

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 670 of 2022

BETWEEN:

RUHUL AMIN

Claimant

and

SHUMAN AHMED

Defendant

Appearances:

Ashanti Arthurs Martin and Erin Alexis Quiros for the claimant
Estevan A. Perera and Chelsea D. Sebastian for the defendant

2023: July 10, 11, 12

December 8

2024: January 10

JUDGMENT

[1] **CHABOT, J.:** The parties operated Hotel Ocean Paradise, a hotel in San Pedro, Ambergris Caye, until January 2023. Mr. Ruhul Amin filed this claim seeking a declaration that he holds a 60% partnership interest in Hotel Ocean Paradise. Mr. Amin alleges that the defendant, Mr. Shuman Ahmed, holds property in trust for and on behalf of the partnership and seeks a declaration to that effect. Mr. Amin further seeks damages for Mr. Ahmed's alleged breach of the partnership, and an accounting of all profits earned by Hotel Ocean Paradise as of August 2022.

- [2] Mr. Ahmed denies that he purchased property for and on behalf of the partnership. Mr. Ahmed alleges that he, alone, has been making payments towards its purchase price, and he therefore does not hold property in trust for the partnership. He further denies that he breached the partnership. Mr. Ahmed filed a counterclaim in which he seeks a declaration that he is the sole equitable owner of the property, and the settlement of the partnership's accounts.
- [3] For the reasons outlined in this judgment, I deny the claim except for a declaration that Mr. Amin is entitled to a 60% interest in the partnership. Mr. Amin has failed to prove, on a balance of probabilities, that Mr. Ahmed holds property in trust for the partnership. As a result, I grant Mr. Ahmed's counterclaim and declare that he is the sole equitable owner of the property. The partnership is dissolved as of 18th January 2023, and an accountant is appointed to settle the accounts of the partnership.

Background

- [4] In 2014, Mr. Ahmed entered into a hotel business with Mr. MD Azad Miah, Mr. Shahnaj Kamil, and Mr. MD Sharifuzzaman (the "Original Partners"). The Original Partners registered the business name "Hotel Ocean Paradise" to operate the hotel business.
- [5] Hotel Ocean Paradise is operated from the 2nd and 3rd floors of a building located at 25 Barrier Reef Drive, being Parcel 1056, Block 7 in the San Pedro Registration Section (the "Property"). The 2nd and 3rd floors of the Property were originally leased from the building owner, Mr. Felipe Paz Jr. In 2016, Mr. Paz decided to sell the 2nd and 3rd floors of the Property. On 1st December 2016, Mr. Paz entered into a sale agreement with Mr. Ahmed for the agreed purchase price of BZ\$1,000,000.00 (the "Sale Agreement"). The parties dispute whether Mr. Ahmed entered into the Sale Agreement for and on behalf of the Original Partners.
- [6] On 26th October 2021, Mr. Amin agreed to purchase Mr. Miah and Mr. Kamil's interest in Hotel Ocean Paradise. Mr. Amin paid BZ\$100,000.00 to each for the acquisition of their combined 40% interest.

[7] Mr. Amin alleges that on 27th October 2021, he, along with Mr. Ahmed and Mr. Sharifuzzaman, signed an agreement by which Mr. Ahmed acknowledged the partnership's interest in the Property being purchased from Mr. Paz, and agreed that title to the Property would be transferred to Mr. Amin, Mr. Ahmed, and Mr. Sharifuzzaman (the "Transfer Document").

[8] On 29th October 2021, Mr. Amin agreed to purchase Mr. Sharifuzzaman's 20% interest in Hotel Ocean Paradise for the sum of BZ\$100,000.00. Mr. Amin alleges that from that point on, Mr. Ahmed treated him as the 60% owner of Hotel Ocean Paradise.

[9] Mr. Amin alleges that Mr. Ahmed breached the partnership. According to Mr. Amin, Mr. Ahmed, his wife, and his brother, Mr. Shahriar Ahmed, occupy rooms in the hotel without paying any compensation to the partnership. Mr. Amin makes various other allegations in support of his claim that Mr. Ahmed has breached the partnership, including that Mr. Ahmed has unplugged a security camera installed by Mr. Amin to monitor the activities at the hotel; that he has refused to account to Mr. Amin for any revenue, expenses, or profits generated by the hotel; that he terminated the employment of Mr. Shahadat Hussain, who had been hired to represent Mr. Amin's interest; that he has excluded Mr. Amin from participating in the management and decisions in respect of Hotel Ocean Paradise; and, that he has denied the existence of any partnership in relation to the purchase of the Property. Mr. Amin alleges that as a result of Mr. Ahmed's breach of the partnership, he has suffered loss.

[10] Mr. Amin seeks the following relief in the claim:

1. A declaration that the claimant holds 60% partnership interest in Hotel Ocean Paradise, which partnership was established by the registration of Hotel Ocean Paradise under the Business Names Act.
2. An order directing the defendant to execute the appropriate form required by the Companies Registry to effect the change of ownership of the business name, Hotel Ocean Paradise, to remove MD Sharifuzzaman as an owner so that the claimant would be reflected as the 60% owner and the defendant as the 40% owner of the business name.
3. A declaration that the defendant entered into an agreement dated 1st December 2016 for the purchase of Parcel 1056, Block 7 in the San Pedro Registration

Section, for and on behalf of the business, Hotel Ocean Paradise, and all rights under the agreement are held by the defendant in trust for the partners of Hotel Ocean Paradise.

4. A declaration that the claimant is entitled to 60% share of any profits or revenue generated from the use/rental of the 2nd and 3rd floors of Parcel 1056, Block 7 in the San Pedro Registration Section, commencing on 1st January 2023 to the date of determination of this claim.
5. Damages for breach of the partnership constituted between the claimant, defendant, and MD Sharifuzzaman by the registration of Hotel Ocean Paradise under the Business Names Act.
6. An order that the defendant accounts for all profits earned by Hotel Ocean Paradise as of August 2022.
7. An order directing the defendant and his brother Shahriar Ahmed, to vacate the rooms they occupy at Hotel Ocean Paradise.
8. An order that the defendant pays compensation for the unauthorized use of hotel rooms by him and his brother, Shahriar Ahmed, for the periods commencing 1st June 2022 and 1st April 2022, respectively, to the date the rooms are vacated.
9. A declaration that the Lease Agreement dated 30th May 2017 and purportedly executed between the defendant, MD Azad Miah, MD Sharifuzzaman and Shahnaj Kamil is a fraudulent document, as neither MD Azad Miah, MD Sharifuzzaman nor Shahnaj Kamil executed the said Lease.
10. Interest pursuant to sections 175 and 176 of the Senior Courts Act, 2022.
11. Costs.

[11] Mr. Ahmed's position is that the partnership was in respect to the hotel business only. Through the Sale Agreement, he became the sole equitable owner of the 2nd and 3rd floors of the building owned by Mr. Paz. He paid Mr. Paz a deposit of BZ\$150,000.00 for the purchase of the Property, and pays the monthly instalments to Mr. Paz by leasing 14 rooms and a laundry room to the partnership for the operation of the hotel business (the "Lease Agreement"). Mr. Ahmed denies that he purchased the Property on behalf of the Original Partners or anyone else.

