

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

CLAIM NO. 548 of 2016

BETWEEN         JUDITH BAEZA                                 Claimant  
                          AND  
                          DAVID SHUMATE                                 Defendant

*BEFORE THE HONORABLE MADAM JUSTICE MICHELLE ARANA*

Sharon Pitts of Pitts, Pitts & Associates Law Firm for the Claimant

Mark Williams for the Defendant

1. This is a Fixed Date Claim seeking equitable relief in setting aside a contract entered into between the Claimant Ms. Judith Baeza and the Defendant David Shumate and his wife Linda Shumate (now deceased) as unconscionable and unjust. Ms. Baeza is also seeking as against surviving Purchaser Mr. Shumate an order for recovery of property subject matter thereof located at Registration Section Corozal Central Block: 1 Parcel 120 and further or alternative order(s) the Honourable Court may deem fair equitable just and/or appropriate in the circumstances. Mr. Shumate defends against this Claim contending that the

contract between the parties is valid and binding and on that basis the Claim should be dismissed. The Court now reviews the evidence of the witnesses produced at trial and the legal submissions filed on behalf of each party then renders its decision on the issues.

## **2. ISSUES**

These are the issues to be determined by this court as agreed between the parties:

- (1) Whether there was any particular representation made to the Claimant by Defendants induced her to enter into agreement for sale
- (2) If so whether this constituted a condition precedent or subsequent to the execution of the Agreement for Sale.
- (3) Whether in the circumstances there is or was only unconscionable dealing by the Defendant (and/or his wife) sufficient to justify the setting aside of the agreement.

## **3. Evidence on behalf of the Claimant**

The Claimant gave evidence at the trial of this Claim. Ms. Judith Baeza testified that she is a Belizean resident of No. 3, 4th Street, North, Corozal Town, Corozal District, Belize. She is a domestic and she is 46 years old. Ms.

Baeza is the registered owner of Registration Section Corozal Central, Parcel 120, Block 1 and owner of house being two storey concrete house.

4. In or around August 2010, Mr. David Shumate called Ms. Baeza saying he was interested in purchasing a house that she was selling as he saw the For Sale sign but that he would contact her later. He said he was passing through Corozal when he noticed the house and sign for sale. Ms. Baeza said she mentioned the price of **\$350,000.00** Belize Currency. About a month thereafter Mr. Schumate called Ms. Baeza back wanting to set up an appointment to look at the house. Shortly after, Ms. Baeza and Mr. Schumate met at the house, a brand new house for sale at No. 42 - 7th Street North, Corozal Town, Corozal District, Belize.
  
5. Mr. Shumate viewed the house and was very pleased with the house and the price of \$350,000.00 quoted. Ms. Baeza explained to him that she had ran out of money in building the house and that she was seeking to sell it in order to build a smaller house - a bungalow for herself and her daughter. That's why she was selling for cash. Mr. David Shumate said he loved the house. He loved the extra floor ceiling height of 13 1/2 feet as he and his wife would for

the first time be able to open their tall canopy bed and it would fit. And he would see the extra-large cement with reinforced steel columns and all 8 inch thick interior and exterior wall; the house was built extremely strong and to withstand hurricanes.

6. Mr. Shumate told Ms. Baeza that he was absolutely interested and he would purchase the house at the \$350,000.00. He took photos of the house and that he would speak with his wife and get back to Ms. Baeza.

He called Ms. Baeza about couple weeks later from Belmopan saying he was interested in purchasing the building and that his wife wanted to speak with her. Ms. Baeza was informed by Mr. Shumate and his wife that they had One Hundred Thousand Belize Dollars, unencumbered, words she used, right now, which they would pay Ms. Baeza right now and the balance of \$250,000.00 would come from the imminent sale of a big parcel of land in Belmopan and/or that her son Dr. Thomas Head, a Neurologist, would help her with the full amount balanced in any event as her son had agreed and had a pact to purchase a house for her.

7. The Shumates called back Ms. Baeza after a couple days. Mrs. Shumate said she needed to see lawyers in Belmopan for the transaction as they were definitely interested in purchasing the property. Shortly after, the Shumates called Ms. Baeza once again saying that the Belmopan Attorneys were charging too much. Ms. Baeza suggested she would personally prefer lawyers from Belize City and she recommended Mr. Oscar Sabido, or Carlo Mason.
  
8. A few days later Mr. Shumate, David, called Ms. Baeza saying that they already spoke with Mr. Sabido, and that Mr. Sabido gave them the best price. Mr. David Shumate gave Ms. Baeza a date of 27th October 2010 which is same date that the (purported) Agreement was signed, to be at Sabido's office in Belize City. Mr. Schumate also asked Ms. Baeza for a discount as they had to pay legal fees, so she agreed to a discount of \$40,000.00 Belize Dollars over the phone bringing total purchase price to \$310,000.00 cash sale.
  
9. Mr. David Shumate very shortly after called Ms. Baeza five minutes later and said they can't give her \$100,000.00 as they needed the \$10,000.00 for Transfer Cost, but not to worry about the balance as given imminent sale of their St. Margaret's Property and that Ms. Linda Shumate's son Dr. Head was doing well financially and he would help with the rest, meaning pay the rest

of the purchase price. Ms. Baeza said, ok, to accepting the \$90,000.00 that day.

10. Before the parties went into Mr. Sabido's inner office whilst they were in the waiting room both Mrs. Linda Shumate and Mr. David Shumate kept reassuring Ms. Baeza that they would pay the full amount as there was an imminent sale of St. Margaret's property that they both owned and also that her son had agreed to give her the okay that he would pay the rest and was committed to do this for her in any event. She had a pact with her son Dr. Tom Head. Mrs. Linda Shumate told Ms. Baeza she was at her third marriage, and that she had sold a big colonial house in Alabama to put into her son's medical education as he was extremely bright and promised/entered a pact with her, the word she used, to purchase back a house for her. They said Ms. Baeza had no reason to worry that they owed her. The Schumates said they will see to it that Ms. Baeza is paid. They stated that he was a neurologist doctor with 20 years plus experience.

