

IN THE SUPREME COURT OF BELIZE, A.D. 2008

CLAIM NO 471 OF 2006

(SESARIA HERNANDEZ PALACIO CLAIMANT  
(  
BETWEEN( AND  
(  
(KEVIN PALACIO DEFENDANT

Coram: Hon Justice Sir John Muria

29 July 2008

*Mr.Lionel Welch for the Claimant*  
*Ms.Deshawn Arzu for the Defendant*

J U D G M E N T

*CLAIM – joint ownership – husband and wife – claim by wife for declaration and rectification of register – wife alleged joint ownership only for convenience – no “fraud or mistake” alleged – inappropriate proceedings to make declaration and rectification of land register – section 143 Registered Land Act – Court’s power to rectify register*

**Muria J.:** By her Claim issued on 5 September 2006, the claimant seeks the following relief, namely:

*“A declaration that she is the sole owner of the property Registration Section/Belmopan, Block/20, Parcel/5208, held by land certificate 7704/2001 and of the property Registration Section/Belmopan, Block/20, Parcel 4173 held by Land Certificate*

*6373/2001 both of which are in joint names of the claimant and the defendant and orders for both certificate of Titles be cancelled and re-issued in the name of the claimant only and costs.”*

***Brief Background***

The parties are husband and wife. They were married in or about May 1985 at Roaring Creek Village in the Cayo District, Belize. That marriage still subsists. The parties lived together in Belize and later moved to United States of America where they lived together for some eight or nine years. The defendant returned to Belize in 2000 to reside, although prior to that the parties had been visiting Belize together. The claimant continues to reside in the United States.

Despite the fact that the claimant lives in the United States and the defendant resides here in Belize, the parties are still married. This case, on the evidence before the Court, did not arise as an ancillary application to any matrimonial proceedings between the parties. This case is simply brought by the claimant wife for a declaratory order that the two parcels of land described above are her sole properties, despite the fact that they were registered in the joint names of herself and the defendant.

In 2001, the two properties concerned were acquired. Although there is some variance in the process of acquiring the properties, there is no dispute that the properties were both registered in the joint names of the parties.

It is also not disputed that Parcel No. 5208 has been developed with a house constructed on it and Parcel No. 4173 is an empty Lot.

### ***The Case for the Parties***

In a nutshell, the case for the claimant is that both properties, Parcel Nos. 5208 and 4173, are hers alone and that the registration of the two Parcels of Land in the joint names of herself and her husband were done only as a matter of convenience, since her husband lives in Belize while she resides in the United States. That being the case, the claimant now says, the register should be rectified so that the titles to both properties should be in the sole name of the Claimant.

It is also the claimant's case that all the money used to purchase both properties and to construct the house on Parcel No. 5208 at the cost of

\$48,000.00 were provided by herself. The defendant, says the claimant, contributed nothing towards the purchase of the two properties, nor toward the construction of the house in question.

In the course of the trial, the claimant's position with regard to the property in Parcel No. 4173 somewhat changed. This is evident when she further elaborated on her evidence in Chief as follows:

***“As to Parcel #4173, this is meant to be his. As for Parcel No. 5208, is meant for me and after I died, it will go to my daughter.”***

Later when cross-examined by Ms Deshawn Arzu, the claimant stated:

***“Q. Your claim is for sole ownership over both properties?”***

***A. No. I gave # 4173 to the defendant.”***

It is safe to conclude, therefore, that the claimant's case is now centred on Parcel No. 5208, having relinquished her claim over Parcel No. 4173.

The defendant's case, on the other hand is that, he contributed to the acquisition of both properties in Parcel Nos. 5208 and 4173, and to the construction of the house in Parcel No. 5208. It is the defendant's case that he applied to the Belmopan City Council for the two properties concerned and paid BZ\$6,000.00 each for the two properties. According to the defendant, his wife (claimant) paid the \$6,000.00(BZ) for Parcel No. 4173 which the defendant says, is his wife's property. He said so when cross-examined by Mr. Welch:

***“Q Both properties in your joint names?”***

***A. Yes***

***Q. What about Parcel # 4173?***

***A. That's my wife's property. She paid \$6,000.00.”***

The defendant's focus is also on Parcel No. 5208 as according to him, Parcel No. 4173 belongs to his wife, the Claimant.

In so far as the status of both Parcels No. 5208 and No. 4173 is concerned, they were both registered in the joint names of the claimant and defendant

and there is no dispute about that. See the *Land Certificates Nos: 7704/2001* issued on 26/10/01 and *6373/2001* issued on 6/9/01. It must also be noted that there are no words of severance used in the said Land Certificates of Titles.

There is no claim in this case that the properties be divided up or apportioned due to, any severed relationship between the parties. Neither is there a claim that the either party is about to dispose of the properties without the knowledge of the other.

