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	**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**
BENZER INTERNATIONAL CO. LTD.	**5th Interested Party**

Before: **The Hon. Mde. Justice Griffith**
Dates of Hearing: **9 & 10 July, 2018; 5 September, 2018; Written Submissions 5 & 8 October, 2018; Oral Decision 30th April, 2019.**
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 Respondent; Mrs. Yogini Lochan-Cave for the Interested Parties.**

DECISION

Introduction

1. This is the substantive determination of the Originating Summons filed in April, 2016 for division of property arising from the common law union of the Applicant and Respondent. Two prior rulings have already been made in this matter. The first, arising from a challenge to the Court's jurisdiction to hear the matter on the basis of the Respondent's denial of the existence of a common law union between the parties. The second, an application to strike out portions of the Originating Summons, namely, the relief seeking to set aside the Respondent's transfer of shares in the 5th Interested Party Benzer International Co. Ltd. ('the company'), to his children, and the Applicant's prayer for maintenance.

Neither of these challenges was successful. In relation to the first challenge, the Court found the parties to have been involved in a common law union for just over eight years, from August, 2007 to October, 2015. In relation to the application to strike out, the Court ruled that the validity of the Respondent's transfer of shares to the Applicant was a matter for determination at trial and the Applicant was permitted to apply for maintenance. This Ruling also dealt with the 5th Interested Party's application to be struck out as a party (it was then the 2nd Respondent). The company was indeed struck out as a substantive party but remained as an interested party along with the 1st through 4th Interested Parties who are the Respondent's children. After all of the preliminary and interlocutory issues were disposed of, the substantive hearing of the Originating Summons was conducted in July and September, 2018. The Court delivered an oral ruling in April, 2019 now followed up by its written reasons.

Issues

2. The issues for determination in the matter were as follows:-

Division of Property

(i) What is the validity and effect of the July, 2011 Agreement vis-à-vis the assets covered by the Agreement?

(ii) What is the pool of matrimonial assets available for consideration?

(iii) What are the entitlements of the parties to those assets?

(iv) What if any orders for distribution or settlement of the assets should be made in respect of the parties?

Maintenance

(v) Should an award of maintenance be made in favour of the Applicant and if so, how much?

Background

3. Given the prior rulings in the matter, a very brief background of the factual matrix now relevant to the disposal of the substantive action will suffice.

The parties (as found by the Court) were involved in a common law union for just over eight years, having come together from respective previous relationships. Both parties had been involved in their own businesses prior to their union and as such came to the union with property already individually owned. Additionally, during the union, property was acquired primarily concerning or through the company Benzer International Ltd ('the company'), which by virtue of its shareholding and legal ownership of a number of properties acquired during the union, occupies its position as the 5th Interested Party herein. The Applicant's claim in the round, is that she and the Respondent worked throughout their union as partners (in the matrimonial sense of the word) to establish the company Benzer International and thereafter the company's main business was the successful wholesale/retail shop in the Corozal Free Zone which traded in a number of consumer goods. As further claimed by the Applicant, the business was the couple's source of income for all aspects of their lives, and the company was used to hold all their property (real and personal), which they acquired as the fruits of their labour in the business.

4. Upon the demise of their union, the Applicant says she was put out from the business and has been deprived not only of a source of income from which to live her daily life, but has been deprived of the benefit of the investments she helped to build, as part of what she believed was the parties joint pursuit of a successful life together. This issue of interest and entitlement to property acquired during the parties' union is complicated by the following:-

   (i) use of the corporate vehicle of the company to acquire property;

   (ii) vesting of shares in the company by the Respondent to his children, so that the ownership of the company involves the rights of third parties;

   (iii) ownership by the company itself, of property said to be acquired by the parties, thus raising the separate legal personality of the company in relation to such ownership;

(iv) the existence of an agreement covering ownership and entitlement to several properties during a particular period of the union, which affects the composition of assets forming the matrimonial pool.

The Court's Consideration

5. In furtherance of brevity, the Court will not as is generally done, treat separately with the respective submissions of Counsel for the parties, the evidence, and thereafter discussion on the application of law and evidence. The Court instead sets out its decision according to the framework which is detailed below, and as arises, the submissions of counsel and findings on the evidence will be set out within the respective parts. The framework of the Decision is as follows:-

    A. The effect and applicability of the Court's prior rulings.

    B. The July, 2011 agreement with reference to -

        (i) validity of the agreement; and

        (ii) the scope of the agreement.

    C. The subject matter of the Originating Summons (Identification of pool of assets).

    D. Determination of Beneficial Interests (Section 148E(2)) in the subject matter of the Originating Summons.

    E. Application of Section 148E(3)(4)&(5); Alteration of Property Order

        (i) whether property alteration/sale just and equitable; and

        (ii) identification and application of relevant factors.

    F. Maintenance

    G. Costs

    H. Orders upon Disposition.

A. <u>The effect and applicability of the Court's prior rulings.</u>

6. The Court's prior rulings concerned (i) the declaration of the parties' common law union and July, 2011 agreement; and (ii) the determination of the Respondent's application to strike out aspects of the Originating Summons[1].

[1] Action No. 16 of 2016: Rulings dated - 25th May, 2017 & 29th January, 2018.

It is necessary to identify what effect these rulings have on the action as it now stands, whether as it pertains to issues which may have been already disposed of; or evidence relevant to the substantive hearing which may or may not have been accepted or rejected by the Court. Respective counsel for the parties in their closing submissions have highlighted aspects of the Court's prior rulings which they contend have already finally determined certain issues. The Court finds however, that these matters identified by Counsel as finally determining issues from the prior rulings were not all entirely accurately construed. Additionally, there are instances where Counsel have treated with certain allegations of fact as though there were still in issue, when those facts have already been finally determined in the prior Rulings. The Court's first task in disposing of this the substantive matter, is thus to extract relevant dicta of the prior Rulings along with any implications for the substantive disposition of the Originating Summons.

Ruling on Common Law Union and July, 2011 Agreement, 25th May, 2017.

7. The following matters are extracted having regard to the submissions made by respective Counsel for the parties:-

(i) There was final determination on the existence of the union for the period of just over eight (8) years. This prior finding applies to periods put forward by the Respondent in closing submissions as characterized by the Applicant having left the relationship and returned and having behaved in a certain way. In paragraphs 27-20; 30-33 & 34 of this Ruling the Court rejected evidence by the Respondent that the Applicant had moved on or moved out from the relationship, thus it was not open to the Respondent to have made submissions in relation to the evidence on that basis;

(ii) Counsel for the Applicant contended to the effect that the since Court has already found the Respondent and his witness, daughter Nimmi's evidence to have been discredited, that their evidence on the remaining trial was to be similarly regarded. The Court's ruling as stated in paragraph 36 therein, was that with respect to the parties' living together, the evidence of the Respondent and Nimmi had been rejected. However, this does not automatically result in the Court now treating with their evidence in the same manner.

Any evidence on the issues remaining for trial stood to be assessed on its own merit. Where findings of fact or inferences to be drawn hinged upon credibility however, the Court may in the final analysis refer to its prior dispensation of their evidence as part of its overall assessment. Such an assessment however, would arise only after due consideration of all new evidence available on the remaining issues outside of the establishment of the common law union;

(iii) The Court finally determined that the Respondent was in financial difficulty in the initial stages of the parties' union at paragraph 41 of the Ruling, thus it was not open for the Respondent to submit anything different in relation to his financial position in the initial stages of the relationship. It was also determined that the Applicant had loaned the respondent one hundred thousand dollars ($100,000), early in their relationship;

(iv) With respect to the parties' business endeavours, much has been made of the Court's prior findings in this regard by Counsel for the Applicant. What was found and thus no longer in dispute is that the parties both had an input in the starting of the Corozal Free Zone business. This finding was never taken beyond this statement. At paragraphs 42-43 of the Ruling, the Court specifically stated that its finding in relation to the parties both having been involved did not amount to any determination of whether there was an interest, beneficial interest or otherwise; or whether the parties were mere employer and employee. This issue was left for a determination on the merits;

(v) At paragraphs 46-47, the Court stated that the Applicant had accepted the July, 2011 agreement as binding on the parties. This fact was viewed by Counsel for Respondent as effectively disposing of the Applicant's claim. However the Applicant's position was simply that whilst the agreement was binding, the agreement did not cover all of the properties which were being claimed. The relevant issue was therefore not whether the agreement was binding, but what it covered and whether it precluded any further claim by the Applicant, to properties falling outside of its scope and coverage;

Application to Strike Out – Ruling of 29th January, 2018

(vi) The submissions advanced on behalf of the Applicant appeared to contemplate orders being made against the property held in the name of the company.

In the Court's second Ruling, the issue of piercing the corporate veil was discussed, with the result that at paragraph 29, the Court clearly concluded that it was not possible in this claim to affect the property owned by the company. However, that the Applicant's remedies were against the Respondent and it was possible for any interest she may be entitled to in respect of the company's property, to be reflected in orders made against the Respondent.

B. <u>The July, 2011 Agreement</u>

8. The parties are not at variance with respect to their respective positions on the validity of the Agreement, but they are at variance with respect to its scope and effect. As already acknowledged in both its prior rulings, the Applicant does not dispute that the Agreement was validly made or that she is bound by its terms. The parties differ on whether the terms of the agreement restrict the Applicant's entitlement to claim property outside of what was provided in the Agreement. Specifically, the Applicant contends that the Agreement did not include the Free Zone business operated in the name of the 5th Interested Party, or the properties acquired by the company out of the profits of the business. The Respondent and Interested Parties however contend that besides the distribution of properties provided thereunder, the Agreement limited the Applicant's entitlement in respect of the business to the sum of $2,000 per container imported by the Respondent or any of his companies. The Applicant vigorously disagrees with this contention. As a matter of law, senior counsel for the Respondent submitted that the Agreement gave rise to an estoppel, thereby precluding the Applicant from asserting any position contrary to the terms of the Agreement.

9. In spite of the fact that the Applicant from the inception has not disputed the validity of the Agreement nor being bound by its terms, the Court nonetheless does make a formal ruling with respect to its validity, having regard to the arguments submitted in this regard by senior counsel for the Respondent. The argument in respect of validity was based on Guyanese decision **Rosemarie Ramdehol v Haimwant Ramdehol**[2] particularly, the Court's (Caribbean Court of Justice) articulation of the issue therein in the following manner:-

> *"The question of significance which arises in the present case concerns whether or to what extent are the legislative rules on the division of matrimonial property relevant when there is such a contract between the parties"*

The reference above to '*such a contract*' pertained to the existence of an agreement between the parties in **Ramdehol** which provided for ownership and distribution of certain matrimonial property. The appellant wife had contended that the parties' agreement was unfair and was contrary to the legislative provisions for division of matrimonial property. Subject to the Court's duty in relation to ensuring financial provision for minor children upon dissolution of parties' marriages, the Court upheld the right of parties to freely enter into contractual arrangements regarding the ownership and distribution of their marital property. In particular, the Court based this ruling on the provisions of section 18 of the Guyana Married Persons (Property) Act, Cap. 45:04 and affirmed that in cases of such agreements, the general principles of contract law regarding the validity and enforcement would apply[3].

10. Senior Counsel for the Applicant then referenced section 18 of Belize's Married Women's (Property) Act, Cap. 176 as being almost in *pari materia* to the Guyana provision, thereby urging the conclusion by the Court that the July, 2011 must be similarly regarded, thereby binding the Applicant to its terms. The Belize section 18 is extracted thus:-

> *"**18.**–(1) Nothing in this Act shall interfere with or affect any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of any married woman, but no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement*

[2] [2017] CCJ 14 (AJ)
[3] The Court contrasted the legislative position in Jamaica which permits the Court to vary or set aside such an agreement based on specified factors, including unfairness.

or agreement for a settlement made or entered into by a man would have against his creditors.

(2) Notwithstanding subsection (1) of this section, a settlement or agreement for a settlement made after the commencement of this Act by the husband or intended husband, whether before or after marriage, respecting the property of any woman he may marry or have married, shall not be valid unless it is executed by her if she is of full age, or confirmed by her after she attains full age, but if she dies an infant, any covenant or disposition by her husband contained in the settlement or agreement shall bind or pass any interest in any property of hers to which he may become entitled on her death and which he could have bound or disposed of in the absence of this subsection.

(3) Nothing in this section shall render invalid any settlement or agreement for a settlement made or to be made under any law relating to infants' marriage settlements and contracts.

It is the case that the Belize provision is somewhat different from the Guyana section 18 and the CCJ decision did indeed determine the position in Guyana. The decision would therefore bind this Court to the extent that it could be established that the legislative positions under consideration are the same.

