

IN THE SUPREME COURT OF BELIZE A.D.2013

ACTION NO. 24 OF 2010

(JASMIN SAMUELS	APPLICANT
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(WINSTON BUCKNOR	RESPONDENT

Before: Justice Rita Joseph-Olivetti

Appearances: Mrs. Magali Marin Young of Magali Marin Young & Co. of counsel for the Applicant.

Mr. Mark Williams of Mark E. Williams & Co. of counsel for the Respondent.

J U D G M E N T

Dated: 2013, 18 September

[Common Law Union – Declaration and Alteration of property rights sought by the Applicant- title to all properties acquired during the union in sole name of Respondent - no direct financial contribution to acquisition of properties by Applicant –whether Applicant’s contributions to the family and business of Respondent entitles her to a share in the properties- whether just and equitable to alter property rights of the Respondent in favour of the Applicant - Supreme Court of Judicature Act Cap. 91s.148:05.

Common Law Union – Maintenance sought by the Applicant –Whether court has jurisdiction to make order in these proceedings- whether on consideration of fortune of Applicant, the ability of the Respondent to pay and the conduct of the parties it is fit and reasonable to make order - Supreme Court of Judicature Act ss.148:09 &152.

Enforcement of Family Court Order - Alternatively Set Off- Respondent ordered to pay maintenance for children of the union - Respondent in arrears – whether set off or enforcement can be ordered - Supreme Court of Judicature Act Cap 91 s.38- Family Courts Act Cap.93 s.14-District Courts (Procedure)Act Cap.97 s.53 – Supreme Court Rules Order 46.]

1. **Joseph- Olivetti J:- ‘I thought we would be together for always’** was

Ms. Jasmine Samuels’ plaintive cry when pressed in cross- examination about not insisting that her common law partner include her name on the titles of properties he bought during their union: a sanguine but apparently necessary hope without which few romantic attachments can begin. Yet, relationships breakdown and those whose names are not on title deeds are thereafter constrained to seek the aid of the courts for financial provision. This is such a case.

2. **Relief Claimed**

Ms. Samuels claims various orders as set out in her Originating Summons of 22 April 2010 as subsequently amended. They are in the main for a declaration and alteration of property rights in her favour in relation to all

four properties (listed in the schedule to the Originating Summons) which were allegedly acquired during their common law union; a share in their personal property and in monies held in a joint bank account; maintenance; set off of arrears on, or enforcement of, a Family Court Order for maintenance of their children by sale of Mr. Bucknor's separate property and an injunction preventing him from selling those properties until determination or sale.

3. **Main Issues for determination.**

These were not summarized or agreed on but can be gleaned from the relief sought and the arguments in closing submissions. To my mind they are:-

- (i) What property was acquired by the parties or either of them during the subsistence of their common law union and whether or not Ms Samuels is entitled to a share or interest in them;
- (ii) Whether Ms.Samuels is entitled to a share in the properties acquired by Mr.Bucknor during their cohabitation outside of their common-law union?
- (iii) Should the court make an order altering the interest and rights of the parties in properties acquired during the common law union in favour of Ms. Samuels?

- iv. Whether Ms Samuels is entitled to a share in the personal property acquired by the parties during their common law union and to a share in the monies held in the bank account at the date Mr.Bucknor withdrew them;
- v. Whether Ms Samuels is entitled to an order for maintenance;
- vi. Can Ms. Samuels claim a set off of the arrears due under the Family Court order for maintenance of the children or alternatively enforce the order by sale of Mr.Bucknor's separate property?

4. **Mr. Bucknor's non- appearance at trial.**

At the trial on 24 July, 2013, Mr. Bucknor did not attend although Ms Young, learned counsel for Ms. Samuels, had given notice as early as 21 November, 2012 that he was required to attend for cross- examination.

5. Mr. Williams S.C, learned counsel for Mr. Bucknor, when the matter first came on for trial on 18 June, 2013 told the Court that his client was abroad and in poor health and unable to attend then. The Court adjourned the trial and suggested that if Mr. Bucknor's health was still an issue that he apply to give his evidence by video link, if he so wished, at the next hearing. Mr. Bucknor declined to do that and chose instead to rely solely on his counsel's ability, not inconsiderable, to destroy Ms. Samuels' credibility in cross-

examination, a task in which, like the redoubtable Spanish at the Battle of St. George's Caye of 1798, he was roundly defeated.

6. I remark also that on 20 October, 2010 Hafiz-Bertram J (as she then was) gave judgment in default of attendance at trial against Mr. Bucknor and that pursuant to that judgment Parcel 1224 Block 16 Caribbean Shores was sold and the proceeds of the sale distributed 60% to Ms. Samuels and 40% to Mr. Bucknor. Mr. Bucknor later succeeded in having the judgment set aside. However his exertions seem to be to little avail save to cause further delay as he has again failed to attend. The effect of this is that his affidavit cannot be relied on. In other words, he has put no evidence before this court. See Supreme Court Civil Procedure Rules 2005("CPR") 29.8 which to my mind is applicable here as in this case the affidavits take the place of witness statements.

7. **Findings on the Evidence.**

The only evidence before this court then is that of Ms. Samuels who filed three affidavits dated 22 April, 2010('the First Affidavit') , 18June 2012 ("the Second Affidavit ") and 18 October 2012 ("the Third Affidavit") respectively

8. Mr.Williams cross- examined Ms. Samuels vigorously. Let me say at once that the suggestions of counsel are not evidence unless they are accepted by

the witness. Furthermore, that I found that Ms. Samuel stood up well to cross-examination on the whole and that her evidence in chief as contained in her affidavits was not compromised in any material particular. She gave an overall good impression and I will not castigate her if she refuses to accept that Mr. Bucknor is gravely ill or if she has not managed her finances as wisely as Mr. Williams thinks she ought to have done. For the latter Mr. Bucknor must take the credit as he when she was at a very impressionable age introduced her to the good life in which she did not have to trouble herself unduly about her finances. He was happy to be her sole provider. And, if she in some respects has exaggerated the value of the assistance she gave to Mr. Bucknor in their businesses as I find she has (an all too human failing) then that too does not seriously affect her case and the Court has taken notice of and made allowance for that.

