IN THE SUPREME COURT OF BELIZE, A.D. 2016

ACTION NO. 17 of 2016

IN THE MATTER OF An Application by Rutilia Olivia Supaul under Sections 148E and 148H of the Supreme Court of Judicature Act (Cap. 91) of the Laws of Belize.

BETWEEN

RUTILIA OLIVIA SUPAUL	**APPLICANT**
AND	
GULAB LALCHAND	**1st RESPONDENT**
BENZER INTERNATIONAL CO. LTD.	**2nd RESPONDENT**
NIMMI LALCHAND	**1st Interested Party**
MIRIANY LALCHAND	**2nd Interested Party**
DEMI LALCHAND	**3rd Interested Party**
DEMI LALCHAND (As Trustee for HITESH LALCHAND	**4th Interested Party**

Before:	**The Hon. Mde. Justice Griffith**
Dates of Hearing:	**22/11/2016 and 17/01/2017; 15/03/2017 (Oral Decision)**
Appearances:	**Mrs. DeShawn Arzu-Torres and Mrs. Julie Ann Ellis-Bradley for the Applicant; Mrs. Magali Marin-Young S.C. and Mr. Allister Jenkins for the 1st Respondent; and Mrs. Yogini Lochan-Cave for the 2nd Respondent and Interested Parties.**

RULING

Introduction

1. This is an originating summons for division of property pursuant to section 148E of the Supreme Court of Judicature Act, Cap. 91, that being the section which enables the Court's jurisdiction to declare and alter property rights in relation to parties to a common law union. The application also prays relief pursuant to section 148H of Cap. 91, this being the section which enables the Court to set aside transfers of property made for the purpose or likely to have the effect of defeating any orders made or to be made under section 148E. The substantive parties are Rutilia Supaul, the Applicant; Gulab Lalchand, the 1st Respondent; and Benzer International Co., the 2nd Respondent. The interested parties are the four children of Mr. Lalchand.

2. A number of interlocutory applications have been filed by both the substantive parties and the interested parties, but of primary concern, is the 1st Respondent's challenge to the Applicant's assertion that they were involved in a common law union as defined by the Act. Given that the non-existence of a common law union would be dispositive of the entire proceedings, the Court directed that the issue be tried as a preliminary issue. Additionally, the 1st Respondent raised the issue of estoppel by deed in relation to an agreement executed by the parties in July, 2011, as potentially dispositive of the application. This issue is therefore also the subject of the trial of the preliminary hearing.

Issues

3. The issues for determination in this preliminary hearing are as follows:-
   (i) Were the parties Rutilia Supaul and Gulab Lalchand involved in a common law union as defined by section 148D of Cap. 91, and if so what are the material dates of commencement and termination of such union.
   (ii) Is Rutilia Supaul by virtue of the existence of the agreement dated July, 2011 between herself and Gulab Lalchan, estopped from bringing her claim for declarations and alternation of property rights between the parties?

Background

4. A brief neutral account of the facts commences with the Applicant and 1st Respondent having met in late December, 2006 and sometime in 2007 beginning an intimate relationship. The parties were both business persons and had children from prior relationships (the Applicant 2 daughters and the Respondent 3 daughters and 1 son), but had no children together. The parties engaged in a number of business transactions and ventures together, and lived or visited with each other to some extent in several locations in Belize, until they finally parted ways in 2015. Neither party denies that they had business dealings together, nor that they lived with each other for some period. What is denied is the length and standing of their relationship, as well as the nature of their business dealings insofar as the extent to which those dealings represented the nature of their relationship.

Issue (i) – The existence or not of a common law union.

Evidence of Parties

5. The Applicant Ms. Supaul alleges that the parties started living together as man and wife in August, 2007 and that the relationship finally ended in October, 2015. In particular, Ms. Supaul alleges that the union was defined through four phases relative to where the parties lived. These phases were as follows:-

   (i) August, 2007 – Easter, 2009 the parties commenced living together (with the Applicant's two daughters), in Cohune Walk, Belmopan in premises rented by the Applicant;

   (ii) Easter, 2009 – July/August, 2011 the parties moved (with the Applicant's 2 daughters), from Belmopan to rented premises in Santa Elena, Cayo, (including a short period at a small apartment known as 'the VIP premises' after they were asked to leave the first rental premises);

   (iii) August, 2011 – September, 2015 the parties moved from Cayo to rented premises in 6th Street, Corozal to operate a business in the Free Zone. The Applicant's 2 daughters moved back to Belmopan in the Maya Mopan area to a house owned by the Applicant. Subsequently the Applicant's younger daughter and the Respondent's son went to live with them in Corozal;

   (iv) September, 2015 – October, 2015, the parties (with the Applicant's younger daughter and Respondent's youngest child), moved from 6th Street, Corozal to Venezuela Site, Corozal.

   In support of her claim to the existence of a common law union, Ms. Supaul relied upon the evidence of her elder daughter Selena Marin and 3 persons who worked with her as domestic workers and caregivers to her daughters, during 3 of the 4 periods above.

6. Mr. Lalchand alleges that the parties knew each other from late 2007, but only lived together from December, 2009 to July, 2011. He asserts that the parties' relationship prior to December, 2009 was sexual only in nature and that whilst they continued in a relationship beyond July, 2011, the relationship was unstable and not one of living together as man and wife.

