

IN THE SUPREME COURT OF BELIZE, A.D. 2015

CLAIM NO. 712 of 2014

CHRIS ATKINSON

CLAIMANT

AND

MARCO CARUSO

1st DEFENDANT

PANTHER ESTATES DEVELOPMENT LTD.

2nd DEFENDANT

BEFORE the Honourable Madam Justice Sonya Young

Hearings

2015

18th June

30th July

Written Submission

2015

25th June – Defendants

7th July – Claimant

Mr. Andrew Bennett for the Claimant.

Mr. Yohhahseh Cave for the Defendants.

Keywords: Contract – Signature – Authenticity - Enforceability

JUDGMENT

1. Unravelling this matter was a most curious task. Chris Atkinson, a self styled businessman, says he, originally entered into arrangements in relation to foreign property with Marco Caruso (according to the statement of claim) or Brent Borland (according to his witness statement). For reasons unknown to

the court, that venture failed. He was subsequently offered instead, property in Belize at the Placencia Gated Community. This offer was made to him by Brent Borland, whom he says, was then acting as agent of both Marco Caruso and Panther Estates Development Ltd. In acceptance of that offer, he entered into an oral and then a written agreement for the sale and purchase of property in the Panther Golf Course and Residences at the Placencia Resort, North Stann Creek District, Belize Central America – in particular Lot No. 147 (The Property). We shall hereinafter refer to that written agreement as ‘The Agreement’.

2. According to The Agreement, Chris Atkinson was Purchaser A and Placencia Estates Development LLC was Purchaser B (together, The Purchasers). Panther Estates Development Ltd was the vendor. Expressly stated therein was that Chris Atkinson had already paid \$70,590.00 USD on the 11.7.2008 as a non-refundable deposit. That was to be his contribution to the purchase price. The Property was to be transferred into the name of The Purchasers within 90 days of the date of The Agreement. Following the transfer, The Property was then to be sold at a profit and the Purchasers were to share that profit.
3. Chris Atkinson says he was induced to enter into The Agreement by both Brent Borland and the Defendants. At that time, Brent Borland and Marco Caruso were friends, co-directors of Panther Estates Development LLC and business partners. Marco Caruso was not only a Director of Panther Estates Development LLC, but also of Placencia Estates Development LLC. He goes on to state that, pursuant to The Agreement, Mr. Caruso and Mr. Borland both executed a deed of conveyance for The Property. That deed is dated the

4th April, 2014 and he exhibited a copy of same. Thereafter, he claims, the Defendants breached The Agreement.

4. The terms of The Agreement which demands our immediate attention is paragraph F, which falls under the heading: General further terms and special conditions. It reads: *“Developer (Marco Caruso) agrees to pay to purchaser “A” the sum of \$35,295.00 USD at 12 months of this contract date if the lot referenced in this agreement has not been sold by that time. If this payment is made then the purchaser “A” will receive the first \$52,943.00 upon sale of the Lot. This agreement remains 100% confidential and will be rescinded if agreement of confidentiality has been breached.”*
5. Mr. Atkinson says that twelve months have long passed. The Property has not been sold and he has not received the contracted sum. He requests the court’s assistance for the recovery of the agreed sum.
6. The Defendants, on the other hand, deny the contract and dispute the claim in its entirety. Marco Caruso says Brent Borland was never an authorized agent of the company with regard to any arrangements made with Chris Atkinson. Furthermore, he, Marco Caruso, did not or did not knowingly sign The Agreement. In fact, he never knew of The Agreement before he was served with the Claim Form in this matter. He admits to signing a conveyance on behalf of Placencia Estates Development LLC in relation to Parcel No. 147 in which Placencia Estates Development LLC and Chris Atkinson are named Purchasers A and B respectively.

The issues to be considered:

7. 1. Is The Agreement authentic.

2. Are the Defendants indebted to the Claimant in the sum of US\$35,295.00 or its BZ equivalent of \$70,590.00.

8. **Is The Agreement authentic:**

Since the authenticity of The Agreement is in issue we must consider the document itself. The Agreement has five pages. Therein, the parties are Panther Estates Development Ltd – **the Vendor** and Chris Atkinson – **Purchaser A** and Placencia Estates Development LLC – **Purchaser B**. Now Placencia Estates Development LLC is described in That Agreement as being the owner of the 1680 acres of land on which The Property is being built. This perhaps explains why in the conveyance which the Claimant presents, it is Placencia Estates Development LLC who is the vendor.

9. The first two pages of The Agreement refer to vendor and purchaser but, suddenly and without warning, the third page headed ‘General further terms and special conditions’ begins to speak of Developer in paragraphs B – F (the final paragraph). It is only in paragraph F that one is made aware that Marco Caruso is the Developer. Following this is the signature of the vendor and that of a witness, the signature of the Purchaser A and that of a witness and signature of Purchaser B and that of a witness. There is no designated line for Developer nor does the document purport to be signed by the Developer. However, what Marco Caruso agrees looks like his signature is affixed at signature of vendor and signature of Purchaser B.

