

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

ACTION No. OS 028/2022

IN THE MATTER of an Application by **Sharon Dorothy Smith Pastor** under Section 16 of the Married Woman's Property Act, Chapter 176 of the Substantive Laws of Belize R.E. 2020

AND

IN THE MATTER of an Application by **SHARON DOROTHY SMITH PASTOR** under Section 148A of the Supreme Court Judicature Act, Chapter 91 of the Substantive Laws of Belize R.E. 2020

BETWEEN:

SHARON DOROTHY SMITH PASTOR

APPLICANT

AND

[1] HERMAN GEORGE PASTOR JR

[2] CEIBA GROVE LLP

RESPONDENTS

Appearances:

Mrs. Robertha Magnus Usher, SC, with Ms. Tiffany Cadle for the Applicant
Ms. Kimberly Wallace for the 1st Defendant
Ms. Darlene Vernon for the 2nd Defendant

2024: December 11,12

2025: April 9

June 10

August 7 -closing submissions

December 19.

JUDGMENT

Senior Courts Act 2022 – sections 150, 154, 157- division of matrimonial property – meaning of common law union – whether it is possible to have multiple common law unions at the same time – the requirement of five continuous years of cohabitation as husband and wife – whether cumulation of periods of cohabitation is possible

- [1] **GOONETILLEKE, J.:** This is an Application by Sharon Dorathy Smith Pastor, the former wife of Heman George Pastor, the respondent, for a declaration that she is beneficially entitled to one half share of the properties described in the schedule of the originating motion. The properties are said to be those that were acquired during the marriage and previous common law union between the applicant and the 1st respondent. For convenience, the applicant will hereinafter, sometimes be referred to as “**Sharon**” and the first respondent will be referred to as “**Herman**” (pun not intended).
- [2] There are two (2) real properties in the schedule to the originating summons. They are (i) a parcel of land situated at No. 19 Rosewood Street, San Ignacio, Cayo District – Sharon’s home, hereinafter referred to as the “**Rosewood property**” and (ii) a parcel of land situated at Joseph Andres Drive, San Ignacio, Cayo District – where Sharon has a salon in one part of the building and in the other part (the main part of the building) Herman had previously operated a Karate do jo (karate studio). For convenience, the second property will hereinafter be referred to as the “**Studio**”.

Procedural background

- [3] The originating summons was filed on 26 May 2022, during the course of divorce proceedings and prior to the Senior Courts Act 2022, which came into effect on 15 November 2022. It for this reason that the caption refers to the Supreme Court Judicature Act, which was repealed and replaced by the Senior Courts Act.
- [4] When the matter came up before court for the first time on 3 August 2022, Justice Lisa Shoman referred the parties to mediation. On the 7 October 2022, the parties returned to inform the court that there was no settlement at mediation.
- [5] The matter next came up before Justice Patricia Farnese on the 21 February 2023, and the 1st respondent was granted time to file a counter claim, and the matter was adjourned to 9 June 2023.

- [6] The Applicant thereafter on 13 March 2023, filed a Notice of Change of Attorney. Thereafter, till the end of the trial, Sharon was represented by Mrs. Robertha Magnus Usher, SC.
- [7] Herman also changed his attorney, and by Notice dated 13 April 2023, informed that Bradley Ellis would be representing him.
- [8] In response to the originating summons, Herman had filed an affidavit indicating that both properties had been sold and transferred to Ceiba Grove LLP and that Sharon would not be able to obtain the declarations she seeks. On that basis Sharon filed an Application on 9 June 2023, for leave to add Ceiba Grove LLP (hereinafter referred to as “**Ceiba**”) as a party to the originating summons and to set aside the transfers of the properties to Ceiba. When the matter came up for hearing on the 9 June 2023, Justice Farnese who had conduct of the case at the time, ordered the parties to present submissions and be heard on 5 October 2023, on the issue of adding Ceiba as a party.
- [9] The case was thereafter assigned to me and came up for hearing on the 13 October 2023, at which hearing, I granted the order that Ceiba be added as a party and be given notice of the Application. The first amended originating summons adding Ceiba as a party was filed on 25th October 2023. Subsequently, Ceiba filed its response.
- [10] Following that, case management orders were given, and the trial was initially scheduled for 6 and 7 March 2024. On agreement of the parties, the trial was vacated and re-scheduled to 28 and 29 May 2024. On 6 June 2024, the Applicant moved again to amend the originating summons to rely on section 150, 154 and 157 (1) of the Senior Courts Act. The parties, thereafter, informed that the Trial Bundle was not ready. The trial was then rescheduled to 9 and 10 July 2024. The Court was then informed that, Senior Counsel Mrs. Usher had been medically advised to rest and that she would not be able to be present for the trial. Therefore, the Applicant moved for an adjournment. In these circumstances, the trial was re-scheduled for 11 and 12 December 2024.
- [11] It was a contentious trial, made more contentious by counsel who strenuously opposed each other. The trial took place over four days, on 11, 12 December 2024, 9 April, and 10 June 2025. At the end of the trial, parties were granted time to file closing written submissions. Less than a month thereafter, on 3 July 2025, Senior Counsel Mrs. Robertha Magnus Usher passed away. The Court notes with

appreciation, Senior Counsel Mrs. Usher's contribution to this case. Ms. Cadle who ably assisted Mrs. Usher, SC, settled and filed closing submissions on behalf of Sharon.

The relevant factual background

[12] This case is complicated by the fact that the parties commenced a common law relationship, which Herman describes as a visiting relationship. Herman asserts that he did not co-habit with Sharon but visited her from time to time. He also simultaneously had relationships with other women and had children with them. Sharon and Herman did, however, formally enter into marriage thereafter. The relevant dates are as follows:

- (i) The parties were married on 10 December 2005.
- (ii) The parties were legally separated on 29 September 2009.
- (iii) Divorce proceedings were commenced in August 2020.
- (iv) The Order Nisi was issued on 12 May 2022, on the basis that the marriage had irretrievably broken down and the parties consented to a dissolution of the marriage.
- (v) The Decree Absolute is dated 17 January 2023.
- (vi) The parties have three children from their union, born prior to their marriage. All three children at the time of this Action are above the age of 18 years. The first child was born in September 1993, the second in January 1995 and the third in January 1997.
- (vii) The Rosewood property was obtained as a lease by Herman in 1994. The land certificate for that property was obtained on 31 May 2019. The house on that property was completed in 2003. Sharon is presently in occupation of the Rosewood property.
- (viii) The Studio property was acquired by Herman in 2009 and was built on sometime in 2010. The Land Certificate in the name of Herman Pastor is dated 5 May 2014. Sharon moved her hairdresser's salon to that property sometime in 2010 and operated from a part of that premises. Sharon still operates her salon from a part of the Studio.

