

IN THE SUPREME COURT OF BELIZE A.D. 1998

ACTION NO. 446 OF 1998.

(EDUARDO MARTINEZ & SONS LTD PLAINTIFF
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BETWEEN (AND
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(ALOMA LONGSWORTH MUNNINGS DEFENDANT

Mr. P. Zuniga S.C., for the Plaintiff.
Mr. Denys Barrow S.C., and Ms. Colleen Lewis for the defendant.

AWICH J.

4.3.2005. JUDGMENT.

1. *Notes: A claim for possession of land by a purchaser of land for value whose title was registered (the legal title), against a divorced wife who is in occupation of the land. The vendor (the transferor), the husband, deserted her and children on the property which was leased to him with option to purchase. He later divorced her in foreign court, but she remained on the property. 26 years later he obtained title absolute and 2 years later sold the property to the plaintiff. She remained on the property. She claimed beneficial interest (proprietary interest) as an overriding interest under S: 31(1) (g) of the Registered*

Land Act Cap. 194, to resist the plaintiff's claim for possession, injunction order and damages.

2. This Action, No. 446 of 1998, was consolidated with Action No. 445 of 1998, by order of the Court made on 19.1.2000. The plaintiff in both actions was the same. Its claims in each action were for possession of the same land which the plaintiff said each defendant unlawfully occupied, injunction order restraining each defendant, "from remaining on the land," damages and costs. On the date of trial I made an order cancelling the order consolidating the two actions, and directed separate trials of the actions because the defendant, Ruth Tasher, in Action No. 445/1998, was reported to have died. A personal representative will have to be substituted. This judgment is in Action 446/1998, Eduardo Martinez & Sons Ltd. v Aloma Longsworth Munnings only.

3. ***Background.***

The plaintiff is a corporate *persona*, Eduardo Marinez and Sons Limited. It is the holder of Land Certificate of Title, No. 1154/98, dated 23.2.1998, for land Parcel 313, in Block 45, Lake Independence Registration Section, Belize City. The transfer instrument given No. 1154/98 was signed by the transferor on 2.2.1998. It was shown as recorded at Entry No.2 on, 23.1.1998, on Land Register, Edition 1. That date might have been wrong because the transfer was signed only in February, 1998, so it could not have been recorded on the Register earlier in January 1998, or the date on the

transfer may have been wrong. The land has since been charged with \$270,000.00 loan in favour of the Belize Bank Limited.

4. It was stated in the transfer that the plaintiff obtained title for the value of \$60,000.00. That would be by sale and purchase. The testimony of Mr. Kelsey Lee Munnings, the transferor, about it was as follows:

“Q: You subsequently sold the land to Eduardo Martinez and Sons Limited?

A No, I don't even know them.

Q Did you have property on Central American Boulevard?

A: Not now.

Q: Did you in the past?

A: In the past.

Q: Why do you say not now?

A: Because I heard I lost it.

Q: Explain what you did, of course in relation to the property?

A: It was sold as far as I understood.

Q: Was this with your consent it was sold?

A: Well, yes.”

...

Q: You gave directions to somebody to sell the land for you after you had bought it from the Government?

A: Yes.

Q: You recall how much the land was sold for?

A: I don't recall exactly.

Q: At the time you bought the land from Government Mrs Munnings was living on the land?

A: Yes.

Q: Later when you gave directions for it to be sold she was living there?

A: Yes and she was told to leave.

...

Q So you wrote her personally?

A No, I didn't write her, I get someone else to do it.

Q Who was that?

A Hazel Lord.

Q What were her instructions?

A I asked Hazel write her letter saying she had to move. This happened about three times".