He also contended that the parties had more of a business relationship as evidenced by the fact that they operated a number of business ventures with each other. Further, that during the time the parties were involved, the Respondent had been involved respectively with the mother of his youngest child; his ex-common law wife who is the mother of his 3 daughters and in the final stages of the relationship, with another young woman who bore him a child in January, 2015. In support of his case, the Respondent relied upon the evidence of his daughter Nimmi Lalchand.

The applicable law

7. A common law union is defined by section 148D of Cap. 91 in the following terms:-

> *"In sections 148E to 148I of this Act, "common law union" or "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."*

Arising out of this definition are the following requirements:-

(i) the Applicant and Respondent must respectively be a single man and single woman;

(ii) they must have cohabited together continuously as husband and wife for a period of at least five years.

There is no dispute that the parties were single persons, having not been legally married to each other and neither having been legally married to any other person during the material time asserted as their union. The point of departure is whether they cohabited as man and wife and whether that cohabitation was for at least five continuous years. In coming to a determination of the issue, the law must be examined with specific reference to the meaning of 'cohabitation as man and wife' and to what suffices as 'continuous'.

8. Counsel for both parties cited legal treatise on Caribbean family law[1] which speaks to the term 'consortium vitae', taken from Australian jurisprudence on the issue of living together or cohabitation.

[1] Commonwealth Caribbean Family Law (Husband, Wife and Cohabitant) by Karen Nunez-Tesheira

Consortium vitae is said to be the various incidents that go to make up the matrimonial relationship even where one or more of the usual elements may be absent[2]. The elements of consortium vitae were described as follows:-

(i) The duration of the relationship
(ii) The existence or not of a sexual relationship
(iii) The degree of financial dependence or interdependence and any arrangements for financial support between the parties
(iv) The degree of mutual commitment to a shared life
(v) The care and support of children, if any
(vi) The performance of household duties
(vii) The reputation and public aspects of the relationship.

In Mohammed v Albert[3], in addition to the above, Warner JA listed a further factor – 'the nature and extent of the common residence' – as relevant in determining the existence of a cohabitation relationship. These factors were said to be taken from analogous Australian legislation[4].

9. Aside from the defined concepts of consortium vitae, Counsel for the Applicant cited **Crake v Supplementary Benefits Commission**[5]which concerned awards of social benefits under certain benefits legislation, where the awards were dependent upon a finding that the applicants were not living together with any person as man and wife. Woolf J acknowledged, with approval, a number of criteria, which he referred to as "*signposts to help a tribunal…to come to a decision whether in fact the parties should be regarded as being within the words 'living together as husband and wife'*."[6]. There were stated as:-

(i) Whether the parties are members of the same house hold;
(ii) Whether there is stability;
(iii) Financial support;
(iv) A sexual relationship;
(v) Children; and
(vi) Public acknowledgement.

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[2] Ibid p.59; acknowledged by Nunez-Tesheira to have been cited by Williams CJ in Barbadian case Shepherd v Taylor, (1987) 22 Barb. L.R. 118
[3] TT 2006 CA 27
[4] This legislation is the Australian Family Law Act, 1975 section 4AA.
[5] [1982] 1 All ER 498 @ 504
[6] Ibid @ 505

10. With respect to these factors, there are a number of authorities (both English and from the Caribbean) in which either cohabitation has been defined, or the factors have been interpreted in respect of common circumstances which might generally arise in determining cohabitation. The purpose for which cohabitation is sought to be established varies throughout authorities, however, insofar as the determination of 'living together as man and wife' remains at the root of the determination, the authorities offer relevant assistance and guidance to the court. Some of the relevant principles derived from those cases are as follows:-

    (i) The existence of an intimate relationship, however frequent and for however long does not amount to cohabitation[7];

    (ii) The purpose of living together must be as man and wife and not for any other reason[8];

    (iii) Cohabitation is not the same as 'residing with'[9];

    (iv) Cohabitation consists of the wife acting as wife towards her husband and vice versa[10];

    (v) The types of living arrangements that unmarried couples adopt vary and cultural differences may, where necessary, require a modified construction[11];

    (vi) Cohabitation does not necessarily mean that there must be the existence of sexual relations between the parties, albeit the existence thereof is strong evidence of cohabitation. Similarly however, the absence of sexual relations does not mean that there is no cohabitation[12];

    (vii) For consideration is whether monogamy is a prerequisite for a common law union[13], but from the standpoint that there can be only one common law spouse at a time (as distinct from mere sexual partners or lovers)[14].

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[7] **Alexandria Nicholson v Byron Warren**, Belize Supreme Court No. 261 of 2004 per Conteh CJ @ para 21.
[8] **Crake** supra @ 504 per Woolf J.
[9] **Wheatley v Wheatley** [1950] 1 K.B. 39 @ 43-44.
[10] **Thomas v Thomas** [1948] 2 K.B. 294 per Lord Goddard CJ @ 297. Lord Goddard also identified wifely duties to her husband as housekeeping and the husband cherishing and supporting his wife as he should. Further Nunez-Tesheira supra @ pg 60 refers to Alleyne v Dorant BB 1986 HC 69 and Layne v Gittens
[11] **Mohammed v Albert** supra per Warner JA @
[12]Thomas supra. (Cited by Nunes Tesheira supra @ pg 59
[13] **Millicent Bowes v Keith Alexander Taylor**, Jamaica Supreme Court 2006/HCV05107 per McDonald-Bishop J @ paras 46-48.
[14] **Re Intestate Estate and Property Charges Act and Harriott**, **Dexter Ogilvie Harriott**. [2016] JMSC Civ 15. Batts J found the existence of a cohabiting relationship between the applicant and deceased even where there was an existing sexual relationship between the deceased and another person at the time. The existence of the relationship of man and wife was stated as not to be altered by the existence of the other sexual relationship as '*to so hold would be to abandon common sense and ignore the reality of life in Jamaica…*'.

