

IN THE SUPREME COURT OF BELIZE A.D. 2006

CLAIM NO. 10 OF 2006

BETWEEN: MICHAEL DANIELS CLAIMANT
AND
YVETTE JACOBS DEFENDANT

Ms. Roberta Magnus-Usher for the claimant.
Mr. Anthony Sylvester for the defendant.

AWICH J.

20.1.2009 JUDGMENT

1. *Notes: Law of Trust: Land was bought and the defendant alone took the legal title; whether the claimant alone paid the purchase price, and entitled to the entire beneficial interest, based on express or implied trust; whether the defendant contributed to the purchase price and created joint beneficial interest in the property; express trust is defeated, but implied, constructive, or resulting trusts are not defeated by lack of written form, s:43 Law of Property Act.
Family Law, Land Law and Law of Trust: Land bought when a married woman lived with another man, the legal title was taken by the woman alone; whether the property was bought by the man alone or the woman alone or jointly; whether the relationship was not an enduring relationship as obtains in marriage and did not create a constructive trust under which beneficial proprietary interest would accrue.
Civil Procedure Rules: A party wishing to obtain an order for interim occupation of property the subject of a claim, must make an interim application – R17; evidence in support of a fixed date claim must be by*

affidavit, but on application, court may allow witness to testify viva voce – R 8.2.

2. The story of this case is a simple one, notwithstanding some disgusting lies in court. The points of law are not. They are in the perview of the law of trust; law that is rarely used in common law developing countries. Unfortunately, learned attorneys for the claimant did not make it any easier. They simply asked for a declaration of the equitable relief of beneficial interest in the land in favour of their client, without specifying the principle of law under which the beneficial interest would arise. Learned attorneys for the defendant too, perhaps for the convenience of their defence, chose not to demand the specific principle of law that the claimant relied on. Courts do not have that convenience.

3. ***The Claim.***

On 11.6.2006, Mr. Michael Daniels, the claimant, had a fixed date claim issued requiring Ms. Yvette Jacobs, the defendant, to answer a claim in which Mr. Daniels claimed: (1) a declaration that Ms. Jacobs holds title to a certain property No. 200 Lords Bank, Ladyville, Belize District, or the proceeds of sale of it, in trust for Mr. Daniels; (2) an

order requiring Ms. Jacobs to transfer the title to the property to Mr. Daniels (3) an order granting to the claimant interim occupation of the house on the property until determination of the claim or further order; and (4) an order that the defendant pay all costs.

4. For the interim order requested at (3) for interim occupation of the house, an interim application made by the claimant at commencement, or in the course of the proceedings was required. The claimant did not make an interim application to move the court to decide the question of interim occupation, and so no order of this Court has been made, granting or denying interim occupation of the house to either party. Mr. Daniels had obtained from the Family Court in May 2005, an interim order for the occupation of the house. The order expired and was not renewed, but he continued to occupy the house. He has been paying instalments of the mortgage loan. At this stage, the request for the interim order is no longer an issue.
5. Claim (1) is the crucial claim. The rest, namely: claim (2) for an order for the transfer of the title to the property from Ms. Jacobs to Mr. Daniels; and claim (4) for costs of the proceedings, depend on claim

(1) succeeding. So, the crucial question for determination is that in claim (1). It is whether on the facts proved, Mr. Daniels is entitled according to the law of trust, to the entire beneficial interest in property, No. 200 Lords Bank, Ladyville, so that the court may make, the declaration that, “the defendant holds the property... in trust for the claimant”.

6. On the facts presented, the trust claimed, whether express trust, implied trust, constructive trust, or resulting trust, could arise, depending on the facts proved, in the following four ways.

