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

CLAIM NO. 214 of 2018

IN THE MATTER OF BELIZE MINERALS & WEILER (A FIRM)
AND
IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 37(d) and (f) OF THE PARTNERSHIP ACT CHAPTER 259 OF THE SUBSTANTIVE LAWS OF BELIZE, REVISED EDITION 2011

FRANZ WEILER **CLAIMANT**

AND

BELIZE MINERALS LIMITED **DEFENDANT**

BEFORE the Honourable Madam Justice Sonya Young

Hearings 2019
5th March
Written Submission
19th March – Defendant
None – Claimant
Decision
9th April

Mr. Estevan Perera for the Claimant.
Ms. Stacey Grinage for the Defendant.

Keywords: Partnership – Breach of the Partnership Agreement – Damages – Dissolution – Winding Up – General Accounting – Assets of the Partnership – Constructive Trust – Account of Profits – Partnership Act Cap 259 – Supreme Court (Civil Procedure) Rules 2005 – Rules 41.2, 26.9, 32.6, 29.8

JUDGMENT

1. There is no dispute that Claimant and Defendant were partners pursuant to a written agreement entered into on the 17th October, 2016. Together, they were mainly to produce and sell rock products and dolomite as well as bid on and undertake road construction and repair projects. They carried on business under the name Belize Minerals and Weiler and conducted same from the Defendant's office in Punta Gorda.

2. Both partners were equally responsible for the management of the business. They each brought their own special expertise, skill and resources. Mr. Weiler was to bring in new business, manage the excavating and crushing operations, oversee maintenance and repairs to the equipment and use his expertise to purchase new equipment and parts. Belize Minerals Ltd (BML) was responsible for the accounting, marketing and handling of explosives. When necessary, they were to jointly draft bids and quotations. They were set for success.

3. However, Mr. Weiler says that in breach of the partnership agreement, BML failed to account to him for the income and expenditure of the business. Although the Agreement provided that he should be allowed to examine the books of accounts, this right was denied him. Finally, on the 24th February, 2017, he was unable to perform because the Defendant closed off the fuel account at the UNO gas station in Punta Gorda. The heavy equipment could not function without fuel.

4. Later that same day, Mr. Alistair King, a Director of BML, approached him with a monetary offer and a document which Mr. King did not want him to read but expected him to sign. He did not sign the document but assumed

that the Defendant had no interest in continuing the partnership although he had been given no written notice of an intention to dissolve, as prescribed by the Partnership Agreement.

5. He continues that all attempts to settle the matter amicably have failed. Certain equipment and tools remain in the Defendant's possession so he has had no use or benefit. Assets have been liquidated without his consent and the Defendant has had continued access to the partnership bank account. He did write to the Belize Bank Limited Manager in Punta Gorda asking that the account be frozen. As part of the agreement he was entitled to a salary of US$5,000.00 each month. He says he never received any salary. Although he had his own bookkeeper review the accounts they were unable to see the actual invoices, bills, receipts etc. and concerns were raised about certain irregularities.

6. Mr. Weiler states that he alone invested the entire initial capital of $5,200.00 in the partnership and a further $3,200.00 to purchase a towhead for the partnership. The partnership has also been awarded three road construction projects including a US capital Energy Contract for a value exceeding $200,000.00. He concluded that he is owed $52,538.59 which is comprised of his original investments, loans he made to the partnership and profits earned. He seeks payment of that sum, and orders for dissolution, winding up and for all necessary accounts and inquiries to be made.

7. Finally, he prays an injunction to restrain the Defendant from any dealing with documents, computers, equipment or any other asset of the partnership. Alternatively he asked for payment of any sum found to be due on the taking of the accounts or damages with interests and costs.

8. In its defence BML categorically deny terminating the partnership agreement. It also makes a counterclaim. BML maintains that both parties contributed $5,200.00 towards the initial capital. While they admit that Mr. Weiler contributed $3,200.00 towards the towhead (which is registered in his name alone), they say they also put $8,600.00 and $2,000.00 for tires. Further, the accounts were always available for Mr. Weiler's inspection and he had in fact, through his accountant, been given copies of statements, balance sheets and reports. The fuel account was only closed off on the 25th February after Mr. Weiler refused to continue crushing and removed all his equipment from the quarry and plant site. He took the towhead (which he had located for purchase) and tools which belonged to the partnership as well as a compactor which had been rented by the partnership and was to be used for a further five days.