11. In the final analysis, as all of the cases have been clear in qualifying or pointing out, the existence or absence of one factor cannot be conclusive of the relationship existing or not. Further, that the factors which might be taken into consideration are not exhaustive and can never be considered closed. McDonald-Bishop J in ***Bowes v Taylor*** expressed the Court's approach in a clear, prudent and pragmatic way, which this Court will adopt. The determination of whether two persons were living together as man and wife requires[15]:-

    "…a thorough examination of the parties' interaction with each other as well as their interaction with others while bearing in mind that there will always be variations in the personalities, conduct, motivations and expectations of human beings. The court indeed, will have to make a value judgment taking into account all the special features thrown up by a particular case to see whether the lives of the parties have been so intertwined and their general relationship such that they may be properly regarded as living together as if they were in law, husband and wife. It has to be inferred from all the circumstances."

    McDonald-Bishop J went on to conclude that the determination of a relationship between parties as husband and wife was one to be objectively made, taking into account the subjective interactions of the parties with each other. With this approach in mind and the factors and their respective interpretations considered, the Court now examines the evidence in the instant case.

<u>Analysis of the evidence</u>

12. The Court's approach was to assess the evidence with reference to the stages of the alleged union which were identified by the various places of residence. The assessment was as such that the sole evidence of the Applicant was not viewed as acceptable for the purpose of establishing any fact by itself. The Court therefore examined the evidence with reference to the existence of evidence of other witnesses which provided support to the Applicant's claim. The impact if any of the Respondent's, evidence was also examined in turn.

[15] Millicent Bowes v Keith Alexander Taylor supra @ paras 49-50

Belmopan, 2007 – Cayo, 2009.

13. The first period is the Cohune Walk residence in Belmopan from summer, 2007 to Easter, 2009. The Applicant's case is that after the parties met in December, 2006 and their friendship grew intimate, they first visited each other – the Applicant lived in Nurse Findlay Crescent in Belize City and the Respondent in Bullet Tree Road, San Ignacio then to an apartment owned by Martin Galvez. From summer, 2007 the Applicant says the Respondent slept at the Cohune Walk house every night. The Respondent refutes the existence of this period as the start of the common law union. Initially, the Respondent refuted that the parties were even involved during that period, and that the relationship was business in nature only.

14. Under cross examination however, the Respondent accepted that the parties had become involved in a sexual relationship shortly after they met, albeit he acknowledged that fact in disparaging terms. The Respondent nonetheless did not accept that he lived with the Applicant in Cohune Walk but instead asserted that he was still involved with his son's mother at the time he met the Applicant; that he still lived with her in the summer of 2007 at the Martin Galvez apartment in Cayo and that even after he moved out of that apartment, he returned home to whom he described as his common law wife, the mother of his elder children. The respondent finally acknowledged that he did stay over with the Applicant at the Cohune Walk house on some occasions, but returned to Cayo to spend time with his children and their mother.

15. In resolving the conflicting evidence of the parties, the Court considered the evidence of Selena Marin, the Applicant's younger daughter. The Court takes into account that this would not be an independent and objective witness, given the relationship of parent and child. Additionally, the Court takes into account that this witness would be called upon to recall facts or circumstances in existence or which occurred when she was a young child. The presumed challenges in relation to this witness' evidence were considered by the court to be not only accuracy of temporal recall, but the appropriateness of the application of a child's perspective (at the time), to a now adult context.

In relation to both challenges, the Court found Selena's evidence to have overcome any concerns in that regard and to have provided sufficient support for acceptance of the Applicant's testimony of the first stage of the union. Selena's evidence is that she met Mr. Gulab when she was in standard five in (primary) school and she recalls going by bus to Cayo where he lived and spending the weekend. She also recalls she realized that Mr. Gulab was not just a friend by her father's reaction (her parents were not living together at the time however) and by the number of times her mother and Mr. Gulab saw each other.

16. Selena's evidence was also that *before* she went into standard 6, her mother told her they were moving, which they did, to the house in Cohune Walk in Belmopan. According to Selena, Mr. Gulab moved in with them and they lived like a family. Under cross examination Selena maintained that Mr. Gulab slept at the house every day but acknowledged that she would not be able to say where he was or what he did whilst she was at school and not at home. On the weekends, Selena also maintained that Mr. Gulab slept at the house, but that he would be gone during the day and where he went she was unable to say. According to Selena, when she was about to go into Form 2, her mother informed her that they were going to move again, this time to Cayo. This time period would have to have been sometime in mid-2009.
17. The Court accepted Selena's evidence as credible in supporting the Applicant's claim of having commenced the common law union in August, 2007, primarily because it was given from the standpoint of a perspective relevant to her at the material time. That is, her recall of events was defined by the stage she was at in school – particularly, that she was in standard 5 and the move to Belmopan occurred in the summer before she went into standard 6. This frame of reference was found believable by the Court as opposed to contrived and strengthened by her forthrightness in accepting what she would or would not be aware of with respect to the Respondent's whereabouts based on her absence from the home whilst at school.
18. On the other hand, the Respondent's evidence with respect to this period, was like his evidence in its entirety for the most part, found to be lacking in credibility.

