IN THE SUPREME COURT OF BELIZE, A.D. 2016

CLAIM NO. 562 OF 2016

	(THEODORE DONALD GRIMWOOD	FIRST CLAIMANT
	(DANNY DEAN MITTELBERG	SECOND CLAIMANT
	(	
BETWEEN	(AND	
	(	
	(PHILIP LEE	FIRST DEFENDANT
	(JASON SCHLUKEBIER	SECOND DEFENDANT
	(SAN JUAN FARMS LTD.	THIRD DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Allister Jenkins of Magali Marin and Co. for the Claimants

Magalie Perdomo of Reyes Retreage LLP for the Defendants

1. FACTS

Theodore Grimwood, the First Claimant, and Danny Mittelberg, the Second Claimant, are Businessmen from Missouri, USA. Philip Lee, the First Defendant, Businessman and Jason Schuklebier, the Second Defendant, are

Businessmen living and working in Independence Village, Belize, San Juan Farms Ltd. The Fifth Defendant is a company duly incorporated as a domestic company under Chapter 250 of the Laws of Belize. On February 25, 2015 Scotiabank (Belize) Ltd. as mortgagee exercised its power of sale by auction over property previously belonging to Dennis Morey of Stann Creek District, Belize. This parcel of land comprised 51.36 acres being Grant No. 1035 of 2002 situate at the junction of Cowpen Road and the Southern Highway Stann Creek District ("the Property"). An oral agreement was entered into between the Claimants and the First Defendant that the Property would be purchased and would be proportionally subdivided between them. It was also agreed that a company registered in Belize, the Third Defendant , would be incorporated, and the Property would be transferred into the name of that company, San Juan Farms Ltd. The company was therefore incorporated on 18th March 2015 and the Claimants and First and Second Defendants were each allotted 25% shareholding. Pursuant to the oral agreement the purchase price for the Property was advanced and a Deed of Conveyance was executed on March 31, 2015, between Scotiabank (Belize) Ltd. and San Juan Farms Ltd. where the Property was conveyed to San Juan Farms Ltd. Subsequent to the oral agreement, a Payment Arrangement was entered

into on March 24, 2015 between the First Claimant, for and on behalf of himself and the Second Claimant, and the First and Second Defendants. By the terms of this Agreement, the First and Second Defendants agreed to pay BZ$1000 per month without interest or fees towards the estimated amount of BZ$36,636 until the balance of the purchase price was paid in full, being their contribution towards the purchase price of the Property. There are several factual contentions made by the parties respectively, and this court will examine the evidence to see which of these will be borne out.

2. ISSUES

1. Whether the Claimants paid the full purchase price for the Property?
2. Whether or not the First and Second Defendants breached the Payment Arrangement Agreement and the Agreement for the loans advanced to them to cover various costs?
3. Whether the Parties agreed to vary the payment terms of the Payment Arrangement Agreement?
4. Whether the First and Second Defendants made significant improvements and work on the property for the benefit of and on the request of the Claimants which exceeded the amount owing to the Claimants?

5. Whether the Third Defendant holds the Property in resulting and/or constructive trust for the Claimants, the Claimants having advanced the full purchase price and carried out substantial improvements on the Property?

3. Claimant's Evidence

The Claimants presented evidence from 2 witnesses. The first was Theodore Grimwood who testified in his witness statement that he and the Second Claimant Danny Mittelberg travelled to Belize in 2015 to purchase a property comprising approximately 105 acres in the Stann Creek District. The purchase fell through when the owner of that parcel of land refused to complete the sale. Upon preparing to leave Belize after that deal did not materialize, the Claimants were approached by the First and Second Defendants, Philip Lee and Jason Schucklebier, about buying a parcel of land comprising 51.36 acres in the Stann Creek District. Mr. Grimwood said that he was not interested initially as the piece of land was smaller than what he originally wanted to purchase, but Mr. Mittelberg convinced him to buy it. The Defendants informed the Claimants that since the Claimants were not citizens of Belize, the land would have to be purchased by a Company

duly incorporated and registered in Belize. Mr. Grimwood agreed to incorporate the Company and to advance the purchase money for the Property. After discussions between the parties, he and Mr. Mittelberg entered into an oral agreement with Mr. Lee and Mr. Schuklebier in March 2015 that the Claimants would purchase the Property which was being auctioned by Scotiabank(Belize) Ltd. and that they would advance the full purchase price of BZ$55,000. The Claimants paid the purchase price in full. It was also agreed that each of the Defendants would reimburse the Claimants for their proportionate contribution towards the purchase price, with each Defendant agreeing to pay 25% of the purchase price advanced by the Claimants for the Property. Mr. Grimwood also states that it was agreed that a limited liability company would be incorporated, would take title to the Property, hold the Property on trust, and subdivide the same so that all of the parties could, after subdivision, have the company transfer to each party his proportional interest in the Property, once the Defendants had each paid their proportional share of the purchase price. It was also agreed that the Property would be divided up into four equal parts, with each party receiving 12.83 acres

each. While it was agreed that the Property would be divided up equally, there was no agreement as to which specific portion of land each party would receive upon the Property being subdivided. San Juan Farms Ltd. was then incorporated on March 18, 2015 as shown by the Articles of Association **(Exhibit TDG 1)**. Each party was allotted a 25% shareholding in San Juan Farms Ltd., with the express understanding that the First and Second Defendants would pay their proportionate share of the purchase price. Based on this oral agreement, Mr. Grimwood and Mr. Lee advanced US$27,500 to Mr. Kevin Castillo, the auctioneer of the Property, as shown by a Copy of the Wire Transfer **(Exhibit TDG 2)**. Mr. Grimwood also wired an extra US$300 to cover transfer fees for this initial payment **(Exhibit TDG 3).** Having paid the full purchase price for the Property, by a Deed of Conveyance dated 31st day of March 2015, between Scotiabank (Belize) Ltd. and San Juan Farms Ltd., the Property was then conveyed to the Third Defendant **(Exhibit TDG 4).** He also exhibits copies of receipts for fees paid by him for Stamp Duty, recording fees and legal fees for this transaction **(Exhibit TDG 5**). Pursuant to the oral agreement between the parties, Mr. Grimwood states that a Payment

