

IN THE SUPREME COURT OF BELIZE A.D. 2004

ACTION NO. 623 OF 2002

(JOVITA NOVELO	PLAINTIFF
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(AND	
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(
(ALONZO NOVELO	DEFENDANTS
(RAMON URBINA	
(ALMA URBINA	
(ATLANTIC BANK LIMITED	

Ms. S. M. Pott for the applicant.
Mr. L. Willis for the first respondent.
Ms. K. Lewis for the second and third respondents.
Ms. L. Barrow for the fourth respondents.

AWICH J

JUDGMENT

1. *Notes: Declaration of title or rights to property acquired during marriage or common law union, under S: 148(A) and (B) of the Supreme Court of Judicature Act Cap. 91; court is authorised to declare title or right but the section and the Act does not state any statutory rules or principles for the determination of title or rights; title or rights to property are determined by the general principles of law of property, i.e. statutory laws regarding property and the common law including the equitable doctrine of proprietary estoppel imposing beneficial interest held on trust by the holder of legal title; rules applicable in sharing out beneficial interest or for settlement stated in SS: 148 (A) and 148 (E) originated from equity. The husband used proceeds of properties he had acquired before he met and lived with the wife to purchase the property in question therefore, contributions by wife not material, not referable to acquisition, improvement or conservation of the property. Right to remain in matrimonial home while alternative accommodation is to be found. Wife entitled to order for*

maintenance.

2. ***The Background.***

Jovita Novelo the applicant, lived with Alonzo Novelo, the first respondent, in Caye Caulker from about 1973, as common law husband and wife. About 1979 they moved to live in Belize City. They first lived at a house owned by Mr. Novelo's brother. Then in 1979 or 1980 Mr. Novelo bought property No. 26 Cemetery Road, Belize City, the property is one of the items the subject of this case. The money used was, admittedly, the proceeds of sale of his properties in Caye Caulker. He had acquired those properties before he met her. He alone became the holder of the registered title to No. 26 Cemetery Road. On the property now is a double floor building. They lived on the upper floor. The lower floor or part of it was rented to Ramon Urbina and Alma Urbina, husband and wife, who carried on business thereat. The rent was paid to Mr. Novelo. On 10.4.1992, Jovita and Alonzo formally married and continued to live at No. 26 Cemetery Road.

3. He was a fisherman and a member of the National Fishermen Producers Cooperative Society Ltd. He owns shares which number has not been stated with certainty. In his business he owns a 25 horse-power fibreglass boat. She was a housewife. She had five children of her own before she met him. It was admitted that two were brought up by the couple together. He also had children of his own; there is no evidence that they were brought up by the couple together. They had two children together. All the children have moved out and have started their own families. There was evidence that two moved with their own families back and occupied part of the premises in the

course of the argument between their parents. Let me make it clear that the children, now adults, have no right to the items of property and are not in any way part of this case. They would acquire right if a gift of the items of property were to be made to them or upon death of the parents, in accordance with the law of inheritance.

4. When in Belize City difficulties developed in the marriage of Mr and Mrs Novelo. In the year 2001, he moved out. On 27.9.2001, she obtained a court order from the Family Court; the order granted to her continued occupation of No. 26 Cemetery Road. On 17.1.2002, she obtained another court order requiring him to pay \$100, subsequently reduced to \$75, maintenance sum weekly to her. Those were emergency measures; they did not preclude her from applying to the Supreme Court for final reliefs.

5. On 19.2.2002, Mrs Novelo filed a petition for divorce, Action No. 180 of 2002. In the petition she included a claim for payment of weekly or monthly maintenance sum. The petition was served on Mr Novelo only 11 months later, on 23.1.2003. On 19.12.2002, meanwhile, she filed the originating summons, the subject of this judgment, asking for declaratory orders, “*under S: 148(A) and/ or 148 (E) of the Supreme Court of Judicature (Amendment) Act [No, 8 of 2000], and S: 16 of the Married Women’s Property Act, that the applicant is beneficially entitled to one-half share or interest in the following properties:*” No. 26 Cemetery Road, Belize City; real properties if any, in Caye Caulker; the shares in National Fishermen Cooperative Ltd; and the fibreglass boat. The citation of SS: 148(A), 148(E) and 148(H) should be of the Supreme Court of Judicature Act, Cap 91, Laws of Belize,

not the (Amendment) Act. Mrs Novelo also asked for: order that the items of property be sold and the proceeds be equally divided; injunction order prohibiting Mr. Novelo from selling or disposing of the items of property until the action was concluded; and an order for maintenance sum that Mr. Novelo should pay weekly or monthly to her.