[12] Mr. Ahmed alleges that Mr. Amin committed fraud by tricking him into signing the Transfer Document. According to Mr. Ahmed, after Mr. Amin joined the partnership,

Mr. Ahmed was presented with a Lease Assignment Agreement, which he signed. However, unbeknownst to Mr. Ahmed, Mr. Amin attached the signature page of the Lease Assignment Agreement to the Transfer Document. The Transfer Document is therefore fraudulent. Even if the Transfer Document is not fraudulent, Mr. Ahmed alleges that it is of no effect in law because it has no consideration and lacks all of the requirements to be a legal arrangement.

[13] Mr. Ahmed denies breaching the partnership. Mr. Ahmed alleges that Mr. Amin only has a 40% interest in Hotel Ocean Paradise because Mr. Sharifuzzaman failed to transfer his interest to Mr. Amin in compliance with section 21 of the Business Names Act,¹ and his name remains on the Business Name Certificate. Mr. Ahmed further alleges that he has been reporting monthly revenue and expenses to Mr. Amin, that Mr. Hussain left the employment on his own, and that the camera was unplugged by his brother who rents the ground floor of the Property from Mr. Paz. Mr. Ahmed denies the rooms he, his wife, and his brother occupy form part of the hotel business. Mr. Ahmed alleges that he leases 14 rooms and a laundry room to the partnership, and uses the remaining room, which he has renovated into a small 2-bedroom apartment, as his living quarters.

[14] Mr. Ahmed admits that Mr. Amin is entitled to BZ\$1,548.00, being his share of the profits generated by Hotel Ocean Paradise for the period 1st August 2022 to December 2022. The partnership was dissolved and Hotel Ocean Paradise ceased operations in January 2023.

[15] Mr. Ahmed filed a counterclaim seeking the following relief:

1. A Declaration that the defendant is the sole equitable owner of the 2nd and 3rd floors of the building located on Parcel 1056, Block 7 in the San Pedro Registration Section by virtue of his sale agreement with Mr. Felipe Paz.
2. A declaration that no written document or trust exists between the defendant and the original parties in respect to the 2nd and 3rd floors of the building.
3. A declaration that the partnership established by the registration of Hotel Ocean Paradise under the Business Name Act between the claimant, defendant and

¹ Cap. 247, Rev. Ed. 2020.

MD Sharifuzzaman is dissolved as of the 9th of January, 2023 or the 18th of January 2023 pursuant to section 34(c) of the Partnership Act of Belize when the defendant delivered his notice at the address of the hotel business where the partnership operates from personally served the new partners with the notice of termination of the partnership.

4. A declaration that the falsified document dated the 27th October 2021 was secured by fraud.
5. A declaration that the falsified document dated the 27th October 2021 is of no legal effect (in any event) as there was no exchange of consideration between the parties, and it does not contain the basic requirements of a valid contract.
6. In the alternative, a declaration that the partnership established by the registration of Hotel Ocean Paradise under the Business Names Act between the claimant, defendant, and MD Sharifuzzaman be dissolved by virtue of section 37(c) and (f) of the Partnership Act.
7. An order that an accountant be appointed in order to settle the accounts of the dissolved partnership.
8. Interest at 6% pursuant to sections 175 and 176 of the Senior Courts Act, 2022, or pursuant to such other method as the court deems just.
9. Costs.
10. Such further and other relief as the court deems fit.

[16] In his reply and defence to the counterclaim, Mr. Amin denies Mr. Ahmed's allegations, including the allegation of fraud. Mr. Amin denies presenting a Lease Assignment Agreement to Mr. Ahmed for signature, and alleges that Mr. Ahmed willingly signed the Transfer Document. Mr. Amin further denies that profits from the hotel business were only of BZ\$3,870.00 for the period August to December 2022, and claims that Mr. Ahmed under-reported the hotel revenue to the Belize Tourism Board and the Tax Authority.

Issues for determination

[17] The following issues arise in the claim and the counterclaim:

1. Can the court issue any order or declaration in relation to the Original Partners or Mr. Paz?

2. Does the partnership have an equitable interest in the Property?
 - a. Was there a common intention that the Original Partners would have a beneficial interest?
 - i. Did Mr. Ahmed enter into the Sale Agreement for and on behalf of the Original Partners?
 - ii. Did Mr. Ahmed sign the Transfer Document?
 - b. Did the partners act to their detriment or significantly altered their position in reliance upon that common intention?
 - i. Did the Original Partners contribute to the initial deposit of BZ\$154,323.96?
 - ii. Did Mr. Ahmed lease the Property to the partnership?
3. Does the hotel room occupied by Mr. Ahmed and his brother form part of the partnership assets?
4. Does Mr. Amin hold a 60% partnership interest in Hotel Ocean Paradise?
5. Did Mr. Ahmed breach the partnership?

Analysis

Can the court issue any order or declaration in relation to the Original Partners or Mr. Paz?

[18] Mr. Ahmed argues the court is unable to make any order or declaration in relation to the Original Partners or Mr. Paz's rights or interest in the Property because they are not parties to the claim. Making any order or declaration in relation to their rights or interest would effectively make them a party to the claim without their consent. Relying on **Eric McCalla et al. v Grace McCalla**,² Mr. Ahmed argues that any declaratory order made granting Mr. Amin any beneficial interest in the Property would be tantamount to granting a beneficial interest in the Property to the Original Partners.

[19] Similarly, title to the Property remains with Mr. Paz, making him the sole legal owner of the Property. Mr. Amin makes no claim against Mr. Paz. Mr. Ahmed cites the cases of **Jamaica Citizens Bank Ltd v Dyll Insurance Co Ltd & Another**³ and **National**

² [2012] JMCA Civ 31 ("McCalla").

³ (1991) 28 JLR 415 ("Jamaica Citizens Bank").

Commercial Bank Jamaican Ltd v International Asset Services Ltd⁴ in support of his contention that a registered proprietor whose interest could be affected is a necessary party to a claim. Because Mr. Paz was an indispensable or necessary party to the claim but was not added as a party, the court cannot make any findings or order against his property.

[20] According to Mr. Ahmed, a decision by this court granting any beneficial interest to Mr. Amin or altering the terms of the Sale Agreement in the circumstances would be prejudicial to the interest of Mr. Paz as it would circumvent his ability to dispense with his property as he sees fit. Mr. Paz remains the proprietor of the ground floor of the building. The Sale Agreement grants Mr. Paz the first right to purchase the 2nd and 3rd floors from Mr. Ahmed, and contractually obliges Mr. Ahmed to make no changes to the structure of the building without Mr. Paz's consent. These obligations are binding on Mr. Ahmed even after the Sale Agreement is completed and he becomes the legal owner of the 2nd and 3rd floors of the building. Mr. Amin would not be bound by the Sale Agreement, thus prejudicing Mr. Paz. Mr. Ahmed submits that Mr. Amin is not entitled to seek any redress or claim against the title to Mr. Paz's property nor is the court able to force or disrupt Mr. Paz's private agreement since he is not a party to the claim.

[21] Mr. Amin denies that the Original Partners or Mr. Paz are necessary parties to the claim. Mr. Amin argues that, contrary to **McCalla**, he is not seeking any relief for the benefit of an unnamed third party. Mr. Amin seeks a declaration as to his ownership interest in the partnership and the Property. The Original Partners, save for Mr. Ahmed, have sold and assigned their rights to the partnership and the trust to Mr. Amin. Those rights are extinguished and they have no *locus standi* to be named as parties to the claim.

