which led to his drafting of the ESA, Ms. Minh and Mr. Rouvier spoke in French to each other and in Spanish or English to him. As such the Defendant was always fully aware of the contents of the agreement.

51. The Defendant also argues that the Claimant orally represented to her that the agreement was merely an acknowledgment that he had built a building on her land for which he would be compensated in the event of the sale of the business. Mrs. Lochan Cave submits that Ms. Minh has provided no evidence to substantiate this assertion. On the contrary, by her own admission, Ms. Minh stated that the Claimant showed her a copy of the agreement in July 2014. Learned Counsel contends that this would have given Ms. Minh ample opportunity to ascertain the contents of the agreement prior to signing it. Ms. Minh chose not to read the agreement or to request a copy.

52. Mrs. Lochan says that the Defendant has provided no evidence to show that the Claimant, by himself, his servant or agent, prevented her from understanding the true

content and effect of the agreement. Rather, the Defendant gave evidence that on more than one occasion she chose not to read the agreement or to request a copy.

53. Learned Counsel for the Claimant also argues that there is no evidence that Mr. Rouvier pressed Ms. Minh to sign the agreement. On the contrary, Ms. Minh's evidence when she was asked whether she signed the agreement without any pressure from the Claimant or anyone else was, "*No. I would have had no problem signing it*".

54. The final particular addressed by Mrs. Lochan Cave is Ms. Minh's contention that the agreement was presented to her for execution without her having obtained independent legal advice on the true content and effect of the agreement. Mrs. Lochan Cave submits that the Defendant has failed to prove that there was a relationship of trust and confidence that would raise the presumption that undue influence was exercised. As such there was no need for the Defendant to lead evidence of independent legal advice to rebut the presumption. However, even if she had successfully proven the presumption, the transfer is not automatically set aside because independent legal advice was not received once the evidence is such that it was the spontaneous act of the Defendant and that she exercised her free will. In ***Inche Noriah v. Shaik Allie Bin Omar*** (1929) AC 127 it was held that "*where the relations between a donor and donee raise a presumption that the donee had influence over the donor, the Court will set aside the gift unless the donee establishes that it was a spontaneous act of the donor acting in circumstances which enabled him*

to exercise an independent will, and which justified the Court in holding that it was the result of a free exercise of the donor's will. If the evidence establishes the fact above stated, it should not be disregarded merely because the donor did not receive independent legal advice". Learned Counsel submits that the evidence provided by the Claimant, the evidence of Elsner Cruz and Juan Guerrero proves that Ms. Minh was fully aware of the contents of the agreement and she acted of her own free will in signing it. The agreement should therefore not be set aside because Ms. Minh did not get independent legal advice.

Legal Submissions on behalf of the Defendant on Issue No. 2

55. Mrs. Pitts Anderson argues that the Defendant was acting under undue influence from the Claimant when she signed the agreement. Undue influence is an equitable doctrine which is brought into play when one party has acted unconscionably in exploiting power to direct the conduct of another which is derived from the relationship between them (*Royal Bank of Scotland PLC v. Elridge No. 2* (1998)). The House of Lords in *Bank of Credit and Commerce International S.A. v. Abouody* [1990] explained the categories of undue influence by dividing into Class 1 Actual Undue Influence and Class 2 Presumed Undue Influence. Class 2 is subdivided in to Class 2A and Class 2B.

"Class 1: Actual Undue Influence

In these cases it is necessary for the Claimant to prove affirmatively that the wrongdoer exerted undue influence on the complainant to enter into that particular transaction which is impugned.

Class 2: Presumed Undue Influence

In these cases the Complainant only has to show, in the first instance, that there was a relationship of trust and confidence between the Complainant and the wrongdoer of such a nature that it is fair to presume that the wrongdoer abused the relationship in procuring the transaction. In Class 2 cases therefore there is no need to produce evidence that actual undue influence was exerted in relation to the particular transaction impugned: once a confidential relationship has been proved, the burden then shifts to the wrongdoer to prove that the Complainant entered into the impugned transaction freely, for example, by showing that the Complainant had independent advice. Such a confidential relationship can be established in two ways, viz,

Class 2(A)

Certain relationships (for example solicitor and client, medical advisor and patient) as a matter of law raise the presumption that undue influence has been exercised.

Class 2(B)

Even if there is no relationship falling within Class 2(A), if the Complainant proves the de facto existence of a relationship under which the Complainant generally reposed trust and confidence in the wrongdoer, the existence of such a relationship

raises the presumption of undue influence. In a Class 2(B) case therefore, in the absence of evidence disproving the undue influence, the Complainant will succeed in setting aside the impugned transaction merely by proof that the Complainant reposed trust and confidence in the wrongdoer without having to prove that the wrongdoer exerted actual undue influence or otherwise abused such trust and confidence in relation to the particular transaction impugned.”