10. Marco Caruso in his pleadings stated that he never signed The Agreement. However, in his witness statement he says *“I did not knowingly sign the purported*

agreement and was unaware of the existence of the said agreement until I was served with the claim filed by the Claimant herein.”

11. During amplification, he attempted to salvage what, to my mind, he had been thoroughly destroyed by that statement. He expressed doubt that the signatures were his own. Even stating that they were a reproduction of his own which may have been placed there by the cut and paste method. He found issue with the positioning of the signature “*three inches*” above the designated line. He is no handwriting expert and neither am I. He went on to highlight a difference in the appearance of The Agreement to other agreements prepared by his companies. He presented a witness who explained that her duties involved preparation of contracts for all the first Defendant’s company. She confirmed that The Agreement was not one she had prepared.
12. In a final attempt to discredit The Agreement, Counsel for the Defendants, under cross-examination, questioned the Claimant about the fact that he had only presented a copy of The Agreement to the court. If the Defendants required an original of that document there were certain applications that could have been made prior to trial. Moreover, the Claimant explained that he entered into The Agreement via internet. He never had an original copy. In this advanced technological era that has certainly become the norm. It therefore took nothing away from the Claimant’s case.
13. Having waded through all that duff, we are still left with that statement in the first Defendant’s witness statement. “*It is a fundamental principle that the parties are bound by the content of a written contract ... Once an agreement is signed, a party*

cannot use the fact that he or she did not read the terms, to avoid liability under the contract.” Commonwealth Caribbean Contract Law pg 62.

14. Scrutton LJ in *L’Estrange v Graucob Ltd [1934] 2 KB 394* explains: “*When a document containing contractual terms is signed, then, in the absence of fraud, or, I will add, misrepresentation the party signing it is bound, and it is wholly immaterial whether he has read the document or not.*”
15. So to my mind, by stating that he did not knowingly sign The Agreement, Marco Caruso has, in fact, admitted to the signing. His not knowing what he was signing would only be a defence in very limited circumstances, such as, where he is illiterate, blind, senile or of low intelligence. A party who was negligent in signing or simply too lazy or too careless to read cannot find assistance here. The court also considers Marco Caruso’s explanation for signing the conveyance. He said he did it as a favour to his friend, Brent Borland, whom he felt indebted to for past kindness. Is this anyway to conduct business? Is a director’s duty to his friends or to the company? It placed him in a very dim light as the experienced business man which he accepted himself to be. And where is Brent Borland, the alleged nexus. Mr. Caruso explains that he did not bring him as a witness as he was out of State. That is most unfortunate.
16. This court therefore finds that Marco Caruso by his own admission signed The Agreement. Having not pleaded or proven fraud or misrepresentation, he is therefore bound by the terms therein.

Are the Defendants indebted to the Claimant:

17. A company, being an artificial person, must act and enter into contracts through its employees, agents, officers or members. The defining feature of a company is that it has a legal personality which is separate and distinct from the natural person(s) of which it is made up.
18. There is no issue of Marco Caruso, as a director of the second Defendant, having exceeded his authority in entering into this contract. In any event, even if he did so exceed, the contract would nonetheless be binding provided that the third party entering into the contract believed in good faith that he, as a director, had the authority to make the contract on the company's behalf. It is clear that Chris Atkinson so believed. The Defendants have not pleaded or proven otherwise.
19. Marco Caruso signed as a director in the name of a company. Therefore, the company can sue and be sued in its own name.
20. However, the particular clause on which the Claimant grounds his claim for the recovery of a debt is not related to the contracting company at all. It is stated to be a promise given by the Developer, Marco Caruso, personally.
21. Although the Developer is not stated to be a party to this contract, he is one and the same person as had contracted on behalf of the vendor and purchaser companies. Can the court blindly assume that he was able to read and understand the obligations and rights as they related to the Company, but not as they related to him personally? Can the court accept that because he did not sign the Agreement in his personally capacity he is not bound by the

terms? I should think not. I therefore find that Marco Caruso by virtue of his having signed The Agreement, accepted the terms therein and is therefore bound by them personally, where he is stated to be so bound. The Property having not been sold and twelve months having passed since the date of the contract, Marco Caruso stands indebted to Chris Atkinson in the sum of US\$35,295.00 or Belizean \$70,590.00. I can find no legal basis on which to hold the contracting company liable.

22. It is therefore unnecessary to discuss principles of agency and any authority Brent Borland may or may not have had. Equally futile is any consideration of the veracity or otherwise of the witnesses presented. The signed contract speaks for itself.

IT IS HEREBY ORDERED:

23. 1. Judgment for the Claimant against the first Defendant in the sum of \$70,590.00.
2. Prescribed costs, as agreed, to be paid by the first Defendant to the Claimant.
3. The Claim against the second Defendant is dismissed with no order as to costs.

**SONYA YOUNG
JUDGE OF THE SUPREME COURT**