

IN THE SUPREME COURT OF BELIZE, A. D. 2012

CLAIM NO. 229 OF 2012

BETWEEN:

**(MAGIL'S MEXICAN PRODUCTS CLAIMANT
(COMPANY LTD. (d.b.a. CAYE SUPPLIES)**

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(AND

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(JUAN ANGEL MUNOZ DEFENDANT

BEFORE THE HON. MADAM JUSTICE MICHELLE ARANA

**Mr. Estevan Perera along with Ms. Payal Ghanwani, Counsel for the
Claimant**

Mr. Anthony Sylvestre, Counsel for the Defendant

J U D G M E N T

Facts

[1] The Claimant, Magil's Mexican Products Co. Ltd. d.b.a. Caye Supplies, is a general merchandise retail store duly registered as a limited liability company pursuant to the Companies Act. The Defendant, Juan Angel Munoz,

was an employee of Magil's Mexican Products Co. Ltd ("Magil's") and acted as Manager being responsible for the deposit of monies, account management and other duties assigned to him from time to time. Upon conducting an audit in October 2010, Magil's discovered that monies were missing from sales for the period June to October 2010, in the sum of \$137,916.46.

[2] Magil's dismissed Mr. Munoz from his employment as Manager. But, before his dismissal, Mr. Munoz agreed to Magil's withholding \$137,916.46 and he promised to make payment to the company. Magil's also filed criminal action against Mr. Munoz. That case was heard by Lucas J. and Mr. Munoz was found Not Guilty by the Jury of the charge of theft. Mr. Munoz has since failed to make payment to Magil's. This present civil claim before this court is a claim for the sum of \$137, 916. 46, or in the alternative damages plus interest and costs.

The Issue

[3] Is Magil's Mexican Products entitled to recover the sum of \$137, 916.46 or damages in the alternative from Juan Angel Munoz?

Evidence from the Claimant

[4] The Claimant called two witnesses to prove its claim; the first witness was Ms. Claudia Barboza. In her witness statement, Ms. Barboza testified that she has been a Manager of Magil's for the past eight years. She said that, Mr. Munoz was employed as a manager at one of the Claimant's department stores, "Caye Supplies" for three and a half years. He was responsible for the overall management of the store which included sales and marketing, weekly balancing of sales, deposits, payroll and monthly preparation of general sales tax, social security, and business tax forms. Ms. Barboza said that she was instructed by her employer, Magils, to conduct an audit of Caye Supplies because cheques received for payment of goods were taking too long to clear. The witness said that Mr. Munoz was present when she was extracting the reports from his computer for the audit and he advised that he would assist her by informing her what monies were missing. Upon conducting this audit, Ms. Barboza discovered that the total sum of \$137,966.46 was missing as detailed in her report attached as Exhibit "CB 1".

[5] Ms. Barboza set out the method she used in conducting this audit. She retrieved the monthly master report prepared by Angel Munoz that is generated from a computer report of the daily sales. The master report comprised of monies that were received from customers in the form of cheques, credit card payments, cash etc., and paid in to the respective

cashier(s). At the end of the business day, Mr. Munoz would retrieve the monies paid from the registers and he was responsible to input the said information into the system and deposit the sums at the bank. From the master report, Ms. Barboza examined all the monies actually received then proceeded to conduct a comparison with the bank statements and deposit books. This is when she found out about the missing monies.

[6] Ms. Barboza also stated that any monies taken from the cash register for Magil's miscellaneous expenses would have had a cash voucher attached and duly signed by the relevant personnel with the authorized charge. This was in order for management to have a clear understanding of funds received daily and what was utilized for expenses by management. She also states that during the audit, Mr. Munoz gave her access to a desk drawer that had been locked which contained a bundle of cheques that were not deposited; it is her evidence that Mr. Munoz moved quickly to deposit those cheques as they were not sure whether or not the cheques had become stale dated.

Cross-examination of Ms. Barboza by Mr. Sylvestre

[7] Upon being shown the Master Reports she had referred to in her evidence, Ms. Barboza admitted that, those reports did not contain her signature nor that of Mr. Munoz. She also admitted that, the documents contained no hand written date. She said that when monies are received those monies should be deposited weekly. She could not say when reconciliation was done at Caye Supplies because she was not working there at the material time. She was working at Super Buy, another company of Magil's.

[8] Ms. Barboza was then shown Exhibit "CB2", the letter where Mr. Munoz agreed to make payments to Magil's. Ms. Barboza disagreed with Mr. Sylvester's suggestion that the amount of money and the date were not on the document when Mr. Munoz signed it. She also disagreed with counsel's suggestion that Mr. Staines had a firearm with him with which he threatened Mr. Munoz.

[9] She agreed that, Mr. Munoz did not work at Caye Supplies alone, but she said that he was the person in charge. She also agreed that she could not tell the court how deposits were made at Caye Supplies since she did not work there, but she said she could show the court. Ms. Barboza disagreed that she and Mr. Staines fabricated the Master Reports which were attached to her witness statement.

Re-examination of Ms. Barboza by Mr. Perera

[10] Under re-examination by Mr. Perera, Ms. Barboza said that, she inserted the amount in her handwriting, and Mr. Munoz dated the document and put his signature on it. The witness explained that the amount was handwritten and inserted afterwards because the confession letter was typed in the other office and then brought to her. She said the confession letter was made by Cindy Selgado, a secretary, and when Ms. Barboza received the letter, Mr. Enrique Staines was there with a Justice of the Peace. They then signed the letter together.

[11] The court asked Ms. Barboza about Ms. Yanira Henkis and the witness explained that Ms. Henkis was an Accounts Receivable Clerk who worked along with Mr. Munoz; she would deposit and receive monies from the companies. Ms. Barboza said that Mr. Munoz would take monies to Ms. Henkis and she would issue a voucher for the amount she received from him.

Evidence of Cindy Staines

[12] Ms. Cindy Staines testified that she is part owner of the Claimant's Company. Ms. Staines reiterated the evidence already given by Ms. Barboza.

She described the role of Mr. Munoz as Manager of Caye Supplies. She described the audit conducted by Ms. Barboza in identical terms. She also spoke of the hidden drawer containing cheques which had not been deposited by Mr. Munoz.

