

**IN THE SUPREME COURT OF BELIZE, A.D. 2017**

**CLAIM NO. 372 OF 2009**

**BETWEEN:**

**SHAWN SPARKS  
Personal Representative for the  
Estate of Terry M. Sparks**

**Claimant**

**AND**

**MELISSA JUDE LUCA**

**Defendant**

**BEFORE:** Hon. Chief Justice Kenneth Benjamin.

**Appearances:** Mrs. Magali Marin-Young for the Claimant.  
Mr. Leo Bradley for the Defendant.

**JUDGMENT**

[1] The present Claim involves a dispute as to the entitlement to the property described as follows:

"ALL THAT piece or parcel of land situated in the Calla Creek Agricultural Layout, Cayo District comprising 6.950 acres as shown on Entry No, 6515 of Register 17, surveyed by J. E DePaz, Licensed Land Surveyor, TOGETHER with all buildings and erections standing and being thereon, and ALL THAT piece or parcel of land situated in the Calla Creek Agricultural Layout, Cayo District comprising of 6.93 acres as shown on Entry No. 7056 at Register 17, surveyed by J. E. DePaz, Licensed Land Surveyor, TOGETHER with all buildings and erections standing and being thereon."

The property is located in the Cayo District and enjoys a picturesque view of the Mayan Temple, Xunantunich.

[2] Terry M. Sparks died in the United States on January 25, 2009 and is survived by two children. The Claimant is his son and the personal representative of his estate, having been so appointed to act by the Arizona Superior Court, Yavapai County, in the State of Arizona. The Defendant is a massage therapist and yoga instructor. The property was conveyed by Marie Katherine Devine into the name of the Defendant and Terry M. Sparks ("the deceased") by a deed of conveyance dated November 27, 2008 having been sold for a purchase price of US \$350,000.00.

[3] The Claim was instituted on April 27, 2009 and the Claimant seeks the following:

- (1) A declaration that the properties described below in the name of Terry M. Sparks, deceased and the Defendant is (sic) held by the Defendant on trust for the estate of Terry M. Sparks.
- (2) An order that the Claimant be appointed as trustee of the trust and that the Defendant be removed as trustee.
- (3) An order that the Defendant do execute and deliver to the Claimant a conveyance of the properties into the name of Shawn Sparks representative of the Estate of Terry M. Sparks, as trustee.
- (4) Further or other relief.
- (5) An order that the Defendant do pay the Claimant's costs of this claim.

The Statement of Claim recited a contract in writing dated October 6, 2008 made between the Defendant and the Deceased of the first part and Marie Katherine Devine of the other part by which the property was sold at a total contract price of BZ \$700,000.00 or US \$350,000.00 which sum was paid entirely by the deceased

[4] It was averred that on March 16, 2009, the Defendant filed an Inventory in the Supreme Court (Probate Side) in the estate of the deceased, as a survivor of the legal and beneficial estate in the property and became the sole beneficial owner. It was also

stated that she has threatened to deal with the property as though it is absolutely hers and refuses to acknowledge the interest of the deceased's estate. The Claimant asserted the entitlement to an order that the Defendant forthwith convey the property to the Claimant absolutely.

[5] The Defendant acknowledged service and filed an amended Defence on September 23, 2009. The written contract and the Deed of Conveyance were admitted. The Defendant did not dispute that the deceased paid the entire purchase price to the vendor. It was admitted that the Defendant filed the Inventory but it was disputed that the estate of the deceased has any interest in the property or that the Claimant is entitled to an order conveying the property to him or to any order.

[6] The Defence pleaded that further and/or in the alternative the Claimant was estopped from asserting that the estate has an interest in the property or that the property should be conveyed to the Claimant by virtue of certain particulars as to the deceased's conduct which induced her to believe that the property was to be jointly owned with the right of survivorship to her as sole beneficial owner of the property in the event of the deceased's death. The Reply joined issue and it was denied that the deceased had made any representation to the Defendant, but rather, that it was the defendant who induced the deceased to purchase property in Belize. It was further stated that the Defendant did not relocate to Belize until after the present proceedings were commenced.

## FACTS

[7] The deceased and the Defendant met in 2005 in Sedona, Arizona. He was then a divorcé with two living adult children. He had moved from Enumclaw, in the State of Washington, where he had lived when married to his ex-wife, Pamela Sparks, between 1966 and 1988. The Defendant treated the deceased professionally with yoga and massage.

