

**MONDAY – 8<sup>TH</sup> SEPTEMBER, 2003**

**IN COURT**

**ACTION NO. 39 OF 2002**

**PHYLLIS MOSSIAH**

**v.**

**BRODERICK NEAL**

**Property between married couple – declaration as to title/share sought.**

**APPEARANCES:**

R. Williams S.C. for Plaintiff.

M. Cardona for Defendant.

**WILLIAMS:**

Seeks amendment to Statement of Claim to include declaration under section 148(e) (1) of Chapter 91 (Amendment Act No. 8 of 2001) in the alternative.

**No objection by Cardona for Defendant.**

**COURT:** Amendment is granted.

**WILLIAMS:**

Plaintiff's case is she was in a common law relationship for not less than five years.

But there is dispute as to period of relationship but agreement as when ended.

Parties agreed during course of relationship for Plaintiff to put in money to build property on land owned by Defendant.

There is no dispute as to agreement (oral).

But there is dispute as to Plaintiff's contribution.

**Calls Plaintiff.**

**P.W. 1: PHYLLIS MOSSIAH s/s:**

Of U.S.A., 120 Bentley Place, Bronx, New York.

Belizean, reside at 196 East Canal Street; 50 years old.

Knows Defendant for very long time, since he was a teenager in Belize. Brother is a good friend of his dad.

Defendant was in U.S.A. at some time. He visited with my family occasionally.

In late 80's he was living with my brother. After a while he lived in New York City.

I heard Defendant was incarcerated. As a result I sought to get in touch with him. I got in touch with Defendant around April 1996. Defendant wrote me and I started to visit him during his incarceration. I would drive seven hours to visit Defendant during his incarceration in Laredo, Pennsylvania.

The Defendant and I became very close friends during those visits. He would call me three or four times a week. He knew everything about me and I about him, through our conversations.

Defendant was a very spiritual man. This attracted me to him. On my visits he would say what a wonderful person I was. Defendant would tell his friends I was like a big sister to him.

I was then an Accountant with 3M.

Defendant amorously pursued me. He was very much pursuing me. We would spend wonderful time together in prison on my visits.

The amorous relationship began in September 1996. The feeling was mutual. We held hands together, took pictures, hugging each other.

Defendant's incarceration ended on 3 April 1998.

Defendant was incarceration for a little over ten years.

I visited Defendant once a month.

Defendant was released finally. I attended his release proceedings.

I later visited Defendant in detention in D.C. Defendant wrote me later.

Defendant I learned would go home to Belize after his release from Immigration.

I was his confidante. Defendant was escorted by immigration officer to Airport to come back to Belize.

When I visited him in Manassas, Virginia, I took a choice of clothing and accessories for him so he would look presentable on going back to Belize.

I later saw Defendant on April 3 1998 when he arrived in Belize. I came to Belize to receive him. I came in March of 1998.

My son picked Defendant up at Airport after 5:00.

My relationship with Defendant continued in Belize. I came back in August 1998 for his birthday.

We drove by a property and he told me it was built by his daddy. I told him there was enough land to build property on.

I told Defendant why don't we build on the land.

I told Defendant I liked the country as it is quiet.

I told Defendant that we should build something on his property in the city. He agreed to this finally.

We agreed to build property on Defendant's land in the city at No. 5 Kut Avenue, Belize City.

I started to draw plans for the house.

A friend later offered me some mahogany. Defendant paid for it with my money.

I have money in my 401(K) account.

I went to U.S.A. and withdrew \$35,000.00 US (\$70,000.00 BZ) from my account. I sent US \$20,000.00 to the Defendant in cash with my son in an envelope. This \$20,000.00 was out of the \$35,000.00 I withdrew from my 401(K) account. I sent the \$20,000.00 to Defendant in August/September 1998.

In October 1998 I came to Belize with the rest of the money, \$15,000.00 (US) and gave it to Defendant.

Defendant would sell the money to Chinese merchants at a better exchange rate.

December of 1998 I came back to Belize and gave Defendant US \$16,000.00.

