IN THE SUPREME COURT OF BELIZE A. D. 2006

CLAIM NO. 244 OF 2006

BETWEEN: MARIA JOHANA DURON

(aka Johana Duron)

AND

JOEL MOLLINEDO DEFENDANT

CLAIMANT

Mrs. M. Marin Young, for the claimant.

Mrs. R. Magnus Usher for the defendant.

AWICH J.

7.5.2009

JUDGMENT

1. Notes:

Land Law, Law of Trust and Family Law. Defendant purchased property with own money while he lived with the claimant; he took title in their names jointly; he borrowed money for building work and mortgaged the property; he alone paid off the loan. Whether the claimant is entitled to share in the title under ss:148A, 148D and 148E of the Supreme Court of Judicature Act, Cap 91. Whether there is a presumption of law that the defendant made a gift to the claimant; whether the presumption was rebutted; whether by taking title in joint names of the claimant and his name, the defendant intended to own the property jointly with the claimant; whether the defendant created a trust for the benefit of the children and himself.

- 2. The trial of this claim took three days last week. It is a case that should have taken at most one and one half hours. Right from the statements of case filed by the parties, the material facts were common facts. On those common facts, if the learned attorneys for the parties exchanged the points of law on which they relied for their client's claim, or defence and counterclaim, they might have seen their way through the dispute and reached a settlement before pretrial review. Alternatively, they could have outlined the facts and applied to court to decide questions of law which would in turn lead to entering judgment, or dismissing the claim or counterclaim, under *R* 26.1(2) (j) of the Supreme Court Civil (Procedure) Rules, 2005.
- 3. Most of the time at trial was taken up by, "amplifying" evidence set out in witness statements; and crossexaminations. The amplifications became much more extensive than the evidence in witness statements.

 I should have curtailed it. The crossexaminations were also too long, without disclosing new material facts. Both could be easily avoided.

 I suggest that learned counsel make effort to avoid what happened.

- 4. The claim of Maria Johana Duron, is for: (1) an order that a certain land, lot 50, Dr. George Estate, Orange Walk Town, be sold and the proceeds divided equally between herself and Joel Mollinedo, the defendant; (2) an order that the defendant render accounts of rent and profits he received from the land and (3) an order for costs against the defendant.
- 5. On the other hand, the defendant counterclaimed against the claimant for: (1) a court declaration that the claimant is not entitled to any interest in the property; (2) an order that the claimant convey the property (to the extent required of her) to the defendant absolutely; and (3) an order for costs against the claimant.
- 6. The material facts are the following. In 1993 the claimant travelled from Honduras through Belize, intending to go to the United States of America, "to seek better life". For whatever reason, she stopped and worked for about two months as a bartender in Orange Walk, Belize. The defendant met her during that time. He had separated from his wife with whom he had nine children; he was not divorced. His wife died in 2004, ending the marriage. Shortly after the claimant and the

defendant met, the claimant moved in and lived with the defendant in a house he rented. They lived together as man and woman, that is, as if married. They had two children, in 1994, and 1995.

- 7. In 1997 the claimant moved out with the two children. She blamed it on the defendant. He blamed it on her. Within a short time she and the children moved in to live with a certain Dr. Estrella Rodriguez, a friend of the defendant. They are now married and live in Mango Creek, Belize. They have since had two children.
- 8. In 1996, whilst the claimant and defendant lived together he bought, "a parcel of land, No. 79 Pasture Street, Orange Walk Town", for \$6,000.00. He took conveyance jointly in his name and the claimant's name. The conveyance was recorded as entry No. 2468, in Register No. 1 of 1996. There is no dispute that it is the same land also known as "lot 50 Dr. George Estate". The defendant explained in his witness statement the intention of taking the conveyance in joint names, in these words: "After my children with the claimant were born, I thought at the time I was purchasing the property... that, I should secure something for them because they were so small and I was

afraid that if something happened to me, they would be left unprotected. They were too young at the time to acquire title, and that is why I placed title in the claimant's name on their behalf. I never promised the claimant a share in the property..."

- 9. The claimant in her witness statement, stated the intention of the defendant in these words: "After I gave birth to our second child, the defendant purchased a lot No. 50 Dr. George Estate, Orange Walk Town, so that we could build a house for our family... The defendant informed me that he was putting the title in both our names to benefit our two children". In court, the claimant explained that the defendant had told her that he wanted to provide a home for his two young children, and that he did not want anyone to tell the young children to leave the home, should anything happen to him, the defendant.
- 10. The defendant was a plumber; some of his jobs included hospital maintenance jobs on contracts. He also did some general building work. To finance building a house on the land that he had bought, the defendant borrowed \$23,000.00, and mortgaged the land. In addition he spent about \$19,000.00 of his business earnings on labour. He also

personally carried out some of the building work on the land. The claimant looked after the children and did the household work. She was helped by a paid assistant. She also cooked for labourers who worked with the defendant. I do not believe that the claimant had time to personally do the building work.