7. The first way would be an express trust, that would arise if the facts proved that, Mr. Daniels alone bought the property, and expressly stated his intention to Ms. Jacobs that, he intended that the property would belong to him alone, and that Ms. Jacobs would be named in the document of title as the legal titleholder merely as a matter of convenience because Mr. Daniels was away in the USA. Of course, an agreement between them to that effect would be the more straightforward proof. In the trust Mr. Daniels would be the settlor and Ms. Jacobs would be the trustee, regarded as holding the legal

title on trust for Mr. Daniels, the sole beneficiary. “*An express trust is a trust created expressly by the settlor, by stating directly his intention to create a trust*”. The subject matter of the trust in this claim was land; the requirement for written form would apply to express trust, and defeat it since Mr. Daniels did not state the trust in writing – see ***s: 43(1) of the Law of Property act, Cap 190, Laws of Belize.***

8. Alternatively, if Mr. Daniels did not state directly his intention to acquire the property for himself alone, and that title would be in the name of Ms. Jacobs for convenience, but it is apparent from their conduct that it was the intention and understanding, then an implied trust, also a constructive trust, would arise in which Mr. Daniels would be regarded as the settlor and Ms. Jacobs as the trustee. The requirement for a writing form would not apply to defeat the implied trust or constructive trust. ***Subsection (2) of section 43 of The Law of Property Act***, exempts implied trust, constructive trust and resulting trust from the requirement for a written form. “*An implied trust is a trust that arises either from the presumed unexpressed intention of the settlor or by operation of the law*”, – see ***Oxley Hiscock [2004] 3 All E.R. 703.***

9. Secondly, if the facts proved that Ms. Jacobs and Mr. Daniels together contributed their money towards the costs of acquisition and the payment of the purchase price, without discussing ownership, then both would have acquired the property jointly by implied and constructive trust. In that case the law would regard Mr. Daniels and Ms. Jacobs as holding joint beneficial interest in the property. The legal title held by Ms. Jacobs would be subject to the implied and constructive trust which has effect as a to statutory trust under *ss: 7, 36 and 37 of the Law of property Act*. Ms. Jacobs would hold the property, *“upon trust to sell and stand possessed of the net proceeds of sale ...for the benefit of, both of them.*

10. Thirdly, if an agreement was not discernible, but the facts proved that Mr. Daniels alone provided the money for the payment of the purchase price and costs of acquisition, in circumstances that showed that he intended that Ms. Jacobs would own the whole property or a share in the property, and Ms. Jacobs relying on that intention to make a gift, participated in the acquisition transactions, or the loan servicing duty, or in any other way, at some costs to her, including missing some opportunity, then Mr. Daniels would be estopped from denying

to Ms. Jacobs sole or joint ownership of the property, as the gift may have been. She would accordingly be entitled to the beneficial interest – see *Dillwyn v Llewellyn [1861-73] All ER Rep 384* and also *Poscoe v Turner [1979] 3 All ER 945*. Again the trust created would be constructive trust, sometimes referred to as proprietary estoppel. If the promised gift was of the whole property, the legal title and the entire beneficial interest would belong to Ms. Jacobs. If the gift promised was of part ownership, then the legal title of Ms. Jacobs would be subject to joint beneficial interest of Mr. Daniels and herself. For the purpose of realising the interest of each of them if the promise was of part ownership, the law would regard Ms. Jacobs as holding the legal title on a, “*statutory trust to sell and stand possessed of the net proceeds of sale ... for the benefit of,*” both of them, – see again ss: 7, 36 and 37 of the *Law of Property Act*.

11. Fourthly, if the facts proved that Mr. Daniels and Ms. Jacobs cohabited, that is, lived together as man and woman, in an enduring relationship such as obtains in marriage and known in Belize as common law marriage, and Mr. Daniels alone paid the purchase price and other costs for the property, but they intended to acquire it as their

common home or investment property, then again a constructive trust (some say a resulting trust) would set in as a consequence of that relationship. Upon the cohabitation coming to an end, each of them would be regarded as entitled to a share of the beneficial interest in the property in the proportions that the court would deem fair. – *see Pettitt v Pettitt [1969] All ER 385.*

12. The current tendency of courts is to start from assuming that dividing the property in equal shares ensures fairness, and therefrom make adjustments of the shares by taking into consideration the particular facts of the case such as, the length of the relationship, whether the property was meant to be their home or for investment, and the difference in future earning abilities. The length of the relationship was advanced as a fact to be considered in *White v White [2001] 1AC 596*, but rejected in the joint judgment in, *Miller v Miller, and McFarlen v McFarlen [2006] UKL 24*. It would not matter whether Mr. Daniels alone, or Ms. Jacobs alone, made all the loan payments. A contention that when they lived together the other spouse or partner did not contribute money for the payment of the loan, would be

answered that, the law is that court may regard contribution in kind as good enough contribution.