11. With respect to the Belize legislation, the Court is of the view that the terms '*settlement*' and '*agreement for a settlement*' in section 18 of Cap. 176 have a meaning in law that has no relevance to this case. The marginal note reads '*Settlement of married women's property*' and the Act itself is similarly titled with reference to property of married women. The Court's position is that section 18 refers to 'marriage settlement', within the peculiar and dated context of old, in which in light of the common law position that upon marriage the property of a married woman devolved in law unto her husband (*jus mariti*), the property of a single female was often 'settled' for her benefit or that of her, both spouses and any children, in consideration of the marriage. This position was of course graciously abolished by legislation none other than the Married Women's (Property) Act, as evidenced by sections 3 and 4, which affirm the married woman's right to ownership and use of her property after marriage (whether acquired before or after marriage) as if she were a *feme sole*. In keeping with this position, section 18 then establishes that in order to be valid, a settlement or agreement for a settlement, must be executed by the married woman. In further examining this issue, one must understand that the term 'settle' and its derivative noun 'settlement' are capable of different meanings in law.

The former, includes (i) the drawing up terms and conditions of a document (to settle the terms of an agreement); (ii) the process that brings about resolution (negotiating a settlement); or (iii) the act of creating a settlement (with reference to the specific terminology 'settlement' as described following below).

12. The specific meaning of '*settlement'* is defined as *'any disposition of property, of whatever nature, by any instrument or number of instruments whereby* <u>*trusts*</u> *are constituted for the purpose of regulating the enjoyment of the settled property, successively among the person or classes of persons nominated by the settlor'*.[4] Of the many kinds of settlement that could be created, the marriage settlement is just one[5] and along with it, the settlement itself could often form the subject matter of a contract in anticipation of impending nuptials (hence the reference in section 18 of '*agreement to create a settlement*'). Settlements are also classified by whether made for valuable consideration or voluntary, or whether their subject matter consisted of realty or personalty.[6] The point however, is that the settlement to which the term 'marriage settlement' applies, is the creation of a trust for the benefit of parties to a marriage, made by a third person (the settlor), as opposed to an ordinary contractual agreement between two parties. The fact that an agreement is made by spouses or parties to a union in respect of property belonging to them does not bring that agreement within the context of a marriage settlement, which is what is envisaged by section 18 of the MWPA. The Court finds therefore that neither ***Ramdehol*** nor section 18 of the Act have any applicability to the instant matter, insofar as the agreement in question is not a settlement as arises under section 18. The agreement is an ordinary contractual agreement between two parties, albeit in the specific circumstance of a common law union.

[4] Halsbury's Law of England 4th Ed. Vol 42 para 601; Lewin on Trusts, 19th Ed. Para 10-015
[5] Halsbury's para 602 supra fn 4 – "*Settlements may be made on many occasions and for many purposes. Among familiar kinds of settlements are marriage settlements, post-nuptial settlements, settlements for the benefit of minors, strict settlements and resettlements of land, protective settlements*…"
[6] Ibid.

13. The Court will also say that even if it were to be found to the contrary – that is, that the agreement is one which should be governed by section 18, without legislative intervention, the Court would not accept same to be applicable to a common law union.[7] In the circumstances, it is once again acknowledged that the Applicant was never disputing the validity of the July 2011 agreement. Rather, she was disputing, as was being contended by the Respondent, that the agreement precluded her from making a claim to any property falling outside the terms of the agreement. The question for the Court really, is that of the scope of the agreement relative to the pool of properties available for consideration. The Court nonetheless felt it necessary to treat with the issue of s.18 of the MWPA given that it was raised in argument on behalf of the Respondent. Section 18 of the MWPA does not apply to the July, 2011 agreement between the parties, and the agreement falls to be considered with reference to ordinary principles of contract law. This brings the Court to the question of what the agreement governs or does not govern. With reference to the property under consideration in this matter, the property acquired after the time of execution of the agreement would be the business (retail store) in the Corozal Free Zone as operated by the company Benzer International (the 1st Interested Party) and on the Applicant's case, all of the property acquired Benzer. The full text of the agreement is attached herewith as the Appendix, but the most relevant aspects of the agreement are the recitals and clause 4, which are extracted below:-

> *"**THIS DEED** made the 4th day of July, 2011 at the request of GULAB LALCHAND of No. 11 Eduardo Juan Street, Santa Elena, Cayo District, Belize (herein-after called "Mr. LALCHAND") of the one part and **RUTILIA OLIVIA SUPALL** of No. 11 Eduardo Juan Street, Santa Elena, Cayo District, Belize (herein-after called "Ms. Supall") of the other part.*
>
> ***WHEREAS** the parties who are living together have agreed to divide the properties mentioned herein between themselves in an amicable and mutual fashion unless superseded by any order of the court. The following provisions herein shall take effect and regulate their rights and liabilities to each other..."*

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[7] Section 148E as far as the Court is concerned, enables the statutory dispensation in relation to property acquired by parties to a common law union only, and short of legislative intervention, does not confer rights in law beyond the division of property (or maintenance under section 148I), as therein provided. For example, the right of a common law spouse to obtain a grant of administration upon death of an intestate spouse was given effect by statute (**s.54A of the Administration of Estates Act, Cap. 160** by amendment No. 6 of 2001). In similar vein the extension of s.18 of the MWPA to parties in a common law union would not arise without statutory intervention.

"…4. The following constitutes a final agreement between the parties in relation to the assets listed:

a) Mr. Lalchand shall invest $30,000.00 for the completion of the unfinished house in Belmopan for Ms. Supall and shall purchase a 4 cylinder motor vehicle for Ms. Supall. This investment is a repayment from Mr. Lalchand to Ms. Supall for money loaned to Mr. Lalchand by Ms. Supall. Completion date shall be:

b) Mr. Lalchand shall transfer 25 acres of leasehold land situate in Buena Vista Village, Cayo District, Belize to Ms. Supall.

c) Mr. Lalchand shall pay to Ms. Supall $2,000.00 for every container of cigars imported by Mr. Lalchand either directly or indirectly or by any of his companies into Belize. This includes but is not limited to trade names like (Goal City, Royalist, Racer, Dart Deel). All monies to be deposited in the Atlantic Bank Account No. 2107 334 74 in the name of Rutilia Olivia Supall.

d) Ms. Supall shall transfer 25 acres of leasehold land situate in Young Gial/Macre Registration Area, Teakettle Village, Cayo District, Belize to Mr. Lalchand.

e) Ms. Supall shall transfer 1 house and lot situate on Peter August Street, Santa Elena, Cayo District, Belize to Mr. Lalchand.

14. As has already been found by the Court in its first ruling, the agreement does on the face of it imply that it was made in anticipation of the parties' going their separate ways, but that separation did not materialize and they remained in a common law union[8]. The Court has also already found that the Applicant proceeded to Corozal and assisted with setting up the shop in the Free Zone, which thereafter carried on the business of wholesale and retail of goods (including cigarettes), under the name Benzer International. The Respondent contends that the company had been acquired since 2009 and denied as alleged by the Applicant, that she directly contributed to the cost of acquisition of the shares from the previous owners, the company then known as Shiva International. The Respondent stated that by July, 2011, the company had already been engaged in the business of importing containers of cigarettes and reselling them at a profit and from its first container, he made a profit of US$10,000 and the sum of US$1,000 (BZ$2,000) was agreed to be paid to the Applicant in recognition of the fact that she had played a role in assisting him with his business[9]. The Respondent however urged the Court to accept as an obvious implication from the terms of clause 4(c), that whatever role the Applicant had, the company, the importation and sale of containers of cigarettes and the profits made therefrom were solely his concerns.

[8] Ruling of May, 2017 paras 31-33.

[9] 1st Affidavit Gulab Lalchand para 41

The Applicant by her own agreement, was therefore entitled to no further compensation beyond payment of the $2,000 per container as therein provided.

15. The Applicant's position is that even though the transaction for purchase of the company was executed solely by the Respondent (it was customary in the Respondent's culture for him as the male to have done so). Notwithstanding, she and the Respondent had discussed the acquisition of the company as a couple and the monies used to purchase the shares were monies generated from the turnover of the Respondent's businesses after the cash loans she had earlier made to him. In this regard the Applicant's position was that she contributed financially to the acquisition of the shares of the company. Further, with respect to the actual business, in 2009, the Applicant says that the company was not operational and that the first container purchased as alleged by the Respondent, was not done in the name of the company but by the Respondent himself. The Applicant asserts that the agreement to pay her $2,000 per importation of container is supportive of her case that she contributed to the acquisition of the shares and Respondent's business up to that point. However, it remained her position that the agreement did not contemplate the business operated by the shop in the Free Zone, as it had not been in existence at the time the agreement was executed. This position therefore extended to the property thereafter acquired from the proceeds of the Free Zone business in the name of the company, but for their use and benefit. The Applicant had only her evidence to rely on, the Respondent, his own plus the evidence of daughter Nimmi.

16. On the evidence, the Court accepts that the company was acquired in 2009 and that it is clear from the cases of both parties that the Free Zone shop was established in late August and September, 2011. (The evidence of Nimmi on this issue is rejected on the basis that the Court finds it highly improbable that she would have been directly informed or consulted as to her father's business affairs during 2009 – 2011 during which time she was not yet an adult, and the Respondent as already found by the Court, was no longer residing with her mother, his former common law partner). It is however accepted as contended by the Applicant, that the company was not operational in July, 2011, but at worst even if it was, the Free Zone business was not in existence at the time of the July,

2011 agreement. As a result, the agreement by its terms did not speak to nor contemplate the operation of the Free Zone business. It also does not expressly preclude the consideration of the issue of to whom the company Benzer International belongs. This is because the agreement spoke to the activity of importation of containers of cigarettes, which was a business the Respondent had been engaging in at the relevant time. The Court recalls the evidence of the Applicant who responded under cross examination on this very issue, that when the business started, neither she nor the Respondent had any expectation or idea of what it would thereafter become.

17. The Court therefore finds that with respect to its scope, clause 4(c) of the agreement applied to the Respondent's activities of importing containers of cigarettes for resale, from which the Applicant was entitled to have a fixed payment of $2,000. The agreement did not contemplate and as such did not cover, the establishment of the shop in the Free Zone and the importation and resale of consumer goods thereafter carried out by the company in the name Benzer International. To the extent that the Free Zone business did involve importation and resale of cigarettes, this fact will be accounted for where it later falls to be considered with respect to any assessment of contributions and determination of interests. For now, the Court rules that the Free Zone business and the ownership of the company fall to be considered as part of the subject matter of the Originating Summons. In keeping with general principles of contract, there was no evidence raised of undue influence or fraud to be able to defeat the validity of the agreement. Therefore, the following properties which are pleaded in the Originating Summons must be excised and remain part of the July, 2011 agreement, to be enforced according to its terms and conditions:-

1. *Parcel #2191 situate on Peter August Street, San Ignacio Town, Cayo District in the name of the Applicant.*
2. *25 acres leasehold property located in Buena Vista Village in the Young Gal McCrae Registration Section in the name of the Applicant.*

The Court will now consider the determination of the Originating Summons proper according to the process now well established by then Barrow JA in **Vidrine v Vidrine**[10].

[10] Belize Civil Appeal No. 2 of 2010.

C. The Originating Summons (Identification of Pool of Assets)

18. The approach of then Barrow JA informs the process of division of property, in this case of parties to a common law union pursuant to section 148E of Cap. 91. By now that process is well established as comprising two steps[11] - the first of which requires the Court to identify the property which forms the pool of matrimonial assets to be divided. In this regard, the Originating Summons as finally amended by the Applicant on the 2nd March, 2018 sought relief which is extracted in its entirety as follows:-

> *The Originating Summons*
> *[1] A Declaration under section 148:05 of the Supreme Court of Judicature Act, Chapter 91 of the Laws of Belize that the Applicant and the Respondent were in a common law union for a period of five years or more.*
>
> *[2] [a] A Declaration under section 148:05 of the Supreme Court of Judicature Act, Chapter 91 of the Laws of Belize that the Applicant is beneficially entitled to a one-half share or such other interest as the Court shall deem just in the properties listed in the FIRST SCHEDULE below.*
>
> *[b] A Declaration that the Applicant is beneficially entitled to one-half share or such other equitable interest as the Court shall deem just in the shares of the 5th Interested Party and that the purported transfer of shares in the 5th Interested Party to the 1st to 4th Interested Parties dated 31st of May 2015 were void and of no legal effect; such transfers having been done in contravention of and in disregard of the equitable interests of the Claimant in an effort to defeat the. Further a consequential order that the said transfers be set aside and the share register of the second Respondent be amended accordingly.*
>
> *(c) A Declaration that the Appellant is beneficially entitled to one-half share or such other interest as the Court shall deem just in the 5th Interested Party and the properties owned by the parties listed in the SECOND SCHEDULE below.*
>
> *(d) A Declaration that the Applicant is beneficially entitled to 100% share in interest in the personal properties listed in the THIRD SCHEDULE below.*
>
> *[3] An order that the aforementioned properties contained in the First and Second Schedule should be sold and the net proceed of sale be shared equally or in such proportion as the Court shall deem just between the Applicant and the Respondent; and or*

[11] Vidrine supra para 70.