Arrangement Agreement was entered among the parties where Mr. Lee and Mr. Schuklebier agreed to pay BZ$1,000 per month without interest or fees toward the amount of BZ$36,636.00 representing their proportionate contribution towards the purchase price, until the balance of the purchase price was paid in full. He exhibited this Agreement as **Exhibit "TDG 6".** Under this Agreement, the Defendants were to begin payment on 24th April 2015. He says that Mr. Schuklebier has paid a total of BZ$2,500 to date, while Mr. Lee has made no payments to date, despite numerous demands from Mr. Grimwood and Mr. Mittleberg for payment. In addition, Mr. Grimwood claims to have advanced loans to Mr. Lee for various items such as building materials, vehicle replacement parts, and other miscellaneous expenses associated with the maintenance and development of the property. None of these have been repaid by Mr. Lee. Mr. Grimwood alleges that as a result of these breaches of the Payment Arrangement Agreement by the Defendants, he and Mr. Mittelberg have suffered damages in the sum of BZ$40,244.45 representing the Defendants' contribution to the purchase price, costs of transfer and various loans made to them by the Claimants.

4. Mr. Grimwood indicated that in an attempt to get Lee and Schuklebier to pay the outstanding monies owed on the purchase price, all parties agreed to a new contract. This was only signed by Mr. Schuklebier and not by any of the other parties. Since none of the other parties had signed this new contract, Mr. Grimwood and Mr. Lee operated on the basis that the Payment Arrangement Agreement was still the binding contract. Mr. Grimwood claims that since purchasing the Property he has made substantial improvements at a cost totaling $99,845. 96. He further states that he has planted various crops including lime trees, lemon trees, pineapples, corn, cabbage and mango trees and he has provided receipts of his expenses at **Exhibit TDG 7**. He has also started to build a fence around his home on the property and he exhibits the receipts for tools and materials from Benny's Home Center at **Exhibit TDG 8.** Mr. Grimwood has built a house on the property and he exhibits receipts for the costs of material and construction in **Exhibit TDG 9**. He exhibits a photo of the works done on the property and receipts for rental of bulldozers, backhoes and tractors etc. at **Exhibit TDG 10.** He says that he also built a bridge on the property but he has no receipts as payments were made in cash. After this claim was filed, the Defendants have tried to carry out works and improvements on the property and in 2016, sent a bill to the

Claimants for the cost of works done by them on the property without the Claimants knowledge or permission. The Defendants paid additional stamp duty on the property in September 2016 after they received a letter from the Claimants' attorney.

5. Under extensive cross-examination by Ms. Perdomo for the Defendants, Mr. Grimwood was challenged on many aspects of his evidence. He was questioned about the Payment Agreement and whether the $36,636 owed by the Defendants was their contribution towards the purchase price. He agreed. He was asked whether based on the Amortization Schedule it was always the intention of the parties that the Defendants would own a bigger portion of the property. He disagreed and said that the intention was that each party would own 25% of the property. He claimed that the payment schedule shown to him by Ms. Perdomo had been altered unknown to him.

6. The next witness for the Claimants was Mr. Clyde Wilson who gave evidence in his witness statement that he had travelled to Belize along with Mr. Grimwood and Mr. Mittelberg in 2015 to look at a piece of land which they had been interested in purchasing from Remax. That deal failed when the owner refused to sell. He endorses and reiterates what was said by Mr. Grimwood as to the events that led to the purchase of the 51.36 acres

subject property of this case. Mr. Wilson states that he was present at the time when the parties negotiated the terms of the oral agreement in March 2015 whereby the Claimants on behalf of themselves and the First and Second Defendants agreed to purchase the Property and to advance to the auctioneer the purchase price of BZ$55,000.00. It was agreed that the Defendants would reimburse the Claimants for their proportionate contribution, each paying 25% of the purchase price. The Property was to be divided into four equal parts between the Claimants and the First and Second Defendants. Mr. Wilson said that he returned to Belize in November 2015 along with the First and Second Defendants when they began the construction of their home on the property. At some point the Defendants proposed putting an Industrial Zone on the property but Mr. Grimwood refused. He said that Mr. Lee helped Mr. Grimwood with construction of Grimwood's home. He states that he always understood from the inception of the agreement that the Property would be divided equally and that each party would receive 25% shares in the Defendant company. After the property was conveyed to San Juan Farms Ltd, Mr. Wilson states that there were several demands and attempts by the Claimants to collect payments from Mr. Lee and Mr. Schuklebier. They either could not be found or they

would make excuses that they only needed to go to the bank, but they did not pay the Claimants their proportionate share of the purchase price of the property.

7. Ms. Perdomo cross-examined Mr. Wilson. He was asked whether he was giving his evidence as a good friend of the Claimants. He replied that he was giving this evidence because he place his hand on the Bible. When asked whether he was present for all negotiations between the parties, he said he was only present for the first day of negotiations. He also clarified that he was not a party to the oral agreement. He was asked about helping Mr. Grimwood to build a home on the property, and whether he assisted in pouring cement for the camper to have a foundation. He said yes.

8. The Final witness for the Claimants was Mr. Mittelberg. His evidence was a replica of what Mr. Grimwood had testified to in his witness statement setting out how they came to Belize to purchase one property but that deal did not materialize, how the Claimants learnt of the property in the matter at bar, the payment of the purchase price, the incorporation of the Third Defendant company, the creation of the oral contract between the parties, the Conveyance to the Third Defendant and the Payment Arrangement Agreement between the parties. Mr. Mittelberg provided proof of additional

expenditure through a receipt which showed a wire transfer on April 13, 2015 for BZ$8,000 which he claims he sent to a hardware store to cover the costs of items purchased by Mr. Schuklebier for items to install water and electricity on the Property. Of this sum, BZ$3,000.00 was to be reimbursed by Mr. Schuklebier **(Exhibit "DDM1").** Mr. Mittelberg also claims that Mr. Schuklebier owes him BZ$1,400 to cover costs of rental of a semi-trailer. To date, Mr. Schucklebier has not repaid Mr. Mittelberg for any of these expenses.

