

**IN THE SUPREME COURT OF BELIZE, A.D. 2010**

**ACTION NO. 24**

**IN THE MATTER of an Application by JASMIN SAMUELS  
AND**

**IN THE MATTER of Section 148:05 of the Supreme Court of  
Judicature Act, Chapter 91 of the Laws of Belize**

**JASMIN SAMUELS**

**APPLICANT**

**AND**

**WINSTON BUCKNOR**

**RESPONDENT**

**BEFORE** the Honourable Justice Minnet Hafiz - Bertram

Mrs. Magali Marin- Young for the Applicant

No appearance for Respondent

## J U D G M E N T

### Introduction

1. The applicant, Jasmin Samuels, by an Originating Summons dated 22<sup>nd</sup> April, 2007 made pursuant to **section 148:05 of the Supreme Court of Judicature Act , Chapter 91 of the Laws of Belize, Revised Edition 2000 -2003** , claims the following:
  1. a) *A Declaration under Section 148:05 of the Supreme Court of Judicature Act, Chapter 91 of the Laws of Belize that the Applicant is beneficially entitled to a one-half share or such other interest as the court shall deem just in the properties listed in the SCHEDULE below.*
  - b) *A Declaration that the Applicant is beneficially entitled to one-half share or such other interest as the court shall deem just in the personal properties owned by the parties.*
2. *An Order that the aforementioned properties should be sold and the net proceeds of sale be shared equally or in such proportion as the court shall order between the Applicant and the Respondent; and or*
3. *In the alternative an Order that the aforementioned properties be settled or transferred equally or equitably between the Applicant and the Respondent as the Court may determine.*
4. *An order that one-half of the amounts standing as credit in the following bank accounts be paid to the Applicant, namely:*

- a) *Savings Account at the Holy Redeemer Credit Union, and*
- b) *Savings Account at First Caribbean International Bank*

5. *An Order that the Respondent do pay the Applicant such monthly or weekly sum and make other financial arrangements in respect of the maintenance of the Applicant as may be just.*
6. *An Order of injunction restraining the Respondent by himself, his agents and servants or howsoever from selling, transferring, leasing, charging or in any way dealing with any of the real and movable properties aforementioned and the inventories until the determination of the Action herein or further order.*
7. *Such further or other order or relief as the Court may deem just.*
8. *Costs.*

### **SCHEDULE**

1. *Lot No. 38 Burrell Boom Village, Belize District (Leasehold)*
2. *Parcel 1224 Block 16 Caribbean Shores Registration Section (Freehold).*
3. *Parcel 5578 Block 20 Belmopan Registration Section (Freehold)*
4. *Lot F32 San Pablo, DFC Housing Project – Ambergris Caye.*

2. The Originating Summons is supported by the first affidavit of Jasmin Samuels sworn to on 22<sup>nd</sup> April, 2010. This affidavit gives a background of the relationship of the parties and how the properties were acquired by them. Winston Bucknor, the Respondent was served with Notice of the Originating Summons by causing Notice to be published in two consecutive issues of the Reporter newspaper. On 1<sup>st</sup> June, 2010 the Respondent entered an appearance to the Petition. There was no response in opposition to the affidavit filed by the Petitioner. On the day

of the hearing there was no appearance by the Respondent or his attorney-at-law.

3. On 26<sup>th</sup> April, 2010 on an application made by the Applicant the court granted an interim injunction against the Respondent until the 18<sup>th</sup> day of May, 2010 from selling, dealing or disposing of the properties mentioned in the Schedule to the Originating Summons. On 18<sup>th</sup> May, 2010 the interim injunction was continued until 7<sup>th</sup> July, 2010 which was further continued on that date until the determination of this matter.