In 1999 I started sending Defendant US \$5,000.00 through the mail from January to April.

In May, Defendant asked me for some money. I had the US \$1700 which I sent to him through the mail.

As a result of the experience with this, I started sending money through people I knew.

Defendant's mother brought back US \$8,000.00 in 2000.

Sharon, a friend of ours, brought back US \$7,000.00 in 2000.

Defendant's cousin brought back US \$4,900.00.

Ms. Laing brought back US \$6,000.00.

I withdrew another US \$20,000.00 in June 1999 which I gave to Defendant, plus another US \$6,000.00.

The monies I sent through other people I know Defendant received as he told me.

In March 2001, Defendant called me and asked for money. I sent US \$2,000.00 which Defendant said was to buy shares in B.E.L.

Total money I sent to Defendant was \$330,000.00 BZ.

Construction of the house began in October 1998.

I visited three or four times per year during the construction of the house. I would take pictures. I picked out all the tiles in the house. We would travel to Chetumal to buy certain things.

I bought all sockets and outlets for the house from U.S.A. I bought my Jacuzzi, the faucets and showers in the bathroom.

I never asked Defendant about costs of house. He gave me an estimate of costs to finish house in December 1999.

Defendant employed people to do the construction. He hired people and he supervised them.

The Defendant borrowed \$100,000.00 BZ from Credit Union. Defendant mortgaged property to Credit Union as security.

We moved into the house on 19 May 2001.

The house has three floors. The ground floor is rented out as a warehouse at \$1,800.00 per month.

The second floor is the living area – our home. It has three bedrooms, a living room, dining room, kitchen and a den and an office.

The third floor is a gym and recreation.

The \$1,800.00 is supposed to be used to pay back mortgage to Credit Union.

I don't know how much the repayment of the mortgage is.

The second floor has mahogany ceiling with recessed lights, I designed.

The floor is dark parquet we brought from Chetumal.

When we moved in May 2001, there was some furnishing – bed, refrigerator I had shipped from U.S.), but not complete.

Whole household furniture came in June 2001 which I shipped from U.S. which I bought from different money.

On 30 November 2001, the Defendant and I broke up.

I removed the furniture I had sent, put it in storage and I rented a place after Defendant and I broke up.

Defendant is still residing in the house.

I don't receive any income from the rental of the ground floor.

I had a market valuation of the property done.

**It is agreed between the parties this can be received in evidence.**

The property is valued at \$450,000.00.

**Valuation tendered in evidence as Exhibit PM 1.**

Defendant borrowed \$100,000.00 from Credit Union and then he borrowed \$30,000.00 from his mother from Holy Redeemer Credit Union.

I know of no other money Defendant put into the house.

Defendant built houses for Housing Department from which he said he would get about \$3,000.00 to \$4,000.00 per house. This he started in 1999. Before this, Defendant worked for Cable Co. I don't know his salary. Defendant also sold computer software which I helped financed.

Defendant did not indicate what income he had to put in construction of property.

**CROSS-EXAMINATION BY CARDONA FOR DEFENDANT:**

I was an accountant at beginning of our relationship. Now I am a nanny.

I ceased to be an accountant in October 98 with 3M. My salary was US \$62,000.00.

I have a family – I have two sons and a daughter aged 33, 27, 23. Then - 28, 25 and . . .

I supported the youngest who was attending college – University of Virginia. She lived on campus. She attended for her 1<sup>st</sup> year, then transferred to Georgia Tech in Atlanta. She was a pre-med in University of Virginia and aerospace engineer at Georgia Tech. She spent five years at Georgia Tech. She was on full scholarship at Georgia Tech.

I gave my daughter \$300.00 a month as pocket money. She would visit home during vacation.

Her University fees were US \$25,000.00. My daughter had a student loan.

My other son is a custom officer in Belize and the other a personal trainer.

I live in a co-op in U.S.A. It is now in my sons'.

During the relationship I paid rent of US \$845.00 all inclusive.

I owned a vehicle – a Ford Explorer, which I sent to Defendant.

I owned another Ford which I bought in 2001 when I was moving back to Belize.