The total sum claimed by the Claimants from the Defendants is damages of $40,244.64 representing the First and Second Defendants' proportional contribution towards the purchase price of the property, the costs of the transfer and the monies loaned to them to cover various costs.

9. Under cross-examination by Ms. Perdomo, Mr. Mittleberg denied that trees were planted on only 10 acres of the Property. He also denied the suggestion that this was done because the initial agreement between the parties was that 10 acres would be portion for each. The witness said that the initial agreement was for 25% in a partnership, and his 25% was 12.83 acres. He was asked whether there was a shortfall in the purchase price of BZ$55,000 when it was wired. He said yes there was, but he denied the suggestion by

counsel that that $600 shortfall was paid by Mr. Lee. Ms. Perdomo put to Mr. Mittleberg that the reason that the Defendants were paying $36,636 was because all parties in their written agreement agreed that the Defendants would get more than half the size of the property. The witness did not accept this suggestion. The minutes of a meeting dated November 10, 2015 were put to him. He refused to accept the minutes, pointing out that neither Grimwood nor he had signed the minutes and claiming that those minutes were fraudulent. He was asked to show proof of demands for payment he made of the Defendants; he was not able to show such proof.

10. The Evidence of the Defendants

Two witnesses were called on behalf of the Defendants. Mr. Schukelbier gave testimony that he entered a Purchase Agreement along with Mr. Lee for the purchase of a 51.36 acre property in San Juan Village, the subject property of these proceedings. He said that he and Mr. Lee asked Mr. Grimwood to form an agreement with them after the bank had refused their application for a loan to purchase the 51 acre property. The Defendants had met Mr. Grimwood who had expressed a desire to purchase a parcel of land on which to put an ATV course. The agreement between the parties initially was that Mr. Grimwood would finance the purchase of land and after

completing payment, each party would have his part of the land being 41.36 acres and Grimwood's being 10 acres. The parties finally agreed that Grimwood would have 10 acres, Mittlelburg 10 acres and the remaining parcel was for Schuklebier and Lee.

11. Mr. Schuklebier said that Greenwood and Mittelberg attended personally to inspect their parcel of land and were satisfied with the 10 acre plots. Grimwood went back to the USA and Mittleburg stayed to ensure that everything went according to plan. Grimwood sent a wire transfer payment for only $54,000 and Schuklebier and Lee had to pay BZ$600 to close the purchase. He says that Mr. Mittleberg was present in all the transactions and that evidence of this payment is already in the proceedings. He also says that he and Lee made several trips to Belmopan to complete the company name, pay for the transfer of land from the bank to San Juan Farms Ltd. They also paid taxes, stamp duty, recording fees and fuel costs. The legal work was done by Dangriga Land Developers.

12. Mr. Schuklebier also stated that after Mr. Mittleburg flew back to the USA, he and Lee began to clear the land, drain it, install utilities, and pay for security to be 24/7 on site. They also moved equipment belonging to the Claimants from Tex Mar Shrimp Farm including a mobile camper where Lee

had all their equipment, as they had been instructed by the Claimants that they were to secure the Claimants equipment pending their return to Belize. They were also instructed by the Claimants to plant coconuts, lime, mechanize land, spread white lime and plant pineapple on their property. He says that Lee completed tractor work for Grimwood and Mittleburg. The Claimants returned to Belize in November 2015 and requested to have a company meeting. He states that when the Claimants saw the improvements made by the Defendants to the land at that point, the Claimants agreed to set up a revised 5 month payment starting on September 1, 2015. This is recorded in minutes of the meeting of November 10, 2015 which are in evidence. He claims he was secretary at that meeting and documented the discussion and decisions made. In that same meeting, all parties agreed with their parcel of land and a map was given to all members. Grimwood and Mittleburg were in Belize for over 20 days and could not set up a bank account. He says that is why payment from September 1, 2015 to January 1, 2016 being a total of $2,500 was expected to be paid in January 2016. In February 2016, both Claimants returned to Belize, and on their arrival he paid them $2,500 being the total that had been outstanding for 5 months. He said he discovered that Grimwood had gone to Dangriga Land Developers to

retrieve the company documents and deliberately stopped the transfer process because a new reassessment was done which had to be paid for before the paper work could continue. Mr. Grimwood told him that a Deed was being prepared and he instructed that Schuklebier and Lee should sign over the land to his name, then they would make payments eventually getting back their agreed parcels. He had told one Salomon Marin that he was not to proceed with the original transfer and that he had a lawyer looking at the situation. Grimwood acknowledged that monies had been paid by Lee towards the land transaction according to the Payment Schedule which showed that Schukelbier and Lee held 60% of the property. Schuklebier states that he and Lee have made significant investment in acquiring and developing the property and that the $40,000 demanded by the Claimants is far in excess of what is owed. He exhibits a Payment Schedule as **"JS1".**

13. Mr. Schuklebier was cross-examined extensively by Mr. Jenkins. He was challenged on the terms of the Payment Arrangement Agreement; Schuklebier agreed that according to the Agreement, he and Lee were to reimburse the Claimants for their portion of the purchase price. He also agreed that they were to pay $1,000 per month until their full contribution

of $36,636.00 was paid. The witness did not agree with the suggestion that Mr. Grimwood wired $55,000 for the payment of the purchase price; he said Grimwood wired $54,300. When he was shown **TDG 2** by counsel, he agreed that that wire transfer showed that Mr. Grimwood had in fact wired the amount of US$27,500 of BZ$55,000 for full payment of the purchase price. He also agreed that Mr. Grimwood sent an additional wire of $300 as shown by **Exhibit TD 3.** Mr. Schuklebier did not agree with the suggestion that payments were to start in April 2015; he said they were to start in September 2015. He said he had made one payment of $2,500 pursuant to the agreement, and agreed that he has not been making payments in accordance with the agreement. However he does not agree that he has been in breach of the agreement. Mr. Schuklebier agrees that the Articles of Association of San Juan Farms Ltd showed the distribution of shares in the company being 25% shares each between each of the parties. But he did not agree that the distribution of shares reflected the agreement that the property was to be divided into four parts. He was shown **JS1** a Land Investment Payment Schedule and asked if it was a proposed payment schedule; he did not agree that it was. He was shown the Deed of Agreement and asked about whether his signature or that of Mr. Lee appears on the document; he said no. Upon