13. *The Defence.*

The defence of Ms. Jacobs was that, she alone applied for the property, arranged the loan, paid the loan instalments until May 2005, when the Family Court made an order for temporary occupation of the house in favour of Mr. Daniels, and she alone obtained and held the legal title to the property. By inference, she denied express trust created, or any circumstances in which implied or constructive trust would arise subjecting her legal title to beneficial interest in favour of Mr. Daniels or of both of them jointly.

14. Surprising to anyone, the evidence regarding the estate or interest in issue was vague; it was never proved. The document of legal title was not exhibited to prove the legal title of Ms. Jacobs. With due respect to learned counsel for the defendant, it was a curious aspect of the case, an extraordinary omission by counsel. According to the testimony of Ms. Jacobs, she bought the house owned by the Government, and she alone owned it. But the only document that she

produced as exhibit was the mortgage deed. It referred to her as a lessee for 30 years. The lease was said to have been granted by, a “Minister’s Fiat Lease No. 622 of 2000, dated the 24th day of May, 2000”. It was not exhibited. Ms. Jacobs could not have bought the lease, which in any case, she said had been granted to her. What was stated in the mortgage deed was an unreliable hearsay anyway.

15. Moreover, it was unusual that commercial lenders would accept a mortgage of a lease other than of the freehold title. Both the claimant and the defendant said that he or she “bought the house” owned by the Government. That meant that ownership title to national land was sold to the claimant or to the defendant. That would be what they bought under *s: 13 of the National Lands Act, Cap 191, Laws of Belize*. A lease of national land is not sold by the Government, it is the freehold title that is granted and sold at a purchase price, – see *ss: 7 and 13 of the Act*.

16. From what I have seen in many cases in this court, the practice leading to sale of national land is as follows. Usually in the first place, a lease is granted by a Minister’s Fiat for lease. The rent is

usually paid annually, and is minimal. Then if the lessee wishes and is ready, he applies to purchase the land. The application is usually approved and the land is sold to him by the issuing of a Minister's Fiat for grant of the land. The purchase price is far less than the market price. In this case, it is higher than usual because a house had been built on the land. If a loan is obtained for the purchase price of the freehold title, which is the Minister's Fiat for a grant, the title is mortgaged by the purchaser to secure the loan. In this case, the Minister's Fiat for lease and the Minister's Fiat for grant of freehold were not exhibited. I do not believe that the loan of \$30,900.00 was obtained merely to pay the annual rent which must be minimal. There was a large gap in the evidence for the defendant.

17. The extraordinary omission by learned counsel for the defendant was followed by extraordinary omission by learned counsel for the claimant. She did not canvass in the proceedings the reason for not exhibiting the Minister's Fiat for lease and the Minister's Fiat for grant. Given the extensive differences in what each party presented as the facts of the case, and given the extensive public controversy about impropriety at the Development Finance Corporation, DFC, which led

to an inquiry by a select committee of the Senate, it was desirable that the defendant would confirm the legal titles by exhibiting the Minister's Fiat for lease, and the Minister's Fiat for grant, of national land.

18. ***The Facts.***

Before I appraise the evidence, and make determination from it as to whether any trust has been created, I need to mention one procedural matter. The general rule of procedure is that evidence in a claim by a fixed date claim must be by affidavit. I have, however, granted an application by the claimant and an application by the defendant, for permission to subpoena one witness each, and to have the witness testify *viva voce*. The witness subpoenaed by the claimant worked for the DFC, the mortgagee who financed the purchase of the property in question. The witness for the defendant worked for Western Union, a company in Belize City, at whose office, it was said, sums of money sent from the USA by Mr. Daniels were collected by Ms. Jacobs. Each witness wished to remain neutral, and preferred not to swear affidavit for either party. I accepted their reason.