9. Mr. Weiler has used the towhead (valued at $20,000.00) for his own benefit since then and so he must be made to account for the profit and revenues generated since it rightfully belongs to the partnership. They also ask that the towhead now be sold and the proceeds shared. The partnership bank account has been frozen (as per Mr. Weiler's request to the Bank) and contained only $10,462.67. Only deductions since the 24th February should be bank charges. Mr. Weiler had been given an advance of the profits in the sum of $10,000.00. Mr. Weiler says this was no advance it was in fact accrued salary which it was agreed he would be paid at the rate of $5,000.00 monthly.

10. BML posture that it was in fact Mr. Weiler who had breached the partnership agreement in various ways. The worse being when he removed the crusher and the excavators so that the partnership was unable to

complete the US Capital Energy contract. BML was obliged to take over the contract. As a partner, BML suffered loss due to Mr. Weiler's breach of the partnership agreement and should be compensated in damages. It was only on 19th March that Mr. Weiler was handed a settlement proposal by Mr. King which dissolved the partnership. Mr. Weiler refused to sign same and did not accept the settlement as offered.

Preliminary matter:

11. The Claimant filed no witness statements and the dismissal of his application to file out of time and for relief from sanctions is the subject of another written decision of the Court. Suffice it to say that the only evidence before the Court were three witness statements filed in support of the defence and counterclaim.

The issues for the Court to determine are:

On the Claim and counter Claim

12. 1. Whether either party breached the partnership agreement

    2. Whether any damages should be awarded for the breach of the partnership agreement and if so in what quantum

On the Claim

13. 1. Whether the partnership should be dissolved

    2. Whether the partnership should be wound up
    3. Whether a general accounting of the partners' dealings and transactions should be taken
    4. Whether an injunction ought to be granted against the Defendant

On the Counter Claim

14. 1. Whether the towhead is held on trust by the Claimant/counter Defendant for the partnership

2. Whether the Claimant/counter Defendant is to account for the use of the towhead from the 25th February, 2017.

Whether either party breached the partnership agreement:

15. The rights and obligations of the parties to a partnership agreement are principally governed by the agreement and the Partnership Act. Like any other contract the nature of the breach would dictate the remedy available. For a breach to be repudiatory it must go to the root of the contract. An occasional breach will not suffice, it has to be of a substantial character and if accepted by the wronged party would effectively discharge both parties from further performance.

16. The partnership agreement contained an arbitration clause which reads *"Any controversy or claim arising out of or relating to this Agreement, or the breach hereof, shall be settled by Mr. Alistair King, or if Mr. King is not available to resolve the matter then arbitration in accordance with the rules,…."* Neither party seemed to consider this clause because neither referred to it. Rather, the Claimant filed a claim and the Defendant filed a counterclaim, (no one sought a stay), both accepting the Court's jurisdiction. The Court took this to be indicative of a mutually agreed variation of the agreement to the extent that the arbitration process was excluded and the matter could proceed by way of a claim before the Court.

17. Both parties make allegations of breaches which they obviously viewed as fundamental. Mr. Weiler could not substantiate his assertions as he presented no evidence. However, even a consideration of his statement of case does

not demonstrate a fundamental breach. Mr. Weiler alleged that BML refused to let him view the books of accounts. Section 30 of the Partnership Act mandates that *"(p)artners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives."*

18. BML in its defence pleaded that they did show Mr. Weiler the books. His reply then was that they only showed him what they selected and a lot of information was missing. Again this change in the actual nature of the allegation really leaves the Court to question its veracity. Mr. Weiler, having not presented any testimony was unable to demonstrate what, if any information was missing from those books.

19. When the Court considers the evidence presented by BML that the books were always available; that Mr. Weiler could barely read or write English so they allowed him access with his wife as well and that they allowed his own book keeper access; it finds that this particular allegation is unfounded. Therefore, no breach has been proven.