Issues

- [13] In addition to having to decide whether or not the parties contributed to the acquisition of the properties during the course of the marriage, it necessary to also determine whether the properties were acquired during the common law union of the parties.
- [14] A further issue arises as to whether the common law union was a continuous one or whether at some point before the marriage the parties had separated and then reunited when they formally married. A material issue is whether the relationship between the parties prior to the marriage could be considered a common law relationship.
- [15] The issues therefore can be separated as follows:
- a) Whether the Rosewood property and the Studio are properties acquired during the marriage or common law union, if any, that existed prior to the marriage?
 - b) What is the contribution by the parties towards the acquisition and maintenance of those properties?
 - c) Whether the contribution by parties as regards the properties can be assessed as a global contribution or should contributions to each property be assessed individually?
 - d) Whether the properties were sold with a view to denying Sharon her share thereof, and if so, whether the sale should be voided?

The Evidence of the Parties

Sharon Dorothy Smith Pastor

- [16] Sharon's evidence is as follows: she and Herman began their relationship in 1991, when she was 16 years old and still in High School. She lived with her aunt at the time. Upon commencing her relationship with Herman, she did not complete her education.
- [17] In September 1993 Sharon gave birth to her first child, Asha Pastor. Her second child Negeri Pastor was born in January 1995, and her third child Cara Pastor was born in January 1997.

- [18] Sharon states that she lived with her aunt for 9 years after the union and that Herman also resided there. she states that because they did not pay rent, Herman was able to save towards building a house. During this period, she had started to work as a hairdresser to supplement the household income.
- [19] On 29 September 2009, she states she obtained a restraining order against Herman and obtained an order for legal separation.
- [20] Two years prior to the marriage (the parties married in December 2005), the family including Herman began living at the Rosewood property. She has since lived at the property and currently resides there. The Rosewood property is registered in Herman's name. She says that she contributed financially towards that property. She estimates that her direct financial contribution towards the house is about Belize Dollars (**BZD**) 20,000.
- [21] Sharon states that upon the Rosewood property nearing completion and being liveable, she moved into it as she had been living rent free at her aunt's house previously and needed to move out. Herman was not happy about the move and made excuses not to move, but she nevertheless did so sometime in 2003. She states that she moved into the house with the three children when Herman was overseas.
- [22] Sharon states that she brought her old furniture to the house and that Herman replaced the furniture with new items in 2019. She asserts that Herman remodelled the kitchen as a Christmas gift and installed a deck at the back of the house as a birthday present for her. She states that she currently resides in the upper part the house while, her daughter Asha lives downstairs.
- [23] Sharon states that she contributed to the Rosewood property by ensuring that the family had a place to stay during the construction of the house and by paying for the children's education and purchasing the groceries, so that Herman could afford to make the payments for the house.
- [24] As regards the Studio, Sharon states that Herman acquired that property and that they both worked out of the property. He had a karate dojo in the main building, and she commenced a salon in a section of the Studio, in 2010. She states that she expended about BZD 6,000 – 8,000 to furnish the salon and construct a bathroom at the Studio.

- [25] It is Sharon's evidence that she got involved in looking after the dojo/ Studio when Herman was away and she cleaned and maintained it and that the Dojo made about BZD 1,500 a month. She states that her salon still operates from the premises and that she still lives at the Rosewood property despite Herman having sold the properties to Ceiba.

Neceri Pastor

- [26] One of the daughters, Neceri Pastor, who is an adult now, gave evidence in support of her mother to say that she and Sharon visited the Rosewood property when it was being built and that her mother paid the workmen.
- [27] In cross examination however, she was not very helpful with her evidence. She could not recall when the house was built, nor could she state how many workmen were involved in the building of the house or when she visited the house. It is noteworthy that Neceri who was born in 1995, would have been eight years in 2003, and if she had visited with her mother when the house was being build, it would have been in 2001 /2002 when she was six and seven years old respectively, at the time.

Herman George Pastor

- [28] Herman's evidence is that he got a lease from the government for the Rosewood property in 1994. This was a vacant parcel of land. He then got a bank loan and assistance from his parents to build the house there.
- [29] He vehemently denies that Sharon contributed financially toward the building of the house. At the time when the house was being built, he states that he was living and working at Dandriga and would come on the weekends to pay the workmen and check on the progress of the construction. Herman states that the house was completed sometime in 2003 and that Sharon moved into the house when he was away, without informing him and without his consent. He stated that he could not evict his children from the house, so he let them stay.
- [30] As to the relationship, he states that he did not cohabit with Sharon before the marriage but was in a visiting relationship with her and would visit her and the children who were living at Sharon's aunt's house. Herman stated that he lived and worked in Dandriga, and that he also had relationships with

other women at the time with whom he has children. In all, he said he had many children with different partners. Of these, three are from Sharon, the others are from multiple separate relationships.

[31] He states that the marriage to Sharon was a brief one; they got married in 2005 and were legally separated in 2009. He denies that he lived / cohabited with Sharon at her aunt's house, and states that it was not a co-habiting relationship.

[32] In regard to the Studio, he states that he teaches karate and that he got this property from the San Ignacio Town Council in or about 2009 and that he built a Studio there with the aid of bank loan. He states that in 2010, he allowed Sharon to locate her salon in the storeroom of the Studio, which had one door leading to the main Studio and another separate door leading out. Herman states that he did so on the understanding that Sharon would build her salon on her own property close by and that he assisted her with building a foundation on her property for this purpose. He denies that Sharon contributed financially towards the building of the Studio. He states that she has installed a bathroom in her salon and purchased furniture for it.

[33] As to the sale of the properties, Herman states that due to the Covid virus pandemic (**Covid**) in 2020, he could not operate his karate dojo. He had loans to pay and therefore decided to sell the properties to close off the loans. He sold the properties to Ceiba, at a time when the market was slow due to Covid and he got (BZD) 182,000 for both properties.

[34] In his *viva voce* evidence, when questioned by court, he stated that he had offered BZD 50,000 to Sharon as a settlement but that she had refused to accept it. Giving evidence on 9 April 2025, Herman stated *viva voce* that he was presently prepared to give Sharon BZD 75,000 and let her keep the furniture in the house, though he had bought them.

Edgar Cooch

[35] Mr. Cooch is a builder, who built both the Rosewood property and the Studio for Herman. He gave evidence in support of Herman; that it was Herman who paid him for the construction of the house during the period 2001, 2002 and 2003.