11. Based on their undertakings and assurances Ms. Baeza felt comfortable and reassured in going ahead with the Shumates and trusting them. They all went

into Mr. Sabido's office and Ms. Baeza was presented with a copy of the Agreement and for first time, Ms. Baeza noticed they wanted to pay her a monthly instalment of \$500.00.

12. Ms. Baeza said she was about to walk out and had gotten up to leave when she saw the Agreement with instalments. Mrs. Linda Shumate in presence of Mr. David Shumate held Ms. Baeza's wrist and promised, reassured her that she'd see to it that Ms. Baeza gets paid. Mr. David Shumate also reassured her that she would be fully paid very soon through the said son. So Ms. Baeza signed the Agreement for Sale with \$90,000.00 purchase price and she collected the \$90,000.00 right as she signed, was paid literally in cash. Ms. Baeza gave the house keys over when she signed the Agreement. This was before she signed the Addendum. Ms. Baeza got up, was about to exit door, asked a question and she was presented with the Addendum and she signed it and exited. This was after she collected the \$90,000.00. Ms. Baeza was up and leaving. She left, having accepted payments. Fast forward to January, 2015.

13. In January 2015, at their request Ms. Baeza accompanied Mr. David Shumate and Mrs. Linda Shumate to Doctor/Internist in Clinica de Carranza, Chetumal for medical attention. The Shumates don't speak Spanish. The Shumates both assured Ms. Baeza not to worry as Mrs. Linda Shumate had a Life Insurance Policy out of which she would be paid the full balance in presence of Mr. David Shumate, if she died soon, Ms. Baeza would be paid out of that since she was ill and said that the worst thing that could happen to her was to be diagnosed with cancer since her mother died of cancer. She, Mrs. Linda Shumate said in presence of Mr. David Shumate that her son was a cat in a cradle, after she spent her last dollar on his medical education, he did not come through, meaning he did not help her, (but instead) scratched her in her face, like a cat. Mrs. Linda Shumate asked Ms. Baeza if she knew the song, cat in the cradle.
  
14. The following week Mrs. Linda Shumate called Ms. Baeza saying she is leaving for the United States to receive treatment. Last Ms. Baeza spoke to Mrs. Shumate; she passed away that April, 2015.



15. David Shumate mentioned to Ms. Baeza that he made back and forth trips to the United States to be by Ms. Linda's side at Dr. Tom's house. David Shumate informed Ms. Baeza that before Mrs. Linda Shumate died that Mrs. Linda Shumate had already given instructions for the remaining balance to be fully paid up from her life insurance. This was 17th March 2015 and Mr. Shumate paid two months then as he was looking to go back. Based on that he put Ms. Baeza in the expectation that she would be paid the full balance on his wife's passing. Ms. Baeza went inside and her mother said it was about time they pay her.
  
16. In May 2015 Mr. David Shumate and Dr. Thomas Head visited Ms. Baeza at her home. She expressed her condolences to them and Mr. David Shumate told Ms. Baeza that he and Dr. Head, the son of Mrs. Linda Shumate, the one who is a Doctor and to whom she and David referred when they said he would pay. David Shumate said that they had put the Life Insurance money in a Certificate of Deposit and Dr. Head added, "in a bank in the United States." Mr. David Shumate told Ms. Baeza that he didn't want to immediately use the money as they were trying to settle something with the IRS, meaning United States Internal Revenue Services. He told Ms. Baeza in one year she would definitely get paid the full balance owed on the house.

17. Mr. David Shumate did not pay. After a few months, on 1st June 2016, Ms. Baeza asked Mr. David Shumate about her money. He told her and she quotes "I am not releasing any fucking money." He took out the addendum, a paper which appeared to be the addendum and said, "You see this is your fate it has been signed and sealed," and he waved it touching her nose with it, mocking Ms. Baeza and taunting her. And then Ms. Baeza answered him, said, "well I want my fucking money or my fucking house." He stormed away from her house, slamming his pickup door and revving his engine.
  
18. The following month, July 2016 Ms. Baeza refused to collect. He dropped off \$500.00 cash and her mother received it. Ms. Baeza gave her mother the receipt to give to Mr. David Shumate. She didn't feel comfortable being in his presence anymore. The first time her mother informed Ms. Baeza, afterwards that Mr. Shumate went to pay her with a Police Officer, July 2016. Ms. Baeza was scared for herself because David Shumate had told her he is a Veteran Soldier and can take out the whole of Corozal if he ever wanted. Ms. Baeza was scared of what might happen. She know he knows about guns.

19. After Mr. Schumate's behaviour this was the last straw that broke the camel's back as Ms. Baeza realized that all along they were just stringing her along, deceiving her and telling her anything to get her to sell the house. Ms. Baeza felt wrongfully taken advantage of, tricked and humiliated. In the circumstances she was wrongfully tricked and induced by the Defendant and his wife into signing a contract that she would not have otherwise signed. Ms. Baeza filed this Supreme Court action seeking relief from the purported unregistered contract herein and such alternative relief(s) as the Court may deem just. At trial, Ms. Baeza tendered her Witness Statement as "JB1", the Agreement for Sale as "JB2" and a Letter dated July 13, 2016 as "JB 3".

**20. Cross-examination of Ms. Baeza by Mr. Williams**

Ms. Baeza confirmed that she was a middle and senior level employee of the Government of Belize, specifically a Regional Health Manager. She is university educated in the field of Economics. She was retired at the time that she entered into this contract. Ms. Baeza agreed that there was some negotiation between Mr. and Mrs. Schumate and herself before they came up with a final figure of BZ\$310,000 as the purchase price of the house. She lives in a house which belongs to her mother. She does not own other houses in

Corozal. The witness admitted that she had agreed with the Shumates to receive \$90,000 upfront as a deposit from the sale of this house. She did not agree that the sum of \$90,000 could have taken her through the completion of a substantial part of the bungalow that she had been planning to build with the proceeds of sale. She explained that was not enough for her to build a smaller house in a safe environment for herself and her young child. Ms. Baeza did not agree that the house she was selling had several defects including faulty electrical wiring. She cannot say whether Mr. Shumate had an attorney while he was negotiating with her because they spoke over the phone and she could not see him. As far as she knew, it was just Mr. and Mrs. Shumate and herself who were negotiating. Ms. Baeza admitted that she was the person who recommended two attorneys to Mr. Shumate. She said she suggested Mr. Sabido and Mr. Mason to Mr. Shumate because she knew Mr. Sabido did land law and she knew of Mr. Carlo Mason. She met Mrs. Shumate for the first time when she visited Mr. Sabido's law office on October 27 at the invitation of the Shumates. Ms. Baeza admitted that she knew that it was Mr. Sabido who prepared the agreement. She said she had preliminary discussions with Mr. Schumate for a month before she signed the agreement at Mr. Sabido's office. The first phone call from him was in August followed by another phone call from him in September. She said she met with Mr. Shumate personally at

the house before the date of her signing this agreement; he inspected the house at that meeting. She agreed that she had told the Schumates that she had run out of money while building the house, but the house was incomplete only in the sense of two doors and a decorative railing were missing.

