

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

**CLAIM NO. 394 of 2016**

**PETER HANCOCK**

**CLAIMANT**

**AND**

**ALVARO GRAJALES  
SHALINI HANCOCK**

**FIRST DEFENDANT  
SECOND DEFENDANT**

**BEFORE the Honourable Madam Justice Sonya Young**

Hearings

2017

10<sup>th</sup> July

19<sup>th</sup> September

Written Submissions

Claimant – 19.9.2017

Defendants – 10.8.2017

Further Submissions - 20.10.2017

None received

Decision

7.12.2017

Mr. Estevan Perera with Mr. Kevin Arthurs for the Claimant.

Mr. Yohhanseh Cave for the second Defendant.

**Keywords: Contract – Consideration – Undue Influence – Contract - Breach  
- Terms – Interpretation – Enforcement Specific Performance**

**JUDGMENT**

1. Peter Hancock and Shalini Hancock were married but are now divorced. Alvaro Grajalez is Shalini's father. Now, Alvaro and Shalini owned two adjoining parcels of land (Lots 30) Parcel 2209 and (41) Parcel 2208 (The Parcels) in Corozal. The three parties entered into an Agreement (The Agreement) which allowed Peter at his own expense to erect a building which spanned both lots. Peter says that having done so his marriage failed. He caused his attorneys to write to the Defendants on the 4<sup>th</sup> February, 2016 demanding that the parties meet to discuss him either being paid for his investment or allowed to purchase The Parcels, pursuant to the Agreement. However, in breach they have refused. He seeks the court's aid in enforcing the terms of the Agreement, so that he is either compensated for his investment with interest or alternatively allowed to purchase The Parcels.
2. Alvaro entered no defence and Peter's application to enter default judgment was deferred to be dealt with at the same time as the claim against Shalini pursuant to Rule 12.9(2)(b). The court having ruled that, in the circumstances, it was impossible to separate the claim against the Defendants. The order herein shall therefore deal with both Defendants.
3. Shalini, in her defence, admits the Agreement, but purported that it was legally unenforceable as Peter had given no consideration for it. She said that any consideration he may have given was past and is therefore insufficient. She also alleged that she had been induced to sign the Agreement while acting under Peter's influence. Counsel for the Claimant offered no argument whatsoever on these two issues in his closing submissions. He chose instead to focus on whether the claim for recovery had been substantiated.

**The issues for the court to consider is:**

4. 1. Whether there exists a legally binding contract between the parties.

A: Was consideration proven.

B: Was Shalini's freewill impaired.

2. What are the terms of that contract.

3. Can the contract be specifically enforced.

**Whether there exists a legally binding contract between the parties:**

5. It seems that since the Defendant has chosen to discuss only the interpretation of The Agreement itself, there really need be no great discussion of the evidence presented as to its advent.

**The Evidence:**

6. Peter was his only witness. He testified that the Agreement had been prepared by Shalini and Alvaro and he had agreed its contents. They all executed same on the 26<sup>th</sup> July, 2011, but even prior to this the parties had accepted that they would execute an agreement which would be fair and offer each of them protection. He informed that construction of the building was done both prior to and after the Agreement had been signed. He was the general contractor and he alone paid for the construction (material and labour) as agreed. He conducted business there for six months from 16<sup>th</sup> December, 2011 when the building was completed.

7. Alvaro and Shalini both testified for the defence. Alvaro, a 68 year old retired businessman, explained that on 8<sup>th</sup> February, 2011 he transferred Parcel 2209 to Shalini . Parcel 2208, on which he lives, remains in his name. Since 2010, Peter, his then son-in-law, informed that he wanted to

utilize Parcel 2209 to construct a building from which he and Shalini would operate a night club. He agreed. By then, Alvaro, had already intended to transfer Parcel 2209 to Shalini and expected that both Shalini and Peter, (as a family), would benefit from this kindness. It was later agreed that Peter and Shalini would, and they did, assume responsibility for the remainder of an existing loan at the Credit Union which had been used to purchase Parcel 2209.

8. All went as expected and around the middle of March 2010 construction began. Only Peter's money was utilized. Alvaro's nephew supervised the project with Alvaro's assistance. It was soon realized that in order for the building to be completed as intended, it would encroach on Alvaro's Parcel. He acceded to Peter's request to allow the encroachment as they were part of one family.
9. Alvaro says that it was not until July 2011 when the building was almost completed that Peter approached him about recovering his investment. Apparently, Peter in a general way suggested an agreement and he, Alvaro, agreed and prepared same. He has had no legal training. He said he was attempting to be fair, reasonable and to keep his family together and protected. Neither Shalini nor Peter objected to the contents and all three of them freely signed the document.
10. From December, 2011 the Hancocks operated a nightclub in the building until July 2012 when they separated as a couple. Since Peter left, the building was further improved. The upstairs palapa was enlarged, a stairway was constructed and a glass door was installed.

