IN THE SUPREME COURT OF BELIZE A.D. 2015

CLAIM NO. 76 of 2015

LEONORA E. BODDEN aka LORNA BODDEN **CLAIMANTS**
ELEANOR WILLIAMS

AND

ELIZABETH BERNADETTE GENTLE **DEFENDANT**

BEFORE the Honourable Madam Justice Sonya Young

By written submissions filed by the Claimant on the 22.6.2015 and by the Defendant the 23.6.2015.

Mr. Edwin Flowers, SC for the Claimants.
Mrs. Peta-Gay Bradley for the Defendant.

Keywords: Joint Tenancy – Severance – Statutory Notice to Sever – Sufficiency of Words – The Law of Property Act Cap 190 (The LPA) – The Registered Land Act Cap 194 (The RLA)

DECISION

1. A mother, by her Will, leaves her property at No. 85 West Canal Street (The Property) to her five children, jointly and in equal shares. In 1992, through a deed of assent, her executor duly complies with her wishes. As co-owners in

a joint tenancy, three of the beneficiaries have since died. It is only the latter's death that concerns us. Horace B. Stephen died on the 6th June, 2014. Prior to his death, it is accepted by both parties that, the other two beneficiaries, Eleanor Williamson and Lorna Bodden (the Claimants), in a document they signed before a Justice of the Peace, stated: *"85 Canal Street in Belize City, Belize is currently occupied by Horace Stephen, younger brother of Eleanor Williamson and Lorna Bodden, I Eleanor Williamson and I Lorna Bodden are willing to grant our portion of the property to Horace Stephen."*

2. The defence contends that these words were a release, sufficient to sever the joint tenancy created by the deed of assent. The Claimants dispute this. They have both asked that trial of this issue be bifurcated. The court has obliged and ordered that consideration by written submissions only, would be undertaken. The parties have agreed the issue for determination as:

Whether the joint tenancy was severed to create other interests in the property

3. *"Before I embark on the task, it is appropriate that I remind myself about what severance of joint tenancy means. Again Dillon LJ stated it in simple form in,* ***Harris v Goddard*** *at page 1210, in these words:*

> *"Joint tenancy is a form of co-ownership of property. Its special feature is the right of survivorship, whereby the right to the whole of the property accrues automatically to the surviving joint tenants or joint tenant on the death of any one joint tenant. Severance is, as I understand it, the process of separating off the share of a joint tenant, so that the concurrent ownership will continue, but the right of survivorship will no longer apply. The parties will hold separate shares as tenants in common. Joint tenancy may come to an end through other acts which destroy the whole concurrent ownership …"* ***per Awich J at***

paragraph 20 in Fernando Aragon v Primitivo Aragon and Jose Aragon Claim No. 251 of 2005 (Belize).

4. There can be no dispute that prior to the LPA a joint tenancy could be severed both at law and in equity. However, with the enactment of the LPA and in particular Section 38, a legal joint tenancy can no longer be severed. It must continue undisturbed unless it is destroyed in its entirety. The equitable tenancy, on the other hand (which is created simultaneously), continues to be severable and so allows for the avoidance of jus accrescendi or survivorship. The RLA by section 103, which was enacted after the LPA, also allows for the severance of the beneficial interest only.

5. The RLA states that this could be done by the desirous joint owner giving the other owners notice in writing **and** doing such other acts or things as would, in the case of personal estate, have been effectual to sever the beneficial interest. Whereas the LPA mandates that severance could likewise be effected by the desirous joint tenant giving notice in writing of such desire **or** by doing such other acts or things as would, in the case of personal estate, have been effectual to sever the tenancy in equity.

6. The use of the conjunctive **'and'** in the RPA and the disjunctive **'or'** in the LPA cannot be overlooked. Those words change the effect of each provision significantly. It seems that severance of a beneficial joint tenancy requires less formality and effort than severance of a beneficial joint ownership. For the purposes of this matter at bar, however, I do not feel it necessary to discuss the nuances of the two. Moreover, since what has been provided to the court is a deed of assent and not a certificate of title issued

under the RLA the court will proceed on the assumption that The Property remains unregistered and the LPA applies.

7. Before the LPA, a joint tenancy could be severed by destroying the unity of time, title or interest. This could only be done through alienation by any joint tenant, acquisition of a greater interest, mutual agreement or course of conduct and homicide. The LPA introduced an additional method of a unilateral severance by the desirous joint tenant giving written notice to the other tenants. I repeat for clarity, that this is an additional method and not the only method as Counsel for the Claimant has submitted.

