

IN THE SUPREME COURT OF BELIZE A.D. 1998

ACTION NO. 406 OF 1998.

IN THE MATTER OF SECTION 16 OF THE MARRIED WOMEN'S
PROPERTY ACT

AND

IN THE MATTER OF PARCEL 2005/1 BLOCK 16 CARIBBEAN SHORES

	(ROSE BURNS	CLAIMANT
	(
BETWEEN(AND	
	(
	(MICHAEL BURNS	DEFENDANT

Ms. L. Barrow-Chung for the claimant.
M/s. Musa and Balderamos for the defendant.

AWICH J.

10.2.2006.

JUDGMENT

Ex tempore.

1. The defendant, Mr. Michael Burns, or his attorney, did not attend the hearing today, 10.2.2006. M/s Musa and Balderamos Attorneys are attorneys on record for him. Notice of the trial today had been signed by the attorneys. Learned counsel, Ms. L. Barrow-Chung for the claimant, Ms. Rose Burns, attended the trial. Ms. Barrow-Chung informed the Court that Mr. E. Flowers SC, who was in another court in a criminal case trial "had no objection" to this case proceeding to trial today, because he had been unable

to locate his client Mr. Burns.

2. I decided to proceed as provided for by rule 39 of the Supreme Court (Civil Procedure) Rule, 2005. The action was begun by originating summons as long ago as 8.10.1998. It is now regarded as a claim by a fixed date claim form under the 2005 Rules. The plaintiff, subsequently filed an affidavit sworn by her in support of her originating summons and disclosed documents pursuant to direction orders made by Shank, J. Although the defendant entered appearance, he did not file any affidavit in defence nor make any disclosures. For that reason and in view of his non-attendance today, the Court proceeded to trial on the facts in the affidavit by the claimant only.
3. Ms. Burns' affidavit was an exhaustive and thorough one. It canvassed all the material facts that the Court is obligated to consider in arriving at a decision on the issues raised in the originating summons. The claim was for: (1) a declaratory order that "the applicant is entitled to a one-half share in the proceeds of sale" of the leasehold interest in a parcel of land, No. 2055/1, Block 1, Caribbean Shores Registration Section, Belize; (2) an order that the leasehold be sold and the proceeds divided between the claimant and defendant; and (3) costs of the proceedings be awarded to the claimant.
4. There has been evidence that the claimant and the defendant, husband and wife, and both Belizeans who lived in the USA, discussed and formed a common intention in 1987, to purchase property in Belize for investment, and that the property would be owned jointly by both. They obtained a loan

from the Holy Redeemer Credit Union in Belize together on a bank account initially owned by the claimant. They purchased the property, parcel No. 2055/1 Block 1, the subject of these proceedings, and built a house on it for renting out. The claimant was employed in the USA on a regular salary, while the defendant did occasional purchase and sale of vehicles for profit. The claimant paid the loan instalments of \$1,000.00 per month initially for three years and later together with the defendant. The property was registered in the name of the defendant alone. The explanation was that because he was not employed in the USA, he spent much time in Belize and it was necessary and convenient to register the property in the name of someone who would be in Belize. As a matter of law, by the registration in his name alone, the husband alone became the legal owner of the legal title. However, all the above facts are clear evidence of joint equitable ownership with the wife, and I find as a fact and a point of law - see *Eduardo Martinez & Sons v Aloma Longsworth Munnings, Action No. 446 of 1998; Jovita Novelo v Alonzo Novelo, Action No. 623 of 2003; Pettit v Pettit [1969] 2 All E. R. 385 and Grant v Edwards and Edwards [1987] F. L. R. 87.*

5. Accordingly, I adjudge that the claimant had joint beneficial interest in the property as to equal share with the defendant, and that the defendant held the property in trust for both of them. I enter judgment for the claimant and grant the three orders prayed for.

6. Dated this Friday the 10th day of February, 2006.

At The Supreme Court,

Belize City.

Sam Lungole Awich

Judge

Supreme Court of Belize