

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 591 of 2022

BETWEEN:

[1] CAMILLA YAMASAKI

Claimant

and

**[1] DEAN REIBER
[2] REIBER HOLDINGS LTD.**

Defendants

Appearances:

Payal B. Ghanwani for the claimant

Bryan A. Neal for the defendants

2023: October 2, 3

November 16

2024: January 2

JUDGMENT

[1] **CHABOT, J.:** Ms. Yamasaki filed this claim seeking a declaration that she is entitled to a joint interest or such other interest in Parcel 4775 (H36), Block 7 in the San Pedro Registration Section (the “Property”). Title to the Property is registered to Reiber Holdings Ltd. (the “corporation”). Mr. Reiber is the sole shareholder of the corporation. Ms. Yamasaki alleges that she is entitled to an interest in the Property on the basis of her financial contribution towards its purchase price. Mr. Reiber denies that Ms.

Yamasaki is entitled to any interest in the Property because she has made no contribution towards the purchase price.

- [2] For the reasons outlined in this judgment, I find that the circumstances give rise to the imposition of a constructive trust in equity in favour of Ms. Yamasaki. I declare that Ms. Yamasaki is entitled to a joint interest in the Property and in Reiber Holdings Ltd. I further declare that the Property is held in trust by Reiber Holdings Ltd. in joint shares for Ms. Yamasaki and Mr. Reiber, and that Mr. Reiber holds 50% of the shares in Reiber Holdings Ltd. in trust for Ms. Yamasaki.

Background

- [3] On 23rd March 2022, Ms. Yamasaki and Mr. Reiber entered into a sale agreement with Mr. Michael Olkowitz as seller for the Property. The purchase price of the Property was US\$433,000.00, inclusive of chattels and an advisory fee.
- [4] Ms. Yamasaki alleges that she contributed US\$101,000.00 towards the total purchase price for the Property. She alleges that between 3rd March 2022 and 22nd June 2022, she transferred or withdrew this amount from two bank accounts and paid it to several people on Mr. Reiber's behalf. Mr. Reiber represented to Ms. Yamasaki that these transfers and withdrawals made on his behalf would be considered as her investment in the Property. Ms. Yamasaki further alleges that although her investment was only a quarter of the total purchase price of the Property, Mr. Reiber represented to her that she would be given a joint interest in the Property upon transfer.
- [5] On the advice of their real estate agent, Ms. Yamasaki and Mr. Reiber decided to incorporate a corporation to hold title to the Property. According to Ms. Yamasaki, she and Mr. Reiber had agreed they would be equal shareholders of the corporation. Belize Title and Closings LLC and Belize Caye Investments Ltd. were hired as the closing and escrow services agent (the "Closing Agent"). The Closing Agent was instructed to incorporate the corporation and ensure title to the Property was transferred to the corporation.

[6] Ms. Yamasaki alleges that on 23rd March 2022, Mr. Reiber wrote to the Closing Agent without her knowledge to change the initial instructions that both Ms. Yamasaki and Mr. Reiber were to be equal shareholders in the corporation. Mr. Reiber requested the Closing Agent to incorporate the corporation in his sole name instead. Reiber Holdings Ltd. was incorporated on 4th May 2022 with Mr. Reiber listed as the sole director and shareholder. Title to the Property was transferred to Reiber Holdings Ltd. on 20th May 2022. According to Ms. Yamasaki, since the transfer, Mr. Reiber has denied Ms. Yamasaki's interest in the Property.

[7] Ms. Yamasaki alleges that she was in possession of the Property from 20th May 2022 to 12th September 2022, and made improvements and purchased furniture for the Property.

[8] Ms. Yamasaki seeks the following relief in the claim:

1. A declaration that the claimant is entitled to a joint interest or such other interest as the court may deem fit in all that piece or parcel of land legally described as being Parcel 4775 (H36), Block 7, situated in the San Pedro Registration Section;
2. Further or in the alternative, a declaration that the claimant is entitled to a 50% interest or such other interest as the court may deem fit in the second defendant;
3. Further or in the alternative, a declaration that the second defendant holds any and all interest in the property in trust, whether as constructive and/or resulting trustee or otherwise, for the claimant and first defendant in joint shares or such shares as the court deems just and the defendants are estopped from denying such interest;
4. An order that the property or the shares in the second defendant be settled or transferred equally or equitably between the claimant and the first defendant as the court deems just;
5. An order that the second defendant, whether by itself or its servant or agents or trustee or otherwise howsoever, be restrained from transferring, charging, selling, pledging, or otherwise dealing with the property until the complete determination of this claim or further order of the court;
6. An order that the first and second defendants, whether by themselves or their servants or agents or trustee or otherwise howsoever, be restrained from transferring, charging, selling, pledging, or otherwise dealing with any and/or

all of the shares of the second defendant until the complete determination of this claim or further order of the court;

7. Alternatively, restitution of the monies had and received and/or applied for the first defendant's benefit on the grounds of unjust enrichment;
8. Interest on any amount found to be owing, pursuant to sections 166 and 167 of the Supreme Court of Judicature Act, Chapter 90 of the Laws of Belize or equitable interest;
9. Costs; and
10. Such further or other relief as the court deems fit.

[9] The defendants deny the allegations in the claim. They deny that Ms. Yamasaki made any payment towards the purchase price of the Property, and deny that Mr. Reiber made any representations to Ms. Yamasaki that she would receive any interest in the Property.

[10] According to the defendants, Ms. Yamasaki and Mr. Reiber had agreed they would each pay half of the purchase price of the Property. On 22nd March 2022, the purchase agreement for the Property was signed by both Ms. Yamasaki and Mr. Reiber, however shortly thereafter Ms. Yamasaki informed Mr. Reiber she would not be able to contribute her portion of the purchase price. Mr. Reiber paid the full purchase price for the Property.