The Respondent was cagey in accepting firstly that there was a sexual relationship that developed after the parties met. He insisted that the relationship was only business, but did accept that the parties visited each other but only for business purposes. He eventually did accept that there was a sexual relationship, but that it was only casual. He was reluctant to specifically define when his relationship with his son's mother began and ended, even when the period of 5-6 years was put to him as an estimate based upon his own answers. The Respondent's evidence in this regard was set right when assessed against his daughter Nimmi Lalchand's evidence (under cross examination). It was then established that Hitesh was born in 2003 so that the Respondent's answer that he lived with Hitesh's mother 2-3 years after he was born, would take him to having lived with her at maximum until sometime in 2006. In the circumstances, the Respondent's contention that he was still living with Hitesh's mother after the parties became involved was discredited by evidence from his own case.

19. The Respondent also denied starting to live with the Applicant in August, 2007 by claiming that he returned living with his ex common-law wife and mother 3 of his children, after he moved out of the Martin Galvez apartment in 2007. This evidence was also supported by Nimmi Lalchand to the effect that although her father had several affairs, between 2006 and 2009 he still slept at their house in Cayo every night. The Court did not accept Nimmi's evidence in this regard as credible as it was inconsistent with the Respondent's own evidence that he did spend some time in Cohune Walk during that period. Additionally, unlike the Court's impression of Selena's evidence which was given from the point of view of her childish frame of reference of being in standard 5 and 6 at the time, Nimmi's evidence was targeted at establishing particular circumstances to account for the respondent's whereabouts between the period 2006 and 2009. That this was the case is further buttressed by the fact that Nimmi stated that the Respondent resided with her, her siblings and her mother, even after the Applicant went to live in Cayo in 2009 and would at times visit the Applicant where she lived with her daughters. The Respondent's own evidence is that he lived with the Applicant in Cayo in 2009 so Nimmi's evidence is considered largely discredited.

20. In addition to the Court's view of the unreliable evidence of both the Respondent and Nimmi Lalchand as to the period 2006 to 2009, the Court also found the photographs, gun licence and application form for Nimmi's school, to be evidence discrediting their positions and instead supporting the Applicant's claim. The photographs of the parties together were put to the Respondent in cross examination as having been taken in 2008, which he accepted. The photographs showed the parties together on different occasions, also with the Applicant's children. The Respondent accepted the photographs were of him and the Applicant, but denied having posted them to the social media site where they were allegedly taken from. At the highest, by themselves, the photographs are taken by the Court to establish that the parties were involved in a relationship. By themselves, the photographs could not establish that the parties were living together as man and wife. In this regard, the Court did not rely on any writings appended to any of the photographs.
21. Taken with the evidence as a whole however (relating to this period), the photographs discredit the evidence of the Respondent, particularly when he denies knowing who RickG is (one of the domestic helpers would later on refer to him as Mr. Rick), but also when his answer to how the photographs got posted to a page he acknowledged was his, was that anyone, most probably the Applicant posted them to his social media page as his computer was always on and his social media open. On the one hand, the Court found the Respondent's answers in relation to his social media page always being logged on and accessible by anyone to be incredible. On the other hand, if that was indeed the case, it is hard to imagine that in order to be that unguarded in his personal affairs, the Respondent could be doing anything else but living in a trusting environment with the Applicant, in premises occupied by them both.
22. Further, with respect to the Respondent's application for a gun licence, he could do nothing besides accept that he did list his address as Cohune Walk, Belmopan. His explanation that he did so only because it was a convenient advantage to having the application processed in Belmopan was viewed by the Court either as an untruthful explanation, or by his own evidence, impeaching his own credibility as a person of truth, as he would have lied on the application form as to his address and place of residence.

Either way, the Respondent's case was not assisted by this evidence. In any event, the Court rejects the explanation and accepts the evidence that the Respondent's place of residence in December, 2008 was in Cohune Walk, Belmopan. Regarding his daughter's Belmopan school application form, the Respondent accepted in cross examination that the Applicant's name was listed as an emergency contact for his daughter. The Respondent's explanation for this fact was to dismiss it as unremarkable. In the eyes of the average person however, the Court would consider that the involvement of a person in the life of one's child is significant – particularly, when the situation involves past and present intimate relationships.

23. The listing of the Applicant as a contact for the Respondent's child was more consistent with the Applicant's evidence that she knew the Respondent's ex common law wife and was friendly with her. It is difficult for the Court to accept that the Respondent's ex common law (described by him at that period as still his wife with whom he was involved and resided with sometimes), was either not involved with the details of her daughter's attendance at school so that she was unaware that the Applicant was listed as a contact; or that if involved, was unconcerned with or accepting of a person not a friend of hers - but as alleged by the Respondent, a casual friend of her husband's - being listed as the emergency contact for her daughter whilst at school in Belmopan. The Court finds the listing of the Applicant as an emergency contact for the Respondent's daughter, whilst at school in Belmopan, to be significant and supportive of the Applicant's claim of the existence of the union at that time.