[36] In his *viva voce* evidence, he confirmed that Herman was in Dandriga at the time and that he would visit once a week to pay the bills and check on the house while it was being built.

[37] He denies that Sharon paid him for the construction and defended his stance on this matter when cross examined.

[38] He also states that he built the Studio for Herman in 2009 and that he got instructions and payments solely from Herman.

[39] Mr. Cooch also confirmed that on instructions from Herman, he built a foundation on the land which he understood to be that of Sharon.

Julio Valdez

[40] Mr. Julio Valdez is a freelance Land Title Investigator who had been engaged by Ceiba to investigate the titles of the Rosewood property and the Studio.

[41] He has presented with his affidavit evidence two reports dated December 2020 regarding the properties. The first report is in regard to the Studio (Parcel 2869) and states that the property is solely owned by Herman Pastor and that the property is not encumbered in anyway. The area of the land is depicted as 492.27 Square meters. It shows that Herman Pastor was issued a Land Certificate on 5 April 2014.

[42] The second report is regarding the Rosewood property (Parcel 1047) which is also only in the name of Herman Pastor and is also unencumbered. The land area of the Rosewood property is shown as 464.498 square meters. That report indicates that Herman Pastor was issued a Land Certificate on 31 May 2019.

[43] Mr. Valdez was cross examined by the counsel for Sharon on his relationship with the Pastors, that his son attended karate classes conducted at the studio and that the family had socialised with the Pastors by attending a barbecue. Mr. Valdez countered that it was his wife that took his son for karate, that the barbecue was attended by other people as part of the karate school and that he had not known Herman Pastor.

[44] He maintained that the title report was presented to Ceiba as part of his professional and independent services as Title Investigator and had nothing to do with any personal relationship.

Jonathan Lohr

- [45] Mr. Jonathan Lohr gave evidence on behalf of Ceiba. He stated that he and his wife are the shareholders of Ceiba and that he is authorised to give evidence on behalf of Ceiba.
- [46] It was his evidence that Herman had approached him some time in August or September 2020, wanting to sell both properties for BZD 250,000 but that he made a counteroffer of BZD 150,000 because it was Covid times and the market was slow. Herman had rejected the counteroffer.
- [47] Herman had then approached him again stating that he needed to sell the properties due to some medical issues and to close off a loan. This time, Herman and Ceiba agreed to BZD 175,000 for both properties which was later raised to BZD 182,000.
- [48] Mr. Lohr had seen the Rosewood property only from the outside as he was informed that Herman's ex-partner was inside and also because it was during Covid time. He states that he had a look at the Studio both from outside and inside but had not looked at the storeroom (Sharon's salon) due to it being locked. He stated that the price offered at the time was reasonable due to the slow market during Covid and that the transaction was a business transaction. He denied that he or Ceiba were holding the property in trust for Herman to defraud Sharon.
- [49] In cross examination and in answer to questions put by court, Mr. Lohr stated that he had bought and sold properties while persons occupied them. As an example, he stated that when properties are bought at auction from banks, they often have persons in occupation and that it takes a long time to get them to vacate.
- [50] In answer to a question from court he estimated that the current market price of both properties is probably double what he paid for them and would be between BZD 350,000 to 400,000. He also confirmed that Mr. Valdez had done a title report on both properties for him, and that he purchased them because the title was clear.

The Relevant Applicable Law

- [51] The law relating to division of matrimonial property is contained both in statute law as well as case law. Sections 150, 153, 154, 155 and 157 of the Senior Courts Act 2022 (**SCA**) governs the division of matrimonial property and the setting aside of transfers of property made to defeat an anticipated order

by the court. The Applicant has also cited the Married Women's Property Act, Chapter 176 Revised Laws of Belize (**MWPA**).

[52] The relevant section in the MWPA is section 16 which reads as follows:

“ 16(1) – In any question between a husband and wife as to the title to or possession of property, either spouse or any bank, corporation, company, public body or society as aforesaid in whose books, funds or shares of either party are standing, may apply by summons in a summary way to a judge of the court who may make such order with respect to the application as he thinks fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he thinks fit...” [Emphasis added]

[53] The Court of Appeal in the cases of **Thomas Vidrine v Sari Vidrine**¹ (hereinafter **Vidrine**) and **Elena Usher v Osbert Orlando Usher and Another**² (hereinafter **Usher**) held that an Application under Section 16 of the MWPA is not in the nature of matrimonial proceedings, whereas an Application under section 148A of the Supreme Court of Judicature Act (similar to the present section 150 of the SCA) is made in matrimonial proceedings.

[54] Under section 16 of the MWPA, not only the spouses, but an interested party such as a bank or other institution may apply to court for a declaration as to who is the owner of the property or the funds or shares held. The MWPA has been enacted to counter an archaic or Victorian view that a woman could not own and manage property on her own and that upon marriage she moved from the coverture of her father or guardian to the coverture of her husband. Thus, the MWPA (and similar legislation elsewhere in the British Commonwealth) made it clear that a married woman held property on her own and could have a declaration as to which property is hers.

[55] Such an application under the MWPA is not a matrimonial action as has been held in the Court of Appeal. Hence, I decline to make any orders under the MWPA in this matter.

[56] At the time the cases of *Vidrine* and *Usher* were decided by the Court of Appeal, the applicable law in relation to division of matrimonial property was set out in Section 148A of the Supreme Court of

¹ CA Civil Appeal No. 2 of 2010, decided on 27 January 2011.

² CA Civil Appeal No. 40 of 2010, decided on 28 June 2013.

Judicature (Amendment) Act (hereinafter referred to as “**Judicature Act**”). As stated above, when this Action was commenced, the Judicature Act was the applicable law. The Judicature Act was repealed and replaced by the Senior Courts Act 2020, which came into effect on 15 November 2020, during the pendency of this case.

[57] Section 150 of the SCA retained the same grounds and principles for division of matrimonial property as was stated in section 148A of the Judicature Act. A novel feature of the SCA was that it enabled such an action to be filed not only during divorce proceedings but also within two years of the dissolution of the marriage.

[58] In terms of Section 154 of the SCA, the same principles for the division of matrimonial property may also be used for division of property acquired during a common law union.

[59] Section 150 of the SCA reads as follows:

*“150.-(1) Notwithstanding anything contained in this Part or in any other interests in law, a husband or wife may, during divorce proceedings or at any time within two years of the date of dissolution of the marriage, 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 sub-section (1), 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), 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, 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 the husband or the wife or both of them to make, for the benefit of one of them, such settlement or transfer of property as the court determines.