[4] An order that one-half of the amounts standing to the credit of the following accounts or such sum as the Court deems just be paid to the Applicant namely:

[a] Checking Account #100111870 at Atlantic Bank in the name of Gulab Lalchand T/A Miryani's Store.

[5] An Order that the Respondent and the Interested Parties do provide an accurate account of the importation of all containers imported directly or indirectly by either the 5th Interested Party and or an company or entity on its behalf during the period January 2015 to the date of judgment and that the Respondents to pay to the Applicant the sum of $2,000.00 per container after deduction of the sums paid to the Applicant with respect to such containers during this period. That a further lump sum payment be made with respect to said containers post judgment.

[6] An Order that the Court doth order that the Respondent is entitled to a beneficial interest in any other assets not mentioned herein acquired by the Respondent during the common law union, in such shares as the Court shall deem just.

[7] An order that the Respondent do pay to the Applicant such monthly or weekly sum or such lump sum and make other financial arrangement in respect of the maintenance of the Applicant as may be just.

[8] An Order of injunctions restraining the Respondents by themselves, their servants or agents or whosoever from selling, transferring, leasing, charging, or in any way dealing with any of the real and movable properties aforementioned and the inventories until the determination and satisfaction of the orders made in the Action herein or further order of the Court.

[9] An Order of injunction restraining the Interested Parties by themselves, their servants or agents or whosever from in any way dealing with any of the shares in the 5th Interested Party until the determination and satisfaction of the Action herein or further order of the Court.

[10] Such further or other Order or relief as the Court may deem just.

FIRST SCHEDULE

3. *Home situate at #6 North Venezuela site, Corozal, Corozal District Belize being parcel 2081, Block 1, Corozal North Registration Section registered in the name of Shyam Amarnani and charged to Heritage Bank Limited.*
4. *Parcel 400 Block 1 in the Paraiso/ Santa Rita Registration Section beneficially owned by the Respondent and held in the name of Jesse Robert Vellos Sr.*

5. *Parcel 401 Block 1 in the Paraiso/ Santa Rita Registration Section beneficially owned by the Respondent and held in the name of Jesse Robert Vellos Sr.*
6. *Beneficial or equitable interest in property in the Benque free zone area being purchased or purchased from Billy Musa in payment by installments.*
7. *Parcel #2191 situate on Peter August Street, San Ignacio Town, Cayo District in the name of the Applicant.*
8. *25 acres leasehold property located in Buena Vista Village in the Young Gal McCrae Registration Section in the name of the Applicant.*

SECOND SCHEDULE

1. *Vehicle – 2000 Toyota Sierra Van in the name of the Respondent.*
2. *The issued shares in Benzer International Company Limited numbered 1 to 10,000.*

THIRD SCHEDULE

1. *2008 Hummer licensed CZL 01050 registered in the name of Rutilia Supall.*

19. Following the Court's earlier finding with respect to the scope of the July, 2011 agreement, the process of identification of the pool of assets first requires that the property governed by the July, 2011 agreement be removed from the Court's consideration. Additionally, the factual matrix of this case necessitates the resolution of several legal issues which arise in respect of the property asserted by the Applicant as forming part of the assets acquired during the course of the union. The property which remains after excluding that governed by the July, 2011 agreement is as follows and will be addressed in turn in respect of any legal issues which arise:-

   (i) 400 Paraiso in the name of Robert Vellos Sr.
   (ii) 401 Paraiso in the name of Robert Vellos Sr.
   (iii) Property in Benque Free Zone purchased from or being purchased from Billy Musa in installments
   (iv) Venezuela Site home
   (v) Shares in Benzer International Co. Ltd.
   (vi) 2000 Toyota Sierra
   (vii) 2008 Hummer

(i) <u>Paraiso and Benque Free Zone Properties</u>

20. The real properties claimed by the Applicant include land the legal title of which is in the name of third parties. These are the lots in Paraiso in the name of Robert Jesse Vellos Sr.;

the property in Benque Free Zone owned by Billy Musa; and the Venezuela Site in the name of Shyam Armanani. In respect of these properties, the Court would have to be proceeding on the basis that the Respondent holds the entire, or some beneficial interest in all of them and such a determination is a matter of evidence. With respect to the first three of these four properties, (Robert Vellos Sr. x 2 and Billy Musa), the evidence for consideration by the Court comes from the word of the Applicant herself versus that of the Respondent, supplemented by some documentation. As pertains to the properties in the name of Robert Vellos Sr., the Applicant's evidence is that about a month after their relationship ended the Respondent told her he owned lots 403 and 404 in the Paraiso/Santa Rita area and drove her to the area and pointed out the land. The Applicant also alleged that the Respondent spoke to someone on the phone about the location of the lands whilst showing them to her and obtained a rough hand drawn map, of which he gave her a copy upon her request.[12] The Respondent denied ownership of these lands in any capacity and put the Applicant to her proof. As evident from the amendments to the parcel numbers pleaded during the course of proceedings, the Applicant herself is not aware of the precise identifying details of such parcels. She was similarly not aware of any details pertaining to the actual purchase such as date or purchase price. Further, she presented no evidence of who Robert Vellos Sr. is, or of any connection between him and the Respondent at all, much less within any context that could give rise to an inference that Mr. Vellos would be holding land in trust for the Respondent.

21. The evidence in respect of the Billy Musa property is similarly afflicted, as the Applicant provided no other information aside from the location of the property in the Benque Free Zone; that it was purchased or being purchased from Billy Musa; and that this information was supplied to her by the Respondent. The Applicant asserts that the Court should accept these properties as beneficially owned by the Respondent notwithstanding the absence of any cogent evidence, primarily on the basis that the Respondent has a pattern of having land held in the names of third parties for his benefit.

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[12] 1st Affidavit of Applicant paras 104-105

She alleges that this pattern was deliberate, stemming from the Respondent's prior experience of having his properties foreclosed by the bank during the period when she first met him in 2007. The Applicant states that the Respondent specifically communicated this strategy to her as an explanation for not wanting to place the shares of the company in both their names when the shares were purchased in 2009. The Applicant also specifically points to the transaction whereby the Respondent had her purchase leasehold property situate in the Young Gal Mcrae area which he said was his, but was held in the name of his ex-girlfriend, the mother of his fourth child[13]. The Applicant said, that as requested by the Respondent, she purchased that property from his former girlfriend and it was transferred to her name. However, the Applicant asserts that sometime thereafter, the Respondent without her knowledge or her consent, managed to effect a transfer of that land (legally held in her name), to a further third party. This property in question is registered land and the last transfer as alleged by the Applicant is borne out by the land register and the earlier transfer, by title and transfer documents, thus it is accepted that those transfers took place. Whether they occurred in the manner and circumstances alleged by the Applicant is another matter.

22. The Court accepts that the Respondent owned the land and that he asked the Applicant to purchase it from his ex-girlfriend. In respect of the transfer thereafter effected to the third party without her knowledge or consent, it is either that the Applicant is mistaken or untruthful about this allegation, as such a feat could not have occurred without forgery on the part of the Respondent, compounded at best by negligence, on the part of the land registry. The Court is unable from the evidence to determine that the transfer from the Applicant to the third party took place in such circumstances. There is simply no evidence that allows the Court to so find. Additionally, the imputation or not of knowledge of this transfer to the Applicant is not relevant to this issue of whether or not the Respondent owns the properties registered in the names of Robert Vellos Sr. or Billy Musa. However, insofar as the initial transfer from the ex-girlfriend to the Applicant is concerned, coupled with the Respondent's explanation to the Applicant of wanting to minimize his exposure

[13] 5th Affidavit of Applicant paras 45-46

to possible liability arising from his business ventures, the Court finds the Applicant's assertion of the Respondent having a pattern of owning land beneficially and allowing the legal title to be hold in the name of third parties, to be supported. Acceptance of such a pattern aside, this remains a court of law in which having alleged – the Applicant must prove.

23. At best, the pattern accepted by the Court raises the possibility that the three parcels of land could be beneficially owned by the Respondent whilst legally held at his behest in the names of Robert Vellos Sr. and Billy Musa. However, insofar as set out above, the evidence does not rise to the level of proof on a balance of probabilities. With this determination by the Court, the two parcels of land in Paraiso owned by Robert Vellos Sr. and that said to be situated in Benque Free Zone purchased from or being purchased from Billy Musa are excluded from the Court's consideration as property acquired by the parties during their union. The Court now considers the house at the Venezuela Site. From that filtering process just made in relation to the other three parcels of land, the Court's consideration is already informed by the finding of a possibility that the land is beneficially owned by the Respondent. The evidence presented in relation to this assertion is that of the Applicant and Respondent, a representative of Heritage Bank Ltd. (in response to a subpoena requested by the Applicant), and the legal owner of the house Mr. Armanani on behalf of the Respondent. The Court has accepted the submissions on behalf of the Applicant in relation to how the Respondent's evidence on the Venezuela Site is to be viewed.

(ii) The Venezuela Site home

24. The Applicant's case regarding the Venezuela Site home is that in January, 2015 she and the Respondent discussed buying the house from Vishal Armanani, a gentleman who owed the company Benzer International over four hundred thousand dollars ($400,000). Vishal it was said, offered to sell the house to them to clear off the debts he owed to the company. The house was said to be in his father's (Shyam Armanani's) name. The Applicant said that after viewing the house with the Respondent they agreed to purchase it.

She says a few days later, which would by her account be either still in January, 2015 or early February, 2015, she recalls travelling with the Respondent to Belize City to go to Heritage Bank to meet Vishal and another person, supposedly his father. The purpose of that trip was for the papers for the house to be signed over at the bank, as the house was mortgaged to the Bank. The Applicant was aware of no details other than the fact that the Respondent took a cheque of over $60,000 as part payment for the house, and they would then continue making payments until the mortgage was paid off. After that transaction, she says they proceeded to carry out renovations to the house, whereby she picked out materials such as tiles, paint and fixtures, and the renovations was paid for from the company's monies. The renovations were complete in late August, 2015 and the parties including her younger daughter and the Respondent's son, moved into the Venezuela Site as their new home. This was the Applicant's account of the acquisition of this property in her first affidavit in support of her Originating Summons.

25. The Respondent gave three different responses (in several of his affidavits which were admitted to stand as his evidence in chief) to the allegation that he owns the Venezuela Site property. The first (from his first affidavit in response to the Originating Summons, in May 2016), was that in 2015, Vishal Armanani did offer to sell the property to him in consideration of a cancellation of his debts to Benzer. However that offer was not accepted and instead the Respondent put Vishal on to a Mr. Kishore Makhajani who purchased the house and in turn rented it to the Respondent for $1,000 monthly. His first position therefore was that the house was owned by Mr. Makhajani and from whom he was renting it. He stated that the renovations were made upon their request, but at the cost of the owner, and they were involved in picking out the materials. In his third affidavit filed in November, 2016, the Respondent reiterated that he had no interest in the Venezuela Site property and stated that the property was owned by Shyam Armanani and was mortgaged to Alliance Bank of Belize Ltd. (Heritage Bank). No mention was made at that time of Kishore Makhajani, but the Respondent again stated that he rented the property for $1,000 monthly.

In his seventh affidavit, filed in March, 2018 the Respondent again stated that he was not the owner of the property, neither the legal nor beneficial owner. He stated that he was renting the property from Shyam Armanani as part of an arrangement arising from debts owed to Benzer International by Vishal Armanani, Shyam's son. The rent he was paying was being deducted from Vishal's debt to Benzer and it was also stated to be the Respondent's belief that Shyam (at the time said to be overseas in India), was returning to Belize and upon his return that he might clear his son Vishal's debts owed to the company.

26. Pursuant to a subpoena issued at the behest of the Applicant, Ms. Wendy Babb, officer of Heritage Bank Ltd. filed an affidavit in April, 2018 and her evidence as stood at the trial, was that the property in question was owned by Shyam Armanani, and it was charged in the sum of $275,000 in June 2006. On January 19th 2015 the balance of the charge was repaid in full. Ms. Babb's evidence was that the final payment in the sum of $63,481.70 was made by Mr. Gulab Lalchand, who collected the title documents pursuant to the written instructions of Mr. Armanani. In May, 2018 Shyam Armanani filed an affidavit on behalf of the Respondent. The affidavit, which stood as his evidence in chief confirmed the position stated by the Respondent in his 7th affidavit regarding the rent being paid for the Venezuela Site house being applied towards Vishal's debt to Benzer. Mr. Shyam also stated that the Respondent had paid for renovations and repairs, and that the final payment of the mortgage was made by the Respondent as a loan to him. Mr. Armanani was careful to point out that the Respondent was formerly a director and shareholder of Benzer. Finally, he confirmed that he was currently in India and that when he returned to Belize, he 'may be able to' pay the debts owed by his son to Benzer. Under cross examination however Mr. Armanani stated that he and Vishal had not had a very good relationship for some time and he knew nothing about his whereabouts at that moment.