**COURT:** The property was registered in Defendant's name?

**THE CASE FOR THE PLAINTIFF.**

**Adjourned to 2:30 p.m.**

**HEARING RESUMES AT 3:35 p.m.**

**DEFENCE CASE**

**D.W. 1: BRODERICK NEAL s/s:**

No. 5 Kut Avenue. Contractor.

Presently I have no relationship with Plaintiff.

I have been family friend with Plaintiff for long time. I met her in summer of 1983 when I visited New York area with her family. I spent some time with the whole family.

I moved from Plaintiff's brother, Gill, and moved into inner city of New York. I did not then see much of Plaintiff until last year of my incarceration.

I was in US Federal Prison when I was 24 for over ten years.

I was incarcerated on 19 January 1988 through 3<sup>rd</sup> April 1998.

I arrived in Belize on 3<sup>rd</sup> April 1998.

From last year of my incarceration I established contact again with Plaintiff from early months of 1997 through telephone calls and mail, arrangements were made for Plaintiff to visit me in Federal Prison in Laredo in Pennsylvania on 30<sup>th</sup> August 1997. I have pictures to prove this.

It is virtually impossible for me to have been in an amorous relationship with Plaintiff while in Federal Prison (as she claims) as there is no conjugal visits. The visiting areas in Federal Prison is public, with cameras and guard supervision all around.

We established a very good friendship/relationship with each other.

I would agree Plaintiff was a big sister to me. She gave advice to me. We discussed issues, like her daughter going to school, family issues.

I got to know Plaintiff very well during this period.

Upon my release from incarceration and return to Belize on 3<sup>rd</sup> April 1998, I was fortunate to have Jason, Plaintiff's son, assist me with quiet clearance through Belize Customs and Immigration.

Plaintiff was here in Belize when I returned on 3 April 1998. She stayed for about ten days after I returned. Then she departed. Plaintiff came back for my birthday around 3<sup>rd</sup> August 1998.

Plaintiff and I had become amorous from her first visit after my release.

I was understanding than upset about Plaintiff leaving for the U.S.

Yes, there was an oral arrangement between Plaintiff and me about constructing a building at 5 Kut Avenue. The ground floor was to be a warehouse and second floor dwelling quarters.

This idea came about because the next door property was my father's on which we were constructing a warehouse. Construction on this property started in May and concluded in October 1998.

I took a job with a Cable Co. in my first weeks in order to learn the City.

I then ventured out into selling computer accessories and helping my dad with his construction work – with accounts and workers.



I graduated from Laredo University, majoring in Business.

The construction on 5 Kut Avenue commenced in October 1998. The agreement between us was that I was to be responsible for the ground floor, as we had materials from site of my father's it would be easier for me. My father allowed me access to material.

For the first phase obtained a loan from Holy Redeemer Credit Union for \$100,000.00 on 8<sup>th</sup> October 1998.

The Plaintiff assisted me with some money to be able to get loan from Credit Union. In August, I received from Plaintiff US \$6,000.00 to get my account with Credit Union. I had to withdraw \$5,800.00 BZ from account as Plaintiff wanted to help her mom.

Yes, I received further sums from Plaintiff.

In summer of 1998 I received \$10,000.00 BZ from Plaintiff through her son Jason.

In December 1998 I received \$10,000.00 BZ from Plaintiff which she brought herself.

I received more money from Plaintiff.

Throughout 1999 I received approximately \$28,000.00 BZ from Plaintiff.

In 2000 I received approximately \$19,000.00 BZ.

In 2001 I received \$4,000.00 BZ.

In total I would say I received not more than \$83,000.00 BZ from Plaintiff.

No, I did not in August 1998 receive \$20,000.00 US through Plaintiff's son.

It is false to say in October Plaintiff gave me \$20,000.00 U.S.

I at no time received US \$5,000.00 from Plaintiff.

I received no US \$5,000.00 from Plaintiff via mail but she sent me money via mail some time – US \$2,000.00, US \$1,000.00.

Plaintiff was a nanny during this period. She lost her job as accountant with 3M early in our relationship.

