THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2021/CLE/gen/001260

BETWEEN

FEDERICO RIEGÉ

Plaintiff

AND

(1) SARKIS D IZMIRLIAN

(2) THE PRESERVE DEVELOPMENT COMPANY LTD.

(Formerly CRIOLLO ONE LIMITED)

Defendants

Before:	**The Honourable Chief Justice Sir Ian Winder**
Appearances:	**Gail Lockhart -Charles KC with Syann Thompson for the Plaintiff**
	Brian Simms, KC with Wilfred Ferguson Jr and Aquelle Tuletta for the Defendants
	29 April 2024, 20 April 2024, 1 May 2024, 2 May 2024 and
	6 October 2025

JUDGMENT

WINDER, CJ

This is the Claim of the Plaintiff, Frederico Riegé (Riegé) for Deceit/Fraudulent Misrepresentation, Breach of Confidence and Unjust Enrichment against the Defendants arising out of proposed equestrian development project in Western New Providence.

[1.] The Claim was commenced by Writ of Summons filed on 25 October 2021. The Statement of Claim indorsed thereon is settled in the following terms:

1. The Plaintiff is a citizen of Argentina and Switzerland and a permanent resident of the Commonwealth of The Bahamas.
2. The First Defendant is a property developer and a permanent resident of the Commonwealth of The Bahamas.
3. The Second Defendant, The Preserve Development Company Ltd. (Formally Criollo One Limited), is a limited liability company incorporated under the laws of the Commonwealth of The Bahamas as a special purpose vehicle to take title to a certain tract of land in the Western District of the Island of New Providence for development by the Plaintiff and the First Defendant as an ecological sustainable equestrian community oriented real estate project ("the Project").
4. The Second Defendant is the alter ego of the First Defendant, who is its sole directing mind and will as well as its beneficial owner.
5. The Project was an original idea that the Plaintiff had conceived of arising from his passion for and knowledge of equestrian activities, polo in particular, and his extensive network of contacts in the international Equestrian/Polo community. The Plaintiffs vision for the Project was to create a destination with a focus on equestrian activities, particularly Polo, and incorporating other features such as residential real estate investment opportunities affording qualified purchasers accelerated consideration for annual or permanent residence applications in The Bahamas in accordance with the policies of the Bahamas Investment Authority.
6. The Plaintiff's concept for the Project included building a sustainable ecological community around equestrian activities (such as polo/dressage/jumping), including a club house, a boutique hotel, restaurants, shopping village, and residential properties around the fields.
7. In or about October 2014, after discussing the concept for the Project with numerous investors who had expressed an interest in participating in the project with the Plaintiff and providing financial backing, the Plaintiff began searching in The Bahamas for land that could be acquired for the purpose of developing the Project with the financial backing of the investors he was in contact with.
8. After extensive research and discussions with landowners in The Bahamas, the Plaintiff located a Three hundred Thirty-three and Three hundred and Twenty-three thousandths (333.323) acres tract of land situated on the Eastern Side of South West Bay Road and

on the Southern Side of West Bay Street in the Western District of the Island of New Providence ("the Land") which he was certain would be ideally suited for the Project.

9 The Plaintiff made inquiries as to the ownership of the Land and discovered that it was owned by company, Nassoak Ltd., which was in turn owned by a trust. The Plaintiff engaged in discussions and negotiations with the trustees and the beneficial owners for the acquisition of the Land.

10 In or about May 2016 the Plaintiff mentioned the Project to the First Defendant while at a social gathering and the First Defendant expressed an interest in participating with the Plaintiff in the Project. Discussions ensued between the Plaintiff and the First Defendant during which the Plaintiff described the Project to the First Defendant and told him about the land he had located and intended to acquire for the purpose of developing the Project with the backing of his investors.

11 In order to induce the Plaintiff to fully disclose his proprietary information relating to the Project and to participate in the development and planning of the Project and to negotiate and secure the deal for the acquisition of the Land, the First Defendant represented to the Plaintiff that he would receive a 10% ownership interest in the Land, which said interest was to be his reward for having come up with the idea, found the Land, successfully negotiating the acquisition of the Land and his continued involvement in the ongoing development and planning of the Project.

12 The representation that the Plaintiff would have a 10% ownership interest in the Land was first made in a meeting between the Plaintiff and the First Defendant in St Tropez, France on June 29th, 2016. It was also agreed during the meeting in St Tropez that there would be a put and a call option in relation to the Plaintiffs ownership interest.

13 The representation that the Plaintiff would have a 10% Ownership interest in the Land was repeatedly confirmed including (i) in meetings, calls and correspondence between the First Defendant to the Plaintiff, (ii) in an e-mail dated 10 July, 2016 entitled "our agreement"; (iii) in a telephone call between the Plaintiff and the First Defendant on 11 July, 2016 during which the Plaintiff confirmed his agreement to proceed in reliance on the First Defendant's word that he would be given a 10% interest in the Land in exchange for his effort and information, as described below; (iv) in a meeting at Island House on Feb 6th 2017 to specifically define the strike values for the put at $80,000 and call at $130,000 in relation to the Plaintiffs 10% ownership interest in the land, and (iii) in a meeting over lunch at Mahogany restaurant on 14 September, 2017 during which the Plaintiff reconfirmed the Defendant's ownership interest in the Land, stating that this would be effected through ownership of 10% of the shares of a BVI company that would own the Land;

14. Induced by and acting in reliance upon the said representations, the Plaintiff discontinued his efforts to seek the backing of other potential investors and carried out all of the activities described below:

    a) successfully negotiated a purchase agreement at a very favourable price with the trustees and beneficiaries of Nassoak.

    b) During the course of title negotiations and in order to secure the deal, the Plaintiff travelled twice to Mexico at his own expense to negotiate in person with Curtis Lowell, one of the trustees and attended numerous meetings with the trustees in Nassau.

c) The Plaintiff's offer dated 23 June, 2016 to Nassoak Limited, Bruno Roberts and Curtis Lowell, senior executor of the estate of Baroness Nancy Oakes von Hoyningen-Huene (the Trustees), to purchase the Land at the price of $58,000 per acre for the 336.2 acre parcel was accepted by the trustees and a signed accepted copy was returned to the Plaintiff under cover of a letter dated 27 of June 2016 from Nassoak Ltd.'s attorneys McKinney Bancroft and Hughes.

d) The Plaintiff's offer letter stated that the purchaser intended to develop a portion of the Land into a project featuring a 'sustainable community' with polo, Equestrian grounds and customary accoutrements with residential units.

e) The Plaintiff conducted meetings with the attorneys for the owners of the Land and attended to the development of the Project plan and due diligence including engaging architects, engaging surveyors, commissioning a survey and engaging experts to conduct environmental studies.

f) The Plaintiff travelled to New York to meet with Hart Howerton, the architects to explain his idea and guide them on how to implement it, and travelled around Europe and Latin America studying many equestrian facilities, developing his network further, pitching the idea and generating interest in the Project.

g) the Plaintiff worked tirelessly on development of the Project without seeking any reimbursement for his time, effort or cost on the understanding that his 10% interest in the Land was to be his reward for having come up with the idea, found the land and successfully negotiated the acquisition and his continued extensive involvement in the in the ongoing development and planning of the Project.

h) the Plaintiff was instrumental in the Project, sourcing the land and putting all the stakeholders and the deal together; he was able to negotiate a price of S58,000 per acre for the Land which was well below the market price, which was $70,000 to $120,000 per acre.

i) The Plaintiff dealt with all matters relating to environmental studies and attended all matters as were necessary to close the transaction.

j) The Plaintiff disclosed to the First Defendant all of his proprietary and confidential information regarding the project that he had been developing, which involved putting forward a Polo/Equestrian community and creating a unique theme that would create value on land without access to the ocean.

k) The terms of the Plaintiff's said offer letter that had been accepted by thc trustees, as described above, entitled the Plaintiff or the Plaintiff's nominee to purchase the Land, and Plaintiff exercised his right pursuant to the said offer letter to nominate the Second Defendant as the purchaser of the Land.