#### **Evidence of Jasmin Samuels**

4. The Applicant, Jasmin Samuels in her affidavit evidence deposed that in August 1998, while she was a spinster attending SJC Junior College she met Winston Bucknor, the Respondent. He introduced himself to her as a self employed contractor in electrical and construction. At this time she was 17 years of age and he was 37 years old. She and Winston Bucknor started a casual friendship which later turned into a formal relationship. One year later in the latter part of 1999 they commenced living together as husband and wife at 1232 Sunray Avenue, Coral Groves in Belize City. That was where they lived together up until January 9, 2009 when their relationship terminated due to fear of losing her life because Mr. Bucknor physically abused her and threatened her life. It was in 2002, whilst living with her Winston divorced his wife.

#### **Commencement of Common Law Union**

5. The Applicant, Jasmin at paragraphs four to eight of her affidavit gave evidence as to the common law union. She deposed that after one year

dating and being continuously persuaded by Mr. Bucknor, she finally decided to move into his house which was once occupied by him and his family, namely his ex-wife, a son and a daughter. Mr. Bucknor told her that he and his wife were separated and going through a divorce and it would be fine for them to live in the house. She often questioned him why don't they rent their own house but he always said, "*Why will I pay rent when I own a house.*" At the time that they started living together it was only him and her living at this house. His two children Andre and Shakera Bucknor would visit and spend alternate weekends with them. Almost a year into Winston's divorce with his wife, his son Andre Bucknor came to live with her and Winston.

6. When they started living together the relationship was exciting, loving and happy like every new relationship. After a while Jasmin began noticing a possessive, aggressive and violent character displayed by Mr. Bucknor towards his workers, family, and herself. As a humble woman with great family up-bringing she ignored such behavior and tried to make do with the situation and tried to have happiness in the home.
7. When she met Mr. Bucknor he mentioned that he had a house in Santa Elena, Cayo. They often spent time at the house and they visited almost every weekend. That this is where they also started their first business venture, a boutique named "Princess Diamond." At this time she began residing at this house and Mr. Bucknor continued in his construction and electrical business as well.
8. Jasmin deposed that although she was going to school at the time she was also the Office Manager of Mr. Bucknor's business TECHTRON-Construction and Electrical and did everything in the office. These tasks included: filing, book-keeping, billing, quotations to customers, meeting

potential clients, bank deposits and whatever was needed to be done.

#### Joint Business Ventures and Establishing a Family

9. Jasmin at paragraphs 11 to 13 of her affidavit deposed about her and Winston's joint business ventures and establishing a family. She said they had a restaurant, a fast food hut, and the last one they started was apartment rental located on the bottom portion of their residence, all of which she was the manager and at the head, up until the time of their separation, including managing his company TECHTRON.
  
10. Jasmin said that two years later at age 21, she became pregnant for Winston and gave birth to a son named Bryson Winston Bucknor born October 18, 2002. This child along with two more namely: Preston Winston Bucknor born August 28th, 2005 and Cassie Siara Alba Bucknor born December 17, 2005 were all born in Los Angeles, California in the United States of America. See **Exhibit "J.S. "3"** for copies of the children's birth certificates.

#### Domestic Abuse

11. Jasmin deposed that as time progressed and the children were all little babies the abuse by Winston began to present itself even more. When the constant abuse started Jasmin realized it would be difficult to leave since they were all being maintained and supported by Winston. However, the more she tried to work it out, the more his behavior did not change, and he began what would turn out to be years of continuous physical and verbal abuse which got worst when she defended herself.

Properties acquired during the union

12. At paragraphs 24 to 32 of her affidavit, Jasmin deposed as to when and how the properties were acquired by them. She stated that in the year 2002 they learnt that the Belmopan City Council had put up for sale 1 acre of land located in Belmopan City. Since Belmopan was a city which was starting to develop they saw it as a great opportunity for them to expand the business so immediately they decided that they should consider making a purchase. They paid with a cheque written by Jasmin for the sum of BZD10,000.00 to the Belmopan City Council. See Exhibit **J.S. "5"** for the title to Parcel 5578 Block 20 Belmopan Registration Section.
  