6. The requests in the originating summons, for an injunction order prohibiting sale of No. 26 Cemetery Road, until the conclusion of the action and for maintenance sum, were misplaced. The injunction order requested was an interlocutory one and should have been applied for in an interlocutory application, once the originating summons had been filed or even filed together with. In fact such an application was made on 10.2.2003, subsequent to issuing the originating summons. Presumably, unknown to Mrs Novelo, the property had already been sold. I made an order for payment of the proceeds into Court.

7. The request for maintenance order should have not been made in the originating summons because it had already been made in the petition for divorce. It was an abuse of process to repeat it in this action subsequent to the divorce proceeding. Entitlement to maintenance sum is not incidental to right to property acquired during marriage so that it would be convenient to include it in the proceeding regarding title to property. An order for maintenance sum usually follows from desertion, separation, or divorce and so a permanent order for maintenance is usually claimed as an ancillary order in a petition for judicial separation or divorce. Occasionally there may be need to apply for maintenance order during the subsistence of marriage

and now even during the subsistence of common law union - see *S: 148 (I) of the Supreme Court of Judicature Act, Cap 91, Laws of Belize and Families and Children Act, Cap 175, Laws of Belize*. Because I have decided below the question of maintenance as part of this case, I now order that the prayer for maintenance order in the Divorce Action No. 180 of 2000 remain stayed indefinitely.

8. *The Course of Proceedings.*

As mentioned, Mrs Novelo filed petition for divorce on 19.2.2002, and it was served only on 23.1.2003. Seven days after service of the petition, on 30.1.2003, (the date the financiers made payment), Mr. Novelo sold off No. 26 Cemetery Road, to Ramon Urbina and Alma Urbina for \$170,000.00. Out of that sum, \$6,000.00 was retained by the financiers for charges. Mrs Novelo said she was not sure the sale had taken place. On 10.2.2003, she made an *ex parte* application to this Court for, an interim order restraining sale of the property or, alternatively, that the proceeds of sale, if it had taken place, be paid into Court, pending the outcome of the originating summons. I made the interim order in the presence of attorneys for the parties. On 14.2.2003, I confirmed the interim order into an interlocutory order, but with the variation that \$50,000.00, which was the available part of the proceeds of sale of the property be paid into Court. Mr. Novelo had informed Court that he had sold off the property and that he had kept the sum of \$50,000.00 in his bank account. He said he had used part of the sum to pay: a \$40,000.00 loan with which the property had been charged, loans totally about \$25,000 taken to rehabilitate the fishing business ruined by three hurricanes, bills that they had incurred together, the weekly maintenance sum to her and for his

own upkeep. He confirmed that the loan for \$40,000 was taken after separation, to buy equipment in his business.

9. On 23.5.2003, Mrs Novelo received from Mr and Mrs Urbina a written notice of eviction from the property. The notice was dated 13.5.2003. On 29.5.2003, Mrs Novelo applied to join as parties to the originating summons, Mr. and Mrs Urbina, and Atlantic Bank Ltd, the financiers of the sale and mortgagees. An order to set aside the sale was also asked for in the application to join parties. On 25.9. 2003, I granted the order to join Mr and Mrs Urbina and Atlantic Bank Ltd, as the second and the third respondents respectively, but declined to determine the application to set aside the sale. Instead, I directed that a separate application for an order to set aside the sale could be made or the applicant could apply for it to be introduced as an amendment to the originating summons.
10. On 14.4.2004, Mrs Novelo filed an application for leave to amend her originating summons dated 18.12.2002, to include, “*a declaratory order under S: 148(H) of the Supreme Court of Judicature Act*”, that sale of No. 26 Cemetery Road, by the first respondent to the second respondents and all subsequent transactions were void. Leave was granted on 12.7.2004, and the originating summons was amended accordingly. This judgment is the determination of the originating summons as amended.
11. ***Determination***

It is appropriate to commence the determination of the questions raised by noting that despite the applicant’s claims having been cast so wide in the

originating summons, this case is really about the single question as to whether Mrs Novelo has any title or right to the items of property which have been specified, namely; No. 26 Cemetery Road, the fibreglass boat, shares in the Cooperative and land in Caye Caulker, and if so, whether her share in the beneficial interest in the items is one-half or greater or less than one-half. Depending on whether she has title or right, the validity or otherwise of the unilateral sale of No. 26 Cemetery Road, by Mr. Novelo may then be considered.