11. Shalini informs that she and Peter were married on 31<sup>st</sup> March, 1999 and share two children. She supports her father's version of how the construction came about in 2010 and Peter and her accepting responsibility for the existing loan. She said she was never aware before July, 2011 that Peter expected to be compensated for his investment. She signed the Agreement nonetheless. From December 2011 when the building was open, until July 2012 she assisted Peter in the operation of the nightclub while he serviced the loan. Peter also bought the sound system, lights and restaurant equipment. In April, 2012 and prior to their separation, Peter and she had taken a \$40,000 loan to effect improvements on the building. A roof was added to the existing palapa, a bar, male and female bathrooms and a kitchen were also constructed. The upper deck was enclosed. Parcel 2209 secured that loan.
12. She then speaks to Peter's neglect of the loan and the business after their separation in July, 2012. With her brother's help she continued the business and was able to service the loan and maintain the children therefrom. Her recollection of further improvements are identical to those detailed by Alvaro. These she says were financed through an arrangement with one of the tenants on the premises for which payment is made by deduction of rent.
13. There is no doubt, therefore, that all the parties have admitted that they signed the Agreement and as such it is legally binding on them all unless it can be otherwise impugned.

**A. Was consideration proven:**

It is obvious from the evidence that all the construction of the building by Peter had not been completed before the Agreement had been signed. This

can therefore not be a case of past consideration - *Re McArdle [1951] ch 669*. The transaction was still ongoing when the Agreement was made and the presence of good and sufficient consideration has clearly been established.

**B. Was Shalini's free will impaired:**

No evidence whatsoever has been presented to support this contention, other than Shalini's bald statement that she was unduly influenced by Peter. There is no presumption in law that a husband has undue influence over his wife. And there is nothing which even gives rise to a suspicion of pressure or persuasion far less undue influence by Peter. In fact, her father prepared the Agreement and together they signed it of their own free will

**Finding:**

14. The court therefore finds that there exists a legally binding and enforceable contract between the parties.

**How can the Claimant enforce the Contract:**

15. Peter claims entitlement to his investment for the construction of the building and in the alternative an order that The Parcels be sold to him in specific performance of the Agreement.
16. The court must look to the contract itself to determine its precise terms. There is no evidence provided that there were any other possible terms than those to be found in the written document. The parties are therefore confined to its four corners and its interpretation rests solely within the judge's domain.

**What are the terms of that contract:**

17. The Agreement would be reproduced below in its entirety:

*“Be it known to all concerned that I Alvaro Grajalez, and Shalini Hancock being land owners of lot #39 and lot #41 respectively situated on the Belize Corozal Road, hereby agree that we have freely accepted to allow Mr. Peter Hancock to erect a building of which will have, half of the building on lot #39 and the other half on lot #41. Mr. Peter Hancock will be the person that will do all the funding for the erection of that building.*

*We have also freely agreed that if at any time any of the land owner members decide not to honor the agreement, the other member or Mr. Peter Hancock will have the option to acquire the land of the disgruntled member at a price that will be arrived at by an authorized evaluator. The payments will also be made on monthly amounts for a period not exceeding three years unless the purchaser is able to pay in one payment. Also if Mr. Peter a. Hanconk would one day decide to withdraw himself, any of the other two parties or one party will refund the investment made by Mr. Peter Hancock. The payments term will also be made within a period of three years with monthly payments.”*

18. The court states early that the contract relates to a building, the land on which it is situated and the process of removing one’s self from the Agreement. There is no mention of existing loans, a business, equipment or furnishings of that business. They will form no part of the court’s consideration.
19. The Agreement speaks to two situations by which the parties may extricate themselves. The first relates to either land owner not wishing to honour the contract. In that event the other land owner or Peter may acquire the land belonging to the owner who has withdrawn. However, in the event that Peter withdraws, then either of the land owners would refund Peter for his investment.
20. Peter’s pleadings do not speak to any of the land owners withdrawing and this is a serious flaw. He does annex a letter thereto dated February, 4<sup>th</sup>, 2015 written by his then attorney to Shalini (not the Defendants as he

pleads). Such an attachment can form no part of the pleadings. There, the attorney refers to certain approaches Alvaro had made to Peter on or around July 29<sup>th</sup>, 2012. However, Peter's own witness statement says at paragraph 19 *"(o)n or around the 29<sup>th</sup> of July, 2012, the Defendants approached the (sic) me to terminate the agreement and for me to leave the business and structure. However, I informed them that they would not neglect the terms of the agreement which was signed."*