13. Then in the year 2003 they received word that small income homes were available for purchase in San Pedro through the Development Finance Corporation (DFC) under the San Pablo Housing Project in San Pedro Ambergris Caye. So they bought one of these homes through a mortgage with the DFC. This home is at the moment being rented out and the tenants deposit their monthly rent directly to the DFC office in San Pedro. See **Exhibit J.S. "6"** for a copy of a letter regarding the housing loan for this property.
  
14. Thereafter, she deposed that in the year 2001, Winston and her came to know through a very close friend named Barbara Johnston that the government was releasing lots for lease in Burrell Boom Village. Since they had an inside connection and obtaining the land would be a simple process they decided to purchase two lots on lease. One was put in Mr. Bucknor's name and the other was put in his mother's name, HESSIE Westby. Jasmin deposed that when she questioned Mr. Bucknor why none of these lots were put in her name he answered her with the same words he always said. "Don't worry all of these are for you and the

children, I have to do things this way.” He always reassured her that all that they had obtained together would be for her and her children. So she left it at that as she thought they would always be together. See **Exhibit J.S. “7”** for copies of Land Rent Statement of lots 37 and 38, Burrell Boom Village, Belize District.

15. In early 2004 they bought a property from Ms. Pollard. This property is described as Parcel 1224 Block 16 Caribbean Shores Registration Section. See **Exhibit J.S. “8”**.
16. In December, 2004, they started their restaurant, Buck’s Cabin Diner. This restaurant only existed for three months as Jasmin was expecting her third child and the work became too strenuous for her. They both then agreed that they would rent out the business since they were receiving offers for rentals. Jasmin deposed that as she travelled to the United States to have her third child, the building at 1223 Blue Marlin Blvd which was once the restaurant remained on rental, the only thing that changed was the tenants and it then turned into a bar/club, which is the way it is presently.
17. Jasmin further deposed that on her return to Belize in 2007 after giving birth to their third child they then decided to build a small food hut on 1224 Blue Marlin Blvd. They sold a variety of food and the business seemed profitable, however it only succeeded for about 8 months. At this same time they began the apartment rental at their residence at 1232 Coral Groves. Their house had two floors of living space and since they occupied only the second floor and the ground floor had already been divided into rooms, they decided to rent the three remaining portions. Jasmin’s evidence is that these three apartments brought in significant revenue of up to \$2,000.00 per month, not including the club ‘LEAVES’



which brought in a fixed rental of over \$2,000.00 per month as well.

18. Jasmin deposed that even with the difficult financial situation in the country they were still able to maintain the comfortable life that they had, while Winston's Construction and Electrical Company still yielded an extra income for the month. That when it was time to put the children into a Primary School they both decided and agreed to enroll them into the Belize Elementary School located on Princess Margaret Drive. The money that was earned from the apartment was then used to cover all the fees and tuition to be paid, including other minor expenses. Mr. Bucknor still continued paying for the utilities, food and whatever was needed. This situation remained up until the day Jasmin decided to leave the residence.

#### Break-up of the Union

19. Jasmin deposed that on the night of December 30, 2008, their 10 year relationship ended when Mr. Bucknor violently and viciously attacked and abused her after a night of socializing with friends at "LEAVES Club" which is situated opposite their home. Before the break up Jasmin found a job at Vasquez & Company, which is where she is currently employed as an Executive Assistant.

#### Orders from the Family Court

20. At paragraph 38 of Jasmin's affidavit she deposed that on 9<sup>th</sup> of January 2009, the Family Court judge ordered that a one year protection order be granted to Jasmin against Winston Bucknor and that he should pay weekly maintenance in the amount of \$300.00 per child. Mr. Bucknor was granted visitation rights to have the children on alternate weekends for two days, from Saturday 9:00 am up until Sunday 5:00 pm. Mr. Bucknor's

mother's house would be the pick-up and drop off point. See Exhibit **J.S. "9"** for a copy of the family court orders.