12. ***Determination (The Law)***

It is convenient at this point to state the law applicable. Ms S. M. Pott, learned counsel for the applicant, relied on the statutory laws she cited in the originating summons for the claim that, “the applicant is beneficially entitled to one-half share or interest”, that is, one-half share of the title or proprietary rights, in the items of property enumerated. She urged the Court to make determination of the question of proprietary title and rights and of the question of the spouse’s shares of the beneficial interest, based on those statutory laws, which she said gave a wife proprietary right in her husband’s property, by reason of the wife’s contribution made in her role as homemaker and mother.

13. I view the statutory laws in a different way in as far as the law regarding determination of title or rights to property is concerned. Only ***S: 148(A) of the Supreme Court of Judicature Act***, is applicable, if at all, to the question of *determination* of “title or rights” to property between Mr and Mrs Novelo or any spouses. In my view, the section is limited to the actual making of the declaration as to title or rights which the Court will have

found to exist already between the spouses as at the end of their living together. The section applies where the parties have been married, whereas *S: 148(E)* applies where parties had been living in “*a common law union*” and have separated. Apart from that one difference the provisions of the two sections are identical. Mr and Mrs Novelo had lived in a common law union and married. They then separated and divorce proceeding and the claim for title or rights to property were commenced. The section applicable to them as married persons is S: 148(A), there was no need to cite S: 148(E) as well. *Section 148 (H)*, introduced into the case later by amendment asking for an order to set aside sale of No. 26 Cemetery Road, comes in only at the consideration of any consequential orders, if and only if, the applicant succeeds in obtaining a declaration of title or rights in her favour under *S: 148(A)*. If *S: 16 of the Married Women’s Property Act, Cap 176, Laws of Belize*, is relevant, then it must be only in a very general way; it does not provide answer to the central question which is whether the applicant has any title or right to the items of property and, if so, whether her share of it is one-half.

14. I shall elaborate. It is *S: 148(A) of the Supreme Court of Judicature Act* that authorises a spouse, and *only during divorce proceedings*, to make an application for a court *declaration* of the applicant spouse’s *title or rights* to property *acquired jointly or by one of them during the marriage* - see *subsection (1) and (2)*. Then, the section authorises court to make consequential orders such as order for settlement, sale, partitioning and possession to effect the title or rights declared - see *subsections (3), (4), (5) and (6)*. Then further, the section goes on to enumerate the factual

considerations to be taken into account by court in making the consequential orders. The factual considerations are financial as well as non-financial, such as: the contribution made by the wife as a home-maker and mother, how long the marriage has been, ages of the spouses, the state of health of the spouses and their children, eligibility to pension or other old age benefits and the effect of any proposed order against the earning capacity of either. The section makes it clear, however, that the enumerated considerations are not meant to be exhaustive, by including at *subsection (5) (i)* the clause: “*any other fact or circumstances that in the opinion of the court, the justice of the case requires to be taken into account*”. Note that those considerations are not stated as factors in deciding whether only one or both spouses have title or rights which court may make declaration of, they are stated as factors in sharing out property in which joint title is found to exist. I view that as a deliberate omission so that the question of proprietary right is left to be determined in the usual way, by statutory laws regarding property ownership and the principles of the common law and equity where statutes do not spell out the rules. Compare *Pettitt v Pettitt [1969] 2 ALL ER 385*, in which it was held that a provision in the Married Women’s Property Act 1882 (England), which authorised that “... the judge may make such order with respect to the property in dispute ... as he thinks fit”, did not authorise court “to pass property right from one spouse to another” who did not have it or “to create or vary the property rights of husband or wife”. In other words, the section did not authorise court to determine property right outside the general law of property.