9. Ms. Samuels was barely seventeen years old and still at St. John's College Junior College, Belize City, still living at home, when she commenced an intimate relationship with a considerably older man in August 1998. Mr. Winston Bucknor, the man, was thirty- seven years old, a businessman, married but estranged from his wife .The wife had custody of their two young children. Ms Samuels and Mr.Bucknor began to cohabit as man and wife in late 1999. (I will refrain from asking where Ms.Samuels' parents

were at the time). Their primary residence was at Mr. Bucknor's former matrimonial home at 1232 Sunray Avenue, Coral Groves in Belize City although they spent time at his Cayo property.

10. Mr. Bucknor's wife subsequently filed for and obtained a decree nisi of divorce on 1 March, 2002. The decree was made absolute on 31 January, 2003. The parties' relationship endured for almost ten years during which time they had three children. It appears that they were anxious for children of the union and Ms. Samuels' apparent inability to conceive resulted in her consulting with doctors in the Mexican border town of Chetumal, Quintana Roo after about two years into the relationship. Their children, two boys and a girl, were born on 18 October 2002, (Ms Samuels was then 21years old) 28August 2004 and December 17, 2005 respectively. Throughout the union Ms. Samuels was the principal caregiver to the children, managed the household and family affairs and assisted Mr.Bucknor in their various businesses. Theirs was a very comfortable lifestyle.
11. The union ended on the night of 30 December, 2008 when Mr. Bucknor physically assaulted and inflicted injuries on Ms. Samuels at their home when she returned from a neighbourhood nightclub, forcing her to leave the home with the children, to seek help from the Police and then to obtain a protection order from the Family Court on 9 January, 2009. The Family

Court also ordered Mr. Bucknor to pay maintenance of \$100.00 a week for each child from 9 January 2009 until each attained the age of eighteen years.

12. Mr. Bucknor left Belize on 7 April, 2009 and has had no contact with their children and what is more has defaulted with maintenance payments. He now apparently resides somewhere in California, USA and Ms. Samuels lives here in Belize City with their children. Interesting, in his affidavit on the court's file Mr. Bucknor did not see fit to disclose his proper address. His affidavit styles him as, "formerly of Belize City, Belize and now residing in the United States of America". That speaks volumes, none of it to his benefit.
13. Mr. Bucknor was a successful businessman. Prior to their relationship he had several properties and businesses- Techtron Construction and Electrical, the dwelling house at 1232 Sunray Avenue, Coral Groves, 1223 Blue Marlin Blvd. , both in Belize City, and a house at Salazar Street San Ignacio, Cayo District ("the Cayo Property").
14. During their period of cohabitation Mr. Bucknor bought several other properties. Sometime in 2001 a close friend of theirs, a civil servant, Ms Barbara Johnston, informed him that the Government was releasing lots for lease at Burrell Boom Village, Belize District. He and Ms Samuels decided to purchase two lots as it was a good investment. Mr. Bucknor did so and on 6 August 2001 he took title to one lot (Lease 509/2001 Lot 37, containing

0.1866529 acres) in his mother's name, Hessie Westby. Further, on 9 August, 2001 (Lease 505/2001 Lot 38 containing 0.18152479 acres) was transferred into his sole name. Sometime in 2002 the same inside source informed them that the Belmopan City Council had put up for sale one acre of land in Belmopan City. They decided it was a good investment, visited the site together and Mr. Bucknor bought this freehold property, Block and Parcel No. 20/5578, Belmopan, for \$10,000.00 and had title transferred into his sole name on 13 November 2002. See JS5.

15. Again, through the same inside source, they were made aware in 2003 that small income homes at the San Pablo Housing Project San Pedro, Ambergris Caye were available for sale through the Development Finance Corporation ("the DFC") which financed the purchases by way of mortgage on the properties. They visited the properties and Mr. Bucknor bought one (Lot F32) San Pablo, DFC and had title transferred to his sole name. (How he qualified for small income housing I will not speculate upon). The property is being rented and the tenants pay the rent directly to the DFC towards the mortgage/legal charge which DFC holds on it. As of 15 December 2006 the loan balance was \$42,932.36 and the loan is scheduled to be paid off on 31 May 2020. See JS6.

16. Ms. Samuels was involved in the discussions for each property and they bought them as part of their family provisions. Indeed when she inquired of Mr. Bucknor at the time of the acquisition of the Burrell Boom properties in 2001 why none of the lots were put in her name he told her not to worry as all of these were for her and the children and that that he had to do things that way. She believed him and relied on his assurance as he continued to repeat assurances in similar vein in respect of subsequent properties and investments he made.
17. Mr Bucknor on 2 July 2001 opened a savings account in their joint names at the First Caribbean International Bank (then Barclays Bank) with an initial deposit of \$15,000.00. The parties agreed that only the yearly interest would be withdrawn from that account. However, Ms Samuels discovered after their break-up that Mr Bucknor had cleared out the account in October 2006 to the tune of \$18,877.38 including interest. (Ms. Samuels is also making a claim for monies held at the Holy Redeemer Credit Union but there is no evidence about such an account).
18. In early 2004 the parties were in the process of planning a restaurant at 1223 Blue Marlin Blvd which was opposite to their home. At that time, Ms Phillipa Pollard advertised an adjacent lot for sale and they decided to buy

it –Block and Parcel No.16/ 1224 Caribbean Shores- as it would be ideal for expansion of the restaurant. Mr. Bucknor bought it on 12 March 2004 in his sole name. (This was the property the court subsequently sold pursuant to the order of Hafiz- Bertram J).