21. Jasmin further deposed at paragraph 39 of her affidavit that at this time she sought and was granted by the judge under Mr. Bucknor's consent ownership of the green Mercury Mountaineer vehicle which was gifted to her by Mr. Bucknor along with any household furniture or appliance that she so wished to remove from their residence for the benefit of the children, since she would be leaving their home.

Living conditions of the Petitioner and her children

22. Jasmin further deposed that she and her children moved into a rented home and they would visit with their father just as per the court orders and they seemed to be happy while visiting with him. Mr. Bucknor, however, would most of the times be late with payments. Despite the stiff penalty imposed by the Family Court with regard to late payment of maintenance Jasmin still did not report it to the Family Court.
23. On April 7, 2009 at approximately 4:45pm Jasmin's mother Alba Samuels received a call from Mr. Bucknor. He stated that he was on a plane on board to Los Angeles for a short trip and that Jasmin should not take the children to his mother's house because he would not be in the country to pick them up. Mr. Bucknor did not return to Belize and Jasmin has been told that Mr. Bucknor resides in the state of Chicago in the United States and that he is currently working on a massive building doing construction and electrical.
24. Jasmin further deposed that Mr. Bucknor has not made any attempts to contact his children and payments for the children are in excess of 15

weeks late. Jasmin visited the Family Court and they told her that they can issue a bench warrant for his arrest, but since he is not in the country it would be futile since he is not here for it to be served on him. He would have to be in the country or she would have to know his definite address for action to be done. The information she received is that his son Andre Bucknor is responsible for collecting all the rent from the properties and that the child support should be paid from this money.

25. Jasmin's evidence is that after the end of their ten year relationship her children and her were left with absolutely nothing. No house or money of her own. Jasmin rely on her small income and on the support of her family. Much to her surprise even the joint savings account held by Mr. Bucknor and Jasmin had been closed by him since the year 2006 without her knowledge. Acting in good faith in the year 2008 Jasmin used up most of a little savings that she had at the Holy Redeemer Credit Union in order to pay off a mechanical debt which was owed by Mr. Bucknor.
26. Further, Mr. Bucknor owns other properties he acquired before the union with Jasmin, which said properties are income generating properties, earning some \$2,000.00 from apartments he owns and some \$2,000.00 from a club, all of which are situated on Parcels 1223 and 1232 Block 16 Caribbean Shores Registration Section.
27. Jasmin said that Mr. Bucknor went to the United States of America in April, 2009 and has not returned to Belize and has not paid maintenance regularly for their young children, who are without a home. The children and Jasmin live in rented premises. She pays BZD750.00 rent per month, car loan of \$747.23 per month, and she has other bills and school fees for the children.

## **Statutory Scheme**

28. The Applicant is making a claim under section **148:04** and **148:05** of the **Supreme Court of Judicature Amendment Act (SCJA)**. Section **148:04** and **148:05** of the **Belize SCJAA** states:

148:04 In sections 148:05 to 148:09, “Common law union” or “union” means the relationship that is established when a man and woman who are not legally married to each other and to any other person cohabit together continuously as husband and wife for a period of at least five years.

148:05 (1) *Where the parties to a common law union separate, then either party to the union may thereafter make application to the court for a declaration of that party’s title or rights in respect of property acquired by the parties or either of them during the subsistence of the union.*

(2) *In any proceedings under subsection (1) above between the parties to a common law union in respect of the existing title or rights to property, the court may declare the title or rights, if any, that a party 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 the parties to the union 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 or both parties to the union to make, for the benefit of the other party, 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:-*

- (a) *the financial contribution being made directly or*

*indirectly or on behalf of either party to the union in the acquisition, conservation or improvement of the property, or otherwise in relation to the property;*