acknowledging that the document was unsigned, he agreed that neither the agreement nor the map attached thereto was anything more than a proposal made to them by Mr. Grimwood. Schuklebier disagreed with the suggestion by counsel that he failed to provide evidence of the fees and taxes that he claims to have paid. He says that those are in Mr. Lee's evidence. He also did not agree that the Claimants had paid him and Mr. Lee to carry out works on the property. The witness agreed that he was unable to provide receipts of costs he incurred on the property. He was shown the minutes of the meeting in November which stated after 5 months arrears, but he did not agree that it proved he and Lee had not made payments for 5 months at the date of that meeting. He agreed that the minutes were not signed by Mr. Grimwood who was Director of the Company; they were only signed by Lee and Schuklebier. He agreed that while he made payments between September to January 2016, he has not made any payments from January 2016 until the date of trial.

14. Under re-examination by Ms. Perdomo, Mr. Schuklebier said that he did not pay $1,400 to Mr. Mittleberg because he would pay him when he returned to Belize from the US. He gave an extensive explanation of how the Deed of Agreement came about and stated that he and Lee refused to sign it because

it was going to be expensive. He further stated that he did not breach the agreement because they tried to work. They have the money to pay for the land but they just want to pay their righteous part. He insisted that he had paid the balance of $600 owed on the land when Mr. Grimwood only sent $54,000 by wire transfer. At that point they were unable to get the documents from the bank because there were unpaid taxes on the land.

15. The other witness for the Defence was Mr. Philip Lee. Mr. Lee said that he is a farmer and around 2006, he became interested in purchasing 51.36 acres of land in San Juan Village, Stann Creek District. He had tried to buy this land in an auction in 2006, but his bid was not accepted. When he saw that the same piece of land was up for sale in 2015, he put in a bid of $55,000 which the bank accepted. He says that he paid $5,500 as the deposit on the purchase price and signed a purchase agreement with the Bank for the balance of $49,500. Copies of the deposit payment and the agreement are attached as Exhibits " **PL1"** and "**PL2".**

16. Mr. Lee says that after meeting the Claimants, Mr. Mittelburg emailed him to say that he was bringing a truck and camper down to Belize and wanted a secure place to park his belongings. Mr. Grimwood also emailed Mr. Lee confirming what Mr. Mittelburg had said, and Mr. Lee agreed to allow him

to park his camper on Lee's property. Copies of email exchange between the parties are Exhibit "**PL3".** Mr. Lee said that Mr. Grimwood informed him that their plans to purchase land had fallen through, and Mr. Lee along with Schuklebier unsuccessfully attempted to get financing for the purchase of San Juan Farms. He mentioned to Mr. Grimwood that he and Schukelbier had commenced purchasing San Juan Farms and that subject to Schukelbier's approval they were open to allowing Mr. Grimwood to purchase at least an acre of that land for storing his camper. This arrangement would benefit all parties since at that time, Grimwood already had funds in Belize to purchase property. Mr. Lee said that he and Schuklebier intended to buy a property in a company's name so that they could each have control over the property, which would later be subdivided between them in their respective names. He explains that Grimwood agreed to provide the initial funding for the transaction in exchange for 10 acres. The day after they made this agreement, Mittelburg showed up with Grimwood requesting that they be given 10 acres each. On March 5, 2015 the parties made a verbal agreement that they would purchase the property, that Mittelburg and Grimwood would finance the initial funding to secure 10 acres each to the north end of the property, while Schucklebier and Lee would keep 31.36 acres to the

south of the property. Mr. Lee states that the Claimants were both happy that they got 10 acres each because the cost was half what they would have paid in the previous deal that had fallen through. He says that on March 8, 2015 he paid $300 for a title search on the property as shown by receipt **Exhibit PL4.** Mr. Lee states that he along with Schuklebier, Grimwood, Mittelberg and Mittelberg's wife walked the property the following day to show the Claimants what they would be getting. A map was also shown to them indicating the allotted portions **Exhibit PL5.** Lee says he, Schuklebier and Mittelberg went to Belmopan to register the company on March 3, 2015 and to complete the title search. They visited the ScotiaBank in Dangriga where they learnt that the wire sent from Grimwood was only for $54,433.00 so the deal could not close. Lee states that he deposited $600 into the auctioneer Kevin Castillo's account to cover the balance and proceed with the closing as per deposit slip in **Exhibit "PL6"**. They then met with one Solomon Marin who gave them pro-forma invoice of the cost of transferring the property to a company, a copy of which is shown at **Exhibit PL7.** Mr. Lee said that upon returning to Belmopan they paid $809 to the Companies' Registry to register San Juan Farms Ltd. The list of persons holding shares included 25,000 shares each for Danny Mittelburg, Theodore Grimwood,

Jason Schuklebier, and Philip Lee all as Directors of the company. A copy of the certificate of incorporation, memorandum of association, list of shareholders, and receipt are shown at **Exhibit PL 8.** On March 20, 2018 they paid Dangriga Land Developers $956.25 as shown by the Copy of invoice at **Exhibit PL9.**

17. On March 23, 2015, Mr. Lee emailed the auctioneer to update him on the transaction. All parties signed an Agreement to transfer the property to San Juan Farms Ltd. on this day as shown by copy of Agreement at **Exhibit PL 10.** By a Payment Agreement dated March 24, 2016, the parties all agreed on the terms of paying of the balance owed by Lee and Schuklebier. According to that Agreement, Lee and Schuklebier would pay $1,000 monthly ($500 from Lee and $500 from Schuklebier) and the property would then be transferred to San Juan Farms Ltd., as shown by **Exhibit PL11**. On 23rd March Lee returned to Dangriga Land Developers and paid Mr. Marin a total of $1,750 towards the stamp duty based on the estimate Marin had provided. The stamp duty was re-assessed by the Lands Department and Lee paid another $1,305 in stamp duty to Mr. Marin. Copies of receipts showing stamp duty paid are shown at **Exhibit PL12**.