I recall receiving US \$900.00 from my mother from the Plaintiff.

It is false to say Sharon brought to me US \$8,000.00. She brought me only US \$2,000.00.

The last money I received from Plaintiff was in 2001 and it was BZ \$2,000.00 to purchase shares. I did not buy shares. We ended up spending the money on fixing the dwelling quarters upstairs.

If the Plaintiff had sent me \$330,000.00 I would have finished Kut Avenue and built another.

I had never received that amount of money from Plaintiff.

As of April last year, I have spent a total of \$385,000.00 on the project. The majority of this comes from:

\$100,000.00 loan from Bank

\$30,000.00 from mother

In 2002 I raised another loan of \$50,000.00 on my account and \$12,000.00 on my mother's account.

I make money as a contractor. Plaintiff did not fulfill her part of agreement.

Of a project of \$1.3m of which 17% is my income.

I also commenced a quarry business in 2001 – an additional source of income for me.

**CROSS-EXAMINATION BY WILLIAMS FOR PLAINTIFF:**

I earned a degree in business while incarcerated. Up to that point I have been in construction while in prison.

Yes, Plaintiff had communicated with me in writing while I was in prison.

No, Plaintiff did not communicate with me prior to April 1996 while I was in prison.

I can't recall if the pictures with Plaintiff were taken on her first visit to me in prison.

I am 40 years old. No, Plaintiff was not the only woman who visited me while I was incarcerated. I had several friends visit me from New York area, Pinky Copeland etc.

Mr. Dunn assisted with construction of my dad's warehouse. Mr. Dunn also worked on 5 Kut Avenue. I hired him because he is an experienced contractor.

No conjugal visits were allowed in prison. No visit allowed because of amorous relationship.

No, prior 1997 there had been no mutual expression of feelings between Plaintiff and me.

I disagree this occurred long before 1997.

The amorous relationship developed after 3rd April 1998, the day of my release – within a week of my release. We went to Maruba to relax.

It is just after a week of my release that amorous feelings developed.

We spent some time thinking about the relationship.

I spent time thinking about it while I was in prison. We discussed relationships.

Long before I came to Belize I thought about relationship with Plaintiff.

I disagree that I had no money when I returned to Belize. I had no income.

It is not true that I informed Plaintiff that I had no means of obtaining a loan. I had assets, land.

The land was not given to me by my father.

Plaintiff assisted me to reactivate my account with Credit Union. I put the money Plaintiff sent in the book.

I put \$11,200.00 of \$12,000.00 the Plaintiff gave me in the book. This exceeded \$15,000.00 that was required.

I borrowed \$100,000.00 from the Credit Union in October 1998 and the construction began with that.

I gave the property as security for the loan and agreed to repay \$1,000.00 per month.

Yes, I say in my pleadings I was repaying \$4,500.00 per month; \$4,500.00 per month was paid.

**Witness shown mortgage deed and asked to read clause 1(1) and says yes he agreed to pay \$1,000.00 per month towards interest and principal.**

**Mortgage deed tendered in evidence and marked as Exhibit BN 1.**

I pay \$2,000.00 per month towards the mortgage.

In April 2002 I was paying \$4,500.00 per month towards the mortgage.

Yes, all the funds Plaintiff sent me was cash given to me by herself or through third parties. She sent or brought monies from the U.S.A. in US currency and that is how I received them and exchanged monies on parallel market. Some time I get ten cents more on the dollar.

I disagree Plaintiff told me how she wanted building designed. We discussed the design. She expressed what she wanted.

Can't recall when Mr. Dunn wanted to get off project because Plaintiff's money was late.

I accept value of \$450,000.00 for the property as fair market value.

No, I did not receive US \$35,000.00 from Plaintiff. Nor in June 1999 US \$2606, or \$20,000.00 by Plaintiff and \$60,000.00 through her son.

No, in December 1998 Plaintiff did not give me US \$16,000.00.

No, Plaintiff did not in first four months of 1999 send me by mail US \$5,000.00.