19. Ms. Samuels did not make any direct monetary contributions to the acquisitions, maintenance or improvement of the properties as she had not the means to do so. However, throughout the relationship, Ms. Samuels, despite her youth, inexperience and the fact that she was attending college part-time until she graduated, was a good helpmate to Mr. Bucknor in the home and in all of his businesses, both those that he had before the start of their relationship and those they started together- a boutique on the Cayo Property which she managed with an assistant (this business lasted for 6 months until she left the country to give birth to their first child), Bucks Diner which they conceived together and operated at 1223 Blue Marlin Blvd for 3 months from December 2004 until the work became too heavy for her because of her third pregnancy (it was then rented out as a bar/club); the apartment rental business(two apartments) which they commenced at their home in 2007 and which still continues and the food hut they subsequently built and operated for about 8 months at 1223 Blue Marlin Blvd.

20. The parties led a comfortable lifestyle and made several trips abroad mainly to the USA. On one such trip to Los Angeles in 2000 Mr. Bucknor bought a Mercury Mountaineer SUV and gifted it to Ms. Samuels. When the relationship broke up Ms Samuels kept the vehicle and later sold it in July 2009 for \$4000.00 as it was becoming unreliable. Then with the proceeds of sale and the aid of a loan she bought a new and more fuel efficient vehicle for \$27,500.00 for the use of the family. I also find that even though Ms. Samuels went abroad to the USA at Mr. Bucknor's behest to have all their children and during the third pregnancy to actually try to re-settle the family in Culver City California for about a year, she continued to help him with the businesses with the aid of her computer on which she had stored all their business information. During their time together she also assisted with caring for Mr. Bucknor's first son who lived with them for a while during his parents' divorce and his daughter when they visited with Mr. Bucknor.

21. Ms. Samuels is now an executive secretary earning about \$1600.00 a month. She finds it difficult to meet her commitments although she works overtime and receives help from her family and friends. She has 2 loans and recurring expenditure for the home and the children which includes all their food clothing educational and medical and dental needs including frequent medical expenses for the eldest child who is asthmatic. Her current monthly

expenses including rent, utilities, and loan repayments are about \$4000.00 per month. During their union all three children attended private schools. Now they have to go to the public schools as their father has ceased to assist them and their mother cannot afford private tuition for them. What is more, she has exhausted the monies she received as her share of Parcel 1224 on herself and the children. On the whole the family is struggling to maintain a decent standard of living.

22. **Issue 1- What property was acquired by the parties or either of them during the subsistence of their common law union and whether Ms. Samuels is entitled to a declaration and alteration of property rights in them in her favour.**

23. First, the law. Belize, like many English Commonwealth countries, has enacted legislation recognizing what is known as common law unions, to no doubt address the reality which exists and to deal with some of the inequalities which often arise when such unions are not accorded any legal status. Accordingly, the Supreme Court of Judicature Act Cap 91(“SCJA”) was amended in 2001 by the addition of s.148 to legitimize common law unions, to empower the court to declare and alter property rights in relation to properties acquired by the parties or either of them during the union and to

grant maintenance to a party to the union on separation. I will refer to the specific statutory provisions as is necessary.

24. I will also be guided by the approach commended by the Court of Appeal with respect to declaration and alteration of property rights on divorce in **Vidrine v Vidrine** Belize Civil Appeal 2/2010 (Barrow JA delivered the unanimous judgment of the court), which was recently endorsed by the Court of Appeal in **Usher v Usher Civil Apps. Nos 40/2010 and 2/2011** (Hafiz- Bertram JA). In so doing I am mindful that both **Vidrine** and **Usher** were concerned with declaration and alteration of property rights **on divorce** but I am satisfied that the legislation under consideration there (s 148 A SCJA) is sufficiently similar to s.148.05 to apply this method to the same issues in common law unions.

25. The Court of Appeal has recommended a two step approach –which in this case translates to - (i) identify and value the property acquired during the subsistence of the union and (ii) consider and evaluate the matters listed in the relevant legislation, here s.148.05. See para.70 of **Vidrine**. The court has said further in **Vidrine** that when both a property declaration order and a property alteration order are sought the trial judge should after step one go on to consider what interest if any the claimant has in the properties before

going on to step 2, as a determination of beneficial interest may impact on the property declaration order. See **Vidrine** para.70.

26. The first issue which arises is whether a common law union as defined by s. 148:04 of the SCJA existed between the parties. Under this section a common law 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.
27. As I have determined, the parties began their relationship in 1998 and by late 1999 they were cohabiting continuously as husband and wife until the relationship ended on 30 December, 2008. However, as Mr. Bucknor was still lawfully married, the legal basis of a common law union did not exist until after the decree nisi was granted on 31 January, 2003. Therefore, cohabitation for the purposes of s.148:04 began on 1 February, 2003 and ended on 30 December, 2008. So although in reality co-habitation lasted for about 10 years, in law, the common law union only had a duration of just about a month short of 6 years.
28. I will now turn to consider step 1- what property was acquired by either or both parties during the union and their value? Mr. Williams submits in essence that there is no property to consider here as the parties did not live

together as man and wife i.e. there was never a common law union between the parties, that Ms Samuels was simply Mr.Bucknor's girlfriend. This position is wholly unsupported by the evidence. On the other hand, Ms. Young is correct in her contention that two properties were bought during that period – (1) Lot F32 San Pablo Housing Project San Pedro in 2003 and (2) freehold property, Parcel 1224 Block 16 Caribbean Shores Registration Section, on 12 March, 2004. As Parcel 1224 was sold pursuant to the judgment of Hafiz-Betram J. I do not propose to revisit that sale. I am thus only concerned with Lot F32.

29. Now, as to the first step, we have identified the property but we are unable to ascertain its value as the court has no evidence of value before it. I can understand this omission on Ms. Samuels' part as she I accept has no means to obtain valuations. I therefore turn to consider the issue of a property declaration order before I go on to step 2.

30. **Is Ms. Samuels entitled to a property declaration order?**

31. This issue is not governed by legislation but is based on equitable principles. Ms. Young relies on the doctrine of constructive trust. In short, that Mr.Bucknor made assurances to Ms. Samuels that the properties acquired by him during the union would be for her and their children, that Ms.Samuels relied on those assurances, acted to her detriment in contributing

as she did to their family, household and business investments and that it would be unconscionable to allow Mr.Bucknor to retain the entire beneficial interest in the property.