27. Inasmuch as the rental was agreed for the purpose reducing the debt of his son whom he knew nothing about, Mr. Armanani did not give particulars of the debt owed by his son and could only say that accounts between himself and the Respondent would be settled when he returned to Belize.

Mr. Armanani was unable to indicate when he would be returning to Belize but at the time of the trial he was hospitalized, recovering from medical procedures. The Court took a dim view of the evidence provided by the Respondent and his witness Mr. Armanani. The first account of the property having been purchased by a Kishore Makhajani which was the Respondent's initial response to the Applicant's allegations of ownership of the Venezuela site could only have been an outright fabrication, as it was entirely inconsistent with the account of ownership later asserted in respect of Mr. Armanani. Under cross examination the Respondent could do no better than fail to recall, when his statements regarding Kishore Makhajani owning the property and paying for renovations were put to him. Further, the arrangement of the rental of the premises being for the purpose of offsetting the debt owed to Benzer by Vishal Armanani is also viewed as a fabrication, as it is difficult to understand why that was not stated from the outset if that were the case. The Applicant had exhibited a document from Heritage Bank speaking to the Respondent having paid the sixty thousand plus dollars on behalf Mr. Armanani very early in the proceedings. The Respondent did not acknowledge having made that payment nor did he make mention of any set off for Vishal's debts to Benzer until very late in the proceedings as the matter marched on to trial. Further, the Court found Mr. Armanani to have been at best irritated and at worst belligerent when pressed for details of the rental arrangement which his evidence was provided to confirm. It was also curious to the Court that Mr. Armanani disavowed interest in the whereabouts of his son, yet had entered into an arrangement to discharge his son's debt and seemed to have no details of the particulars of that debt.

28. Mr. Armanani's account was that the Respondent had paid for the renovations and repairs to the house whilst the Respondent in his first response (found to be fabricated), attributed the repairs to Kishore Makhajani. Mr. Armanani's statement that the Respondent paid for the renovations is what is asserted by the Applicant. The Court takes the point that the Respondent rendered his own initial response as to ownership a fabrication and was contradicted by his own witness in relation to the renovations.

The Court also notes that the evidence of Mr. Armanani was particular in speaking to matters which were not for him to establish, such as the Respondent's position being that of a former director and shareholder of Benzer. This evidence is viewed by the Court plainly as an attempt to buttress the case of the Respondent without any basis for asserting knowledge of that fact. Also, the Court finds the assertion that the final payment of over $60,000 was made as a loan to Mr. Armanani to be improbable. This assertion was never mentioned by the Respondent in any of his three versions accounting for the Venezuela Site property. As a matter of fact, as stated before, the Respondent never acknowledged making the payment of that money to Heritage Bank and Mr. Armanani's affidavit was filed after the Bank's response (pursuant to subpoena), confirming that that payment was made by the Respondent. In the round the Court rejects the evidence advanced by and on behalf of the Respondent in relation to the ownership of the Venezuela Site home. The Court notes as submitted by Counsel for the Applicant, that the title documents were handed over to the Respondent who has declined to address that evidence at all, even to say where or by whom they are being held.

29. The Court has found that the Respondent has been untruthful in his responses about ownership of the Venezuela Site home. This fact alone however is not sufficient for the Court to make a finding as to the beneficial interest asserted by the Applicant. The Court must still examine what actual evidence can give rise to an inference of beneficial ownership. The fact that the Respondent was untruthful does not automatically translate to such an interest. In this regard, most importantly, the Respondent is in possession of the home and is found to have paid for renovations above and beyond what would be the responsibility of a tenant. The Court also accepts the evidence provided by the Applicant of the Respondent having sued to recover monies expended in pursuance of those renovations. This was supported by the actual plaint as filed in the Magistrate's Court for the recovery of monies paid to construct cabinets. Mr. Makhajani's owneship was a fabrication so he had nothing to do with the renovations and Mr. Armanani says the Respondent paid for the renovations. This action is found supportive of beneficial ownership as opposed to a monthly tenancy with no beneficial interest.

Additionally, the repayment of the balance of the charge on the property by the Respondent was objectively confirmed by the Bank and by Mr. Armanani and this amounts to a direct financial contribution capable of giving rise to beneficial interest.

30. The Bank's evidence could go no further than the monies having come from the Respondent towards Mr. Armanani's loan. Mr. Armanani said that the final payment was a loan made by the Respondent to him. The Respondent never made this assertion of the final mortgage payment being a loan by him to Mr. Armanani. The Court finds the idea of the final payment being a loan improbable in the circumstances of there already being an indebtedness assumed by Mr. Armanani for his son's debt to Benzer, and the absence of any specific oral or written agreement in this regard advanced by the Respondent. Lastly, the last known whereabouts of the title documents to the property was in the Respondent's possession, he having collected them upon written instructions of Mr. Armanani. The Respondent failed to account in any way for the whereabouts of these title documents. The Court therefore finds on a balance of probabilities that the Respondent does indeed possess a beneficial interest in the Venezuela Site property and as such it will form part of the Court's consideration for division of property of the union.

Ownership/Shares in Benzer International Company Limited

31. The Applicant's case with respect to the ownership of the shares of the company Benzer International is that she is a rightful owner of the company as she contributed to its acquisition as well as the free zone business operated in the company's name. The Applicant says she accepted the Respondent's representation to her that only one of them should sign on to the company as shareholder and director so that in the event of any liability issues they both would not be affected. The company was thus acquired with a shareholding of 10,000 issued shares, the Respondent holding 9000 and the Respondent's friend Lindon Jackson, (known to the Applicant) holding 1000. The Applicant participated in the setting up the company's main venture the Corozal Free Zone business on the basis of the parties' joint ownership of the company and on the basis that she and the Respondent were working together for the benefit of their joint future. The Respondent's position is that the company was entirely his;

that he acquired it without the input or contribution of the Applicant; and his position as communicated to her was that the company would eventually be turned over to all of his children.

32. The Applicant accepts that she was aware when the 1000 shares held by Lindon Jackson were transferred to the Respondent's eldest daughter Nimmi, when she turned eighteen in July, 2012. The Applicant however denies that the transfer was in furtherance of the Respondent's intention to turn over the company to his children. Rather, she understood that the transfer was effected as Lindon Jackson was mismanaging monies of the company and that notwithstanding the transfer ownership of the 1000 shares, the company remained for the benefit of her and the Respondent. In September, 2015, when the parties' union was already strained arising from the Applicant finding out that the Respondent had fathered another child from an affair she knew about but thought had ended, the Applicant says she discovered that the Respondent had transferred his 9000 shares to his children in May, 2015. The Applicant was not on terms with the Respondent's three adult daughters and was upset that this had been done without her knowledge. Shortly after a confrontation about that, allegations of domestic violence and confrontations about other issues, the relationship ended. The Applicant's position is that she was never aware of any intention by the Respondent to transfer his shares to his children and that he did so deliberately to deny her a share in the company.

33. The Respondent maintains that the Applicant was aware that the company was for the benefit for and was to be handed over to his children. The question of whether or not the company should form part of the assets of the union requires the Court to examine the legitimacy of the transfer of shares made by the Respondent to his children. This entails consideration of whether section 148H falls to be applied. Section 148H provides as follows:-

"148H *(1) In cases where sections 148A to 148G of this Act apply, the court may on application by an interested party or on its own motion, set aside any instrument transferring property from a spouse to a marriage to any other person, or from a party to a union to any other person, or may restrain the making of such an instrument or disposition by or on behalf of, or by the direction and in the interest of, such spouse or party to a union, which is made or is intended or proposed to be made to defeat an*

existing or anticipated order in any proceedings under the said sections, or which, irrespective of intention, is likely to defeat any such order.
(2) An instrument or disposition made contrary to subsection (1) of this section, is void."

A set aside of the transfer of the Respondent's shares to his children, the 1st – 4th Interested Parties would have to be made pursuant to this section. The operative parts of the section as relevant to this case are underlined. There was no existing order concerning the shares in Benzer in May, 2015 thus the operation of the section would have to hinge upon there being an anticipated order. Regardless of the state of the Applicant's knowledge or belief in relation to her entitlement as to ownership of the company, the question of whether or not the transfer of shares should be set aside rests entirely upon a finding that it was made to defeat an anticipated order.

34. Senior counsel for the Respondent and Counsel for the Interested Parties provided excellent submissions and authorities on the application of the Australian equivalent of section 148H. It has been established by ***Vidrine*** that the application of section 148A (same applies to 148E) derives from the Australian rather than English position, and this parity is just as applicable to section 148H in terms of the corresponding provision in the Australia Family Law Act, 1975.[14] As such both counsel relied almost entirely on Australian authorities in construing section 148H. The Court accepts respective counsels' reliance on the Australian position as the preferred source of authority and guidance in the application of section 148H. The Respondent's first position in relation to the transfer of shares was that the Applicant's entitlement was limited by the July, 2011 agreement by which she accepted $2,000 per container of cigarettes imported by the Respondent or any of his companies. The Respondent's argument is that this establishes that any claim to the Respondent's companies was precluded as Benzer International had already been acquired since 2009. The Applicant's response to this contention is that albeit it had been purchased, the company was not in operation in July, 2011, thus the agreement was not referring to Benzer.

[14] S.106B of the FLA 1975 as amended.

The Court has already made its ruling that the agreement was temporal and that as submitted by the Applicant, Benzer International at least in terms of the Corozal Free Zone shop, was not yet in existence at that time. The Court does not therefore accept the Respondent's first position in relation to the share transfer issue, however the position in relation to construing 'anticipated order' was adopted by both senior counsel for the Respondent and counsel for the Interested Parties.

35. The authorities submitted to the Court provide guidance in respect of the meaning of 'anticipated order' which is what is most critical in the application of section 148H in this instance. Reference was made to **Australia and New Zealand Banking Group v Harper et al**.[15] This case concerned an application by a wife to set aside a transfer of property by way of mortgage by her husband to a bank. The basis of the application was said to be a beneficial interest arising out of a financial provision agreement entered into between the spouses in divorce proceedings by which the husband had agreed to pay the wife a certain sum from sale of proceeds of the house. The mortgage of the property to the bank took place after the agreement (and divorce) and there was part payment only of the agreed sum to the wife. The convoluted facts thereafter saw the wife institute proceedings against the husband for enforcement of the agreement including a set aside of the mortgage; the death of the husband and substitution of his estate with new wife as executrix as a party; and a caveat entered against the property restraining further dealings. It suffices to say that the court at first instance found that the transfer by way of mortgage fell within the provisions of then section 85 of the FLA 1975 and the transfer was set aside. The bank appealed. In considering the question of whether the disposition was likely to defeat an anticipated order in the wife's proceedings, the Full Court affirmed with reference to prior authorities, that the onus of so proving rested with the wife. This onus must be accepted as laying upon the Applicant in the case at bar.

[15] (1987) Fam Ca 4

36. More importantly, with respect to the consideration 'anticipated order', the Full Court (referring to **In the Marriage of B G & K R Pflugradt**[16]) stated that *'…the onus upon the wife was to establish that the security given to the Bank was likely to defeat an order in her favour which could reasonably be anticipated in the proceedings.'* [17] They then went on to explain that *order* was in contradistinction to the existence of a claim, meaning that aside from proceedings having to be in existence or apprehended, there ought to be within realistic contemplation, a prospect of success by grant of an order. Also to be considered is whether the anticipated order could likely be defeated by the disposition or dealing sought to be set aside. The Full Court found that that in the circumstances of that case it had not been open for the judge to find that the transfer by mortgage could be seen as likely to defeat the wife's anticipated order and the appeal was allowed. The process of having come to that conclusion required the Court to make an inquiry as to the assets available from the husband's estate and its debts and liabilities. The point being made is that the question of 'anticipated order' and a disposition being 'likely to defeat' any order made, are not automatic conclusions, so that the application of section 148H to any given situation requires consideration of evidence in a particular light.