11. **Determination.**

In Belize, the law regarding entitlement to property in regard to married couples on divorce, or cohabitees on separation, have changed since *Act No. 8 of 2001*, which amended *the Supreme Court of Judacature Act, Cap 91*, *Laws of Belize*. A husband or wife may during divorce proceedings make an application to the court for a declaration of his or her title or rights in respect of property acquired by them jointly during the subsistence of the marriage, or acquired by either of them during the subsistence of the marriage. Secondly, where parties to "a common law union" separate, either party may make an application to 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.

- 12. The two laws were introduced as ss:148A, 148D and 148E of the

 Supreme Court of Judicature Act. I set out the sections for ease of reference:
 - "148A. (1) 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,...

...

148D. In section 148E to 148I, "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.

148E. (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 right in respect of property acquired by the parties or either of them during the subsistence of the union."

13. In this claim the parties were not married, so s: 148A does not apply.

The claimant and defendant lived, accordingly to common parlance,
as common law husband and wife. They lived as such for four years

and had the two children in the relationship. Their relationship had the serious intention and degree of commitment as exists in marriage. Relationships which have such serious intention and commitment as exists in marriage have been accepted in England in, *Cooke v Head* [1972] 2 All E.R. 38, and Bernard v Joseph [1982] 3 All E.R. 162, as the basis for sharing property. In Belize, however, the relationship between cohabitees must last for at least five years to entitle either cohabitee to apply for a court declaration of title or rights in property. Further, they must not be married to someone during the cohabitation.

- 14. The relationship in this claim lasted for four years; it does not qualify the claimant to make an application for a court declaration of title or right to property. Her contributions in kind also do not count because they were made in a cohabitation which lasted shorter than five years. So, to the extent that the claim of the claimant to title to the property might have been based on cohabiting with the defendant as if they were husband and wife, the claim fails.
- 15. There is however, another aspect of this case. The defendant purchased the property and had it conveyed jointly in his and the

claimant's names. The question of law that arises is the effect of the defendant including the claimant jointly with him in the title.

- 16. The general rule is that where a person purchases property in the joint names of himself and of another, or gratuitously transfers property into joint names of himself and of another, the property is deemed in equity to be held on a resulting trust for the purchaser or transferor alone, unless there is an indication of an intention to benefit the other person, or there is a presumption of law in the circumstances of their relationship, that the other person will derive benefit. The cases of:

 Fawkes v Pasco (1875) 10 Ch App 343; Young v Sealey [1949] Ch 278, and Re: Figgis, Roberts v McLaren [1968] 1 All E.R. 999, are authorities for the rule.
- 17. Where the purchase or transfer in joint names is between husband and wife or cohabitees, or where the purchaser or transferor stands in *loco* parentis towards the other person, the rule is that the purchaser or transferor is presumed to have made absolute advancement or gift to the other see *Emery v Emery* [1959] 1 All ER 577, and Tinker v Tinker [1970] 1 All ER 540 CA. The presumption applies to

ER 486. In a recent case, Stack v Dowden [2007] 2 All ER 929, the case cited by both learned counsel the House of Lords advanced the rule a little further that, conveyance in joint names of spouses or cohabitees "established a prima facie case of joint and equal beneficial interests unless and until the contrary was proved".

18. So, based on the evidence that the defendant purchased the property with his money alone, and alone paid the loan for improvement, but had the property conveyed in joint names; and based on my decision that the defendant stood in *loco parentis* in regard to the claimant, although their relationship did not qualify as a "common law union", I apply the rule that in the first place, the defendant could be presumed to have made a gift to the claimant, of one-half of the property. I must however, immediately acknowledge that there has been common evidence that the defendant included the claimant in the title because he wanted the two children he had with the claimant to have the property as their home upon his death. He made a gift to the children and used the name of their mother to represent the children. The conveyance he made was to benefit jointly his children born of the claimant and himself, as joint tenants, with the benefit of survivorship.

The defendant did not by the joint conveyance, make a gift of the property to the claimant.

- 19. The consequence of the above determinations of the questions of law is that the claimant has no personal right to the property. She holds the legal title jointly with the defendant as joint trustees for the benefit of the defendant, Joel Mollinedo, and the two children, Manuela and Paola. The fact that the children now live elsewhere with their mother, the claimant, does not give their mother a right to demand sale of the property, and division of the proceeds; and does not diminish the beneficial interests of the children in the property.
- 20. The practical consequence of my decision is that there will be no change in the legal title to the property; the defendant is entitled to continue residing on the property. In the event the property is rented out, the rent will benefit the trust, for the benefit of the two children and the defendant.

- 21. The claim is dismissed. The counterclaimed is also dismissed. In view of the fact that the counterclaim was an unnecessary response to the claim, parties will bear own costs.
- 22. Delivered this Thursday the 7th day of May 2009 At the Supreme Court Belize City

Sam L. Awich Judge Supreme Court