Cross-examination of Ms. Staines by Mr. Sylvestre

[13] Ms. Staines agreed that, her father is Mr. Enrique Staines and that he was still alive. She agreed that she was given authority to bring this claim on behalf of Magil's Mexican Products, and that she has been integral in the stages of this case since 2012. Upon being asked about whether she was aware that Mr. Munoz had alleged since 2012 that, he had been forced to sign the letter, the witness said she was not aware and that Mr. Munoz had not been forced. She said she recalled reading Mr. Munoz's statement in the Supreme Court criminal case where he had been charged for theft; Ms. Staines also admitted that she was aware that during that trial Mr. Munoz alleged that he had been forced by her father, Mr. Enrique Staines, to sign the document. Ms. Staines admitted that since she was not present when the Master Reports were prepared, she could not speak about when the audit was done. She also agreed that no cash vouchers had been exhibited to prove what amount had been handed over by Mr. Munoz.

[14] There was no re-examination of this witness, and the Claimant closed its case.

Evidence of Juan Angel Munoz for the Defendant

[15] Mr. Munoz testified that he is presently a Pharmacy's Assistant living in Orange Walk Town. In his first witness statement of May 16th, 2013, Mr. Munoz stated that he worked with the Claimant Company as a Manager for a subsidiary store, Caye Supplies, between May 2007 and October 2010. As the Manager, he was responsible for the deposit of monies, account management, and other duties assigned to him by the company. The witness concedes that an audit was conducted by the company in October 2010. However, Mr. Munoz says that it is not true that monies in the sum of \$137,916.46 representing sales for the period June to October 2010 were unaccounted for and missing.

[16] Mr. Munoz says that, he had at all times worked along with one Yadira Henkis, a junior Accountant, and accounted for all monies representing sales for that period to the Claimant through Ms. Henkis. Mr. Munoz also states that this audit was not conducted in accordance with standard accounting principles as Claudia Barboza, the person who did the audit, was the Manager of a different store and had no knowledge of Caye Supplies finances.

[17] Mr. Munoz recounted that on 20th October 2010, he was summoned to the Caye Supplies office by Mr. Enrique Staines. At the time Ms. Barboza was present, and on the phone was Mr. Staines' daughter, Ms. Cindy Staines, and his wife, Mrs. Laudacia Staines. Ms. Cindy Staines immediately accused Mr. Munoz of theft and called him a "*F---ing ladron*" while continuing to accuse him of stealing monies from them. He professed his innocence to them, but they persisted in their accusations.

[18] Mr. Munoz described how the meeting took place in the office at Caye Supplies. Mr. Enrique Staines had his licensed gun with him which was visible to Mr. Munoz and he brought a paper telling Mr. Munoz to think what could happen to him. Mr. Munoz said he was afraid because he knew the reputation that the Staines had and he was alone with them in the offices. The Staines took Mr. Munoz's phone away and did not allow him to make a telephone call. While he was still in the office, Mr. Munoz said that his boyfriend, Jeronimo Mendoza, walked into the shop to check on him as Mr. Munoz had called him before his phone was taken away and before he was taken to the office. Mr. Staines met Mr. Mendoza outside the office and chased him out of the store. Mr. Munoz saw Mr. Staines stop a police patrol and the police took Mr. Mendoza away. Mr. Staines walked into the office and told Mr. Munoz that he would make sure that Jeronimo Mendoza is locked

away for life if Mr. Munoz did not sign the paper admitting to taking the money.

[19] Mr. Munoz said that he eventually signed the paper presented to him by the Staines under duress and agreeing that he had withheld monies from the company. The sum of \$137,916.46 was not inserted in his presence. There are no terms of repayment mentioned in the letter. Mr. Munoz denies promising to make payments to the Claimant.

[20] In a further statement dated April 26th, 2018, Mr. Munoz said that he was tried in the Supreme Court (Criminal Jurisdiction) by a trial by jury and presided over by Hon. Justice Adolph Lucas Sr. for the offence of theft. The trial started on 23rd May, 2017, and concluded on 16th June, 2017. The allegations of theft in respect of which he was charged was that Mr. Munoz “*between June 19, 2010 to October 10, 2010 at San Pedro Town*” stole the sum of \$137, 917.00, the property of Caye Supplies. In 16th June, 2017, the jury acquitted and exonerated Mr. Munoz of the charge. Mr. Munoz, therefore, asks that in these circumstances the claim against him be dismissed.

Cross-examination of Mr. Munoz by Mr. Perera

[21] Mr. Munoz admitted that as the Manager of Caye Supplies he prepared documents and reports every month. He was shown Exhibit "CB1". The witness was asked about a deposit slip stamped September 27th, 2010. He agreed that the deposit was from June 4th to 6th, 2010, but the deposit was not made until September 27th, 2010. Mr. Munoz could not recall if he made cash deposits for the months of July, August, September or October. He agreed that he mentioned Ms. Henkis in his Defence, but that he had not asked Ms. Henkis to provide a witness statement nor did he request that Ms. Henkis be summoned. He also was not aware that Ms. Henkis resigned in June of 2010 and that she could not have made comments to him for the months of July to October 2010 as she no longer worked at the company. The witness said he did not ask Ms. Henkis if she was working at Caye Supplies during these months June to October 2010.

[22] Mr. Munoz agreed that Superbuy falls under Magil's. He said he had an Associate Degree in General Studies. He agreed that, he is a diligent worker, good with numbers but he does not have a good memory. He was responsible for depositing cash and cheques but cannot recall if this was weekly or monthly. As Accounts Manager for Magil's, Mr. Munoz said he tried to have employees sign cash vouchers when he paid money out to them, but this was not all the time. He was shown the Master Reports and asked

about whether it was his handwriting showing dates of deposits to Belize Bank. He said, yes. Mr. Munoz disagreed that the reports showed that he held cheques from June for a period of five months before depositing them. He agreed that he was the person who received the cheques in terms of the sales made, but he said he was not always the person responsible to make deposits from sales; he then agreed that he was the person responsible to make deposits from sales. Mr. Munoz denied that the reason he held back cheques for June was because he had taken cash for himself and was later only able to return cash. He disagreed that the bank would not be able to take deposit as the amount would be short due to no cash.

[23] Mr. Munoz was then questioned about the layout and size of the office and how it was that he was able to see all the way to the back when there were rows of shelves with products. He said he was able to see because all the rows were straightened; he was able to see the offices in the back. He was questioned about the document that he had signed and he agreed that was his signature. He agreed that in his witness statement he had not said that, Mr. Staines pointed a weapon at him or that Mr. Staines had threatened to beat him up. He agreed that after the meeting, he did not press charges against Mr. Staines. He agreed that he did not give any reason for not making the deposits in June 2010. He also agreed that he gave no account as to when he deposited

the funds. Mr. Munoz said that, he disagreed that cash sales were handed over to him. He agreed that he did not explain what he did with the cash when he was working for the month of August, September, October. The witness disagreed with the suggestion that the reason that he never accounted for the monies was that he had taken the funds and not deposited it as he had been required to do.