15. The factual considerations for making consequential orders, are in fact

nothing new, except that they have been expanded and emphasised in statute. They were considerations that had been taken into account by court before the Act was passed, when court decided how to share out to spouses or partners, beneficial interest in property that court decided they both had unapportioned title or rights to when their marriage or union came to an end. Some, not all the considerations, had also been taken into account when court had to determine, in the first place, the primary question as to whether the applicant spouse or partner had any proprietary interest termed “*beneficial interest*” in the property acquired during marriage or living together. A notable non-financial contribution is the contribution by wife (and these days husband) as home-maker and minder of children in circumstances referable to the acquisition; conservation and improvement of the property. So the statutory rules *in S: 148 (A) (3), (4) and (5)* which now must guide court when making consequential orders for sharing out proprietary interest or when making order for settlement, originated from the common law, in particular, equity, -see *Gissing v Gissing [1970] 2 ALL ER 780 and Cooke v Head [1972] 2 ALL ER 38*.

16. I must, emphasize that while *S: 148(A)* at subsection *(1) and (2)* authorises court to make a declaration of title or rights to property acquired during marriage, the section does not lay down any statutory rules or principles by which court may make determination as to the title or rights to be declared. So the section does not create or confer title on the grounds that a spouse has made contributions whether in money or in kind, it merely directs that “*court may declare the title or rights, if any*”. Therefore title must first be found to exist according to the general law of property. To be able to make the

declaration court must therefore first make a determination as to whom title or right to the property in question belongs. The determination may be that the property belongs to both spouses or to only one of them or to one of them but the other has acquired proprietary interest in it. Moreover, court may not declare any title or right if it does not find any. In the absence of statutory rules or principles *in S: 148 or the Act* as a whole, as to how title or right may be determined, court will in its determination, apply the rules and principles in other statutes in Belize about title to property and where there are no provisions in statutes the rules and principles in common law and equity. *The law of Property Act Cap 190 and the Registered Land Act, Cap 194* come to mind immediately.

17. I have identified five cases that illustrate how the law applicable to determining proprietary interest of a spouse or partner in the absence of specific statutory rules or principles and in the absence of evidence of explicit or implicit agreement between them as to title, loan or gift or of declaration of trust, developed and may now be regarded as firmly rooted in the principle of trust in equity. The cases are: *Pettit v Pettit [1969] 2 ALL ER 385*, *Gissing v Gissing [1970] 2 ALL ER 780*, *Cooke v Head [1972] 2 ALL ER 38*, *Bernard v Joseph [1982] 3 ALL ER 162* and *Thomas v Fuller-Brown [1988] 1 FLR 237*. In the case of land, the agreement, gift or declaration of trust must be in writing, a requirement of *SS: 43, 44 and 45 of the law of Property Act*.
18. I shall take *Gissing v Gissing* as an example because the facts there are near

to the facts in this case: In the case the husband paid a small deposit and bought the property on mortgage loan. The title was taken in his name alone and he alone paid the loan instalments. He regularly gave a sum of money for house-keeping to the wife. She was employed. She paid for her and her son's clothes and other things. There was no evidence that she did so in order to free the husband's money to pay the loan. She also paid for furniture and for improvement of lawn. On appeal to the House of Lords it was held that the husband alone had the beneficial interest. It was observed though that there was no distinction in law between direct contribution or indirect contribution. The law as stated by Lord Pearson on page 786 is as follows:

“ The appellant is the owner of the legal estate in the house and prime facie the legal estate carries with it the whole beneficial interest. The respondent however claims that she has a partial beneficial interest to the extent of one-half or some lesser portion.

If the respondent's claim is to be valid I think it must be on the basis that by virtue of contributions made by her towards the purchase of the house there was and is a resulting trust in her favour. If she did make contributions of substantial amount towards the purchase of the house there would be a resulting trust in her favour”.

His Lordship went on to conclude that on the facts the respondent had not made, either directly or indirectly, any substantial contribution to the purchase of the house, and therefore there was no resulting trust in her favour. Lord Diplock, after noting that the respondent founded her claim on the contention that she contributed

substantially, though indirectly, to the payment by the appellant of the original deposit and the subsequent instalments payable under the mortgage which enabled him to acquire the house, stated the law as follows:

“Any claim to a beneficial interest in land by a person, whether spouse or stranger, in whom the legal estate in the land is not vested must be based on the proposition that the person in whom the legal estate is vested holds it as trustee on trust to give effect to the beneficial interest of the claimant as cestui que trust. The legal principles applicable to the claim are those of the law of trust in particular, ... the law relating to the creation and operation of resulting, implied or constructive trust”.