[22] Similarly, Mr. Amin argues that Mr. Paz is not a necessary party to the claim because Mr. Amin does not seek any order against Mr. Paz. Mr. Amin is seeking the recognition of his partnership rights and his interest in the trust property. Mr. Amin is seeking the

⁴ [2015] JMCA Civ 7 G ("National Commercial Bank").

recognition of rights between Mr. Amin and Mr. Ahmed, not against Mr. Paz. The assertion that Mr. Paz would be directly affected financially or legally is without merit as no relief is sought against Mr. Paz. If the court determines the Property is held in trust by Mr. Ahmed, the court will make a declaration that will be enforceable only against Mr. Ahmed. Mr. Ahmed would be accountable to Mr. Amin for the Property and any income derived from the Property. Mr. Amin is not seeking any order compelling Mr. Paz to do, or refrain from doing, anything to the Property. His rights are not impacted.

[23] I agree with Mr. Amin and find the Original Partners (except Mr. Ahmed) and Mr. Paz are not necessary parties to this claim. The Original Partners have sold and assigned their rights and interest in the partnership to Mr. Amin. The court is asked to determine what rights and interest Mr. Amin acquired from the Original Partners. The Original Partners have divested themselves of those rights and interests, and will not be affected by any order or declaration made by the court. They are therefore not necessary parties to this claim. **McCalla** is distinguishable from this case because in **McCalla**, the trial judge had granted a 50% interest in a property to a party who was not claiming any interest, thus effectively making that party a claimant. Mr. Amin is not seeking any order or declaration that would grant rights or interests to the Original Partners.

[24] Similarly, Mr. Paz is not a necessary party to this claim. There is no cause of action against Mr. Paz. Mr. Amin makes no allegations and seeks no relief against Mr. Paz. The orders and declarations Mr. Amin seeks against Mr. Ahmed will not affect Mr. Paz's rights and interest in the Property. The Sale Agreement is between Mr. Paz and Mr. Ahmed, and Mr. Amin does not seek to disturb that contractual relationship. Mr. Amin seeks orders and declarations in relation to the partnership. Mr. Amin claims that the partnership's assets include Mr. Ahmed's rights and interest in the Property, which Mr. Amin claims Mr. Ahmed holds in trust for the partnership. Whether these rights and interests are held in trust for the partnership does not relieve Mr. Ahmed of his contractual obligations towards Mr. Paz. I find, therefore, that Mr. Paz is not a necessary party to the claim.

Does the partnership have an equitable interest in the Property?

[25] Mr. Amin claims Mr. Ahmed holds the Property in trust for the partners of Hotel Ocean Paradise. Specifically, Mr. Amin alleges that the circumstances of the Property's purchase give rise to a constructive trust. As noted in **Halsbury's Laws of England**,⁵

A constructive trust attaches by law to specific property which is neither expressly subject to any trusts nor subject to a resulting trust but which is held by a person in circumstances where it would be inequitable to allow him to assert full beneficial ownership of the property

[26] Because it arises from the operation of law, the existence of a constructive trust is not subject to the requirement in subsection 5(4) of the Trust Act⁶ that it be reduced into writing to be enforceable.

[27] The test for a finding of a constructive trust is in appearance simple, but gives rise to complexities where facts are heavily disputed as they are in this case. The establishment of a constructive trust in equity is premised on a finding that (1) there was a common intention that both parties should have a beneficial interest; and the (2) the claimant has acted to his detriment or significantly altered his position in reliance upon that common intention.⁷ The authorities on this point are numerous and the test is not disputed by the parties, although its application to the facts of this case is.

Was there a common intention that the Original Partners would have a beneficial interest?

[28] According to the House of Lords in **Lloyds Bank**, the parties' common intention can be established in one of two ways: by express agreement, or by inference based on the conduct of the parties, for example through a direct contribution to the purchase price:

The first and fundamental question which must always be resolved is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or exceptionally

⁵ Vol. 98 (2019) at para. 114.

⁶ Cap. 202, Rev. Ed. 2020.

⁷ *Lloyds Bank plc v Rosset* [1991] 1 AC 107 at 132 ("Lloyds Bank").

at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially. The finding of an agreement or arrangement to share in this sense can only, I think, be based on evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been. Once a finding to this effect is made it will only be necessary for the partner asserting a claim to a beneficial interest against the partner entitled to the legal estate to show that he or she has acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or a proprietary estoppel.

In sharp contrast with this situation is the very different one where there is no evidence to support a finding of an agreement or arrangement to share, however reasonable it might have been for the parties to reach such an arrangement if they had applied their minds to the question, and where the court must rely entirely on the conduct of the parties both as the basis from which to infer a common intention to share the property beneficially and as the conduct relied on to give rise to a constructive trust. In this situation direct contributions to the purchase price by the partner who is not the legal owner, whether initially or by payment of mortgage instalments, will readily justify the inference necessary to the creation of a constructive trust. But, as I read the authorities, it is at least extremely doubtful whether anything less will do [emphasis added].⁸

i. Did Mr. Ahmed enter into the Sale Agreement for and on behalf of the Original Partners?

[29] The first issue to be determined is whether at the time the Sale Agreement was entered into by Mr. Ahmed and Mr. Paz, the Original Partners had a common intention that the Original Partners would have a beneficial interest in the Property.

[30] It is common ground that the Sale Agreement was entered into by Mr. Paz and Mr. Ahmed on 1st December 2016. The Sale Agreement provides for the sale of the 2nd and 3rd levels of the building, with Mr. Paz retaining ownership of the ground level. The sale price is of BZ\$1,000,000.00, paid in one down payment of BZ\$154,323.96 to be made at the time of the Sale Agreement, and two subsequent payments of BZ\$659,866.42 in principal plus interest at the rate of 11% per annum, and BZ\$185,809.62 to be paid in 5 years at 6% interest to the Development Finance

⁸ Lloyds Bank at 132-133.

Corporation (“DFC”), who holds a mortgage on the building. Title to the Property is to be transferred to Mr. Ahmed upon full payment to Mr. Paz and the DFC. This has not occurred yet. Clause 13 of the Sale Agreement provides as follows:

13. This Agreement sets out the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements, arrangements and understanding relating to the subject matter hereof.

- [31] Mr. Amin called as witnesses Mr. Sharifuzzaman, Mr. Kamil, and Mr. Miah to testify about the Original Partners’ intention in regards to the Property.
- [32] According to Mr. Sharifuzzaman, from 2014 to 2016, the Original Partners leased the 2nd and 3rd floors of the building from Mr. Paz. In 2016, Mr. Paz experienced financial difficulties and offered the two floors for sale to the Original Partners. All four partners were present when the Sale Agreement was signed. At the meeting, Mr. Paz indicated to the Original Partners that it would not be possible for everyone to have their names on the Sale Agreement. It was decided that Mr. Ahmed would sign the Sale Agreement on behalf of the Original Partners because he resides in San Pedro and managed the hotel. Mr. Sharifuzzaman testified that at all material times, it was intended and understood amongst the Original Partners that Mr. Ahmed would enter into the Sale Agreement for and on behalf of the other partners of Hotel Ocean Paradise.
- [33] Mr. Kamil confirmed that it was the Original Partners’ initial intention that the Property be purchased by all four partners. However, when Mr. Paz indicated he would prefer making the agreement with only one person to represent the partners, it was agreed that Mr. Ahmed would enter into the Sale Agreement with Mr. Paz on behalf of the Original Partners. Mr. Kamil was present when the discussion between the partners occurred, and when the Sale Agreement was signed. Mr. Kamil testified that he trusted Mr. Ahmed because he is a fellow countryman and because their families are closely related. Mr. Kamil stated that it was agreed that Mr. Ahmed would later sign an agreement with the other partners reflecting they have an interest in the Property, however this was never done. Mr. Kamil testified that the partners did not push for that agreement because they trusted Mr. Ahmed as he is like family.