Re-examination of Mr. Munoz by Mr. Sylvestre

[24] Mr. Munoz said that he could not recall because it had been so long ago, nine years. He explained that, he tried to make sure that people would sign vouchers and that, every time that, the boss and staff comes they need cash, and he would sometimes ask that they sign vouchers. But sometimes the boss would be in a hurry and vouchers would not be able to be created. He said the boss has custody of the deposit slips for Caye Supplies.

Evidence of Jeronimo Adrian Mendoza

[25] Mr. Mendoza said that, he received a call from Juan Angel Munoz on the morning of 20th October, 2010, telling him that he was in trouble. The call got cut off and Mr. Mendoza became worried, so he called Mr. Munoz back but there was no answer. He then took a flight from Belize City to San Pedro, and upon arrival Mr. Mendoza walked to the store to see what was happening. Mr. Staines, part owner of Caye Supplies came out of the office and asked

Mr. Mendoza what the f---k he was doing there. When Mr. Mendoza told Mr. Staines, he was there to see Juan Munoz, Mr. Staines told him to get the f---k out. Mr. Mendoza turned around and walked out of the office. Mr. Staines followed him out. As Mr. Mendoza was walking out a police patrol was arriving and Mr. Staines instructed the police officer to arrest Mr. Mendoza. When Mr. Mendoza asked on what grounds, Mr. Staines said it was because Mendoza was Juan Munoz's accomplice and was responsible for loss of cash. Mr. Munoz said he did not know what Mr. Staines was talking about, but the police placed Mendoza inside the police vehicle and took him to the police station where he was questioned; Mr. Mendoza was later released without being charged. Mr. Mendoza was later detained by police for 48 hours when he went to check on Mr. Munoz. He was profiled, fingerprinted and released without any explanation.

Cross-examination of Jeronimo Mendoza

[26] Mr. Mendoza said he was not in the office when Mr. Munoz signed the agreement and he cannot speak to the missing cheques. He agreed that, Caye Supplies is a very large building and that, the cash register is in front. He said he could not recall if there were shelves in the back. He said it would take about one minute to walk to the back of the building, not three minutes. Mr. Mendoza said he did see Mr. Staines at the same time Mr. Munoz was in the

building. He agreed that, he did not say whether or not Mr. Staines had a gun when he walked out towards him on that day, and after the exchange he walked out of the building.

The Defence then closed its case.

Legal Submissions on behalf of the Claimant

The Defendant's Defence

[27] The Defendant in his Defence after 24 months (2 years) now claims that the agreement was signed under duress and up to this day has refused to provide anyone with information regarding the whereabouts of the cash amounting to \$137,916.00 BZE Dollars.

[28] The Defendant's second ground of Defence is that he accounted for the funds over the period of June 19th to October 2010 through the junior Accountant, one Yanira Henkis. However, this is not possible since the junior Accountant had resigned on the 19th of June, 2010; as such, the Defendant could not have provided any funds for the months of July, August, September, or October to her since she was no longer working at the Claimant's Company.

The Issue

[29] It is submitted that there are four main issues for the court to determine.

These are as follows:

- (a) Whether the Defendant was responsible to keep safe the cash proceeds from the weekly sales which were provided to him for the period 18th June, 2010, to October 2010 as part of his job.
- (b) Whether the Defendant has accounted for the sum of \$137,916.46 BZE in cash which was provided to him from the sales for the weeks commencing 18th June, 2010, to October 2010.
- (c) Whether the Settlement Agreement containing the amount of funds to be returned is valid having been signed by the Defendant.
- (d) Whether the Defendant has proven that he executed the Settlement Agreement under duress.

Lies of the Defendant Juan Munoz

[30] The Claimant is of the position that the Defendant lied on numerous occasions and that his testimony should not be accepted as truthful given the number of inconsistencies and lies made by the Defendant. The Claimant made the following lies during cross examination:

- (a) At first the Claimant agreed that he was responsible for depositing the cash and checks received from the customers. When asked if he was responsible for this task, he responded

“*correct.*” Thereafter, he tried to change his answer to “*sometimes.*” What the Claimant failed to realize was that in his own witness statement he had already informed the court that he was “*responsible for the deposit of monies.*”

(b) He lied when he tried to say that he was not always at work and did not receive monies on some days.

(c) He lied when he indicated that the banks would accept the deposits if he failed to provide them with the cash that was noted on the deposit forms.

(d) He lied when he said that the deposits were not made weekly. This is made clear from the actual September deposits tendered in evidence which clearly shows that they were each made a week apart. At the end of the cross-examination, it was put to the Defendant that “*the deposits were made weekly based on the documents before the court*” and he said, “*yes.*”

(e) He lied when he said he accounted for the deposits for the months of July, August, September and October through Ms. Yanira Henkis. This could not have been possible as it was shown clearly through cross-examination that Ms. Henkis had

resigned and left the Clients business on the 19th of June, 2010. Therefore, his statement of accounting for the funds through Yanira Henkis cannot be true.

(f) He also lied when he said that, there were two offices, one in the middle of the store and one to the back. His own witness confirmed that the office was located at the back of the building.

(g) Finally, the Defendant lied to the court when he said he was not always at work and as such did not receive the day sales. After a great deal of back and forth, he conceded that he would be the one to receive the sales, prepare the deposit and make the deposit at the bank.

Important Admissions by the Defendant Juan Munoz

[31] The following admissions by the Defendant Mr. Juan Munoz are important to point out for this Honourable Court:

(a) When asked if the deposits for June 2010 were deposited until September, 2010, the Defendant agreed.

(b) The Defendant also agreed that it was his handwriting on the deposit slips.

- (c) When asked about the dates of the deposit slips, the Defendant agreed that they were a week apart and not monthly as he had claimed under cross-examination.
- (d) After showing the Defendant the resignation letter, he was asked if the resignation of Ms. Yanira Henkis was made on the 19th of June, 2010; he responded “*Yes, that is what I see.*”
- (e) He also agreed that it was his signature on the document confirming the amount of funds that was misappropriated.