[11] According to Mr. Reiber, it was never the intention of the parties that Ms. Yamasaki would hold shares in Reiber Holdings Ltd. Ms. Yamasaki was aware that the Property would be transferred solely to Reiber Holdings Ltd. and that Mr. Reiber would be the sole shareholder in the said corporation. The defendants deny there was any agreement about sharing the beneficial ownership of the Property, or the shares in Reiber Holdings Ltd. equally or otherwise.

[12] In reply, Ms. Yamasaki denies she indicated to Mr. Reiber she would not be able to contribute her portion of the purchase price of the Property as she had already paid funds to, and on behalf of, Mr. Reiber as her contribution to the purchase price, and she continued to do so after the contract for purchase was executed on the basis of Mr. Reiber's representations.

Issues to the determined

[13] The following issues arise in the claim:

1. Whether Ms. Yamasaki is entitled to any interest in the Property and, if so, the nature of such interest.
2. Whether Ms. Yamasaki is entitled to any interest in Reiber Holdings Ltd.
3. If the court determines that Ms. Yamasaki is not entitled to any interest in the Property or Reiber Holdings Ltd, whether she is entitled restitution from Mr. Reiber.

Evidence

Evidence of Ms. Yamasaki

[14] Ms. Yamasaki testified at the trial, and called as a witness Mr. Alberto Villanueva, the owner of Belize Title & Closing LLC and Belize Caye Investments Ltd.

[15] Ms. Yamasaki testified that she met Mr. Reiber through a mutual friend in September 2020, and by February 2021 the two of them were engaged. Ms. Yamasaki moved into a home co-owned by Mr. Reiber in Playa Hermosa, Guanacaste, Costa Rica. At the time, Ms. Yamasaki owned a condo in Playa del Coco which she rented seasonally, and a cabin in Playa Avellanas. According to Ms. Yamasaki, there was no agreement between her and Mr. Reiber that they would share the living expenses equally. Mr. Reiber told her she was a guest in his home. Mr. Reiber and the co-owner of the house, Mr. David Ebert, continued to share expenses, while Ms. Yamasaki contributed to the household by purchasing groceries and other items.

[16] In January and again in March 2022, Ms. Yamasaki and Mr. Reiber visited San Pedro, Belize. They decided to purchase the Property with the intention to relocate from Costa Rica to Belize and make it their home.

[17] According to Ms. Yamasaki, in March 2022 she sold her condo in Playa del Coco and had US\$100,000.00 to invest in the purchase of a property with Mr. Reiber. Ms.

Yamasaki adduced no evidence in support of this allegation, and in cross-examination admitted that the sale of the condo occurred in 2021 rather than in 2022. Ms. Yamasaki stated that she and Mr. Reiber discussed she could only contribute US\$100,000.00 towards the total purchase price of a property. According to Ms. Yamasaki, Mr. Reiber insisted that despite the amount Ms. Yamasaki was investing, they would be joint owners of the Property. This was represented to Ms. Yamasaki repeatedly before and after the execution of the sale agreement for the purchase of the Property.

[18] In cross-examination, Ms. Yamasaki clarified that the couple had previously been looking at properties in Nicaragua. Their budget was US\$200,000.00 because it was agreed they would split the cost of purchasing the property equally, and Ms. Yamasaki's budget was US\$100,000.00. As they were unable to find a suitable property in Nicaragua, they looked towards Belize. Ms. Yamasaki denied that their agreement was for her pay half of the purchase price of the Property, as Mr. Reiber was aware of her budget.

[19] On 16th March 2022, Ms. Yamasaki contacted a real estate agent, Mr. Josh Frazier of 17 North Global Real Estate via email to make an offer for the purchase of the Property in Ms. Yamasaki and Mr. Reiber's joint names. The sale agreement was entered into evidence. The sale agreement was electronically signed by both Mr. Reiber as "buyer 1" and Ms. Yamasaki as "buyer 2" on 22nd March 2022. The seller, Mr. Michael Olkwitz, accepted the offer on 23rd March 2022. The purchase price of the Property, together with the chattels and an advisory fee, was US\$433,000.00.

[20] Ms. Yamasaki testified that, concurrent with their purchase of the Property in Belize, Mr. Reiber decided to invest in a gym in Costa Rica. His investment would make him a percentage owner of the corporation Highland View Enterprises SOC ("Highland View"). Since Mr. Reiber did not have a bank account in Costa Rica and Ms. Yamasaki did (as one of two shareholders of a corporation incorporated in Costa Rica under the name Sueno Organico Sociedad De Responsabilidad Limitada ("Sueno Organico")), Ms. Yamasaki agreed to make payments on Mr. Reiber's behalf from Sueno

Organico's bank account to Highland View's bank account. According to Ms. Yamasaki, those payments would be applied as her investment towards the joint purchase of the Property. Ms. Yamasaki testified that they also agreed Ms. Yamasaki would provide Mr. Reiber with cash he could deposit in his account with the Zindis Group Corp. ("Zindis"). Zindis manages Mr. Reiber's property in Costa Rica.

[21] Ms. Yamasaki testified she made the following transfers or payments to Mr. Reiber or on his behalf from her bank accounts in Costa Rica and in the United States:

1. 3rd March 2022 - US\$1,500 transferred on Mr. Reiber's behalf to Highland View;
2. 3rd March 2022 - US\$1,500 transferred on Mr. Reiber's behalf to Highland View;
3. 21st March 2022 - US\$3,000 transferred on Mr. Reiber's behalf to Highland View;
4. 23rd March 2022 - US\$3,000 transferred on Mr. Reiber's behalf to Highland View;
5. 25th March 2022 - US\$5,000 transferred on Mr. Reiber's behalf to Highland View;
6. 1st April 2022 - US\$5,000 cash withdrawn for Mr. Reiber;
7. 1st April 2022 - US\$2,000 transferred on Mr. Reiber's behalf to Highland View;
8. 4th April 2022 - US\$5,000 cash withdrawn for Mr. Reiber;
9. 15th April 2022 - US\$7,000 cash withdrawn for Mr. Reiber;
10. 18th April 2022 - US\$2,000 transferred on Mr. Reiber's behalf to Highland View;
11. 27th April 2022 - US\$8,000 cash withdrawn for Mr. Reiber;
12. 4th May 2022 - US\$7,000 cash withdrawn for Mr. Reiber;
13. 11th May 2022 - US\$8,000 cash withdrawn for Mr. Reiber;
14. 17th May 2022 - US\$8,000 cash withdrawn for Mr. Reiber;
15. 11th May 2022 - US\$9,000 issued to Zindis Group Corp from Launch Federal Credit Union, cheque #1447 on behalf of Mr. Reiber; and

16. 22nd June 2022 - US\$26,000 issued to Mr. Reiber from Launch Federal Credit Union, cheque #1448 for balance owed + \$1,000 cash loaned. I note that the word "Belize" is written at the bottom left of the cheque.