19. *The evidence for the claimant.*

Mr. Daniels testified to the following facts to support his claim. In 1997 or 1998, he met Ms. Yvette Jacobs; she worked as a waitress at Flight Deck Restaurant at the Goldson International Airport, Belize. They became boyfriend and girlfriend. Ms. Jacobs informed him that she was pregnant by him. They then started to live together at No. 41, Marage Road, in Ladyville. He paid the rent for the accommodation. He was self-employed as a mechanic and used to travel to the USA, would work there, and would buy and bring back two vehicles and spare parts each time for sale in Belize. Their son was born in the year 1998, however, he would accept the year 1997 stated by Ms. Jacobs. The son was named Brandon Daniels. Mr. Daniels said that contrary to what Ms. Jacobs said, he did not ask that his surname be the surname of the child.

20. In the year 2000, Mr. Daniels testified, he went to Mr. Raphael Fonseca, the area representative (the member of the House of Representatives) for the constituency, and applied to buy “a government house” in Lords Bank, Ladyville, in the constituency. He was accompanied by Ms. Jacobs. In 2001, when he was in the USA,

Ms. Jacobs informed him that, “the chairperson of the area representative”, had informed her that the application had been approved; the price for the property was \$60,000.00. She expressed doubt that Mr. Daniels would be able to buy the house. She asked him how he would be able to pay the purchase price. He told her to go ahead and, “arrange the paper-work”, he would send money every month for the payment of the mortgage loan.

21. According to Mr. Daniels, Ms. Jacobs had been laid off work because the restaurant closed, but later she resumed work when the restaurant reopened under a different ownership. Her pay was \$3.25 per hour which was about \$95.00 per week. Mr. Daniels said, he had a job in New York, USA, and sent money regularly through Western Union to Ms. Jacobs for payment of the mortgage loan, payment for furniture, and for maintenance and medical expenses. He started to pay the loan when payments were in arrears for four months. He said, he intended to own the property alone, not jointly with Ms. Jacobs.
22. In 2002, Mr. Daniels said, he returned to Belize with vehicles and spare parts that he sold, and used the proceeds to pay the mortgage

loan and for maintenance when he was in Belize. That time he found out that the papers for the property were in Ms. Jacob's name. He decided to leave them that way, he said, "because we were in a relationship". He again went to the USA. He continued sending money for the mortgage loan, maintenance and medical expenses. Ms. Jacobs informed him that she was pregnant again and had medical problem with the pregnancy. He wanted to return to Belize, but she advised against it that, "things were bad in Belize". He continued sending money all through 2004.

23. In the early part of 2005, Mr. Daniels said, he continued sending money. In all the years, he sent a total of about \$21,000.00 for the mortgage loan. In the course of time he started to receive adverse information about Ms. Jacobs, and that, "another man" was driving his (Mr. Daniels') vehicle that he had left with Ms. Jacobs. He stopped sending money, and stopped payment of a sum he had sent. Ms. Jacobs called and asked why he had stopped sending money. He told her that he would return and check things, and make payments of the mortgage loan in person. On 20.5.2005, he arrived at the Goldson International Airport by plane unannounced, and went home,

No. 200 Lords Bank, Ladyville. He saw that Ms. Jacobs had left in a hurry, and had taken only personal things. She returned on another day in the company of the police and her boyfriend, and collected the remainder of her belonging.

24. Mr. Daniels continued with his testimony as follows. Ms. Jacobs applied to the Family Court for protection order and an order for temporary occupation of the house. Her application was rejected, and instead, the application by Mr. Daniels was granted. He learned that time for the first time, that Ms. Jacobs had all along been married, but not to the new man she was with. She remained married upto the date of hearing of this case. When Mr. Daniels applied for custody of Brandon, Ms. Jacobs contended that Brandon was not his son.

25. *The evidence for the defendant.*

The testimony of Ms. Jacobs was, for the most part, the direct opposite to the testimony of Mr. Daniels. Her testimony was the following. She worked at Flight Deck Restaurant at the Goldson International Airport. The restaurant changed to Global Spice Restaurant. She earned \$350.00 per week in 2001 and 2002,

improved to \$375.00 per week, plus tips. She had been employed for 12 years and never was laid off any time. She lived at No. 41 Marage Road, Ladyville. When Mr. Daniels became her boyfriend in 1998, he used to visit her at No. 41 Marage Road, he did not live there. She paid the rent. She started to live with Mr. Daniels in 2000. Her child whose correct name was, "Brendon", was born in 1997. Mr. Daniel's name was added to Brendon because Mr. Daniels requested and, "we, were happily involved".