- (b) the non-financial contribution made directly or indirectly by or on behalf of either party to the union in the acquisition, conservation or improvement of the property, including any contribution made in the capacity of housewife, homemaker or parent;*
  - (c) the effect of any proposed order against the earning capacity of either party to the union;*
  - (d) the age and state of health of each of the parties to the union and the children born from the union (if any) ;*
  - (e) the eligibility of either party for 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 aforesaid;*
  - (f) the duration of the union and the extent to which it has affected the education, training and development of the party to the union in whose favour the order will be made;*
  - (g) the need to protect the position of a woman, especially a woman who wishes to continue in her role as a mother;*
  - (h) the non-financial contribution made by the female party to the union in the role of companion and/or mother in raising any children born from the union (if any);*
  - (i) any other fact or circumstance 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 partition, and interim or permanent orders as to possession, and may further order that any necessary deed or instrument be executed, and such documents of title to the property*

*be produced or such other things be done as 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 parties to the union, but not on any other person.*

**Submission by Mrs. Magali Marin Young**

29. Learned Counsel, Mrs. Young submitted that in the case at hand, the Applicant was cohabiting with the Respondent for approximately 10 years from 1999 to 2009. The Respondent was married at the time of commencement of the union, but divorced in 2002.
30. The Applicant is now left with three very young children and the Respondent has since left the country and has not been complying with any order for maintenance. There is no certainty that the Respondent will return home and it is difficult for the Applicant to execute any order for maintenance against him.
31. The Applicant lives in rented premises and has to survive and maintain the three very young children on her meager salary as an executive assistant. The Respondent owns other properties, including the matrimonial home where the parties cohabited which is being rented and which fetches some BZ \$ 2000.00 in rental income.
32. Mrs. Young submitted that though **section 148:05** of the **Supreme Court of Judicature Act**, (hereinafter called "**SCJA (BZE)**") is not exactly in *para materia* with the Barbados section 57 and 53 of **Family Law Act** (hereinafter called **FLA (B'dos)**) and section 79 of the **Australian Family Law Act** (hereinafter called "**FLA (Aust)**"), it is far more similar in wording

and scheme to those two Acts than to the **English section 25** of the ***Matrimonial Causes Act (Eng) (MCA)***. Further, that the precedents from Australia and Barbados should be more persuasive authorities in Belize and the guidelines therein should be followed by this Court, as opposed to those emanating from England. In the Barbadian case of ***Proverbs v Proverbs (2002) 61 WIR 91***, the Court of Appeal held that in view of the similarity of the legislation in Australia and Barbados (***The Family Law Act***), Australia precedents should be followed; English case should not as a general rule be relied upon in **s 57 of FLA (B'dos)** applications, although they might be relevant and useful on applications under **s 56 FLA (B'dos)** (jurisdiction of court to make declaration as to title or interest in property).

33. Mrs. Marin Young further submitted that the Courts in Australia have given a wife with children to care for, a greater percentage in property in exercising its discretion. See ***Anthony Dickey, Family Law 5<sup>th</sup> Edition Chapters 34 and 37.***
  
34. Learned Counsel, Mrs. Young in written submissions stated that given that the Applicant was left with three young children and given her meager salary and the fact that the Respondent has left the jurisdiction and has not been paying maintenance and given that the Applicant is not only left with the financial responsibility of the children but also the responsibility to care for them, it is just and equitable to grant her a declaration of 100% of the properties and to award her cost and to make an order that the property be transferred into her name only. In oral submissions she however requested 75% of the properties.