[22] Together, these payments make up Ms. Yamasaki's alleged contribution of US\$101,000.00 towards the purchase price of the Property.

[23] Ms. Yamasaki was cross-examined on the bank statements she entered into evidence to prove the above-noted transfers and withdrawals. She agreed the bank statements do not state that any transfer was sent to Highland View. She also confirmed that Mr. Reiber did not provide her with any receipts for any of the transfers or cash payments she made to him or on his behalf.

[24] In cross-examination Ms. Yamasaki was also presented with a loan agreement dated 16th February 2022 between Highland View Enterprises, S.A. as the "debtor", and herself as the "lender", with Mr. Reiber acting as a witness. Under this loan agreement, Ms. Yamasaki was to loan the sum of US\$20,000.00 to Highland View, to be amortized over four years. The loan agreement stipulates that Ms. Yamasaki was to make deposits in the account of Highland View. The loan agreement also stipulates that Ms. Yamasaki would receive 20% of the capital stock of Highland View. Despite the document apparently showing her signature, Ms. Yamasaki denied having seen the document before the week prior to the trial, and denied signing it.

[25] Ms. Yamasaki was also cross-examined on the 22nd June 2022 cheque for an amount of US\$26,000.00. Mr. Reiber's counsel suggested to Ms. Yamasaki that this cheque was provided to Mr. Reiber to reimburse him for the expenses he incurred on her behalf to travel to Belize in January and/or March 2022, and then to move there in June 2022. Ms. Yamasaki resisted this suggestion, stating that the January 2022 trip to Belize was his Christmas gift to her, and that she paid for her own expenses when they relocated to Belize. When questioned as to why the cheque would have been issued after Mr. Reiber had already paid the purchase price for the Property, Ms. Yamasaki responded that she issued the cheque in order to complete her financial obligations towards Mr. Reiber for the purchase of the Property.

[26] It is not disputed that Ms. Yamasaki and Mr. Reiber decided to incorporate Reiber Holdings Ltd. to hold title for the Property. Ms. Yamasaki testified that she and Mr. Reiber agreed they would both hold equal shares in the corporation. On 23rd March 2022, Mr. Frazier introduced Ms. Yamasaki and Mr. Reiber to the Closing Agent. In his email, Mr. Frazier indicated to the Closing Agent that “*they [Ms. Yamasaki and Mr. Reiber] are looking to set up a 250 using you as nominee for 5% stamp tax*”. In his same-day response to Mr. Frazier’s email, Mr. Villanueva, the owner of the Closing Agent, indicated that a member of his team would be in touch to request information. A few minutes later, Ms. Katherine Hernandez emailed Ms. Yamasaki and Mr. Reiber requesting a copy of their passport, a second government ID, a completed Buyer’s Information Form, and proof of address. Ms. Yamasaki testified that she provided her information to Mr. Reiber so he could scan and submit it to the Closing Agent along with his paperwork. This was denied by Mr. Reiber.

[27] The closing day was set for 20th May 2022. Ms. Yamasaki and Mr. Reiber travelled to Belize together. Ms. Yamasaki did not attend the office of the Closing Agent on that day as she was informed that no signature was required until the corporation had been handed over to them.

[28] The relationship between Ms. Yamasaki and Mr. Reiber started to deteriorate around June 2022. In their respective witness statements, they make serious allegations of abuse against each other. While I allowed the introduction of this evidence and permitted questions in cross-examination because the issue had been raised by both Ms. Yamasaki and Mr. Reiber, I am mindful that this is neither a criminal proceeding, nor a claim in tort. Some of the allegations are the subject of a separate civil claim, which will be tried in due course. For the purposes of this claim, I accept that the parties’ relationship broke down in the summer of 2022, became abusive, and ultimately led to the eviction of Ms. Yamasaki from the Property in September 2022. I do not find it necessary to determine what, exactly, happened between the parties and who is responsible for the breakdown of the relationship.

[29] Ms. Yamasaki testified she found out during one of the couple's fights that she was not the owner of the Property. She attended the office of the Closing Agent who informed her that Mr. Reiber had sent him an email requesting the corporation to be in the name of Mr. Reiber only. Ms. Yamasaki adduced into evidence the said email dated 24th March 2022 from Mr. Reiber to Mr. Villanueva. Ms. Yamasaki is not copied on the email. The email states as follows:

Hello Alberto, this is Dean Reiber regarding the purchase of the residences at barrier reef 6C... the contract is in Camilla and myself names but we want the corporation to reflect myself only. I will submit the info form and copy of bill etc that you require hopefully today. Thanks.

[30] Ms. Yamasaki testified that prior to that day, she was unaware Mr. Reiber had not sent her information to the Closing Agent, and had changed the instructions in order for the corporation to reflect Mr. Reiber's name only. Ms. Yamasaki introduced into evidence an email from Mr. Frazier dated 6th May 2022 in relation to the Property, which she says proves she did not have any reason to believe or become concerned that she would not be receiving her interest in the Property or the corporation.