He also Paid Mr. Marin $250 as Property Tax for 2015 (**Exhibit PL 13**) and for 2016 and 2017

(**Exhibit PL 14**).

18. Lee says that from May 6, 2015, both he and Schuklebier continued to work the property incurring various costs including demarcating the land, creating boundaries, drainage and leveling the land etc. Copies of invoice of payments he made are at **Exhibit PL15**. He also attached copies of email exchanges between himself and Grimwood evidencing their assistance with various activities on the land **Exhibit PL 16.** He claims that throughout this time the Claimants never demanded the monthly payments because the parties understood that he and Schuklebier were to get things started and develop the property, thereby incurring costs which would exceed the monthly payments. He also states that when the Claimants returned to Belize in November 2015, the parties held their first company meeting, where they agreed to divide up the property into 5 parts. The new division would include four 10 acre parcels allotted to each Director and one 11.36 acres parcel allotted to Lee and Schukelbier for an Industrial Zone. The parties agreed that the payments were to commence September 1, 2015 as opposed to the initially agreed date of April 24, 2015. A copy of the minutes and the revised map are at "**Exhibit PL 17**".

Grimwood emailed asking that a copy of the minutes be sent to him (**Exhibit PL 18**). Lee also exhibits an email from Grimwood dated December 29, 2017 where Grimwood stated that he had no place to put the money and that they should hold on to the monthly payments until he arrived in Belize on January 25, 2016 as seen in **Exhibit PL19**. On February 11, 2016 Mr. Schulkebier paid the Claimants $2,500 as shown by receipt **Exhibit PL20**. Mr. Lee says that given his work on the property and the substantial payments already made by him, he was not required to make any payment at that time. At a further meeting with the Claimants on March 15, 2016, the Claimants suggested that contracts be drawn up to the approval of Lee and Schuklebier. Lee said that they only agreed to look at those contracts, as shown by minutes of that meeting **Exhibit "PL21**". Lee said he and Schuklebier were surprised when Grimwood presented them with a letter to the Commissioner of Lands seeking to have the transfer of the property to San Juan Farms Ltd. canceled and a new conveyance issued to Mittelburg and Grimwood. Lee refused to sign the document as he said he knew that that would mean that all of his hard work on the property would have been in vain, and that he would then have no interest in the property. Schuklebier also refused to sign. A copy of the letter to the Commissioner of Lands and the proposed Deed of Conveyance are shown as **Exhibits** "**PL22"** and "**PL23"**

respectively. Mr. Lee says that the relationship with the Claimants became hostile after he and Schuklebier refused to sign the Deed as they had received legal advice not to do so. He attaches a copy of an email that he sent to Grimwood on May 18, 2107 where he offered to pay the Claimants the entire amount owing **Exhibit "PL24**." He also exhibits an email from Grimwood which shows the reason why Grimwood wanted to get out of the company is due to problems Grimwood was having with the IRS **Exhibit "PL25"**. He received no response to his letter offering payment and the next communication from the Claimants was a letter from their attorney demanding payment to which he paid $2,500, as shown by Belize Bank voucher **Exhibit "PL 26".** Mr. Lee claims that the amount which he spent on utilities, security, farm work and repairs is approximately $61,015. 80. He says that he also made payments in the amount of $2,538 for planting coconuts and $1,165 for pineapples on the instructions of Mr. Grimwood for his property as shown by Statement of Accounts **Exhibit "PL 27"**. He concludes by saying that given all that has been paid toward development of the land, and the work done for the Claimants, the balance owing and due as repayment for monies advanced could never exceed $23,000.

19. Mr. Lee was cross-examined extensively by Mr. Jenkins on behalf of the Claimants. He was asked how many payments has he made on the Payment

Arrangement Agreement, to which he replied that he had made a total of $10,000. When he was pressed repeatedly by Mr. Jenkins, Mr. Lee very reluctantly admitted that he had only made one payment of $2,500 to date. He was then asked if he and Schucklebier were to receive a bigger portion of the Property as he is claiming, then why was each party to the Agreement allotted 25% shares each in the company. Mr. Lee's response was if the parties had allotted shares according to the land that would be divided, then he and Schucklebier would have received 65% of the shares, while the Claimants would only have received 35% of the shares. The Claimants would have been minimum shareholders in this holding company in which they had invested money to finance the purchase of the land. Mr. Lee said that he did not want the Claimants to feel as if they were being cheated, and the company was only to hold the property for the parties until the land could be properly subdivided among them. He refused to accept Learned Counsel's suggestion that the distribution of shares in San Juan Farms Ltd. reflected each shareholder's proportionate interest in the Property. Mr. Lee was challenged on the sum of $65,015.80 which he claims that he spent on utilities, security, farm work and repairs. He could not say whether that was an accurate sum representing what he had spent. After several questions by Mr. Jenkins as to the sum being

claimed, Mr. Lee said he thought the sum was more likely $6,000 plus and not $60,000 plus and that somehow an extra zero was in the previous figure. He later asserted that the figure of $60,000 plus was correct and that he had misunderstood counsel's previous question. Later on in cross-examination, Mr. Lee admitted that he had amended a receipt by adding information to it, after the receipt was made by Mr. Grimwood. It was put to Mr. Lee that it was never agreed by the parties that any works or improvements done was to be credited to his portion of the purchase price that he was supposed to pay. Mr. Lee replied that the amortization schedule shows payments received by the Claimants on behalf of the Defendants. He was then asked if the Court were to accept that he had made a contribution of $60,000 plus towards his contribution to the purchase price, then how did he admit owing $23,000. Mr. Lee said that the services rendered were not part of the purchase agreement; they were stuff that they did for the clients. He points to Annex 2 attached to the Claim Form (a $6,000 plus credit to payments made by the Defendants) as evidence that there was agreement between the parties that works done by the Defendants was to be credited toward their contribution to the purchase price.