20. Mr. Weiler also raised that BML closed the fuel account so the heavy equipment could not function. At best such an act would perhaps halt business for a period of time. To constitute a fundamental breach there would have to be an intention to discontinue operations altogether. Without a discussion, Mr. Weiler could not possibly have been certain that BML had in fact withdrawn from the agreement. It is significant that Mr. Weiler himself pleads that even after Mr. King approached him on the afternoon of the 24th February he was unsure of the Defendant's intentions, that is, whether or not they wanted to continue the partnership.

21. BML says that the very next day Mr. Weiler removed all the equipment. It is also more than passing strange that Mr. Weiler does not mention removing his equipment in any part of his statement of case. Even in his Reply to the Defence he speaks to removing tools but never any word on removing his equipment, when or why this was done. This lacuna raises significant doubt in the Court's mind as to Mr. Weiler's version of the events.

22. Ms. Anne Brorsen, witness for BML explained that the agreement was short lived (4 months) because of Mr. Weiler's abrupt departure therefrom. Mr. Weiler stopped crushing and left the quarry and plant site. This is supported by the evidence of Mr. King, the Country Manager for US Capital Energy and a director of BML, who said that on the 24th February he asked Mr. Weiler why he had stopped working and he simply said he was *"done"* with working at Belize Minerals and Weiler Partnership. He then removed his equipment and the rented compactor the next day.

23. On a consideration of the Defendant/Counterclaimant's evidence the Court finds that Mr. Weiler, by refusing to crush material and thereafter removing his equipment and the rented compactor from the plant site, showed unequivocally that he no longer wished to be bound by the agreement. He was, after all, responsible for the management of the excavating and crushing operations. This was indeed the main component of the partnership business.

24. His actions affected the ability of the partnership to conduct any business or make any profit whatsoever. This constituted a fundamental breach which allowed the Defendant/Counterclaimant the right to rescind the contract. Such a breach attracts damages sufficient to cover any financial harm

suffered by BML. BML must be placed in the same position it would have been in had the agreement not been breached.

25. BML also raised a number of smaller allegations of breach but their Counsel chose not to address the Court on any of them so the Court considers them abandoned.

What if any damages should be awarded for the breach of the partnership agreement:

26. It is the Defendant's evidence that as a result of Mr. Weiler's removal of his equipment and the rented compactor, the contract with US Capital Energy would have been breached had BML not stepped in to take it to completion. In order to do that BML had to rent equipment and lost five days worth on the rented compactor. This was valued at $2,150.00 for the rental of the road grader and $1,430.00 on the compactor. These are losses which the Partnership would not have incurred had there not been a breach and there being no evidence disputing them, they will be allowed.

27. Although there seems to be a claim for a malfunctioning compactor that was rented and returned before Mr. Weiler took away his equipment, it can form no part of this assessment. It does not flow from the fundamental breach and it has not been proven to be the result of any other breach pleaded and submitted on.

28. The Court is uncertain whether the Defendant seeks to recover what was remaining on the contract with US Capital Energy after Mr. Weiler left. Their statement of case speaks to the loss of the US Capital Energy contract but no submissions were made in this regard. The Court will go no further

than to say that BML would have had to prove that they were deprived of income which they were unable to generate elsewhere (see **Hurst v Bryck and others [2000] UKHL 19 [2000] 2 ALLER 193**). It is BML's own evidence that they completed the contract and they received the payment. From the evidence presented, none of the partnership assets were used by BML to generate any income after Mr. Weiler left (25th February, 2017). The Claimant on the accounting would not be entitled to any income from that date.

Determination:

29. Damages are awarded in the sum of $3,580.00 for breach of the partnership agreement.

Whether the partnership should be dissolved:

30. This was an ordinary partnership made for an undefined term or a partnership at will. The partnership agreement speaks to dissolution by mutual consent or by one partner giving the other a 90 day notice in writing. BML pleaded that they gave such a notice They testified to sending a letter dated March 19th, 2017, and settlement sum to Mr. Weiler on or about the 25th March, 2019. That could certainly not be the notice contemplated by the agreement since Mr. King attested that it was a proposal to terminate the agreement while Ms. Bornsen referred to it as a settlement proposal. The letter was not exhibited and the Court would make no assumptions as to its content. He who asserts must prove.