21. Ms. Baeza said that she refused to collect rent from Mr. Schumate since August 2016. She agreed that she met Dr. Head once, and that she communicated with him via telephone. She said she referred to the Agreement as purported because that is the word her lawyer used and she agreed that at no time during the preparation of the Agreement nor at the execution of the Agreement did she raise any objection to the Agreement. Ms. Baeza explained that there were a few things about the Agreement that troubled her, but the Schumates kept reassuring her that she had nothing to worry about. When asked about the Addendum to the contract, the witness said she understood that to mean the document was an attachment to the contract and she agreed that she signed the attachment. She said she read the document before signing it, but that it was pushed in front of her after she had been paid. She only read the first part, not the second part of the addendum. Finally, she agreed that she had read and understood the addendum. She did not agree with counsel's suggestion that Mr. Sabido SC carefully and painstakingly explained the

implication of the wording before inviting her to sign the document. She reluctantly admitted that she understood that the attachments formed and was part of the entire agreement and transaction.

22. Ms. Baeza admitted that she knew that Mr. Schumate and Mr. Head were selling the St. Margaret's property. She did not know that to date they have not been able to find a buyer for that property. She disagreed with the suggestion that nothing was said to her by Mr. Schumate to make her feel assured that he would sell that property in order to be able to pay her the balance of the purchase price on her property; Ms. Baeza said that they always told her that the sale was imminent and that the balance would be covered by their stepson who was doing well financially. She said that Mr. Head came to her house and made Mr. Schumate go back on his word that they would pay her out of Mrs. Schumate's life insurance policy. She said Mr. Schumate was forced by Mr. Head to recant his promise to pay her. The witness said that Mr. Sabido did not explain anything to her about the Agreement she signed. She said she went back to see Mr. Sabido to explain to him what had happened with the Schumates. She agreed that she signed the Addendum which stated that she understood the terms of the agreement and the manner of payment of the balance of the purchase price. Ms. Baeza agreed that a JP witnessed her

signature. She admitted that there was a major altercation between Mr. Shumate and herself at her home on one occasion after which he always came with a Police Officer to pay her the rent. She did not agree with counsel's suggestion that her allegation of being tricked or induced into the Agreement was an afterthought. She disagreed that there was no trickery or inducement by the Schumates. While she said the Schumates said the sale of their property was imminent, she agreed that they did not give her a timeline. She said she went back to Mr. Sabido because she had become frustrated with the Schumates. She did not go to another attorney because Mr. Sabido knew the case better than anyone. She agreed that she signed the addendum which explained that if there is no sale of St. Margaret in a lump sum, then she would only receive a monthly payment of BZ\$500 until the balance is paid.

23. Under re-examination by her counsel Ms. Pitts, Ms. Baeza said that when she said that the building was not complete, she meant that three inside doors and a decorative railing were not installed. She stated that after the letter dated July 13, 2016 was sent by Mr. Sabido she did not receive payment from anyone towards the purchase price. Ms. Baeza said that she refused to accept the \$500 payment after an altercation she had with Mr. Shumate. She also said that before she went in to sign the agreement she was given assurances by Mr.

Shumate and the late Mrs. Linda Shumate that Dr. Head would ensure that Ms. Baeza would pay off the balance of the purchase price. No one complained to Ms. Baeza about any defects in the property. She said she felt humiliated and tricked by Mr. and Mrs. Shumate into signing a contract that she would never have signed otherwise.

### **Evidence of David Shumate**

24. Mr. Shumate says that he is a Retiree who lives in Corozal Town, Corozal District and that he is the Defendant named in this action. In or about the year 2010, he was travelling in Corozal with his wife (now deceased) when he saw the property (subject of this litigation) with a “For Sale” sign posted on it. Because his wife really liked the property Mr. Shumate called the references number and spoke to the Claimant, asking for information about the purchase price and other related matters.
  
25. About one week or so thereafter Mr. Shumate called and asked the Claimant to see the property. Accompanied by a friend he went to Corozal to look at the property, took pictures and videotaped the process so that his wife could see the footage. This made his wife like the property even more, so they called and made a counter-offer below the original asking price.



26. The Claimant accepted this counter-offer and said that she would have her lawyer prepare the necessary papers. Her lawyer then sent the documents for Mr. and Mrs. Shumate to review and they made some changes. These changes were later agreed upon and arrangements were made for a meeting between the Claimant, her lawyer, Mrs. Shumate and Mr. Shumate.
  
27. At this meeting Mr. and Mrs. Shumate made the down payment. The Claimant's lawyer asked her repeatedly if she was comfortable with the terms of the proposed contract. The lawyer then prepared a secondary document which he had the Claimant sign as well, indicating or confirming that she understood and fully accepted the contents and implications of the contract.
  
28. The lawyer also stressed and explained that it could take up to thirty (30) years before the Claimant received the full purchase price of the property. Mr. Shumate and his wife proceeded to take possession of the property and made all their scheduled payments in accordance with the contract up until the unfortunate passing of his wife in 2015. Upon the death of Mr. Shumate's wife, the Claimant approached him in a menacing manner and suggested that Mr. Shumate had to use his insurance money to pay her out or she would re-

possess the property. Mr. Shumate was very much taken aback at this, since neither he nor his wife had entered into any agreement or arrangement of that sort. In fact, he says that there was never any discussion or mention of insurance, whether he had any and if so, how much it was.