5. The land was originally obtained in 1957, by Mr. Munnings on lease from the Government of Belize. The lease gave him option to purchase title absolute. His sister, Gladys Bainton, built a house and lived on the property. In 1961 or 1962 Mr Munnings built another house on the property and lived in it. It was a one room house. Then in 1996, when Mr. Munnings had been away for 26 years, he or someone on his behalf obtained the title absolute (freehold title) recorded on 15.1.1996, at Entry No. 1, on Land Register, Edition 1, for which Land Certificate of Title No. 206/96, also dated, 15.1.1996, issued to Mr. Munnings. The title absolute was then transferred to the plaintiff on, 23.1.1998 (or 23.2.1998, the date on the certificate).

6. *The Facts and Issues.*

The story leading to the claims is of a man and woman of very humble means in 1957. He was a carpenter without a regular job. She was a domestic worker. He had the foresight to acquire land in Belize City from the Government cheaply in 1975. The land is now very valuable. It has been charged to secure a bank loan of \$270,000.00. They met when they were very young, and in 1966, Mr. Kelsey Lee Munnings married Aloma Longsworth Munnings, the defendant. They lived as husband and wife on the property in the house he had built, for about three years. The house was described as one large room house. They isolated a kitchen area within. They had two children of the marriage, Marlon and Sharlet. Then about 1970, the husband left to look for employment in the United States of America, U.S.A. The children were only about three years and one year old. Unfortunately as often happens, absence and distance damaged the marriage. On 11.7.71, the husband obtained decree absolute of divorce in the County Court, Suffolk, Massachusetts, U.S.A. Mrs. Munnings and their two children continued to live in the house in Belize City. About 1986, some 15 years after the divorce, the children left for the USA. The mother said she agreed to it. She still lives on the property. The house has since been improved. A bedroom and indoor toilet and bathroom have been added. The land was swampy, it has been sand-filled. There is also a kiosk out of which retail trade is carried on.

7. The story of the two young persons of humble means is now a story of complex legal issues. Mrs Munnings has since modestly improved her

humble means, she is now a shop assistant at James Brodies, Belize City.

There has been no evidence about Mr. Munnings means. In the year 2000 he lived in Los Angeles. He was very ill in November 2000, an order had to be obtained to record his testimony earlier than the expected trial date.

8. It appears that the divorce was obtained by Mr. Munnings without notice of the divorce proceedings to Mrs Aloma Munnings. The, “Certificate of Divorce Absolute”, issued by the court in Boston stated for her address the words, “ *parts unknown, in the county ... [blank].*” No ancillary orders were made as to maintenance of the children and Mrs Munnings, and as to her right to accommodation in the matrimonial home until an alternative accommodation could be found. There has been no evidence in this trial as to whether she was or not entitled to alimony payment and to be accommodated. Mr. Munnings said he used to voluntarily send money for the maintenance of the children. Mrs. Aloma Munnings denied that. About accommodation for the children he said he allowed their mother to remain in his house so that his children would have accommodation.
9. That an ancillary order was not obtained, might have been brought about by the law in the state of Massachusetts, USA, as to jurisdiction to grant divorce to persons who married outside the jurisdiction. I think the Supreme Court of Belize could not have granted divorce to a person in the shoes of Mr. Munnings. Our jurisdiction to grant decree of divorce is based on domicile. Mr. Munnings had lived in the USA for less than two years, he had wife and children and property in his home country, Belize. He might have been unable to prove domicile.

10. Had Mr. Munnings obtained divorce in Belize, the questions about, the land, custody of the children, maintenance and other ancillary questions might have been dealt with that time in an ancillary order. The law in Belize authorizes the Court to delay divorce until the questions of custody and maintenance of minor children are resolved. That might have been applied given that Mr. Munnings was employed outside the jurisdiction while his children lived in Belize.

11. It is not clear when and by what authority, Ruth Tasher, the defendant in Action 445 of 1998, went to live on the land. Mr. Munnings said she was the girlfriend of his brother who took her to live on the property, he, Kelsey Munnings, gave his brother permission. Aloma Munnings said something different. It is clear, however, that Aloma and Ruth lived on the same property in separate houses; Aloma at No. 7 CAB, and Ruth at No. 9. Ruth's defence was singularly that the claims made by Mr. Munnings had been barred by *S: 12 of the Limitation Act, Cap. 170, Laws of Belize*. The provisions in S:12 adopt the principle of adverse possession.