26. Ms. Jacobs continued that she alone applied to, "the chairperson of Mr. Fonseca", to buy the house. She alone arranged the mortgage loan of \$30,000.00, with the Development Finance Corporation in her name, based on letters of her employment with Global Spice. The monthly payment was \$287.10 and rose to over \$300.00, per month. She alone made the payments out of her wages until May 2005, when the Family Court gave temporary occupation of the house to Mr. Daniels.

27. According to Ms. Jacobs, Mr. Daniels was not a mechanic, he used to bring vehicles from the USA and sell. The vehicle said to be driven

by another man belonged to her; she gave \$5,000.00 to Mr. Daniels to buy and bring a vehicle for her, and he brought that vehicle for her. Mr. Daniels used to send money to her, “because they were together”, not for payment of the mortgage loan. In January 2005, when Mr. Daniels telephoned her from the USA, she informed him that their relationship had ended and she was moving on with her life. He threatened her with violence. In April 2005, she applied to the Family Court for protection order, but she did not get it because Mr. Daniels was not in Belize.

28. Ms. Jacobs testified further, that on 20.4.2005, when she was at home, No. 200 Lords Bank, Ladyville, someone at the airport called and informed her that Mr. Daniels had arrived by plane. She hurriedly took some of her clothes and left with her children and fiancé, Mr. Isaac Cob. She went back with the police on 22.4.2005, and collected more belonging.

29. ***Determination.***

From the evidence as a whole, I believed the testimony of Mr. Daniels, that he alone made the application for the purchase of the

house; that the reason the land papers were in the name of Ms. Jacobs was because he asked her, “to arrange the paper-work”, even if he did not say in whose name the papers were to be; and that payments of the loan instalments were made entirely from sums of money sent by him to Ms. Jacobs. He may have made mistakes about dates. Mistakes in remembering dates, if any, were inconsequential, given his testimony as a whole. On his evidence taken together with the evidence for Ms. Jacobs, I believed that Mr. Daniels intended the property to belong to him alone, and Ms. Jacobs did not consider the property joint property of Mr. Daniels and herself.

30. Most of the testimony of Ms. Jacobs was outright lies. I do not accept that she earned enough money to pay the loan instalment of \$287.10 per month, rising to over \$300.00 per month. I believe that she arranged the purchase of the house knowing that all the obligations and benefits were for Mr. Daniels, and that she merely acted as his agent. The story about the name Brandon Daniels, registered belatedly on 1.2.2005, as Brendon Gladstone, was a pitiful lie. In my view, registering the birth belatedly was intended to introduce another surname and contest any application by Mr. Daniels for custody. This

case, however, is not about paternity and custody; the court is not called upon to decide those issues.

31. In the Family Court, Ms. Jacobs denied ever collecting money from Western Union, sent by Mr. Daniels. By the time she was to testify in this Court she had realised that the denial could easily be disproved. She admitted that she received sums of money sent by Mr. Daniels, but not many times, and that the sums of money were for her maintenance as, “we were together”. I was inclined to believing her, based on the fact that some of the copies of forms filled by Mr. Daniels when he said he sent money, did not bear the, “money transfer control numbers”. However, the testimony of Ms. Danette Burns, the manager of Western Union in Belize, a witness subpoenaed by Ms. Jacobs herself, persuaded me otherwise.

32. Ms. Burns dispelled any doubt that Mr. Daniels made many remittances of money that Ms. Jacobs collected in Belize. The witness said that, Ms. Jacobs was, “a regular customer”, receiving money from the USA, sent by Mr. Daniels, she collected money at least in nine months of the year. The witness prepared lists of receipts

of money by Ms. Jacobs for the years 2002, 2003, 2004, and identified the remittances for early 2005. Ms. Burns also explained the circumstances of one payment in May 2005, when Mr. Daniels himself went to the Western Union in Belize City, and claimed money he had sent from the USA, but had not been collected. That confirmed Mr. Daniels' testimony that he stopped payment of money he sent in early 2005, to Ms. Jacobs. Ms. Burn's testimony was unbiased and most useful.