[31] Prior to the trial of this claim, the court heard and granted an application for an injunction preventing the sale of the Property or the sale of the shares in Reiber Holdings Ltd. until the determination of this claim. In the context of that application, Mr. Reiber disclosed an addendum to the sale agreement which reflects his name as the only purchaser of the Property. Despite Mr. Reiber's allegation that Ms. Yamasaki was present at the signing of the addendum on 4th April 2022, Ms. Yamasaki denies having any knowledge of the addendum prior to these proceedings. The addendum is not signed by Ms. Yamasaki.

[32] Ms. Yamasaki adduced into evidence text messages and emails in which Mr. Reiber admitted that Ms. Yamasaki had an interest in the Property and referred to the money Ms. Yamasaki gave him for the purchase of the Property. These include:

1. A WhatsApp message dated 18th July 2022 in which Mr. Reiber writes: "*I will stick around until I sell the condo and pay you what I owe you*";

2. A WhatsApp message dated 18th July 2022 in which Mr. Reiber writes: *"I don't need a lawyer, I'm not going to cheat you out of your money, I offered to buy you out before you said no you wanted to stay, so when I get funded I will pay you back the money I owe you, just like when we sell car, you will get your money"*;
3. An email from Mr. Reiber to Ms. Yamasaki dated 26th July 2022 in which Mr. Reiber writes: *"Would it speed things up if I have Alberto put you on corporation for your percentage?"*.

[33] The parties attempted to negotiate a resolution whereby either Ms. Yamasaki or Mr. Reiber would purchase the other's interest in the Property. These efforts failed. Ms. Yamasaki testified that she was in possession of the Property from 12th May 2022 until she was evicted on 12th September 2022. During that time, she made certain improvements and purchased furniture.

[34] In his witness statement, Mr. Villanueva confirmed receiving the email from Mr. Frazier, and confirmed that Ms. Hernandez responded to Ms. Yamasaki and Mr. Reiber to request information from them. According to Mr. Villanueva, after changing his instructions to request that the corporation reflect his name only, Mr. Reiber proceeded to send his information only. On 24th March 2022, Mr. Reiber sent his Buyer's Information Form, a copy of his passport, and a utility bill to Ms. Hernandez. On 25th March 2022, Ms. Hernandez responded to Mr. Reiber, asking to confirm whether *"Ms. Camilla will proceed in being part of the purchase. If yes, we will also require her information to be provided"*. On the same day, Mr. Reiber responded to Ms. Hernandez indicating that *"Camilla will not be, I have emailed this to Arturo for corporation purposes only"*. Questioned in cross-examination as to why he did not find it necessary to reach out to Ms. Yamasaki to confirm Mr. Reiber's instructions, Mr. Villanueva stated that it is not uncommon when a couple is concerned that one spouse takes the lead. In this case, because Ms. Yamasaki did not respond to the email from Ms. Hernandez asking for information and Mr. Reiber changed the instructions in regards to the corporation, the Closing Agent did not find it necessary to follow-up with Ms. Yamasaki.

[35] The purchase was successfully closed on 20th May 2022. In cross-examination, Mr. Villanueva stated that he was not aware of any addendum to the sale agreement.

[36] Mr. Villanueva testified that in July 2022, Ms. Yamasaki visited his office and requested to see her file. She was very distraught. Mr. Villanueva informed Ms. Yamasaki that the Closing Agent acted on Mr. Reiber's instructions that he should be the only shareholder in the corporation. At the time of Ms. Yamasaki's visit, the shares of the corporation had not been issued yet, and Mr. Villanueva told her he could put the matter on hold until he received further instructions. In August 2022, Mr. Reiber instructed the Closing Agent to transfer his entire corporate file over to his attorneys as they would attend to the filing of the documents necessary to allot the shares of Reiber Holdings Ltd. to Mr. Reiber only.

Evidence of Mr. Reiber

[37] Mr. Reiber was the only witness called to testify on behalf of the defence.

[38] Mr. Reiber testified that when Ms. Yamasaki moved into his home in Costa Rica, she agreed to share the expenses equally since she represented to Mr. Reiber that she was financially independent. This was an oral agreement between the parties. Mr. Reiber explained that his financial affairs and all expenses connected to his house were managed by Zindis. He would make deposits into Zindis' account and Zindis would deduct his expenses as they were incurred. Mr. Reiber entered into evidence statements from Zindis showing deposits and deductions for expenses for the period January to December 2021. Mr. Reiber testified that during the period Ms. Yamasaki lived with him in Costa Rica, she only made one payment of US\$9,000.00 for living expenses by personal cheque paid directly to Zindis. That payment was made in May of 2022, 16 months after Ms. Yamasaki had moved in with Mr. Reiber in Costa Rica and two months after Mr. Reiber and Ms. Yamasaki entered into the sale agreement for the Property. Mr. Reiber denied Ms. Yamasaki made that payment on his representation that it would be credited towards the purchase price of the Property.

[39] Mr. Reiber confirmed that he and Ms. Yamasaki travelled to Belize in January and again in March 2022 with a view to purchasing a condo in San Pedro. Mr. Reiber testified they agreed they would each pay half of the purchase price of the Property, just like they did for everything else in their relationship. Therefore, on 22nd March

2022, both he and Ms. Yamasaki signed the purchase agreement and emailed it back to Mr. Frazier.

[40] According to Mr. Reiber, on 23rd March 2022,¹ within a few hours of signing the purchase agreement, Ms. Yamasaki informed Mr. Reiber she could no longer proceed with the purchase as she would not be able to pay her 50% of the purchase price of the Property. Mr. Reiber opted to proceed with the sale alone rather than rescinding the offer. Mr. Reiber denied making any representations to Ms. Yamasaki as to her entitlement to ownership of the Property despite not being able to pay her share of the purchase price. In cross-examination, he was adamant that Ms. Yamasaki never paid him anything for the Property, and that he never promised to give her anything.