12. ***Determination. The Legal Effects of Registering Title (Title Absolute).***

Eduardo Martinez and Sons Limited based its claims on registered title and the Land Certificate of Title it holds. The registration of a person as the owner of title to registered land, vests in the person, "*absolute ownership...*" see *S: 26 of the Registered Land Act, Cap 194, Laws of Belize*, which provides:

“26. Subject to section 30, the registration of any person as the proprietor with absolute title of a parcel shall vest in the person the absolute ownership of that parcel together with all rights and privileges belonging or pursuant thereto, free from all other interests and claims, whatever but subject -

(a) to the leases charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

(b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 31 not to require noting on the register:

Provided...”

13. Section 30 to which the above provisions are subject states that a registered owner who did not give valuable consideration holds his title subject to unregistered interest to which the title of the transferor had been subject. It is not relevant to this case.

14. Section 31 provides for recognition and acceptance of certain unregistered rights, including right of way, of water, of natural light, of acquisition by limitation of time to bring action, of acquisition by prescription period, authority to compulsorily acquire the land, and other such matters. They are

termed “*overriding interests*”. The most relevant to this case is in clause

(g). For clarity I quote the entire S: 31(1):

“31...(1) Subject to subsection (2), unless the contrary is expressed in the register, all registered land shall be subject to such of the following over-riding interests as may for the time being subsist and affect it, without their being noted on the register -

- (a) rights of way, rights of water and any easement or profit subsisting at the time of first registration under this Act;*
- (b) natural rights of light, air, water and support;*
- (c) right of compulsory acquisition, resumption, entry, search, user or limitation of user conferred by any other law;*
- (d) leases or agreements for leases for a term less than two years, and periodic tenancies within the meaning of section 2;*
- (e) any unpaid moneys which, without reference to registration under this Act, are expressly declared by any law to be charged upon land;*
- (f) rights acquired or in the process of being acquired by virtue of any law relating to limitation or prescription;*

(g) *the rights of a person in actual occupation of land or in receipt of the rents and profits thereof except where inquiry is made of such person and the rights are not disclosed;*

(h) *electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, canals, weirs and dams erected, constructed or laid in pursuance or by virtue of any power conferred by any law”.*

15. Complementary and equally emphatic expressions of the strong nature of registered title evidenced by land certificate of title are in ***S: 41 subsections (2), (3) and (4), of the Law of Property Act, Cap 90, Laws of Belize***, some of which I set out here:

“41(1)...

(2) The certificate of title to legal estate, interest or right in or over any land shall confer upon the registered proprietor -

(a) the right against all the world to peaceable possession of the land for the estate, interest or right conferred by the certificate,

(b)

(3) A registered title to land under Part III of the General

Registry Act, subject to all estates, interests, charges and encumbrances noted on the certificate of title of the land, shall be an absolute and indefeasible title.

(4) In this section, 'absolute and indefeasible title implies that a certificate of title... and the estates, charges and encumbrances noted thereon... cannot be challenged in any court of law on the ground that some person other than the person named therein as the registered proprietor is the true legal owner of the land therein... or that the estates, interests, charges and encumbrances... are not the estates, interests, charges and encumbrances on the said land except where it is proved to the Court that -

(a) fraud was committed in respect of the issue of the certificate of title, or the noting of the estates, interests, charges, or encumbrances;

(b) the title of the registered proprietor had been superseded by a later title - acquired under S: 42 or barred by the Limitation Act in favour of the person making the challenge”.