20. Under re-examination by Ms. Perdomo for the Defendants, Mr. Lee clarified that he did not write remarks on the original receipt. He also clarified that at

a meeting of 15th March 2016 it was agreed by the parties that the property would be divided into five parts and Schuklebier was to draw a land lease agreement for parking Grimwood's camper on the property.

21. Legal Submissions On Behalf of the Claimants

Mr. Jenkins submits on behalf of the Claimants that pursuant to the Oral Agreement between the parties, the Claimants duly paid the purchase price for the Property by way of two separate wire transfers in the amount of US$27,500 and US$300 to Mr. Kevin Castillo, the Auctioneer, on the 12th March 2015 and 13th March 2015 respectively as shown by Exhibits **TDG 2** and **TDG 3**. The agreement was that the Claimants would advance the full purchase price and the third Defendant would hold the Property on trust for the Claimants and for the Defendants. While the Deed of Conveyance was duly executed transferring title to the company, the express trust between the parties was not put in writing. This failure to put the trust in writing failed to create any interest in the parties in their personal capacity. However, this did not affect the creation of a resulting or constructive trust created by law under Section 43 of the Law of Property Act which reads as follows:

" 43(1) Subject to the provisions hereinafter contained with respect to the creation of interests in land by parol, no interest in land shall be created or disposed of except by writing signed by the person creating or conveying it, or by his agent thereunto lawfully authorized in writing, or by will or by operation of law.

(2) This section shall not affect the creation or operation of resulting, implied or constructive trusts"

Mr. Jenkins submits that notwithstanding the fact that the Claimants' interest in property was not put into writing, having paid the full purchase price of the property as evidenced by the wire transfers **Exhibit "TDG 2"** and "**TDG 3",** and having made substantial improvements to the property, the third Defendant holds the Property on trust for the Claimants by operation of law. Learned Counsel relies on Halsbury's Laws of England Vol. 98(2013) /1 as follows:

"*A resulting trust is a trust arising by operation of law. Such a trust arises in two sets of circumstances.*

The first set of circumstances occurs where A makes a voluntary transfer of property to B or pays(wholly or in part) for the purchase of

property which is vested either in B alone or in the joint names of A and B, when there is a presumption that A did not intend to make a gift to B. The property is held on trust for A (if he is the sole provider of the money) or in the case of a joint purchase by A and B in shares proportionate to their contributions. This has been described as a presumed resulting trust. It is, however, not to be relied upon in determining interests in a property occupied as a family home; instead reliance is placed upon the common intention constructive trusts.

The second set of circumstances occurs where A transfers property to B on express trusts, but the trusts declared do not exhaust the whole beneficial interest. This has been described as an automatic resulting trust. A special case is the Quistclose trust where X transfers money to Y on the agreed basis that Y is not free to use it as his own but must (or may) use it exclusively for a particular purpose, like paying creditors or buying property, in which eventuality occurring a debtor-creditor relationship is to arise between Y and X. Equity presumes that until then Y holds the money from the outset on a resulting trust for X.

Both types of resulting trust are traditionally regarded as examples of trusts giving effect to the common intention of the parties. However, a resulting trust can be regarded as imposed where it cannot be proved that the transferor intended to part with his beneficial interest. A resulting trust is not imposed by law against the intentions of the trustee (as may happen in a constructive trust) but gives effect to his presumed intention."

22. Mr. Jenkins cites **Westdeutsche Landesbank-Girozentrale v Islington Borough Council** [1996] AC 669 where the principles of resulting trust were affirmed by the House of Lords. He also cites **Shawn Sparks v. Melissa Jude Luca** Claim No. 372 of 2009 where the court applied the principle of resulting trust as per Dyer v Dyer (1780) 2 Cox 92 that the trusts results to the man who advances the purchase money which raises the presumption that the purchaser intended to retain the whole beneficial interest. Benjamin CJ in the **Shawn Sparks** case cited Snell's Equity at paragraph 33:

"The presumption of a resulting trust can be rebutted by evidence of the actual intention of the purchaser. This raises a question of fact to be decided on the basis of all the circumstances of the case with the object of ascertaining the real intention of the de facto purchaser."

In response to the Defendants' argument that the parties had agreed that the company would hold the Property on trust for each party, and that the property was to be subdivided and transferred to each Defendant upon full payment according to the Payment Arrangement Agreement, Mr. Jenkins contends that while that was the intention of the parties, the 1st and 2nd Defendants did not pay their contribution towards the purchase price as would entitle them to 25% of the Property. They made payments which fall far short of their agreed contribution. As the Claimants have advanced the full purchase price for the property in accordance with the principles of resulting trust, the 3rd Defendant holds the property in trust for the Claimants.

On the principles of constructive trust, Mr. Jenkins argues that there is clear evidence that the consideration for the agreement to transfer the Property to the 3rd Defendant wholly failed. The 1st and 2nd Defendants would be unjustly enriched if the Court were to declare that the 3rd Defendant holds ¼ of the property on trust for the 1st and 2nd Defendants, having failed to make their contribution as intended and agreed. A constructive trust also arises in favor of the Claimants therefore also arises in the circumstances, as to hold otherwise would allow the 1st and 2nd

Defendants to be unjustly enriched at the expense of the Claimants. He cited **Tay Choo Foov. Tengku Mohd Saad** et. al. 11 1TELR 616 a Malaysian case where the court held that a constructive trust arose in circumstances where there was unjust enrichment. The deceased held 1.2 million shares in a family company which became a public company, and he thereafter transferred those shares to Mr. Tay on terms that the beneficial ownership of the share remained with the deceased until the purchase price was paid. The deceased died before the purchase price was paid and the children and executors of the deceased sought a declaration that they were the beneficial owners of all the shares. The Court of Appeal in its judgment outlined the principles governing the creation of a constructive trust in the circumstances at paragraph 92:

23. *"A constructive trust is simply a relationship created by equity in the interest of conscience. According to Snell's Equity (26th ed., 1966) p201, a constructive trust is 'a trust which is imposed by equity in order to satisfy the demands of justice and good conscience, without reference to any express or presumed intention of the parties'. In the Law of Trusts by JG Riddall (3rd edn) the learned author's views are as follows (p359):*

"The constructive trust is a remedial device that is employed to correct unjust enrichment. It has the effect of taking title to property from one person whose title unjustly enriches him, and transferring it to another who has been unjustly deprived of it..."