### Determination

35. The evidence is that Jasmin started to live with Winston in latter part of 1999. At this time Winston was still married. On 1<sup>st</sup> March, 2002 it was decreed that the marriage be dissolved and this Decree was made final and absolute on the 31<sup>st</sup> day of January, 2003. Up until 1<sup>st</sup> March, 2002 the Respondent was still a married man. The common law union between the parties, Jasmin and Winston, applying **section 148:04** commenced after Winston's marriage was dissolved. The common law union therefore commenced from 2002 to and ended in 2009 when they were separated. It lasted for over five years thus satisfying the requirement under **section 148:04**. She is therefore entitled to make an application under **section 148:05**.
36. In an application under **Section 148:05 (1)**, the Court is empowered by **subsections (2), (3)** to declare the title or rights that a party has in respect of property and make such order as it thinks fit altering the interest and rights of the parties to the union in the property. However, in making a declaration under **subsection (3)** the court in the exercise of its discretion is guided by factors in **subsection (5)**.
37. As for the applicability of precedents, I agree with Mrs. Young that though **section 148:05** of the Belize **Supreme Court of Judicature Act**, is not exactly in *para materia* with the **Barbados section 57 and 53 of Family Law Act** and **section 79 of the Australian Family Law Act**, it is far more similar in wording and scheme to those two Acts than to the **English section 25 of the Matrimonial Causes Act**. See the case of **Proverbs v Proverbs supra**. In this case the court at paragraph 88 had this to say this about the presumption of equal division:



*Our reading of **White v White** impels us to the view that the House of Lords was grappling with the presumption, at one time strenuously held, that in property settlement matters the starting point was equality of division. It was a view held in Australia in the early days of their Family Law Act but was rejected firmly by the High Court of Australia in **Mallet v Mallet (1984) FLC 91-507** and cases thereafter. There is no presumption of equal division.*

38. In **Proverbs v Proverbs** *supra* the court held that in the determination of a property application under section 57, the proper approach involves a process of three steps:

- (i) the net property of the parties must be identified and valued by the court;
- (ii) the respective contributions of the parties within the terms of section 57(3) must next be considered and evaluated; and
- (iii) The section 53(2) factors so far as relevant, should then be considered.

**Proverbs v Proverbs** is persuasive but not binding on the courts of Belize. The court will be guided by the principles in so far as is relevant.

39. In Belize the applicable law is **section 148:05** of the **Supreme Court of Judicature Act**. The court has to take into consideration the factors listed **section 148:05 (5)** in so far as is relevant to the circumstances of the particular case in order to make an order that is just and equitable between the parties. Firstly, though the assets of the parties should be identified and valued.

### **The assets**

40. The evidence before the court is that the parties during their relationship acquired the following properties:

1. *Lot No. 38 Burrell Boom Village, Belize District (Leasehold)*
2. *Parcel 1224 Block 16 Caribbean Shores Registration Section (Freehold).*
3. *Parcel 5578 Block 20 Belmopan Registration Section (Freehold)*
4. *Lot F32 San Pablo, DFC Housing Project – Ambergris Caye.*

### **No valuation**

41. The difficulty with this case is that at the date of this hearing the Applicant could not afford to do a valuation of these properties and so, though reluctantly, the court will have to determine this matter on a percentage entitlement rather than a fixed sum of monetary compensation or a transfer of title.

42. The Respondent who resides in the United States of America did not appear at trial. Though Mr. Bucknor contacted the Legal Aid Centre to enter an appearance in the matter, he had no contact with Legal Aid Counsel thereafter. The court therefore is left to consider the unchallenged evidence of the Applicant.

### **Lot No. 38 Burrell Boom Village, Belize District (Leasehold)**

43. The evidence is that this property is a Leasehold property which was obtained on 9<sup>th</sup> August, 2001 before the commencement of the common law union and is in the name of the Respondent, Winston Bucknor. See

**Exhibit “J.S. 7”** which shows a Land Rent Statement for Lease No. 505/2001 located at Burrell Boom Village. The Lease itself was not put into evidence. The commencement date of the Lease according to the Land Rent statement is **9<sup>th</sup> August, 2001** which is before the common law union. The common law union commenced after Mr. Winston’s dissolution of marriage on **1<sup>st</sup> March, 2002**. Though Jasmin may have some interest in this property, it would not be property acquired during the common law union. As such, Jasmin cannot claim an interest in this property pursuant to **section 148:05**.