Important Admissions by the Defendant’s Witness, Jeronimo Mendoza

[32] The following admissions by Jeronimo Mendoza are also important for this case:

- (a) When asked if he spoke about the settlement agreement in his witness statement, he said, “*No;*”
- (b) When asked if he was in the office at Caye Supplies when Mr. Munoz signed the settlement agreement, he responded, “*No, I wasn’t;*”
- (c) When asked if there was an error in his witness statement when he said Mr. Staines came out of the office and spoke

to him before he (Mr. Mendoza) could ask Ms. Chi what was happening, he responded, “*Yes, it is not correct;*”

- (d) When asked if he saw Mr. Enrique Staines clearly as he came out of the office, he responded, “*Yes;*”
- (e) When asked if this was at the same time the Defendant was in the office signing the agreement, he responded, “*Yes;*”
- (f) When asked if he watched Mr. Enrique Staines the entire time as he approached him, he responded, “*Yes;*”
- (g) When asked if he mentioned anything in his witness statement about Mr. Staines holding a gun, he responded, “*No;*”
- (h) When asked if he mentioned anything in his witness statement about Mr. Enrique Staines having a gun at his side, he responded, “*No;*”
- (i) When asked if he mentioned anything in his witness statement about feeling afraid or nervous as Mr. Staines approached him, he said, “*No.*”

[33] We urge this Honourable Court to accept these answers from the Defendant's own witness as true as this confirms that Mr. Staines did not have any gun at his side when he was in that room with the Defendant.

[34] If Mr. Staines did have a gun at his side (which we deny), the second witness of the Defendant would have seen it and mentioned it in his witness statement since he saw Mr. Staines as he came out of the room.

The Four Issues

[35] We will discuss the reasons as to why this Honourable Court should find for the Claimant in respect of the four issues provided. We will address each of the four issues below:

Whether the Defendant was responsible to keep safe the cash proceeds from the weekly sales which were provided to him for the period 18th June, 2010, to October 2010 as part of his job.

[36] By his own witness statement at paragraph 1, the Defendant answered this question. He states at paragraph 1 of his own witness statement, "*I was responsible for the deposit of monies.*"

[37] Despite the fact on numerous occasions he tried to say he was only responsible "*sometimes.*" Having said that he was the person responsible in his witness statement, we urge this Honourable Court to find that he was

responsible for the preparation of the deposits and seeing to it that all of the weekly sales were deposited at the banks.

[38] It is important to note that, when asked under cross-examination if he received the weekly sales, he did not deny that he did. He simply tried to reduce his responsibility by saying “*sometimes*” when he was at work. However, given his statement in his witness statement and his responsibility we humbly suggest that he was lying and that he received all of the sales for the period 18th June, 2010, to October 2010.

[39] Furthermore, the evidence provided through the testimonies of both of the Claimant’s witnesses were sound. They both indicated clearly in their witness statement that it was the Defendant who was responsible for the overall management of the store which included sales and marketing, the weekly balancing of sales, deposits, payroll and the monthly preparation of General Sales Tax, Social Security and Business Tax. It was the Defendant who received the cash from the sales for the deposit and that he failed to make the deposit and took the funds.

Whether the Defendant misappropriated and failed to account for the sum of \$137,916.46 BZE in cash which provided to him from

the sales for the weeks commencing 18th June, 2010, to October 2010 in contravention of his fiduciary duties.

[40] The Defendant's primary defence to the misappropriation of the cash deposits to the amount to \$137,916.46 BZE Dollars was that he provided same to one Ms. Yanira Henkis between the period 18th of June, 2010, to October 2010. However, this Defence cannot be substantiated since Ms. Yanira Henkis resigned from the Claimant's Company on the 19th of June, 2010.

[41] Under cross-examination the Defendant admitted that Super Buy was one of the companies operated by the Claimant. Thereafter, the Defendant was shown the resignation letter of Ms. Yanira Henkis which was addressed to the Claimant's subsidiary company.

[42] The resignation document was disclosed to the Defendant and presented to the Defendant at cross-examination. The Defendant read the resignation letter addressed to the Claimant. When asked for the date Ms. Yanira Henkis resigned, he answered the 19th of June, 2010.

[43] Therefore, it can only be that the Defendant was lying when he claimed to have accounted for the deposits through Ms. Henkis during the period in question since she was no longer working for the Claimant as of the 19th of June, 2010.

[44] We maintain that the resignation letter and its contents is not hearsay information as it was addressed to Super Buy which is a subsidiary of the Claimant. We say that on a balance of probability it was the Defendant who kept the cash deposits for himself and deprived the Claimant of these funds.

[45] Further evidence suggesting that the Defendant did take the Claimant's cash deposits for the months June, July, August, September and October can be seen in his actions of replacing the early June deposits and depositing same with the bank in the month of September 2010 (three months later).

[46] The Defendant admitted under cross-examination after being asked to look at the deposits that he made in September 2010 and he confirmed the following delays on his part:

- (a) The deposit for June 1st to 3rd was deposited by Defendant on the 20th September, 2010, "CB 1."
- (b) The deposit for June 4th to 10th was deposited by the Defendant on 27th September, 2010, "CB 1;"
- (c) The deposit for June 7th to 10th was deposited by the Defendant on 4th October, 2010, "CB 1;"
- (d) The deposited for June 13th to 18th was deposited by the Defendant on the 13th October, 2010, "CB 1."

[47] When asked if in his witness statement he made any reference to the whereabouts of the cash deposits for the remaining period of June and months of July, August, September, and October, he responded, “*No.*”

[48] When asked if he provided any proof in his witness statement showing that he made the cash deposit for July, August, September and October of the year 2010, he responded, “*No.*”

[49] When asked if he indicated in his witness statement whether or not he informed the boss or the owners of the fact that no deposits were made for the months July, August, September, and October, he responded, “*No.*”

[50] Similarly, when asked if he indicated in his witness statement as to why he did not make the deposits for the months July, August, September, and October, he responded, “*No.*”

[51] He was also asked if he told the court where he had the deposit held until the month of October, and he responded, “*No.*”

[52] When asked if in his witness statement did he say or indicate what he did with the funds, he responded “*No.*”

[53] When asked if he accounted for the cash he received while he was working in the months of July, August, September and October and he said, “*No*” in response to each month.

[54] On a balance of probability, the Claimant says that the Defendant retained the funds after the 18th of June, 2010, up and until 20th October, 2010, and has not returned same to the Claimants. He has only returned the funds for 1st June to 17th June, 2010, in the month of September 2010.

[55] It is important for the Court to note that an audit was done. The audit was submitted as evidence in Court by the Claimants witness Claudio Barboza. The audit was not challenged by the Defendant nor was any cross-examination question presented denying the total amount of monies/cash which was missing and not deposited by the Defendant, “CB 1”.

**Whether the Confession Agreement is valid having been signed by
the Defendant**

[56] The Defendant indicated clearly under cross examination that he was aware that the Confession Agreement was prepared by Ms. Cindy Selgado for him to sign and that it was handed to him by Claudio Barboza.

[57] The Defendant on a number of occasions under cross-examination confirmed that he did sign the Confession Agreement. He confirmed that it

was his signature on the document. Therefore, there is no issue as to the authenticity of the Defendant's signature on the agreement.