[8] The deceased had worked for many years as a courier. In 2000, his son, Ryan, passed away and the deceased and his ex-wife as parents received a settlement which

was shared equally, and, in turn, with their two surviving children and other relatives. At the time he met the Defendant, the deceased was suffering from arthritis and he had relocated to Sedona to take advantage of the warm weather. The Defendant was the single mother of a female minor.

[9] The Defendant was in the business of conducting yoga retreats. Several months after meeting the deceased, they decided to become business partners. They consulted a lawyer, Adrienne Hanley, and together they formed "The Vision Exchange LLC", a limited liability company with its place of business in Sedona, Arizona. The Defendant was listed as the manager and both the Defendant and the Deceased were listed as members. The Articles of Organisation were executed on July 18, 2008. The Operating Agreement is dated November 5, 2008 and Exhibit A thereto stated that the respective percentage interests of the Defendant and the Deceased were 67% and 33% in the company; Certificates numbers 1 and 2 were issued evidencing the said percentage interests. The parties entered into a Joint Property Agreement by which the deceased agreed that he held his percentage interest as "joint tenants with the right of survivorship with Melissa Jude Luca". It was recited in the agreement that as a condition for allowing the deceased to be a member of the company, the Defendant demanded that in the event of his death, while a member of the company, his shares would be transferred to her.

[10] Between August 2008 and January 2009, the deceased wrote cheques for various amounts ranging from \$650.00 to \$6,000.00 to the Defendant. In December 2008, he wrote cheques to pay for legal services rendered to the Defendant and for insuring of her vehicle in the United States of America.

[11] In June 2008, the Defendant came to Belize to conduct a retreat in Hopkins. She met Katherine Devine who owned a property in the Cayo District. On a subsequent visit to Belize with the deceased a few months later, an agreement was entered into for the sale and purchase of that property which is now the subject of these proceedings. That agreement was dated October 6, 2008 and was entered into between Marie Katherine Devine as the vendor and the Defendant and the deceased as the purchasers. There was no mention in the agreement as to the nature of the tenure of the purchasers,

whether jointly or as tenants-in-common. A deposit of US \$100,000.00 was paid out of the total purchase price of US \$350,000.00. The said deposit was paid on October 10, 2008 by wire transfer by the deceased as was the balance of US \$250,000.00 on November 28, 2008. The Defendant freely admitted that the entire purchase price was paid by the deceased. There is also evidence that the deceased paid for the construction of cabanas, for the building of bamboo furniture by Conrado Felipe Assales and for other works on the property.

[12] Rhonda Smith, a former vice president of Bank of America, testified as to her dealings with the deceased as his banker. She recalled that there were over fifty transactions face to face or over the telephone with the deceased. In particular, she recalled one transaction, the date of which she did not remember, for the wire transfer of funds to purchase property in Belize. She said that she had seen a copy of the contract and observed that it was written as joint owners with another person named Melissa. The witness recounted a telephone conversation she then had with the deceased. In her oral testimony she repeated that she noted that it was stated to be 'jointly' on the contract.

[13] She told the Court in her examination-in-chief that the deceased told her in response to her query that he wanted the property to go to his children if anything were to happen to him. He also told her he would consult his Attorney. As previously iterated, the agreement did not contain the words 'joint owners' or "jointly". However, being a lay person seeing two persons named as purchasers, the concept of joint ownership would come to mind. Learned Counsel for the Defendant did not suggest to her that the conversation never took place. Accordingly, it can be accepted that the deceased did express the desire to leave the property to his children upon his death.

[14] The conveyance of the property was dated the 29<sup>th</sup> of November 2008. It was executed with the signature of the vendor, Marie Katherine Devine, but the purchasers, Melissa Jude Luca and Terry M. Sparks, did not sign the document. Of significance is the word 'jointly' appearing in brackets after the names of the purchasers at the beginning of the document. However, there is no tenendum clause to indicate how the property was to be held by the purchasers.

[15] The Defendant pleaded that the deceased's intention was that the property be held jointly with her with the right of survivorship. In her witness statement, she wrote that the property was bought in their joint names. It was explained that The Vision Exchange LLC was set up to protect them from personal liability in the event a client suing for injury while at the retreat. She recited the shareholding of the company by which they were joint tenants with a right of survivorship.