[41] On 23rd March 2022, after the seller accepted the offer, the sale agreement became binding. Mr. Reiber called Mr. Frazier to inform him that Ms. Yamasaki was no longer able to proceed with the purchase, and that he was prepared to proceed alone. In cross-examination, Mr. Reiber denied instructing Mr. Frazier to prepare an addendum to the sale agreement. Yet, in his affidavit dated 31st October 2022 in response to Ms. Yamasaki's application for an injunction, Mr. Reiber stated that :

Consequently, on my instructions Mr. Frazier prepared an addendum to the purchase agreement which addressed some incidental repairs the seller had to complete and reflected only me as the purchaser. The addendum was executed on 4 April 2022. Ms. Yamasaki was present when I signed the addendum.

The addendum was signed by Mr. Reiber on 4th April 2022 and by the seller on 7th April 2022. It is not signed by Ms. Yamasaki. The addendum provides that the seller agrees to make a number of repairs to the Property. It also provides that "all other terms and conditions of the Sales Contract to remain the same". Except that it is only signed by Mr. Reiber, there is nothing in the addendum to suggest that the original buyers had changed.

¹ The witness statement indicates that Ms. Yamasaki informed Mr. Reiber she could not proceed with the purchase on 22nd March 2022. At the trial, Mr. Reiber corrected that date for the 23rd March 2022.

[42] On 24th March 2022, Mr. Reiber informed Mr. Villanueva by email that the corporation which was to be formed for the purpose of holding title to the Property would be owned exclusively by Mr. Reiber. Mr. Villanueva responded to acknowledge Mr. Reiber's instructions. Mr. Reiber replied to Mr. Villanueva asking whether the Closing Agent had received the information requested by Ms. Hernandez. Mr. Reiber attached as an exhibit to his witness statement the Buyer's Information Form he allegedly provided to the Closing Agent. The document contains three pages. The first page contains his personal information, the second page is the "Source of Funds Declaration Form", and the third page is the "Source/Purpose of Funds Declaration". The third page is signed by Mr. Reiber, and appears to be dated "5/5/2022". Mr. Reiber was cross-examined on the Buyer's Information Form Mr. Villanueva entered into evidence as having been received by his office. The first page is identical to the first page of Mr. Reiber's exhibit and is titled "Part I: Personal Information". However, the second page is completely different. The second page of the document exhibited by Mr. Villanueva appears to be the continuation of the first page. The second page is divided into two parts: "Part II: Purchase Information", and "Part III: Title Transfer Information". Critically, in Part III, under the sub-title "Name(s) the property title will be placed in" the name "Dean C. Reiber" appears, and under "Name(s) of beneficial owner(s) for the said property", the name "Camilla Yamasaki" appears. This page is signed by Mr. Reiber and dated 23rd March 2023. Questioned as to why this particular page had not been provided as part of his evidence, Mr. Reiber responded that he did not know as he did not compile the pages, and did not look if there were any missing pages before signing his witness statement. I find it highly unlikely that the omission of this particular page was accidental. Mr. Reiber provided the page immediately preceding, and the page immediately following this particular page. That the missing page is detrimental to Mr. Reiber's case as it tends to corroborate Ms. Yamasaki's allegation that the parties' intention was for her to be the equal owner of the Property is not lost on the court. Its omission from the evidence impacts Mr. Reiber's credibility.

[43] On 4th April 2022, Mr. Reiber wired from his personal bank account US\$20,025.00 to the Closing Agent as payment of the deposit pursuant to the sale agreement. On 11th

May 2022, he wired US\$439,973.07 to the Closing Agent as payment of the remainder of the purchase price.

- [44] On 20th May 2022, Mr. Reiber and Ms. Yamasaki travelled to San Pedro from Costa Rica, where they were still living at the time. Mr. Reiber went to meet with Mr. Frazier to sign the closing documents for the Property, while Ms. Yamasaki went to purchase some items for the Property. Mr. Reiber testified that he informed Ms. Yamasaki that he was attending the closing. Ms. Yamasaki did not attend the closing and did not make any inquiries regarding the closing. Mr. Reiber denied instructing Ms. Yamasaki not to attend the closing.
- [45] Mr. Reiber confirmed that his and Ms. Yamasaki's relationship deteriorated in the summer of 2022. He returned to Costa Rica.
- [46] In his witness statement, Mr. Reiber testified that on 24th July 2022, he advised Ms. Yamasaki he had received an offer from a third party for the purchase of the Property, but wanted to give Ms. Yamasaki an opportunity to purchase the Property on the same terms. Ms. Yamasaki responded with an offer to purchase the Property for US\$275,000.00 financed over 30 years with 0% interest and no prepayment penalty. Mr. Reiber stated that he counter-proposed a purchase price of US\$300,000.00, 0% interest, no money down, a balloon payment after 5 years, and no prepayment penalty. Ms. Yamasaki responded that she needed the loan to be amortized over 40 years for the payments to be reasonable.
- [47] In cross-examination, it was revealed that Mr. Reiber once again did not provide the court with the entire documentation in relation to his counter-offer to Ms. Yamasaki. Ms. Yamasaki entered into evidence the email thread showing that Mr. Reiber counter-proposed a purchase price of US\$350,000.00 over five years, interest free, no money down, with "some kind of balloon at the end". Ms. Yamasaki responded to this email by noting that she had "over \$100k invested". Mr. Reiber then responded as follows:

Don't understand your figures, but \$459k was paid out for unit, not counting any upgrades which I paid for all. So even using your figures that makes \$359, so again even considering your figures I'm giving you deal especially

since you always stated that price paid was good deal. So again using your figures you feel your entitled to 21 percent of the value is that accurate? Is so let me know and we can work on it.

[48] Mr. Reiber was also shown an email dated 26th July 2022 in relation to the corporation, in which Mr. Reiber asked Ms. Yamasaki: *“How will it be transferred to you? And why, has it been explained to you that I am the majority owner and can decide what to do with the unit and you have no say in that decision”*. Mr. Reiber denied that his reference to “majority owner” as opposed to “sole owner” implied that Mr. Yamasaki had an interest in the corporation.