*"20. That when I was approached, I enquired whether the Defendants were asking to buy out of the business, my investments and the building however the Defendant said "no."*

*"21. The Defendants have ... effectively broken the covenants of the July 26, 2011 agreement.*

*"22. I then instructed my attorney to prepare and send a demand letter to Shalini Hancock. By this official letter, I demanded that either the Defendants pay to me the value of my investment as per the agreement or that they accept the payment of the value of Parcel Number 2208 and 2209....."*

21. He then exhibits the very same letter and continues at paragraph 23:

*" ... the Defendants failed and/or refused to provide any formidable response to my attorney as suggested."*

22. The discrepancy between his pleadings, the attorney's letter and his witness statement casts serious doubt on the allegation that both or either of the Defendants withdrew themselves from the Agreement on or around 29<sup>th</sup> July, 2012. Further, neither Alvaro nor Shalini were cross-examined in the regard and no reference whatsoever is made to this integral issue in the Defendant's Pre-trial memorandum or closing submissions. Understandably there was nothing stated in Shalini's defence as there was nothing which required such a response. It was not an issue for her.



23. Even though Alvaro's failure to file a defence is an admission of the claim, the claim is lacking in that material particular and he cannot admit what simply is not there. Furthermore, the Agreement itself does not allow, in such a circumstance (where one party is "*disgruntled*"), for both land owners to part with their land. It is only the "*disgruntled*" owner who is called upon in this manner. Shalini's portion would in that case be exempt since no evidence has been provided that she had indicated her withdrawal. The court therefore finds that the Claimant has not proven to the requisite standard that either party had withdrawn. He therefore has not acquired the right to purchase The Parcels.
24. Shalini and Alvaro on the other hand both testified that it was Peter who discontinued his involvement with the operation of the night club and (Shalini only) the payment of the loan. Though these do not on their own signal that he had withdrawn from the Agreement, his attorney's letter and the bringing of this action to seek enforcement clearly says that he no longer wishes to be bound. What is even more telling is that he first seeks compensation for the construction and in the alternative that the parcels be sold to him. The only way Peter could be compensated for the construction pursuant to the Agreement is if he, himself, withdraws. With no reliable evidence whatsoever to the contrary, the court finds that Peter has withdrawn himself and he is, therefore, entitled to be refunded "*the investment made.*" The Defendants are guilty of a fundamental breach of the contract by not reimbursing Peter accordingly.
25. Shalini has asked that "*the investment made*" be interpreted to mean only what Peter would have spent on construction in 2011. According to the joint

expert agreed by the parties, that is a sum of \$186,480. Peter, on the other hand, claims \$264,580 and bases this on some proprietary estoppel.

26. Suffice it to say that this court will not consider the Claimant's submission on proprietary estoppel because it was never pleaded, never even alluded to before these closing submissions. Raising it is improper and wholly unfair to the other side.
27. What the court will consider however, is what "*the investment made*" means. The parties seem to postulate two interpretations:
  1. The construction expenditure as made in 2011.
  2. The value of the construction at the present day.
28. Investment as defined by **Blacks Law Dictionary 7<sup>th</sup> Ed** is 1. An expenditure to acquire property or assets to produce revenue, or a capital outlay; 2. The asset acquired or the sum invested.
29. The court has considered the terms of the Agreement and can find no way to conclude that Peter's "*investment*" could be only what he spent to construct the building. His investment was the building, as Shalini and Alvaro's were The Parcels. Not the value of the Parcels at the time the building was constructed, but their value at the time Peter may have acquired the right to purchase. The court will therefore award the present day value of the building Peter built (not additions made subsequently). The Expert Report states that value as \$207,200.00. He shall be awarded that sum as damages with interests.

**It is ordered:**

1. Judgment for the Claimant against both Defendants.

2. Damages are awarded to the Claimant in the sum of \$207,200 with interest at the rate of 3% per annum from the 15<sup>th</sup> July, 2016 to 6<sup>th</sup> December, 2017. Thereafter at the statutory rate of 6% per annum.
  
3. Costs to the Claimant on the prescribed basis. I will rely on counsel to calculate same.

**SONYA YOUNG**  
**JUDGE OF THE SUPREME COURT**