[16] No doubt in an effort to explain why the property was not put in the name of the company, the Defendant at para. 23 of her witness statement stated:

“In purchasing the property Terry Sparks and I decided not to put it in the name of the LLC as we had been advised that anything owned by the LLC would, if it were sued, be available to satisfy any judgment given against it. However, we wanted it purchased with the same objectives in mind. We went with Kate to Jose DePaz and we discussed with them what was the best way to achieve these objectives and we decided that it would be by way (sic) of transferring the property to Terry Sparks and I as beneficial joint tenants.”

Katherine Devine's witness statement dealt with the same issue in the following paragraphs:

“7. At the time of signing the agreement there was a great deal of discussion between Terry Sparks and Melissa Jude as to whether it would be better to put the property in their business company name (The Vision Exchange) or to put it in their personal names as joint owners.

8. They eventually decided after discussions with me to have the property conveyed to them in their own names as joint tenants in order to avoid any possibility of the property becoming entangled in any legality, such as law suites (sic), which might occur with operation of The Vision exchange.”

The conveyance was drawn up by Jose DePaz who did not appear as a witness.

[17] She further stated that their plans were to culminate in complete relocation to Belize by May 2009. This was corroborated by the witness, Marisol Sanchez, who was to be hired to manage the retreat. The new centre for The Vision Exchange was to be in Belize at the property. She started to move to Belize in November 2008 and gave up her business in Arizona. Thereafter, herself, her daughter, the deceased and a friend spent Christmas and New Year's Day in Belize returning to the US on January 10, 2009. They remained in Sedona until January 22, 2009 when the deceased left for Washington. The deceased had just attended a birthday dinner for his daughter, Kimberly Sparks, when he passed away later that night.

[18] The children, ex-wife and sister-in-law of the deceased testified as to their conversations with him prior to his death. The Claimant said that his father told him he had invested in the property and hoped to earn income from it to support himself. The deceased told him he had met the Defendant who was a spiritualist and she had asked him to invest in her business with a guaranteed return of \$10,000.00 per month. As far as he understood, this was the first time his father was undertaking an investment personally having only invested previously in the stock market. The Claimant said that the deceased never told him that he intended to have the Defendant inherit the property. He admitted receiving a cheque once per year from his father from the time of the settlement after Ryan's death until the deceased's death.

[19] The deceased's daughter, Kimberly Sparks, stated in her witness statement that her father had called her in October 2008. He told her that he was investing in the property which he had told her about in July 2008. She said he and the Defendant were going to operate a spiritual retreat on the property. The arrangement was that he would put up the money for the property and when the retreat started to make money she would make payments to him. In cross-examination, she said that he was excited about the investment as the Defendant had told him that he would be making \$10,000.00 per month. She too admitted receiving a cheque once per year from her parents from the settlement for her brother. Neither of the children had visited their father in Sedona or in Belize nor had they met the Defendant prior to his death.

[20] Pamela Sparks was divorced from the deceased in 1988. They shared the settlement from the death of their son. However, they continued to associate with each other while he lived in Enumclaw up to 2006. She was told by the deceased about the Defendant in July 2008. He told her they had recently gone into business together in Sedona to hold spiritual seminars. She said he intimated to her that the Defendant wanted him to go with her to Belize in September 2008 to see property. She next spoke to him in October 2008 when he told her that he was in the process of buying the property to start a spiritual retreat. From that conversation, she understood that he was putting up all of the capital, the Defendant would be conducting retreats on the property and that he would earn an income of \$10,000.00 per month. The deceased's sister-in-law, Jaclyn Kuhns, also related a conversation with the deceased on July 31, 2008 on the occasion of his grandson's birthday in Enumclaw. She related a similar conversation with the deceased to that of her sister, Pamela Sparks, to the effect that he had met the Defendant at a spiritual retreat at Sedona, they had become friends and that they would be starting seminars together in Sedona. She said he told her the Defendant wanted him to go to Belize to build a spiritual retreat that had the potential to earn \$10,000.00 per month.

[21] The witnesses from the family of the deceased did not relate any conversation with the deceased as to how he wished the property to be disposed of upon his demise. However, the common thread was that the property was to be a business investment from which he expected a return.