32. As already determined, Mr. Bucknor had a very successful business, Techtron, and owned other properties before he began to cohabit with Ms.Samuels. He bought Lot F32 with the aid of a mortgage from DFC. And, Ms Samuels readily acknowledged that she made no direct financial contributions to this acquisition.
33. However, as I have found, Ms. Samuels assisted Mr.Bucknor in their various businesses by helping to establish and operate the boutique, Bucks Cabin Diner, the food hut and acting as office manager of Techtron. She also assisted with the rental business. In respect of her work with Techtron she admitted that she initially paid herself wages of \$150.00 per week for a short period but that later she did not take any salary as by that time they were building a family and she properly thought she ought not to and in any event she had the use of the income from the businesses to manage their household.
34. Mr. Williams submitted that in any event Ms. Samuels' contributions to the home and to the businesses were not such as to qualify her for her an interest in any of the properties acquired during their relationship and he put much emphasis on the fact that at one period she received a salary. He relied on

Midland Bank PLC v Dobson and Dobson [1986]1F.L.R. 171, **Lloyds Bank PIC v Rosset &Anr.** [1991]1A.C.107, **Burns v Burns** [1984] Ch.317 and **Layton v Martin** [1986] 2 FLR 227, all persuasive authorities of the English courts.

35. Ms. Young referred to **Usher, Vidrine** and the English case of **Edwards v Grant and Anr.** [1986] 2 All E R 426. Ms. Young submitted that Mr.Bucknor’s assurance that he held properties for Ms. Samuels and the children coupled with Ms. Samuels’ contribution to the family, the home and to the businesses were sufficient to entitle her to an interest in the properties of at least a one -half share both in equity and under section 148.05 of the SCJA.
36. The principle on constructive trust in these situations which I glean from the line of cases emanating from the English courts relied on was succinctly summed up in the headnote to **Grant v. Edwards**. That reads- “**when an unmarried couple lived in a house which was registered or held in the name of only one of the parties, the other party could establish a beneficial interest in the property if he or she could establish a constructive trust by showing that it would be inequitable for the legal owner to claim sole beneficial ownership. That in turn had to be demonstrated by a common intention that they should both have a**

beneficial interest (which required to be proved by direct evidence or inferred from their actions including indirect contributions to the purchase such as mortgage payments, housekeeping expenses etc) and also that the claimant had acted to his or her detriment on the basis of that common intention and in the belief that by so acting he or she would acquire a beneficial interest. Once it had been established that the claimant was entitled to a beneficial interest in the property the quantification of that right depended on the direct and indirect contributions made by the parties to the cost of acquiring the property”.

37. The dicta of Sir Nicholas Browne-Wilkinson V.C in **Grant** at p.439(c) to (e.) is also instructive and applicable —“**in many cases of the present sort it is impossible to say whether or not the claimant would have done the acts relied on as a detriment even if she thought she had no interest in the house. Setting up home together, having a baby and making payments to general housekeeping expenses(not strictly necessary to enable the mortgage to be paid) may all be referable to the mutual love and affection of the parties and not specifically referable to the claimant’s belief that she has an interest in the house. As at present advised, once it has been shown that there was a common intention that the claimant should have an interest in the house, any act done by her to**

her detriment relating to the joint lives of the parties is in my judgment sufficient detriment to qualify. The acts do not have to be inherently referable to the house: see Jones v Jones [1977]2All ER231. The holding out to the claimant that she had a beneficial interest in the house is an act of such a nature as to be part of the inducement to her to do the acts relied on. Accordingly, in the absence of evidence to the contrary, the right inference is that the claimant acted in reliance on such holding out and the burden lies on the legal owner to show that she did not do so: see Greasley v Cooke [1980]3AllER710". (Emphasis added.)

38. It is also instructive to remark that in **Lloyds Bank PLC v Rosset** (H.L.), one of the cases relied on by Mr Williams, that this principle of constructive trust was also enunciated and that the court referred to **Grant** as being illustrative of the first type of case where there is evidence to support a finding of an agreement or arrangement to share the beneficial ownership of the property as distinct from the type of case where a common intention fell to be inferred from the conduct of the claimant. See Lord Bridge of Harwich p.133.
39. In my judgment, the clear distinction between **Rosset** and **Edwards v Grant** is that in **Edwards v Grant**, as in the case before us, there was evidence that the male partner, the legal owner of the property, had led the female partner to believe that she was to have some sort of proprietary interest in the

property and that she acted to her detriment in reliance on that understanding. The court also pointed out that in **Edwards v Grant** and **Eves v Eves** [1975]1 WLR 1338 type of cases **the subsequent conduct of the female partner which the court rightly held sufficient to give rise to a constructive trust or proprietary estoppel supporting her claim in the property fell far short of such conduct as would by itself have supported the claim in the absence of an express representation by the male partner that she was to have such an interest.** See Lord Bridge p.133.

40. On Ms. Samuels' evidence of the assurance given by Mr Bucknor which I accepted I find that there was a common intention throughout the union that any property acquired was to be held for Ms. Samuels and their children. The evidence of this assurance is direct evidence of such a common intention. I also find that Ms.Samuels relied on that assurance to her detriment by playing a joint role in their lives including their various business ventures to the best of her abilities and by foregoing in the main her right to a salary for her work. It cannot be gainsaid that by so doing she acted to her detriment and that Mr.Bucknor benefited by saving monies that he would otherwise have expended on a salary for her or someone else to carry out the services that she rendered which were all valuable services. It would be unconscionable in all the circumstances (I note in particular her youth and

inexperience at the time) to allow him to keep this benefit and the sole beneficial ownership and so renege on his word. This then is a Grant and Eves k type of case because of the direct evidence of the assurance or arrangement between the parties.