24. During this period also, the Applicant exhibited a document signed by the Respondent bearing handwriting referring to the Applicant as his common law wife with whom he'd lived for the past 3 years. The Respondent accepted that the document was signed by him but denied he wrote the contents, stating that he often signed such documents and left them blank for business purposes. Further, either that he may have given the blank document to the Applicant to conduct business or that she took it without his knowledge from his possessions.

Somewhat like the explanation of the Respondent's social media page, the Court considers that for a business person to leave around signed blank pages of statutory declarations which could be accessed and used by other persons without his knowledge to be startling. However, given the nature of the business dealings alleged, and the similarity with handwriting on that document compared to other documents allegedly penned by Ms. Supaul, the Court actually does accept that the Respondent did not write the contents of the document as he maintains he did not.

25. On the other hand however, much like the explanation of access to his social media, the Court finds that there must have been a level of comfort and trust in existence to enable the Respondent, a businessman, to make available to Ms. Supaul, pre-signed blank documents by him, which when utilized, had the ability to affect him in business and in law. Again, the Court finds the Respondent's explanation more indicative of the existence of a common law relationship, rather than the denial of same. In the circumstances, taking all the evidence into consideration, it is found that as alleged by the Applicant, the union commenced in August, 2007 with the parties moving in together in Cohune Walk, Belmopan with the Applicant's two daughters, and they resided there until moving to Cayo in 2009.

<u>Cayo, 2009 – Corozal, 2011.</u>

26. The evidence is not precise as to when the parties moved to Cayo in 2009. According to the Applicant's initial evidence it was in Easter, 2009, but according to Selena, it was when she was about to go to second form which presumably would have been after Easter, 2009. The Court however does not find the absence of a precise date of the move to Cayo in 2009 to affect the evidence that the union was in existence during 2009. The Respondent has accepted that the parties started living together sometime in 2009, which means, that having accepted the evidence of the Applicant of the commencement in August, 2007 through 2009, the Court does not have to be troubled by precise dates in 2009.

In light of the fact that the Respondent accepts that the parties were living together up until July, 2011, there is no need for the Court to examine the evidence in support of this fact. The Court's consideration is required to find continuance of the parties living together after July, 2011.

27. That being said, in relation to this period, there is the issue of the parties' move from the first rental premises in Cayo – Eduardo St. to the smaller VIP premises, which the Applicant says occurred in May, 2011 when they were given notice to quit the Eduardo St. premises by their landlord. The Applicant says that she and the Respondent occupied one bedroom in the VIP premises and her daughters and live-in helper Ms. Lilian Perez occupied the other bedroom. The Respondent on the other hand, in his initial answer to the claim, had asserted that he alone moved to the VIP premises whilst the Applicant and her daughters relocated to Belmopan. In cross examination the Respondent answered initially that he alone moved to the VIP premises and had all of Ms. Supaul's things sent to Belmopan. Then in further answer, he stated that Ms. Supaul and her children stayed a few days at the VIP premises whilst their things were moved to Belmopan and he moved directly to Corozal.

28. The Respondent's evidence developed under cross examination that that he never moved to the VIP premises; he went directly to Corozal where he initially stayed with a friend for 1-2 months; and that Ms. Supaul might have stayed a few days or a month at the VIP premises in order to allow her daughter to finish school, but that in any event he was not concerned with her movements or whereabouts at that time. This evidence clearly conflicted with the Respondent's initial answer that he moved on his own to the VIP premises, whilst the Applicant moved back to Belmopan with her daughters. Aside from contradicting his own evidence, the Court found that the Respondent's answers on cross examination were evasive, his manner was oft times argumentative and the contradictions concerned material matters. In contrast to this evidence, there is the evidence of Selena who confirmed that the entire household of the Applicant and Respondent and herself, sister and helper lived in the small apartment in Cayo after they moved because of problems with the landlord.

29. Even if this evidence is to be viewed as not objective because of the relationship of parent and child, there is the additional evidence of Lilian Perez, who confirms moving to this smaller apartment for about 2 months where she continued to function as domestic helper for the household. Under cross examination it was evident that Ms. Perez was confusing the 2011 move with 2013, but the Court was able to accept this confusion for what it was from the evidence of both the Applicant and Respondent regarding the time of the move in Cayo being around July, 2011. The initial evidence of the Respondent that he alone moved to the VIP premises is rejected outright as it is contradicted by his own evidence. His subsequent evidence in cross examination that the Applicant may have stayed at the VIP premises whilst he went directly to Corozal is rejected as being unreliable and disproved by the evidence of Selena and Ms. Perez. It is found that the Applicant, Respondent, Applicant's children and live in helper moved from Eduardo Street, Cayo to the VIP premises Cayo from May, 2011 to July, 2011.

Corozal, 2011 – 2015.

30. July, 2011 is marked by the existence of the Agreement between the parties, which speaks to them living together and giving several undertakings in relation to settling property and them going their separate ways. The Respondent asserts that as the Agreement clearly contemplates, the parties did go their separate ways, he to Corozal and the Applicant back to Belmopan with her daughters. The Court finds that the tenor of the Agreement was one of parties who were living together, making arrangements upon their separation. However, the Court also finds as is entirely possible, that in spite of the Agreement, the parties continued to live with each other. The question is whether there was a significant break which was the end of them living together or whether the relationship continued but there was some time during which living arrangements were sorted out in the interim on account of the setting up of the business in Corozal and relocation of the Applicant's daughters to Belmopan.