31. Mr. Weiler on the other hand has applied to the Court for a dissolution decree pursuant to section 37 (d) and (f) which states:

On application by a partner the court may decree a dissolution of the partnership in any of the following cases-

(a) ……
(b) …...
(c) ……
(d) when a partner, other than the partner suing, willfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him;
(e) ……
(f) whenever in any case circumstances have arisen which, in the opinion of the court, render it just and equitable that the partnership be dissolved.

32. The partnership agreement did not expressly exclude the application of section 37 (d) and (f) for the dissolution of the partnership and the Court is therefore of the view that it remains applicable. From the finding on the breach of the agreement (above) it is clear that subsection (d) is no longer available for consideration. The Court will therefore only discuss the issue as it relates to subsection (f).

33. From the Defendant's evidence, the partnership comprised of only two partners who have clearly fallen out, this is not just a simple argument or a disagreement. Attempts to settle the dispute amicably have all failed. The Court's own efforts and even Court connected mediation, failed. The personal relationship, which is the substrata of the partnership, no longer exists. One accuses the other of irregularities in the keeping of accounts, which, if it had been proven, would certainly be proper grounds for dissolution. The other has proven that his partner committed a fundamental breach and have offered a settlement proposal. It is clear that the mutual trust and confidence required to manage the business is no more.

34. BML, although they did not seek dissolution as a remedy, have admitted in their testimony that they too wish for the partnership to be dissolved. There really is no other remedy or solution since the partnership has no sustainable future: **Re Brand & Harding Ltd [2014] EWHC 247 (ch) [2014] All ER (D) 136**. The Court must now weigh all the relevant factors to determine whether it is just and equitable to interfere.

35. He who comes to equity must come with clean hands. Mr. Weiler cannot claim clean hands since it has been proven that he committed a fundamental breach of the agreement. As stated at pg. 589 of Lindley on Partnership 13th ed: *"It must be borne in mind that the court will never permit a partner, by misconducting himself and rendering it impossible for his partners to act in harmony with him, to obtain a dissolution on the ground of the impossibility so created by himself."* The Court cannot under those circumstances assist Mr. Weiler. But the matter does not end there.

36. Having pleaded and proven a fundamental breach, BML are entitled to a remedy beyond the damages assessed. The Court is empowered to grant any remedy to which they are entitled even if it had not been specified (Rule 8.6 (1) (b)). The Court is prepared to make an order on the counterclaim for the dissolution of the partnership pursuant to section 37(d). The parties will also be ordered to concur on the making of a public notification of the dissolution of the partnership in accordance with section 39 of the Partnership Act.

Whether the partnership should be wound up:

37. The partnership agreement speaks to a dissolution by notice being made by either party. It continues that in such an *"event the partners shall proceed with reasonable promptness to liquidate the business of the partnership."* It then outlines

the procedure to be followed for liquidation. This clearly demonstrates the partners' acceptance that a dissolution did not bring an end to the partnership.

38. **Dickson v National Bank of Scotland [1917] S.C (HL) 50** explains that for certain purposes a partnership continues notwithstanding dissolution. The Court in that case referred to section 38 and the procedure for winding up a partnership which is identical to our own section 41 of the Partnership Act which states that;

On the dissolution of a partnership, every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm, and for that purpose any partner or his representatives may on the termination of the partnership apply to the court to wind-up the business and affairs of the firm.

39. It is really the winding up of the affairs or liquidation of the business which brings a full end to the partnership. In ***Yenidje Tobacco Co. Ltd. [1916] 2 ch 426, CA*** referred to in Farrar's Company Law 3rd ed at pg 458, the court found that *"the Company was in essence a partnership and that there was such a state of animosity between the parties as to preclude all reasonable hope of reconciliation or friendly co-operation. There is no doubt either that the partnership has ceased to conduct business. In such circumstance the Court would order that it be wound up"*.

40. This Court having already made an order for dissolution can find no reason not to also order the winding up of the partnership as prayed by the Claimant, particularly because the relationship has completely broken down and there is no communication between the parties. Any hope for a mutual liquidation has, to my mind, been extinguished. The partnership will

accordingly be ordered to be wound up. The assets are to be realized and distributed according to the order of priority outlined in Clause 10 of the agreement.