[58] The Confession Agreement was tendered into evidence and was therefore before the Court as evidence by Claudio Barboza, "CB 2".

The Confession Agreement

[59] The Agreement clearly contains the following information:

- (a) It is dated the 20th of October, 2010;
- (b) It is signed by Claudia Barboza in the first section;
- (c) At the bottom it states the total amount taken by Mr. Angel Munoz;
- (d) The signature of Mr. Angel Munoz is located at the bottom of the page;
- (e) The signature of Mr. Angel Munoz is witnessed by Claudia Barboza;
- (f) The signature of Mr. Angel Munoz is witness by a Justice of the Peace.

[60] Under cross-examination, the Defendant confirmed all of the details contained in the confession agreement.

Whether the Defendant has proven that he executed the Confession Agreement under duress.

[61] The general principle regarding duress is that it is for the person claiming duress to prove it. This position is clearly laid out by the learned author Nelson Enonchong in his text **Duress, Undue Influence and Unconscionable Dealings (Second Edition)** at paragraph 4 to 12 where he states:

*“The position in **Barton v Armstrong**. It is for the party alleging duress to prove it. However, in Barton it was held that if the complainant proves that the defendant applied pressure, which was illegitimate and that the illegitimate pressure was exerted for the purpose of inducing the complainant to enter into the impugned transaction, then the onus shifts onto the party denying duress to establish that the illegitimate pressure which he exerted for the purpose of inducing the victim to enter into the transaction, in fact contributed nothing to the decision of the victim to enter into the transaction.”* TAB 1

[62] It is the Claimant’s position that the Defendant has failed to prove his purported allegation of duress and as such his defence should fail.

[63] The Claimant maintains that the Defendant did not sign the Settlement Agreement under duress. It is the Claimant’s position that the Defendant

signed the agreement to return the funds because he knew he had taken the funds and had yet to return it.

[64] The Defendant on the other hand claims that he signed it under duress as Mr. Enrique Staines who was in the room with them had a gun at this side.

[65] The Claimant's position is that the Defendant is lying and has fabricated the story of someone having a gun at their side. We humbly suggest that the Defendant has failed to prove that Mr. Staines had any gun at his side when he the Defendant signed the settlement agreement.

[66] What is even more important is the fact that his own witness confirmed that he did not mention anything about seeing a gun on Mr. Enrique Staines when he approached him after coming out of the office.

This is very telling

[67] We humbly suggest that this Honourable Court should find that there was no threat of violence or gun used to threaten the Defendant.

[68] It is the Claimant's position that Jeronimo Mendoza could not assist the court in respect to any details regarding the signing of the Agreement since he was not present in the office when it was signed by the Defendant.

[69] The Claimant humbly says that the following facts clearly suggest on a balance of probability that the Defendant did not sign the Agreement under duress:

- (a) He did not describe any alleged gun in his witness statement;
- (b) His second witness stated that he saw Mr. Enrique Staines as he came out of the room and walked towards him from the back of the store;
- (c) The second witness of the Defendant, Mr. Mendoza, did not mention anything in his witness statement about seeing Mr. Enrique Staines with a gun at his side when he came out of the room or when he approached him;
- (d) The Defendant admitted that he did not file any criminal complaint for threat or assault against Mr. Enrique Staines after he signed the settlement agreement; and
- (e) The Defendant confirmed that two years had passed between the signing of the settlement agreement and the filing of the claim and that throughout that period he at no point informed the Claimant that he was challenging the settlement agreement;

- (f) The Settlement Agreement was signed before a Justice of the Peace which strengthens the argument that it was signed by the Defendant willingly. The Justice of the Peace was present during the signing of the document;
- (g) The Defendant did not challenge the fact that the Justice of the Peace was present and verified his signature. He did not summon the Justice of the Peace to present any questions to him concerning his verification;
- (h) There were no deviations in the signature of the Defendant on the sale agreement suggesting that he was not scared, stressed or nervous when he signed.

[70] It is telling that even though the burden of proving duress was on the Defendant alleging the duress that he did not summon the Justice of the Peace to testify.

[71] The Claimant's position is that the Defendant did not do so since he knew that he signed the settlement agreement willingly having acknowledged that he took the cash deposits for the period 18th June, 2010, to October 2010 and knew he was responsible for returning same.

[72] Another important point that the Claimant would like to bring to the Court's attention is the fact that the Defendant himself conceded that Mr. Staines and his family are well known business persons in San Pedro and that as far as he knows Mr. Staines has not been charged for shooting anyone in Belize or any crime for that matter.

[73] Again, we urge this Honourable Court to accept these answers from the Defendant's own witness as true as this confirms that Mr. Staines did not have any gun at his side when he was in that room with the Defendant.

[74] If Mr. Staines did have a gun at his side (which the Claimant denies), the second witness of the Defendant would have seen it and mentioned it in his witness statement since he saw Mr. Staines as he came out of the room.

Legal Submissions on behalf of the Defendant

[75] These submissions are submitted on behalf of the Defendant in this matter, the thrust of which is that the Claimant's claim should be dismissed with costs.

Background

The Claim & Evidence of the Claimant

[76] The Claimant on the 19th April, 2012, commenced the instant claim. By paragraph 7 of the Statement of Case of the same date, the Claimant's claim/chose in action¹ is one of breach of contract purportedly resulting from the failure of the Defendant to repay the sums owing to the Claimant. The Claimant therefore claimed the sum of \$137,916.46 and in the alternative damages for breach of contract.

[77] Annex to the Claimant's Statement of Case marked "MM2" is a letter dated October 20, 2010, in which the Defendant purports to "*have come to an agreement as a form of confession of taking money from Caye Supplies,*" the sum being One Hundred Thirty-Seven Thousand Nine Hundred Sixteen Dollars and Forty-Six Cents (\$137,916.46). The document does not contain a promise by the Defendant to repay the sum of \$137,916.46². Nonetheless, the Claimant's chose in action for breach of contract resulting from the failure of the Defendant of the Defendant to repay the said sums, is based on this document.

[78] The trial of the claim commenced on 3rd July, 2018, with the Claimant presenting its case and concluding on 8th October, 2019, with the Defendant concluding his case.

¹By section 2 of the Limitation Act, an "action" is defined as any court proceeding in a court of law [Tab 1].

²The consequences of this is discussed hereunder.

[79] The Claimant had two witnesses having filed two witness statements as part of its claim. These were the witness statement of Cindy Staines dated 1st November, 2013, and witness statement of Claudia Barboza also dated 1st November, 2013.

[80] Again, in neither of the witness statements do the witnesses depose that Defendant agreed to repay the sum of \$137,916.46.