[34] Mr. Miah testified he was present when Mr. Paz offered the 2nd and 3rd floors of the building for sale to the Original Partners. In cross-examination, he could not identify a specific month when the discussion or the signature of the Sale Agreement took place. He also testified that it was initially agreed by the Original Partners that they would purchase the Property in the name of all four partners but given Mr. Paz's wish to enter into an agreement with only one of them, Mr. Ahmed was designated to enter into the Sale Agreement with Mr. Paz. Mr. Miah confirmed that the partners intended to enter into a separate agreement that would reflect their interest in the Property, but this was never done and the issue was not pushed because the partners trusted Mr. Ahmed. Mr. Miah acknowledged there is no document signed by Mr. Ahmed stating that Mr. Ahmed holds property for the partners.

[35] Mr. Ahmed's evidence differs markedly from that of the other Original Partners. Mr. Ahmed testified that Mr. Paz approached him personally and informed him of his intention to sell the Property for BZ\$1,000,000.00. Mr. Ahmed informed the Original Partners of the offer. The Original Partners made it clear to Mr. Ahmed they were not interested in purchasing the Property because they could not afford to pay BZ\$250,000.00 each towards the purchase price or to contribute towards the initial deposit. Consequently, about a month later Mr. Ahmed called Mr. Paz to negotiate an agreement. Mr. Ahmed alleges that he entered into the Sale Agreement with Mr. Paz on his own behalf. He denies that all of the Original Partners were present at the signature. According to Mr. Ahmed, of the Original Partners, only Mr. Kamil attended.

[36] Mr. Ahmed intended to make the monthly instalments by leasing 15 of the rooms (inclusive of the laundry room) to the Original Partners, and from additional revenues from his other businesses. Mr. Ahmed testified that he sold three businesses, "SS Grocery and Ice Cream Corner", "BD Laundromat and Grocery", and "SR International" to raise the capital required to make the BZ\$154,323.96 initial deposit. He denies that the Original Partners made payments towards the purchase price or the deposit.

[37] The evidence is inconclusive as to whether the Original Partners agreed that Mr. Ahmed would enter into the Sale Agreement for and on behalf of the Original Partners.

The Sale Agreement is signed by Mr. Ahmed only and makes no mention of any beneficial interest in favour of the Original Partners. There is no independent evidence of the discussions held between the Original Partners, or confirming whether all four Original Partners attended the signing of the Sale Agreement. Mr. Paz was not called as a witness in this matter despite the central role he plays as a party to the Sale Agreement. In addition, the signatures on the Sale Agreement are witnessed by a person who has not been identified by either of the parties, and was not called as a witness. In cross-examination, Mr. Ahmed stated that he did not call Mr. Paz as a witness because the Sale Agreement is clear. Mr. Amin has not explained why he did not call Mr. Paz as a witness. Mr. Amin bears the burden of proving his claim. His claim is that the Original Partners entered into an oral agreement that differs from the written agreement Mr. Ahmed relies on. Mr. Amin's witnesses have a financial interest in the outcome of this case. I draw an adverse inference from Mr. Amin's failure to call Mr. Paz or the witness to the signatures on the Sale Agreement as witnesses in this matter.

ii. Did Mr. Ahmed sign the Transfer Document?

[38] In addition to the Sale Agreement, Mr. Amin alleges the court can find evidence of the parties' intention to confer on the Original Partners a beneficial interest in the Property from the Transfer Document. The Transfer Document is a document purportedly signed on 27th October 2021 by Mr. Ahmed, Mr. Amin, and Mr. Sharifuzzaman which provides, amongst other things, that:

The parties have agreed to purchase the First and Second Floors of a three storey building from FELIPE FELINO PAZ situate on San Pedro Ambergris Caye for the sum of (1,000,000.00) One Million Dollars.

[39] Mr. Ahmed alleges he did not sign the Transfer Document, but rather, that he was presented with an Assignment of Lease Agreement, which he signed because Mr. Amin had purchased Mr. Kamil and Mr. Miah's interest in the Lease Agreement. Mr. Ahmed alleges that the signature page of the Assignment of Lease Agreement was thereafter attached to a different document, the Transfer Document. Mr. Ahmed contends that Mr. Amin created the Transfer Document and tricked him in order to

secure his signature. Mr. Ahmed denies he would have signed the Transfer Document since he did not want to sell his rights under the Sale Agreement.

[40] Mr. Amin called as witnesses Mr. Mohammed Meju and Mrs. Shahana Amin, who both witnessed the parties' signatures on the Transfer Document. Mr. Meju testified that he read the Transfer Document out loud to the parties before they signed it. This was confirmed by Mr. Amin's wife, Mrs. Amin.

[41] For the following reasons, I find, on the balance of probabilities, that Mr. Ahmed did not sign the Transfer Document. First, the Transfer Document cannot coexist with the Lease Agreement. The Lease Agreement provides that Mr. Ahmed, as the landlord, leases the Property to the Original Partners as tenants. If Mr. Ahmed entered into the Sale Agreement for and on behalf of the Original Partners, he would not have entered into a Lease Agreement with the Original Partners for the lease of a property the partnership owns. For reasons that will later be expanded on, Mr. Amin has not proven, on a balance of probabilities, that the Lease Agreement is a forgery. Since the Lease Agreement has not been proven to be a forgery, its validity implies that Mr. Ahmed did not sign a Transfer Document by which he purportedly recognized Mr. Amin and Mr. Sharifuzzaman's rights in the Property.

[42] Second, the Transfer Document contains irregularities and discrepancies which supports Mr. Ahmed's contention that the Transfer Document was drafted by Mr. Amin and not by Mr. Edwin Flowers, SC as alleged. As noted above, the Transfer Document provides that Mr. Ahmed, Mr. Amin, and Mr. Sharifuzzaman have agreed to purchase the Property for the sum of BZ\$1,000,000.00. The Transfer Document further provides that:

5. At the material time FELIPE FELINO PAZ must transfer the said First and Second Floors of the building to SHUMAN AHMED, RUHUL AMIN and MD SHARIFUZZAMAN.

6. In order to perfect the proportion of the title SHUMAN AHMED will be obliged to inform RUHUL AMIN and MD SHARRIFUZZAMAN of their presence in order that they are able to sign the said transfer.