Lord Diplock stressed that if the facts are such that it may be taken that the holder of the legal title conducted himself in a way that induced the other, (*the cestui que trust*) to act to his or her detriment in the reasonable belief that by so acting he or she was acquiring beneficial interest in the property, then a trust is created to give the claimant a beneficial interest. His Lordship held that on the evidence the respondent did not acquire beneficial interest by the contributions she made which were *ephemeral* in nature.

19. Let me mention ***Grant v Edwards and Edwards [1987] 1FLR 237***. It was a case of two Jamaicans living in England. They met after the spouse of each had left. They lived as common law husband and wife and had two children together. They later separated. During their living together, the man bought

a home intending it to be their home. He alone paid the purchase price. The property was purchased by mortgage loan in the name of his brother and himself. The registered title was taken in the names of himself and the brother. He gave an excuse to the plaintiff that the brother's and not the plaintiff's name was included in the title to avoid any prejudice that might arise from her pending divorce. The defendant never intended to have the plaintiff's name replace the brother's. He paid most of the loan instalments. The plaintiff, on the other hand, made substantial financial contributions to the housekeeping expenses, feeding and the bringing up of children. The Court of Appeal stated that in order to establish a claim to beneficial interest in property legally owned by another, where there had been no written declaration or agreement, the claimant must first establish that such a beneficial interest was the common intention of the parties, the intention could be inferred from conduct such as expenditure referable to the acquisition of the property. The Court went on to hold that the excuse given by the defendant led the plaintiff to believe that she would acquire beneficial interest and she made contributions to her detriment, the defendant's conduct precluded him from denying a common intention that the plaintiff would acquire beneficial interest. The plaintiff won the appeal and got a share of the beneficial interest, which in reality was a share of the title to the property.

20. *Eves v Eves [1975] 3 ALL ER 768*, was a case where wholly non financial contributions by the wife were held good to establish beneficial interest. She broke down concrete wall, painted, cleaned and did general renovation work and looked after the man and children.

21. I have considered the two cases cited by Ms. Pott as case law to the point.

The cases are: *White v White* [2001] 1 AC 596 and *H-JvH-J* [2003]1 FLR 415. They are about sharing the spoil, not about determining, in the first place, whether both spouses or only one had beneficial interest in the properties. The cases were decided on the basis that both spouses had title, that is, beneficial interests which had to be shared fairly, taking into account financial as well as non-financial contributions by the wives. In *H - J v H-J* the primary role of the wife had been that of mother and home-maker. In *White v White*, the wife had brought into the marriage a farming business of her own. Moreover, England now has far more reaching statutory provisions than Belize.

22. For a full appreciation of the above discussion I set out S: 148(A) which is identical to 148(E), except that the latter is applicable to persons in a common law union. *Section 158(A)* states:

148 (A) Notwithstanding anything contained in this Part or in any other law, a husband or wife may during divorce proceedings make application to the court for a declaration of his or her title or rights in respect of property acquired by the husband and wife jointly during the subsistence of the marriage, or acquired by either of them during the subsistence of the marriage

(2). In any proceedings under subsection (1) above, the court may declare the title or rights, if any, that the husband or the wife has in respect of the property.

(3). In addition to making a declaration under subsection (2) above, the court may also in such proceedings make such order as it thinks fit altering the interests and rights of either the husband or the wife in the property, including:-

- (a) an order for a settlement of some other property in substitution for any interest or right in the property; and
- (b) an order requiring either the husband or the wife or both of them to make, for the benefit of one of them, such settlement or transfer of property as the court determines.

(4). The Court shall not make an order under subsection (3) above unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.