15. In tandem with the performance of the activities outlined above, the Plaintiff was also negotiating the terms of a profit share agreement with the First Defendant and his representatives and drafts of this agreement were exchanged between the parties, including a draft sent by the First Defendant's representatives to the Plaintiff in February, 2017, which included provision for the previously negotiated put option for the Plaintiff at USD$80,000 per acre and call option for the First Defendant at USD$130,000 per acre.

16. The information communicated by the Plaintiff to the First Defendant with regard to the opportunity to purchase the Land and the development of a Polo/Equestrian Community and creating a unique theme that would create value on the Land, was communicated in

confidence and in circumstances importing an obligation of confidence on the part of the First Defendant in that the First Defendant at all material times represented himself as a potential investor in the Project that was being developed by the Plaintiff and it was at all material times understood that the Plaintiff was communicating with the First Defendant in confidence as such and that the use of the Plaintiff's confidential information for the purpose of acquiring the Land and developing the Project to the exclusion of the Plaintiff was prohibited.

17. In the premises, the relationship between the Plaintiff was one of confidence and trust.
18. On 22 September, 2017 the First Defendant sent an e-mail to the Plaintiff stating "...I have decided to put in the application as the sole beneficial owner. We will document your interest as a profit share as Whitney explained in the BVI company. I will ask Whitney to get in touch with you to document "
19. The Plaintiff understood the reference to "the application" in the First Defendant's e-mail to be a reference to the application that non-Bahamians are required to make for permission to acquire commercial property or property exceeding a certain amount of acreage in The Bahamas. Following receipt of the First Defendant's 22 September, 2017 e-mail, the Plaintiff wrote to Whitney Thier, the Executive Vice President of one of the First Defendant's entities, More Development Property Company Ltd., expressing his concerns about the First Defendant's intentions as expressed in the 22 September, 2017 e-mail; however, he continued to communicate in good faith with the First Defendant in an attempt to finalize the terms of the profit share agreement.
20. The Plaintiff continued to work on the project in reliance on the First Defendant's representation that he was to have a 10% economic interest in the Land and on 18 May, 2018 the Land was transferred by conveyance from Nassoak Limited to the Second Defendant, Criollo One Limited, a Special Purpose Vehicle beneficially owned by the First Defendant and established for the purpose of holding the Land, whose name, "Criollo One Limited", was conceived of by the Plaintiff deriving its origin from the Argentinian word "Criollo", meaning the breed of an Argentine Horse.
21. The said conveyance is lodged for record in the Registrar General's Departmcnt in book 13006 pages 394 to 401.
22. Having secured ownership of the Land and all of the Plaintiff's proprietary information with regard to the Project, the First Defendant revealed that he had no intention of giving the Plaintiff a 10% (or indeed any) economic interest in the Land.
23. Attorneys for the First Defendant sent a letter to the Plaintiff dated 16 November, 2018 in the following terms:

    We write on behalf of our client to inform you that after several years of unsuccessful negotiations and the exchange of several draft profit share agreements, there does not appear to be any prospect of reaching agreement on the structure of an economic interest in the former Nassoak property in return for your involvement. Your insistence on an immediate ownership equity interest in the Investor in the property is not acceptable for many reasons, including the significant initial and continuing capita! outlay by the Investor and the absence of any guarantee of profitability.

    Agreement on the structure of the economic interest for your involvement was preliminary to our client agreeing the details and terms of a partnership agreement. This is no longer possible.

Even though the principal of the Investor is appreciative of your efforts in sourcing the property and the enthusiasm shown by you by inquiring into the market for a polo community in The Bahamas, unless there were some formal agreements on polo community in The Bahamas, unless there were some formal agreements on both the economic interest and partnership component of the relationship, it is simply impossible to continue to negotiate with you in an unproductive manner.

Moreover, in the absence of an agreement, there is no basis for you to claim entitlement to a buy out of a share that simply does not exist /n the premises, it is with deep regret that our client must terminate any further discussion relating to your possible involvement in the project.

24. The Profit-sharing agreement, referred to in the correspondence from the First Defendant's attorneys to the Plaintiff, was a separate agreement that the parties at all material times intended to pursue. The said profit sharing agreement was never intended to represent the First Defendant's 10% economic interest in the Land, nor was the said profit sharing agreement ever represented to the Plaintiff to be a condition of his ownership of a 10% economic interest in the Land.
25. The Profit-Sharing Agreement with the Put/Call options negotiation was in fact promised on the representation that the Plaintiff was the owner of a 10% stake in the land. Indeed, it was only upon the representation that the Plaintiff was the owner of the 10% interest in the Land that the intention to negotiate a Profit Sharing agreement with put/call options could be understood.
26. The First Defendant made the said representations that the Plaintiff would have a 10% interest in the Land fraudulently in that he had no intention of honouring this representation. The First Defendant further used the proposed profit sharing agreement to disguise his intent and to deceive the Plaintiff into believing that he would still receive a 10% economic interest in the land although the First Defendant would apply for the permit to purchase the land as the sole beneficial owner.
27. The First Defendant has, in breach of confidence, taken for his exclusive benefit the Plaintiff s unique idea for the development of the Project on the Land and excluded the Plaintiff from participation in the Project and economic interest in the Land.
28. Since securing ownership of the Land and the full participation of the Plaintiff in developing the Project, including disclosure in confidence to the First Defendant and his agents of all of the Plaintiff's proprietary information relating to the Project, the First Defendant has revealed his true intent by refusing to acknowledge any right of the Plaintiff to a 10% economic interest in the Land and has terminated all discussions with the Plaintiff with regard to the matter.
29. The Plaintiff has suffered loss and damage as a result of acting to his detriment in reliance on the First Defendant's said fraudulent representation that he would have a 10% economic interest in the Land and as a result of the First Defendant's breach of confidence

PARTICULARS OF LOSS AND DAMAGE

a) The Plaintiff expended years of time and effort as the founder and promoter of the Project developing the project, researching and locating the Land and negotiating favourable terms for the acquisition of the Land in return for which he has received no benefit or compensation.

b) The Plaintiff has also been deprived of the benefit and value of the Project, which was his unique idea and work product, and he has lost the benefit of all of the proprietary information relating thereto which he was induced to share with the First Defendant and shared with the First Defendant in confidence and on the representation by the First Defendant that he would have a 10% economic interest in the Land.

c) The Plaintiff's unique idea and his opportunity to acquire the Land and develop the Project with other investors if necessary has been taken from him by means of the First Defendant's deception.

d) The Plaintiff has lost the opportunity to nominate an entity other than the Second Defendant as Purchaser of the Land and to benefit from the increase in the value of the land from the date of the signed offer letter between the Plaintiff and the owners of the Land to the date hereof.

e) Prior to meeting with the First Defendant the Plaintiff had already developed the concept of the Project, promoted the idea, formulated the business model, engaged in discussions and initial negotiations with prospective local and global investors, identified the target parcel, engaged the owners of the property in negotiations to purchase the property, conducted market research, traveled to Europe and Latin America at his expense to meet with third parties and invested an extensive amount of personal time and energy on the project. The Project represented a large part of his creative, entrepreneurial and commercial endeavors over many years, all of which was lost to him due to the First Defendant's deception and breach of confidence.

f) The Plaintiff has suffered reputational damage in that discontinuing the discussions with the investors he had secured prior to the First Defendant's fraudulent representation has impaired his ability to solicit investors and raise financing for project development in the future.

g) The Plaintiff has lost credibility having negotiated the acquisition of the Land and the development of the Project holding himself out as an owner and his reputation has been impaired with the pool of investors available to the Plaintiff for project financing in the future.