56. Mrs. Pitts Anderson cites ***Banco Exterior Internacional SA v Thomas & Another*** [1997]

1 ALL ER 46 where the question of undue influence arose between an unmarried man and a woman. The woman acted as surety for the man in obtaining a loan for his car business. When the bank sought to enforce against the woman, it was contended that she had signed the guarantee under undue influence of the man, of which the Bank should have had notice. The Court at first instance and on appeal found that presumed undue influence did not exist primarily because the bank had directed the woman to obtain independent legal advice which she did but ultimately refused to follow. Mrs. Pitts Anderson says that the court placed much emphasis on the provision of legal advice, the purpose of which was to inform the woman of her obligations and to emancipate her of any influence that the man might have exerted upon her:

“The so-called ‘presumption’ of undue influence does no more than to require that, in the absence of any rebutting evidence, a conclusion of undue influence should be reached. The classic rebutting evidence would be evidence that advice had been given by an independent solicitor. Mr. Bishop was such a solicitor. Having received his advice Mrs. Dempsey signed the two documents. It cannot be said that when

she did so she lacked a full understanding of their nature and effect. In my judgment, there was, at the foot of Mrs. Dempsey's meeting with Mr. Bishop, no further part to be played by the presumption and I would hold that the presumption was rebutted. Mr. Falconer argued that her signing of the two documents showed that she was so fully under the influence of Mr. Mulchay that Mr. Bishop's advice made no difference. This argument is circuitous and, if accepted, would turn what is only a presumption into an irrebuttable conclusion. In my judgment, the evidence did not justify a finding that, when she signed the documents, Mrs. Dempsey lacked a free and full will and informed understanding of what she was doing (see Allcard v. Skinner (1887) 36 Ch D 145)."

Mrs. Pitts Anderson states that in determining whether a transaction was brought about by presumed undue influence, the court must determine a question of fact and the burden of proving it rests on the person who claims to have been wronged. The evidence required to discharge the burden of proof depends on the nature of the alleged undue influence, the personalities of the parties, their relationship, the extent to which the transaction cannot really be accounted for by the ordinary motives of ordinary persons in that relationship and all the circumstances of the case. Proof that the complainant placed trust and confidence in the other party in relation to the management of the complainant's financial affairs coupled with a transaction which calls for an explanation, will normally be sufficient, failing satisfactory evidence to the contrary to discharge the burden of proof. The court may infer that the transaction was procured by undue influence. This situation is conventionally described as one in

which a presumption of undue influence arises, the use of the word ‘presumption’ being descriptive of a shift in the evidential onus on a question of fact. It is not necessary to show that the victim’s will was completely overborne in order for the claim to succeed *Hewett v. First Plus Financial Group* 2010 EWCA Civ 312. In addition if the intention to transact was procured by an unacceptable means the law will not permit the transaction to stand (Lord Nicholls in *Royal Bank of Scotland v. Etridge AP*).

57. Mrs. Pitts Anderson submits that based on the circumstances of the present case, presumed undue influence arises for determination for the following reasons:

The first particular on which presumed innocence arises is the relationship between Mr. Rouvier and Ms. Minh. It is an accepted fact that the relationship started in 2008 sometime after Ms. Minh separated from her husband; Mr. Rouvier arrived at Backpackers on the heels of the end of Ms. Minh’s marriage to find her distressed and perhaps vulnerable. An intimate relationship developed between the parties where the Defendant allowed Mr. Rouvier to live at Backpackers for free. It is submitted that it is within the confines of that relationship that Mr. Rouvier’s assertions of improvements done to the business must be construed. He assisted Ms. Minh as her partner. If there was an intention to create legal relations as he asserts, then it is expected that he would have presented receipts and the like indicating that such was the direction the parties were headed.

58. Learned Counsel for the Defendant further submits that the trust that Ms. Minh had for Mr. Rouvier was shown by the evidence to not only be implicit in their relationship, but also expressed by Ms. Minh to the knowledge of Mr. Rouvier. This is borne out by the Defendant's testimony that when Scotiabank told her that they wanted another signature of someone that she trusted, she chose him because he was her partner and he was the only person she trusted in Belize. This was the reason that she invited Mr. Rouvier to accompany her to the Bank and this is the reason that she signed the ESA. To use the Defendant's words, *"I did not read it because it was in English and they told me what was in the document and I trusted them"*. When pressed she continued, *"I only looked at the first page to see that it was the same because I trusted him"*.