(4) *The Court shall not make an order under sub-section (3), 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 sub-section (3), the court shall take into account the following–*

(a) *the **financial contribution** made directly or indirectly by or on behalf of either the husband or the wife 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 the husband or the wife 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 the husband or the wife;*

(d) *the **age** and state of health of both **the husband and the wife, and the children** born from the marriage, if any;*

(e) *the **non-financial contribution made by the wife in the role of wife and/or mother** and in raising any children born from the marriage, if any;*

(f) *the eligibility of either the husband or the wife to 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 as aforesaid;*

(g) *the **period when the parties were married and the extent to which such marriage has affected the education, training and development of either of them in whose favour the order will be made;***

(h) *the **need to protect the position of a woman, especially a woman who wishes to continue in her role as a mother;** or*

(i) any other fact or circumstances 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 sub-section (3), 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 that such documents of title to the property be produced or such other things be done as are 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 husband and the wife, but not on any other person.” [Emphasis added]

[60] A plain reading of section 150 of the SCA, points to the fact that property acquired by either party prior to the marriage or after the marriage should not be subject to an order under section 150. It is only property acquired during the substance of the marriage that can be the subject of an order of court.

[61] In this case, however, section 154 of the SCA may also be applicable as Sharon claims that she and Herman were in a common law union prior to the marriage, when the properties were acquired. The wording in Section 154 of the SCA is similar to wording in section 150 of the SCA except, that the words “*during the subsistence of the marriage*” in section 150 of the SCA is replaced in section 154 of the SCA with the words “*during the subsistence of the union*” [Emphasis added].

[62] When applying the criteria in section 150 or 154 of the SCA to the facts, the Court of Appeal interpreting section 148A of the Judicature Act (which is similar), in both *Vidrine* and *Usher*, adopted a two-stage test as follows:

- (i) Identify and value the property acquired during the subsistence of the marriage; and
- (ii) Consider and evaluate the matters listed in subsection (5) which the court will take into account in considering whether it is just and equitable to make an alternation order.³

³ Case of *Usher* (ibid), paragraph [16].

[63] The Court of Appeal has also made it clear that in Belize, there is no justification for the English Law principle of relying on equality of division as a yard stick. Instead, evaluation begins with past contributions of the parties.⁴

[64] The Court of Appeal in *Vidrine*, quoted extensively from the Australian case of *Mallet v Mallet*⁵ in which the High Court of Australia (the apex court in that jurisdiction) stated that:

“[54]. *The respective values of the contributions made by the parties must depend entirely on the facts of the case...*

*[56] Thus, the court must in a given case evaluate the respective contributions of the husband and wife, difficult though that may be in some cases. In undertaking this task, it is open to the court to conclude on the materials before it that the indirect contribution of one party as homemaker or parent is equal to the financial contribution made to the acquisition of the matrimonial home on the footing that the party's efforts as homemaker and parent have enabled the other to earn an income by means of which the home was acquired and financed during the marriage. To sustain this conclusion the materials before the court will need to show an equality of contribution - the efforts of the wife in her role were equal of the husband in his".*⁶

[65] The Court of Appeal was of the view that the Australian position is what needs to be followed in Belize as the law in Belize is similar. Thus, equality in division of matrimonial property is not the starting point. The court needs to evaluate the financial and non-financial contribution of the parties to the acquisition of the property in (a) determining the rights of each party to the property and thereafter (b) determining in accordance with the criteria set out in section 150 (5) of the SCA, whether it would be just and equitable to alter the rights and interests of the parties in the property or properties.

DISCUSSION AND ANALYSIS

[66] The Lease for the Rosewood property was obtained by Herman before the marriage. The house on the Rosewood property was completed in 2003 prior to the marriage with Sharon in 2005.

⁴ Case of *Vidrine* (ibid), paragraphs [57]-[58].

⁵ (1983) 156 CLR 605.

⁶ *Vidrine* (above), paragraphs [54] – [56].

[67] Therefore, for Sharon to claim the Rosewood property, she would have to prove that there was a subsisting common law union between them, to which Section 154 of the SCA could be applied. If not, all that Sharon could do, if she proves that she made a direct financial contribution to the Rosewood property, would be to claim an equitable interest therein – ***Lloyds Bank Plc v Rosset and Another***.⁷

The first issue to be resolved therefore is: Did Sharon and Herman have a common law relationship prior to their marriage and if so, from which date?

[68] A common law union has been defined in section 153 of the SCA as follows,

*“ ‘common law union’ or ‘union’ means a relationship that is established when a man and a 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**.”* [Emphasis added].

[69] What is in evidence is that Sharon commenced a relationship with Herman from the time she was 16 years old (in 1991) when she was living with her aunt. She bore three children with Herman, they were born in 1993, 1995 and 1997. She bore these children and raised these children while living at her aunt’s house until 2003, at which point she moved into the Rosewood property when Herman was away, without his consent.

[70] Herman, lived and worked in Dandriga during the construction of the rosewood proeprty. He states he lived with other women at the time and had children with at least two other women. There is only sketchy evidence that Herman lived at Sharon’s aunt’s house, just one photograph. Herman’s version of events is that he visited Sharon. He may have spent nights there, but he asserts that he did not live there or cohabit with Sharon when she was at her aunt’s house.

[71] The Supreme Court of Belize in ***Pitzold v Pitzold***⁸ held that the burden of proof is on the applicant to prove, on a balance of probabilities, that the properties were acquired during the subsistence of the marriage. Likewise, a corollary of that rule would be that if an applicant claims that a property was acquired during a common law union, the burden of proof would be on the applicant to prove; (a) that there was a common law union and (b) that the property was acquired during the union. Marriage is a matter of fact that can be established by documentation. A common law union on the other hand, if

⁷ [1990] 1 All ER 1111.

⁸ Action No. 31 of 2010, Judgment delivered 29 July 2011

denied by one partner, would have to be established by the person who asserts the union, if he or she seeks to assert rights to property acquired during the union.