16. The above statutory laws show that a registered title is a very strong title. In this case, Eduardo Martinez and Sons Ltd has established by evidence, and

there has been admission by the defendant, that Eduardo Martinez and Sons Ltd is the owner of a registered title, the legal title known as title absolute, and further, that it obtained its title for the value of \$60,000 by transfer from Mr. Munnings, a predecessor in title, who had a registered title. There were no registered charges and encumbrances to the title at the time that Eduardo Martinez & Sons Ltd. obtained the title.

17. So there being no registered charges and other encumbrances on the register at the time that Eduardo Martinez & Sons Ltd obtained title, its title “[*was*] *good against all the world to peaceable possession*” subject only to the unregistered matters, the overriding interests in S: 31(1). In law those interest and powers do not require registering. Aloma Munnings raised in her defence one of the overriding interests, namely, that at S: 31(1)(g) which states:

“... the rights of a person in actual occupation of land or in receipt of the rents and profits thereof except where inquiry is made of such person and the rights are not disclosed.”

18. She has to prove the facts relevant to that clause, in *her favour*, for the Court to modify the rights attaching to the absolute title of the plaintiff company in her favour accordingly, or she had to prove under ***S: 41 of the Law of Property Act*** that registration of the title of the plaintiff company was obtained by fraud, or that the title of the plaintiff company has been superseded by a later title acquired by prescription under S: 42, or that the claims of the plaintiff company had been barred by ***S: 12 of the Limitation***

Act, Cap 170, Laws of Belize .

19. *Determination: Beneficial Ownership: Overriding Interest.*

I start with the pleadings on behalf of Aloma Munnings. It was pleaded at paragraph 2 of her memorandum of defence that since 1973 (amended to 1970), she “*has been continuously and still is in exclusive possession of the said land*”. Further, at paragraph 3 it was pleaded that she was entitled to beneficial interest, the right by which she claimed to have possession, and, by which she has been in actual occupation. The pleading was in the words: “*...the land is subject to a resulting trust and beneficial interest of the defendant subsisting therein ...*” By those words, she indeed admitted the registered title absolute of the plaintiff company under ***S: 26 of the Registered Land Act***, but asserted that she had an “overriding interest specified at clause ***(g) of S: 31(1)***, which entitled her to remain on the land. There were other pleadings not so important for the determination of the case.

20. To prove her pleadings she testified as follows: She married Mr. Munnings in 1966. He had already acquired the land on lease and built a one room house on it. They lived on the property until 1970, when Mr. Munnings went to the USA to look for a job and “improve our life”. He did not return until 16 years later in 1986, to arrange travel for the children to go to the USA. From 1970, she borrowed money and added a room, toilet and bathroom to the house and sand-filled the otherwise swampy yard. She also paid the taxes and lease rentals. She said that her contributions gave her

right to the property. “It is like I deserve to live there”, she said. When in 1996, Mr. Munnings wanted to buy the property alone from the Government, she agreed because he agreed that she would continue to own the part that she lived on.

21. Learned Counsel for the plaintiff company, Mr. Phillip Zuniga S.C., took the claim asserted in those grounds of defence to mean a claim of right arising from trust provided for under *S: 124, of the Registered Land Act*, which he quoted in full. Based on that misapprehension, counsel submitted that Mr. Munnings was not a trustee, and that the right of a beneficiary would be a personal right and would not be available against a person such as the plaintiff, dealing in good faith for valuable consideration without notice of the trust.

22. Clearly S: 124 applies only when a registered owner acquires the “*land... in a fiduciary capacity*” - see *subsection (1)*.

23. Secondly, counsel submitted that the rights of Aloma Munnings as a deserted wife were personal and did not attach *in rem*, to the land. He suggested that her claim would be against Mr. Munnings personally. Mr. Zuniga relied on case law in: (1) *Thompson “Earthy [1951] 2 KB 596*; (2) *National Provincial Bank Limited v Ainsworth [1965] 2 ALL ER 472*; and (3) *Kowalczyk v Kowalczyk [1973] 2 ALL ER 1041*.