30. Further or in the alternative the Plaintiff asserts that the Defendants have failed to pay to the Plaintiff any sum in compensation for the services performed by and work done by the Plaintiff pursuant to the First Defendant's said representation. Accordingly, the Plaintiff will say that he is entitled to recover and the Defendants are required to pay to him a sum representing 10% of the market value of the Land or such other sum as the Court considers to be a reasonable fee in the circumstances of the case.

31. Alternatively, a sum representing 10% of the value of the Land is a reasonable fee which the Plaintiff is entitled to recover by way of quantum meruit.

AND the Plaintiff claims:

(1) Damages;

(2) Damages for fraudulent misrepresentation.

(3) An injunction to restrain the Defendants, whether acting by themselves, their directors, officers, servants or agents or otherwise, from (a) making use of or procuring any other person to make use of any information, documents or other material supplied by the Plaintiff in confidence to the Defendants; (b) developing a polo/equestrian themed development on the Land.

(4) An inquiry as to damages by reason of the Defendants' breaches of confidence or procurements thereof or alternatively an account of profits;

(5) Damages on a quantum meruit basis for work performed.

(6) Damages for damage to reputation

(7) Further or other relief;

[2.] Izmirlian denies the claim. His defence provides, in part, as follows:

7. Paragraph 10 of the Statement of Claim is denied. On or about May 20th 2016, the Plaintiff mentioned to the First Defendant while at a social gathering that he was aware of approximately 333 acres of land situate between Albany and Lyford Cay ("the land") available for sale. The Plaintiff mentioned the idea of developing a Polo based community on the land or a part thereof to the First Defendant. The First Defendant expressed an interest in buying the land by himself and separately agreed to have further discussions as to when and how the Plaintiff and the First Defendant might work together to develop the said land or a portion thereof.

8. Paragraph 11 of the Statement of Claim is denied. Any information disclosed by the Plaintiff was done so without restriction of use as part of negotiations towards the prospect of a formal written and signed agreement. From the initial meeting between the Plaintiff and the First Defendant, the Plaintiff specifically identified the land and provided the First Defendant with publicly available information regarding the size, location and ownership of the land. The said information was confirmed in an email dated June 12 2016 by the Plaintiff and at no time prior to the sending of the said information had any representations and/or offers been made to the Plaintiff in respect of participation. The Defendant expressed a willingness to purchase the land himself and there was potential for the Plaintiff and the First Defendant to develop it or a part thereof collectively into a Polo based community. It is denied that the concept of a Polo based community was proprietary information or capable of being so. It is averred that several other residential developments in the western end of New Providence considered offering Polo grounds and or equestrian lots namely:

i. The Vendors of Nassoak Limited in the producing marketing material expressly mentioned that he said land or a portion thereof could be used as a polo community.
ii. Lyford Cay has lots that are used as equestrian lots.
iii. There was a development proposal in relation to the 200 plus acres attached to Lyford Cay to be an equestrian community.
iv. Albany has since approximately 2015 marketed the sale of the equestrian lots.
v. The Plaintiff informed the First Defendant by email dated 12th June 2016 that for the past 2-3 months he had been in conversation with another potential investor with whom he shared the idea and similar information with. Further, the Plaintiff informed the First Defendant that he shared the idea and similar information with

certain polo developers and Latin-American investors. Further, so revealing that the idea about the Polo community was not confidential or proprietary information.

vi. The Plaintiff indicated in his draft notes to the First Defendant by email dated 26th October 2017 that" there *are many players in the island that know about this project, probably around 30 people now..."*

vii. The First Defendant in or about 2012-2013 during the development of Baha Mar had discussions with Adrian Simonetti, president and CEO of La Martina Group, about the implementation of Polo matches at Baha Mar.

9. Paragraph 12 is denied. At all material times, all information was provided to the First Defendant without any inducement or representation. The First Defendant from the inception expressed a willingness to purchase the land himself and the prospect of him and the Plaintiff having further discussions on how and when to develop the said land or a portion thereof collectively into a Polo community. At all material times the First Defendant never had any discussions with the Plaintiff regarding any ownership interest in the land. The First Defendant avers that following the meeting in St. Tropes, the First Defendant sent an email dated 10th July 2016 to the Plaintiff which set out the agreement that was subject to contract which had been discussed. Under those terms, the Plaintiff had continuing obligations which he had to fulfill in order to realize any benefit.

10. From the inception as expressed in the email dated 10th July 2016, the First Defendant had the intention to give the Plaintiff an economic interest based on the profits of the Polo based community on the condition that the Plaintiff fulfill his obligations and subject to a detailed written agreement. The structuring of the agreement proved to be a difficult task and was never settled because at all material times the Plaintiff kept insisting on terms that were unacceptable to the First Defendant and had never been contemplated by the First Defendant.

11. Paragraph 13 is denied. At all material times, the First Defendant and the Plaintiff were engaged in a series of negotiations and discussions which would hopefully become the basis for the terms of a detailed written and signed agreement.

i. On or about 10th July 2016, the First Defendant by an email stated broadly what he hoped would later become the basis of terms of a written and signed agreement between him and the Plaintiff. The First Defendant stated that *"Once we are in [on] the same page, I will ask Whitney to work with the lawyers and see how to best structure."*

ii. The First Defendant in an exchange of discussions with the Plaintiff over what he hoped would later become the terms of a detailed written and signed agreement stated that the Plaintiff will have a 10% economic interest in the land on the condition that he would continue to be involved; negotiate with the necessary parties, help develop the master plan, bring in other investors, assist in selling land/homes to client base and provide advice on the polo club and community.

iii. The First Defendant never offered the Plaintiff an interest in the land but only suggested a profit interest which was termed an economic interest. The 10th July 2016 email in setting out such proposal that was subject to contract, set out the formula for calculating such economic interest.

iv. At all material times, no contract was ever entered into between the Plaintiff and the First Defendant.

12. During those discussions the Plaintiff made the following material representations all of which were misleading:

i. That he had an extensive business knowledge in relation to the establishment of polo clubs and communities.

ii. That he had investors who would invest in a Polo based community alongside of the Plaintiff.

iii. That between his clients and his extensive network of contacts in the international community he would be able to sell homes, lots and condominiums built around a Polo club.

iv. That he had sufficient contacts in the Polo community and would bring in any experts needed for the development and operation of the Polo club and community.

13. The First Defendant and the Plaintiff discussed the idea that the Plaintiff's economic interest would be structured in a detailed written and signed agreement by the parties in the best manner possible in order to achieve the Plaintiff's goal of obtaining permanent residence in The Bahamas and their mutual goal of a rapid/hassle free closing. This discussion was reflected in the email of July 10th 2016, where the First Defendant stated *"Once we are in [on] the same page, I will ask Whitey to work with the lawyers and see how best to structure."*

14. Additionally, as stated in the July 10th 2016 email, the First Defendant discussed with the Plaintiff the idea of incorporating customary terms such as drag along and tag along rights and put call options within the terms of a detailed written and signed agreement between the parties.

15. At all material time the First Defendant considered his conversation with the Plaintiff to be discussions and negotiations that were always subject to a detailed written and signed agreement to be entered into by all parties. This understanding was evident by the terms of the First Defendant's July 10 2016 email expressing that once the parties were on the same page a formal contract would be drafted and by concluding that further discussions would ensue.

16. The First Defendant's intention was understood and accepted by the Plaintiff as expressed in the Plaintiff's email dated 11th July 2016.

17. On or about 27th October 2016, the First Defendant by email sent the Plaintiff a draft agreement representing their negotiations and discussions for the Plaintiff's comments, questions or any concerns.

18. On or about 28th October 2016, the Plaintiff responded by email and stated *"thank you for this, I will look at this draft and I'll come back to you with comments."*

19. Over a series of discussions and negotiations, the First Defendant revised the draft agreement to address points discussed by both parties and circulated the draft by email to the Plaintiff.