No, in 2000 Plaintiff did not send to me via my mother US \$8,000.00, nor did I receive through Sharon Neal in 2000 the sum of US \$7,000.00 from Plaintiff, nor US \$6,000.00 through Ms. Laing; nor US \$4,900.00 through a cousin of mine from Plaintiff.

Yes, in March 2001 I received US \$1,000.00 from Plaintiff in the mail.

I have filed a tax return in Belize – Business Tax return since 1999.

I have not filed Business Tax return for past three years.

Yes, Business Tax should be filed monthly.

I can't recall rate of Business Tax.

Yes, I paid contract tax in 1999. I can't recall if I paid for each month in 1999.

I did not file in 2000. The contract I assume would be around a couple of hundred thousand.

The sum of \$1.3 m would apply to combine value of my contracts.

I was awarded contract since 1999.

I am speaking the truth.

**Adjourned to tomorrow at 9:30 a.m. to continue re-examination of Defendant.**

**TUESDAY – 9<sup>TH</sup> SEPTEMBER, 2003**

**IN COURT**

**ACTION NO. 39 OF 2002**

**MOSSIAH**

**v.**

**NEAL**

**For a declaration of interest/share in property – continuation.**

**APPEARANCES:**

Same as on adjournment on Monday 8<sup>th</sup> September.

**RE-EXAMINATION OF D.W. 1: None.**

**D.W. 2: GRETA NEAL s/s:**

92 Dean Street, Belize City, Housewife. Training to be a Deacon at Church of St. John's Cathedral.

Yes, Defendant is my son. Plaintiff is Ms. Mossiah.

Plaintiff and Defendant were lovers.

**Adjourned briefly for 10 minutes.**

**HEARING RESUMES.**

**D.W. 2 GRETA NEAL cont. in chief:**

I know the parties to be lovers when my son, the Defendant, came back from the States. That was in 1998 he came back from the U.S.

I recall it was 1998 because he was in prison in the U.S. and there could not have been a relationship.

The relationship lasted about three years.

The relationship lasted for a short time because they could not agree on certain things. She, Plaintiff, said threatening words to my son.

I told Plaintiff that my son now has his freedom and if they continued the relationship he would lose his freedom. Plaintiff said she would kill Defendant. I told Plaintiff that I cared for my son.

I told Plaintiff not to leave premises on Kut Avenue. She didn't listen and moved out when Defendant was in Guatemala. From there the relationship ended.

As a consequence these proceedings were brought to settle the matter about the house.

I was not in agreement with a Court proceedings. The Defendant asked Plaintiff to settle the matter.

Yes, I was in the U.S. in April 1999. Plaintiff gave me US \$900.00 to deliver to Defendant. I was in New York visiting when Plaintiff gave me the money. Plaintiff gave me the money in an envelope – a manila envelope.

Yes, I assisted Defendant financially with the building. I signed for a loan with Holy Redeemer Credit Union for \$30,000.00 which was the first loan. I can't remember the second loan.

It was agreed that both the Plaintiff and Defendant should pay off the loan but Defendant alone paid off the loan.

Yes, the Plaintiff assisted financially with the project.

**CROSS-EXAMINATION OF D.W. 2 BY WILLIAMS FOR PLAINTIFF:**

Yes, Defendant used to write to me often when he was in prison in U.S.A.

Yes, Defendant discussed Plaintiff in the letters to me.

Yes, I discussed the case with my husband, my son. I discussed case with Mr. Cardona.

Defendant did not tell me what to say. We talked about the case yesterday after adjournment. Defendant told me I was going to be a witness and should testify as to what happened.

Defendant write me once about Plaintiff in the latter part of his detention, towards his release.

Yes, Defendant told me all that Plaintiff had been doing for him.

Defendant told me Plaintiff visited him – a very good friend.

Plaintiff called me when Defendant was about to be released.

Defendant wrote to me and told me who the friend was.

I went to U.S. in 1999 and brought home money given to me by Plaintiff and I gave it to Defendant. The money was given to me in US in an envelope. I was staying at Plaintiff's house when she gave me the money.

The envelope wasn't sealed. She put in the money and sealed it.