The Court of Appeal held that there would be unjust enrichment if the defendants were allowed to keep the shares, the consideration for the transfer having failed, and that the learned trial judge was correct in imposing a constructive trust. Mr. Jenkins submits that in the case at bar, there is clear evidence that the consideration for the agreement to transfer the property to the 3rd Defendant wholly failed. The 1st and 2nd Defendants would be unjustly enriched if the Court were to declare that the 3rd Defendant holds the property on trust for the 1st and 2nd Defendants.

24. In the Alternative, Mr. Jenkins submits that if the claim in resulting or constructive trusts fails, damages should still be granted for the breach of the Payment Arrangement Agreement dated 24th March 2015.

The method of payment was expressly agreed to by the parties as follows:

"The first payment of $1,000 is to be paid on 24th April 2015 subsequent payments to be made on a monthly basis until the balance of $36,636.00 is

paid in full with no interest or fees added and our balance reflects $0 balance."

25. Mr. Jenkins argues that the Court need only consider the irrefutable evidence presented by the Claimants as to how much of the agreed $36,636 was paid by the First and Second Defendants. The first two Defendants have disingenuously asserted that there was an agreement with the Claimants that whatever works they carried out on the Property was to be credited towards the balance of the purchase price. The Claimants say that there is no evidence of any such agreement, or of any such works or improvement by the Defendants. The Claimants also say that this would be inconsistent with what the First Defendant says that he alone made a total of $61,015.80 in improvements and works, yet he still owes $23,000 out of the balance of $36,636. It also makes no sense that the parties would agree that any alleged improvements done by the first 2 Defendants was to be credited toward their contribution to the purchase price. No credible evidence has been provided to prove the improvements allegedly carried out. The First Defendant admitted writing particulars on a receipt after the receipt had been issued to him by the First Claimant. The evidence of the Defendants should be rejected as wholly unreliable and replete with inconsistencies. All

the evidence shows is that the First and Second Defendant have only paid $5,000 in total towards the balance of $36,636 in breach of the Payment Arrangement Agreement.

26. In relation to the Minutes of the Meeting of 10th November 2015, Mr. Jenkins submits that those minutes do not constitute evidence as they are contrary to section 73 of the Companies Act which requires that the chairman sign the minutes in order to constitute evidence of the meeting. The minutes of this meeting did not state who was the chairman of that meeting, and did not bear the signature of either Claimant. No evidence was tendered to show that these minutes were approved therefore they should not be accepted as evidence.

In conclusion, the Claimants have had additional loan agreements with the Defendants which have been breached. The total now owing on those agreements is $6,871.63 which has been admitted in part by the evidence of the First and Second Defendants and shown by receipts from payments made by the Claimants. The Claimants therefore say that the Third Defendant holds the Property in resulting and/or constructive trust proportionate to their contribution of the full purchase price. Alternatively, the Claimants say that the First and Second Defendants have breached the

Payment Arrangement Agreement and the loans advanced to them for various costs and have therefore suffered damages in the amount of $38,333.03.

27. Legal Submissions on behalf of the Defendants

Ms. Magali Perdomo argues that the sum of $36,636 owed by the Defendants represents 66% of the total $55,000 owed by the Claimants. Even if the purchase price was $60,000, $36,636 would represent much more than 25% share of the Property for the First and Second Defendants. Learned Counsel submits that the First Clamant admitted under cross-examination that the Deed of Conveyance which he drafted shows that the First and Second Defendants were to own an Industrial Zone as well as a further 10.7 acres of the Property. The Deed of Conveyance Exhibit "**PL 23**" states: *"THE BUYERS, agree to lease to Theodore Donald Grimwood Jr. inside the 21.14 Acres for Ten (10) years with a Fifteen Feet (15') acres along the Line. Concrete Pillar 'M9' and a six month notice to vacate…"* It is contended that this shows the intention of the Parties that the Industrial Zone would be for the Defendants which the Claimants would occupy pursuant to a lease

from the Defendants. This Deed of Conveyance proves that the parties at all times intended that the First and Second Defendants would own more than half of the Property as they were to own 31.36 acres of the property and the Claimants were to own approximately 10 acres each.

The Defendants have receipts to prove that they, and not the Claimants, paid $1,750, and then $1,305 to Salman Marin for Stamp Duty for the property. They have also produced receipts to prove that they paid $956.25 to the Dangriga Land Developers Ltd. for the cost of transfer of the conveyance on March 20, 2015. Ms. Perdomo submits that there is no evidence proving that the Claimants reimbursed the Defendants for these expenses and that correspondence between the parties refer to a new agreement.

Under the Payment Arrangement Agreement, dated March 24, 2016, the parties agreed on the terms for paying of the balance owed by the Defendants on the purchase price. According to that Agreement the Defendants were to pay $1,000 monthly ($500 from each Defendant), and that the Property would be transferred to the Third Defendant company. Ms. Perdomo argues that the parties agreed at a meeting that they were going

to divide up the property into 5 parts including 10 acre parcels with one parcel for each Director and one 11.36 acre parcel to be known as the 'Industrial Zone'. Learned Counsel also contends that the parties agreed to revisit the payment plan in consideration of all the work completed on the land by the First and Second Defendants, and that the monthly payments would commence as at September 1, 2015 as opposed to the initially agreed date of April 24, 2015. It is argued that the minutes of that meeting prove that this was what the parties agreed to in that meeting, and that the First Claimant is now trying to discredit those minutes by saying they were never approved. The submission is that the Claimant's emails dated November 25, 2015 and December 9, 2015 (Exhibit **"PL18"**) are crucial evidence which show that the parties had a meeting where they decided to extend the payment date and amend the map to include 5 parcels plus an Industrial Zone. The emails also confirm the Defendants' contention that the Claimants were having difficulty opening a bank account in Belize. It is further argued that the First and Second Defendants did not make payments because there was no place for them to put the money. Ms. Perdomo points out that under cross-examination, the First Claimant tried to deny that he had told the First and Second Defendants that there was no place to put the money; however