**Parcel 1224 Block 16 Caribbean Shores Registration Section (Freehold).**

44. Jasmin’s evidence is that early in 2004, they bought a property from a Ms. Pollard. This property is described as Parcel 1224 Block 16 Caribbean Shores Registration Section. See **Exhibit J.S. “8”** for extract from Land Register which shows that the proprietor of the property is the Respondent, Winston Bucknor and that he acquired the property on 12<sup>th</sup> March 2004. It also shows that the Land Certificate No. is 2407/2004 dated 12<sup>th</sup> March, 2004.
  
45. As mentioned before, the court has no evidence of the value of the property or any of the properties. In arriving at a decision that is just and equitable the court will apply the relevant factors as set out in **section 148:05 (5)**. Firstly the factor in **5(a)** which is an important factor is the financial contribution made directly or indirectly in the acquisition, conservation or improvement of the property. There is no evidence before the court of a monetary sum contributed by either of the parties of the purchase price. The evidence before the court by the Applicant is that the

parties had joint business ventures and they bought the property. There is also evidence that the Respondent is also a Construction and Electrical Contractor. However, Jasmin's evidence is that she was the Manager of the business TECHTRON-Construction and Electrical. So, apart from the joint business venture, Jasmin worked in the Respondent's Company. Further, there is no evidence of any conservation, or improvement of the property.

46. Another factor I find relevant is **(5) (d)** in so far as is relevant which is the age of the three children. The children are young, ages 8, 6, and 5 and the Applicant will have to continue to feed, clothe and shelter them for many years.
47. The duration of the union, which is **(5) (f)** is also relevant. The parties were together for a duration of 10 years which in my view is not a short union.
48. The factors in **(5) (g)** and **(h)** are also relevant to this case. The factor in **(g)** is the need to protect the position of a woman, especially a woman who wishes to continue in her role as a mother. **(5) (h)** is the non-financial contribution made by the female party to the union in the role of companion and/or mother in raising any children born from the union. Jasmin has the three children and is the only one who is providing and caring for them. The Respondent resides in the United States and pays no maintenance.
49. Having regard to the factors applied in section **148:05 (5)** above, it is just and equitable that an order be made that pursuant to **section 148:05 (3)** Jasmin is entitled to 60% and Mr. Bucknor 40% of this property.

**Parcel 5578 Block 20 Belmopan Registration Section (Freehold)**

50. This property was acquired on 13<sup>th</sup> November, 2002 during the common law union. Jasmin's evidence is that they paid with a cheque written by her for the sum of BZD10,000.00 to the Belmopan City Council for the Belmopan property. See Exhibit **J.S. "5"** for extract from Land Register which shows that Parcel 5578, Block 20 Belmopan Registration Section was acquired on 13<sup>th</sup> November, 2002 and the proprietor is Winston Bucknor.
51. Again, there is no evidence of financial contribution of each party. The cheque mostly like came from the parties joint savings account. Having regard to the factors applied in section **148:05 (5) above**, it is just and equitable that an order be made pursuant to **section 148:05 (3)** that Jasmin is entitled to 60% and Mr. Bucknor 40%.

**Lot F32 San Pablo, DFC Housing Project – Ambergris Caye**

52. Jasmin deposed that in 2003 they bought a house in San Pedro through a mortgage with the Development Finance Corporation which is being rented out and the tenants deposit their monthly rent directly to the DFC office in San Pedro. See **Exhibit J.S. "6"** for a copy of a letter regarding the housing loan for this property. This letter dated January 26, 2007 is addressed to Winston Bucknor, the Respondent and it advised him of a discount on his account and stated that his new loan principal as at December 15<sup>th</sup> 2006 is \$42,932.36. There is no valuation of this

property and there is no evidence as to the balance on the loan. As such, the court has no evidence as to the net value of the equity of the property.