41. Accordingly, in my judgment, Ms. Samuels has established a constructive trust and therefore I declare that Mr. Bucknor holds Lot F32 on trust for her and himself. Having regard to her contributions throughout the period of their relationship and to the length of that relationship I am of the view that a 50% interest in Lot F32 would be a fair and just apportionment of the beneficial interest in that property and accordingly I declare that Mr. Bucknor holds Lot F32 on trust for them in those shares.

42. **Issue2: Whether Ms, Samuels is entitled to a share in properties acquired during the relationship but outside the common law union?**

43. It is appropriate to consider this issue now as this claim is based likewise on the doctrine of constructive trust. As already determined, Mr. Bucknor acquired three properties whilst they were living together but those properties were not acquired during the common law union as Mr. Bucknor was still married at the time. However, I find, based on the evidence alluded to in the foregoing paragraphs that he assured Ms. Samuels that all properties acquired were for herself and the children, that she believed him, that there was thus a

common intention that she should benefit and that she assisted him in the home and in all his endeavours to her detriment. In all the circumstances on applying the doctrine elucidated in **Grant v Edwards** she is entitled to a share in those properties save the lease in the name of HESSIE WESTBY, chiefly for the reason that HESSIE WESTBY was not made a party to these proceedings and that it would be unjust to deprive her of that property without giving her an opportunity to defend the claim. Having regard to Ms. SAMUELS' contributions to the relationship including the children, home and his businesses and of the entire length of the relationship, I declare that she is entitled to a half share in those properties. Ms. SAMUELS is thus entitled to a half share in the BELMOPAN property and the leasehold property at BURRELL BOOM held in Mr. BUCKNOR'S name. Both properties are to be sold by the court within 6 weeks hereof and the net proceeds of sale distributed in accordance with this order.

44. **Issue 3: Should the court make an order altering the property rights in Lot F32 in favour of Ms. Samuels?**

45. Section 148: 05 subsections (3), (4) and (5) govern this issue. In essence, the court has jurisdiction to alter property rights in property acquired by either party during the common law union on separation and may only make such an order if it is just and equitable to do so in all the circumstances and after

having considered all the factors adumbrated in section 148:05 (5). I will consider the factors in the order set out in s. 148:05(5) bearing in mind that the factors are not listed hierarchically and therefore none is given greater emphasis or importance in the legislation than the others. And that it is the duty of the court (as explained in **Vidrine** at para.77 (approving and adopting the learning expressed in the Australian case of **Mallet v Mallet**) to “**evaluate the factors according to their presence in a given case and to measure the respective contributions of husband and wife in their respective roles. It may be open to a court to conclude on the material before it that the indirect contribution of one party is equal to the financial contribution made by the other to the acquisition of the property but for the court to so conclude the material before it must show an equality of contribution**”. See **Vidrine** para.77.

46. The Court of Appeal also stated in **Vidrine** para78-“**In performing its evaluation it is helpful for the court to remember that care must be taken not to allow the measurable and obvious financial contributions to the acquisitions of properties made by a husband precisely because they are mathematically certain to overshadow the non-financial contributions made by the wife which even when obvious, are not mathematically certain**”.

47. Thus, in exercising its discretion to alter property rights, the court must give such weight to each factor as the court deems fit in the circumstances of each case and measure the respective contributions of the parties.
48. ***S.148.05 (5) (a)* - Financial contributions direct or indirect of the parties to the acquisition, conservation or improvement of Lot F32, or otherwise in relation to Lot F32.**
49. As already determined, Mr.Bucknor bought the property with the aid of a mortgage and Ms.Samuels made no direct financial contributions to its acquisition, conservation or improvement. But she can be said to have made indirect financial contributions as her assistance to the family, household and their various business concerns freed Mr.Bucknor from his domestic duties and allowed him to concentrate on his businesses.
50. ***S.148:05(5) (b)* - Non-financial contribution, direct or indirect, made by the parties in the acquisition, conservation or improvement of the property, including any contribution made in the capacity of housewife, homemaker or parent.**
51. The Court of Appeal in **Vidrine** (page 37 Para. 82) explained that this factor in relation to spouses includes contributions made by the female party in her capacity as housewife, homemaker or parent **to the property** as distinct from her contributions **to the home and family**. This distinction is

also apposite here having regard to the factor enumerated at s.148:05(5) (h).

(See para. 64 hereof)

52. There is no evidence that any works of maintenance or otherwise was carried out on the property by either party. The property was mortgaged and rented out and the rent financed the mortgage. Accordingly, Ms. Samuels made no such contributions.

53. **S.148:05(5) (c) - The effect of any proposed order against the earning capacity of either party to the union.**

54. If an order is made in favour of Ms. Samuels I find that Mr. Bucknor's earning capacity will not be unduly affected as he has other properties (some income-producing) in Belize which he acquired before he began his relationship with Ms Samuels and that whatever order the court sees fit to make will not leave him destitute. I am satisfied that he receives proceeds from the night club and the rental business of approximately \$5000.00 per month. We know nothing of Techtron presently save that it is difficult to contemplate that he would leave a successful business without making arrangements to sell it or have someone manage it on his behalf. Ms.Samuels will obviously suffer no adverse effect to her earning capacity if such an order is made.

55. **S.148:05(5)(d) -The age and state of health of each of the parties to the union and the children born from the union (if any);**
56. The three children are now aged 10, 8 and 7. No evidence was given about any health issues save that the eldest child is asthmatic and requires periodic intubation and medication, so I presume the other two to be in good health. Ms. Samuels, I also treat as in good health as she has testified to no illnesses or disability. She is now about 32 years old.
57. A major part of Mr. Williams' cross examination dealt with the health of Mr. Bucknor. Mr. Williams tried to wrest an admission from Ms. Samuels as to Mr. Bucknor's current state of health, a most unfair undertaking in the circumstances of his non-appearance. The most that Mr Williams got out of Ms. Samuels was that Mr. Bucknor had visited a cardiac specialist, a relative of hers, some years ago in Belize but she was adamant that during their relationship she was not aware that Mr. Bucknor had a heart condition or any health issues save hypertension. She also accepted that as far as she was aware he was living with his relatives in the USA and that that was not his usual style. However I am not prepared to infer from those concessions that Mr. Bucknor is in ill health as Mr. Williams invites me to as that is not a logical or reasonable inference to draw from them. As Ms. Samuels actually lived with Mr. Bucknor for nigh on ten years I grant that she has a good basis

to support her disbelief. It is inimical and unfair to seek to extract confirmation about Mr.Bucknor's current state of health from Ms. Samuels who has not seen or heard from him since he left in 2009 when he chose not to attend or call any witnesses. As there is no evidence of his ill-health I can only conclude that Mr.Bucknor at about 52 is in good health.