33. *Trust.*

In determining whether a trust was created or arose, I start with the question; whether Mr. Daniels alone applied to purchase the property and made his intention known to Ms. Jacobs that he would own it alone. I have already accepted his testimony to that effect and have given the reason. The related question is whether he requested Ms. Jacobs who was in Belize, to have the title granted or transferred to her so as to avoid delay in having the grant or transfer of title from the Government made. I have accepted the testimony of Mr. Daniels to the extent that he asked her, "to arrange the paper-work", so as to avoid delay in having the grant or transfer made. He may have

expected that arranging the paper-work included the use of his own name as the owner of the title. Mr. Daniels seemed to have little or no knowledge of how such a transaction would be carried out. Whatever he thought “arranging the paper-work” involved, he certainly intended to retain the entire beneficial interest in the property for himself.

34. These questions and answers disclose that if Mr. Daniels did not intend to have Ms. Jacobs named the title holder in the paper-work, but accepted it when so done, then Mr. Daniels may be deemed to have made the appointment of Ms. Jacobs who was in Belize, as the holder of the legal title for the convenience of having the grant of title made without delay in his absence. The evidence showed the three certainties, of intention, of subject matter, and of the object (the beneficiary) required in a trust. Mr. Daniels was the settlor and Ms. Jacobs was the trustee. The trust property was No. 200 Lords Bank Ladvyille, Belize District. Accordingly, an express trust was created by Mr. Daniels settling the property on trust for his sole benefit. He retained the whole beneficial interest. The express trust involving land was not created in writing, and may fail – see *s: 43 (1) of the Law of Property Act*.

35. Alternatively, and I think better proved, was that, from the conduct of Mr. Daniels and Ms. Jacobs, one may infer that an implied and constructive trust arose from the presumed intention of Mr. Daniels to give the legal title to Ms. Jacobs, if it was not possible to have it in his name when he was away, but to retain the whole beneficial interest for himself. The inference flows readily particularly from the fact that he asked her, “to arrange the paper-work”, and added that he would send money monthly to pay for the property. The implied and constructive trust will not fail, because *subsection (2) of section 43 of the Law of Property Act* exempts implied and constructive trust from the requirement of a written form. The section states:

“43(1) Subject to the provisions hereinafter contained with respect to the creation of interest in land by parol, no interest in land shall be created or disposed of except by writing signed by the person creating or conveying it, or by his agent thereto lawfully authorised in writing, or by operation of law”.

(2) This section shall not affect the creation or operation of resulting, implied or constructive trusts”.

36. The next question is whether any trust arose as a result of Mr. Daniels and Ms. Jacobs contributing money and jointly buying the property, without addressing their minds to ownership. Ms. Jacobs did not resist the claim of Mr. Daniels by claiming that she contributed her own money, and together with Mr. Daniels they paid the costs of acquisition and the purchase price of the house, or did she make a counterclaim to that effect. She said that she alone bought the property. She counterclaimed the entire ownership, the entire beneficial interest. So constructive trust in regard to joint beneficial interest in her favour based on contribution did not arise.
37. Thirdly, Ms. Jacobs did not raise as a defence, trust arising by estoppel. She did not claim that Mr. Daniels promised her an interest in the property and that she acted on the promise, to her detriment. The facts as I have decided also do not disclose such an estoppel. The case of: *Dillwyn v Llewellyn [1861- 73] All ER Rep. 384*, *Chalmers v Pardoe [1963] 3 All ER 552*, and *Pascoe v Turner [1979] 2 All ER*

- 945, do illustrate some of the circumstances in which constructive trust will arise because of estoppel.
38. On the facts proved, partial success for Ms. Jacobs might have come from a constructive trust that she did not plead. Depending on appraisal of the facts, constructive trust would arise from the fact of their cohabitation as man and woman in what might have been shown to be an enduring relationship, otherwise known as common law marriage – see *Pettitt [1969] 2 All ER385*, *Cooke v Head [1972] 2 All ER 33*, and *Lansford Myvett v Ann Burns, Supreme Court Civil Claim No 78 of 2003*. The facts of the last two cases are to a large extent similar to the facts of this case.
39. In *Myvette v Burns*, the claimant, Mr. Myvette, claimed a declaration that he was the joint legal owner and also entitled to the joint beneficial interest in a leasehold, together with the defendant, Ms. Burns, and that his share was fifty percent. Ms. Burns counterclaimed that Mr. Myvette held the joint legal title in trust, and that each of them was entitled to the beneficial interest in the thirty year lease, proportional to his or her contribution to the value of the development

on the land. She claimed that contribution by Mr. Myvette was minimal.