Whether a general accounting of the partners' dealings and transactions should be taken:

41. A former partner is entitled to an accounting and payment for his partnership interest. Section 46 of the Partnership Act refers to it as the final settling of accounts between the partners after the dissolution of the partnership and outlines the rules to be observed, subject of course to any agreement to the contrary (such as that made by Clause 10).

42. Lindley on Partnership 30th ed p518 explains that *"(t)he right of every partner to have an account from his co-partners of their dealings and transactions is too obvious to require comment. An action for an account may be maintained by partners although the partnership accounts are not complicated; …….and although the plaintiff may have…..otherwise misconducted himself in relation to the partnership business."*

43. Atkin's Court Forms second ed Vol 30 pg 84 under the heading *Partnerships and Firms 12. Accounts and inquiries* states *"On dissolution the court will direct both the usual and any special accounts and inquiries…"* This means that an accounting between partners is of right, unless there is some proven defence to it being obtained. All that Mr. Weiler needed to prove in these circumstances was the existence of the partnership and the dissolution of same. Those have certainly been proven even though he offered no evidence. We turn then to the defence.

44. BML seems to be relying on the defence of account stated, I say seems because at one point they sought to omit the account from evidence (that will soon be discussed). However, for this defence to succeed, the account being relied upon must have been settled between the parties. Proof of its settlement comes either through the signing of it by the parties, or a demonstration that it had been acquiesced in by the parties. Atkin's Court Forms 2nd ed Vol1 p 369 makes it clear that a *"settled account is an account of mutual dealings* ***agreed*** *between the parties, either expressly or by conduct, as being correct, which cannot therefore subsequently be re-opened without special reason….. A settled account need not necessarily be signed, but it must have been* ***agreed****, and should be in writing and show the amount of the balance."*(emphasis mine).

45. It is BML's evidence that they had an accountant prepare an account from the partnership's books. That report concludes that Mr. Weiler is entitled to Bz $19,674.00 if he remains in possession of the towhead or BZ$29,674.00 if the towhead is sold on the open market. BML also admits to having moneys in hand belonging to Mr. Weiler. The Court finds that the prepared account had been sent or made available to Mr. Weiler. The question now is does the account already rendered afford BML a good defence.

The Financial Statement:

46. This document was not prepared by a Court appointed expert in accordance with Part 32 of the Supreme Court (Civil Procedure) Rules 2000. At the trial the defence said they would no longer be calling the author Emil Pinelo. They had served the Claimant with the witness statement but had given no notice whatsoever of this intention (see Rule 29.8). Counsel for the Claimant also informed the Court that they had no objection to the witness being called or the account being entered into evidence notwithstanding the maker

had not been a Court appointed expert and the report had not been prepared in accordance with the guidelines outlined in the Rules.

47. The Court used its discretion under Rule 32.6 and allowed the witness to be called and the report to be entered into evidence. The Accountant testified that the report was prepared based on documents provided to him by the Company directors. Since the partnership has no directors the Court understood this to mean the directors of Belize Minerals Ltd only. He said after he examined *"bank records (bank statements, deposits and checks) and the expense vouchers and other documents* ***for the Defendant,*** *I prepared a Balance Sheet, Statement of Operations (Profit & Loss) and associated notes in the form of a report dated the 23rd of July, 2018."* This leaves much to be desired by way of the final settling of accounts between partners. There was no input or agreement by Mr. Weiler.

48. When the Court considers all the other evidence presented on the Defendant's behalf there is not sufficient to convince the Court that Mr. Weiler ever settled that account so that he ought to be deprived of his right to have an account taken under the direction of the Court. Ms. Brorsen speaks to him bringing his wife and a book keeper to view and discuss the report; about BML producing documents as requested and answering queries. But the evidence falls short of an agreement or acquiescence.

49. The proper procedure ought to have been for the Claimant to have made an application, at the first hearing, to have the account taken pursuant to Rule 41.2 (1). However, there is no sanction specified for the failure to comply with this rule. The Court will, of its own volition and using its power under Rule 26.9, put matters right by ordering the taking of the account by an

accountant agreed by both parties or appointed by the Court. The Court will also give directions for the efficient conclusion of this exercise.