20. The Plaintiff by email dated 25th September 2017 continued to be aware that he and the First Defendant were engaged in discussions and negotiations and had not reached any agreement when he stated *"If I may suggest, we can ask Viana to draft a list of all requirements for me to have 10% ownership of the BVI and all requirements needed to include me in the BIA process. With these facts, we can reassess the situation so that we can create a firm conclusion that satisfies everyone's priorities."*

21. The Plaintiff at all material times during the revision of the drafts with the First Defendant was aware that the Second Defendant would be the sole owner of the Property

and that the Plaintiff would have an economic interest in the profits of Criollo as outlined in each reversion of the draft agreement after the agreement was finalized and executed by the parties. …

25. At all material times the Plaintiff and the First Defendant could not agree on any of the multiple draft versions of the agreement. …

29. On or about 16th November 2018, Lennox Paton wrote to the Plaintiff on behalf of the First Defendant and stated that *"after several years of unsuccessful negotiations and the exchange of several draft profit share agreements, there does not appear to be any prospect of reaching agreement on the structure of an economic interest in the former Nassoak property in return for your involvement. Your insistence on an immediate ownership equity interest in the Investor property is not acceptable for many reasons, including the significant initial and continuing capital outlay by the Investor and the absence of any guarantee of profitability."*

30. It is averred that after several years of unsuccessful discussions and the exchange of multiple revised draft agreements between the parties, negotiations broke down due to the Plaintiff's refusal over a period of several years to reach any agreement. The exercise was unfruitful and the parties could not come to any agreement on the terms for a detailed written agreement to be signed by the parties.

31. Paragraph 14 is denied, and the Plaintiff is put to proof thereof. The First Defendant at all material times did not make any representation to the Plaintiff to be relied on and/or induced by for any purpose whatsoever. Further and in the alternative, the Plaintiff did not by conduct or otherwise, carry out any activity as a result of inducement by or in reliance upon any purported representation made by the First Defendant. It is averred that:

i. The price paid for the land was the market price. The Plaintiff was acting as agent of the First Defendant whilst negotiating the terms for the sale of the land which were clearly within the market price.

ii. The Plaintiff by email dated 25th September 2017 stated that *"bottom line, I did all this, not only because I believed in this project but because I worked as a minority shareholder and one of the drivers of the project, along with the team, the First Defendant and Tom, I am not earning income on this nor passing my costs and never even thought twice about all efforts, as I am working full blast for the future of an ownership stake which I believe in."*

iii. The Plaintiff was always aware that he did not have any agreement in place with the First Defendant and nevertheless continued to act of his own accord.

iv. The offer dated 23rd June 2016 to Nassoak Limited to purchase the land was an offer made on behalf of the First Defendant. The offer clearly states that it was an offer on behalf of the Plaintiff's client. The offer was drafted by the First Defendant and his advisor and not by the Plaintiff.

v. The Plaintiff operated his activities in furtherance of the idea of developing the land or a portion thereof into a Polo community while in tandem engaging in a series of negotiations and discussions with the First Defendant which they hoped would later become the basis for the terms of a detailed written and signed agreement.

vi. The Plaintiff at all material times remained a full-time employee of Julius Baer.

vii. The Plaintiff failed at all material times to introduce any potential investors to the First Defendant.

viii. The Plaintiff failed at all material times to introduce and potential purchasers of the property to the First Defendant.

ix. The Plaintiff other than introducing service professionals for the designing of Polo clubs and providing general brochures which were publicly available, failed to provide any information or expertise on the design of a Polo community and/or the cost of establishing and running Polo clubs and/or the profitability of running such a club to the First Defendant.

x. The Plaintiff failed to advise the First Defendant on the difficulties in running a Polo club in the Bahamas.

xi. The project as envisioned by the Plaintiff would have never succeeded and has not been nor will it be developed by the First Defendant.

xii. On some or all of the Plaintiff's travels, he was traveling as Julius Baer's employee.

xiii. The Hart Howerton meeting was organized by the First Defendant. The Plaintiff was invited to the Hart Howerton meeting at his own request and insistence to the First Defendant. The Plaintiff's attendance at the meeting added no material value to the meeting.

[3.] The Second Defendant also denies the claim. Its defence provides, in part, as follows:

> 6. Paragraphs 5-13 of the Statement of Claim are neither admitted nor denied and the Plaintiff is put to proof thereof. Paragraph 2 of this Defence is repeated. The Second Defendant was incorporated on or about 19th July 2016 and the allegations made by the Plaintiff herein relate to matters involving the First Defendant in his personal capacity and are outside of the knowledge of the Second Defendant.
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> 7. Save and except that it is denied that the Plaintiff exercised his right pursuant to the said offer letter to nominate the Second Defendant as purchaser of the Land, Paragraph 14 of the Statement of Claim is neither admitted nor denied and the Plaintiff is put to proof thereof. On or about 23rd June 2016, the Plaintiff executed an offer letter which stated *"I am writing in a representative capacity to present a formal offer to purchase the real property described herein form Nassoak Limited ("Vendor") by my client through a person or entity that it may nominate (the "Purchase"), upon the terms and conditions set out below."* At all material times it was the client who was the First Defendant that had the right to nominate a person or entity to take ownership of the land. …
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> 9. Save and except that on or about 18th May 2018 the land was transferred by conveyance from Nassoak Limited to the Second Defendant, Criollo One Limited, a special purpose vehicle beneficially owned by the First Defendant, Paragraph 20 is neither admitted nor denied and the Plaintiff is put to proof thereof.

[4.] At trial, Riegé gave evidence and called Philip Whitehead (Whitehead). The Defendants called Sakis Izmirlian (Izmirlian) and Whitney Thier (Thier).

The Evidence

Riegé's evidence

[5.] Riegé gave evidence by way of a witness statement which stood as his examination in chief. He was subject to cross-examination and re-examination. The following is a summary of that evidence:

[6.] Riegé provides a detailed account of the origins, development, and ultimate breakdown of a proposed real estate and polo club development in the Bahamas. Riegé, a former Managing Director at Julius Baer, claims to have conceived the project and approached Izmirilian, an experienced property developer, for his expertise and potential investment.

[7.] Initial discussions between Riegé and Izmirilian were informal and exploratory, with Riegé seeking advice and later soliciting Izmirilian's participation. The parties discussed the need for the right land at the lowest possible cost, and Riegé began negotiations with the Oakes Estate's trustees and beneficiaries for a 332-acre parcel. To avoid inflating the purchase price, the offer for the land was made in Riegé 's name as a representative, with the intention that Izmirilian or his company would ultimately be the purchaser.

[8.] Riegé testified that after a meeting in Saint Tropez, it was agreed he would have a 10% ownership interest in the land, either directly or through a company, with an exit strategy involving a call option for Izmirlian to buy him out and a put option for Riegé to sell his interest. He emphasized that he wanted to be an equity holder in the project, with the equity being the land itself, and not simply to be paid for his involvement.

[9.] Throughout 2016 and 2017, the parties exchanged multiple drafts of a Profit Sharing Agreement. Riegé explained that he did not sign the first draft profit sharing agreement sent to him (dated October 27, 2016) because it did not reflect what was agreed in Saint Tropez. Specifically, the draft stated that "no ownership of the Property or of Criollo shall vest in Riegé by virtue of this Agreement," which contradicted the oral agreement for a 10% ownership interest in the land.

[10.] Riegé described a series of draft agreements and related emails, noting that the terms evolved over time. He pointed to an email (Tab 3 of the Supplemental Core Bundle) from Mrs. Thier, which referenced the inclusion of a put and call option as negotiated with Izmirlian. However, he stated that the inclusion of "expenses" in the agreement was never discussed with Izmirlian, and that this was inconsistent with their actual negotiations. Subsequent drafts consistently provided Riegé with an "economic interest" in the profits of the development company, but not an ownership interest in the land or company unless the investor chose to convert the profit share into equity. Riegé objected to this structure, insisting that there had been a "handshake agreement" entitling him to a 10% ownership interest in the land, with profit sharing as a separate entitlement.