31. According to the Applicant, there was no break in the relationship. Even after signing the Agreement, she returned home with the Applicant (that day was actually his birthday).

Later in July, 2011 she relocated her daughters to Belmopan with live in domestic helper Ms. Lilian Perez and she and the Respondent went to set up business in Corozal. The precise time of the move to Corozal is not stated by the Applicant, but she did state that whilst setting up the business in Corozal, she would return to Belmopan on weekends and at first the Respondent would go with her, but eventually went less often. Lilian Perez (confusion as to the year aside), does confirm that the Applicant moved to Corozal and would come home on weekends. Lilian did not accept under cross examination that the Applicant moved also to Belmopan. In particular, Lilian answered that Ms. Rutilia would work in the Free Zone during the week and arrive home on weekends. She was not able to say how often the Respondent went but she knew he did reach there but not as frequently as Ms. Rutilia. Ms. Perez stated that some weekends when the Respondent did not come to Belmopan, she and the girls would go.

32. In relation to other evidence in support of this period, the evidence of Nimmi Lalchand has already been viewed as significantly discredited thus her support of the Respondent's case that the Applicant played no part in the move to Corozal and the she and her siblings assisted their father to set up the shop in the Free Zone was not accepted. On the other hand, the evidence of Maismelda Hernandez supports the Applicant's claim that she resided with the Respondent in Corozal. Maismelda's testimony of having been employed in September, 2011 to work three days a week at the parties' home in Corozal was not put to her as being untrue. The nature and quality of the parties' living was challenged but the fact that they both lived at the premises as far as Maismelda was aware and the capacity in which she was hired, was not challenged. Maismelda was employed until at most September, 2012, as she stated she worked only for one year. On the other hand, the Respondent's answers in cross examination with respect to this period was that the Applicant joined him in Corozal (as an employee living in his house), some six to seven months after and that she was not there at all for 2011. Considering that Maismelda's evidence of having been employed in September, 2011 was not challenged, the Respondent's evidence in relation to this period, was again found untrue and unreliable.

33. Based on the above, the Court has accepted that there was no break in the parties' relationship after July, 2011 and that the parties relocated to Corozal and visited Belmopan on weekends. Some weekends the Applicant's children and Ms. Perez would visit the parties in Corozal instead. Maismelda supports that the children and Ms. Perez would sometimes come to visit on weekends as she would have seen them before leaving work on Fridays. With respect to the length of the period of residence in Corozal, the Court finds that it continued with the intervening event of the Applicant running for office of area representative in Cayo. At that time, it is accepted that the Applicant spent more time in Belmopan, but that the Respondent financed her and would be present with her and the children in Belmopan regularly. Ms. Perez maintained this fact in cross examination and answered definitively that during that time the Respondent was always there with the Applicant, supporting her. Selena's evidence was that during the campaign time the Respondent did not live in Belmopan, but she did also state that the Applicant lived in Corozal. Selena left for the United States in December, 2013.

34. With respect to the parties' circumstances after the Applicant's campaign bid in 2013, the evidence of Lilian Perez is that she moved to Corozal along with the Applicant's younger daughter in 2015. Her further evidence combined with that of the Applicant and Fransine Peters shows that Ms. Perez and the Applicant's younger daughter must have moved to Corozal since 2014, thus Lilian was again mistaken as to the year the event occurred. Lilian had stated that they relocated from Belmopan to Corozal in October, and she remembered that as they spent Christmas there. She later said in cross examination that it was October, 2015 that they moved to Corozal and spent Christmas there but as the parties by both of their accounts were not together in December, 2015, the Court accepts that as an incorrect reference by Lilian as to the year she moved to Corozal. It is accepted that she meant October, 2014. Lilian states that the Respondent's son Hitesh was in Corozal during the months she was there and given that Fransine started work in May, 2015 and met both the Applicant's younger child and Hitesh in Corozal, the year in which Lilian moved must have been 2014. Fransine Peters worked from May, 2015 to June 2015 and placed that parties as living in the same household.

35. Thereafter, the Applicant's evidence is that she by then was aware that the Respondent was continuing a relationship with another young lady who had born him a child in January, 2015. The Applicant acknowledged having been aware of the affair since early 2014 after she confronted the Respondent about it, who admitted the affair but described it as a fling. Thereafter, after the young woman stated she was pregnant and started call the Respondent at home, the Respondent denied that the child was his. The Applicant says she became aware via social media that the Respondent had attended the christening of that child, with his daughters contrary to his denials of paternity of the child. The Applicant, whilst upset, nonetheless still moved with the Respondent to the Venezuela site in Corozal and states that she even was involved in renovations and furnishing of the house. The Applicant states that the Respondent had started to become violent towards her, arising out of quarrels about his affair and even verbally and physically abused her in front of workers at the business in Corozal. The Applicant says she finally severed the relationship in October, 2015 after a series of violent physical attacks which she reported to the police, arising out of quarrels over the business and the affair.
36. The Respondent's evidence in relation to this final period was that whilst the Applicant was away visiting her daughter in the United States in 2014, he commenced a relationship with the young woman who bore him a child in January, 2015. In spite of having commenced that relationship, the Respondent's evidence is that the Applicant begged him to come live with him again and as he'd been injured in an accident he allowed her to come which she did, to help him with his recovery. The Respondent stated in cross examination that the Applicant was fully aware of his relationship with the young woman and he allowed her to stay at his house in Corozal as an employee of the Free Zone business during 2014 into 2015. The Respondent also stated under cross examination that the Applicant was involved in the move to the Venezuela site house and in fact bought paint and fixtures. He acknowledged that he, the Applicant, her daughter and his son lived at that house but that the Applicant left because his daughter was coming to live with them.