- [72] Does the mere fact of having children with a partner, make the partner a common law spouse? Respectfully no. That only proves a sexual relationship and not a common law union as husband and wife. The parties must live together as husband and wife, not merely procreate. A common law union is a marriage for all intents and purposes, except that it is not registered. That is why section 154 of the SCA refers to living together as “*husband and wife*”. It is only when you are husband and wife in a common law sense, that a common law spouse is given the same rights (by section 154 of the SCA) for division of property as a spouse in a marriage (division of matrimonial property under Section 150 of the SCA).
- [73] A common law union for all intents and purposes is what is known as a marriage by ‘habit and repute’. The couple live together, eat and sleep together - ‘*mensa et thoro*’ (board and bed), and are regarded by the community and the society as husband and wife. If they do not eat and sleep together, and they do not cohabit and are not regarded by the community as a couple, then there is no common law union. The law requires that the elements of the union must also be present for a continuous period of five (5) years to be regarded as a common law union.
- [74] This background raises some interesting but valid questions in the circumstances of this case. Is it possible for a man to have multiple common law unions recognised by law, with many women, at the same time? If the answer is ‘yes’, how is section 154 of the SCA to be applied? Do each of the common law wives get an interest in the man’s property? What happens if the common law union is not continuous for 5 years in any one given period but is a start and stop relationship. Do the words “at least 5 years” in section 153 of the SCA permit cumulation of various periods of continuous cohabitation?
- [75] In the case of ***Crake v Supplementary Benefits Commission***⁹ Lord Woolf stated, “*what Parliament had in mind was no more than what I have indicated earlier in my judgment, namely that where a couple live together as husband and wife, they shall not be in any different position whether married or not...*” [Emphasis added].

⁹ [1982] 1 All ER 498

[76] The court went on to set out various criteria to test whether a man and woman are living together as husband and wife: “*whether they are members of the same household; then there is a reference to stability; then there is the question of financial support; then there is the question of sexual relationship; the question of children; and public acknowledgment*”.¹⁰ Similar criteria was adopted in Barbados, in the case of **Shepards v Taylor**¹¹ which referred to the circumstances leading to a common law marriage as “*consortium vitae*”.

[77] The above dictum in **Crake** contrasts with the dictum of the Court of Appeal in the case of **Usher** (above) on the distinction between marriage and a common law union:

“...It would be helpful to look at the principles applicable to marriage and common law union as this would show that the legislation does not give the two regimes equal rights although they are given the same rights in terms of property and maintenance...A marriage is formal and can only be dissolved by a court of competent jurisdiction or when one of the parties dies...In a common law union there is no formality and the union comes to an end upon separation by the parties. There is no restriction on common law spouses to cohabit with more than one partner...A married person can make an application for division of matrimonial property solely on the basis of the fact of marriage, whereas in a common law union, the parties have to co-habit for five years before such application can be made to the court.” [Emphasis added].

[78] The above views of the Court of Appeal are obiter, and with great respect, I am unable to agree that the legislature intended that one can be treated as a common law spouse if that person has multiple so-called common-law relationships at the same time.

[79] Section 153 of the SCA speaks about a common law union being between persons who are not legally married to each other and to any other person. While the legislature has omitted to state the words “*and also not in a union with any other unmarried person*”, it would be going against the purpose of section 153 of the SCA, to recognise that a common law spouse could at the same time be in a common law union with multiple partners. That this is not so, is implied by the language in section 153 of the

¹⁰ *ibid*

¹¹ (1987) 22 Barb. L.R.118.

SCA, and is obvious, in my view, because section 153 of the SCA goes on to state the words, “*cohabit together as husband and wife for a period of at least five years*”. [Emphasis added].

- [80] One cannot cohabit together as ‘*husband and wife*’ if one or both common law spouses are having multiple common law spousal relationships. That would not be living together as ‘*husband and wife*’. The words “*husband and wife*” must be given their meaning in the legal and social context. If the relationship is to be considered “*as husband and wife*” in the eyes of the law, it must be an exclusive relationship. If it is a polygamous or polyandrous relationship, then it is not a cohabitation ‘*as husband and wife*’. It may be cohabitation, but not cohabitation ‘*as husband and wife*’. This view finds support in the Belize Supreme Court case of **Alexander Nicholas v Byran Warren**¹² which held that the existence of an intimate relationship however frequent and for however long, does not amount to cohabitation. A similar view was also expressed by the Supreme Court of Jamaica in the case of **Millicent Bowen v Keith Alexander**¹³ which held that, “*The court will have to make a value judgment taking into account all the special features thrown up by a particular case to see whether the lives of the parties have been so intertwined and their general relationship such that they be properly regarded as living together as husband and wife. It has to be inferred from all the circumstances*”.
- [81] The test to be applied is an objective one taking into account the subjective interactions of the parties with one another. The need for the community and society to recognise the common law union as husband and wife (per the case of **Crake** above) adds weight to the interpretation that one cannot be in many common law unions, recognised by law, at the same time. I doubt very much that the legislature intended otherwise.
- [82] The requirement of a period of continuous five years cohabitation as husband and wife is another issue that needs to be addressed. The period cannot be cumulative. It must be a continuous five-year period. Unlike in a marriage, it is possible for common law partners to just walk away. That is the nature and risk of a common law relationship if one elects to get into such a relationship. Hence, it is quite possible for one of the partners to walk away after four years, and then after a separation, resume the relationship. In my view, such a stop and start relationship, if it does not have a continuous five-year period, would not qualify for a common law union under sections 153 of the SCA or for division of

¹² Action No 261 of 2004.

¹³ 2006/HCV 05107

property under section 154 of the SCA. Any proprietary interest in such a polygamous or polyandrous relationship would have to be based on an equitable interest in property but would not entitle a court to alter such interests under section 154 of the SCA.

- [83] As the applicant, the burden of proof is on Sharon to prove the existence of the common law union; that she and Herman cohabited as husband and wife with all the attributes described above. The best available evidence of such a continuous relationship is from 1993 to January 1997, when three children were born in quick succession. A period of cohabitation may also be assumed from 2003 to 2005 when the parties and their children were at the Rosewood property prior to their marriage. These periods do not however, evince five continuous years together, as husband and wife.
- [84] There is no independent evidence of a third party to show that they were regarded in society as a couple, prior to their marriage. No neighbour or relative gave evidence to that effect. No evidence was produced to show that Sharon, Herman and the children attended social gatherings as a family and were regarded as such by society.
- [85] In contrast, Herman states he was in a visiting relationship; that he lived in Dandriga and visited Sharon and the children and provided for them but did not cohabit with them. It is in evidence that he did have other children with other partners during the period that Sharon claims she had a common law union with Herman.
- [86] The provision of financial support for the children, or visiting them *per se*, does not establish the common law union as husband and wife. That the parties subsequently married only proves a relationship that matured into marriage, it does not prove a common law union before the marriage in terms of the definition set out in section 153 of the SCA.
- [87] In the totality of the evidence presented, I therefore hold that, Sharon and Herman did not have a continuous five-year period of living together as husband and wife, for a common law union to be established between them in their relationship prior to the marriage.
- [88] As such, any rights that Sharon has to the property acquired by Herman prior to their marriage in 2005 would be confined to an equitable interest, if she had made any direct financial contribution towards such acquisition.

Second issue; What is the contribution of the parties to the acquisition and maintenance of the properties?

[89] As there are only two properties, it would be convenient to deal with them separately.