[49] Around 30th July 2022, the negotiations between the parties broke down. Mr. Reiber confirmed that he obtained an occupation order for the Property on 13th September 2022.

[50] Mr. Reiber denies that at any point in time, he requested Ms. Yamasaki to make any payments on his behalf as he is financially comfortable and can pay all of his expenses and bills. Any payments made by Ms. Yamasaki to Mr. Reiber were made for repayment of monies Mr. Reiber advanced on her behalf and for her own living expenses. Mr. Reiber attached to his witness statement a table showing items paid on behalf of Ms. Yamasaki and their costs. No bank or credit card statements are attached to this table. In cross-examination, Mr. Reiber stated that the \$26,000.00 cheque issued by Ms. Yamasaki with the mention “Belize” was for the reimbursement of living and moving expenses.

Analysis

Whether Ms. Yamasaki is entitled to any interest in the Property and, if so, the nature of such interest

[51] Ms. Yamasaki argues the facts in this case establish a resulting trust or, alternatively, a constructive trust. I find that Ms. Yamasaki has proven, on a balance of probabilities, the existence of a constructive trust in her favour for an equal share of the Property.

[52] I agree with Mr. Reiber that the circumstances of this case do not lend themselves to a finding of a presumed resulting trust. Unlike the case of **Shawn Sparks v Melissa Jude Luca**,² which Ms. Yamasaki relies on, this is not a case where title to the Property was jointly placed in both parties' names. Title is in Reiber Holdings Ltd's name, whose sole shareholder is Mr. Reiber. Since Ms. Yamasaki's name does not appear on the title or as a shareholder of the corporation, and she made no direct contribution towards the purchase price of the Property, there are no legal ties between Ms. Yamasaki and the Property. Ms. Yamasaki's position is that she contributed to the purchase price of the Property through payments made to Mr. Reiber or on his behalf for various other expenses. The court is unable to consider these payments as giving rise to a trust without also considering the common intention of the parties as to the purpose of the payments and ownership of the Property. I note that, in the excerpt from **Halsbury's Laws of England**³ cited by Ms. Yamasaki, the authors specifically state that "a presumed resulting trust [...] is, however, not to be relied upon in determining interests in a property occupied as a family home; instead, reliance is placed upon the common intention constructive trust".

[53] I find, however, that the circumstances of this case do lend themselves to a finding that the conduct of the parties and their common intention leading up to the purchase of the Property result in a constructive trust in favour of Ms. Yamasaki.

[54] The approach to be taken in determining whether a constructive trust has been created in circumstances such as those arising in this case, where one party in a relationship claims an equitable interest in a property purchased in the name of the other but to which they made a financial contribution, has been very helpfully summarized by the English Court of Appeal in **Oxley v Hiscock**:⁴

[68] I have referred, in the immediately preceding paragraphs, to "cases of this nature". By that, I mean cases in which the common features are: (i) the property is bought as a home for a couple who, although not married, intend to live together as man and wife; (ii) each of them makes some

² Claim No. 372 of 2009.

³ Vol. 98 (2013)/1.

⁴ [2004] EWCA Civ 546 ("Oxley"). See also *Gallarotti v Sebastianelli* [2012] EWCA Civ 865.

financial contribution to the purchase; (iii) the property is purchased in the sole name of one of them; and (iv) there is no express declaration of trust. In those circumstances the first question is whether there is evidence from which to infer a common intention, communicated by each to the other, that each shall have a beneficial share in the property. In many such cases – of which the present is an example – there will have been some discussion between the parties at the time of the purchase which provides the answer to that question. Those are cases within the first of Lord Bridge's categories in *Lloyds Bank Plc v Rosset*. In other cases – where the evidence is that the matter was not discussed at all – an affirmative answer will readily be inferred from the fact that each has made a financial contribution. Those are cases within Lord Bridge's second category. And, if the answer to the first question is that there was a common intention, communicated to each other, that each should have a beneficial share in the property, then the party who does not become the legal owner will be held to have acted to his or her detriment in making a financial contribution to the purchase in reliance on the common intention.

[69] In those circumstances, the second question to be answered in cases of this nature is “what is the extent of the parties' respective beneficial interests in the property?” Again, in many such cases, the answer will be provided by evidence of what they said and did at the time of the acquisition. But, in a case where there is no evidence of any discussion between them as to the amount of the share which each was to have – and even in a case where the evidence is that there was no discussion on that point – the question still requires an answer. It must now be accepted that (at least in this Court and below) the answer is that each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property. And, in that context, “the whole course of dealing between them in relation to the property” includes the arrangements which they make from time to time in order to meet the outgoings (for example, mortgage contributions, council tax and utilities, repairs, insurance and housekeeping) which have to be met if they are to live in the property as their home.⁵

[55] The first question is whether there is evidence from which this court can infer a common intention that Ms. Yamasaki would have a beneficial share in the Property. I find there is such evidence based on the whole course of conduct between the parties,⁶ and the fact that Ms. Yamasaki made contributions towards the purchase price of the Property in detrimental reliance to the parties' common intention.

⁵ Oxley at paras. 68-69.

⁶ *Dobson v Griffey* [2018] EWHC 1117 (Ch) at para. 21 (“Dobson”).