### ***Consideration***

In support of the claimant's case, Mr. Welch referred the Court to the following cases: *Cooke v Head* [1972] 2 All E.R. 38 where the relationship between the man and his mistress had broken down and the mistress sued for her share in the property; *Smith and Another v Baker* [1970] 2 All. E.R. 826 where the husband and wife had been divorced and wife claimed her share in the matrimonial home under the Married Women's Property Act 1882; *Hine v Hine* [1963] 3 All E.R. 345 where the husband and wife marriage relationship had broken up and parties separated, and wife claimed

under the Married Women's Property Act 1882 for her share in the joint matrimonial home; and *Bernard v Josephs* [1982] 3 All E.R. 163 where the man and his mistress jointly owned the house, their relationship broke down and the mistress brought a claim for sale of the house and declaration of her share in the property. Mr. Welch also referred to the well known case of *Petitt v Petitt* [1969] 2 All E.R. 385; *Changlee v Changlee* [1967] G.L.R. 507; *Lensford Myvett v Ann Burns* (16 May 2003) Supreme Court of Belize Action No. 78 of 1999. The last case is a Belize case involving a common law relationship which broke down and the defendant sued for damages for wrongful ejectment and ownership interest in the property concerned.

There is absolutely no evidence before the Court even to demonstrate that any of the situations described in the above cases relied upon by the claimant, has occurred in this case. Apart from the principles for which the cases cited stand for, they are of no help to the claimant in her claim in this case where she simply changes her mind and asks for the joint titles to the properties to be cancelled and given to her alone, and to have the register rectified on that basis.

Ms Arzu for the defendant has correctly pointed out, and the Court must bear in mind, that the Court's power to rectify the land register is limited to cases in which registration is obtained by "*fraud or mistake*" as provided in section 143 (1) of the *Registered Land Act* (cap. 194) which states:

***"143.-(1) Subject to subsection (2), the court may order rectification of the register by directing that any registration be made, cancelled or amended where it is satisfied that any registration, including a first registration, has been obtained, made or omitted by fraud or mistake.***

***(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents or profits and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake on consequence or which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default."***

It has not been suggested in this case, nor is there any evidence to even suggest that there is some possibility that fraud or mistake had been



committed here by one of the parties. Hence, in so far as the law is concerned, the parties have absolute joint titles to the two properties in question and there is nothing to suggest otherwise. The law does not support a course of action which extends the Court's power to rectify the land register where one of the parties simply seeks to delete the other's name from the register, since that will operate to defeat the purpose of the system of title by registration or will be "*destructive*" to the entire system of land registration:" *Santiago Castillo Limited v William Quinto et al* (26 October 2007) Court of Appeal of Belize Civ. App. No. 7 of 2007.

On the evidence, the Court is satisfied that both parties contributed towards the expenses of purchasing and development of the properties concerned. It is not disputed that the claimant paid USD\$14,000 as deposit for construction of the house on Parcel No. 5208. Further the Court is satisfied that the claimant made a final payment of \$8,000.00. I am also satisfied that the defendant did contribute financially, although it is not clear how much that contribution was. It may well be that his contribution was less than that of the Claimant. However, if I have to decide on the point, I would only say that the properties in question were obtained by the joint efforts of the parties in this case.

It must also be acknowledged that the claimant throughout the period, lived in the US while the defendant resided in Belize. This was the scheme of the parties' arrangement to enable the defendant to carry out the physical aspects of the acquisition of the properties and to shoulder some of the procedural processes of acquiring the properties.

Although, not supervising the construction work on the house on Parcel No. 5208, I am satisfied that the defendant's presence in the process of construction, represent the interest of his wife (Claimant) and himself in ensuring that their joint interest in the property was taken note of. I am satisfied also that it was the common intention of the parties to have a matrimonial home in Belize for them. The defendant was given the task of maintaining the property, although the claimant says that the money to do so was provided by her. The presence of the defendant in Belize was to ensure that these would be done.

To suggest that the defendant's part in all their arrangements was simply as a matter of convenience, runs counter to the evidence before the Court. The evidence before the Court does not support any suggestion that the defendant

was aware all along that the acquisition of the two properties and development on Parcel No. 5208 were solely for the Claimant's benefit, and that he (defendant) was only a conduit to get things done for the Claimant.

Taking all the evidence into account and the whole circumstances of the case, I do not see how the Court can justly make the declaration sought in this case, since on the evidence, both properties are still in the joint names of the parties. As to that part of the order sought, seeking to rectify the register, I can only conclude, that there is absolutely no basis on the facts or in law for any order to rectify the register.

The apportionment of the parties' rights and interest in the properties concerned may well arise in an appropriate proceedings. One such proceedings is that suggested by Counsel for the defendant in her written submission, namely proceedings under the *Married Women's Property Act* (cap. 176) or as ancillary matters in matrimonial proceedings. It would not be proper to decide on the issue so as to make the declaration sought, in the present proceedings.

The effect of this judgment is that these proceedings are inappropriate to make any declaration and rectification of the land register as sought by the claimant or to consider the apportionment of the rights and interest of the parties in the properties in question.

For the reasons stated in this judgment, the Court declines to make the order sought in this Claim. The claim by the claimant is dismissed.

I feel it would be appropriate that the claimant should also bear the costs of these proceedings.

***Order: Claim dismissed***  
***Costs to the defendant.***

(Sir. John Muria)