58. **S.148:05 (5) (e) - The eligibility of either party for a pension, etc.**

59. No evidence has been given of that fact.

60. **S.148:5 (5) (f) - The duration of the union and the extent to which it has affected the education, training and development of Ms.Samuels.**

61. The Union lasted just over 5 years. However, it is clear that it has had a very adverse impact on Ms Samuels. She entered into this relationship at 17 years while still at junior college and became a mother at a young age, not of one, but of three children in close succession and now is left as their only caretaker. She was subjected to physical and emotional abuse and no doubt this has also damaged her psyche. In my judgment undoubtedly this relationship has impacted negatively on her personal development and well being. She struck me as being an intelligent, ambitious person and most likely if given the opportunity would have gone on to further her education after junior college and have attained a profession which would have enabled her to achieve some measure of independence and a comfortable lifestyle.

Now she is barely making ends meet with three young children to provide for with no assistance from Mr. Bucknor since the separation. It is also artificial to not put the whole relationship in context, which is in reality a ten year association.

62. **S.148:05(5) (g) - The need to protect the position of a woman, especially a woman who wishes to continue in her role as a mother.**

63. I repeat that Ms. Samuels is the mother of three young children and their sole provider. She is in a precarious financial position. She has to supplement her income by working overtime. And, by gifts from family and friends, in short, charity. Certainly her prolonged absence from home due to work, even if the children are in the care of a helper, is to the further detriment of her young family. She needs as much help as possible to ensure that her role as mother can be properly carried out and the children and family properly cared for and maintained to a reasonable standard of living.

64. **S.148:05 (5) (h) - The non-financial contribution made by Ms. Samuels in the role of companion and mother and in raising their children.**

65. Ms. Samuels was a good and faithful companion to Mr. Bucknor during the union and supported him in his every endeavour. She had full care of and responsibility for the children. She was on her own in the USA to give birth to those children at the request of Mr. Bucknor and during her last pregnancy

she was there not only with the new born child but the other two children for about nine months thereafter as it was Mr. Bucknor's wish to migrate to the United States of America and she attempted to set up a home there. It did not work out and she returned to Belize. She was a loving, faithful, supportive and helpful companion to Mr. Bucknor and was his wife in all but name only during their joint relationship. That she made a very substantial and valuable contribution to their lives cannot be gainsaid.

66. **S.148:05 (5) (i) - Any other fact or circumstance that, in the opinion of the court, the justice of the case requires to be taken into account.**

67. Mr. Williams tried to gloss over the evidence of Mr. Bucknor's cruelty to Ms Samuels during the Union but I have no hesitation in accepting Ms. Samuels's evidence on this. That she was subjected to abuse, both physical and emotional during the union is established beyond doubt. On the last night of their union Mr. Bucknor attacked her physically and injured her when she returned to their home from the neighbouring nightclub. She had to seek help from the police and subsequently obtained a protection order. To ignore abuse in a domestic situation is tantamount to doing a grave injustice to the victim and to condoning the acts of the perpetrator. And, contrary to Mr. William's submissions, it is not irrational that a man can be a good provider of material things on the one hand and on the other an abusive partner. I also

accept Ms.Samuels evidence as set out in her affidavits that she was subjected to emotional and physical abuse throughout the relationship, that the children suffered also and that accordingly the last night was not the only time Mr.Bucknor behaved in such an abhorrent manner to her.

68. It is worth noting, and that bolsters her evidence of abuse, that the grounds for the divorce as stated in the decree absolute at Tab JS1 were - **“the Respondent (Mr Bucknor) has been guilty of persistent cruelty to the Petitioner and has frequently committed adultery with Sandra Arnold and Jasmine Samuels”**. In Grenada we say – **“a snake can change its skin but not its nature”**. If Mr. Bucknor received no professional help in relation to the abuse he visited on his wife then it was unlikely that his behaviour would have altered in his relationship with Ms. Samuels, a child-woman solely dependent on him, pretty, pliable and vulnerable - the classic scenario for abusive relationships. Further, I accept her evidence of his sexual liaisons with the helper and some other woman; that in itself is emotional abuse where ostensibly he was in a common law relationship with her and establishing a young family with her. One wonders why she is surprised and hurt at that again having regard to the divorce proceedings in which she was named as a partner in his infidelity to his wife.

69. I also note that Ms. Samuels bore the brunt of providing a home for and all the financial and emotional needs of the children since they broke up and that Mr. Bucknor has not paid one red cent towards their maintenance ever since the Family Court order. At trial the arrears according to Ms Samuels stood at \$ 54,000.00. When Lot 2224 was sold by order of the court, Mr. Bucknor, had he been minded so to do, could have given some if not all of his share of the proceeds towards that debt. Ms. Samuels is constrained to live above her means because her means are insufficient to properly maintain herself and the children and because of Mr. Bucknor's refusal to accept his joint responsibility for their children. To my mind, it would be unjust not to take these matters into account as one has to look at the overall picture of this union in order to determine whether or not it is just and equitable to make an order to alter the property rights in her favour.
70. Taking all the factors into account as mandated by s.148:05 (5) and weighing them, in my judgment Ms. Samuels has made a substantial contribution to their joint lives during the parties' common-law union, not only in her role as companion, parent and homemaker but also as business partner. Mr. Bucknor, in the main provided the money or rather obtained financing for the property and used his business acumen to ensure that the family enjoyed a comfortable standard of living from his various business ventures. In all the

circumstances, Ms Samuels' contribution to the union can be said to be equal in value to his but now as she is the sole provider for the children and has been so since the union broke down she requires more help to maintain her role as parent and homemaker. Accordingly, in all the circumstances it is just and equitable to alter the property rights and gives Ms. Samuels an increased share in Lot F32 of another 20% thus making her total beneficial share therein,70%. Mr. Bucknor accordingly holds this property in trust for them in those shares. The property is to be sold by the court within six weeks hereof and the net proceeds distributed to the parties in the proportion stated after the charge to the DFC has been satisfied.