- [56] The documentation shows that up to 23rd March 2022, it was the common intention of the parties that Ms. Yamasaki would have a beneficial share in the Property. The sale agreement was signed on 22nd March 2022 by both Mr. Reiber as “buyer 1” and Ms. Yamasaki as “buyer 2”. Mr. Frazier was informed that the both of them would be involved in the corporation to be set up to hold title to the Property, and that is why he wrote to Mr. Villanueva to ask him “to get started working on their corporation”. Critically, the Buyer’s Information Form filled out and signed by Mr. Reiber on 23rd March 2022, and provided to Ms. Hernandez, shows that Ms. Yamasaki was intended to be a beneficial owner of the Property.
- [57] At some point between 23rd March and 24th March 2022, Mr. Reiber changed his mind and unilaterally decided to exclude Ms. Yamasaki from the deal. I find Mr. Reiber’s decision to have been unilateral because there is no evidence that Ms. Yamasaki changed her mind within 24 hours of signing the sale agreement and informed Mr. Reiber that she would no longer be proceeding with the purchase as he alleges. Mr. Villanueva’s testimony that Ms. Yamasaki was distraught when she attended his office in July 2022 to ask questions about ownership of the Property supports Ms. Yamasaki’s testimony that she did not know Mr. Reiber had changed the instructions.
- [58] It is unlikely that, having signed a sale agreement for the purchase of the Property on 22nd March 2022, Ms. Yamasaki would change her mind just as it became binding, the seller having accepted the offer on 23rd March 2022. Ms. Yamasaki is a retired businesswoman who previously worked as a financial analyst. She would presumably understand the binding nature of an accepted offer for the purchase of real property and the consequences of its breach. That Ms. Yamasaki would change her mind and withdraw from the deal without advising anyone, including their real estate agent and the Closing Agent, strikes me as incredulous. I agree with Ms. Yamasaki the fact that Mr. Frazier continued emailing her until at least 6th May 2022 in relation to the Property suggests he also had not been made aware that Ms. Yamasaki was no longer involved in the purchase of the Property, as does the fact that she did not sign the addendum to the sale agreement.

- [59] Furthermore, that Mr. Reiber subsequently excluded Ms. Yamasaki from all email correspondence in relation to the Property, including the email in which he advised the Closing Agent that Ms. Yamasaki would no longer be part of the corporation, is evidence of Mr. Reiber's deceptive intent. I find Mr. Reiber's convenient omission of the second page of the Buyer's Information Form showing Ms. Yamasaki as a beneficial owner of the Property from his witness statement to be further evidence of Mr. Reiber's pattern of hiding information in order to further his own interests.
- [60] On the whole, I am satisfied that at all material times up to 23rd March 2022, it was the parties' common intention that Ms. Yamasaki would have a beneficial share in the Property. I am also satisfied that Mr. Reiber's decision to exclude Ms. Yamasaki was made unilaterally and without Ms. Yamasaki's knowledge.
- [61] In addition to finding evidence of the parties' common intention from their conduct and the documentation, I further infer this common intention from Ms. Yamasaki's financial contribution towards the purchase price of the Property through payments made to, or on behalf of, Mr. Reiber.
- [62] Ms. Yamasaki's evidence in relation to the payments made towards the purchase price of the Property is certainly imperfect. There is little evidence, apart from her testimony, that the transfers and withdrawals from her bank accounts in Costa Rica and in the United States were made for the benefit of Mr. Reiber as her contribution towards the purchase price of the Property. It is not disputed that Mr. Reiber did not issue receipts for each payments she made to him or on his behalf, which is not surprising given that the two were involved in a romantic rather than a business relationship.
- [63] I infer that these payments were made towards the purchase price of the Property for the following reasons. First, the statement from Banco de Costa Rica entered into evidence by Ms. Yamasaki shows transfers and withdrawals of US\$66,000.00 within the period 3rd March 2022 to 17th May 2022. Transfers and withdrawals of this magnitude within such a short period of time are unlikely to arise from living expenses only, but are consistent with Ms. Yamasaki's position that they were made as contributions towards the purchase price of the Property.

[64] The loan agreement between Highland View and Ms. Yamasaki for US\$20,000.00 casts doubt about the payments made by Ms. Yamasaki to Highland View which Ms. Yamasaki stated were made on behalf of Mr. Reiber. Because the loan agreement was disclosed by Mr. Reiber the week before trial, Ms. Yamasaki's assertion that this document is a fabrication has not been tested. However, even discounting the US\$18,000.00 paid to Highland View, Ms. Yamasaki would still have transferred or withdrawn US\$48,000.00 within a two-month period, a sum which is greatly in excess of what she would be expected to spend on living expenses.

[65] I also find it unlikely that the two cheques dated 11th May 2022 and 22nd June 2022 for a combined amount of US\$35,000.00 would have been issued by Ms. Yamasaki to cover her living expenses. In cross-examination, Mr. Reiber admitted that he did not pay rent on the house in Costa Rica because he owns it. He alleged that Ms. Yamasaki and he agreed to share their living expenses, which Ms. Yamasaki denied. He provided no evidence as to those expenses, but judging by the statements from Zindis entered into evidence for the year 2021, Mr. Reiber's expenses for the house in Costa Rica average between US\$1,500 and US\$2,000 a month, except for January where the expenses are higher because of property taxes. By Mr. Reiber's own evidence, if the couple had agreed to share living expenses equally, Ms. Yamasaki's share would have been a maximum of US\$1,000.00 per month. They lived together in Costa Rica from December 2020 or January 2021 until they moved to Belize in June of 2022, which is roughly 18 months. Using Mr. Reiber's own evidence, Ms. Yamasaki's contribution to the couple's living expenses would have been about US\$18,000.00 during this period. The two cheques issued by Ms. Yamasaki were for double that amount, and were issued just as the couple moved to Belize. In addition, when combined with the transfers and withdrawals made from Ms. Yamasaki's bank account in Costa Rica, Ms. Yamasaki would have paid US\$83,000.00 for her share of the living expenses over a period of only 18 months, which appears excessive.

[66] I find it more likely than not that the two cheques were not issued to cover Ms. Yamasaki's living expenses but to cover her contribution towards the purchase price of the Property. That the 22nd June 2022 cheque for an amount of US\$26,000.00 is

annotated “Belize” reinforces my belief as to the purpose of this payment. For completion, I note that the list of expenses entered into evidence by Mr. Reiber is supported by no evidence, such as bank or credit card statements. Even using Mr. Reiber’s figures, these expenses would not come close to US\$83,000.00.