[11.] The agreements also included put and call options, allowing Riegé to sell his profit interest or for Izmirilian to buy him out, with the value to be determined by a formula based on profits or a

fixed price per acre. Riegé objected to the calculation method, fearing it could be manipulated to his disadvantage, and continued to negotiate for more favorable terms.

[12.] Riegé maintained that throughout the negotiations and in various meetings (including one at Mahogany Restaurant), he consistently expressed his understanding and expectation of a 10% ownership interest in the land, not merely a profit share or a contractual right to payment.

[13.] Riegé claims to have contributed significantly to the project by identifying the land, initiating contact with the beneficiaries and trustees, and providing market research and project ideas. However, the substantive master plan and professional work were commissioned and paid for by Izmirilian and his team. The information Riegé provided was not treated as confidential, and he had discussed the project with numerous other people. His role in the land purchase negotiations was primarily as a front or intermediary, with the substantive decisions and legal work handled by Izmirilian's team and lawyers.

[14.] Despite extensive negotiations and multiple drafts, no final agreement was ever signed by Riegé . The Defendants eventually terminated negotiations, citing the inability to reach a meeting of the minds and the lack of a signed agreement. Riegé continued to assert his entitlement to a 10% ownership interest, but acknowledged that he had not signed any agreement granting him such an interest. The Defendants maintain that Riegé was only ever offered a profit share, and that his insistence on ownership was unacceptable and led to the breakdown of negotiations.

[15.] In summary, the evidence reveals a complex and ultimately unsuccessful attempt to formalize a business relationship between Riegé and Izmirlian, characterized by misunderstandings, shifting positions, and a failure to reduce key terms to a signed agreement.

Whitehead's evidence

[16.] Whitehead gave evidence by way of a witness statement which stood as his examination in chief. He was subject to cross-examination and re-examination. The following is a summary of that evidence:

[17.] Whitehead's evidence was that his involvement was limited to providing construction costings and advice at Riegé 's request, and that he was not offered nor did he participate as an investor. He would have been interested in investing if the opportunity had arisen, but it did not materialize. He also confirmed that any investment would have been subject to proper due diligence and formal agreements.

Izmirlian's evidence

[18.] Izmirlian gave evidence by way of a witness statement which stood as his examination in chief. He was subject to cross examination and re-examination. The following is a summary of that evidence:

[19.] Izmirlian confirmed his experience in real estate development and described himself as an educated man whose first language is English. Izmirlian maintained that he only ever discussed and intended to promise Mr. Riegé a 10% economic interest in the deal, specifically as a profit share, not an ownership interest in the land itself. When confronted with an email he sent to Mr. Riegé stating, "As far as our agreement, you will have a 10% percent economic interest in the land," he insisted that this was always meant to refer to a profit share, not to an ownership or equitable interest in the land. Izmirilian consistently maintained that Mr. Riegé was to have a 10% profit share in the project, not an ownership interest in the land or the company. He distinguished between an "economic interest in the land" (as referenced in an email) and actual ownership, stating that the intention was always a profit share, not a direct interest in the land or company. He asserted that if Riegé had signed the agreement and earned the profit share, he would have been entitled to 10% of the profits, calculated as revenue minus costs, but not to a share of the land or company itself. He asserted that the agreement was always for a profit share, calculated as 10% of profits after deducting all costs and expenses from the revenue generated by the project.

[20.] Izmirlian explained that the phrase "economic interest in the land" was used as shorthand for a profit share arising from the development of the land, and that all draft agreements reflected this understanding. All draft agreements sent to Mr. Riegé over a two-year period were titled as profit share agreements and consistently reflected a 10% profit share, not a direct interest in the land. He said that the agreements evolved over time, with issues such as the "put" and "call" options (allowing Riegé to sell or be bought out of his interest at a set price per acre) being negotiated and eventually agreed at $80,000 and $130,000 per acre. Izmirlian maintained that the profit share was not automatic; Riegé would have to perform certain services (such as negotiating with parties, helping develop the master plan, bringing in investors, and assisting with sales) to earn it.

[21.] The draft agreements included provisions for a put and call option, which would allow either party to trigger a buyout of Mr. Riegé 's profit share at a specified value per acre. However, Mr. Izmirilian noted that the values for these options ([x] and [y]) were not always filled in the drafts, and that these values were later agreed to be $80,000 and $130,000 per acre, respectively.

[22.] He explained that the calculation of the put and call was to be based on the defined term "profits," which meant revenue less all associated costs and expenses. He maintained that this was a fair mechanism and denied that it would result in a meaningless or negative value for Mr. Riegé.

[23.] Izmirilian stated that various drafts of agreements were prepared to formalize the arrangement between himself (or his entities) and Mr. Riegé. He indicated that attorneys, under the

direction of Thier, were responsible for drafting these documents, and that there were multiple versions over time. He explained that he would provide general guidelines and the agreed points to his team, who would then instruct the lawyers to draft the contracts. He denied giving detailed instructions to the lawyers himself.

[24.] Izmirlian denied that there was ever an agreement for Riegé to have an ownership interest in the land or in the company that owned the land. He said the structure was always intended to be a profit share, possibly through a BVI company, but not as a shareholder in the land-owning entity. He explained that the structuring discussions (including references to the International Persons Landholding Act) were about how to best document the profit share and facilitate a rapid closing, not about giving Riegé a beneficial interest in the land.

[25.] Izmirilian described the negotiation process as protracted, with Riegé frequently changing his mind and not committing to signing the agreement. He claimed that after two years of negotiations, he gave Riegé an ultimatum to sign the final version or receive nothing.He denied that the removal of the put and call option from the final draft was intended to deprive Riegé of an agreed benefit, stating he did not recall why it was removed and that the drafts evolved over time.

[26.] Izmirlian stated that Riegé wanted to use his profit share agreement to obtain permanent residency in The Bahamas, but legal advice was that this was not possible. He said he was clear with Riegé that the agreement would not entitle him to residency. Both parties agreed that Izmirlian's involvement in the project would remain confidential and that Riegé would not disclose his name without approval.

[27.] Izmirlian confirmed that he was the one who purchased the land and that Riegé 's role was to act as a representative in negotiations with the owners, but that Riegé was not promised a 10% ownership interest in the land for this work. He stated that Riegé never signed any agreement, and therefore, in his view, had no enforceable rights.

[28.] Izmirlian minimized Riegé's role, describing him as a "representative" or "post box" who relayed messages and facilitated introductions, but did not negotiate or add substantive value to the project's development or land acquisition. He acknowledged that Riegé was involved in communications with trustees and vendors but insisted that Riegé was acting on instructions and not as a principal negotiator. He also acknowledged that Riegé assisted in certain tasks, such as opening gates for environmental consultants and attending meetings, but downplayed the significance of these contributions.

[29.] Izmirlian denied any dishonesty, bad faith or intent to deceive Riegé. He maintained that he was always clear that the only benefit Riegé would receive was a profit share, and that any references to an "economic interest in the land" were not intended to confer ownership.

[30.] In summary, Mr. Izmirlian's evidence was that the only agreement ever contemplated or offered to Mr. Riegé was a 10% profit share in the development, not an ownership or beneficial interest in the land itself, and that all documentation and negotiations were consistent with this position. There was no binding agreement, as Riegé never signed the final version, and that any entitlement Riegé might have had was contingent on execution of the formal agreement and the terms as drafted by the lawyers.

Their's evidence

[31.] Thier gave evidence by way of a witness statement which stood as her examination in chief. She was subject to cross examination and re-examination. The following is a summary of that evidence:

[32.] Thier says that she was involved in preparing draft agreements reflecting the terms discussed between Izmirlian and Riegé, based on instructions and a synopsis provided by Izmirlian via email dated 11 July 2016. She says that Tom Dunlap, who was copied on relevant correspondence, was the president of the development companies and an architect/designer.