59. Mrs. Pitts Anderson also challenges the manner in which the ESA was prepared and executed. She argues that Ms. Minh maintains that there was no consultation with her and Elsner Cruz regarding the preparation of the agreement. She maintains that Mr. Rouvier was the one who sought Mr. Cruz's assistance to draft the agreement which she believed would concern his house. It is submitted that this is consistent with Mr. Cruz's testimony that he was approached by Mr. Rouvier not by Ms. Minh. Drafts of the ESA were forwarded to Ms. Minh by email, but Ms. Minh denies receiving these emails. It is also argued on behalf of Ms. Minh that the timing of the document is also crucial. The uncontroverted evidence of Ms. Minh is that the ESA was signed on September 8th, 2014, the very day on which she had to travel to Switzerland to deal with a family matter. Although there was no urgency for the document to be signed on that day (as Ms. Minh was not relocating to Switzerland), the evidence reveals that

the agreement was signed hastily. It is also suspect that Mr. Cruz signed the document as a witness before Ms. Minh or Mr. Rouvier signed it and that he did not accompany them to Justice of the Peace (JP) Guerrero's house to sign it. There is also conflicting testimony about what took place in front of JP Guerrero where the document was allegedly signed. Mrs. Pitts Anderson points out that in his witness statement, Mr. Guerrero said that he read the agreement. In cross-examination he first said he read the document brought to him by the parties. Then he changed his testimony to say he read the first page and didn't read the entire document. He later says in his witness statement that he asked Ms. Minh and Mr. Rouvier to read the document over in his presence. In Court Mr. Guerrero admits that the document was never read by the parties in his presence. Learned Counsel submits that these changes in his evidence affect his credibility. In addition she submits that since the document is written in English and Ms. Minh does not speak English, the likelihood that she would have read the document fully understanding its true contents is highly unlikely. Ms. Minh was also pressed with travel preparations on 8th September, 2014 and she believed, as was explained to her by Mr. Rouvier and Mr. Cruz, that she was executing a document concerning Mr. Rouvier's house and not a partnership agreement touching and concerning her business.

60. Mrs. Pitts Anderson also submits that voluntary execution of the agreement by Ms. Minh is further suspect by the fact that she did not receive independent legal advice before signing the document. This is even more significant because Mr. Cruz said that he made significant changes to the document after August 10th, 2014 by omitting

paragraph 8 from the final draft of the ESA. The effect of that omission was to remove joint liability for financial obligations with statutory and government bodies, and to remove the responsibility of both parties to maintain and keep up the property to foster growth. The final agreement saddles Ms. Minh with all these responsibilities and Learned Counsel argues that this is strange if the parties were to be engaged in a joint partnership.

61. Mrs. Pitts Anderson also contends that the valuation conducted on the property is also suspicious, and it was done at the request of Mr. Rouvier and solely for his benefit. The valuation focuses on improvements that Mr. Rouvier purportedly made at Backpackers Paradise to the exclusion of the equity that Ms. Minh already had in the property. The result is the skewed view that Mr. Rouvier has a 50% equity in the business which is completely unreliable without an accurate evaluation of what was there before him. There is also no inventory of any business item in the valuation. This factual matrix suggests the unlikelihood of the Defendant signing any agreement being fully informed; it equally highlights the disadvantage to the Defendant that stems from that agreement.

62. Learned Counsel also argues that there is major contractual imbalance when the effect and content of the ESA is examined. In addition to the purported partnership contract being based on a valuation that was not equitable, the penalty for breach of the contract was also oppressive and overreaching. As the evidence disclosed, if the Defendant were to breach the contract she would be liable to \$195,000 which

according to the valuation accounts for more than half of the Defendant's property. The Claimant admitted in cross-examination that "*we didn't point out that she would be liable for \$195,000*". It was accepted by the Claimant that the value of the Defendant's land would not cover the liability of the Defendant upon breach; yet he testified that "*it wasn't mentioned to the Defendant that her land would not cover the \$195,000...*" Similarly attention must be paid to the fact that the Claimant by his own admission did not pay anything out of his pocket for the business's bills. For a joint business venture it is also suspicious that the ESA does not speak to salary, nor define position or role within the business and lacks stipulations concerning the death of a partner. Given the reasonable man test, it is submitted that the purported agreement is ineluctably colored by exploitation.