Cindy Staines

[81] The thrust of the witness statement of Cindy Staines was that: (i) the Defendant was responsible for the overall management of the store which included sales and marketing and the weekly balancing of sales, deposits, payroll and monthly preparation of general sales tax, social security and business tax forms (para 3); (ii) an audit was conducted by Ms. Claudia Barbosa of the sales of the store for the period May 1st, 2010 to October 30th, 2010 and it was found that \$137,966.46 were unaccounted for (para 6); (iii) the audit was conducted using a master report (“CS1”) allegedly prepared by the Defendant though not signed or initialed or dated by the Defendant. This report is allegedly generated from a computer report of the daily sales; (iv) monies taken from the cash register for the Claimant’s miscellaneous expenses would have a cash voucher attached to the same and duly signed by relevant personnel (para 8). The witness accepted in cross examination that

this is a way to reconcile what is received and what is handed over and further accepted she did not have attached to her witness statement any cash voucher, which would give an indication of cash received and handed over; (v) during the audit, cheques which had not been deposited were found hidden in a drawer (para 9). This witness accepted in cross examination that she was not in the country when this audit was done and as a consequence, this part of her evidence would be hearsay. In any event, the purported cheques which were found were not annexed to the witness statement of this witness and did not find its way into evidence.

Claudia Barboza

[82] The witness statement of Claudia Barbosa was very much similar to that of Cindy Staines, the thrust of which was that: (i) the Defendant was responsible for the overall management of the store which included sales and marketing and the weekly balancing of sales, deposits, payroll and monthly preparation of general sales tax, social security and business tax forms (para 3); (ii) she conducted an audit of the sales of the store for the period May 1st,

2010, to October 30th, 2010, and it was found that \$137,966.46 were unaccounted for (para 6). The witness accepted in cross-examination that she was not an auditor in 2010 when she conducted this audit. The witness also admitted that she was the Manager for Super Buy at the time, not the Manager of Caye Supplies as deposed to at para 2 of her witness statement; (iii) the audit was conducted using a master report (“CB1”) (para 7). The witness accepted that this report “CB1” does not have the Defendant’s signature, nor hers and similarly is not dated. The witness further accepted in cross-examination that she would not have known when reconciliation was done for Caye Supplies. She also accepted that the Defendant did not work at Caye Supplies alone and that she could not say who did the deposits for Caye Supplies; (iv) the Defendant executed a document (CB 2) admitting theft of the monies from the company (para 11). The witness accepted that Mr. Enrique Staines was present when the document was executed. She also accepted that the amount was handwritten in and not typewritten in.

Defence & Defence Evidence

[83] The Defendant by his Defence dated 14th August, 2012: (i) denied that the sum of \$137, 916.46 representing sales for the period June to October 2010 was missing and unaccounted for (para 3); (ii) denied agreeing to the withholding of \$137,916.46 (para 5); (iii) accepted that he signed “MM2” but

that he was forced by Enrique Staines, father of Cindy Staines, to sign same, as a result of the threat of physical violence Mr. Enrique Staines made to him with the use of his gun (para 5); (iv) That at the time of signing, the document did not have a specified sum of money inserted and that the sum of \$137,916.46 was inserted on the document in his absence (para 5); and (v) denies promising to make payments to the Claimant to repay the sum of \$137,916.46 (para 5).

[84] The thrust of the Defendant's defence as way back as August 2012 then was a denial that he entered into an agreement or contract to repay the sum of \$137,916.46 to the Claimant.

[85] The Defendant by his witness statement and that of his witness Jeronimo Adrian Mendoza provided evidence of the circumstances leading up to the Defendant signing of "MM 2."

Juan Munoz

[86] The Defendant in his witness statement dated 16th May, 2013 testified that:

- (i) He was indeed Manager of Caye Supplies between the period May 2007 to October, 2010 and as Manager he was responsible for the deposit of monies, account

management and other duties assigned: para 1 witness statement;

- (ii) While an audit was indeed conducted, it is not true that the sum of \$137,916.46 representing sales for the period June to October, 2010 was unaccounted for and missing: para 2 witness statement;
- (iii) The audit was not done in accordance with standard accounting principles³ and Claudia Barboza had no knowledge of Caye Supplies internal financial system since she was managing Super Buy, another store: para 3 witness statement;
- (iv) On 20th October, 2010 he was summoned to Caye Supplies office by Mr. Enrique Staines. Present was Claudia Barbosa and Cindy Staines was on the phone and he was accused of theft: para 4 of the witness statement;
- (v) Mr. Staines had his firearm with him which was visible from his waistband and threatened to slap him. Mr. Staines brought a paper for him to sign and told him to think what

³It is noted here that Claudia Barboza, who conducted the audit, accepted that at the time she was not an auditor.

could happen to him. He was terrified because he knew the reputation the Staines had and he was alone in the office with them: para 6 witness statement;

(vi) His boyfriend Jeronimo Mendoza had arrived at the store but Mr. Staines had chased him out of the store and Mr. Staines had instructed a passing police patrol to take his boyfriend away: para 7 of the witness statement: para 8 witness statement;

(vii) He eventually signed the document under duress, but the letter did not have inserted in it at the time of signing the sum of \$137,916.46: para 9 witness statement;

(viii) He at no time made promise to make payments to the Claimant to repay the sums of \$137,916.46: para 10 witness statement.

[87] Significantly and importantly, the Defendant was NEVER challenged on his evidence at para 10 of his witness statement, viz, that he did not promise to make payments to the Claimant to repay the sum of \$137,916.46. And there was no evidence on the Claimant's case, by way of extrinsic evidence to "MM 2", to refute the Defendant's defence on this score. We explain the consequence of this below.

[88] In his second witness statement dated 26th April, 2018, the Defendant further deposed that he was tried in the Supreme Court of Belize before the Honourable Justice Adolph Lucas for the offence of theft between 23rd May, 2017, and 16th June, 2017; the allegations being that he stole the sum of \$137,916.46., the property of Caye Supplies. The Defendant further deposed that he was acquitted and exonerated of the charge.

[89] It is to be recalled that Cindy Staines, part owner of the Claimant business, and Claudia Barbosa, had deposed at para 11 and 12 respectively of their witness statements that the Defendant was being prosecuted for arising from the Defendant's executing of "MM2": see too para 11 of the witness statement of Claudia Barbosa.

[90] Significantly as well Cindy Staines in cross-examination accepted that Enrique Staines, her father, was still alive; that her father had testified in the criminal trial of the Defendant in the Supreme Court; that she was aware that the Defendant had alleged in the criminal trial that her father had forced him to sign the document; that the Defendant was found not guilty of theft in the Supreme Court and that her father did not provide a witness statement in the instant trial.