Whether an injunction should be granted against the defendant:

50. The Claimant has provided no evidence on which the Court could make a determination that the Defendant will not act in good faith, would act contrary to the partnership agreement or improperly interfere with the partnership assets. This is therefore, not a proper case for an order of restraint.

Whether the towhead is held on trust by the Claimant/counter Defendant for the partnership.

51. The towhead was bought by the Partnership with partnership money. Whether that money was raised in whole or in part from loans from the partners to the partnership is of no moment. It gives neither partner a right to sole ownership. Of even less importance, in the circumstances, is the fact that the towhead is registered in the Claimant's name only. He knows and has pleaded that it was bought on behalf of the partnership. Section 23 of the Partnership Act states that *"(u)nless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm."*

52. Lindley on Partnership 30th ed p350 leaves no question as to the position. *"The mere fact that the property in question was purchased by one partner in his own name is immaterial if it was paid for out of the partnership moneys; for in such a case he will be deemed to hold the property in trust for the firm, unless he can show that he holds it for himself alone."* Mr. Weiler can certainly not show that he holds the towhead for himself alone, he has no evidence before this Court. So, without

expounding on the creation of a constructive trust, the Court finds that Franz Weiler holds the towhead on constructive trust for the partnership.

Whether the Claimant is to account for the use of the tow head from the 25th February, 2017:

53. The counter Claim sought the taking of an account of profits generated by the towhead while it remained in the counter Defendant's sole possession and that 50% of those profits be paid over to the counter Claimant for the use of the towhead. However, counsel for the counter Claimant in his submissions urged the Court to use an estimated calculation of the rental of the towhead provided by their Court appointed expert, as that would be *"just in the circumstances."*

54. The Court is fairly troubled by its own previous permission to appoint that expert since it must be appreciated that damages and an account of profits are alternative remedies; one understandably precludes the other. If there is to be an award of damages then there has to be a tort or a wrong. For an account of profit the claimant is accepting that the defendant acted as his agent and so he has a right to share in the profits generated or to deprive him of his unjust enrichment. He has therefore adopted the defendant's actions as his own. For this reason the claimant must make a clear choice between the two. The Counter Claim makes it pellucid that BML has chosen to have an account taken.

55. The Court has already found for the counter Claimant that the towhead was owned by the partnership. Although we speak of the assets being that of the partnership, the partnership is not a legal entity. It is the partners that really own the assets jointly. As between co owners there is a unity of possession.

Certainly one cannot convert one's own goods and as a co-owner even if there is a deprivation of the use of the goods by one joint owner from another, there is no conversion unless the goods have been destroyed or disposed of or the other person's interest in the goods has been destroyed. None of this has been alleged.

56. The towhead was in Mr. Weiler's sole name before the dissolution and that has not changed. Although the Defendant tried to take issue with it being in his sole name, the Court finds no evidence of them agitating over the months when the partnership was a going concern, to have it registered otherwise. That state of affairs is therefore indicative of nothing, especially since in his own pleadings Mr. Weiler admits that the towhead was bought for the partnership. Mr. Weiler certainly had no right to take sole possession of the towhead to the exclusion of his co-partner but the counter Claimant's attempt to claim damages for loss of use and opportunity, not having been pleaded, must fail.

57. Where, however, a partner generates profit using a partnership asset prior to a final settlement of accounts between the partners, all the partners are entitled to share in the profit. Section 31(1) of the Partnership Act mandates that *"(e)very partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property, name or business connection."* The Claimant has provided no statement of account or any supporting documents regarding the use of the towhead. But he has neither pleaded nor proved that he did not derive profit from its use so he is accountable for any profits yielded by the trust property.

58. The counter Claimant made no application, at the first hearing, to have the account taken pursuant to Rule 41.2 (1). Since there is no sanction specified for the failure to comply with this rule, the Court will, of its own volition and using its power under Rule 26.9, again put matters right by now ordering that an account of profit be taken and will accordingly give directions for same to be conducted expeditiously. It will also be ordered that that accounting is to be done from the 25th February, 2017 to the date of settlement of the general accounts.