53. The factors that the court applied with regards to the previous properties will be applied to this property also. It means that the parties interest and rights to this property will be 60% for Jasmin and 40% for Mr. Bucknor. The difference with this property is that it is mortgaged with DFC. DFC therefore has the priority to any proceeds of sale of the property. Thereafter, Mr. Bucknor and Jasmin Bucknor is entitled to the balance of the proceeds, if any, in the percentage as declared.

#### **Personal properties**

54. Jasmin has also claimed one-half share in the personal properties owned by the parties. She has not stated what are those properties. As such, I am unable to make an order with regards to personal properties.

#### **Savings Account**

55. The evidence of Jasmin is that the parties have savings account at Holy Redeemer Credit Union and a joint account at First Caribbean International Bank. At paragraph 23 of her affidavit evidence she deposed that the account was opened with \$15,000. and there was an agreement between the parties that they will use only the yearly interest if necessary. That after the separation she discovered that Mr. Bucknor had withdrawn all the monies from the said account. See Exhibit **J.S. "4"** This evidence is unchallenged. In the circumstances, I find it is just and equitable, applying the factors as in the previous properties, to order that Jasmin is entitled to 60% of the monies held at First Caribbean Bank . Likewise, she is entitled to 60% of whatever monies is/was in the Holy Redeemer Credit Union upon separation of the parties.

**Maintenance for Applicant**

56. The Applicant also seeks from the court an order for the Respondent to pay her such monthly or weekly sum and make other financial arrangements in respect of the maintenance of herself. The Application before the court is made pursuant to section **148:05** of the **Supreme Court of Judicature Act, Chapter 91** of the Laws of Belize. It is my view, that the Supreme Court has no jurisdiction under an application pursuant to **section 148:05** nor “under its inherent jurisdiction” to make an order for the Respondent to pay the Applicant maintenance. **Section 148 of the Supreme Court of Judicature Act** provides that a party to a common law union shall have the same rights as a spouse to a marriage, in respect of herself or children born out of the union, to apply to the courts, either during the subsistence of the union or upon separation of the parties for maintenance. However, this section does not give the court the jurisdiction to grant maintenance as it clearly states that, ...”*any law now or hereafter in force in relation to maintenance in respect of the spouses to a marriage shall, upon the commencement of this section, apply, with the necessary modifications, to a party to a common law union.*” As such, I am unable to grant maintenance to the Applicant under this **section 148** application for declaration of rights in respect of property.

## Conclusion

57. (1) Jasmin Samuels is entitled to 60% and Mr. Bucknor 40% interests in the following properties:

Parcel 1224 Block 16 Caribbean Shores Registration Section.

Parcel 5578 Block 20 Belmopan Registration Section.

Lot F32 San Pablo, DFC Housing Project – Ambergris Caye.

- (2) Jasmin Samuels is entitled to 60 % of monies held in the First Caribbean Savings Account and 60% of whatever monies is/was in the Holy Redeemer Credit Union at the time of the separation of the parties.

58. Accordingly, the following declarations and orders are granted:

- (a) A Declaration under **Section 148:05** of the **Supreme Court of Judicature Act, Chapter 91 of the Laws of Belize** that the Applicant is beneficially entitled to 60% share in the following properties:

Parcel 1224 Block 16 Caribbean Shores Registration Section.

Parcel 5578 Block 20 Belmopan Registration Section.

Lot F32 San Pablo, DFC Housing Project – Ambergris Caye.



- (b) An Order that the aforementioned properties should be sold and the net proceeds of sale be shared as declared between the Applicant and the Respondent. This order does not take precedence over any rights of sale that a Mortgagee has over any of the properties.
- (c) An order that 60% of the amounts standing as credit in Savings Account at the Holy Redeemer Credit Union on separation of the parties be paid to the Applicant.
- (d) An order that 60% of the amounts that was held as credit in Savings Account at First Caribbean International Bank be paid to the Applicant.
- (e) I award cost to the Applicant in the sum of \$5,000.00.

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Minnet Hafiz-Bertram  
Supreme Court Judge

Dated this 20<sup>th</sup> day of October, 2010.