63. Finally, Mrs. Pitts Anderson submits that the ESA was never approbated either expressly or by implication by Ms. Minh after its execution. There was never any joint running of Backpackers before or after the agreement was signed. Ms. Minh continued to run the business and assume all the liabilities for Backpacker's Paradise. No steps were taken to change the business name or to add Mr. Rouvier as a partner on the hotel license. Ms. Minh was the person who continued to ensure that all statutory requirements were met. Although Mr. Rouvier was indeed a signatory on the business account, Ms. Minh explained that was merely done to facilitate the running of her business. There is no evidence that Mr. Rouvier signed any cheques (deposited or withdrawn from the business) as a signatory would be entitled to do. There was never any intention on the part of the Defendant to enter into a partnership

agreement with the Claimant. She signed the ESA as a result of pressure, indirect and actual, brought to bear upon her by the Claimant whom she trusted. The fact that the Defendant testified that she had no problem signing the agreement because she believed it to be a guarantee for the Claimant's house does not negate that presumption. If anything it emphasizes the fact that what the Defendant signed and what she believed she signed were substantially different. This is a serious mistake the effect of which means the Defendant signed a contract which is substantially different from what she anticipated. This presumption has not been rebutted by the Claimant at the close of the case.

Decision of the Court on Issue No. 2

64. The court is most grateful for the extensive submissions of both counsel which were ably argued and very helpful to the court in determining this issue. This is by no means an easy case to decide. Mrs. Pitts Anderson raised excellent points which elucidated the Defendant's case that she did not sign this agreement fully informed and of her own free will. Ms. Minh is adamant that when she signed the ESA she was acting under the presumed influence of her lover Mr. Rouvier whom she trusted implicitly. In her own words, "*He was the only person in Belize whom she trusted*". Of the many points raised by Mrs. Pitts Anderson on behalf of Ms. Minh, the one that has given me the most cause for concern is the Defendant's lack of independent legal advice before signing the ESA. Having considered all the evidence, I find as a fact that while it is clear that Ms. Minh deeply trusted Mr. Rouvier, that fact alone is not enough to establish that he exercised presumed undue influence over her. Ms. Minh's own evidence is

that she maintained full control over the manner in which her business was run and I believe her. When Mr. Rouvier arrived in Backpackers, according to Ms. Minh, he had all his worldly possessions in a backpack, so she had to clothe, feed and maintain him. He was totally dependent on her for his survival in Belize. The business and the land belonged solely to her, and she was fully in control. When the parties fell in love with each other, he helped her by providing physical labor in the business occasionally when she needed it, and he eventually built his house on a part of her land. She says when she signed the ESA she did so thinking it was an agreement for her to pay him for the value of his house. Therefore, I find that nowhere in the Defendant's version of the facts does it appear that she was so trusting of the Claimant to the extent that she would be unduly influenced by him. I see no evidence that she relinquished control of the decision making process in her business and ceded such to him. On the contrary, I believe on a balance of probabilities that the evidence of Mr. Rouvier and of the witnesses Cruz and Guerrero is true. I find as a fact that Ms. Minh as an independent, intelligent and well educated business woman agreed to contents of this ESA and took active part in the negotiation of its contents over a protracted period of time. I also take note of the fact that from as early as 2010, Ms. Minh drafted and signed her Will in her own handwriting in proper English leaving all her worldly possessions to Mr. Rouvier in the event of her death. I also note that Ms. Minh had the opportunity from as early as July 2014 to read the ESA and she chose not to do so in reckless disregard as to its contents. In perusing the ESA itself, it is clear that the provisions are equally binding on both parties. Mr. Rouvier would be just as liable to

pay Ms. Minh the agreed upon sum of \$195,000 if he had been the one to breach the contract. While it would have been infinitely preferable that the parties had received professional legal advice so that certain important matters could have been properly addressed as rightly raised by Mrs. Pitts Anderson (for example the prior equity of Ms. Minh, the inventory, salaries, etc.) I find that this document represents what Ms. Minh and Mr. Rouvier discussed with each other over many months and agreed to. They chose a layperson Mr. Cruz to draft the agreement because they wanted to avoid the expense of a lawyer, and they are free to do so. Now that the relationship between the parties has sadly disintegrated and the flames of passion and love have been extinguished and replaced by great pain, disillusionment and anger, Ms. Minh no longer wishes to abide by this agreement. However, I find that in signing the ESA Ms. Minh did so fully informed and acting of her own free will and she is therefore bound to abide by its contents. I find the determination of those two major issues to be entirely dispositive of this case.

Judgment is in favor of the Claimant. Costs awarded to the Claimant to be paid by the Defendant to be agreed or assessed.

Dated this Monday, 23rd day of July, 2018

**Michelle Arana
Supreme Court Judge**