37. In the instant case, the evidence is that the break-up of the parties' union cannot be said to have been in contemplation in May, 2015 when the transfer of shares took place. Such an occurrence was never asserted by the Applicant as having been in her contemplation at that time. As a result there cannot be said to have been any proceedings in contemplation either. From this fact alone, it is not possible for the Court to go any further in order to ascertain the likelihood of an anticipated order in the manner explained by the two above cases. Counsel for the Applicant makes the point that it is unlikely that the Interested Parties paid for shares in the sum of ten thousand dollars as the transfers allege. Short of Nimmi, the other three children were not at the time adults much less working.

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[16] (1981) Fam LR 188

[17] Australia and NZ Banking Group v Harper et al supra @ para 31

The transfers it was contended, were therefore not for valuable consideration. On this point the Court is inclined to agree, i.e. that on a balance of probabilities the shares were not transferred for valuable consideration given the relationship of parent and child and the fact that three out of the four children were minors, not working and had no means to pay for the shares. This finding notwithstanding, the Applicant would still be unable to establish that proceedings were contemplated much less a likely order in her favour, in May, 2015 when the transfers of shares were made by the Respondent to his children. In the circumstances the Court finds that the transfers of the shares to the Interested Parties do not attract the application of section 148H.

38. The Court must nonetheless now go on to consider whether the shares insofar as they represent ownership of the company can be considered as part of the assets acquired by the parties during their union. Having been purchased in 2009, the time of acquisition so allows. However, the only way that the company through the ownership of its shares can fall within the subject of the Originating Summons is if the Court finds that the Respondent retained a beneficial interest in the shares he transferred to his children. In this regard, the finding that the shares were not transferred for valuable consideration even though so stated in the transfer becomes relevant. The first answer that the Court would anticipate in response to this finding is that as a transfer from parent to child, there ought to be a presumption of advancement – i.e. – that the shares were intended to be a gift. The Court declines to apply the presumption of advancement for the simple reason that it was perfectly legally permissible for the share transfers to have recited the consideration as natural love and affection but they did not. The Court finds that the representation of the transfers being for valuable consideration was deliberately false. The Court also looks at the extent to which the company through its primary asset – the Corozal Free Zone store - can be found to have been the primary source of income for the Respondent. The Applicant's evidence that the business (the store) paid for all aspects of the parties' lives was never refuted. The Respondent never asserted nor produced any concrete evidence of any additional source of income (except late in the proceedings, by way of further affidavit speaking to his means).

39. Up until the time of the break-up and prior to the institution and development of these proceedings, the Respondent's source of income is found as having been generated by the company, through its primary asset the Corozal Free Zone store. In the circumstances, where the Respondent claims to be retired and receive $3,000 per month from the business on the agreement of his daughters, as the current shareholders and directors, the Court is unwilling to accept this position. This point will have to be revisited further on in the Court's consideration, but at this stage the Court notes that the company was subject to such poor record keeping that it was unable to meaningfully comply with the Court's order for disclosure of financial records. Further, a qualified accountant was unable to produce standard financial documents at the request of the owner, because of the poor state of the company's records. Against this scenario, the Respondent has been able to produce neatly filled out vouchers from the company to him, signed by his daughter as director, in the sum of $3,000 for each month of the period for which he was ordered to produce evidence of his means. The Court is constrained to treat with this evidence with a high degree of skepticism.

40. Further, at the time he handed over the operational reins of the Corozal Free Zone store, his daughter Demi would have just turned eighteen years, still pursuing her education and the Court does not accept it possible that she would have been left entirely in charge of the company or its finances at that early stage. There is also the evidence of the Respondent as supported by his witness Mr. Armanani, of the verbal agreement entered into in or around August, 2015, (after the transfer of the shares), whereby the Respondent obtained and still retains the benefit of a debt owed to the company. This arrangement pertains to what the Respondent says is the rental of the Venezuela Site home in the sum of one thousand dollars monthly, which is being set off against debts owed to the company by Mr. Armanani's son Vishal. The Court has declined to accept the story of the rental and has preferred a finding that the Respondent is the beneficial owner. Whether or not there is an actual payment of one thousand dollars monthly is however besides the point.

The material evidence is that the Respondent is retaining a benefit arising from a debt owed to the company and this fact contributes to the Court's finding that he retains a beneficial interest in the shares of the company. With respect to this issue therefore, the Court is quite willing to accept that the Respondent may be 'retired' in the sense of having ceded the day to day operations of the store to his daughters.

41. However, on a balance of probabilities, it is also found that the Respondent is still entitled of his own accord, to make use of the company's resources and assets and as such retains a beneficial interest in the shares of the company. The Court is further willing to accept that the Respondent does not retain the entire beneficial interest in the shares, as his adult children do in fact work and have responsibilities in the business. The situation is therefore not to be equated with the children holding the shares in name only as would have been the case with Lindon Jackson's 1000 shares, subsequently transferred to Nimmi. The question of the extent of that beneficial interest is another issue yet to be decided, but for now it suffices to say that the Court finds the Respondent to retain a beneficial interest in the shares and thus ownership of the company. The Respondent's beneficial interest in the shares of the company therefore fall within the pool of property acquired by the parties during the union.

D. <u>Declarations of Beneficial Interests of Property acquired during the union (s.148A(2)).</u>

42. Based on the foregoing, the following property remains for consideration under the Originating Summons:-

(i) The Venezuela Site home
(ii) The shares of Benzer International
(iii) The 2000 Toyota Sienna vehicle
(iv) The 2008 Hummer
(v) The proceeds of the Respondent's account at Heritage Bank.

With respect to this issue of declaring a beneficial interest in property pursuant to section 148E(2), the Court has observed, that even though invariably pleaded, the issue is often not sufficiently addressed by Counsel in final submissions.

Submissions generally proceed directly to the two-step process identified by Barrow JA in ***Vidrine***,[18] in spite of the fact that declarations are sought as to beneficial interest. As evident from the extract below, the two-step process identified by Barrow JA was so done with respect to a property *alteration* order pursuant to section 148A(3). Barrow JA had begun his consideration of the process to be followed in making property alteration orders and made reference to the corresponding Barbados legislation.[19] He described the process in Barbados as comprising three (3) steps, then went on to state the following, which is now used as the starting point for the process of matrimonial property division[20]:-

> *"In Belize, because all the factors to be taken into account are listed in s. 148A(5) and there is no incorporation of a separate list of other matters to be considered, it is a two-step process that should be followed on a property alteration application. Those steps would be to (i) identify and value the property acquired during the subsistence of the marriage and (ii) consider and evaluate the matters listed in sub-s.(5) that it is stated the court shall take into account in considering whether it is just and equitable to make an alteration order."*

43. However, Barrow JA went on to state the following, which is that part of the process generally inadequately addressed:-

> *"It will often be the case that a single application will be made pursuant to section 148A for <u>both a property declaration order</u>, under sub-s.(2), and a property alteration order under sub-s.(3). <u>In such a situation it would be appropriate that after following step (i) to determine beneficial interest in the relevant property before proceeding to step (ii) since that determination of beneficial interest may affect the evaluation under the second step.</u> Further, this approach would avoid confusion since the matters required to be considered in deciding whether to make an order altering property are not matters required or appropriate to be considered in deciding whether a spouse is declared to have a beneficial interest in property"*

The originating summonses for matrimonial property division which come before the court generally seek as primary relief, declarations of beneficial interest in the properties claimed and thereafter, (as consequential relief) orders for sale of the subject property or such other relief as the court may deem just.

[18] Vidrine supra per Barrow JA @ para 70
[19] S.57 Barbados Family Law Act
[20] Vidrine supra para 70.

The practice observed is that this entire process of declaration of beneficial interest and what is in effect consequential relief upon property alteration by means of an order for sale, becomes subsumed under the Barrow JA two-step process, and appropriate principles are not put forth, in relation to the determination of beneficial interest. As stated above by the then Justice of Appeal himself, the matters relevant to determination of beneficial interests are not the same as those relevant to property alteration, and the existence or not of beneficial interests in properties claimed may affect any property alteration order that might be made under section 148E(3). That is all to say however, that the application of section 148E(2) and (3) must arise from two very distinct determinations by the Court.

44. The principles upon which the Court must determine the existence or not of any beneficial interest in matrimonial property are the same which would have to be applied in relation to an application under s. 16 of the Married Women's Property Act, Cap. 176. (which obviously does not arise in this case pertaining to a common law union.) These are the principles applied after the House of Lords' decisions in **Pettitt v Pettitt**[21] followed by **Gissing v Gissing**[22]. These cases really require no introduction nor extensive discussion, save to recall that ***Pettitt*** saw the Law Lords definitively put an end to any further use or development of (their equivalent to section 16 of Cap. 76), as a means of altering property interests between husband and wife. It was recognized therein that albeit the acquisition of matrimonial property raised peculiar challenges of available evidence with respect to determining ownership, there was no room for special application of general principles of law regarding acquisition of property, to the circumstance of matrimony. The seeds were however sown in respect of precisely how ownership of property acquired during marriage was to be decided, in the absence of any express agreement for same. The circumstances identified as most commonly arising were (i) property held in the name of one spouse only whilst acquired by both or the other; (ii) indirect contributions to acquisition – namely, contribution to other expenses enabling acquisition or payment of

[21] (1970) AC 777
[22] (1971) AC 886

mortgage; and (iii) improvements by one spouse to property owned by the other spouse prior to marriage. Save for agreement that the section 16 equivalent was not intended to alter property interests, the question of how ownership was to be determined was not answered definitively. The answers ranged from the parties having to rely on presumptions of gift or a resulting trust; or the finding of a constructive trust evidenced by a common intention as to ownership or interest, arising from the conduct of the parties. It was also not definitively stated how such a common intention was to be determined.

45. ***Gissing*** followed shortly thereafter and by majority, the position regarding determination of ownership of matrimonial property in the absence of express agreement was stated in terms that:-

> *"Any claim to a beneficial interest in land by a person, whether spouse or stranger, in whom the legal estate in the land is not vested must be based upon the proposition that the person in whom the legal estate is vested holds it as trustee upon trust to give effect to the beneficial interest of the claimant as cestui que trust…"*

In relation to the question of determining the beneficial interest in property, the decision of the House, particularly the judgments of Lords Reid and Morris of Borth-y-Gest, established and still provide the base authority from which to approach the issue. The overall position, was that regardless of whether to be termed implied, constructive or resulting, a beneficial interest had to arise from the finding of a trust having been created from the circumstances of acquisition. Lord Reid opined that it ought to make no difference whether financial contributions made to acquisition were direct or indirect, the only difference would be that in cases of indirect financial contributions it would be a greater challenge to determine the extent of beneficial interest. In such case the existence of contributions would be sufficient to give rise to either a resulting or constructive trust. The problem he identified was that in the majority of cases financial contributions referable to acquisition are absent and there is very little evidence of any circumstances capable of giving rise to inferring a common intention of proprietary interest to be held by the parties. Lord Reid eschewed the imputation of any deemed intention of an agreement regarding ownership where there was no evidence to support such an agreement.

46. The position with respect to how the common intention of agreement re ownership is to be found from the evidence is for this Court, best expressed by Lord Morris of Borth-y-Gest and extracted as follows:-

> *"When questions arise between spouses or between former spouses or in relation to the affairs of one or another of them concerning the beneficial ownership of property the task of a court will often be one of much difficulty. But this should not be because the principles of law are in any way obscure or in doubt. It will be because in the nature of things the evidence will often not be specific and precise. The court must do its best to ascertain all the facts and then reach a conclusion.*
>
> *In the infinite variety of circumstances that may arise there will be cases where there is separate ownership of property in a husband and cases where there is separate ownership in a wife and cases where there is joint ownership: there may be a payment which gives rise to a resulting implied or constructive trust: there may be a gift of money by one to the other: there may be a loan from one to another: there may be services rendered in respect of which some reward was expressly or impliedly promised: there may be services rendered without any contemplation of any such result: there may be services rendered or payments made without any thought that any property rights could be or would be in any way affected.*
>
> *When the full facts are discovered the court must say what is their effect in law. The court does not decide how the parties might have ordered their affairs: it only finds how they did. The court cannot devise arrangements which the parties never made. The court cannot ascribe intentions which the parties in fact never had. Nor can ownership of property be affected by the mere circumstance that harmony has been replaced by discord. Any power in the court to alter ownership must be found in statutory enactment.*

47. In the second paragraph of Lord Morris' extract above, he lists a number of circumstances from which the Court can derive the common intention (or not) of the parties. These circumstances of course are not exhaustive, but give guidance on the nature of the evidence that the Court is to be concerned with. It is not considered necessary to delve into the numerous authorities which would have applied and expanded upon this statement of law – common law, as it was, as these two cases contextualize the trust principles with reference to the context of acquisition of matrimonial property. It is however useful to very briefly state the applicable principles as expressed in the ordinary law of trust.