24.

I have to say unequivocally that the facts of this case are not about Mr. Munnings

or Eduardo Martinez and Sons Ltd acquiring “*land ... in a fiduciary capacity,*” under *S: 124 of the Registered Land Act*, which then would require that the plaintiff company be registered with the addition of the words “*as trustee*” to its name. Aloma Munnings does not challenge that Mr. Munnings obtained the lease in his own right for himself, and does not challenge the fact that he went on to obtain title absolute on 15.1.1996, in his name alone. Her case, restated in my own words, is that after Mr. Munnings had obtained a lease which entitled him to purchase the title absolute, she made contributions such that entitled her to a share of the proprietary right, that is, the beneficial interest in the land, which beneficial interest was a trust. I add that the trust would be imposed by constructive or resulting trust, so that Mr. Munnings would hold the property in trust for himself and for her. She then went on to claim that the plaintiff company knew that she was on the land when it bought the land and had title transferred to it, so the plaintiff company could not deny her right. The entire *S: 124 of the Registered Land Act* was irrelevant to the contention of Aloma Munnings.

25. The submission about the right of a deserted wife such as in, *Thompson v Earthy Case* and *the National Provincial Bank Ltd v Ainsworth case*, was undoubtedly correct as to the point of law. A deserted wife has an equity to appeal to court to allow her to remain in the matrimonial home. It is a right that flows from the fact of marriage not from any principle of tenancy or licence or ownership. The Common Law has been that upon marriage, the husband became responsible to provide his wife with the matrimonial home and maintenance. My observation is that with statutory laws now increasingly providing for equality, the responsibility to maintain is rapidly

becoming mutual. The responsibility may be shifting to the spouse with more income. The right of a deserted wife has indeed been personal against the husband and cannot defeat the claim of a third party who has acquired property for value or has a charge for value over property as in the three cases cited. In England her right can now be registered.

26. Although correct, again the submission about the right of a deserted wife was misapplied because of the misapprehension of the legal issue in the contention of Aloma Munnings. She did not base her claim on the right of a deserted wife. In my view, that right came to an end on 11.6.1971, when decree absolute of divorce was obtained, rightly or wrongly, by Mr. Munnings. The right of a deserted wife comes to an end if: the husband offers her alternative accommodation, offers adequate payment of maintenance sum to enable her to obtain alternative accommodation, or if she commits matrimonial offence, or if the marriage comes to an end by divorce. - see the judgment of *Lord Upjohn in the National Provincial Bank v Ainsworth Case*, at page 485.
27. My view of the evidence is that Aloma Munnings, by her testimony, contended that she made financial contributions from 1970, especially between 1970 to 1986, and right up to, 23.1.1998 (23.2.1998), when the land was sold to the plaintiff company, and that her contributions which were by continuing to pay the land taxes, adding of another room, indoor toilet and bathroom and sand-filling the swampy yard, assisted in the final purchase of the land and improved and conserved the land and house, and thereby entitled her to part of the proprietary right in the property. Further, she contended by

her testimony that she was in actual occupation when the plaintiff company bought the land, the plaintiff company did not inquire of her right or interest, so her right was and is now protected against the plaintiff company, the registered owner. Her right is an overriding interest under *S:26(b) and 31 (1) (g), of the Registered Land Act*, the plaintiff had no right to dispossess her.

28. Such a claim can be raised by a wife, deserted wife, a divorcee or the husband for that matter, or by anybody. It does not depend only on marriage and desertion as the submission suggested - see *Williams & Glyn's Bank v Borland and Another: Williams & Ldyn's Bank v Brown [1980] 2 ALL ER 408*. In this case, Aloma Munnings in her testimony gave the period of her contribution that included the time when, she was a wife, a deserted wife and later a divorcee. To regard her claim as based on the right of a wife or deserted wife is mistaken.