As with the majority of the Respondent's evidence concerning the parties living together, the Court regarded this evidence as to the final stages of the relationship as unreliable. That he allowed the Applicant to reside with him in his home in Corozal only as an employee after her failed campaign is found to be untrue.

37. The evidence of both domestic helpers Lilian Perez and Fransine Peters that the parties lived as a household is accepted by the Court as contradicting this claim. Additionally, it is found incredible that the Respondent was happy to have his employee whom he allowed lodging in his home (and her daughter), move to new premises, whilst he was according to him already involved in a serious relationship with the mother of his new baby. Equally incredible is that his employee and lodger had responsibility for making the house he was moving to habitable and that she moved there with her daughter as well.

    This evidence is not accepted and is in fact found more consistent with the Applicant's claim that whilst she was aware of the affair and the child by that time, the Respondent had concealed his continuing relationship with the young woman and the Applicant discovered (or chose to accept) that he was still involved after the move to the Venezuela site. At the time of the move, it is found that the relationship had clearly broken down, but it nonetheless was affirmed by both parties and that it was severed when the Applicant left the Venezuela site home after arguments over the Respondent's continuing relationship with the young woman, in October, 2015.

    <u>The classification of the parties' relationship as a common law union.</u>

38. As a separate consideration from the Court's finding as to the duration of the parties' relationship and living together, the determination must still be made that the nature of the relationship was that of living together as husband and wife. The law as stated with respect to factors coined consortium vitae is now considered with respect to the parties' living arrangements. Firstly, a duration of 8 years has been determined as the continuous length of the relationship. Secondly, the parties are found to have occupied the same household, even during the period in Corozal when the Applicant's daughters resided in Belmopan and she more than the Respondent appeared to have commuted to Belmopan to see her daughters.

It is accepted that the household was maintained in two different places for that period of time. Thirdly, it is accepted that the parties lived as husband and wife and that the usual services such as cooking, cleaning, washing and ironing were carried out as a household. It so happened that the services were carried out by a paid helper, but in such a case, the question would have to be whether the helper performed such services for the benefit of the parties as a household and this is found to have been the case.

39. In particular, Lilian Perez, who as live-in helper would have been well placed to speak to the nature of the parties' living arrangements, confirmed that they lived as man and wife and as a household of which she was part. The fact that Lilian could not speak to where the Respondent might have gone and thereby not be able to deny that he went to his ex common law wife's home in Cayo did not detract from the evidence Lilian was able to speak to with first hand knowledge. On the other hand, the evidence of the Respondent as supported by Nimmi Lalchand that the Respondent still maintained his place of residence at his ex common law in Cayo was discredited and rejected by the Court. Save for the first period of the commencement of the union as found by the Court to have been in August, 2007 to mid 2009, there was evidence of three domestic helpers which all confirmed that the parties lived as man and wife.

40. With respect to the question of children, the parties shared no children together and there is no evidence that this was ever attempted or desired, particularly given the stage of life of both parties when they met, and both having children from earlier relationships. The fact that the parties had no children together is therefore unremarkable in the circumstances. In any event, the evidence of Selena is accepted that she and her sibling regarded whom she referred to as 'Mr. Gulab' as their step-father. There is not however any evidence that the Respondent took any active role in the care and upbringing of the Applicant's children but in the circumstances of these two individuals, the absence of such a role is not found to detract from the parties' relationship as husband and wife. Fourthly, the evidence in relation to how the parties shared living expenses is not conclusive of a common law union. In the early period of the relationship, the evidence is that the Applicant paid the utility bills and lease of the Cohune Walk premises was in her name.

41. The evidence also is however that the Respondent was experiencing some financial difficulty when the parties first met. Even though the Respondent denied such a fact, this evidence of financial difficulty is accepted given the foreclosure of his property (which the Applicant purchased), and a loan to him by the Applicant of $100,000. In such circumstances the fact that there was not much evidence of shared living expenses is accepted in context of financial difficulty of the Respondent. When the parties lived in Cayo however, the evidence of Lilian Perez is that she was paid by 'the boss' Mr. Rick. Both her reference to him as 'the boss Mr. Rick' and having been paid by him were not challenged in cross examination. It is found that Lilian's acknowledgement of the Respondent was as head or part head of the household in which she resided as helper and care giver.
42. With respect to other financial aspects of the relationship, it was the Respondent's position that he and the Applicant maintained separate business ventures throughout the relationship and as such there could not be said to have been any pooling of resources. This is found to be untrue. It is instead found that the parties were both business persons in their own right, who owned and operated separate businesses before they met. These businesses – the Applicant's food businesses, the Respondent's money changing and car import business may have remained their separate investments early in the relationship. However, the evidence at this stage, without attempting to pronounce upon ownership or entitlement is that the Free Zone business was started and operated with input from both parties. Whether in the final analysis they are equal owners or owner and employee, this business involved them both.
43. It is found that the involvement in business together (to whatever extent), contributes to the categorization of the parties' relationship as that of husband and wife. As stated before, the parties were both business persons in their own right prior to starting their relationship. Carrying on business together, even if it resulted in acquisition of separate properties, is therefore considered an integral feature of their relationship with each other.