Resulting trusts occur where money is provided by a true owner or there is a gift to a stranger[23]. The provision of money for purchase or the gift to a stranger is said to give rise to a rebuttable intention that a gift was not intended. That intention is said to be rebutted by a counter- presumption of advancement (which follows as it arises within the degrees of certain relationships); or evidence of intention by the person providing the money to make an outright transfer. There is no need to complicate matters in terms of statement of general principle beyond this definition of resulting trust. An explanation of the constructive trust would be far more difficult to restrict to a few lines. Lewin on Trusts, refers to it as 'an elusive creature'[24] and cites Edmund-Davies LJ in *Carl Zeiss Stiftung v Herbert Smith & Co*[25] that *'English law provides no clear and all-embracing definition of a constructive trust. Its boundaries have been left perhaps deliberately vague so as not to restrict the court in technicalities in deciding what the justice of a particular case might demand.'*

48. Fortunately, ***Pettitt*** and ***Gissing*** have provided the parameters within which the constructive trust is to be considered with respect to acquisition and ownership of matrimonial property by means of the common intention. Subject to its restrictive interpretation as set out above, the Court assesses each asset in turn, for existence of a beneficial interest (according to whichever trust might be found), in favour of either or both of the parties as follows:-

(i) The Venezuela Site home – contrary to his denial of such interest, the Court has found that the Respondent holds a beneficial interest in this property, acquired in or around January, 2015. Given that on the Respondent's evidence he is making payments of $1000 (the Court has found that any payments made do not represent rental, but ownership), with the evidence available the Court can do no more than assign a beneficial ownership of at least 51% of the value of the Venezuela Site home to the Respondent.

[23] Lewin on Trusts 19th Ed. para 7-005.
[24] Ibid @ para 7-010
[25] [1969] 2 Ch. 276

The question of whether the Applicant is herself to be attributed a beneficial interest in this home would require the finding of a common intention constructive or a resulting trust. The Applicant would be relying on the fact that she claims an interest in the company/Benzer International Store, and it is asserted that the acquisition of the home must have come from the profits of the business. The Court does not consider that a claim asserted in this manner, qualifies as a direct or indirect *financial* contribution, so as to give rise to a resulting trust.

Proceeding then to the question of a constructive trust by implied agreement of the parties, there is no evidence supporting any such agreement which can be implied between the parties. The evidence is that at that stage of the parties' relationship, there was discord arising from the Respondent's infidelity; the Respondent had months before transferred his shares in the company to his children; and on the Applicant's case, the Respondent had started to become physically violent towards her.

The evidence that the Applicant was involved in the selection of materials and fixtures for the renovation of the house does not take the Court beyond a spouse engaging in natural incidents of a marital (in this case common law) relationship, in much the same manner as the acts of gardening and beautification by the husband were regarded by Lord Reid in ***Pettitt***.[26] The Court is unable to find that the Applicant's involvement in the renovation works as described, gives rise to a common intention to be inferred that she was intended to derive proprietary interest in the property. The Court therefore does not find the existence of any resulting or constructive trust in favour of the Applicant in the Venezuela Site home.

[26] Pettitt v Pettitt supra @ 391

(ii) The shares of Benzer International – Before determining whether any beneficial interest subsists in relation the shares, the Court observes that the relief pleaded in the originating summons was not pleaded pursuant to s. 148E. However, as the shares were acquired during the union, section 148E(2) subsumes any jurisdiction the Court may have had to declare beneficial interests under the general principles of trust. Further, it is only pursuant to section 148E that any alteration order could be made and therefore sought. It is further observed that the submissions on behalf of the applicant went beyond s.148E insofar as they addressed the law of partnership. No partnership issue was pleaded in the Originating Summons and as such no consideration in that regard arises for determination.

The Court has found that the Respondent retains beneficial ownership in the shares of Benzer International. The Applicant's claim arises from the original acquisition of the shares of Shiva International. The Applicant alleges that she provided approximately $20,000 towards the purchase of the shares then acquired as shares in Shiva. Other than the Applicant's assertion of that fact, there is no evidence of where those monies came from. This assertion was not made in the same manner as that of the loans made to the Respondent, whereby the Applicant alleged that the monies came from the purchase price of her island. It is unclear whether these monies were paid from her own savings, as proceeds from the sale of the island, or from monies generated from her injection of funds into the Respondent's businesses.

The Court will examine both of these possibilities – that is, from the Applicant's own funds or from monies to be considered pooled resources by reason of the Applicant's loans to the Respondent from the proceeds of her island. With respect to the possibility of the monies coming from the returns of loans made to the Respondent, the Court recalls that the Applicant had always insisted that the monies she provided to the Respondent from the proceeds of sale of her island

were loans which were to be repaid. This assertion was maintained throughout and to the very end of the proceedings. The Respondent's position in relation to these monies was that he'd repaid the loans and owed the Applicant nothing more.

The Court considers that the Applicant's unwavering position that the monies she provided the Respondent were loans remaining outstanding in part, to be one which undermines her claim for a beneficial interest in the shares. A resulting trust would arise from provision of the purchase price of the shares. The Applicant cannot at the same time claim that she provided monies for the purchase of the shares with the intention that she derives the benefit of ownership by all means short of recognition by paper title, whilst at the same time contending that the wherewithal to have purchased the shares was to be returned to her in cash. A loan is a loan and monies are to be returned. An advancement of monies to receive the monies worth of what is purchased is entirely different.

Further in this regard, the Court considers that in the July, 2011 agreement there was express provision made with respect to how the Applicant was to be repaid what was said to be the balance of any monies due to her by means of expenditure to complete her house in Belmopan. With respect to the position that the purchase price of the shares came from monies generated from the Applicant's loans to the Respondent, there is express evidence of the manner in which such loans were to be repaid, thereby negating the existence of a resulting trust on purchase of the shares.

With respect to the position that the $20,000 was provided from the Applicant's own funds and not from monies generated from her earlier loans to the Respondent, the Court considers that the agreement provided for the Applicant to be compensated $2,000 per importation of container of cigarettes.

The evidence is that the Applicant's name was not entered on the share register; it is accepted that the Applicant did not want to be a director; there is no overt act on the part of the Respondent which can be attributed to an affirmation that the shares were being held in trust for the Applicant. To the contrary, the Respondent agreed to pay and the Applicant accepted, recompense in the sum of $2000 per importation of container of cigarettes. This agreement for recompense in the Court's view establishes an acknowledgement by the Respondent either that the Applicant had loaned him monies which were put towards his businesses which facilitated the purchase of the shares, or that the Applicant provided monies directly towards the purchase of the shares.

The Court is of the view however, that regardless of what the Applicant may have chosen to believe about the ownership of the shares, the evidence of a share in the profits from the containers of cigarettes along with the exclusion of the Applicant from the legal ownership and management of the company, such evidence rebuts any finding of a resulting trust or common intention agreement or constructive trust as to ownership of the shares. Furthermore, even before the matter became one of dispute, the Respondent acted contrary to any such intention or presumption, by transferring the shares to his children. The Court therefore declines to find that the circumstances of acquisition and how the parties governed themselves after acquisition of the shares, gives rise to any beneficial ownership in favour of the Applicant.

With respect to the Respondent's beneficial ownership found still to be retained in the shares[27], the Court has found that it is unlikely that the Respondent retains the full beneficial interest given that three adult children do substantively work in the running of the store and its sister store Royal.

[27] Supra @ paras 37- 41

In October, 2015, at the end of the parties' relationship, the Court finds that the Respondent would still have been involved in the overall direction of the running of the company. The shares and directorship would have been transferred and handed over to his children only a few months prior, and the Respondent in fact stated that the business was handed over and run by his children under his supervision[28]. At the very least therefore the Court ascribes a value of 51% beneficial interest to the Respondent in the shares of the company, Benzer International Co. Ltd.

(iii) The 2000 Toyota Sienna vehicle – The Applicant had the benefit of the use and proceeds of sale of this vehicle. The Respondent did not pursue any claim in respect of this vehicle except to say that the Applicant's retention of this vehicle should be sufficient discharge of his obligation to her of clause 4a of the July, 2011 agreement. The Court agrees with the Respondent in this regard. The asset firstly no longer exists in specie to be disposed of under the Originating Summons and the Applicant is the party who derived the benefit of its use and subsequent sale.

(iv) The 2008 Hummer – This vehicle was purchased through the company Benzer, and legal ownership was placed in the Applicant's name. The Applicant sold this vehicle, no account was given of the proceeds. The Respondent did not pursue any claim for a share or for the Applicant to account for the proceeds. Within the context of the circumstances, the Court finds that this vehicle was gifted to the Applicant. She has availed herself of the benefit of its sale and as such there is no determination that falls to be made in terms of ownership or accounting for the proceeds.

[28] 1st Affidavit of Respondent para 43

(v) <u>The proceeds of the Respondent's account at Heritage Bank</u> – The Applicant claims beneficial ownership of a share of the monies held in the Respondent's bank account, which is an account which pre-existed their relationship. The entitlement is claimed on the basis that the Respondent used this account for both personal use and to deal with monies arising from the business. This account was never a joint account and the Applicant does not assert that she used this account to deposit her own funds into it. The Applicant in fact had her own account which she said was also used for her personal account and to deal with monies arising from the business.

Based on the account statements submitted to the Court, it is observed that there were fairly large deposits moving in and out of both parties' account with regularity, in a manner more consistent with commercial activity. There are also numerous dealings of small sums, mostly debits, which is considered consistent with personal use. The Court concludes therefore that both parties had exclusive use of their respective accounts so that there is nothing which supports the existence of any agreement that the proceeds in the Respondent's account should belong to both parties as an asset. In this regard, the Court finds that the claim for a share in the monies held in the Respondent's bank account is misconceived.

E. <u>Alteration of Property pursuant to section 148E(3),(4)&(5).</u>

49. The Court has not found that the Applicant holds any beneficial interest in any of the properties determined to have existed in the pool of assets identified in Part D. The resolution of this case therefore now falls to be determined by means of any property alteration orders that the Court may find to be just and equitable pursuant to section 148E(3). Sections 148E(3)&(4) are extracted as follows:-

(3) In addition to making a declaration under subsection (2) of this section, the court may also in such proceedings make such order as it thinks fit altering the interests and rights of the parties to the union in the property, including,
(a) an order for a settlement of some other property in substitution for any interest or right in the property; and

(b) an order requiring either or both parties to the union to make, for the benefit of the other party, such settlement or transfer of property as the court determines.

(4) The court shall not make an order under subsection (3) of this section unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.

Sub-section (3) specifies two different classes of property alteration order the Court may make, expressed at paragraphs (a) and (b). These two different kinds of alteration orders can be made in the alternative or in combination. The first question to be determined on property alteration however, is that raised by sub-section (4), which is whether it would be just and equitable to make any orders altering property. As a matter of general principle, the question of whether it is just and equitable for a property alteration order to be made is one to be determined on a case by case basis. In the instant case, the Court considers that it would be so just and equitable to make a property alteration order for the following reasons:-

(i) The Applicant, regardless of the behavior of the Respondent which on the face of it has been one of disregard and contempt towards her, was committed to the parties' relationship and their life together. In furtherance of that commitment, the Applicant invested her time, money and efforts into what she viewed as the parties' shared life, particularly the running of the store in the Corozal Free Zone;

(ii) In the initial stages of the relationship, the Applicant made monetary contributions to the Respondent's life (in the form of loans) which lifted him from financial difficulties (according to the evidence) and thereafter translated into his financial success;

(iii) There is sufficient evidence of the Respondent playing an active role as provider and companion towards the Applicant which supports her having formed the view of their relationship that she did;

(iv) The Applicant was unceremoniously ejected from the Respondent's life and the business she helped to build, with no financial provision and no time to adjust from the life of relative prosperity which she enjoyed; however

(v) The Applicant did enjoy the fruits of the relationship during the time she cohabited with the respondent.