29. The law regarding beneficial interest in land is that it is imposed by equitable trust. Generally, contribution by a person whether wife, deserted wife or any other person, to the acquisition, improvement or conservation of the property of a holder of the legal title does not in itself create a beneficial interest, a proprietary right, in the property in favour of the person making the contribution, in the absence of a written agreement or a written declaration of trust. The agreement or declaration has to be in writing because of the requirements in *SS: 43 and 55 of the Law of Property Act*, that interest in land be created in writing and that sale or other dispositions of land are not actionable in court unless evidenced in writing. However, courts, faced with

varying circumstances in which contributions have been made to the property of another, have recognised and accepted that even in the absence of written agreement or declaration of trust, contributions may be made in circumstances that may suggest that the parties intended to let the person making contribution have beneficial interest in the property, or the legal owner may be regarded as having acquiesced in giving beneficial interest in the property based on the contributions. In the case of wife or deserted wife, non monetary contributions have been accepted as good contributions - see *Eves v Eves* [1975] 1WLR 1338 . Notable cases in which the point has been made are: *Pettitt v Pettitt* [1969] 2 ALL ER 385, *Gissing v Gissing* [1970] 2 ALL ER 780, *Cooke v Head* [1972] 2 ALL ER 38, *Eves v Eves* [1975] 1 WLR 1338. *Sekhon v Alissa* [1989] 2 FLR 94 and *Grant v Edwards and Edwards* [1987] 1 FLR 87.

30. The last case is of two Jamaican divorcees living in England. They met and had two children. The man, the respondent, bought a house for the two of them and their two children to live in . The appellant, the woman, did not contribute to the purchase price. The title deed was taken in his and his brother's name. He testified that he never intended to let her have joint title with him. Admittedly, he lied to her that her name was not included in the title deed because it would prejudice her pending divorce proceedings. Apart from a few payments of mortgage instalments that she paid, which could be regarded as arising from the general household expenses, he paid all the instalments. But she made substantial contribution to the housekeeping

expenses and the bringing up of their two children. Unfortunately their relationship terminated. The woman claimed beneficial interest in the property. At first instance court she failed in her claim. On appeal it was held that they both intended that the woman would acquire beneficial interest in the property and that she made contributions with that understanding. Further, it was held that her substantial contributions to the household expenses freed him so that he could pay the mortgage instalments. She was entitled to beneficial interest in the property.

31. In this case, if the evidence is found to show that Aloma Munnings made contributions to the acquisition, improvement and conservation of the land and house with the agreement of Mr. Munnings that she would acquire beneficial interest, or she made contributions in circumstances that it may be regarded that he acquiesced in her obtaining beneficial interest, then I should hold that she was entitled to beneficial interest in the property of Mr. Munnings.

32. To find out the answer, we have to go to the entire evidence. It was not extensive. In my view, there has been ample evidence proving that Aloma Munnings paid for the improvements. She produced her bank loan book showing loans given to her by the Holy Redeemer Credit Union Ltd. The book showed the period 20.6.1991 to 12.5.2000, but it began by showing loan balance brought forward on 20.6.1991, from an earlier book for earlier period. She also produced a letter dated 17.5.2000, from the Holy Redeemer Credit Union, confirming that she had obtained a special loan under their

Home Improvement Programme. Further, Aloma Munnings produced a letter dated 24.5.2000, from the Housing and Planning Department, which letter stated that she had received a loan on 9.9.1991, from the Department, under what was stated as “Water and Sewerage Programme”. The purpose of the loan confirmed the testimony of Aloma Munnings that she borrowed money to build indoor toilet and bathroom and to add a room. Those works were improvement works. One may notice that there were discrepancies in some dates given in the testimony and those shown in the book. I think that such errors are understandable given the long time since. I also accept her evidence that she continued to pay the taxes. “After I paid the taxes I wanted to buy the property,” she said. She may well have regarded lease payments as part of taxes. The tax and lease payments are contributions that go to acquisition of the property because failing the payments, the property may have been taken back by the Government. On the other hand, Mr. Munnings never produced a single document to confirm his testimony that he sent money for improving the property, or at all for whatever purpose. It is probable that he occasionally sent money for maintenance of the children. On a balance of probabilities, I have to accept the evidence adduced by Aloma Munnings about money to pay taxes and improvement of the land and house.