[22] The Defendant chronicled the relationship she had with the deceased from becoming friends to eventually business partners. They entered into a legal business partnership beginning with the formation of The Vision Exchange LLC in respect of which they were advised by a lawyer hired by the deceased. She highlighted her stipulation which was reflected in the Joint Property Agreement which was previously referred to in this judgment at para. 9. She became the manager as she would be making most of the decisions following up on her creation and based on her expertise. She found property in Belize after meeting Katherine Devine. She returned to the USA and discussed with the deceased the purchase of the property for the establishment of



a centre for The Vision Exchange. It was contemplated that the property would eventually become the permanent home for herself and her then 8-year old daughter. The property was purchased as she stated in their "joint names". The deceased also made a down payment for the construction of bungalows for the retreat. She explained that the deceased and herself set up The Vision Exchange LLC to protect themselves from personal liability in the event of the clients being injured at the retreat and commenced suit. The Defendant highlighted the respective shareholdings allocated to herself and the deceased as joint tenants with the right of survivorship as stated in the Joint Property Agreement.

[23] The Defendant went on to explain in para. 23 of her witness statement that the property was not put in the name of the company to protect it from being available in the execution of a judgment against the company. Hence, after discussions, it was transferred into the names of herself and Terry Sparks as "beneficial joint tenants".

[24] In cross-examination, the Defendant responded that the deceased had paid a deposit of US \$50,000.00 to Eric Scobar for the building of cabanas after the property was purchased. The property was paid for entirely by the deceased who wired the money in tranches of \$100,000.00 US and US \$250,000.00. He also paid for the incorporation of the LLC. She admitted that at the time she met the deceased she did not own her own property. All in all, she conceded that the deceased financed the business to the extent of 100%. At the time, her own business owned yoga mats and massage tables and had a website.

[25] In response to learned Counsel for the Claimant, she at first said that the business was not to be separate and apart from the property as it was to be sited there. However, she said that the company was treated as separate to shield it from law suits.

[26] As to the conveyance, she said that it was prepared by Jose DePaz who is a land surveyor. The document was not signed by herself and the deceased. At the time, the deceased did not consult an attorney unlike when the company was being set up.

[27] The Defendant was shown the Inventory she caused to be filed in the Supreme Court – Probate Side. The document was signed by her and in part reads:

**“DEVOLUTION(3)**

The said half interest in the said lots passes by virtue of the joint ownership thereof to Melissa Jude Luca.”

Having read this statement, she accepted that a half interest was less than the 67% reflected in the Joint Property Agreement.

[28] In response to learned Counsel, the Defendant said that the bamboo furniture belonged to the business and was paid for by the deceased. Also, the website team that was hired was paid from the funds of the deceased. She was shown the cheques exhibited by the Claimant referred to in para. 10 above and she admitted they were written to her by the deceased. Up to the time of the deceased’s death, the company was not earning any money although the deceased paid her for her services to him when he was a client and she got paid for the work she did. The company had an account into which the deceased paid \$10,000.00 and for which the Defendant had a debit card which she used to wire funds. In short, as she conceded, the entire outlay of funds for the business was provided by the deceased, Terry Sparks.

[29] The testimony of Roberta Hanley was devoted to pursuing the thesis that the Defendant was disrupting her whole life to move to Belize with her daughter. She accused the deceased’s family of being greedy. Both herself and the Defendant said that the deceased’s family never visited him in Sedona. This witness did not relate any conversation with the deceased as to how he wished the property disposed of upon his death.

**THE LAW**

[30] The starting point as to joint ownership is the Law of Property Act, Chapter 190 which enacts as follows:

“36(2). Where, after the commencement of this Act, the title to land vested in more persons than one, the certificate of title or the title deed thereto, notwithstanding anything to the contrary in this Act, shall operate

to vest the title in the grantees as joint tenants upon the statutory trusts hereinafter mentioned.”

The conveyance prepared by Jose DePaz referred to the purchasers, the deceased and the Defendant, as taking ‘jointly’, the word being in parentheses. However, there was no tenendum clause and they did not sign the conveyance to confirm the use of the word ‘jointly’. Hence, there is no express declaration in writing as to whether the beneficial interest is held by joint tenancy or tenancy in common. This brings into effect section 43(1) of the Law of Property Act which states that an interest in land cannot be created unless in writing signed by the person creating it. The net effect is that based on the conveyance there is no express declaration as to how the beneficial interest was to be held by the grantees.