(5). In considering whether it is just and equitable to make an order under subsection (3) above, the court shall take into account the following:-

- (c) the financial contribution made directly or indirectly by or on behalf of either the husband or the wife in the acquisition, conservation or improvement of the property, or otherwise in relation to the property;
- (d) the non-financial contribution made directly or indirectly by or on behalf of either the husband or the wife in the acquisition, conservation or improvement of the property, including any contribution made in the capacity of housewife, homemaker or parent;
- (e) the effect of any proposed order against the earning capacity of either the husband or the wife;
- (f) the age and state of health of both the husband and the wife and the children born from the marriage (if any);
- (g) the non-financial contribution made by the wife in the role of wife and/or mother and in raising any children born from the marriage

(if any);

- (h) the eligibility of either the husband or the wife to a pension, allowance, gratuity or some other benefit under any law, or under any superannuation scheme, and where applicable, the rate of such pension, allowance, gratuity or benefit as aforesaid;
- (i) the period when the parties were married and the extent to which such marriage has affected the education, training and development of either of them in whose favour the order will be made;
- (j) the need to protect the position of a woman, especially a woman who wishes to continue in her role as a mother;
- (k) any other fact or circumstances that in the opinion of the court, the justice of the case requires to be taken into account.

(6) Where the court makes an order under subsection (3) above, it may also make such consequential orders in

respect thereto, including orders as to sale or partitioning, and interim or permanent orders as to possession, and may further, order that any necessary deed or instrument be executed, and that such documents of title to the property be produced or such other things be done as are necessary to enable the court's order to be carried out effectively, or that security be provided for the due performance of an order.

(7)Any order made by the court under this section shall be binding on the husband and the wife, but not on any other person.”

23. The section is extensive because it attempts to state in full the scope of what has become known as division of property to spouses or partners. Despite it being extensive, the Act does not spell out rules about determining proprietary title. In Belize, as in England, statute complemented by equity, now applies in the determination of title or proprietary right between spouses or partners. In the absence of explicit or implicit agreement or common intention of the spouses or partners as to proprietary interest, equity may impose the right of a spouse or partner to beneficial interest in property acquired jointly or by the other during marriage or during common law union if the applicant has made contribution whether in money, labour or otherwise in kind, in the acquisition, improvement or conservation of the property in circumstances that it is just that the title holder should be deemed to hold the

property on trust to the extent of the beneficial interest.

24. I have already mentioned that *S: 16 of the Married Women's Property Act* is of only general relevance if at all relevant. It does not apply specifically to the facts of this case. The section states:

“16(1) In any question between a husband and wife as to the title to or possession of property, either party or bank ..., may apply by summons in a summary way to a judge of the court who may make such order with respect to the application as he thinks fit, or may direct such application to stand over from time to time and any inquiry touching the matters in question to be made in such manner as he thinks fit”.

25. There are several circumstances in which a question under S: 16(1) may arise, for instance, it may arise in a suit by a third party claiming against one spouse only, upon bankruptcy of one spouse only or in inheritance upon the death of one spouse. The main objective of the Married Women's Property Act was to abolish *the rights, powers and authorities of a husband in relation to property of a wife acquired before or after marriage* and to confer, or shall I say restore, those rights, powers and authorities to the wife herself as if she were a *feme sole* - see *SS: 3 and 4*. That is the theme that runs through the Act. It is not the question in this case that a married woman has acquired property and she has been denied rights, powers and authorities over the

property. The question is whether the wife is entitled to title or right to any of the items of property enumerated on the ground that she directly and indirectly contributed to the income of the family in circumstances that this Court may declare that she has title and rights to the items, and if so, the Court may proceed to make the consequential orders sought.

26. ***Determination: (The Law and Facts).***

The applicant's case was based on the statements of facts to the effect that: No. 26 Cemetery Road, was bought to be the matrimonial home, it was bought with the income from the business of the respondent as a fisherman, and so were the other items of property, the applicant contributed by physically participating in the business, and as a wife and mother she contributed much in her domestic role as a home-maker, to the business and welfare of the children and the family generally, and that she had no other home to move to. Based on those facts, the applicant relied on "SS: 184(A) and/or 148(E) of the Supreme Court of Judicature Act and on S: 16 of the Married Women's Property Act", for her claim, "that the applicant is beneficially entitled to one-half share", in the items of property enumerated. On the same statements of facts and the sale of No. 26 Cemetery Road, introduced later by amendment, she relied on S: 148(H), for her claim for an order setting aside the sale to Mr. and Mrs Urbina.