33. I also find that Mr. Munnings had acquiesced in Aloma Munnings obtaining beneficial interest. I do not believe that he made any effort to tell her that any improvement that she would make to the property would have no consequence on his proprietary right, or that he made any effort to claim the

property back. It is more probable that someone came up with an attractive idea to sell the property for him after 26 years of leaving the property to Aloma Munnings and that is when the claim to have his property from Aloma started to be made on his behalf. The evidence as a whole suggests that he had given up the property for Aloma to continue with the lease and tax payments if she wanted to keep the property. That must have come from the realisation that the taxes and lease payments had to be made, and that the structure he left behind could not last for 26 years without improvement, so Aloma Munnings would have paid the taxes and lease payments and made substantial improvement or incurred substantial expenses in maintenance work that should entitle her to at least a share in the property. The part of his testimony that I quoted above supports that view. I also think it important that Aloma Munnings told the Court that when Mr. Munnings said he would buy the property from the Government, she agreed because he agreed that she would retain the portion of the land where the improved house 7CAB was, and Mr. Munnings would take the rest. She was asserting her beneficial right.

34. I do not believe everything that Aloma Munnings said, I think she was less than frank about some aspects of the evidence. However, on the whole, I find that she proved that she made contributions to the acquisition and improvement of the land and house with the understanding of both herself and Mr. Munnings that she would acquire proprietary interest, the beneficial interest, in the property, and her contributions were of the nature referable to the acquisition, improvement and conservation of the property.

35. So do her contributions to the acquisition, improvement and conservation of the property of Mr. Munnings have a consequence on the title acquired by the plaintiff company which is a transferee of legal title for value? It would, if the beneficial interest acquired by Aloma Munnings in the property of Mr. Munnings can be regarded as an overriding interest under *SS: 26 and 31 (1) (g) of the Registered Land Act*, existing before and at the time when the plaintiff company acquired the property from Mr. Munnings and had its title registered. Further, she will have to show that her right is a legal or equitable estate in the land itself, and not merely, a right against Mr. Munnings personally. An overriding interest under *S: 31(1) (g)* must be a legal or equitable estate in the land itself.
36. I have already stated above that a beneficial interest that accrues from contributions made by another to the acquisition, improvement and conservation of the property of a holder of legal title is imposed by equity, which creates a right to part of the proprietary right. It is an equitable estate attaching to the land. Aloma Munning's right is an equitable estate. It can be regarded as an overriding interest. However, one other condition under *S: 31(1) (g)* must be met. She must have been in actual occupation at the time the plaintiff company acquired its title and she must show that the plaintiff did not make inquiry as to the basis of her actual occupation, or that the plaintiff made inquiry and she revealed the right nonetheless the plaintiff company went ahead and took title. Actual occupation is a matter of fact to be proved by evidence.