The Rosewood property

[90] The legal title to the Rosewood property is solely in the name of Herman. He obtained a lease for it from the government, in 1994. The house was completed in 2003. The Land Certificate, however, was obtained in 2019, during the subsistence of the marriage.

[91] Thus, while the lease was acquired and the house was built prior to the marriage in 2005, the fact that the Land Certificate for the Rosewood property by which title was obtained, came only in 2019, brings that property within what may be considered, property acquired during the marriage.

[92] Using the two-stage process established in the case of *Vidrine*, it is then necessary to establish the contributions of the partners to the asset.

[93] Direct Financial Contribution – while Sharon states that she estimates her direct financial contribution to be about BZD 20,000 by which she bought materials and paid the workmen to build the house, there is no evidence to corroborate that position. There are no receipts. The builder denied receiving any payment from Sharon. Negeri, the second daughter who gave evidence that her mother paid the builder could not give details. She would have been a small child of six or seven years and is giving evidence of transactions that took place 23 years ago. A vague recollection of transactions that relate to childhood memory 23 years ago is not a matter the court can attach great weight to in the absence of any receipts and the resolute denial of the builder that he did not received any money from Sharon. The evidence on this point does not favour Sharon. She may have financially contributed in some way, but there is no evidence that can prove it and no evidence to corroborate the figure of BZD 20,000.

[94] Indirect Financial Contribution to the construction of the house – again there is no evidence that corroborates that Sharon supervised the building of the structure. Mr. Cooch, the builder, states that he took all instructions and payments from Herman.

[95] Indirect Contribution as Wife and Mother – such a contribution cannot be considered prior to the marriage because as held above, there has been no finding of a common law union, in the eyes of the

law, in terms of the criteria set out in section 153 of the SCA. The children lived with Sharon at her aunt's house. That was their home. The aunt's house was not the couple's home; Herman did not permanently live there. That Sharon looked after her children born outside of marriage, does not indirectly contribute to Herman's earnings prior to their marriage, because they were not in a union recognised by law. Hence, any indirect contribution prior to the marriage cannot be counted. What may count is Sharon's contribution during the marriage. The house was built by the time they got married, however, the upgrades, can be considered. The fact that Sharon looked after the children, and did the housework, and supported the family with her own income, may be considered to be a 50% contribution to the upgrades of the house. The upgrades in dollar terms amounts to about **BZD 5,109** (Annexure HGP – 3A-E and HGP 15) for the materials for the deck at the back of the house, the furnishings from Courts amounting to **BZD 9,149** (6, 626 + 2,227 + 296 – Annexure HGP 13 and 14 and HGP 2 A- E) and the kitchen upgrade cost of **BZD 6, 348** (HGP -16), there is also a tv, refrigerator and some other items costing **BZD 6, 043**. All these sums aggregate to about **BZD 26,649**. Sharon's non-financial contribution would be about **BZD 13,325** as 50% of the amount for the upgrades.

The Studio

- [96] The karate studio was built on land obtained by the city council in 2009. Herman has produced a letter to the bank and bank statements to show that he took out a loan for BZD 18,768 to build the studio. This property was acquired during the subsistence of the marriage and would fall into the category of property to be determined under section 150 of the SCA.
- [97] Direct financial contribution – There is no evidence of direct financial contribution by Sharon to the construction of the main building. She estimates that she contributed BZD 6,000 to 8,000 (paragraph 44 of Sharon's affidavit dated 29 May 2022) to construct a bathroom and install furniture at her salon in the Studio. Herman has conceded that Sharon has built a bathroom in the studio and furnished her salon. Other than this, there is no evidence of direct financial contribution by Sharon to the main part of the Studio.
- [98] Indirect financial contribution – Sharon states that she helped with the karate dojo in administration, and in cleaning up and running it in Herman's absence. Herman denies this. However, I am inclined to accept Sharon's evidence on this point, that as the wife she would have had some role to play in the karate studio, particularly because the children also contributed to the work of the studio.

[99] Indirect financial contribution as wife and mother – The parties were married during the time that the studio was acquired and managed. Sharon did take care of the family at the time, particularly when Herman was away on official work or overseas. Therefore, she did contribute as wife and mother, and she contributed to the administration of the studio, in helping Herman non-financially, for him to pay off the loan to the bank.

[100] She therefore contributed, in my estimation, at least forty percent (40%), by way of non-financial contribution as wife and mother and also by her help in the administration of the studio. The contributions add equity for Sharon towards the value of the studio, excluding the value of the land.

[101] Other criteria such as eligibility for a pension, the period and impact of the marriage on the earnings capacity of the partners, the need to protect the position of the woman and other circumstances set out in Section 150 (5), will be dealt with later, as a composite consideration regarding all the properties.

Third issue: Ceiba Grove – whether the property was sold to put it beyond the reach of Sharon in anticipation of an order of court?

[102] The *Vidrine* two stage formula of deciding the properties that are acquired during the marriage and then valuing them, cannot be neatly done in this case. This is because, the valuation is affected by a sale of both properties claimed. The properties were sold in 2021. If the court were to hold that the properties were sold to defeat an anticipated order and then voids the transaction, the valuation of the properties would be the present value.

[103] If on the other hand, the court finds that the transfer of the properties is valid, then the valuation would be the value of the properties at the time of the transfer.

Were the properties sold with the intention of defeating an anticipated order of the court?

[104] The court is given the power by section 157 of the SCA to set aside a transfer of property made to defeat an anticipated order. That section reads as follows:

“157.-(1) In cases where sections 150 to 156 apply, the court may on application by an interested party or on its own motion, set aside any instrument transferring property from a spouse to a marriage to any other person, or from a party to a union to any other person, or may restrain the making of such an instrument or disposition by or on behalf of, or by the direction and in the interest of, such

spouse or party to a union, which is made or is intended or proposed to be made to defeat an existing or anticipated order in any proceedings under the said sections, or which, irrespective of intention, is likely to defeat any such order.

(2) *An instrument or disposition made contrary to sub-section (1), is void.*” [Emphasis added].

[105] The Supreme Court of Belize in ***Supall v Lalchand and others***¹⁴ referred to two cases of the High Court of Australia (the apex Federal Court in Australia) in interpreting section 148H of the Judicature Act, which section is analogous to section 157 of the SCA above. The reference to the Australian case law is on the basis that the Belize law is similar to the Australian law on the point.