71. **Issue 4- Whether Ms. Samuels is entitled to a share in the personal property including monies in the Barclays bank account acquired during the union.**
72. Ms. Samuels did not identify this property with any particularity save for the vehicle and the bank account which I will treat separately. Further, I find that Mr.Bucknor consented to her taking away from their home anything that she wanted. She did so although she testified that what she took was mainly her personal effects and necessary articles of furniture, clothing and such like for the children. She had an opportunity to take what she considered she was

entitled to and without more the court cannot aid her further as there is no evidence of what she is specifically claiming.

73. With respect to the vehicle, I accept her evidence that it was a gift and find that she was entitled to keep it as she did and to deal with it as she saw fit. She subsequently sold it. She has not established her claim for a share in any other personal property and therefore no order is made save as to the vehicle to the effect that she had 100% beneficial ownership in it.

74. **Is Ms. Samuels entitled to a share in the proceeds of the Bank account?**

75. With respect to the monies held in the joint bank account at Barclays Bank, Ms Samuels did not contribute to it. However, it can readily be inferred from the manner in which the parties conducted their relationship and the fact that he established the joint account that Mr.Bucknor intended Ms. Samuels to have a beneficial interest in those funds and that there was a common intention that she should have a half share in them and that she acted to her detriment in relying on that common intention. She is therefore entitled to a half share in the monies standing to the credit of that account at the time Mr.Bucknor withdrew the entire balance. The amount was \$18,877.38. Mr.Bucknor must pay her half of that sum, being \$9438.69, within 1 month hereof . If he fails to do so then that sum can be deducted from his share of the proceeds of sale of any of the properties ordered to be sold hereunder.

76. **Issue5-Is Ms. Samuels entitled to maintenance?**
77. Mr. Williams contends that her claim for maintenance should be dismissed for two reasons- (i) it is out of time and (ii), it is not made by a separate petition. He relies on Section 148:09 of the SCJA and the Matrimonial Causes Rules Supreme Court of Judicature (Subsidiary) Act Cap. 91 rule 65.
78. Section 148:09 of the SCJA provides that a party to a common law union shall have the same rights as a spouse to a marriage in respect of himself or their children to apply to the courts for maintenance during the union or upon separation of the parties and that any law now or hereafter in force relating to maintenance for a spouse shall with the necessary modification apply to maintenance for a party to a common law union.
79. To my mind, s. 148:09 is self evident. In essence, a party to a common law union has the same rights to maintenance as a spouse. However, the Matrimonial Causes Rules prescribe the procedure to be followed in matrimonial causes and Rule 65 states that an application for maintenance by a spouse must be made in a separate petition to be filed at any time after decree nisi but not later than one calendar month after decree absolute except with leave of the court.
80. This application is made about four years after the parties separated. There is no question here of a decree nisi or absolute, for the time frame contemplated

by Rule 64 to apply. In any event, if this requirement is to be construed as filing within a reasonable time after separation and if later with leave of the court, I regard Ms. Samuels as having obtained the necessary leave when the court granted her leave to amend the claim to add this relief.

81. With respect to the need for a separate petition for maintenance, I do not think this is appropriate to a common law union as unlike a marriage there is no need to take proceedings to end the union as is necessary in a marriage which envisages divorce proceedings. (Anyway, this duality involves spouses in additional legal costs and the Legislature may see it fit to re-visit this requirement. It is noted that such a requirement does not exist in any other English Commonwealth countries). I therefore hold that the claim for maintenance is properly before the court, it is logical too that it be made with claims for property relief as the one often impacts on the other.
82. Now to the actual law governing maintenance. This is contained in the SCJA s. 152 as explained in **King v King**, and **Vidrine**. S. 152(1) provides- **“The court may, if it thinks fit, on any decree for divorce or nullity of marriage order that the husband shall secure to the wife such gross sum of money or annual sum for any term not exceeding her natural life, as having regard to her fortune, if any, to the ability of her husband and to the conduct of the parties, the court may think to be reasonable.”**

83. And sub- section (2) extends the court's jurisdiction to ordering the husband to pay to the wife such monthly or weekly sums for her maintenance and support as the court may thing reasonable.
84. Applying these provisions to the common law union before us I am concerned with three factors- the fortune of Ms Samuels, Mr.Bucknor's ability to pay and the conduct of the parties during the union. Ms.Samuels has very little financial resources save for her meagre income and the orders the court has made herein, if they are maintained. Mr.Bucknor has the ability to pay maintenance having regard to his property holdings and income as detailed herein. Ms. Samuels' conduct during the union has not been faulted whilst Mr.Bucknor's has. While he admittedly was a good provider of material things he exacted payment by inflicting abuse both physical and emotional on her throughout their union. I note he is supposed to be paying maintenance of \$300.00 a week for the children and has defaulted in doing so. It is a pity that the Court does not have the power to award a lump sum or the transfer of property in lieu of periodical maintenance orders to achieve a clean break and to be free from defaulters. As it is, in all the circumstances I think it just and reasonable that he pay maintenance to Ms. Samuels of one-third of the joint income of the parties less her income. See **Vidrine**, paras. 40-43. Their joint income now is \$6600.00(\$5000.00 his and \$1600.00

hers).However, we must first make allowance for Ms. Samuels' income of \$1600.00 per month and the order in respect of the children of \$1200.00 per month. Accordingly, one- third thus adjusted equates to \$1266.00.00 a month .He must pay this amount monthly to Ms. Samuels commencing from the date hereof until the sale of properties pursuant to the orders made herein have been carried out. That sum is to be secured by a charge on his Coral Groves property. Once Ms. Samuels is in receipt of the proceeds of sale then her fortune would have improved to such an extent that it would be unreasonable to continue the order for maintenance after that.