27. I am satisfied that the applicant on occasions directly helped physically in cleaning lobsters and in some minor work in the fishing business. I am also satisfied, and the respondent admitted, that the applicant carried out her

responsibilities as a wife, mother and home-maker diligently. As the result I think that the respondent was able to carry on his business with reasonable success. I am also satisfied that the respondent also carried out his responsibilities as husband, father and income-earner for the family diligently. The question I have to answer then is whether those contributions by the wife entitled her to proprietary interest in the items of property enumerated.

28. *The Boat.*

In regard to the 25 horse-power boat, counsel for the applicant said during submission that the applicant would drop her claim to any title or interest. Accordingly I make no declaration as to title or right to the boat.

29. *Properties in Caye Caulker.*

In regard to real properties in Caye Caulker, the clearer evidence came from the respondent. He said he had owned the properties before he met the applicant, the properties were four and that he sold them and used the proceeds to buy the property, No. 26 Cemetery Road, Belize City. The applicant admitted all that in crossexamination except that she said there were three properties. She did not proceed to prove that there were still any property in Caye Caulker when they separated. Order as to title cannot be made in respect of non-existent properties. Declaration as to entitlement of the plaintiff to one-half share of beneficial interest in properties in Caye Caulker is refused.

30. *No. 26 Cemetery Road, Belize City.*

As mentioned earlier, general statutes and the common law including equity, regarding real property apply in the determination of any proprietary interest in No. 26 Cemetery Road. The first legal point to note is that title to it has been registered, Mr. Novelo alone is the registered title holder and therefore the owner of the whole legal estate. He is entitled to all the beneficial interest, subject only to equitable interests, encumbrances noted on the register and statutory overriding interests, if any, - see *SS: 26 and 31 of the Registered Land Act, and SS: 40 and 41 of the Law of Property Act*. Also see *Thomas v Fuller -Brown*, cited above.

31. The applicant relied on her contributions of labour to the commodity that the respondent sold in his business. Occasionally she cleaned lobsters and helped operate lobster traps. She also relied on her contributions as wife, mother and home-maker, which contributions she said made it possible for the respondent to earn money in his business. She obviously meant that the money was used in the purchase of the property. She, however, admitted in cross-examination that the money used for the purchase of the property was the proceeds of the sale of the respondent's properties in Caye Caulker, and that he had acquired the properties before she went to live with him. That meant whatever contributions she made were made after the source of the purchase money had been acquired solely by him, therefore her labour and role never contributed to the money used in the purchase of No. 26 Cemetery Road. Moreover, there has been no evidence that No. 26 Cemetery Road was improved at all or conserved with money from the fishing business. So the

evidence does not prove the factual basis that the applicant's contributions were material to the acquisition, any improvement or conservation of No. 26 Cemetery Road.

32. Were the applicant to prove that her contributions were made during the time the respondent accumulated the purchase price, she would still, on the facts, not have been entitled to beneficial interest. Contribution *per se* does not confer beneficial interest in property which someone else has legal title to. The evidence must show that there was written declaration or implicit or explicit agreement or common intention or understanding that she would share in the title to the property, or in the absence of written declaration or agreement that the respondent acquiesced to contributions referable to the acquisition improvement or conservation of the property and by so contributing, the applicant acted to his or her detriment so that equity would set in to give him or her beneficial interest - *see Lloyds Bank plc v Rosset and Another [1990] 1 ALL ER 1111*. The contribution must be made in circumstances from which it can be inferred that joint ownership was intended, an example would be the sort of labour or conduct the claimant could not reasonably be expected to engage in unless he or she was to have an interest in the property - see judgment of *Nurse LJ at page 95 in Grant v Edwards and Edwards*.
33. The application for declaration as to title or rights to the effect that, "the applicant is beneficially entitled to one-half share or interest in No. 26 Cemetery Road, Belize", is refused.

34. *The application for Order to set Aside Sale.*

The application for an order to set aside the sale by Mr. Novelo to the Urbinas can only be considered following a successful application for beneficial interest in favour of Mrs Novelo. Her application has not succeeded. The order to set aside the sale of NO. 26 Cemetery Road, Belize City is refused.