[106] The High Court of Australia in ***Australia and New Zealand Banking Group v Harper et al***¹⁵ held that the onus was on the wife in that case, to prove that the disposition was likely to defeat an anticipated order. In that case, the husband had mortgaged the house to the bank. This view was also upheld by the High Court of Australia in the case of ***In the Marriage of BG & KR Pflugradt***¹⁶. In that case the court held that the onus was on the wife to establish that the security given to the bank was likely to defeat an order in her favour which could reasonably be anticipated in the proceedings. The court held that there ought to be within realistic contemplation, (a) a prospect of success in obtaining the order and (b) that the anticipated order could likely be defeated by the disposition or dealing sought to be set aside.

[107] Having reviewed these authorities the Supreme Court in the case of ***Supall v Lalchand*** (above) held that “*the question of the ‘anticipated order’ and a disposition being ‘likely to defeat’ any order made, are not automatic conclusions, so that the application of section 148H [of the Judicature Act] to any given situation requires consideration of the evidence in a particular light*”.

[108] Both the Rosewood property and Studio were solely in the name of Herman. He obtained the leases for the properties. He took out bank loans for the construction of the Studio. The contributions to the Rosewood property by Sharon are indirect and applicable only to the upgrades after 2005 as held above. Sharon’s contribution to the Studio is also indirect. The direct contribution amount to a maximum of BZD 8,000 towards her salon in a part of the Studio. Sharon’s earnings by her own affidavit indicate

¹⁴ Action No. 17 of 2016, Judgment dated 29 October 2019, per Griffith J.

¹⁵ (1987) Fam Ca 4.

¹⁶ (1981) Fam Lr 188.

an income of about BZD 300 per week. Thus, Sharon's income would not make it possible for her to make substantial financial contributions to the properties and there is no proof of that.

[109] In these circumstances, adopting the the two-part test in *Pflugradt* (above) I hold that the sale of the Rosewood property and Studio cannot defeat any order of this court. In order for the transfer of the properties to defeat an order of this court Sharon would have to anticipate that the court would award her either or both properties entirely under a property alteration order under Section 150 (3) of the SCA. The evidence would suggest that this would not be the case. If there was no sale to Ceiba, in the circumstances of this case, the court would order the sale of the properties and the sharing of the proceeds or for Herman to compensate Sharon for contributions to the properties. It must be borne in mind that proceedings under Section 150 are for division of matrimonial property and not applications for Alimony.

[110] I hold, therefore, that Sharon has not proved to the satisfaction of this court, that the sale of the properties would defeat an anticipated order of this court. Sharon's share in the matrimonial property would be by way of monetary compensation. Such an order would not be defeated by the transfer of the properties. Accordingly, the court will not set aside the sale of the properties.

Valuation of the properties and Sharon's equity in the properties

[111] Valuation is not an exact science. What a property is worth at a given time is a guesstimate, and one person's value can differ from another, within a reasonable range. What a property is worth in the real sense, is what a willing buyer is agreeable to pay, and a willing seller is agreeable to accept at the time. Anything else is speculation.

[112] In arriving at estimates of value, there are several methods adopted. One is comparable sales. The comparator must be in the like area, size and in proximate time of the intended sale. Due to unavailability of an exact comparator, this method may not always result in an accurate comparison. It remains however, the best method to gauge market forces. Replacement value is another method. This method adopts how much it would cost to build a house/ structure in the present context and depreciate its value based on the age of the structure. A difficulty with this method is that the land value cannot be subjected to replacement value without reference to comparable sales. Thus, while the value of a structures can be estimated based on replacement value depreciated to the age of the structure, the

land on which the structure stands, cannot be arrived at using this method. Sometimes, the land value is greater than the structure on it. Thus any resort to replacement value in estimating what a sale of the property would fetch in the open market may not be an accurate valuation.

[113] Sharon has produced two valuations which were done in 2022. These valuations present both comparable sales and replacement value.

[114] According to these valuations done in 2022 with a market value of an 18-month exposure, the **Studio is valued at BZD 215,000** on a replacement value basis and a **forced sale value of BZD 175,000**. Likewise, the **Rosewood Property is valued at BZD 300,000** and a **forced sale value of BZD 240,000**. The above values have been arrived at based on replacement value. Four (4) common comparable sales have been cited for both properties. The comparable sales have been in the years 2016, 2017 and 2018. Thus, the comparable sales are dated. However, they may be relevant during the Covid period as the properties were sold at depressed prices, at possibly half their value. Though Sharon's valuer discounts 25% for forced sales, that would be under normal circumstances. The Covid period was not a normal market, and it would not be possible to apply the usual discounts for forced sales during that period. Price is always a subject of supply and demand. Where there is no demand, the price will drop beyond a normal range. Those with deep pockets that can purchase property during such a market downturn, naturally tend to profit from any subsequent return to normal markets.

[115] Therefore, I am more inclined to accept Jonathan Lohr's evidence given *viva voce*, where he states that during the period 2020/2021 there was a slow real estate market with depressed prices. His evidence was that the properties were now worth double what he paid and together both the Rosewood property and the Studio would be presently worth about BZD 350,000 to 400,000. The forced sale value of Sharon's valuer in the present market for both properties is **BZD 415,000** (BZD 175,000 + 240,000). This figure is close to the upper estimate of Jonathan Lohr as to the present value of both properties.

[116] For arguments sake, I will take the forced sale value given by Sharon's valuer for the Studio, which is a more realistic assumption, estimated at BZD 175,000. As I have held that Sharon is entitled to a 40% value of that sum, her share in the Studio can be stated to be **BZD 70,000**. Sharon does not have any equity in the Rosewood property as held above, however, she may have 50% share in the value of the upgrades which amount to **BZD 13,325** (50% of the cost of the upgrades and furniture costing **BZD 26,649**). Thus, Sharon's total equity in the matrimonial properties can be valued at **BZD 83,325**.

Whether there are any just and equitable grounds to alter the proprietary rights of the parties under Section 150 (5) of the Senior Courts Act?

[117] In arriving at the figures stated above, I have taken into account all the circumstances as presented in evidence before the court. Altering property rights is a separate matter that needs to be done according to statutorily permitted grounds. In this regard, the court is mindful of the dicta of Lord Morris of Borth-y-Gest in **Gissing v Gissing**¹⁷ where he stated:

“When questions arise between spouses or between former spouses or in relation to the affairs of one or another of them concerning the beneficial ownership of property, the tasks of a court will often be one of much difficulty. But this should not be because the principles of law are in any way obscure or in doubt. It will be because in the nature of things the evidence will often not be specific and precise. The court must do its best to ascertain all the facts and then reach a conclusion....

When the full facts are discovered, the court must say what is their effect in law. The court does not decide how the parties might have ordered their affairs: it only finds how they did. The court cannot devise arrangements which the parties never made. The court cannot ascribe intentions which the parties in fact never had. Nor can ownership of property be affected by the mere circumstance that harmony has been replaced by discord. Any power to alter ownership must be found in statutory enactment” [Emphasis added].