29. Therefore Mr. Shumate says he refused to entertain any discussion to that effect, and continued making the stipulated monthly payments due under the contract until the Claimant refused to accept same. He said he even had his Attorney-at-Law write a letter to the Claimant, asking for details of a bank account into which payments could be made, but she never responded to the request. A copy of this letter is exhibited hereto and marked "D.S.1".
30. During this time the Claimant went as far as to call his late wife's oldest son and demanded money from him. On a subsequent occasion the Claimant also called his said son and promised sexual favours for money. Since then Mr. Shumate has been making and continue to make payments for the taxes due on the property.
31. Mr. Shumate was allowed to comment on portions of Ms. Baeza's testimony under the CPR 29.9 in relation to her explanation about reducing the \$100,000

purchase price by \$10,000. Mr. Shumate said he was caught by surprise at the transfer fee of \$10,000 so he asked the Claimant for a \$10,000 reduction to allow him to pay that fee and she agreed. He denies making any statement about the imminent sale of property because one never knows when real estate is going to sell.

32. In relation to Ms. Baeza's evidence that Mr. Shumate and his wife kept reassuring her before entering Mr. Sabido's office that they would pay the full amount as there was an imminent sale of their St. Margaret property and that Mrs. Shumate's son would pay the balance. Mr. Shumate said that he and his wife arrived early and had to wait for Ms. Baeza to arrive at the lawyer's office. He said there was no mention of the sale of their property nor was there any mention of their son.

33. On Ms. Baeza's evidence that when they went into Mr. Sabido's office she was presented with a copy of the agreement and she noticed they wanted to pay her a monthly instalment of \$500, Mr. Shumate said that he understood that Mr. Sabido was Ms. Baeza's lawyer who sent him a copy of the agreement. He says he was shocked to read that she had not seen the agreement because he assumed her lawyer would have sent her a copy.

34. Commenting on Ms. Baeza's evidence that Mrs. Shumate held her wrist as she was about to get up and leave upon seeing the agreement with monthly instalments, Mr. Shumate said his late wife would never grab someone's hand which is against everything she believed in. He also said Ms. Baeza did not stand up to walk towards the door.
35. On Ms. Baeza's statement that he also reassured her that she would soon be fully paid through their son, Mr. Shumate said that he made no such assurances as that would be foolhardy.
36. Mr. Shumate said that Mr. Sabido strongly advised Ms. Baeza against signing the Agreement as it was not in her interest but she still signed it after she had reviewed it. Ms. Baeza then asked Mr. Sabido if he could provide her with an escort to the bank so she could deposit the money and he did. The keys were handed over to the Shumates, they all shook hands and departed separately.
37. On Ms. Baeza's statement that he and Dr. Head had told Ms. Baeza that they had put life insurance money into a certificate of deposit in the United States, and that he told Ms. Baeza he needed to settle something with the IRS before paying her, Mr. Shumate said at no point did he talk about life insurance. He

said neither he nor his son would discuss such internal family business with outsiders.

- 38.** Commenting on Ms. Baeza's statement that she felt taken advantage of, tricked and humiliated into signing the Agreement, Mr. Shumate said no one forced Ms. Shumate to sign the contract. She could have got up and walked at any time or she could have made amendments of her own to the contract. He says he was in no rush as these things take time.

**39. Cross-examination of Mr. Shumate by Ms. Pitts**

In response to a question about his background, Mr. Shumate said that he was retired from the US Military and from IBM. He said he enlisted originally as a Medic then went on to become a Cavalry Scout. He then went on to Officer Candidate School and became a Lieutenant in the US Army. He then went on to work as an independent contractor after serving in the army for a while and then he was hired by IBM.

Mr. Shumate said his son is a Neurologist, a doctor trained to deal with the brain and disabilities. He said the agreed purchase price was originally \$350,000 asking price. He could not say how much he has paid so far on the

contract; he kept paying up until the time that she refused to accept payment. In response to the question on whether he owed Ms. Baeza \$185,000 on the property, he said he has receipts showing he has paid a bit more but he can't find the receipts. He agreed that was at least what he owed Ms. Baeza. Mr. Shumate also agreed that a year or two ago Ms. Baeza had accompanied he and his wife to Chetumal as they did not speak Spanish.

40. Mr. Shumate denied that Ms. Baeza had indicated to him that she was selling her property so she could build another house for herself and her daughter. He denied that Ms. Baeza had been good to him and his wife even throughout his wife's illness; he said Ms. Baeza had just been neutral, an acquaintance. He did not accept that all the documents were prepared at his and his wife's instructions up to the point they went to sign. Mr. Shumate said he recalls that he and his wife split the cost of the attorney's fees with Ms. Baeza. He agreed that the title document for Ms. Baeza's land is being held by the attorney in escrow. He said the property at St. Margaret is in the name of himself and his late wife. He denied that he or his late wife gave Ms. Baeza the assurance that their son Dr. Thomas Head the Neurologist was committed to paying her the balance of the purchase price.

**41. Re-examination of Mr. Shumate by Mr. Williams**

Mr. Shumate was questioned about whether he and his wife had told Ms. Baeza that the sale of their property was “imminent”. He replied that all efforts went into trying to save his wife’s life when she became ill. He has made efforts to sell the property via real estate agents. At the time of entering the Agreement with Ms. Baeza, they had no buyer for their property. Mr. Shumate said Ms. Baeza never indicated to him the reason she was selling her property. He agreed that the Agreement was prepared on the instructions of himself and his wife; the lawyer never mentioned instructions from Ms. Baeza. He said when he was communicating with Mr. Sabido he thought Mr. Sabido was Ms. Baeza’s lawyer and was speaking for her. He repeated that Mr. Sabido repeatedly tried to warn Ms. Baeza against signing this contract telling her that the contract was to the advantage of Mr. Shumate and his wife in the long term.