[33.] The central issue in Thier's evidence was the meaning and calculation of Riegé 's "10% economic interest in the land." Thier explained that this was understood as a profit share, not an ownership or equity interest in the land itself. She described the profit calculation method as set out in the July 2016 email: the profit percentage for a portion of development would be calculated by adding the market value of the land used for that portion to any necessary cash/debt, and then applying the agreed percentage.

[34.] She repeatedly stated that, in her view, the calculation of profit in the draft agreements she prepared was consistent with the example in the July 2016 email, although she acknowledged that the draft agreements expressly deducted the purchase price of the land, whereas the email did not do so explicitly. Thier prepared several versions of a draft profit share agreement for Riegé, starting in October 2016. She stated that for two years, she and Izmirlian attempted to get Riegé to sign a written agreement, but he refused and sought to renegotiate terms.

[35.] Their explained that the language in the draft agreements referred to a "percentage economic interest in the profits" rather than "economic interest in the land," and that this was not a meaningful change in substance, but rather a matter of legal drafting for clarity. The draft agreements included provisions for put and call options, but the specific values for these options were not initially filled in. In the final version provided to Riegé, the put and call options were removed entirely.

[36.] Thier maintained that the draft agreements she prepared accurately reflected the economic deal as she understood it from the July 2016 synopsis, including the deduction of the land purchase price and other expenses from profits before calculating Mr. Riegé 's share. She disagreed with the suggestion that the omission of the land purchase price deduction in the original email meant that Mr. Riegé was entitled to a share of the gross market value of the land, characterizing such an interpretation as commercially unreasonable.

[37.] Thier described Riegé 's assistance to the project as "limited," citing his lack of experience in real estate, negotiation, and development, and stating that while he participated in some meetings and activities, his input was not materially valuable to the project. Thier acknowledged that Riegé was involved in some communications with architects and in promoting the project in Europe, but maintained that this did not amount to substantial assistance.

[38.] Thier confirmed that, to her knowledge, no written agreement was ever executed between Riegé and Izmirlian (or their entities) regarding the profit share or economic interest in the land.

[39.] Thier confirmed that the land in question has not been developed.

The issues

[40.] The issues for determination in this dispute are:

1) Whether the claims of deceit/fraudulent misrepresentation have been made out;
2) Whether there has been a breach of confidence; and,
3) Whether Riege is entitled to restitution for unjust enrichment on a quantum meruit basis for services Riegé claims he provided to Izmirlian.

Law analysis and discussion

[41.] It is perhaps appropriate that I begin with an assessment of the evidence which I have heard and seen. Despite the voluminous material provided the entire case really turns on the factual assessment of what the parties intended when they embarked upon the business venture. Regrettably, no written agreement was entered into beforehand and no eyewitnesses to the actual discussion other than Reige and Izmirlian. The Court is left to determine which of the two versions of the facts, or which parts thereof it accepts.

[42.] Having heard all the witnesses, considered the evidence provided in support of their testimony and observed their demeanor as they gave evidence, I have no hesitation in indicating that I preferred the evidence of Izmirlian and his witness to that of Riegé . I found that Riegé , who was not the dominant partner in the business relationship, was prone to embellishment to support his version of the facts.

[43.] A key document to determining the substance of any agreement which may have formed, everyone accepts, is the e-mail sent by Izmirlian on 10 July 2016, under the subject heading "our agreement". It is perhaps prudent therefore to set out this e-mail here:

> Dear Fede
> I wanted to recap what I believe we have agreed and some other matter related to our agreement in the 330 acres. Once we are in the same page, I will ask Whitney to work with the lawyers and see how best to structure. One thing I would like to point out is that we believe that Delaney Partners are not correct in their view of the necessary approvals for the land purchase. We think it will be easier and faster. Specifically the International Persons Landholding Act in section 2(2) would allow me to close without Govt approvals if necessary, obtaining a certificate of registration after closing:
> ...
> As far as our agreement, you will have a 10% percent economic interest in the land. This is structured in the best manner possible in order to achieve your goal of obtaining permanent residence in The Bahamas and our mutual goal of a rapid/hassle free closing. I must tell you that I believe that two two [sic] goals may not be compatible as the Govt may try before the election to hold up the purchase of such a large parcel of land to a foreigner but we will try.
> We will also enter into a partnership agreement that will contain customary terms such as a drag along and tag along rights. We have also agreed that you will have a put option to sell me your participation and I will have a call option. I would ask that those options can only be exercised after one year from closing. You would be able to put your participation at [$xxx/ per acre] and I would be able to call it at [$xxx/ per acre].
> When developing a portion of the land, we will calculate our profit but putting in the number of acres necessary for that portion of development at market value, plus any necessary cash/debt. For example if we need 10 acres valued at $500,000 per acre and $5 million in cash, your profit percentage for that portion of the development would be 5%. The cash necessary may come in as bank debt or shareholder debt both with interest.
> You agree that for the 10% interest you will continue to be involved: negotiate with the necessary parties, help develop the master plan, bring in other investors if necessary, assist in selling land/homes to your client base, and advise on the polo club.
> We have both agreed that my involvement will remain confidential and this is specified in the agreement. You may not disclose my name without my approval.
> The agreements is governed by the laws of the British Virgin Islands unless agreed otherwise by both parties.

I know that all this may seem a bit formal but it is important we set out our agreement clearly for both of us. I suggest we have a call to discuss the above. I am available tomorrow (Monday) at 6 pm Swiss time.
Have a great Sunday.

[44.] On the evidence which I accept, I am satisfied that Izmirlian never agreed to, or intended to give Riegé any ownership interest in the land, upon which the development was intended to be built. I find that his choice of the word "*economic interest*" rather than "*ownership interests*" or just "*interest*" was deliberate. I am also satisfied that such interest, as was agreed, was limited to the development such that, in the event the development did not proceed there was no expectation that he would retain a 10% interest in the land upon which the development was intended to be built. Likewise, such buyout options, as may have been agreed, would only be relevant if the development proceeded. I do not doubt that this may have been what Reige wanted or hoped that the agreement could have been.

[45.] My ultimate view is that there was no agreement between the parties as the parties were never at idem on the crucial terms of the arrangement. I am also satisfied that agreement was subject to the parties entering into a more formal agreement. It is clear that no agreement was reached between the parties as to what Riegé would receive in return for his continued involvement in the proposed development project. The parties, not being at idem on the nature of the interest which Riegé was to receive, no agreement was entered into.

[46.] I therefore agree with Izmirlian's analysis of this issue which he points out in his submissions as follows:

a. *The following features of Mr. Izmirlian's 10 July 2016 email demonstrate that it constituted unenforceable heads of terms rather than a certain and enforceable contract, it being usual for negotiations in respect of commercial transactions to begin with heads of terms that the parties then flesh out into a contract with the assistance of lawyers, as Mr. Izmirlian noted in cross-examination (describing heads of terms as "agreed points"):*
    i. *the phrase "once we are in [sic] the same page";*
    ii. *the phrase "the agreements <u>will be</u> governed by the laws of the British Virgin Islands unless agreed otherwise by both parties" (<u>emphasis</u> added);*
    iii. *the reference to working with lawyers "to see how best to structure";*
    iv. *the suggestion that Mr. Izmirlian and Mr. Riegé have a call following day to discuss the email;*
    v. *the absence of agreed prices for the put and call options that were envisaged;*
b. *The next day Mr. Riegé made the following comment by email to his friend Mr Kelly regarding the 10 July 2016 email, which indicates that Mr. Riegé himself appreciated*

that the email did not constitute a concluded agreement: "I am looking at your comments. I will not sign anything until I am back or I make it checked by a lawyer."