The business elements of their relationship may have been different in obvious significance to the relationship of husband and wife, in comparison to the usual situation where average couples pool their resources from mainstream employment to purchase what becomes a matrimonial home or other joint property. The pooling of resources in this case may not have been as typically defined as between average couples, but being reflective of the parties as business persons, is found to be equally reflective of their relationship as husband and wife. Fifthly, it is found that there was public acknowledgement of each other as husband and wife. It is found that the Respondent either himself posted photographs of their relationship to his social media or even if he didn't, he was aware that they were posted and had no issue it. The listing as the Applicant as an emergency contact for his daughter early on in the relationship as stated before is found by the Court to be quite significant and to be a public acknowledgement of the Applicant as his common law wife.

44. That the Respondent initially denied his affair in 2014 and the paternity of the child born of that affair in 2015 until late in 2015 when he was confronted by the Applicant is found to be indicative of an acknowledgement that his conduct was unacceptable to the Applicant. More importantly, that the Respondent brought his young son to live with him and the Applicant in 2014 through 2015 is also found to be an acknowledgement that his relationship with the Applicant was as such for him to be comfortable to have his child by another mother be part of that household. By the same token, the Applicant's actions in relation to her own children are regarded in the same light vis-à-vis the Respondent. In the final analysis, the Respondent's attempts to portray his relationship with the Applicant as an uncommitted one, borne from a casual sexual friendship, to shared business interests and even employee is rejected. It is found that the Applicant and Respondent shared a life and household in which they lived as husband and wife, in which the Applicant's two daughters were a part.

45. The parties shared business endeavours and in all respects their relationship was public. Their relationship may not have been defined by traditional markers such as shared bank accounts, purchase of and residence in a single matrimonial home, or children born of

them both. However, having regard to their respective stages of life upon commencement of their relationship, them both being business persons in their own right, their pursuit of business together and the itinerant nature of their lives relative to their business ventures, it is nonetheless found that their relationship was within their peculiar contexts, sufficiently one of husband and wife. It is also found that notwithstanding existence of the affair and the parties' strained relationship in 2015, the relationship still existed but would be categorized as in the stages of breakdown as opposed to no longer in existence. It is therefore determined that the parties were involved in a common law union which lasted for eight (8) years, having commenced in August, 2007 and ended in October, 2015.

<u>Issue (ii) Estoppel by Deed and the Agreement of July, 2011.</u>

46. The claim by the Respondent is that the existence of the July, 2011 Agreement between the parties precludes the Applicant in law from placing any issue of properties the subject matter of that Agreement, before the Court. It is submitted on behalf of the Respondent that there is no issue that the Agreement in question is a deed, that is was executed by the Applicant and Respondent and remains valid and binding upon them both.

    Counsel for the Applicant, does not disagree with any of these latter three contentions. In directing the Court's attention to the law relating to estoppel by deed, learned senior counsel for the Respondent cited **Greer v Kettle**[16] as follows:-

    > *"Estoppel by deed is a rule of evidence founded on the principle that a solemn and unambiguous statement or engagement in a deed must be taken as binding upon parties and privies, and therefore as not admitting any contradictory proof. It is important to observe that this is a rule of common law, though it may be noted that an exception arises when the deed is fraudulent or illegal."*

    With this statement of the law submitted on behalf of the Respondent being accepted by the Court, it is not thereafater necessary to delve into the issue any further.

[16] [1937] 4 All ER 396

47. As accepted, estoppel by deed is a rule of evidence, which operates by precluding admission of any contradictory proof in relation to that which is established by the deed. As a rule of evidence, it cannot be accepted as submitted on behalf of the Respondent, that the issue is placed beyond the jurisdiction of the Court. Rather, as a rule of evidence, upon determining any issue the subject matter of which is covered in the deed, short of common law exceptions (fraud or illegality), or any other rule of law[17], the Court will be obliged to give effect to the provisions of the deed. An additional requirement is that the obligation or state of affairs alleged as giving rise to the estoppel by deed, must be clear and unambiguous.[18] It is therefore found that the plea of estoppel by deed is not a bar to the Applicant's claim, as submitted by the Respondent, but may be raised so as to oblige the Court to give effect to the deed in the determination of the claim. At this stage of the proceedings therefore, the plea of estoppel by deed has not yet arisen.

Disposition

48. The Applicant and Respondent are found to have been involved in a common law union for a period of 8 years, commencing from August, 2007 and ending October, 2015;
49. The plea of estoppel by deed, being a rule of evidence, does not operate to bar the Applicant's claim but subject to any exceptions in law, may be raised upon the Court's determination of the Applicant's claim, to bar any contradictory proof of the matters contained in the deed.
50. Costs are awarded to the Applicant, to be assessed if not agreed.

Dated this 25th day of May, 2017.

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Shona O. Griffith
Supreme Court Judge.

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[17] **Maritime Electric Co. v General Dairies Ltd**. [1937] 1 All ER 748 – Estoppel being a rule of evidence only could not defeat a positive obligation to carry out a duty imposed by statute.
[18] **Onward Building Society v Smithson** [1983] 1 Ch. 1.