[118] The power to alter ownership in matrimonial property is strictly governed by the criteria in section 150 (5) of the SCA and that too only if the court deems it just and equitable to do so. The alteration of proprietary rights, if any, will be considered on a composite basis as there are only two properties involved and I have already held that Sharon has no equity in the Rosewood property except for the upgrades and the furniture.

[119] The three children of the union of Sharon and Herman are presently well into adulthood having been born in 1993, 1995 and 1997 respectively. Hence, the criteria of the court having to consider the woman’s role to continue as a mother, does not arise.

¹⁷ (1971) AC 886

[120] Herman is now retired from government service. He is in his mid-fifties. There was no evidence of the amount of the pension he receives. However, it may be assumed that he does have a government pension. There was some evidence that Herman was building or built another house for himself. He therefore has a roof above his head. He stated that he had some health issues, but those issues were not specified nor was it shown how they affects his life.

[121] Sharon is in her late forties. She resides at the Rosewood property and states that she has no other home. She is self-employed and has her salon in a part of the Studio. She does, however, have a lease of two other lands. This was not denied, nor was it denies that a foundation was put on one of those properties for her to build her salon.

[122] The parties were married from 2005 until their divorce in 2023, a period of 18 years. However, they have been legally separated since 2009 and living separate lives. Sharon has been supporting herself during this period. Thus, it is not a new or strange circumstance for her to be in a position of having to support herself.

[123] Sharon was 18 years old when she got pregnant with her first child, but the parties were not married at the time. She married when she was in her mid-twenties. Did the relationship or marriage affect her education and training? Perhaps it did. However, no evidence was put before the court as to what Sharon intended to do with her life at the end of her schooling, nor were any school reports produced to demonstrate her potential future in adulthood. Given this paucity of evidence, the court cannot speculate as to what her life would have been if she had not met Herman. What is in evidence is that she has trained herself and obtained certification as a hairdresser. This has given her income earning skills, and she did do so while she was a parent. She therefore does have skills and training to fall back on for her livelihood. She is not a stay-at-home wife and mother, which criterion may require consideration in alteration of proprietary rights.

[124] The court also needs to protect the position of the woman and consider any other fact or circumstance that in the opinion of the court, the justice of the case requires.

[125] The only factor that warrants the court's attention on the last two criteria above, is that Sharon would be without a home when she has to move out of the Rosewood property, and that she would have to rent or construct a premises for her salon if she must give up the Studio premises.

[126] Sharon is already entitled to a monetary portion of the value of the properties described above. she also possesses land of her own. Thus, any alteration of proprietary rights would have to take those factors into account.

[127] In considering all these factors, I will grant Sharon a 50% share of the equity of the Studio based on the forced sale value of her valuer, which I find in all the circumstances to be a fair valuation. Sharon will therefore be entitled to 50% of BZD 175,000 which amounts to **BZD 87,500** (half of BZD 175,000). I will also grant Sharon, the entire equity of the furniture and appliances in the Rosewood property.

Costs

[128] The usual formula is for the losing party to pay the costs of the party that is successful. Sharon has not been successful in the entirety of her claim. However, Herman as the former husband has the obligation to bear the costs of his former wife in matrimonial proceedings given that he had the higher income of the two. Herman will therefore pay Sharon's costs in this claim.

[129] Ceiba, was added to this claim at the instance of Sharon. Sharon has not been successful in her claim to have the sale of the properties set aside. In such circumstances, it would not be equitable to have Herman pay the costs of Ceiba. Accordingly, Sharon will be liable for the costs of Ceiba.

Further Equitable Considerations

[130] Ceiba is now the registered owner of the two properties. However, these proceedings are not proceeding by which Ceiba can evict Sharon. No such relief has been claimed by Ceiba in these proceedings.

[131] Sharon's ability to move on with her life would depend on being monetarily compensated by Herman for her share of the matrimonial properties. As such, she is entitled to occupy both the Rosewood property and the salon in the Studio, for six (6) months after the date of payment of the full sum due to her by Herman, referred to above.

[132] While such decision impacts Ceiba, this is a risk Ceiba was willing to bear by purchasing a property which was occupied. Ceiba was aware that the seller's former partner was in occupation of the premises. This risk was factored into the price paid by Ceiba for the properties.

IT IS HEREBY DECLARED AND ORDERED THAT:

- a) The Respondent, Herman Geroe Pastor Jnr., shall pay to the Applicant, Sharon Dorothy Smith Pastor, a sum of Belize Dollars Eighty-Seven Thousand and Five Hundred Dollars (**BZD 87,500**) for her share of the matrimonial property from the proceeds of sale of the Rosewood Street property at San Ignacio, Cayo District and the Studio Property at Joseph Andrews Drive, San Ignacio.
- b) Sharon Dorothy Smith Pastor is entitled to keep the furniture and appliances in the Rosewood street property.
- c) The application by Sharon Dorothy Smith Pastor to set aside the transfers of the Rosewood Street property, Parcel No. 1047 and the Studio property, Parcel No. 2869 on Joseph Andrews Drive, at San Ignacio, to Ceiba Grove LLP, is dismissed.
- d) Sharon Dorothy Smith Pastor is entitled to remain at the Rosewood street property and use and occupy the salon in the Studio property on Joseph Andrews drive for a period of six (6) months from the date on which she receives in full the sum of BZD 87,500 from Herman George Pastor Jnr.
- e) Herman George Pastor Jnr. is directed to make the payment of the BZD 87,500 to Sharon Dorothy Smith Pastor by crediting a bank account of Sharon Dorothy Smith Pastor, and to indicate to the Registrar of this Court and to Ceiba Grove LLP by way of an affidavit, the date of such payment or payments with a copy of the record of the date of such payments attached.
- f) Sharon Dorothy Smith Pastor is entitled to remove her furniture and fittings in the salon at the Studio on Joseph Andrews Drive when she vacates the area of the Studio occupied by her. She is also entitled to remove the furniture and appliances at the Rosewood street property when vacating that property, within six months of receiving her share of the proceeds of the sale of the matrimonial property referred to, in (a) above.
- g) Herman Gergoe Pastor Jnr. will pay the costs of Sharon Dorothy Pastor excluding the costs of Ceiba Grove LLP.

- h) Sharon Dorothy Smith Pastor shall pay the costs of Ceiba Grove LLP.
- i) Costs are to be agreed, and if not agreed, taxed by the Registrar.

Rajiv Goonetilleke
High Court Judge