85. **Issue 6: Enforcement of Family Court Order-sale or set-off.**

86. Mr. Williams readily conceded at trial that there is no dispute as to the Family Court order having been made and in his submissions he did not address the amount owed. In truth, he did not make any specific submissions on this issue. However, I note Mr. William's humble prayer on behalf of his client at page 5 of his submissions - **“while the Respondent dutifully acknowledges his obligations to his children vis a vis the Order of the Family Court, the Applicant has not established either as a matter of fact or law that she is entitled to the reliefs sought and this Honourable Court should so order”**. A fine posture for Mr. Bucknor to take in respect of their children and in the meantime they are to suck salt. What has happened

to the brave old days when men would forego their bread to make sure their children had food? It strikes me as imperative that our laws on maintenance for children should be bolstered by wider and less costly methods of enforcement and that reciprocal arrangements be made internationally to cater for situations where the judgment debtor absconds.

87. I accept, based on Ms. Samuels's testimony, amply supported by the documentary evidence she relied on, that the order was made and that Mr. Bucknor owed \$54,600.00 as at 26 July 2013. He is now beyond the jurisdiction of the Family Court as he lives in the USA, hence her resort to the Supreme Court.

88. Ms. Young submits that the court should enforce the order by sale of Mr. Bucknor's separate property or in the alternative order a set off against Mr. Bucknor's share of the proceeds of sale of any property that Mr. Bucknor is entitled which is ordered to be sold hereunder. Ms. Young submits that the court is properly seised of all property issues and it would avoid a multiplicity of actions if this issue is dealt with now. She relied on s. 14 of the Family Court Act, Cap. 93 s.53 of the District Courts (Procedure) Act and s.38 of the SCJA.

89. First, I am fully satisfied that Mr. Bucknor has had ample notice of the set off application. The set off relief was permitted to be added by order of 24 July,

2012 and is incorporated in the Further Amended Originating Summons of 13th August, 2012; para. 6. He was represented at the hearing. (See order Tab 17). And, his counsel made no opposition at trial to the amendment sought and granted to seek a sale of his property in the alternative.

90. Essentially, s.14 of the Family Court Act provides that an order of the Family Court shall have the same force and effect as an order of a Magistrate's Court and may be executed accordingly. And, s 53 of the District Court (Procedure) Act Cap 97 provides in essence that where there is no personal property of the execution- debtor to satisfy a judgment a party may apply to the Supreme Court to sell the land of an execution- debtor in accordance with the provisions of Order 46 of the Supreme Court Rules.
91. Further, s.38 of the SCJA empowers the court to grant such remedies as the parties may appear to be entitled to in respect of any legal or equitable claim properly brought forward by them in the cause or matter, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicity of legal proceedings concerning any of the matters avoided.
92. I have had regard to the procedural provisions stipulated for by RSC 46, and find that they have been satisfied in the main as the court is seised of all the pertinent information. Why should a person like Ms. Samuels in this situation

be required to bring a wholly new action? The court therefore is of the view that the matter is properly before the court and that an order for sale or set-off can properly be made. Any land owned by Mr. Bucknor can be sold. The Cayo Property is therefore ordered to be sold by the court within 6 weeks hereof to satisfy the judgment of the Family Court. In the event that the net proceeds of sale are not sufficient then any amount left owing is to be set-off against Mr. Bucknor's share of the proceeds of sale of any other property ordered to be sold hereunder.

93. **Costs.** Ms. Samuels has succeeded in her main claims and is entitled to her costs in accordance with the general rule as expressed in CPR 64.5 (1). Mr. Bucknor is to pay prescribed costs to Ms. Samuels in accordance with CPR 64.5 (2) (b) (iii) and Appendix B. This translates to a value of claim of \$50,000.00 and cost of \$12,500.

94. **Summary of Orders Made.**

- a. A declaration that Ms. Samuels is entitled to half share or a 50% interest in the beneficial ownership of Lot F32 and Mr. Bucknor holds Lot F32 on trust for them in those proportions;
- b. A declaration that Ms. Samuels is entitled to a half share or 50% beneficial interest in the Belmopan property and the leasehold property at Burrell Boom held in Mr. Bucknor's name. Both

properties are to be sold by the court within six weeks hereof and the net proceeds of sale distributed in accordance with those proportions; t

- c. A property alteration order in favour of Ms. Samuels is made in respect of Lot F32 increasing her total beneficial share in it to 70% and a declaration that Mr. Bucknor holds the property in trust for them in those shares. The property is to be sold by the court within six weeks hereof and the net proceeds distributed to the parties in the proportion stated after the charge to the DFC has been satisfied;
- d. Ms Samuels' claim to a share in personal property acquired during the common law union is dismissed save in respect of the vehicle in which she had a 100% beneficial interest;
- e. Ms. Samuels is entitled to a half share in the monies standing to the credit of the Barclays Bank account as at July 2006 when Mr. Bucknor withdrew the full balance of \$18,877.38. Mr. Bucknor must therefore pay to Ms. Samuels the sum of \$9438.69 within one month hereof;
- f. Mr. Bucknor must pay to Ms. Samuels the sum of \$1266.00 per month as maintenance commencing from the date hereof until the sale of properties pursuant to the orders made herein have been carried out. That sum is to be secured by a charge on his Coral Groves property.

- g. The Cayo Property shall be sold by the court within 6 weeks hereof to satisfy all arrears outstanding under the order of the Family Court of 2009. In the event that the proceeds of sale are not sufficient then any amount left owing is to be set-off against Mr.Bucknor's share of the proceeds of any other property ordered to be sold hereunder;
- h. Mr.Bucknor is to pay prescribed costs to Ms. Samuels in accordance with CPR 65. 5 in the sum of \$12, 500.

Rita Joseph-Olivetti

Judge, Supreme Court of Belize