c. *The various drafts of the Profit Sharing Agreement circulated by Mr Izmirlian expressly stated that it did not give Mr. Riegé an ownership interest in the Land and they did not refer to Mr. Riegé already having or obtaining an ownership interest in the Land by way of any separate agreement (see paragraph 18 above).*

d. *Further Mr Riegé's contention in cross-examination that he was given both a 10% ownership interest in the Land and promised a 10% share of the profits of the Project is implausible in circumstances where he contributed no funds to the development of the Project.*

e. *Had Mr. Riegé reached a binding agreement with Mr. Izmirlian in June/July 2016 pursuant to which he was to hold an ownership interest in the Land:*

   i. *Mr. Riegé would have mentioned that agreement in his email to Mr. Kelly on 28 October 2016 commenting on the first draft of the Profit Sharing Agreement, instead of simply complaining that the draft did not provide him with an ownership interest nor would he have agreed and followed Mr. Kelly's advice to not sign anything until it was checked by a lawyer.*

   ii. *Mr. Riegé would not have responded to Mr. Izmirlian's email sending him a first draft of the Profit Sharing Agreement 20 minutes after sending his email to Mr. Kelly by simply stating "Sarkis, Thank you for this. I will look and this draft and I'll come back to you with comments. Whitney, Let's try to meet. I really need to understand the meaning of some of the draft points." Instead, he would have immediately objected to the lack of reference to the pre-existing agreement regarding his ownership interest in the Land.*

   iii. *Mr. Riegé would have mentioned that he had a binding agreement with Mr Izmirlian that he was to have an ownership interest in the Land in the email he sent to his attorney Mr. Mike Klonaris on 13 May 2017 asking for his advice on the draft Profit Sharing Agreement. Mr. Riegé's explanation in cross-examination for not mentioning his ownership of the Land to Mr. Klonaris was that he discussed it with him off email, but he could not explain why Mr. Klonaris had not then queried the lack of reference to the ownership in his comments on the draft. Mr Riegé's evidence is not credible.*

   iv. *Mr. Riegé would not have needed a profit sharing agreement in order to realize the value of the alleged 10% interest in the Land he already owned.*

f. *Mr Riegé would not have stated that his continued involvement in the Project was a "risk" which he was doing "without getting paid whatsoever" if he had secured an ownership interest in the Land.*

g. *Mr. Riegé would not have admitted in cross examination that there was no verbal contract with Mr. Izmirlian and he did not sign any of the profit share agreements offered to him.*

h. *Mr. Riegé would not have repeatedly admitted in cross examination that nothing was ever agreed.*

[47.] It is against this factual assessment that I consider the claims made by Riegé in this action.

The Second Defendant

[48.] Riegé alleges as against the Second Defendant are as follows:

(i) The Second Defendant is the alter ego of Izmirlian;

(ii) He exercised a right under the offer letter to nominate the Second Defendant as purchaser of the land; and

(iii) He was deprived of the opportunity to nominate another entity as purchaser and thereby benefit from the subsequent increase in the land's value following the execution of the offer letter with the owners.

The relief sought against the Second Defendant is for an injunction and damages for breach of confidence.

[49.] On the evidence, which I accept, the only role which the Second Defendant plays in the transaction was to take title to the 333.323-acre tract. At trial, Riegé admitted that he never held any option to nominate a purchaser as alleged. I did not find any evidence to support any actionable claim against the Second Defendant. In the circumstances, the claim against the Second Defendant must be dismissed.

Deceit

[50.] Riegé claims that Izmirlian made the representations to him that are documented in the "Our Agreement" e-mail with no intention of honouring them. He says that he was induced by these representations to fulfill his end of the bargain. Despite this, Izmirlian failed to honour representations made to him and in the end Izmirlian took the benefit of his effort and work (which included locating and bringing the Land to the table and negotiating the acquisition) while excluding him from the agreed upon economic interest in the Land or any compensation whatsoever.

[51.] Further, Riegé says, that his cessation of discussions with other investors and his sharing of information as well as his efforts in researching the project and negotiating a favourable purchase price, and investing his time and effort in assisting to move the land acquisition transaction forward to completion, were materially induced by the representations that were made by Izmirlian to him. He did these things, he says, for no other reason than in reliance on a promise made to him by

Izmirlian that he would have a 10% economic interest in the Land as well as a put option entitling him to sell his participation to Izmirlian at a price calculated on a per acre value of the Land.

[52.] Riegé says that the evidence shows that he brought the land deal to the table and played a pivotal role in the negotiations until the successful closing of the sale and he continued to be involved in the development plans going forward.

[53.] Izmirlian asserts that Riegé's claim is wholly misconceived, relying on allegations of fact that are inadequately particularized, clearly contradicted by the documents and/or unsupported by any corroborating evidence and which even if true do not give rise to the core claim in deceit as a matter of law in any event.

[54.] Izmirlian submitted that the deceit claim must fail because the representation was not made, it is implausible that he intended any of his statements of present intention to induce Riegé to remain involved in the Project or that such statements of present intention (and not Riegé's own misunderstanding as to their meaning and effect, if anything) in fact induced Riegé to remain involved in the Project and that Riegé has failed to particularize or evidence any loss in any event.

[55.] Finally, Izmirlian says that taken at its highest, Riegé's case amounts to a claim that discussions and negotiations did not ultimately yield the agreement that he hoped to obtain.

[56.] The law of deceit was discussed by the Supreme Court in the case of **Cleomae Holdings Limited v. Bahamas Woodworking Studio Limited and another** [2017] 1 BHS J. No. 48. At paragraph 11- 14 of the decision the Court stated:

> 11 In Derry v Peek the court held, per Lord Hershell at 376:
>
> > "First, in order to sustain an action of deceit, there must be proof of fraud and nothing short of that will suffice. Secondly, fraud is proved when it is shown that a false representation has been made (i) knowingly, (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Although I have treated the second and third as distinct cases, I think the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states. To prevent a false statement from being fraudulent, there must, I think, always be an honest belief in its truth."
>
> 12 The standard of proof in cases of deceit or fraudulent misrepresentation was recognized by Adderley J (as he then was) in the case of Fidelity Merchant Bank Ltd. v Brown [2010] 3 BHS J No. 64. At paragraphs 15 and 16 of the decision, Adderley J stated:
>
> > 15 The burden of proof is on he who alleges and the standard is not the usual standard on a balance of probability. It depends on the gravity of the allegations. The standard

is set forth in Hornal v Neubeger Products Ltd [1957] 1QB 247 approved by the Privy Council in Brazier v Bramwell Scaffolding (Dunedin) Ltd [2001] UKPC 59.

16 In Hornal which was a fraud case Denning L J at p.258 in reviewing the trial judge's decision said the following:

> "Nevertheless, the judge having set the problem to himself, he answered it, I think, correctly. He reviewed all the cases and held rightly that the standard of proof depends on the nature of the issue. The more serious the allegation, the higher is the degree of probability that is required. But it needs not, in a civil case, reach the very high standard required in a criminal case..."

13 In the case of Standard Chartered Bank v Pakistan National Shipping Corp and others [2003] 1 BCLC 244 the court held that a director may become personally liable for the tort of deceit notwithstanding he acted on behalf of the company and made the representations on behalf of the company. According to Lord Hoffman at paragraph [20] of the judgment,

> [20] My Lords, I come next to the question of whether Mr Mehra was liable for his deceit. To put the question in this way may seem tendentious but I do not think that it is unfair. Mr Mehra says, and the Court of Appeal accepted, that he committed no deceit because he made the representation on behalf of Oakprime and it was relied upon as a representation by Oakprime. That is true but seems to me irrelevant. Mr Mehra made a fraudulent misrepresentation intending SCB to rely upon it and SCB did rely upon it. The fact that by virtue of the law of agency his representation and the knowledge with which he made it would also be attributed to Oakprime would be of interest in an action against Oakprime. But that cannot detract from the fact that they were his representation and his knowledge. He was the only human being involved in making the representation to SCB (apart from administrative assistance like someone to type the letter and carry the papers round to the bank). It is true that SCB relied upon Mr Mehra's representation being attributable to Oakprime because it was the beneficiary under the credit. But they also relied upon it being Mr Mehra's representation, because otherwise there could have been no representation and no attribution.