- [43] I find it is more likely than not that the Transfer Document was drafted by Mr. Amin, and not by an attorney as alleged. I agree with Mr. Ahmed that the Transfer Document could not order Mr. Paz to transfer the Property to Mr. Ahmed, Mr. Amin, and Mr. Sharifuzzaman without Mr. Paz being a party to the Transfer Document. Since title to the Property remains with Mr. Paz, the two parcel numbers listed on the Transfer Document (Parcels 1056 (H2) and (H3)) do not yet exist. Further, the Transfer Document refers to “the material time” for the transfer without specifying what the “material time” is. There are other indications that the Transfer Document was not drafted by an attorney, such as, for example, the fact that Mr. Ahmed’s address is not listed in the preamble, and there is a typo in Mr. Sharifuzzaman’s name.
- [44] The Transfer Document is purportedly signed by Mr. Edwin Flowers, SC, but Mr. Amin did not call Mr. Flowers, SC as a witness in these proceedings despite how important the Transfer Document is for his case. Since all witnesses testified the Transfer Document was signed at Mr. Amin’s house, I find it unlikely Mr. Flowers, SC would have affixed his signature to the document without witnessing the signatures. While Mr. Amin called Mr. Meju and Mrs. Amin as witnesses, their evidence that the Transfer Document was read out loud was contradicted by that of Mr. Ahmed, who stated that the parties read the document to themselves before signing it. I note that, as Mr. Amin’s wife, Mrs. Amin has an interest in the outcome of this case.
- [45] It is clear that the Assignment of Lease Agreement, which Mr. Ahmed alleges was presented to him for his signature, was also not drafted by an attorney despite being purportedly signed by Mr. Edwin Flowers, SC. The Assignment of Lease Agreement is drafted in poor English, and does not have the hallmarks of an authentic legal document. It is unclear whether this document was forged by Mr. Amin and presented to Mr. Ahmed for his signature, or forged by Mr. Ahmed for the purpose of these proceedings. Either way, there is no question that documents have been forged by either or both parties to this claim, and that lies were told on the stand. This dishonesty makes it very difficult for this court to determine what really happened between the parties.

[46] The court is extremely concerned with evidence that Mr. Edwin Flowers SC's signature has been copied and pasted on various documents he clearly has not authored. In addition to being illegal, such a conduct can have grave implications for Mr. Flowers SC's professional reputation and that of his firm. I take this opportunity to condemn in the strongest terms the use of Mr. Flowers SC's name, and the forgery of his signature, on documents not drafted by Mr. Flowers SC.

[47] Mr. Amin entered into evidence a WhatsApp message exchange between Mr. Ahmed and his attorney at the time, Mr. Richard Bradley, in which Mr. Ahmed sends Mr. Bradley photos of the Sale Agreement and asks:

Please check and let me know if I have right any new agreement with somebody else and mention he give me some cash for 40% share like when I'm finished the payment title will come my name and his name together I will appreciate for give me the advise.

[48] He also entered into evidence a video recording of a phone call in which Mr. Bradley can be heard stating that the Sale Agreement does not have a right of first refusal in favour of the seller, so Mr. Ahmed could sell his interest to anyone else. Mr. Amin argues these messages and video were provided to him by Mr. Ahmed to persuade him that he would be purchasing an interest in the Property. In amplification, Mr. Ahmed was asked to comment on this statement. Mr. Ahmed commented as follows:

Okay. He was offer (inaudible) if you agree say to me 40%, I give you good number. That time, I told him I can't say but still I take advised with my attorney and let you know. Then, I spoke with Mr. Bradley, and he tell me (inaudible), it not possible to sell. So, I just let him know that I can't sell so it's just by (inaudible) business. So, he was offering me if I sell 40%, not for them, not for nobody. I (inaudible) because I told him it's not possible. Still I take advice from Mr. Bradley and Mr. Bradley told me then it's not possible you to sell because this is only right to sell - - you have to sell Mr. Paz and Mr. Paz have to right to sell only you that ground floor.

[49] In cross-examination, Mr. Amin admitted that what Mr. Ahmed was asking Mr. Bradley was whether he – Mr. Amin – could pay Mr. Ahmed money to buy the Property. Given this admission, it is not clear to the court whether this exchange refers to Mr. Kamil and Mr. Miah's alleged combined 40% interest in the Property, or whether it refers to Mr. Amin seeking to purchase Mr. Ahmed's interest in the Sale Agreement.

[50] In summary, I have not been persuaded there was an agreement between the Original Partners that Mr. Ahmed would sign the Sale Agreement for and on behalf of the Original Partners. As per the judgment of the House of Lords in **Lloyds Bank**, however, the court must consider whether this common intention can be implied from contributions made by the Original Partners to the purchase price of the Property.

Did the partners act to their detriment or significantly altered their position in reliance upon that common intention?

[51] Mr. Amin contends that the Original Partners contributed to the payment of the initial deposit of BZ\$154,323.96 to Mr. Paz, as provided for in the Sale Agreement, in proportion to their respective shares in the Property. He also contends that the monthly payments towards the purchase price were made from the revenue of the hotel business, which is a partnership asset. According to Mr. Amin, these contributions support that the Original Partners hold a beneficial interest in the Property.

i. Did the Original Partners contribute to the initial deposit of BZ\$154,323.96?

[52] Mr. Sharifuzzaman testified that the initial deposit of BZ\$154,323.96 was paid by all partners based on the percentage of their respective interest in the Property. Mr. Sharifuzzaman stated that he paid 20% of the deposit, or BZ\$30,864.79, to Mr. Ahmed in cash and in cheque. Mr. Sharifuzzaman stated that he was present when the deposit was paid to Mr. Paz. Mr. Sharifuzzaman admitted he did not provide a copy of any cheque, cash voucher, or bank statement showing he made this payment. In re-examination, he specified that he does not have any evidence of a cheque because the Scotia Bank is now closed in Belize.

[53] Mr. Kamil and Mr. Miah also testified that all partners were asked to raise the money to pay the initial deposit to Mr. Paz. Mr. Kamil stated that he paid his 20% to Mr. Ahmed in cash and in cheque so that Mr. Ahmed could make the payment to Mr. Paz. He was present when the initial deposit was paid to Mr. Paz. In cross-examination, Mr. Kamil stated that he sold a business in order to make the payment, but he did not have any evidence to prove that he sold a business. In addition, he stated he could not provide

a copy of any cheque or any cash voucher to prove payment of his share of the deposit because the payment was made a long time ago.

[54] Similarly, Mr. Miah testified that he raised and paid Mr. Ahmed 20% of the deposit, or BZ\$30,864.80, in cash, and was present when the initial deposit was paid to Mr. Paz. In cross-examination, he stated that he sold a business in order to fund the initial deposit, but did not provide any detail about the business. Mr. Miah testified that he did not request any cash voucher because he trusted Mr. Ahmed.

[55] Mr. Ahmed denies Mr. Sharifuzzaman, Mr. Kamil, or Mr. Miah contributed to the initial deposit. Mr. Ahmed testified that he paid the initial deposit by himself. To raise the capital required to make this payment, he sold three businesses which he identified by name but did not provide any evidence of their sale. Mr. Ahmed did not provide any other evidence to support his contention that he alone paid the initial deposit to Mr. Paz.