8. A clear reading of Section 38 (2) of the LPA reveals this. In fact, Lawton LJ interpreted the comparable provision [Section 36(2)] of the U.K. Law of Property Act 1925 in ***Harris v Goddard (1983) 3 All ER 242 at 245,*** thus *"In Williams v Hensman (1861) John & H 546, 70 ER 862 Page Wood V-C said that a joint tenancy could be severed in three ways, that is by disposal of one of the interests, by mutual agreement and 'by any course of dealing sufficient to intimate that the interests of all were mutually treated as constituting a tenancy in common'. The words in s 36(2) 'do such other acts or things as would ... have been effectual to sever the tenancy' put into statutory language the other ways of effecting severance to which Page Wood V-C referred in Williams Hensman. The words "and any tenant desires to sever this joint tenancy in equity, he shall give to the other joint tenants a notice in writing of such desire' operate to extend the mutual agreement concept of severance referred to in Williams v Hensman."*

9. In the instant case, we are presented with a document signed by two of the joint tenants, indicating their willingness to release their shares to their younger brother. A readiness or inclination to release is clearly not a release

and is not sufficient to give him a beneficial interest in all the property, but is it sufficient to sever.

10. For a determination of this issue one must consider only whether the signed document constituted notice to sever. I am of this opinion as that is the only document before the court and the only matter which was discussed in the submissions by both Counsel for the parties. Further, there are no witness statements yet filed and to consider a course of conduct would inevitably involve consideration of such evidence. Counsel for the defence raised the issue of mutual agreement. One cannot accept that this was expected to be seriously considered, as such an agreement has to have been between all the existing joint tenants. There is not one iota of evidence, even in the pleadings, that they all agreed whether by their conduct or otherwise that it was their intention to destroy the joint tenancy.

11. To my mind a better statement of the issue would have been: **"Whether the letter dated 29th March, 2012, constituted a valid statutory notice to sever the joint tenancy."**

Notice to Sever:

12. Although the LPA does not specify any particular form which this written notice must take, it is clear that the notice must be given inter vivos and not by a Will. It is also clear that the giving of this notice is a unilateral act. The Claimants' argument that the document did not state what was to become of Howard Stephen's interest is therefore of no importance. As Henderson J in ***Quigley v Masterson (2011) EWJC 2529*** stated *"Because giving notice of*

severance is a unilateral act, it does not depend in any way on the agreement or other conduct of the recipient."

13. Moreover, it is the actual words used which are important, and not the author's state of mind. In ***Kinch v Bullard (1989) 1 WLR 423 at 429,*** Neuberger J opined on the proper construction of Section 36(2) of the UK Act thus *"... it is scarcely realistic to think that the legislature intended that the court could be required to inquire into the state of mind of the sender of the notice in order to decide whether the notice was valid."*

14. However, the words must manifest a clear intention to sever and the notice must be communicated to be effective. There is no issue here as to whether the notice was communicated since it is the Defence who has presented it. What must now be considered is whether the words used amounted to a statement of an unequivocal intention to sever – Modern Land Law by Mark Thompson p 371.

15. The Court of Appeal in ***Harris v Goddard (ibid),*** while considering the sufficiency of words used in a divorce petition, held that the written notice must (a) be designed to take effect forthwith and (b) evince an intention to sever immediately. Dillon LJ went on to say at p 246 – *"I am unable to accept the submission of Counsel for the Plaintiffs that a notice in writing which shows no more than a desire to bring the existing interest to an end is a good notice. It must be a desire to sever which would have the statutory consequences."*

16. ***Megarry & Wade, The Law of Real Property 6th ed paragraph 9-044*** relied on ***Gore v Carpenter (1990) 60 P & CR 456*** and explained that a *"mere*

proposal to sever made in the course of negotiations will not constitute a notice within the Section."

17. To my mind, the limitations set by the Statute for the notice to sever are significant. The courts have not accepted words which sought anything less than an unequivocal and immediate severance. I therefore find that the Claimants' stated willingness to release their interest was nothing more than an indication of what they were minded to do. It was not a release nor was it capable of constituting the Statutory notice required by the LPA or the RLA.

18. The matter is adjourned to chambers for further Case Management Conference on 20th July, 2015.

SONYA YOUNG
JUDGE OF THE SUPREME COURT
14.7.2015