37. In my view, Aloma Munnings adduced uncontroverted evidence that she was in actual occupation of the house, No 7CAB, and the land before and during the negotiations, sale and transfer of the title to the plaintiff company. About inquiry which Mr. Eduardo Mannuel Martinez testified that he made of Mrs Munnings, my view is that the inquiry was too sketchy and cursory, given his knowledge that the property was being sold by a sister or sister-in-law on behalf of Mr. Munnings whose divorced wife was said to be living on the property, and that a large sum was to be paid as the purchase price.
38. The law in *S: 31(I) (g)* requires the buyer to make inquiry of persons in actual occupation of land to find out the legal or equitable claim by which he or she occupies the land. That inquiry must be made of even a deserted wife or wife. If the buyer fails to make the inquiry, then he takes the registered title subject to any legal or equitable interest, known as overriding interest, by which the occupier is on the land. That law has been stated in the judgements at the House of Lords in two important consolidated appeals, namely: *Williams & Glyn's Bank v Boland and Another, and Williams & Glyn's Bank Ltd v Brown [1980] 2 ALL ER 408*. In each case, the husband and wife contributed to the purchase price and payment of mortgage instalments for their family home. Beneficial interest of the wife in each case was admitted. In each case the husband alone was the registered legal owner. Each family lived in the home with one child in the case of Boland, and three in the case of Brown. Each husband mortgaged the family home to secure debts in his business, including debt due from him on quarantees.

The bank in each case did not make inquiry about the interest of the wife either from her or from the husband. Each business failed, each husband defaulted in payment and the bank sued for possession against husband and wife. Each wife raised the defence that her beneficial interest was an overriding interest under *S: 70 of the Land Registration Act, 1925 (England)*, from which *S: 31 of the Land Registration Act, (Belize)* was adopted. The trial court in each case held against the wife and gave possession of the matrimonial home to the bank. On appeal that was reversed, and the decision on appeal was confirmed on appeal to the House of Lords. The case of , *the City of London Building Society v Flegg and Others [1987] CA 435*, is distinguishable. In that case the respondents with their daughter and husband jointly purchased the house and lived in together. The property was conveyed in the names of the daughter and husband under an express trust for sale.

39. My decision in this case is that the plaintiff company though the legal owner, took the property subject to the overriding interest of Aloma Munnings. That interest was the beneficial interest imposed by trust as the result of her contributions to the acquisition of the freehold estate, improvement and conservation of the property.
40. At the close of evidence, learned counsel Mr. Dean Barrow SC, for the defendant, rightly informed Court that the plaintiff would withdraw her defence based on *S: 12 of the Limitation Act*. It was a commendable way of conducting cases. I recommend it to less experienced attorneys. Valuable

time has been saved.

41. The defence of Limitation of time to bring action, which in the case of a claim for possession of land is the defence of adverse possession, would only be raised as from the date of divorce, 11.6.1971. However, the defendant would have to overcome the insurmountable response by Mr. Munnings that he had a duty to provide accommodation for his minor children and by that necessity, for their mother, he was not ignoring adverse possession. He said he had to allow her to live in the house for the sake of the children. The submission by Mr. Zuniga about lease was merited. I would add that Mr. Munnings had leasehold interest until 15.1.1996. The reversionary freehold estate would revert to the Government, if he did not exercise the option to purchase it. Aloma Munnings could not claim the reversionary interest based on her adverse possession, against Mr. Munnings until from 15.1.1996, the date on which he got title absolute (freehold). This claim was brought in 2000, which was 4 years after Mr. Munnings had obtained title absolute. That is well within the 12 years required for bringing action for recovery of land, under *S: 12(2) of the Limitation Act*.
42. The claims of Eduardo Martinez and Sons Ltd for possession of land Parcel 313 in Block 45, Lake Independence Registration Section, Belize City, injunction order “restraining” Mrs Aloma Munnings “from remaining on the said land”, and for damages are dismissed with costs to be paid by the plaintiff.

43. The practical consequence is that the share of the interest of Aloma Munnings will have to be ascertained and she could be paid for it if the plaintiff who rightly owns Mr. Munnings' share of the beneficial interest would like to have the entire property. Parties are at liberty to seek further directions from Court in this regard if there is no agreement as to the shares of the beneficial interest in the property.
44. Exhibits will be returned to those entitled after the period for notifying appeal has elapsed.
45. Pronounced this Friday the 4th March 2005
At the Supreme Court
Belize City.

Sam Lungole Awich

Judge

Supreme Court