[56] As neither party called Mr. Paz as a witness in this matter, the court is deprived of independent evidence that would have assisted in determining who is telling the truth. Other than their respective testimony, neither party provided any evidence of any payment made to Mr. Paz for the initial deposit of BZ\$154,323.96. While Mr. Amin called Mr. Sharifuzzaman, Mr. Kamil, and Mr. Miah as witnesses, these witnesses had no evidence to support their testimony. In addition, the court cannot ignore the fact that these witnesses have a financial interest in ensuring that Mr. Amin is successful in the claim. Mr. Amin bears the burden of proving his claim on the balance of probabilities. Given the lack of independent evidence supporting his allegation that the Original Partners paid their respective share of the initial deposit, I find that Mr. Amin has not discharged his burden of proving this allegation on a balance of probabilities.

ii. Did the partnership pay the monthly payments to the DFC and Mr. Paz, or did Mr. Ahmed lease the Property to the partnership?

[57] Mr. Amin argues that the monthly payments towards the purchase price of the Property were made from the hotel revenue, which is a partnership asset. He also alleges that

where the profits from the hotel business were insufficient to cover the instalments, the partners were asked to contribute using their personal funds up to their respective share in the Property. Mr. Ahmed argues that the payments towards the purchase price were made by him from personal funds and from monthly payments made to him by the partnership under a five-year Lease Agreement entered into between Mr. Ahmed and the other Original Partners.

[58] Mr. Amin has not proven, on a balance of probabilities, that partnership assets were used to pay for the monthly instalments towards the purchase price for the Property.

[59] First, although the Sale Agreement lacks clarity, it appears that Mr. Ahmed and Mr. Paz agreed that a portion of the monthly payments towards the purchase price would be paid to the DFC, and another portion would be paid directly to Mr. Paz. According to Mr. Ahmed, he makes monthly payments of BZ\$9,900.00 to the DFC, and BZ\$3,584.00 to Mr. Paz, for a total of BZ\$13,484.00. Mr. Amin does not dispute that monthly payments of BZ\$9,900.00 are made to the DFC. These payments will be addressed below. Mr. Ahmed entered into evidence receipts from Mr. Paz proving the monthly payments of BZ\$3,584.00 made to him by Mr. Ahmed. Interestingly, except for one instalment in December 2021, which will be discussed below, these payments are not addressed at all by Mr. Amin in his evidence or his submissions. This monthly payment to Mr. Paz was also not mentioned by any of the witnesses called on Mr. Amin's behalf. Yet if, as stated by the Original Partners, they were asked to pay the purchase price of the Property in proportion to their respective shares in the Property, then each of Mr. Sharifuzzaman, Mr. Kamil, and Mr. Miah should have paid 20% of this monthly payment to Mr. Paz. In the circumstances, I find that these monthly payments were made by Mr. Ahmed from his personal funds.

[60] Second, Mr. Amin has not proven that the Lease Agreement is a forgery. Mr. Ahmed entered into evidence a Lease Agreement dated 30th May 2017 between himself as the "landlord", and the Original Partners as the "tenants" in their respective share in the business (40% for Mr. Ahmed, 20% for Mr. Sharifuzzaman, 20% for Mr. Kamil, and 20% for Mr. Miah). The Lease Agreement provides that the landlord is the equitable

owner of the Property, and agrees to lease the Property to the tenants for a period of five years for a monthly rental payment of BZ\$9,000.00. The Lease Agreement is purportedly signed by all four Original Partners. Their initials are affixed at the bottom of each of the 9 pages of the Lease Agreement. The signatures are witnessed by Mr. Forid Ahmed and Mr. Abdul Quddus.

[61] Mr. Sharifuzzaman, Mr. Kamil, and Mr. Miah were all cross-examined on the purported Lease Agreement. The three of them denied knowing anything about the Lease Agreement, and denied signing it. I noted that in their testimony, all three witnesses were very quick in denying the validity of the Lease Agreement, before any questions were even asked about it. It was obvious that they each had seen the document prior to their testimony, and were eager to deny its validity.

[62] Mr. Forid Ahmed and Mr. Quddus, who witnessed the signatures, were cross-examined. Although they did not remember all of the details, both stated that the Lease Agreement was signed in the afternoon, in the office on the ground floor of the building sometime after they had lunch upstairs in the apartment occupied by Mr. Ahmed. They both testified that Mr. Ahmed read the Lease Agreement out loud to the attendees before it was signed. They confirmed that the partners signed the Lease Agreement in front of them.

[63] The Lease Agreement is purportedly signed by all four Original Partners. Mr. Sharifuzzaman, Mr. Kamil, and Mr. Miah denied signing the Lease Agreement and asserted that their signatures have been forged. The signatures on the Lease Agreement are very similar to the signatures affixed to these witnesses' witness statements. Mr. Amin did not call a hand-writing expert as a witness in this matter. Given their similarity to other signatures in evidence, it would be improper for this court to find the signatures on the Lease Agreement to have been forged.⁹ In these circumstances, I draw an adverse inference from the fact that no expert was called to

⁹ Albert Neal v Macaw Farms Ltd., Civil Appeal No. 2 of 2008 at para. 9.

opine on the issue of forgery. There is no ground for this court to find the Lease Agreement to be invalid.

[64] Having found the Lease Agreement to be valid, it follows that the payments made to the DFC were not made from partnership assets, but from rental payments made by the partnership, as tenants, to Mr. Ahmed as the landlord.

[65] Mr. Amin entered into evidence pictures of ledgers found at the hotel reception which he alleges show that the monthly payments towards the DFC loan, as well as one payment made to Mr. Paz in December 2021, were deducted by Mr. Ahmed from the revenue generated by the hotel, and therefore paid out of partnership assets. Mr. Ahmed testified that these ledgers show his personal accounting, and not that of the hotel business. He alleges that his personal accounting includes income and expenses for his golf cart business. I found Mr. Ahmed's allegation to be substantiated as the ledgers show income and expenses other than income and expenses from the hotel business. For example, each month there is an entry for "meal" or "food". There is also entries for "Kawsey (or something similar) Shop" and "Jakaria Shop", but it was not explained to the court what these entries refer to. The January 2022 ledger shows that Mr. Ahmed added income from golf cart rentals to the rental income generated by the hotel. In addition, since it was never Mr. Amin's contention that the partnership paid a monthly payment to Mr. Paz towards the purchase price of the Property, the December 2021 payment of BZ\$3,584.00 to Mr. Paz would have been made by Mr. Ahmed personally.

[66] Mr. Amin testified that Mr. Ahmed would show him these ledgers every month to justify the monthly profits paid out to him in proportion to his shares in the business. I have no reason to believe this is not true. At the bottom of some of the ledgers (but not all) is a calculation which appears to divide the monthly profits shown on the ledger by five, and the resulting amount multiplied by two to reflect Mr. Amin 40% interest in the business. The court has not been provided with all of the information necessary to understand Mr. Ahmed's calculations. The ledgers do not provide a breakdown of the businesses' profits; they only show expenses incurred for various purposes deducted

from an amount which varies from month to month. Other amounts are added or deducted from this varying amount without explanation. For example, in May 2022, BZ\$2,150.00 and BZ\$550 in “cash” were added to the profits. As discussed below, since the partnership has ended, an accounting of the revenue and expenses of Hotel Ocean Paradise will be carried out. I therefore do not need to determine what Mr. Amin is entitled to. For our present purposes, I find that the ledgers do not support Mr. Amin’s contention that the DFC payments were made out of partnership assets.