40. Ms. Burns was the one who initiated the application for the land, in Ladyville, Belize District, to the Lands Department. The thirty year lease was taken in their joint names, so a declaration about both of them holding the legal title jointly was for the asking by either since there was no question of fraud or mistake. They planned to have two buildings put up. One was for her ceramic tiles business, and the other was for his workshop. She provided all the money for the lease rent, and nearly all for building. He supervised the building work, and may have provided little money. They met in 1976, in Los Angeles, USA, and started to live together in 1978. They return to Belize and continued to live together in 1978 in Ladyville. In all, they lived together for 20 years, before Mr. Myvette moved out in 1999. The Supreme Court made the declaration claimed that, Mr. Myvette and Ms. Burns held joint legal title and by reason of cohabitation and contributing to the development of the land, they had joint beneficial interest. The court held further, that fair proportions of their shares were, one third to Mr. Myvette and two thirds to Ms. Burns.

41. The facts in *Cooke v Head* were the following. He was a married man (in this case Ms. Jacobs was a married woman). He left his wife, and met Miss Cooke in 1962, and they lived together. They discussed obtaining land and building a house to live in together. They planned to marry after the divorce of Mr. Head. He alone obtained the land, paid the initial costs and obtained the loan. He alone took the conveyance. He paid most of the loan instalments, but a small payment was made from common saving. He did most of the building work. She did some of the work that normally men would do. They separated after four years of living together when the building was about completed. It was held that Miss Cooke was entitled to a share of the joint beneficial interest, and on appeal was awarded one-third share, instead of one-twelfth awarded by the trial court.
42. This court was not asked to determine whether constructive trust arose by reason of Mr. Daniels and Ms. Jacobs cohabiting so that each of them would be entitled to joint beneficial interest in the property in question. It appeared to me that the evidence was weak to prove a durable relationship as would obtain in a marriage. Mr. Daniels seemed to live and work most of the time in the USA. He seemed to

believe that he had a serious, even a durable relationship with Ms. Jacobs. She seemed to have intended a less serious and not durable relationship. She said, Brandon was fathered by someone else. Mr. Daniels left Belize in 2001, for the USA, and visited Belize only in 2002, and returned to the USA. In 2004, when he was concerned about her reported pregnancy and health and he wanted to return, she persuaded him not to. It seemed the fiancé was already in the picture. It would appear that Ms. Jacobs chose not to raise a counterclaimed of constructive trust based on cohabitation because she regarded the relationship as not durable enough.

43. Based on the implied and constructive trust which must be inferred from, the application for the property made by Mr. Daniels alone, the fact that Mr. Daniels alone provided the purchase money, his instruction that Ms. Jacobs proceed “to arrange the paper – work”, and the understanding of Ms. Jacobs that Mr. Daniels intended to own the property alone, I enter judgement for Mr. Daniels that, an implied and constructive trust has been proved, wherein Mr. Daniels was the settlor and beneficiary and Ms. Jacobs was the trustee. Accordingly, the court makes the declaration that: Ms. Yvette Jacobs (also known

as Eveith Jacobs) holds the legal title to property, No. 200 Lords Bank, Ladyville, Belize District, on trust for the benefit of Mr. Michael Daniels alone. The court makes the following further orders:

- 43.1 Mr. Daniels is entitled to have the legal title to property No. 200 Lords Bank, Ladyville, Belize, transferred to him.
- 43.2 It is the responsibility of Mr. Daniels to have prepared, at his own costs, all documents required to effect the transfer.
- 43.3 Ms. Jacobs must sign all papers that she is required to sign for the transfer of the legal title to the property to Mr. Daniels.
- 43.4 In the event Ms. Jacobs is unavailable or delays to sign the transfer papers, the Registrar of the Supreme Court is authorised to sign the papers.

43.5 Costs of these proceedings, to be agreed or
taxed, shall be paid by Ms. Jacobs to Mr.
Daniels.

44. Delivered this Tuesday 20th January, 2009
At the Supreme Court,
Belize City

Sam Lungole Awich
Judge