**Legal Submissions on behalf of the Claimant**

**42.** The Claimant and Defendant, the parties, entered a signed contract dated the 27<sup>th</sup> October, 2010 between the Claimant as Vendor and David Shumate and his wife Linda Shumate as Purchasers. The Claimant Judith Baeza instituted

legal proceedings by way of a Fixed Date Claim herein against the Defendant David Shumate *inter alia* for equitable relief to set aside a contract entered into with Defendant David Shumate and his wife Linda Shumate (thereafter deceased) as unconscionable and unjust. She also sought against surviving Purchaser an order for recovery of property subject matter thereof located at Registration Section Corozal Central Block: 1 Parcel 120 and further or alternative order(s) the Honourable Court may deem fair equitable just and/or appropriate in the circumstances.

43. Addendum thereto of even date signed thereafter by the Claimant. It is the Claimant's position that she was led to believe based on terms of the contract that the Defendant and his wife had an imminent sale of a property in St. Margaret's Village, Cayo District and apply proceeds of sale to pay the balance owed. On basis of that, the Claimant let the Defendant and his wife into possession of the property on which a large cement house was.
44. The Claimant maintained that she indicated to the Defendant and his wife that she was selling in order to build another residence of her own for herself and young daughter.



The advertised price was set at \$350,000.00. The agreed contract price set therein was \$310,000.00 of which Ninety Thousand Dollars (\$90,000.00) was to be paid to Vendor upon execution of agreement by the Purchasers at paragraph three (3). The balance of purchase price of \$220,000.00 was to be paid by the Purchasers by monthly installments of Five Hundred (\$500.00) Belize Dollars at zero percent (0%) interest until said balance is paid in full per paragraph four (4).

45. Paragraph five (5) of the contract provided that the Purchasers will sell their property in St. Margaret's Village, Cayo District and will apply the proceeds of that property to pay off the balance owed to the Vendor.

Paragraph sixteen (16) provided that in event of death of either Purchasers or Vendor, the surviving heirs of the deceased will honor the terms of this original agreement. It was a stipulation and term in the agreement constituting and amounting to condition precedent therein that the Defendant would pay off the house.

46. The Claimant was under an understanding and belief based on assurances and representation of Purchasers that she would be fully paid balance of purchase price upon sale of property in St. Margaret's by Defendant, same induced her to the contract.

**47. THE ISSUES:**

(1) Whether there was any particular representation made to the Claimant by Defendants (which) induced her to enter into agreement for sale

(2) If so, whether this constituted a condition precedent or subsequent to the execution of the Agreement for Sale.

(3) Whether in the circumstances there is or was only unconscionable dealing by the Defendant (and/or his wife) sufficient to justify the setting aside of the agreement.

48. The subject matter of Agreements for Sale contract and court claim is Corozal Central, Block 1, Parcel 120 between Judith Baeza and David Shumate and Linda Shumate signed 27<sup>th</sup> October 2010 – JB1. Though client initially claimed \$186,000 remained owing, \$185,000 adjusted same to \$180,500 Belize.

From that date to court hearing Ms. Baeza indicated \$185,000.00 and that she had not collected anything since August 2016; last time collected was July 1, 2016 n.b. this was prior to Senior Counsel letter.

49. Throughout cross examination of Claimant by Counsel Williams for the Defendant: Claimant agreed and maintained Defendant saw the sign on the property, made a call to her enquiring and she suggested as follows: \$350,000.00 Belize price. Claimant and Defendant negotiated back and forth and came up with final figure of \$310,000.00.
50. Tenant lived in another house belonging to her mother in her name. Being retired she maintained that in statement of claim that she “had run out of money in building the house and was seeking to sell it in order to build a smaller house- a bungalow for myself and my daughter.” It was agreed and accepted \$90,000.00 up front as a deposit but she disagreed that that would have taken her entirely into the completion of a bungalow
51. To counsel’s suggestion/question regarding building another house with money from the deposit, Claimant said “no, not in a safe environment, could

not go back there with a young girl (unsuitable). Claimant maintained said new house on lot 120 and denied any defect.

52. It is Claimant's position that she saw the agreement for the first time on 27<sup>th</sup> October, 2010. Claimant agreed in court as in her witness statement, "the following month which would have been July 2016, I refused to collect any further monies from Mr. Shumate." Albeit, the Claimant stated in court that Defendant in company of police delivered a cheque to her mother who collected in error. Claimant agreed it was not the Defendant who refused to pay but (it was) she (who) turned him away.

53. According to her, "Mr. Shumate gave date 27<sup>th</sup> October agreement to be signed; "He also asked for a discount as they had to pay legal fees." There were a few things that troubled her about the Agreement because she saw it for the first time, but they reassured her that she "had nothing to worry about." Further, she said to the court, "I even got up and was about to leave when I found out that they would be paying me \$500.00 per month and not the full balance as I had planned."

54. With respect to the signed addendum or attachment, it was presented to me as I was about to leave and after I had been paid.” When asked if she understood that the attachment formed a part of the overall agreement as is to be read with the agreement, the Claimant responded that she did not understand that part then saying, “I do now. I did not understand that part back then” and that she understood time is of the essence.
55. The claimant also denied that she understood the attachment at the time it was presented to her for signature. Letter of attorney to Defendant of 13<sup>th</sup> July 2016 indicated “If such proposal is not fitting our client will be forced to take legal action in court to protect her interests under the sale agreement resulting from your failure to comply with the terms of paragraph five of the agreement. Claimant clarified she had already signed the agreement of sale. That Claimant went into the contract given the repeated assurances by the Purchasers that there was an imminent sale and in addition to this that Dr. Head, a neurologist (son of Defendant Linda Shumate and stepson of David Shumate), would see that she got paid the full balance.
56. Claimant said she took the word imminent to mean now, soon, very soon. That before she went on to sign the contract already prepared that Purchasers gave

her assurances that in addition to sale of St. Margaret property Dr. Head will make sure she was paid the full balance.

57. At page 870 of Chitty on Contracts, the learned authors in seminal publication posits that “more recently, the courts have admitted evidence to prove an overriding oral warranty.”

Chitty on Contracts Thirteenth Edition Vol. 1 at page 870. The authors went on to reference the case of City of Westminster Properties (1934) Ltd v Mudd, and that Harman J held that “the oral assurance constituted a separate collateral contract from which the landlords would not be permitted to resile.” The learned authors went on thus, “The collateral contract or warrant may be oral or informal...”