Jerónimo Adrian Mendoza

[91] The witness' evidence mirrors that of the Defendant relevantly as he details that when he had arrived at Caye Supplies office he was met by Mr. Enrique Staines who drove him from the store and ordered a police patrol to take him away where he was locked down.

Submissions

[92] It is submitted that, the principal question in this claim is whether there exists a valid agreement between the parties for the Defendant to repay the sum of \$137,916.46 to the Claimant, as pleaded at para 7 of the Claimant's Statement of Case.

[93] It is of significance that the Claimant has not amended its Statement of Case, and that the claim before this Honourable Court is not one of misappropriation or negligence on the part of the Defendant for failing to discharge his duties as Manager and thereby causing the loss of unaccounted sums of monies as was pleaded, for instance, in the case of Claim No. 383 of 2016 *Hofus Limited v Koshia Gentle & Lydia Bennett* [Tab 2].

[94] In the *Hofus Limited* case, the Claimant was a company carrying on a retail business of household goods. The Defendants were former account employees of the Claimant and they were sued jointly and severally for misappropriation of the Claimant's funds and in the alternative, damages for

negligence in failing to discharge their duties as accounts employees of the Claimant company, and thereby causing or allowing the Claimant's funds to be misappropriated: see *paras 1 and 2 of the judgment*. In the case at bar, the Claimant has elected to bring a claim in breach of contract. The Claimant, however, has focused and presented its case through the pith and substance of the questions put to the Defendant in cross-examination as though this were a claim for misappropriation. But as the pleaded case of the Claimant discloses, it is one of breach of contract.

[95] There are therefore, it is submitted, only two issues for this Honourable Court's consideration. The first is whether "MM2" is a valid agreement and secondly, if this Honourable Court answers this first issue in the affirmative, whether "MM 2" is an agreement or promise by the Defendant to repay to the Claimant, the sum of \$137,916.46.

Issue 1: Is "MM2" a valid agreement?

[96] The Defendant in his defence and witness statement has averred that the document titled "MM2", though executed by him, was done as a consequence of duress exerted by Enrique Staines.

[97] The learned authors of *Halsbury's Laws of England 4th Ed., Reissue* at para 710 [Tab 3] explain that "Duress" means "*the compulsion under which*

a person acts through fear of personal suffering as from injury to the body or from confinement, actual or threatened.”

[98] Then later on in the same para 710, the learned authors go on to state that:

“A contract obtained by one party (A) by means of duress exercised by (A) over the other party (B) is probably voidable by B, even though he might have entered into the transaction even of the threat had not been uttered: it is for A to prove that his threat has contributed nothing to B’s decision to enter the contract.” [Tab 3]

[99] It is of great significance that the Defendant has led evidence of him signing “MM 2” as a result of the duress exercised by Mr. Enrique Staines and Mr. Staines was not called as a witness to rebut the Defendant’s evidence. This, it is submitted, is very telling. No reasons have been offered to this Honourable Court as to the grave omission by the Claimant to lead evidence from Mr. Staines when the Defendant has way back as August 2012 in his Defence put the Claimant on notice of what he alleges by way of defence to the claim.

[100] There are additional other evidence from which this Honourable Court can as well conclude that, “MM2” was signed by duress. Consider for instance,

that no reason has been offered as to why the specific sum of \$137,916.46 was not typed in when “MM2” was being drafted. It is to be recalled that the evidence of the Claimant was that an audit was conducted and as a result it was unearthed that the sum of \$137,916.46 was unaccounted. If the Claimant’s case is to be believed, that is, that the audit was conducted with the input of the Defendant and information provided by the Defendant in the compiling of “CB1”, then it does not make sense why when “MM2” was being drafted, that the specified amount unaccounted for would not be known and typewritten in.

[101] On a balance therefore, the Defendant’s testimony that when he signed “MM2” the specific sum of \$137,916.46 was not inserted in is more probable than the version proffered by the Claimant. It is noteworthy as well that the supposed Justice of the Peace who witnessed the Defendant signing the document “MM2” was not called as a witness nor, as emphasized above, did Enrique Staines give evidence as to the circumstances relating to the signing of “MM 2”. As the learned authors of *Halsbury* explain, it would be for the Claimant in these circumstances to prove: (i) there were no threats of personal suffering and/or (ii) the threats contributed nothing to the Defendant’s decision to sign “MM2”.

[102] The Claimant did not discharge its legal duty as is required. But there are further rudimentary obstacles in the Claimant’s case in seeking to rely on “MM 1” to ground a claim in breach of contract or agreement.

[103] As we will now examine, the learned authors of *Halsbury* at **paras 603, 604** and **606** [Tab 4] explain what must legally exist in order for a valid contract to be created.

[104] At **para 603** under the rubric, “*The elements of a valid contract,*” the learned authors of *Halsbury* explain that:

“603. The elements of a valid contract. To constitute a valid contract: (1) there must be two or more separate and definite parties to the contract; (2) those parties must be in agreement, that is, that there must be consensus on some specific matters (often referred to in the older authorities as ‘consensus ad idem’); (3) those parties must intend to create legal relations in the sense that the promises of each side are to be enforceable simply because they are contractual promises; (4) the promises of each party must be supported by consideration, or by some factor which the law considers which the law considers sufficient. ...” [Tab 4]

[105] As is made clear by the learned authors of *Halsbury* at **para 603**, for a contract or agreement to be created, there must be promises made by the respective parties.

[106] The vexed question then is does “MM2” satisfy these legal requirements for the formation of a contract? To answer this question, it is vitally important and critical to examine what are the express terms of “MM 2”. Relevantly, it provides:

“I, Angel Munoz, have come to an agreement of accepting as a form of a confession of taking money from Caye Supplies.

The sum of \$137,916.46 (One hundred thirty seven thousand nine hundred sixteen dollars)

Date: Oct 20th, 10”

[107] It is submitted that the difficulty in the way of the Claimant is that “MM 2” cannot be regarded as an agreement. It does not contain any promise on the part of the Defendant; specifically, the Defendant has not made any promise to repay the sum of “\$137,916.46 to the Claimant. This has been specifically pleaded at para 5 of the Defendant’s Defence as way back as August, 2012.

Accordingly, it is submitted that “MM2” does not constitute a valid enforceable contract as a matter of law.

[108] But assume for argument’s sake, this Honourable Court is to hold that “MM 2” is in fact an agreement. As we have shown, however, “MM2” is void as a matter of law as a consequence of it being signed by the Defendant as a result of duress.

Issue 2: Is “MM2” an agreement or promise by the Defendant to repay to the Claimant the sum of \$137,916.46?

[109] The Defendant has essentially answered this question above but will explore and address it in more detail hereunder.