[67] Second, I find Mr. Reiber’s denial that Ms. Yamasaki made any contribution towards the purchase price of the Property to be inconsistent with his conduct in the months following the breakdown of his relationship with Ms. Yamasaki. Ms. Yamasaki entered into evidence WhatsApp messages in which Mr. Reiber refers to “*what I owe you*”, “*your money*”, “*the money I owe you*”, and “*your percentage*” (in relation to the corporation). I do not accept Mr. Reiber’s testimony that the money he refers to as owing to Ms. Yamasaki is a US\$1,000.00 loan she allegedly made to him. In his witness statement, Mr. Reiber testified that “owing to [his] fiscal prudence and management of [his] finances throughout [his] life”, he can “comfortably pay all [his] expenses and bills”. That Mr. Reiber would have to wait until the Property is sold to pay back a US\$1,000.00 loan from Ms. Yamasaki is beyond belief.

[68] Further, the parties’ unsuccessful attempts at negotiating the buyout of each other’s share in the Property strongly suggests that Ms. Yamasaki has made a contribution towards the purchase price. Had Mr. Reiber truly believed that Ms. Yamasaki had no rights or interest in the Property, there would be no reason for him to buyout Ms. Yamasaki’s share, or to discount from the price he offered Ms. Yamasaki for the buyout of the Property any amount at all, let alone a discount to the tune of more than US\$100,000.00, as he offered her.

[69] For these reasons, I find Ms. Yamasaki acted to her detriment by making a financial contribution towards the purchase price of the Property in reliance of the parties’ common intention that she would have a beneficial share in the Property.

[70] Having resolved the first question, the second question to be answered under **Oxley** is the extent of the parties’ respective beneficial interest in the Property. According to the Court of Appeal in **Oxley**, “each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the

property”. In **Dobson**, the court specified that “if [the quantification of the claimant’s share] is established by the common intention itself, then there is no need for the court to attempt to quantify it”.⁷

[71] I find the evidence supports that the parties intended for Mr. Reiber and Ms. Yamasaki to jointly purchase and hold title to the Property. That this was the parties’ original intention before Mr. Reiber’s unilateral decision to exclude Ms. Yamasaki from the deal was admitted by Mr. Reiber in cross-examination. It is also supported by the sale agreement, which was signed by both Mr. Reiber and Ms. Yamasaki, and Mr. Frazier’s instructions to Mr. Villeneuve that the parties sought to establish a corporation together for the purpose of holding title to the Property.

[72] Mr. Reiber contends that the common intention of the parties was that they would both contribute equally to the purchase price of the Property and would both get an interest as a result of such contribution. Apart from Mr. Reiber’s testimony, there is no evidence of the parties’ common intention that they would contribute equally to the purchase price of the Property. As I found Ms. Yamasaki to be generally more credible than Mr. Reiber, I prefer Ms. Yamasaki’s evidence that at all times she represented to Mr. Reiber that she could only contribute a portion of the purchase price. Despite these representations, it was both parties’ intention that they would purchase the Property and establish the corporation jointly.

[73] Where a constructive trust has been established, the court is not bound to make a mathematical calculation of each parties’ financial contribution to determine their respective share in a property. The calculation is made by the court on the basis of what is fair given the whole course of conduct between the parties.⁸ I find it is fair in the circumstances of this case to declare the Property to be held jointly by Mr. Reiber and Ms. Yamasaki. I find this outcome to be fair based on Mr. Reiber’s representations to Ms. Yamasaki, her detrimental reliance on these representations, and the

⁷ Dobson at para. 23.

⁸ Oxley at para. 69.

underhandedness of Mr. Reiber's conduct in excluding Ms. Yamasaki from the deal without her knowledge or consent.

Whether Ms. Yamasaki is entitled to any interest in Reiber Holdings Ltd.

[74] Reiber Holdings Ltd. was created to serve as a vehicle for holding title to the Property. For the same reasons as those supporting my finding of a constructive trust in respect of the Property, I find that a constructive trust in favour of Ms. Yamasaki has been created in relation to the corporation. The evidence supports the parties' common intention that the corporation be held in their joint names. It also supports that like the Property, Ms. Yamasaki was excluded from the corporation without her knowledge or consent. I find that Ms. Yamasaki's contribution to the purchase price of the Property was also meant as a contribution to the incorporation of the corporation which would hold title to the Property.

[75] Ms. Yamasaki is entitled to 50% of the shares in the corporation. The sole shareholder of the corporation is Mr. Reiber. Mr. Reiber therefore holds 50% of the shares in the corporation in trust for Ms. Yamasaki.

Conclusion

[76] I declare that Ms. Yamasaki is entitled to a joint interest in the Property and in Reiber Holdings Ltd. I further declare that the Property is held in trust by Reiber Holdings Ltd. in joint shares for Ms. Yamasaki and Mr. Reiber, and that Mr. Reiber holds 50% of the shares in Reiber Holdings Ltd. in trust for Ms. Yamasaki.

[77] Since Ms. Yamasaki's claim is for half of the value of the Property, she is entitled to prescribed costs calculated on 50% of the value of the Property.

IT IS HEREBY DECLARED AND ORDERED THAT

- (1) Ms. Yamasaki is entitled to a joint interest in all that piece or parcel of land legally described being Parcel 4775 (H36), Block 7, situated in the San Pedro Registration Section;
- (2) Ms. Yamasaki is entitled to a 50% interest in Reiber Holdings Ltd.;
- (3) Reiber Holdings Ltd. holds any and all interest in the Property in trust for Ms. Yamasaki and Mr. Reiber in joint shares and the defendants are estopped from denying such interest;
- (4) Mr. Reiber holds 50% of the shares in Reiber Holdings Ltd. in trust for Ms. Yamasaki;
- (5) The Property and the shares in Reiber Holdings Ltd. be settled or transferred equally between Ms. Yamasaki and Mr. Reiber;
- (6) Ms. Yamasaki is awarded costs on a prescribed basis calculated on 50% of the value of the Property.



Geneviève Chabot
High Court Judge