58. In the City of Westminster case Justice Harman pronounced that “the Defendant says that it was in reliance on the promise that he executed the lease and entered into the onerous obligations contained in it...that but for the promise made he would not have executed the lease... If these are the facts, there was a clear contract acted upon by the Defendant to his detriment from which the Plaintiffs could not be allowed to resile.”

59. It is respectfully submitted that the Claimant was induced to and only entered into the written contract of 27<sup>th</sup> October 2010 based on the prior oral representation Defendants made to her that they would pay her the balance of the purchase price immediately out of the imminent sale of their St. Margaret's property prior to her signing it; The oral assurance or promise.

This is an exception to the parole evidence rule or otherwise ought to be viewed and construed as a collateral contract.

Hence the Claimant ought to be relieved of the onerous terms thereof to wit; which provides for balance to be paid in at the amount of five hundred dollars (\$500.00) monthly over a period in excess of thirty years. It was her understanding that the sale was imminent and her purpose for selling which she informed the Defendants of at the outset would not be and was not realized. Put another way this was utterly frustrated as non-sale of the St. Margaret's property left the Claimant without the expected funds to build suitable house for herself and young daughter. The St. Margaret's property was not sold by the Defendants and as such the clause 5 of the contract was

not performed by the Defendants who undertook to pay the Claimant the balance of purchase price from same.

60. In the premises the court ought to afford the Claimant such relief as may be appropriate and it is respectfully submitted that the court ought to order the Defendants to pay that balance of the contract within a reasonable time or otherwise treat non-payment as a continuing breach thereof.

**61. Legal Submissions on behalf of the Defendant**

**FACTUAL BACKGROUND:**

The facts of this claim can briefly be detailed as follows:-

- (i) By an Agreement in writing dated 27<sup>th</sup> October 2010 (“the Agreement”) prepared by Attorney-at-Law, Oscar Sabido S.C. (“the Attorney”) the Claimant contracted with the Defendant and his wife (now deceased) for the sale of certain house and land property described as Parcel No. 120 Block 1, Corozal Central, Belize (“the property”) at a purchase price of \$310,000.



- (ii) Attached to the Agreement, and therefore forming part of it, is a document described as an “Addendum to Agreement For Sale” (“the Addendum”), also prepared by the Attorney, in which he sought to explain and clarify certain aspects of the Agreement, in particular clause 5 thereof.
- (iii) Pursuant to this transaction the Defendant and his wife were let into possession of the property and commenced making regular monthly payments to the Claimant in accordance with the express terms of the Agreement.
- (iv) These payments continued throughout until July, 2016 when the Claimant unilaterally refused to accept further sums of money from the Defendant and subsequently caused a letter dated July 13, 2016 to be written to the Defendant by the Attorney, who had previously prepared the Agreement and the Addendum.
- (v) As a result of this stalemate this claim was filed wherein the Claimant now seeks to impugn the validity of the Agreement

principally, it would seem, on the ground that she was misled or induced by the Defendant into executing the Agreement, and or that the Agreement was unconscionable, and therefore should be set aside.

**62. ISSUES ARISING:**

The case chiefly concerns the interpretation of the Agreement voluntarily entered into by the parties, and the central issues are:-

- (i) Whether there was any particular representation made by the Defendant to the Claimant with regard to sale of certain other property situate at St. Margaret's Village, Belize ("the St. Margaret's property") at the time of entering into the Agreement, such as to induce her to do so;
- (ii) If so, whether this constituted a condition precedent or subsequent to the Agreement; and

- (iii) Whether in the circumstances there was any unconscionable dealing by the Defendant sufficient to justify setting aside the Agreement.

## **63. FACTUAL AND LEGAL SUBMISSIONS**

### **Representation and Inducement**

- At trial it was borne out by evidence that the Attorney who prepared the Agreement was known by the Claimant, but not the Defendant. It was on her recommendation that the Attorney had conduct of this transaction: pages 28 – 30 of Transcript.
- Upon execution of the Agreement the Attorney, with his years of experience, made sure that he protected himself by having the Claimant sign the Addendum clarifying, for the avoidance of doubt, certain issues which may have arisen from the Agreement.
- Clause 5 of the Agreement states that “the Defendants will sell the St. Margaret’s property and pay off the balance outstanding on the sale”.
- It is submitted that this was a mere statement of intention, in that it refers to an event that belongs to the future and is not a matter of present or past fact: **Halsbury’s Laws of England, Volume 31 [Misrepresentation and Fraud] at paragraph 705.**
- Under cross-examination the Claimant prevaricated extensively on very crucial aspects of the case. Reluctantly, at pages 46 - 47 of the Transcript she was forced to admit that the St. Margaret’s property had been put on the market by the Defendant and he was actively making efforts to sell it.

- It is inconceivable that the Claimant, a trained economist, would negotiate a transaction of this magnitude and not enquire as to the imminence of the proposed sale (page 62 of Transcript). She admitted reading the Agreement (page 55 of Transcript) but did not raise any query about its contents or purport.
- Furthermore, the Defendant had no way of knowing if and when the St. Margaret's property would have been sold: Comment on witness statement of the Claimant, at page 85 of Transcript. It would have been counter intuitive for the Defendant to make any promise or assurance regarding the imminence of the sale, more so would it have been reckless or foolhardy on the part of the Claimant to accept or rely on any such promise.
- Even if there was such a representation at paragraph 5, it is submitted that its effect, if any, would have been completely extinguished by the execution of the Addendum. In cross-examination and in direct response to a question put to him by the Court, the Defendant was adamant that the Attorney in his (the Defendant's) presence tried to discourage the Claimant from signing the Agreement since he felt that it was in favour of the Defendant: paragraphs 109 - 110 of Transcript. This evidence was neither challenged nor disputed.
- This alone should serve to put an end to the Claimant's case since it is logical to infer that such a reservation must have occurred to the Attorney as a prelude to him taking the precaution of securing her signature to the Addendum.
- It is submitted that the Attorney *ex abundante cautela*, no doubt based on his experience as a Senior Counsel, was vigilant to protect himself by procuring the execution of the Addendum drafted in terms dictated by him: page 88 - 89 of Transcript. This Addendum was signed by all parties to the Agreement. Interestingly, the signature of the Claimant was witnessed by the Attorney and that of the Defendant was witnessed by his office manager, in her capacity as a Justice of the Peace.
- It does ask a bit much to imagine that such an experienced Attorney would have been so irresponsible to involve himself in a transaction which could potentially expose him to liability for negligence.