[67] Finally, Mr. Sharifuzzaman, Mr. Kamil, and Mr. Miah testified that there were several occasions when the hotel did not make a profit and the partners were asked to pay their respective share of the shortfall. This would allow the hotel to meet its expenses, including the payments to the DFC. The DFC deferred payments on the capital of the loan for a period of two years due to the COVID-19 pandemic, however the business was required to pay the interest owing on the loan. In cross-examination, Mr. Sharifuzzaman admitted that he does not have any documentation proving he made any of these payments, except for one receipt showing that he made a payment of BZ\$10,000.00 to the DFC in 2021. The receipt is attached to a WhatsApp conversation carried out in a language other than English that has not been translated. Mr. Ahmed alleges that he gave money to Mr. Sharifuzzaman for him to make the payment as Mr. Ahmed was tied up with some business in Belmopan. That Mr. Sharifuzzaman has adduced no other evidence of payments made by him to the DFC supports Mr. Ahmed’s contention that the payment was made on his behalf on this occasion.

[68] Similarly, Mr. Kamil testified that he made these additional payments in cash or in cheques, but he did not enter into evidence copies of these cheques because these payments were “made a long time ago”. Mr. Miah testified that he made payments in cash, but has no evidence to prove those payments. I find that, on the balance of probabilities, the partners did not make these additional payments or if they did, these payments were made towards the rental payments owed to Mr. Ahmed as the landlord.

[69] In summary, Mr. Amin has not proven, on the balance of probabilities, that Mr. Ahmed entered into the Sale Agreement for and on behalf of the Original Partners. Mr. Amin

has not proven that the Property is held in constructive trust by Mr. Ahmed because there is insufficient evidence to conclude that the Original Partners had a common intention that the partners would have a beneficial interest in the Property, or that the partners acted to their detriment or significantly altered their position by contributing to the purchase price of the Property in reliance upon that common intention.

Does the hotel room occupied by Mr. Ahmed and his brother form part of the partnership assets?

[70] Mr. Ahmed, his wife, and his brother Shahriar Ahmed reside in one of the rooms on the 3rd floor of the building which has been renovated into a two-bedroom apartment. Mr. Amin seeks an order directing Mr. Ahmed and his brother to vacate the room, and an order that Mr. Ahmed pays compensation for the unauthorized use of the hotel room from 1st June 2022 (in his case) and 1st April 2022 (in the case of his brother) up to the date the room is vacated. Mr. Amin grounds his claim for these orders in his allegation that the Property forms part of the partnership assets.

[71] Since I found that the Property does not form part of the partnership assets, and that the Lease Agreement is valid, this ground for relief fails. The partnership leases the Property from Mr. Ahmed as the landlord. The Lease Agreement does not specify how many hotel rooms the partnership leases from Mr. Ahmed. Mr. Ahmed provided evidence that in 2020, Hotel Ocean Paradise was licensed by the Department of the Environment for the operation of a hotel comprising 14 guest rooms, one staff room, and one laundry room. The evidence supports a finding that the room occupied by Mr. Ahmed, his wife, and his brother is the staff room, which has been renovated into a two-bedroom apartment. The staff room was not licensed for occupation by guests. All 14 hotel rooms were available to rent by guests. Mr. Amin's contention that Mr. Ahmed renovated and occupies Room 9 is not supported by any evidence. Mr. Amin himself entered into evidence pages of a book showing that Room 9 was rented from time to time in 2021 and 2022.¹⁰

¹⁰ Annex 12 of Mr. Amin's witness statement.

[72] Even if Mr. Ahmed, his wife, and his brother occupied one guest room, which I do not find, Mr. Amin's claim would have failed because he has not proven any actual loss of rental income. Mr. Amin provided no evidence showing that Hotel Ocean Paradise operated at full occupancy between April 2022 and January 2023, when it ceased operation. In fact, the evidence shows that business was very slow at the height of the COVID-19 pandemic in 2020 and 2021, and that is why Mr. Kamil and Mr. Miah divested themselves on their interest in Hotel Ocean Paradise. No data was provided to show whether business had returned to its normal level in 2022, and what that normal level would be. Based on the available evidence, this court is unable to conclude that the partnership has been deprived of any rental income at all.

Does Mr. Amin hold a 60% partnership interest in Hotel Ocean Paradise?

[73] The original partnership was formed in October 2014 and was comprised of Mr. Ahmed (40%), Mr. Sharifuzzaman (20%), Mr. Kamil (20%), and Mr. Miah (20%). On 26th October 2021, Mr. Amin entered the partnership by purchasing Mr. Kamil and Mr. Miah's respective interest for BZ\$100,000.00 each. On that day, the partners attended at the Companies Registry in Belmopan to file an amendment of particulars that effected the change of ownership in Hotel Ocean Paradise.

[74] Mr. Amin alleges that on 29th October 2021, he entered into a further agreement with Mr. Sharifuzzaman for the assignment of Mr. Sharifuzzaman's 20% interest in Hotel Ocean Paradise to Mr. Amin in consideration of the sum of BZ\$100,000.00. Mr. Amin entered into evidence a copy of a Deed of Assignment between himself and Mr. Sharifuzzaman dated 29th October 2021.

[75] Mr. Amin alleges that a further amendment of particulars was not registered at the Companies Registry because Mr. Ahmed refused to execute the appropriate forms. Mr. Sharifuzzaman's name remains on the Certificate of Registration for Hotel Ocean Paradise. Mr. Amin entered into evidence a letter dated 8th June 2022 from Mr. Richard Bradley, who was Mr. Ahmed's attorney at the time. According to Mr. Bradley, the partnership agreement between the Original Partners had expired due to the effluxion of time, and as such Mr. Amin's acquisition of all three partners' interest in Hotel Ocean

Paradise could not be extended past the date of the original agreement. Mr. Bradley advised Mr. Amin to remove his name from the Certificate of Registration.

[76] I find no evidence that the partnership ended due to the effluxion of time. There is no evidence that a time limit was placed by the Original Partners on their partnership agreement. Mr. Ahmed accompanied Mr. Amin and the other partners to the Companies Registry in Belmopan on 26th October 2021 to proceed with the amendment of the Business Name registration. That the partnership had ended three days later when Mr. Amin acquired Mr. Sharifuzzaman's 20% interest is not credible.

[77] Mr. Ahmed further alleges he was never provided proof that Mr. Amin acquired Mr. Sharifuzzaman's interest in Hotel Ocean Paradise or made any payment to him. The court was provided with a copy of the Deed of Assignment, which appears to be signed by Mr. Sharifuzzaman and Mr. Amin. The Deed of Assignment is also purportedly signed by Mr. Edwin Flowers, SC. Mr. Ahmed has not claimed that this particular document is forged, and while I have doubts as to whether Mr. Edwin Flowers, SC signed the Deed of Assignment in the presence of the parties, if at all, I have been given no reason to believe that it does not represent the true agreement between Mr. Amin and Mr. Sharifuzzaman.

[78] However, given my findings above, the Deed of Assignment could not legally effect the assignment of Mr. Sharifuzzaman's interest in the Property; it could only effect the transfer of Mr. Sharifuzzaman's interest in the business.