14 The elements of the offence are therefore:

> (i)the making of the representation,
>
> (ii)the absence of any belief in its truth by the person making the representation, or recklessly, careless whether it be true or false; and
>
> (iii)inducement to contract/reliance on the representation.

[57.] Applying the facts which I have found, to the elements of legal test, I am satisfied that the tort of deceit has not been made out. I did not find that Izmirlian made the representation alleged by Riegé. Izmirlian never told Riegé that he would receive *"a 10% <u>ownership</u> interest in the Land"*.

Further there could not be any misrepresentation where the discussion were that, "*subject to the parties agreeing a detailed written contract, he was willing to give Riegé a "10% economic interest in the Land"*. Where there was no representation there could be no inducement and the claim to the tort of deceit untenable. Riegé is therefore not entitled to damages for deceit in the absence of any misrepresentation or inducement.

Provision of confidential information

[58.] Riegé claims that Izmirlian breached his confidence. I did not find that this claim was made out or that material was provided in confidence. In cross-examination, Riegé conceded that:

(1) He discussed the polo project with *"a lot of people"*, including at least 30 others, before ever engaging with Mr. Izmirlian.
(2) He sent proposals and drawings to multiple third parties without any confidentiality restrictions on that information.
(3) He never expressly discussed or agreed confidentiality obligations with those he sent information to or required them to sign confidentiality agreements.

[59.] In any event Riegé has failed to identify any such information or circumstances that gave rise to an obligation of confidence. Further, Riegé admitted in cross examination that there was no confidential information in respect of the polo project. In the circumstances this claim, to a breach of confidence must fail.

Restitution

[60.] Riegé makes a claim for restitution on a quantum meruit basis for work he allegedly undertook for Izmirlian, in respect of the project. Riegé says that Izmirlian *received the benefit of and were enriched by Mr. Riegé's work in locating the land opportunity, negotiating with the vendor and bringing the sale to a successful conclusion, and they freely accepted these benefits knowing that Mr. Riegé expected to receive an economic interest in the Land as compensation for his efforts.*

[61.] Riegé relies on the recent English High Court case of **Gheewalla v Rasul** [2022] EWHC 3180 as a proper statement of the principle. I adopt it as a proper statement of the principle at paragraph 85 – 87 of the decision:

5. the Quantum Meruit Claim
(A) Constituents of a Quantum Meruit Claim
…

85. In cases like this, a *quantum meruit* claim is based on the equitable principle that the court should rectify cases of unjust enrichment. Where a claimant has acted in the reasonable expectation of payment for services rendered, a claim may succeed where the following requirements are made out:

a. the defendant has been enriched by the receipt of the services; and

b. the services were freely accepted.

86. In the current case, to meet the first of these requirements Mr Gheewalla needs to show that Mrs Rasul has been enriched by the receipt of his services.

87. In relation to the second point (free acceptance) the point may be broken down to include the following matters. In order for there to be free acceptance of services it is necessary that the defendant to the claim:

a. was aware that the services were being provided;

b. was or should have been aware that there was an expectation by the person providing the services that the services would be paid for; and

c. had an opportunity to reject the services concerned but did not do so (see the comments of Arden LJ (as she then was) in the Court of Appeal decision in in *Benedetti v Sawiris [2010] EWCA Civ 1427 ("Benedetti")* at [4]).

[62.] Izmirlian complains that Riegé seeks to make a quantum meruit claim without particularizing, let alone evidence any work he undertook or its value. I readily accept, as submitted by Izmirlian, that Riege has not particularized his claim. Notwithstanding this fact however, I am satisfied that having regard to Izmirlian's admissions and the extensive interrogation of what was done, or not done by the parties, in seeking to prove the other claims in the action, no real prejudice has been occasioned to Izmirlian. He would have been well aware of what Riege alleged he did in furtherance of the transaction.

[63.] It cannot be seriously disputed that Riegé provided or rendered some services towards realizing the proposed development project, notwithstanding it did not materialize. In fact, at paragraph 31 of his defence Izmirlian admits that Riege was his agent. Paragraph 31 (i) states:

> [Riege] was acting as agent of [Izmirilian] whilst negotiating the terms for the sale of the land which were clearly within the market price.

Indeed, it was this agency which permitted Riege to become a front for the acquisition of the property by Izmirlian. While there is no evidence that Izmirlian paid less than market value it was not disputed that he acquired a valuable and strategically placed property. I am satisfied that Riege provided a service for which Izmirlian benefited and for which Riege received no compensation.

[64.] The real question for determination is the value and extent of the services provided. Understandably, Riegé suggests that the services provided was considerable while Izmirlian considers it minimal.

[65.] Riegé did *find* the 333.323-acre parcel for use in the proposed development and used his name to shield Izmirlian from the possibility of the seller inflating the price due to his involvement. He also created a conduit for the exchange of information with the sellers. This, I find, is the extent of any services provided by Riegé which may have benefited Izmirlian. I do not find that any work towards the proposed development project, whether marketing, travel, planning or attending meetings ought to be considered as Izmirlian's loss was far more significant and neither of them have the benefit of a completed development project.

[66.] Riegé contends that he is entitled to the values subsequently attributed to the buyout options, relying on the case of **H&P Advisory Ltd v Barrick Gold (Holdings) Ltd (formerly Randgold Resources Ltd)** [2025] EWHC 562 (Ch). Riegé asserts that this is authority for the proposition that in cases where there is no objective data available to assess the market value of the services provided the Court may look at the parties' internal assessments as the best proxy for the enrichment received. Riegé says that his 10% economic interest, valued at the call option strike price, equates to 10% of (333.323 acres × USD 130,000 per acre) = USD 4,333,199.

[67.] Reige's argument, in my view, is entirely misconceived. Having found that no agreement was formed, Riege cannot sustain a claim to be treated as if one existed and be paid out in accordance with his view of what was agreed. More significantly, the proposed development project upon which the buyout options related to, never materialized to be able to generate any profit. The numbers suggested for the buyout options were based upon a completed project built out at significant costs and generating a significant profit.

[68.] Reige was instrumental in securing the acquisition of the tract of land, which was acquired at a purchase price of $19,307,330. In **Roker v. H. G. Christie Limited Real Estate and others**, Evans J (as he then was) found that the provision of a *one-off* real estate service did not offend the prohibition on doing real estate work under the **Real Estate (Brokers and Salesmen) Act 1995.** Riege's services were not in the nature of the work of the real estate agent or broker whose fees, I am prepared to take judicial notice of, are ordinarily 6-10%. I also take notice that these fees are typically paid by the seller of the property and not the buyer (as Izmirlian was). Likewise, Riege's services are not quite in the nature of a finder's fee. Finder's fees, it appears, are negotiated and have been elsewhere negotiated in the region of 2% or less (See: **Roker v. H. G. Christie Limited Real Estate and others** [2011] 3 BHS J. No. 104). Like the real estate brokers and agents' fees, the finder's fee appears also to be to the account of the seller.

[69.] In all the circumstances therefore, I will assess the work that Riege undertook for Izmirlian, in respect of the proposed development project at ½ % of the purchase price of the property or $96,536.67.

Conclusion

[70.] For the avoidance of doubt the decision of the Court is as follows:

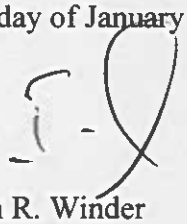
(1) The claims for deceit, fraudulent misrepresentation and breach of confidence are dismissed.

(2) I give judgment for Riegé in the amount of $96,536.67 for restitution on a quantum meruit basis.

(3) The claim against the Second Defendant is dismissed with costs to be assessed in default of agreement.

(4) I will hear the parties by way of written submissions on the issue of costs as between Riegé and Izmirlian by way of written submissions within the next 21 days.

Dated this 5th day of January 2026



Sir Ian R. Winder

Chief Justice