35. *The Question of Matrimonial Home.*

Apart from contribution to the purchase price and to the costs of any improvement and conservation of the property in circumstances that equity imposes beneficial interest in favour of the contributor, I considered that Mr. Novelo bought the property, albeit in his name, to be the matrimonial home for the use of both of them and the children when they were minors. The question then is: did that give Mrs. Novelo any title or right to the property? My answer is that she acquired no title, no beneficial interest, but she would acquire *personal* right as a wife to be accommodated, not a right *in rem*. The right would require that the husband provide her with accommodation if she had no alternative accommodation. While that is being done she would remain in the matrimonial home. Sometimes that extends over a very long time.

36. The evidence disclosed, however, that the applicant had been less than frank. She did not disclose that during the marriage, she acquired on 23.4.1979, two properties at Buena Vista Village and she is till the holder of the legal titles to them. One of the properties, lot 82, measures a huge 1,495.80 acres. There

is a double storey building on one. Moreover, the applicant did not challenge the testimony of the respondent that for 5 years he paid \$80 fortnightly towards what he said was “arrears” and that for three years he paid \$60 weekly to the applicant’s brother to take care of the properties. I wondered whether the respondent might have not himself made application for beneficial interest in the two properties. On the evidence I decline to make any declaration as to possession of No. 26 Cemetery Road, based on the right of a wife to be accommodated in matrimonial home.

37. *Title to Shares in the National Fishermen Producers Cooperative Ltd.*

The evidence as to when the shares were acquired is lacking. On that basis alone declaration as to beneficial interest in the shares are denied.

Additionally there would be difficulty as to whether the contributions made by the applicant would be referable to the acquisition of the shares.

38. *Maintenance Order.*

The evidence regarding maintenance of the wife presents an overwhelming case for maintenance order in her favour. She devoted 29 years of her life to their marriage. In her role as a wife and home-maker she supported the husband in his role as the income-earner for the family. She made it possible or more convenient for him to attend fully to his fishing business, which business was the source of livelihood and from which outgoings were paid. Given that the applicant now has no business of her own, no employment, and she is 57 years old and not living with another man, she is entitled to an

order for maintenance against the respondent. I order that the husband shall pay \$40,000.00 as a lump sum for maintenance. The sum may be collected from the money deposited into Court in compliance with the order made on 10.2.2003. The claim for maintenance in the divorce proceeding, Action No. 180 of 2002, is stayed indefinitely.

39. *Costs.*

In view of the fact that the applicant requires maintenance order for her upkeep, I order that she pay no costs to Mr. Alonzo. It was my view that although the sale by Mr. Novelo to Mr. and Mrs. Urbina was not tainted with fraud, nevertheless Mr. and Mrs. Urbina and Atlantic Bank Limited did not make sufficient inquiry to ascertain any supposed claim of Mrs. Novelo to the right to be accommodated. I deny costs to Mr. and Mrs Urbina and Atlantic Bank Ltd.

40. *Summary of Orders Made:*

The following orders are made:

39.1 Declaration under S: 148A of the Supreme Court of Judicature Act (and under S;16 of the Married Women Property Act), that the applicant is beneficially entitled to one-half share or interest in the properties enumerated at paragraph 1 of the originating summons dated, 18th December 2002, is refused.

- 39.2 Order that the properties be sold and the proceeds be divided equally between the applicant and respondent is refused.
- 39.3 Application for order setting aside sale by Mr. Novelo of No. 26 Cemetery Road, Belize City to Mr. Ramon Urbina and Mrs Alma Urbina is refused.
- 39.4 The applicant is to vacate No. 26 Cemetery Road in 30 (thirty) days. In the event of an appeal she will vacate on the completion of the appeal.
- 39.5 The respondent to pay to the applicant a lump sum of \$40,000.00 for maintenance, no order for periodic payments.
- 39.6 The claim of the applicant for maintenance in the divorce proceeding, Action No. 180/2002, is stayed indefinitely.
- 39.7 The order made on 14.2.2003, that the respondent pay the sum of \$50,000.00 into Court is now discharged, in its place, the respondent is to pay to the applicant out of that sum \$40,000.00 in compliance with the maintenance order made herein.
- 39.8 Parties bear own costs.
40. Pronounced this Monday the 15th Day of November 2004.

At Supreme Court,
Belize City.

Sam Lungole Awich

Judge

Supreme Court