[79] As a result, I grant Mr. Amin a declaration that he holds a 60% partnership interest in Hotel Ocean Paradise. I further grant Mr. Amin an order directing Mr. Ahmed to execute the appropriate forms required by the Companies Registry to effect the change of ownership of the business name to remove Mr. Sharifuzzaman, and add Mr. Amin as a 60% owner of the business name. Since, as will be discussed below, the partnership has ended, it may be that a change in the business name is no longer required or appropriate. This order is to be executed by the parties only if necessary for the orderly winding up of the partnership.

Did Mr. Ahmed breach the partnership?

[80] Mr. Amin seeks damages for breach of the partnership. In addition to his occupation and refusal to vacate the room, an issue that has already been dealt with, Mr. Amin alleges Mr. Ahmed breached the partnership by terminating the employment of Mr. Hussain; failing to account to Mr. Amin for the income, expenses, and profits of the hotel for the period August 2022 to December 2022; wrongly excluding Mr. Amin from the operations and management of the hotel; and refusing to record the change of ownership particulars to remove Mr. Sharifuzzaman as a partner.

[81] Mr. Ahmed denies Mr. Amin's allegations. Mr. Ahmed alleges that Mr. Amin was permitted to make suggestions in relation to decisions being made about the management and staffing of the business; that Mr. Hussain stopped working at the hotel business on his own accord; and that the location where the camera was placed is rented by his brother, Mr. Shahriar Ahmed, who had the right to unplug the camera. Mr. Ahmed makes his own allegations against Mr. Amin, which are consistent with a claim of breach of partnership. Mr. Ahmed alleges that Mr. Amin made it difficult for Mr. Ahmed to discuss the operation of the business with Mr. Amin; that Mr. Amin attempted to destroy the reputation of the business; and that Mr. Amin's criminal record has affected the partners' ability to have a bank account in Belize for the hotel business.

[82] While this may leave both parties dissatisfied, I find it unnecessary to decide which partner wronged the other the most because the partnership was dissolved under section 34(c) of the Partnership Act¹¹ when Mr. Ahmed personally served notice of such on Mr. Amin and Mr. Sharifuzzaman on 18th January 2023. The dissolution of the partnership was confirmed by this court in its decision dated 13th February 2023 granting an injunction and the appointment of a receiver to manage the business until the final determination of this claim.

¹¹ Cap. 259, Rev. Ed. 2020.

[83] In submissions, Mr. Amin argues that the court has the discretion whether to uphold the service of the notice. He notes that the notice was sent after the institution of this claim seeking an accounting of profits retained by Mr. Ahmed, and that service of the notice was injurious to the partnership because it allowed Mr. Ahmed to divert customers of Hotel Ocean Paradise to his other business, Hotel Central Park. Mr. Amin submits that the notice was served with malintent, and should not be upheld. Mr. Amin further alleges that Mr. Ahmed is not entitled to an order that the partnership was dissolved under subsections 37(c) and (f) of the Partnership Act because it is Mr. Ahmed, not Mr. Amin, who is guilty of misconduct. Yet, Mr. Amin acknowledges it would be just and equitable to dissolve the partnership due to Mr. Ahmed's breach of the duty of good faith, exclusion of Mr. Amin from the business, and Mr. Ahmed's dishonesty.

[84] Given my findings in this claim, I see no practical benefit in issuing a decree for the dissolution of the partnership under section 37(c) or (f) of the Partnership Act, as opposed to upholding the notice of dissolution served on the partners. Since I found Mr. Amin likely falsified documents and claimed an interest in the Property he was not entitled to, Mr. Amin is guilty of misconduct towards the partnership and Mr. Ahmed was justified in issuing the notice dissolving the partnership. That is not to say that Mr. Ahmed is blameless. For instance, Mr. Ahmed refused to meet with Mr. Amin and Mr. Sharifuzzaman on 25th November 2022, and refused to comply with the partners' resolution that he be removed as manager of Hotel Ocean Paradise. Even if I were to issue a decree of dissolution taking effect on the day this judgment is released, this would not result in any additional gains for the partners. Hotel Ocean Paradise ceased operations as of January 2023, in part because its trade license was not renewed and in other part because this court issued an injunction restraining Mr. Ahmed from operating the hotel business as of 13th February 2023 at Mr. Amin's request.

[85] Mr. Amin seeks an accounting of the partnership from 1st August 2022 to the date of winding up, in lieu of damages. Mr. Ahmed also seeks an accounting of the business in his counterclaim. Since the parties and the court are in agreement as to the next

steps in this matter, an accounting and the settling of the partners' account in accordance with the provisions of the Partnership Act will be ordered.

[86] Mr. Ahmed called Mr. Emil Pinelo, an accountant, as a witness in this matter. Mr. Ahmed asked Mr. Pinelo to review the partnership's books to determine the profits generated by Hotel Ocean Paradise from August 2022 to December 2022. I do not accept Mr. Pinelo's report as a true account of the income, expenses, and profits of Hotel Ocean Paradise for the above-noted period. Mr. Pinelo's report contains the following disclaimer:

We have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or provide any assurance about whether the financial statements are in accordance with accounting principles generally accepted in the United States of America.

[87] I agree with Mr. Amin that Mr. Pinelo's report cannot be relied on because Mr. Pinelo did not consult with all of the partners, and could not certify the accuracy of the information relied on, including the tax filings reported by Mr. Ahmed, which Mr. Amin says under-reported the business' income.

[88] In the circumstances, and to avoid any further dispute between the parties in relation to the accounting process, the court will order an accountant other than Mr. Pinelo to be appointed to carry out the accounting of the partnership. The parties are directed to agree on an accountant, with liberty to apply to the court for the appointment of an accountant if the parties are unable to agree.

[89] The court will remain seized of this matter until the completion of the winding up process.

Costs

[90] Mr. Ahmed is entitled to his costs in this matter. Given that Mr. Amin was seeking a declaration that he is entitled to a 60% interest in the Property, Mr. Ahmed is entitled to prescribed costs calculated on 60% of the value of the Property.

IT IS HEREBY DECLARED AND ORDERED THAT

- (1) Mr. Ahmed is the sole equitable owner of the 2nd and 3rd floors of the building located on Parcel 1056, Block 7 in the San Pedro Registration Section by virtue of his sale agreement with Mr. Felipe Paz.
- (2) Mr. Amin holds a 60% partnership interest in Hotel Ocean Paradise.
- (3) If necessary, Mr. Ahmed shall execute the appropriate forms required by the Companies Registry to effect the change in ownership of the business name, Hotel Ocean Paradise, to remove MD Sharifuzzaman as an owner and for Mr. Amin to be reflected as the 60% owner and Mr. Ahmed as the 40% owner of the business name.
- (4) The partnership established by the registration of Hotel Ocean Paradise under the Business Name Act between Mr. Amin and Mr. Ahmed is dissolved as of the 18th January 2023 pursuant to section 34 of the Partnership Act.
- (5) The Transfer Document dated 27th October 2021 was secured by fraud, is invalid and of no effect.
- (6) An accountant, other than Mr. Emil Pinelo, which shall be selected by agreement of the parties or failing such agreement, by the court, shall be appointed in order to settle the accounts of the dissolved partnership.
- (7) This court shall remain seized of this matter until completion of the winding up process.
- (8) Interest at 6% pursuant to sections 175 and 176 of the Senior Courts Act, 2022.
- (9) Mr. Ahmed is awarded prescribed costs calculated on 60% of the value of the Property.

Geneviève Chabot
High Court Judge