I can't recall if I visited a bank with the Plaintiff on the day she gave me the money.

I saw Plaintiff put money in envelope. She took out a hundred dollar bill to pay bills.

I know Plaintiff put \$900.00 in the envelope.

I didn't count the money. It was on Plaintiff's bed stand.

**RE-EXAMINATION OF D.W. 2:**

I stand by statement that Defendant wrote me once about Plaintiff.

I gave Defendant the envelope and saw it was US \$900.00.

**D.W. 3: ARTHUR NEAL s/s:**

Yes, I know both Plaintiff and Defendant. Plaintiff was a friend of Defendant who is my son.

The parties were lovers around 1998 – 2000.

I helped my son with finance – he got building materials of plywood, steel and board from me. I helped Defendant with all of these materials – in the amount of \$15,000.00 for the building of Defendant's building, the building on No. 5 Kut Avenue adjoining my building.

That's all I know about this case.

**NO CROSS-EXAMINATION OF D.W. 2.**

**D.W. 4: ANTHONY ELLIS s/s:**

Of 4 Welch Street, construction worker.

I am acquainted with Defendant, not Plaintiff. Defendant has been my boss for about four to five years. I built his house at Kut Avenue.

I was there when the building started. I can't recall when building started.

I was working with Defendant's father and then transferred to Defendant.



I still work for Defendant. The building is not finished yet.

The materials from Defendant's father's house were used to start Defendant's house.

The construction was continuous until I reached second floor.

**NO CROSS-EXAMINATION OF D.W. 4.**

**D.W. 5: JOHN OLIVER s/s:**

16 Rivero Street, cabinet maker. I know Plaintiff and through her I know Defendant.

I knew Defendant through my building of cabinet at Defendant's house in Kut Avenue.

I started work for Defendant in mid-August 2001. I continued working for Defendant.

We got first lot of mahogany from Shooters Club. We had to get some materials as we only made a start with first. We got some material from Mid-West in Spanish Lookout – twice.

We made . . . . . overhead cabinets with mahogany.

This was in 2001.

**NO CROSS-EXAMINATION OF D.W. 5.**

**Adjourned to 2 p.m. for Addresses.**

**2:15 p.m. - HEARING RESUMES**

**ADDRESSES**

**CARDONA FOR THE DEFENDANT**

Case deals with narrow issues.

Defendant admits there is a constructive/resulting trust in favour of Plaintiff in connection with the building.

Defendant submits however that Plaintiff's interest in the property is no more than \$83,000.00 since Defendant admitted receiving in several tranches during period August 1998 – March 2001.

However does the evidence prove that Plaintiff contributed instead \$330,000.00?

On the alternative claim for share as a common law parties pursuant to section 148(e)(1) of Chapter 91.

The evidence shows Defendant was incarcerated for ten years in U.S.

**Submit**: The required statutory period would not award Plaintiff as on the evidence the parties only lived together or cohabited from 1998 to 2001.

The real issue is quantification of Plaintiff's share/interest in the building.

**Submit** that Plaintiff is only entitled to 1/5 share of the value of the property.

**WILLIAMS FOR PLAINTIFF:**

On the issue of common law union under section 148(e) – will not press this.

On the equities of the case

This is a case of equality is equity.

Two people set out on joint enterprise.

Plaintiff gave Defendant money. Plaintiff made monetary contribution. There is a dispute as to quantum but Plaintiff is clear as to how much and how. Plaintiff was not tested as to her contributions.

None of the parties can verify their exact quantum in contributions. They both contributed: the justice of their position would require equal division.

This is a case of equality is equity.

Perera v Perera 3 BLR

Urge that a fair and just result would be to share proceeds of property equally.

**COURT:** What is the position of the mortgage on property?

### **JUDGMENT**

Subject to payment of mortgage on the property, it is declared that the parties hold the property in equal share. In the light of the evidence I declare that the parties hold the property equally. Having paid off the mortgage on the property, the resulting balance will be shared equally.

I have come to this conclusion based on the evidence in this case.

No costs awarded.

A. O. CONTEH  
Chief Justice