50. Having determined that it is just and equitable to make a property alteration order, the Court now considers the factors prescribed by sub-section (5) in order to determine what alteration orders should be made. At this stage, it is useful to recall that the assets under consideration comprise the Respondent's beneficial ownership in the Venezuela Site home, and the Respondent's beneficial interest retained in the shares of Benzer International. The Court assesses the section 148E(5) factors as follows:-

a) Direct or indirect financial contribution to acquisition, conservation or improvement of property: – The financial contribution of the Applicant has already been neutralized by virtue of the Applicant reserving her entitlement to repayment of monies loaned and the mechanism for compensation in the form of $2000 per importation of container of cigarettes. There is no other evidence of direct or indirect *financial* contribution to be measured;

b) Non-financial contribution to acquisition, conservation or improvement of property: - The Court finds the Applicant to have contributed in her time and efforts towards the establishment and operation of the free zone store which with no evidence to the contrary is the main asset of the company Benzer International. The Respondent is found to have retained a beneficial ownership in the shares of the company. The Applicant's contribution to the store is found to have been considerable. The Court accepts the Applicant's evidence that (i) she was instrumental in encouraging the Respondent to establish the Free Zone store; (ii) she helped to set up the business from the inception in September, 2011; (iii) she had an important role in the daily operations of the business including handling sales and advertising; and dealing with customers. Important aspects of the evidence which the Court relies on in this regard include the Applicant being listed as a contact person for the business; the pattern of movement of money in her personal account which suggested commercial activity; the Court accepts the Applicant's

evidence that she had access to the monies generated by the store. The Applicant's evidence is that the Respondent handled the company's financial affairs, however the role she played could not have been occasioned without the Applicant being afforded some autonomy in the store's operations. The Applicant's contribution – non financial in relation to the running of the business is valued at 40%. There is no non-financial contribution found in relation to the Venezuela Site home, however insofar as the Free Zone business on the evidence accounts for the parties' main source of income, the Applicant's non-financial contribution to the business connects the acquisition of the Respondent's beneficial interest in this property. It is not found that there is any significant contribution relative to the success of the business as housewife and homemaker or parent. The Applicant's primary sphere of operation was her work in the business;

c) <u>The effect of an order against the earning capacity of either party:</u> – Neither party was engaged in mainstream employment. Both parties obtained income from the business run in the Free Zone. At the time of the trial the Respondent claims to have been retired from the business and receiving a stipend from his children as the new owners and operators of the company. The Applicant was unemployed at the time of the trial and asserted a lack of success in obtaining meaningful employment and having no resources to start any business afresh, having poured all of her resources in the business she was turned out of. The Respondent has been found to have retained some beneficial ownership of the shares of the company, thus has access to its earnings and assets which include real property and vehicles. The Respondent also disclosed (at a late stage in the proceedings and pursuant to an order of the Court), income which he earns from a trucking business. The Applicant is the owner of at least two pieces of real property. It is found that the Respondent has greater access to resources and will have access to such resources from which to satisfy any order made by the Court;

d) <u>The age and health of the parties:</u> – Both parties are still of working age although the Respondent's case was that he's retired. The Court notes that whilst the Respondent may advocate this position in relation to himself, he nonetheless has two minor children to support and educate. The Court therefore doubts that the Respondent's income is restricted to the stipend of $3000 he claims to receive from his children or that his status in terms of his access to earnings or ability to earn from his business operations, is to be regarded as retired. The Applicant is still of working age, however has given evidence of being unable to find meaningful employment. This factor is reckoned from the standpoint that the Court rejects the Respondent's status as effectively retired and finds that his age nonetheless affords him access the opportunity to continue earning as a businessman. The Applicant's age is also as such that the Court considers she has an opportunity to carry on regular employment or with financial resources carry on her own business. There has been no evidence of ill health of either part. There were no children born of the union and it is not found that the parties assumed parental obligations for support of their respective children;

e) <u>Entitlement to pension, gratuity or other benefit</u>: - Neither party has given evidence of eligibility to any pension, gratuity or other benefit derived from employment or other source;

f) <u>The duration of the union and any effect on the training or development of the Applicant</u>: - The union existed for a few months over eight years. At its commencement the parties were mature adults with separate families, already established in their working lives. The length of the union cannot therefore be said to have affected the Applicant's training or education. However, within the context of the parties' relationship, the Court finds that the Applicant turned her attention away from her prior solo businesses and focused on the business with the Respondent in the belief that it would benefit her in the long term;

g) The need to protect the position of the woman, particularly the woman who wishes to continue in the role of mother:- It is not considered that this factor arises for consideration in this case. The paradigm of wife as homemaker and mother was not that of the Applicant in this case. The domestic aspect of the parties' lives was for the most part assisted by domestic helpers for the children and running of the household. The Applicant certainly managed and directed the domestic helpers and presumably otherwise attended to domestic affairs but her role in the operation of the store on the evidence was more prominent;

h) Non-financial contribution as companion or mother of children of the union:– The parties had no children together and the evidence is that the Applicant cared for the Respondent's youngest child (at the time) for a short period whilst in Corozal. The parties benefited from a domestic helper in this regard. There is no evidence to the contrary that the Applicant was not a good companion to the Respondent. The Applicant suggests that the Applicant was fully committed to her role as companion to the Respondent. In the general circumstances however, this factor can be accepted as neutral;

i) Any other factor the Court may consider relevant:– the Applicant was unfairly treated in terms of being deprived of retaining any benefit arising out of her contribution to the Corozal Free Zone business, in respect of which she played an important role.

51. Before finally determining what order should be made, the Court reverts to the property covered by the July, 2011 agreement as those entitlements can also affect what alteration order or orders the Court finds it just and equitable to make with respect to the subject matter of the Originating Summons:-

(i) Clause 4(a) - The Respondent's obligation to complete the Applicant's Belmopan house to the extent of $30,000. The Court accepts that the Respondent never paid for completion of the house, nor handed the Applicant $30,000 expressly for that purpose.

The Court also rejects outright the evidence of Mr. Garbutt who testified on the Respondent's behalf of having carried out works on that house in pursuance of fulfilling that obligation. Mr. Garbutt's evidence was found wanting in truth and procured by the Respondent for the purposes of these proceedings. The witness' difficulties on cross examination in coherently answering questions about the works carried out attested to this fact. Mr. Garbutt's evidence aside however, this obligation under the agreement amounted to an acknowledgement that of whatever sums had been loaned or advanced by the Applicant to the Respondent, the parties agreed that the sum of $30,000 was a good discharge of such sums. It is found that post July, 2011, the Applicant received far in excess of $30,000 benefit for herself within the duration of the union. This obligation is thus considered discharged;

(ii) Clause 4(d) - The transfer of 25 acres leasehold land in Young Gal Macre Area, Teakettle, Cayo by the Applicant to the Respondent and Clause 4(b) - the transfer of 25 acres leasehold land in Buena Vista, Cayo by the Respondent to the Applicant. The Court finds that these obligations can be treated *quid pro quo* given that the acreage of the properties, location in the Cayo district and legal estate (leasehold) are the same. The Respondent says he transferred his 25 leasehold acres in Buena Vista to the Applicant, however no evidence of any such transfer has been provided to the Court. Such a transfer should exist a matter of record thereby easily established by production of transfer and title documents. In such case the Court declines to accept any proof other than documentation of record, as to the existence of such a transfer. The only reference to a transfer of leasehold land belonging to the Respondent to the Applicant, was of fifty-three (53) acres in Young Gal Mcrae held in the name of the Respondent's former girlfriend.

The Court accepted that this land was beneficially that of the Respondent and that it was transferred to the Applicant. However, this land was not situated in Buena Vista, it was more than 25 acres and the transfers to and from the Applicant were both effected before the July, 2011 agreement. This property could therefore not be the land referred to, nor concern the obligation provided in the agreement. It is found there was no performance of the respective obligations under clause 4(b) and 4(d) of the agreement by either party. As such neither party should seek to specifically enforce the obligation to transfer the 25 acres of leasehold land against the other party unless ready and able to discharge their own obligation to transfer their own 25 acres as therein provided or otherwise mutually agreed;

(iii) Clause 4(e) – the transfer of the Peter August property by the Applicant to the Respondent. By its terms, this obligation is found capable of being regarded *quid pro quo* for the Respondent investing thirty thousand dollars ($30,000) in the Applicant's Belmopan premises. The Court has found that the Applicant has derived far more than $30,000 in personal benefit throughout the union, for example, money for her political campaign and ownership of the hummer. It was a matter for the Applicant to have finished her Belmopan house with monies she would have had at her disposal during the union. The Applicant has indicated that she has pawned the Peter August property, which affects her ability to effect the transfer to the Respondent. However, this obligation must still be discharged and the Applicant will be required to account for her dealings with the property;

(iv) Clause 4(a) – Purchase of a 4 cylinder vehicle by the Respondent for the Applicant. The Respondent's obligation to provide the Applicant with a 4 cylinder vehicle has been discharged by reason of the Applicant having

taken possession of the parties' Ford Sienna which she subsequently sold without accounting for the proceeds;

(v) Clause 4(c) - The payment of $2,000 to the Applicant for every container of cigarettes imported by the Respondent or his companies. This is an obligation which remains enforceable against the Respondent. The Respondent has in conjunction with his children as principals of the company, spoken their intention to honour this part of the agreement. There will have to be an accounting exercise to determine monies owed in the discharge of this obligation. The Applicant has expressed a preference to receive a lump sum payment in discharge of this obligation, rather than be forced to maintain ties with and be at the mercy of the Respondent or his children in receiving these monies. Short of agreement between the parties as to discharge of the future compliance of this obligation, the Court can make no such order in the Applicant's favour. Flowing from any accounting exercise of this obligation, the Court can make a declaratory order in respect of the amount owed to date, however the Court is not seised of the agreement in such a way as to alter the live obligation in the manner sought by the Applicant.

52. Having regard to the Court's reckoning of the factors and the parties' respective positions arising from the determination of the July, 2011 agreement (paragraphs 50 and 51 above), the Court considers that it is just and equitable to make an order pursuant to section 148E(3)(b) that the Respondent settle property, namely money, for the benefit of the Applicant. It is considered that a money settlement is most effective as the Court has no evidence of legal title to property in the hands of the Respondent, which can be ordered to be transferred in favour of the Applicant. The Court also finds that an order for settlement of monies in favour of the Applicant to be most appropriate given (i) the acrimony between the parties thereby favouring a clean break, (ii) the Applicant's need for cash in order to support herself and minor daughter, (iii) the Applicant's difficulties in obtaining employment to properly support herself, and (iv) the Applicant's need to retain

her Belmopan house as her primary place of abode. The question to be determined is how much money the Respondent should be ordered to pay to the Applicant. This amount must be calculated with reference to the property found by the Court to have been acquired during the union, taking into account the manner in which the factors above were considered. As already stated in paragraph 50 above, the assets which form the basis of the property alteration order are the Respondent's adjudged beneficial interests in the Venezuela Site home and shares of Interested Party, Benzer International Co. Ltd.

53. There is no direct evidence of the value of Venzeuela Site home and this information was in the hands of the Respondent who will bear the consequence of the Court being put in a position of having to ascribe a value to the house with the evidence that is available. In terms of that evidence, the Court attributes a correlation between the debt said to be owed to Benzer International of over $400,000 by Vishal Armanani, along with the approximately $60,000 paid by the Respondent as the balance owing on the mortgage of the property. Additionally, there is the evidence of the Heritage Bank officer that the mortgage over the property was to secure the amount of $275,000 which had been loaned to assist with purchase the property. The first deduction is therefore that the Venezuela Site home is valued not less than $275,000. The Respondent says he pays rent of $1,000 per month for the premises, however the Court has declined to accept that the Respondent is merely a tenant of the premises. If the Respondent is in fact paying any monies towards the house, then the value of the house exceeds the range of $475,000 to $500,000 as the debt to the company plus the balance of the loan paid off by the Respondent would already be accounted for.

54. If the Respondent is not paying any monies towards the house, the value would have to be assumed lower. The Court will take the Respondent's evidence that he is paying monies towards the house monthly, in which case, the value of the house is in excess of the alleged debt owed and balance of mortgage repaid by the Respondent. By the Respondent's own doing therefore, the Court finds the Venezuela site house to be worth not less than $275,000 (given the mortgage to assist with purchase of the property) and possibly as much as $500,000 (given the debt alleged owed to the company and the

Respondent's payment of the balance of the mortgage). In considering the amount of monies to be settled in favour of the Applicant, the Respondent is already attributed a 51% beneficial interest in the Venezuela Site home, which is valued as much as $500,000.

55. In relation to the shares of the company, the value of the shares is to be derived taking into account the assets of the company and its liabilities. There is no direct information of the company's financial position or value. However, there is some financial information available from the incomplete accounting process put in evidence by accountant Mr. Manzanero, the Respondent's witness. The incomplete financials generated by Mr. Manzanero were produced from company records and direct information from the Respondent. The Court will therefore do the best it can with the evidence before it. On the evidence of the parties, the company remains a going concern, and its main asset is the Free Zone store. For 2013 to 2014, the company's net income was estimated at just over US$400,000. Its fixed assets were estimated at approximately US$2.8 million, however there was no proper information speaking to its liabilities. In relation to the value of the company's shares, it is impossible for the Court to attempt to ascribe any such value in the absence of information on liabilities. The Court will therefore assess the value of the Respondent's beneficial interest in the shares of the company with reference to the company's net income.