[31] Section 43(2) of the Law of Property Act expressly states that the creation or operation of a resulting or implied trust is not subject to the requirement of an instrument in writing. A resulting trust arises in equity by operation of law for the benefit of the transferor. There is a presumption in equity that the transferor did not intend to take the property beneficially. By section 43(2), the resulting trust is created by operation of law without formality and need not be in writing (see: Snell’s Equity 31<sup>st</sup> ed. para. 23-01).

[32] In this case, there is no express indication on the part of the Defendant and the deceased as to the intention of the deceased as the person providing the purchase price as to the beneficial interest. A presumption therefore arises that he intended to retain the beneficial interest for himself, and a resulting trust is thereby created. The trust of a legal estate results to the man who advances the purchase money (per Eyre CB in **Dyer v Dyer (1788) 2 Cox 92** at p. 93). The presumption equally arises where the person advancing the purchase money makes the purchase in the names of himself and a third party as in the present case (see: Hanbury & Martin, Modern Equity 15<sup>th</sup> ed. p. 254). The presumption can be rebutted upon proof as to the transferor intending the transferee to take the property beneficially. The position in equity was explained by Lord Browne-Wilkinson in **Westdeutsche Landesbank Girozentrale v Islington LBC [1996] A C 669** at pp. 708 – 709 in the following dictum:

“Under existing law a resulting trust arises in two sets of circumstances: (A) where A makes a voluntary payment to B or pays (wholly or in part) for the purchase of property which is vested either in B alone or in the joint names of A and B, there is a presumption that A did not intend to make a gift to B: the money or property is held on trust for A (if he is the sole provider of the money) or in the case of a joint purchase by A and B in shares proportionate to their contributions. It is important to stress that this is only a presumption, which presumption is easily rebutted either by the counter-presumption of advancement or by direct evidence of A's intention to make an outright transfer: see: Underhill and Hayton pp. 317ff, Vandervell v IRC [1967] 1 All E R 1 at 8, [1967] 2 AC 291 at p. 312ff and Vandervell's Trusts (No. 2), White v Vandervell Trusts Ltd. [1974] 1 All E R 47 at 64ff [1974] Ch 269 at p 288ff. (B) Where A transfers property to B on express trusts, but the trusts declared do not exhaust the whole beneficial interest: *ibid* [1968] 3 All E R 651, [1970] A C 567. Both types of resulting trusts giving effect to the common intention of the parties. A resulting trust is not imposed by law against the intentions of the trustee (as is a constructive trust) but gives effect to his presumed intention.”

Consistent with this dictum is that of Slade, LJ in Goodman v Gallant [1986] 1 All E R 311 at p. 314 a – e. The unchallenged evidence is that the deceased advanced the entire purchase price for the property. Hence, a presumption arises that he did not intend to make a gift of the property to the Defendant who holds same (with his estate) on trust for the estate of the deceased.

[33] The presumption of advancement does not arise in this case as the deceased and the Defendant were not husband and wife nor was he in *loco parentis* to her. But rather, they were mere friends who had entered into a business arrangement to operate a spiritual retreat as evidenced by the incorporation documents of The Vision Exchange LLC. However, the presumption of a resulting trust can be rebutted by evidence of the actual intention of the purchaser. This is a question of fact to be decided on the basis of

all the circumstances of the case with the object of ascertaining the real intention of the de facto purchaser (see: Snell's para. 23:09).

[34] Learned Counsel for the Claimant relied upon the classic maxim of *ins accrescendi inter mercatores pro beneficio commercii locum not habet* (the right of survivorship has no place among merchants) to emphasize the fact of there being a business arrangement between the deceased and the Defendant which was formalized in legal documents. In this regard, her written submissions cited Sir Joseph Jekyll, MR in **Lake v Craddock [1929] (1558-1774) All E R Rep 417**. In that case five persons joined to purchase land intending to ..... it and contributed proportionately. One person left the partnership and the remaining four purchased other land for the same purpose. Some of the partners died and one of the surviving partners brought an action for an account. The learned Master of the Rolls decreed that:

“The survivorship should not take place, for the payment of money created a trust for the parties advancing it and an undertaking upon the hazard of profit or loss was in the nature of merchandising, when the *ius accrescendi* was never allowed. Supposing one of the partners had laid out the whole of the money, and had happened to die first, he must, according to the ordinary construction, have lost all, which would have been unjust.”