Costs:

59. The Claimant has shown a disregard for the Court's orders which ought not to be condoned. No witness statements were filed, and even after the Court allowed Counsel additional time (as requested) to file final written submissions herein, none have been filed. The Defendant on the other hand has been fully compliant throughout. Having seen some success on the Claim the Claimant could have been entitled to a portion of cost. In the circumstances, however, the Court will order that each arty shall bear their own costs. The counter Claimant shall have his full cost, on the prescribed basis, as requested.

Other findings to aid the taking of the general account:

Salary:

60. Mr. Weiler pleaded that he was owed two months salary. The agreement says each of the partners were to draw a monthly salary of $5,000. And he had only received $10,000.00. However the uncontroverted evidence before the court is that neither of the parties received a salary because there was never sufficient money to meet that expense. However, Mr. Weiler was paid

$10,000.00 as an advance on the profits. Mr. Weiler cannot expect to have his salary as an expense to the partnership and that the partnership's profit would not be affected. Since the partnership is at an end and there is no hope of making any further profits, the accountant is to consider the $10,000.00 paid to Mr. Weiler as an advance on the profits of the partnership.

61. The Court also notes that the agreement says a salary was to be paid to the partners. Be clear that the Partners are Franz Weiler and BML. The agreement goes on to specify that Franz Weiler and Anne Brorsen/Brian Holland (for Belize Minerals Ltd.) were to receive a salary. This means that either Ms. Brorsen or Mr. Holland were to be remunerated, not both of them as I see being stated in Ms. Brorsen's witness statement.

Small tools:

62. Both parties accused each other of taking small tools belonging to the partnership into their possession and benefiting therefrom to the exclusion of the other. This partnership lasted four months. Whatever tools are in the possession of each partner will remain thus as the Court can find no benefit in embarking on any exercise to ascertain and value these tools. Certainly the cost to do this would far out weight any benefit derived.

Disposition:

On the Counter Claim:

It is ordered that:

1. The Partnership Belize Minerals Weiler is dissolved from the date of this judgment herein.
2. The parties are to forthwith make a public notification of the dissolution of the partnership in accordance with section 39 of the Partnership Act.

3. The towhead now registered in the name of the Claimant only is held by him on constructive trust for the partnership Belize Minerals and Weiler.
4. The said towhead is either to be sold on the open market or be the subject of a notional sale to the Claimant/counter Defendant at the sum of $20,000.00.
5. An account of profits of the use of the said tow head between the 26th February, 2017 and the date of judgment herein, with all necessary supporting documents and verified by an affidavit is to be taken, filed and served on the counter Claimant by the 9th May, 2019.
6. Liberty to the counter Claimant to file an affidavit in answer to the account by 30th May, 2019.
7. Cost of the accounting is to be borne by the Claimant/counter Defendant alone and must form no part of the partnership expense.
8. Damages are awarded to the counter Claimant in the sum of $3,580.00 for breach of the partnership agreement.
9. Interest is awarded on those damages at the rate of 6% per annum from the 1st March, 2017, the date the machinery was rented to the date of judgment herein.
10. Thereafter at the statutory rate of 6% per annum until payment in full.
11. Costs to the counter Claimant on the counter Claim in the sum of $12,500.00 being prescribed cost.

On the Claim

It is ordered that:

1. The Partnership Belize Minerals and Weiler is to be wound up
2. A general account is to be taken by an accountant agreed between the partners or appointed by the Court of all partnership dealings and transactions between the Claimant and the Defendant as co-partners of

the Partnership Belize Minerals and Weiler from the 17th October, 2017 (the commencement of the partnership) to the date of dissolution herein by May, 2019.

3. The accountant in taking the account is directed to consider only the partnership books and documents etc. already disclosed by both parties in this matter.
4. The assets are to be realized and distributed in accordance with Clause 10 of the Partnership Agreement of Belize Minerals and Weiler dated 17th October, 2016.
5. Whatsoever sum is certified by the Accountant as due from either of the said parties to the other be paid by the owing party within one month of the accountant's certificate.
6. The accountant's fee are to be paid out of the partnership's assets.
7. Liberty to both parties to apply.
8. Each party shall bear their own costs.

SONYA YOUNG
SUPREME COURT JUDGE