- It is therefore respectfully submitted that it is foul in the Claimant's mouth to suggest that she was induced or led to believe that there was an imminent sale of the St. Margaret's property, the proceeds of which would have been used to settle the balance outstanding on the Agreement.
- During the course of her cross-examination the Claimant was at pains to try to get around the clear implication and significance of the Addendum. Reference is made to pages 40 - 45 of Transcript, where she was deliberately very evasive and coy in her responses on the matter, even requiring the intervention of the Court to respond to critical questions.
- Eventually, she was forced to concede that she had read and understood the (effect of) the Addendum and that it was an integral part of the entire transaction, in that it sought to explain in simple language and provide a very clear understanding of the situation regarding the St. Margaret's property, sufficient to negate any contrary impression that may have been created by clause 5 of the Agreement.
- It is also submitted that the issue as to whether this (clause 5) was a condition precedent or subsequent to the Agreement therefore becomes otiose. Acceptance of instalment payments by the Claimant would constitute an affirmation of the Agreement and render any such condition precedent unenforceable. Remarkably, it was her unilateral decision not to accept any further payments from the Defendant (page 36 of Transcript) so that no fault can be attributed to the Defendant, who was always ready and willing to comply with the terms of the Agreement.
- When difficulties arose with the payment mechanism, he (the Defendant) had his Attorney-at-Law write to the Claimant requesting banking details in order that he could meet his payment obligations (paragraph 18 of his Witness Statement).

#### **64. Unconscionable dealing**

- The doctrine of unconscionable dealing has been applied very stringently in English courts, and by extension, in our own courts:

**Duress, Undue Influence and Unconscionable Dealing, Second Edition, at paragraph 1-004.** In order to avail herself of relief under this doctrine the Claimant must satisfy three (3) requirements, namely:-

- (a) She is suffering from some kind of vulnerability, in the form of illiteracy, poverty or otherwise;
- (b) The terms of the transaction are oppressive; and
- (c) That vulnerability was knowingly taken advantage of by the Defendant.

- Apart from a bald prayer for equitable relief contained in the Fixed Date Claim Form the Statement of Claim itself contains no particulars of any alleged unconscionable dealing on the part of the Defendant. In fact, this was not specifically pleaded and therefore should not even be advanced and or entertained by this Court: **Hubert Mark v. Belize Electricity Ltd. Civil Appeal No. 11 of 2009**, Judgment of Mottley, P., at paragraphs 17 – 20; **CPR, Part 8.7.**
- In the absence of any particulars of the circumstances giving rise to the alleged unconscionable dealing it has proven embarrassing for the Defendant to adequately reply, but following are the submissions on this issue.
- To begin with, there is no general equitable jurisdiction to set aside a transaction merely because it seems to be unfair. Under English Law the Claimant must plead and prove certain requirements, namely that she was suffering from a particular kind of vulnerability, the terms of the transaction are oppressive to her, and that the Defendant knowingly took advantage of her vulnerability: **Duress, Undue Influence and Unconscionable Dealing, supra, at paragraph 15-005; Snell's Equity, Thirty-Third Edition, at paragraphs 8-041 - 8-045.**
- The question whether all the elements of unconscionable dealing are satisfied is to be assessed as at the time when the contract was entered into, rather than at some later time. So that, allegations of events occurring post Agreement date are to be excluded from consideration: **Duress, Undue Influence and Unconscionable Dealing, supra, at paragraph 15-009.**

- The Claimant, even though describing herself as a ‘domestic’ (at paragraph 2 of her Witness Statement and at page 8 of Transcript, admitted in cross-examination that she was for some fourteen (14) years a senior employee of the Government of Belize, achieving the status of Regional Health Manager. She is also a university- educated, trained economist (pages 24 - 25 of Transcript).
- The Defendant described himself as a retiree, from the United States Military and IBM. It is therefore respectfully submitted that in the circumstances the issue of vulnerability does not arise and there is nothing to suggest that there was any special disadvantage suffered by the Claimant vis-à-vis the Defendant. In fact, she was probably more highly educated than he was: **Duress, Undue Influence and Unconscionable Dealing, supra at paragraphs 16-002 - 16-007.**
- With regard to the nature of the transaction, it is submitted that there was nothing “overreaching and oppressive” about it, even though on the face it may seem improvident to the Claimant: **Portman Building Society v. Dusangh [2000] 2 All ER (Comm.) 221 (CA).**
- Moreover, the Claimant would have to show that the behaviour of the Defendant was characterized by moral culpability or impropriety. The fact that the terms of the bargain were more favourable to one party than to another is not sufficient to trigger exercise of the Court’s equitable jurisdiction: **Boustany v. Pigott - Privy Council Appeal No. 38 of 1992; Duress Undue Influence and Unconscionable Dealing, supra at paragraphs 17-002 - 17-005.**
- It has been contended on behalf of the Defendant that from the very beginning of this transaction the Attorney was known by, and acted for, the Claimant. This is supported and borne out by the fact that the letter dated July 13, 2016 (Exhibit J.B. 3) was written to the Defendant on the instructions of the Claimant. It is submitted that any presumption as to unconscionable dealing is rebutted by the absence of any evidence that the Defendant was aware of any special disability on the part of the Claimant, as well as the fact that she was familiar with the Attorney and was no doubt being advised by him: **Duress Undue Influence and Unconscionable Dealing, supra at paragraphs 17-030.**

- To that extent and in these circumstances it cannot reasonably be said that the Claimant was compromised and had been taken advantage of, because throughout the entire process she had access to, and did obtain, legal advice from the Attorney who prepared the Agreement: **Zainool v. Azim Salim CV2016-01599** (from Trinidad and Tobago).