when confronted with his email in which he instructed the Defendants to "hold off on monthly payments" he then admitted same. She also contends that the Claimants have provided no proof of the additional costs and expenses allegedly paid for by the First Claimant and no proof of any improvements made by the Claimant on the Property. There is no evidence of a 'house, storage shed and thatched roof; all **Exhibit "TDG 10"** shows is the Claimant's camper with a shed built around it parked on the Defendant's portion of the property. Unlike the Claimants who live in the US, the Second Defendant actually lives on the Property and has a business there. The First Claimant merely poured a concrete foundation upon which to place his camper with a screened porch attached. The Amortization Schedule provided by the Second Defendant shows in **Exhibit "JS 1"** that the Claimants have agreed that the First and Second Defendants have already paid $4,550 towards the purchase price. Learned Counsel contends that based on the Claimant's own evidence under cross-examination, the First and Second Defendants have paid a total of $13,211.46.

Ms. Perdomo submits that the presumption of a Resulting Trust is rebutted in this case because the parties expressly agreed that the Third Defendant would hold the Property on trust for the Claimants and the 1st and

2nd Defendants. The Defendants have contributed significantly more than the $5,000 alleged by the Claimants. The evidence also shows that the Parties always intended for the First and Second Defendants to pay a larger portion of the purchase price and own a larger portion of the Property. In fact the Defendants have always been ready to make full payment to the Claimants who have refused and sought to have the Defendants sign a new agreement to transfer the entire property into their names.

On the Constructive Trust, Ms. Perdomo submits that contrary to what the Claimants state, there will be no unjust enrichment if the Property is deemed to be held for the Defendants. The Claimants have accepted that the Defendants have made significant contributions to the purchase, upkeep and development of the Property. The constructive trust remedy is not available as the Claimants have not approached the Court with clean hands. The Claimants have misled the court and failed to disclose that:

1. The Payment Arrangement was varied by minutes of a meeting held with all parties;
2. Payments were not made on the direction of the Claimants as a result of the Claimants not having a bank account;

3. The Defendants offered to pay off the purchase price owing and the Claimants refused;
4. The Claimants have instead insisted that a larger sum of money is due without consideration of what has already been paid by the Defendants;
5. The Claimants sought to have a separate agreement signed by the Parties to transfer the Property into their name;
6. The Parties' intention that the First and Second Defendants would hold a larger portion of land including the Industrial Zone;
7. The extensive development and financial contribution already made by the Defendants.

In conclusion, Ms. Perdomo submits that there is no trust created in favour of the

Claimants. The Defendants have always been ready to pay their portion of the purchase price but was prevented from doing so by the Claimants. The Defendants have worked hard to develop the Property. The Defendants are in actual possession of the Property and should be allowed to make good their payments in order to enjoy peaceful occupation of the Property.

RULING

a. I am grateful for the assistance given by both counsel in determining the issues in this case. Having carefully reviewed all the evidence, I am of the view that the Claimants have proven their case on a balance of probabilities. I find as a fact that the Claimants paid the full purchase price of the Property. I also find as a fact that the First and Second Defendants breached the terms of the Payment Arrangement Agreement. I do not find that the minutes of the meeting are reliable as those minutes were never approved by the Claimants and there are emails in which the first Claimant is asking that the minutes be sent to him for his perusal. I find the evidence given by the First Defendant to be highly questionable, and I view the entirety of his evidence with a jaundiced eye. I am extremely uncomfortable with the credibility of his evidence in general, especially in light of his admission that he doctored a receipt *after* it had been signed by the First Claimant. I find that there was no Agreement by the parties to vary the terms of the Payment Arrangement Agreement. I have seen emails sent by the Claimants asking the Defendants for payment of their portion of

the purchase price, long before this suit was instituted. There is one email in particular where Mr. Grimwood's mounting frustration with the Defendants' failure to abide by their commitments to pay is clearly expressed, as he tells them that he has heard talk of money before but it never materializes, and that he is basically tired of all their lies. Much has been made by the Defendants of the fact that the Claimants did not have a bank account, and it is claimed that this is the reason why they could not pay the Claimants. However, I note with bemused interest the fact that this much vaunted absence of a bank account has not prevented Mr. Schuklebier from paying the Claimants at least $5,000, nor did it prevent the Defendants from receiving several wire transfers from the Claimants; in the same way, the Defendants could have wired the payments owed to the Claimants in the Claimant's bank account in the United States. The evidence shows that the Claimants also made numerous trips to Belize; one would have thought that this eagerness to pay the full purchase price that the Defendants suddenly claim to have would have manifested itself at some point between 2015 and now, by their paying the Claimants

in cash as soon as the Claimants landed in Belize. This leads me to the conclusion that the Defendants willfully and dishonestly refused to meet their financial obligations to the Claimants, and now seek to rely on a non-existent agreement for "works done" to justify doing so, or at the very least to seek to reduce the amount of money that they owe on the property. While I do find that the First and Second Defendants made some improvements on the property, I do not find that the value of those works were in excess of what was owed by the Defendants. More importantly, I do not find that there is any evidence of the contention by the First and Second Defendants i.e. that the Parties had agreed that the works done by the Defendant would count towards their contribution to the purchase price. At no point in any of these email exchanges, where the work done on the property by the First Defendant was acknowledged by the First Claimant, is there even a hint by the Claimants that these works will be counted towards the sums owed by the Defendants toward the purchase price for the property. I therefore find that the Third Defendant holds the Property in resulting trust for the Claimants, the Claimants having advanced

the full purchase price and carried out substantial improvements on the Property.

Judgment is in favour of the Claimants.

Costs awarded to the Claimants to be paid by the Defendants to be assessed or agreed.

Dated this day of September 2020.

Michelle Arana

Chief Justice (Ag)

Supreme Court of Belize