The same approach was adopted by the Court of Appeal of Jamaica treating the right of survivorship as being incompatible with the co-ownership of several parcels of land acquired by two persons pursuant to a joint undertaking. In **O L Panton etc v Dorothy Roulstone (1976) 24 WIR 462**, the court was unable to ascertain the extent of the parties' respective contributions and held that the parcels of land, though held in their joint names, did not devolve upon the surviving party by the doctrine of survivorship.

## **CONCLUSIONS**

[35] The issue to be determined is whether the entire property passed to the defendant upon the death of the deceased. The deceased and the Defendant were business partners. The entire business was financed exclusively from the funds of the

deceased. They were meticulous in seeking legal advice as to the formation and allocation of shares in the entity incorporated as The Vision Exchange LLC. The Defendant was adamant that she maintain control as the Manager and held the majority share of 67% while the deceased held the remaining 33%. The documentation expressly conferred on her the right of survivorship upon the death of the deceased. Of that, there is no doubt. By contrast, the single word "jointly" in parentheses was inserted in the conveyance from Marie Katherine Devine and it was not signed by the deceased and the Defendant as purchasers. There was therefore no express declaration as to the effect of the word "jointly". The conveyance was drawn by a layman without the benefit of legal advice. The agreement of sale and purchase of 6<sup>th</sup> October 2008 is of no assistance in this regard.

[36] There is no direct evidence that the deceased intended the Defendant to have a right of survivorship unlike in the incorporation documents. This is against the background of the Defendant stating that the clear intention was to keep the property apart from the business, albeit to eliminate it from being liable to execution. This was supported by the testimony of Marie Katherine Devine. She did not state that the deceased intended to make a gift of the entire property to the defendant or more specifically that he had addressed the question of what he intended upon his death.

[37] The closest evidence was derived from the testimony of Rhonda Smith who testified that she had discussed with the deceased the status of the property if something were to happen to him. He told her he wanted his children to acquire the property which could only be the property in Belize.

[38] The Defendant referred to the shareholding in the company and stated in para. 23 of her witness statement "we wanted it purchased with the same objectives in mind ... we decided that it would be (by) way of beneficial joint tenants". This statement was plainly self-serving and was not presented with any specificity as to time, date and circumstance.

[39] It is open to the Defendant to rebut the presumption of a resulting trust in favour of the deceased, he having advanced the entire purchase price. In her haste to acquire full ownership of the property, the Defendant filed an Inventory describing her

entitlement to be a half share. This was inconsistent with the respective percentage interest she holds in the company. This matter gave the Court an insight into the thought process of the Defendant and was damaging to her credibility. There is also the presumption of tenancy-in-common given that the deceased and the Defendant were business partners. Here again, there was nothing in the evidence to suggest that the deceased had moved the arrangement from that of business partners.

[40] The Defendant and her mother, Roberta Hanley, attempted to paint a picture of the deceased being estranged from his family. This was plainly disingenuous since, notwithstanding that his children did not visit him in Sedona, he was obviously welcome at family gatherings and felt obliged to attend his grandson's birthday celebration soon after which he met his demise.

[41] On the basis of the foregoing, I am unable to discern evidence to rebut the presumption of a resulting trust and I reject the Defendant's submission that she is entitled to the right of survivorship as a joint tenant.

#### ORDERS


[42] (1) It is hereby declared that the property described in paragraph 1 herewith is held by the defendant in trust for the estate of Terry M. Sparks, deceased.

(2) It is ordered that the Claimant be appointed trustee in the stead of the Defendant who is hereby removed as trustee.

(3) It is further ordered that the Defendant do execute and deliver to the Claimant a Conveyance of the property into the name of Shawn Sparks as personal representative of the estate of Terry M. Sparks, deceased, as trustee or in default such conveyance shall be executed by the Registrar of the Supreme Court.

(4) The Defendant shall pay to the Claimant the sum of \$15,000.00 by way of costs.

**DATED this 6<sup>th</sup> day of October, 2017.**



**KENNETH A. BENJAMIN**  
Chief Justice  
BELIZE