## 65. Interpretation of the Agreement

- In the interpretation of contracts the Court looks firstly at the natural and ordinary meaning of the words used by the parties in an effort to gather their true intention: **Arnold v. Britton (2015) UKSC 36**, Judgment of Lord Neuberger at paragraphs 14 – 23.
- The Court will not take into account any subjective evidence of either party’s intentions. Evidence of negotiations, or of the parties’ intentions ought not to be received, and evidence should be restricted to evidence of the factual background known to the parties at or before the date of the contract: **Prenn v. Simmonds (1971) 1 W. L. R. 1381**, especially at pages 1384 - 1386.
- Following from this principle is the proposition that the Court will be slow to reject the meaning of a provision simply because one of the parties made a bad bargain. By extension, it is not the duty of the Court to improve the positions of the parties by re-writing the contract, *especially in cases where there is no ambiguity in the language used.*

## 66. The Addendum

- An Addendum is defined as a detailed description of all changes made to a contract and which have been decided upon by both parties. Variously described as an “amendment” or “supplement” it is a document attached to clarify or modify a part of a contract.
- It is therefore submitted that the Addendum prepared by the Attorney in the instant case was meant to prevent possible misinterpretation (especially of clause 5 of the Agreement) and provide the parties with some clearance as to their rights and obligations under the Agreement.



- This was a rather short Addendum, the purpose of which was clearly to avoid possible disputes, or at least to shed light on how such disputes should be fairly resolved. It was precise, concrete and left absolutely no room for doubt.
- It is therefore submitted that the Claimant is practically estopped from invoking the said clause 5 of the Agreement in aid of her quest to have the Agreement set aside. There is no gainsaying that despite all prevarication and hesitation, she was forced to concede, however reluctantly, that she read and fully understood the meaning and effect of the provisions of the said Addendum: pages 40 - 45 of Transcript.

## 67. Credibility

- The case was based on the sworn testimony of two (2) witnesses only – the Claimant and the Defendant. So that, credibility and the demeanour of the witnesses has become a critical component in adjudication of the issues at stake.
- Based on the conduct of the hearing and the testimony provided, it is submitted that the Claimant was lacking in frankness and promptitude in answering under cross-examination. It can fairly be said that she did give the distinct impression that she was not being candid in her responses, at times feigning a lack of understanding and deliberately seeking to get around the perceived impact or effect that her correct answers would have on the outcome of her case.
- The following instances are referenced by way of examples:-
  - On the question as to whether the Defendant had the services of an Attorney-at-Law, and that it was on her recommendation that the Attorney become involved in handling the transaction: at pages 28 - 30 of Transcript, later at pages 64 - 66 of Transcript.
  - As to the state or condition of the house in light of the fact that she (the Claimant) had ran out of money: at page 33 of Transcript.

- Whether she spoke to or had follow-up talks with the Attorney concerning the transaction: at page 34 of Transcript.
- What had been the cause of the cessation of monthly instalment payments by the Defendant, and at whose instance this occurred: at pages 35 - 36 of Transcript.
- As to the Agreement being described as “purported” and the fact that she raised no objections and took no issue with its contents prior to signing: pages 38 – 39 of Transcript.
- Whether she had read and understood the Addendum: pages 40 - 45 of Transcript.
- Whether the St. Margaret’s property had been put on the market for sale and the Defendant was trying to sell it: at pages 46 - 47 of Transcript.
- Her attempts to lay blame on the Attorney whom she had recommended: at pages 49 - 51 of Transcript.
- As to the persons who witnessed the execution of the Agreement: at pages 56 - 57 of Transcript.
- The bad faith attending this claim is displayed where the Claimant accuses the Defendant of drinking and making merry soon after the passing of his wife: at pages 58 – 59 of Transcript.
- As to the circumstances surrounding the preparation of the Agreement: at pages 62 - 63 of Transcript.
- Rationale for the Attorney preparing the Addendum: at pages 63 - 64 of Transcript.

68. In closing it must be said that there is something uncanny about a party waiting for so long (here some 6 years) before coming to the realisation, and making the decision to commence these proceedings. In exercise of its equitable jurisdiction this is one of the factors which the Court will always take into consideration – the delay in taking action.
69. For all of the foregoing reasons it is respectfully submitted that the Claimant has failed to make out a successful case against the Defendant, and the matter should therefore be dismissed with costs.

**70. DECISION**

I thank both counsel for their written submissions which I have found to be of great assistance in determining the issues before me in this trial. The Claimant seeks to set aside this contract on the basis that she was induced to enter into it by reassurances which she claims were given to her by the Defendant and his late wife that 1) the balance of the purchase price owing to the Claimant would be paid to her based on the “imminent” sale of their St. Margaret property and 2) Dr. Head, a Neurologist who was the son of the late Mrs. Shumate and stepson of the Defendant had committed to paying Ms. Baeza the balance of the purchase price. The Defendant resists this Claim on the basis that the Claimant is unable to establish the elements

of undue influence, duress or unconscionable bargain. A contract is not set aside under English law merely because it happens to be unfair to one of the parties, therefore the contract is valid and should be enforced by the court.

I have reviewed the evidence of the witnesses in this matter and I find as a fact that the Defendant is a credible witness on a balance of probabilities. I found him to be a very believable witness especially when he described how Mr. Sabido SC warned the Claimant repeatedly against signing the Agreement because it was so highly unfavorable to her e.g. Mr. Sabido spelt out in explicit terms that it would take the Claimant 36.7 years to collect the balance of the purchase price of \$220,000 if she signed this Addendum. I also find as a fact after reviewing the Agreement and the Addendum that the Claimant fully understood the terms of this Agreement as well as the Addendum, and that since she was desperate for cash she defied Mr. Sabido's advice and agreed to this contract against his advice. I note that Mr. Shumate said he had cash with him that day, and \$90,000 was most likely very difficult for Ms. Baeza to resist since by her own admission she had run out of money to complete her house. I agree with the legal submissions of Mr. Williams in their entirety and I find that the contract is valid. I find no evidence of duress, undue influence as alleged

by the Claimant. Ms. Baeza admitted that she read the contract and understood its contents, yet she went on to sign it, even though its terms were manifestly unfair to her.

71. The Claim is dismissed. Costs awarded to the Defendant to be paid by the Claimant, to be agreed or assessed.

Dated this 20th day of October, 2021

Michelle Arana

Chief Justice (Ag.)

Supreme Court of Belize