1. The Defendant in his Defence dated 14th August, 2012, at para 5, denies promising to make payments to the Claimant to repay the sum of \$137,916.46. The Defendant further at para 10 of his witness statement testifies that he never did promise to make payments to the Claimant to repay the sum of \$137,916.46. The Defendant was NEVER challenged on this

very important and significant issue, which effectively disposes of this claim for breach of contract.

2. By the express words of “MM2” there is no promise on the part of the Defendant to repay the Claimant the sum of \$137,916.46. The learned authors of *Halsbury*, at para 770 under the rubric “*Express Terms*” explain that:

“770.

...Where there is a contractual document, the question whether the agreement between the parties contains additional, or even contradictory, or oral terms is one of fact, to be decided by extrinsic evidence.” [Tab 5]

[110] So the next question then is whether there is any extrinsic evidence from which additional terms can be incorporated or implied into “MM2”; specifically, whether there is extrinsic evidence from which a term of promise to repay can be incorporated or implied. The answer to this question is, no. Neither in the Statement of Case of the Claimant nor the witness statements of Cindy Staines or Claudia Barbosa are there any extrinsic evidence that any additional term or detail is to be incorporated in the contract document. This, of course, would have come by way of evidence given by the Claimant’s witnesses of an oral commitment given by the Defendant to repay or the

Defendant having in fact made payment in the past towards repayment⁴. There is absolutely no such evidence before this Honourable Court. The Claimant was put on notice of this fact by the Defendant in his defence as way back as August 2012 and the Claimant neither by way of a Reply or Amended Statement of Case, sought to put forward extrinsic evidence (if such existed) of the nature suggested, that would allow this Honourable Court to infer that there were additional terms that can be implied and incorporated into “MM2”. Accordingly, this Honourable Court, at this stage, can only construe the document based on the expressed terms. And, when this is done, it is respectfully submitted, it is clear beyond peradventure, that there is no promise on the part of the Defendant to repay the Claimant the sum of \$137,916.46. The Defendant therefore cannot be said to be in breach of any agreement.

[111] Equally, the Claimant cannot sustain a claim for payment of a debt as this was firstly, not pleaded, and in any event, as the learned authors of *Chitty on Contract* 28th Ed. Vol. 1, explain at para 27-008, “*a debt is definite sum of money fixed by the agreement of the parties as payable by one of the parties in return for the performance of a specified obligation by the other party or upon the*

⁴As the learned authors of *Halsbury* at para 606 explain, “[t]he promise of any contracting party ... may be inferred by implication from his conduct.” Thus, were the Defendant by his conduct in the past to have made payments towards repayment of the \$137,916.46 and then stopped making payment, this could be evidence from which it may be inferred that the Defendant had made the promise to repay the \$137,916.46. That of course, is not the situation here. There is no evidence of the Defendant’s past conduct from which such an implied promise can be inferred.

occurrence of some specified event of condition.” [Tab 6]. As has been shown, “MM2” does not contain any term for payment of the sums inserted therein. And we have shown as well, there was no extrinsic evidence in the trial from which this Honourable Court could infer that that was an implied term. “MM2”, if anything then, is to be regarded as a “*Confession Letter*” to be used in a criminal trial, as the expressed terms of “MM2” make clear and can be inferred from a reading of paras 11 and 12 of the witness statement of Claudia Barboza. A confession, as section 90 of the Evidence Act explains, is “*an admission which states or suggest the inference*” that a person committed a crime or offence [Tab 7]. “MM2” is therefore not a contractual agreement.

[112] The Claimant may have a claim against the Defendant in another action, but the extant action in breach of contract cannot be sustained for the reasons enumerated above.

[113] In the premises, it is submitted that the Claimant’s claim for the specified amount of \$137,916.46 or alternatively damages for breach of contract arising from the Defendant’s failure to repay the said sums as promised (para 7 of the Statement of Case) must be dismissed.

Conclusion

[114] Having regard to the foregoing, we respectfully submit that this Honourable Court should dismiss the Claimant's claim with costs.

Decision

[115] I wish to thank both Counsel for their submissions in this matter. I have reviewed all the evidence, oral and written, as well as the written submissions made on behalf of the parties. I must state that I agree completely with the legal submissions made by Mr. Sylvestre on behalf of the Defendant in this matter. It is quite clear that there is not one scintilla of evidence that there was any promise by the Defendant to pay any money to the Claimant, therefore, there is no contract between the Claimant and the Defendant. At most, the document Exhibit "CB 1" is a confession, nothing more. In addition, the state of the evidence is so poor that this court finds that it does not even rise to the standard of proof required. The undated and unsigned "*Master Reports*" relied upon by Ms. Barboza as the foundation for this "*audit*" conducted to prove that \$137,916.46 was missing from Magil's Caye Supplies is woefully inadequate and far below standards of accounting. Ms. Barboza by her own admission is not a trained auditor, and Mr. Munoz had at most a Sixth Form education in General Studies; neither of these persons had the requisite level of training to provide the quality of evidence which would satisfy this court that that specific amount of money was missing from this

company in the first place. In addition, it is a basic legal tenet that he who avers must prove and prove affirmatively. Even if it was proven that this specific amount of money was missing, and this court finds that the Claimant has failed to do so, the Court finds that this confession document was obtained by duress. The evidence of the circumstances of this “*confession*” which was described in detail by both witnesses for the Defence, while not impeccable, is persuasive and credible.

[116] I find it highly credible that the owners of the Claimant’s Company upon being informed that a large sum of their money was missing were extremely upset and angry at the Defendant, and I believe Mr. Munoz when he said that Ms. Cindy Staines cursed him out and accused him of being a thief. I also believe and accept as true the evidence of his boyfriend Mr. Mendoza that Mr. Enrique Staines cursed him out and drove him from the premises then ordered the police to seize him. I believe Mr. Munoz when he said that he felt intimidated and frightened being alone with his enraged employers in this room threatening him and shouting at him. I believe Mr. Munoz that Mr. Staines threatened to keep his boyfriend Mr. Mendoza imprisoned until Mr. Munoz signed the document. In addition, as correctly pointed out by Mr. Sylvestre, Mr. Munoz has been consistent in his version of events since 2012. Yet the Claimant made no effort to call Mr. Enrique

Staines or the Justice of the Peace as witnesses to seek to disprove this Defence of duress. In these circumstances, I find that the Claimant has failed to prove its case on a balance of probabilities.

[117] The Claim is dismissed. Costs awarded to the Defendant to be agreed or assessed.

Dated this _____ day of June, 2021

Michelle Arana
Chief Justice (Acting)
Supreme Court of Belize