56. The Applicant's entitlement stands to be assessed with reference to the net income of the company as of October, 2015. It was stated above (paragraph 41), that given that the Respondent's daughters do work in the business, it was not found that the Respondent would be entitled to the entire beneficial interest in the shares held by his children. The Court does however ascribe a beneficial interest of at least 51% in the company's shares on the basis that it is more likely than not in the circumstances, that the Respondent still maintains the substantive hold over the company and its interests. The unofficial accounts of the company saw the net income rise over the three year period assessed by Mr. Manzanero. In the circumstances, the Court assumes that the net income would have been higher by October, 2015, that being the time the parties' union came to an end.

The ascribed net income of the company by October, 2015 is estimated at US$420,000 and the Respondent's beneficial entitlement at 51% thereof, therefore BZ$428,000. This sum along with $255,000 being 51% beneficial interest in the estimated $500,000 Venezuela Site home represent the value of property attributable to the Respondent arising from the Originating Summons. The value of beneficial interest attributed to the Respondent in those properties is therefore approximately $683,000.

57. In deciding a just and equitable sum to be settled by the Respondent in favour of the Applicant, the Court finds it best to do so with reference to percentages attributed from the assessment of factors under section 148E, carried out in paragraph 49 above. The value of the Applicant's direct non-financial contribution to the business was assessed at 40%. The other factors for consideration under section 148E would add an additional 5% onto the Applicant's assessed entitlement, for a total of 45%. However, the Court must account for the fact that part of the company's business comprised sale of cigarettes, and the Applicant is entitled to a payment of $2,000 per container of cigarettes imported by the Respondent by his companies under the July, 2011 agreement. That entitlement to payment of $2,000 per container of cigarettes which would then have been sold by the company is accounted for by way of reduction of the percentage entitlement attributed to the Applicant. A reduction is made of 10% and it is assessed that the Respondent should settle towards the Applicant the amount 35% of the value of his beneficial interest of $683,000. The amount of $240,000 is therefore considered a just and equitable sum to be paid by the Respondent to the Applicant upon determination of the Origination Summons. Aside from this sum, a number of consequential orders will be made concerning the manner in which the Respondent would be at liberty to satisfy payment of the $240,000 to the Applicant.

F. <u>Maintenance</u>

58. The provision for maintenance for a party to a common law union is enabled by section 148I of Cap. 91, and confers the same rights to maintenance as afforded married persons under any law.

Section 152 of Cap. 91 therefore becomes applicable to the parties of a common law union. It had already been determined by the Court's first ruling that the Applicant was entitled to apply for maintenance. That ruling did not conclude that the Applicant was entitled to an order of maintenance, such a determination was a matter for trial. Upon conclusion of the trial, the Court is not of the opinion that the Applicant is entitled to an order for maintenance. The submissions on behalf of the Applicant in support of the claim for maintenance are primarily that the Respondent has the demonstrated means to pay; that he maintains a luxurious lifestyle whilst the Applicant's has significantly dropped and she lacks the wherewithal to provide for herself in like fashion. It has also been alleged that since the end of the union the Applicant has tried but been unable to obtain gainful employment. Counsel for the Applicant relied on the case of **Samuels v Bucknor**[29] and likened the circumstances of the Respondent's less than admirable behavior towards her and the Applicant being unable to sustain her previous lifestyle to the situation in ***Bucknor***. The Court entirely disagrees and apprehends the Applicant's circumstances as manifestly different from the Applicant Samuels. The latter commenced her relationship with the Respondent at the age of 17 years (whilst still in school), to the Respondent's 37years, an already established businessman in an estranged marriage.

59. The Applicant Samuels began cohabiting with Mr. Bucknor at that young age, bore him two children and functioned mostly as caregiver and managed the parties' household. She was found to have assisted in the Respondent's businesses. In that case it was clear that the Applicant's fortunes in life as an adult were significantly affected by the young age in which she became involved with that Respondent. This is simply not the situation in the case at bar. The Applicant became involved with the Respondent at a mature age and was established in her own business endeavours. She made choices regarding those endeavours which have not enured for her benefit. Upon the cessation of the parties' union, the consequences of those choices resulted in the Applicant being deprived of a financial future that she had worked towards.

[29] Belize Supreme Court Action No. 24 of 2010

By the property alteration order and the July, 2011 agreement, the Applicant's financial position has been provided for. It is not considered that there is a further need for financial provision within the circumstances of this case. In the circumstances, the claim for maintenance is dismissed.

G. Costs

60. This matter was instituted in April, 2016 and the trial was held in July and September, 2018. There were two rulings during that time which were determined primarily in the Applicant's favour and on one issue in favour of the 5th Interested Party. The trial has concluded with an order in favour of the Applicant, however the full extent of the Applicant's claim has not been awarded to her. In relation to entitlement to costs, the Applicant is considered the successful party, however there has been delay attributable to the conduct of the Applicant's case, occasioned by several amendments and applications arising out of some of those amendments. In the round it is considered that the Applicant is entitled to 75% of her costs as against the Respondent on account of delay and the disallowance of most of the properties from the subject matter of the Originating Summons. The 1st – 5th Interested Parties are entitled to their costs against the Applicant as they were obliged to participate substantively in rebutting the Applicant's claim against the shares and property of the 5th Interested Party. The Court restricts the Interested Parties' costs at no more than 25% of the Applicant's costs against the Respondent. All parties' costs are to be taxed by the Registrar, if not agreed.

H. Orders upon Disposition

61. The following orders are made from the Court's determination of the Originating Summons and the various issues arising therein:-

Validity of July, 2011 Agreement

1. (a) The July, 2011 Agreement ('the Agreement') between the parties is valid and enforceable and the property therein is excluded from the application for division of property, however;

(b) The Agreement applies only to the property and obligations listed therein and does not exclude property acquired subsequent to the date of, or otherwise excluded by the terms of that Agreement;

(c) The property and obligations to which the Agreement applies is as follows:-

(i) Provision of 4 cylinder vehicle to Applicant;

(ii) Payment of $30,000 towards the Applicant's Belmopan house and lot;

(iii) Transfer of 25 acres of leasehold land in Buena Vista Village, Cayo;

(iv) Transfer of 25 acres of leasehold land in Young Gal Macrae Registration Area, Cayo;

(v) Transfer of the Peter August St. property;

(vi) Payment of $2,000 to Applicant for importation of containers of cigarettes.

Subject matter of the Originating Summons

2. The following properties comprise the assets acquired during the parties' union not covered under the Agreement, and which are to be subject to the Court's determination under the application for division of property:-

   (i) Shareholding of Benzer International Company Ltd (Company's property includes the business carried on by Benzer International Company Ltd. in the Corozal Free Zone, land and vehicles);

   (ii) The Venezuela Site home situate in Corozal (Parcel 2081 Block 1 Corozal North Registration Section);

   (iii) Parcel 400 Block 1 Paraiso/Santa Rita Registration Section in the name of Jesse Robert Vellos Sr;

   (iv) Parcel 401 Block 1 Paraiso/Santa Rita Registration Section in the name of Jesse Rebert Vellos Sr;

   (v) Benque Free Zone property owned by or purchased from Billy Musa;

   (vi) The Hummer and Toyota Sienna vehicles;

   (vii) Monies held in the Respondent's Bank Account.

3. Of the properties identified under paragraph 2 above, the following are dismissed from consideration under the application for division of property:-

   (i) Parcel 400 Block 1 Paraiso/Santa Rita Registration Section in the name of Jesse Robert Vellos Sr;

   (ii) Parcel 401 Block 1 Paraiso/Santa Rita Registration Section in the name of Jesse Rebert Vellos Sr;

   (iii) Benque Free Zone property owned by or purchased from Billy Musa

Application of Section 148E

4. Pursuant to section 148E(2), the following declarations of ownership are made with respect to the property remaining for determination under the application for division of property:-
   (i) The 10,000 shares of Benzer International Co. Ltd. ('the company') were acquired by and on behalf of the Respondent only;
   (ii) The Applicant does not have a beneficial ownership in the shares of the company;
   (iii) The 10,000 shares of the company were legally transferred by and on behalf of the Respondent to the 1st – 4th Interested Parties and the transfer by the Respondent in May, 2015 of 9000 shares was not made in contravention of Section 148H of the Supreme Court Act, Cap. 91;
   (iv) Notwithstanding the transfer of legal ownership of the shares the Respondent retains beneficial ownership of the shares assessed by the Court at not less than 51% of the total shares issued;
   (v) Shyam Armanani holds the legal title to the Venezuela Site home, however the Respondent holds a beneficial interest in this property of not less than 51% of the value of the home;
   (vi) The Applicant does not hold a beneficial interest in the Venezuela Site home.

5. Pursuant to section 148E(3)(b), (4) and (5) the Court finds it just and equitable to make the following order requiring the Respondent to make a transfer of property for the benefit of the Applicant:-
   (i) The Respondent shall pay to the Applicant the sum of BZ$240,000 less the sum owed by the Applicant for any loan taken out on the Peter August property;
   (ii) The sum of BZ$240,000 (less the sum owing on any loan as stated in paragraph 5(i)) is to be paid to the Applicant within 6 months from the date of this order;
   (iii) The Respondent may with the consent of the Applicant, satisfy payment of the sum of $240,000 (less the sum owed on any loan as stated in paragraph 5(i)), by cash or transfer of other property including unencumbered land;

6. The following orders are made in respect of other properties subject to the Application:-
   (i) No orders are made in respect of monies in either the Respondent's or Applicant's bank accounts;

(ii) The Hummer was a gift by the Respondent to the Applicant;

(iii) Monies paid to or on behalf of the Applicant in her political campaign in 2013 were advanced as a gift by the Respondent;

Performance of the Agreement

7. The following orders are made in respect of the parties' respective rights and obligations under the Agreement:-

   (i) Clause 4(a) of the Agreement required the Respondent to repay $30,000 in full discharge of monies loaned to him by the Applicant before the execution of the Agreement. This obligation has been discharged by the monies gifted or advanced to the Applicant during the union;

   (ii) The Respondent's obligation to provide the Applicant with a four cylinder vehicle has been discharged by the Applicant having taken possession of the Toyota Sienna vehicle;

   (iii) There is no evidence supporting the Respondent's allegation of having transferred 25 acres of leasehold property situate in Buena Vista, Cayo to the Applicant and unless and until such a transfer is made, the Applicant is neither obliged to transfer the 25 acres of leasehold property situate in Young Gal Macrae nor account for its proceeds of sale, to the Respondent;

   (iv) The Applicant is obliged to transfer the Peter August Property to the Respondent upon either (i) the repayment by the Respondent of the amount owing on any loan taken out against the property by the Applicant; or (ii) upon full payment of the sum of $240,000 ordered to be paid to the Applicant as provided under paragraph 5(i);

   (v) The Applicant is entitled to receive the agreed sum of $2,000 per container of cigarettes imported by the Respondent whether directly or indirectly, or such amount as pro-rated for any portion of a container in which cigarettes have been imported. The Applicant shall receive this sum for the period commencing from the date on which she last received this sum from the Respondent or on his behalf. The receipt of this sum as per the Agreement is indefinite as until sooner determined by the consent of the Applicant and Respondent.

Consequential Orders

8. For the purposes of carrying out the orders made in paragraphs 5 and 7, the following consequential orders are made:-

   (i) The Respondent may satisfy payment of the entire $240,000 payable to the Applicant under paragraph 5(i) or may directly pay any amounts owing

on the Peter August Property and deduct such sum from the sum of $240,000;

(ii) The Applicant is restrained from transferring, encumbering or otherwise dealing with the Peter August Property save for transfer back to the Respondent;

(iii) For purposes of calculation of the monies owed to the Applicant under paragraph 7(v), the Applicant shall be entitled to have subpoenas issued to the managing and customs authorities in the Corozal Free Zone; or such other person or institution as ordered by the Court, in order to obtain records or other information in support of the importation of containers of or containing cigarettes, directly or indirectly by the Respondent.

Maintenance

9. The Applicant's claim for maintenance pursuant to section 148I of Cap. 91 is dismissed.

Costs

10. (i) The Applicant is awarded 75% of her costs against the Respondent;
    (ii) The 1st – 5th Interested Parties are awarded their costs against the Applicant, such costs are not to exceed the equivalent of 25% of the amount of the Applicant's costs; and
    (iii) All parties' costs are to be taxed before the Registrar, if not agreed.

Dated this 29th day of October, 2019.

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Shona O. Griffith
Supreme Court Judge.

APPENDIX
(July, 2011 Agreement)

*"**THIS DEED** made the 4th day of July, 2011 at the request of GULAB LALCHAND of No. 11 Eduardo Juan Street, Santa Elena, Cayo District, Belize (herein-after called "Mr. LALCHAND") of the one part and **RUTILIA OLIVIA SUPALL** of No. 11 Eduardo Juan Street, Santa Elena, Cayo District, Belize (herein-after called "Ms. Supall") of the other part.*

***WHEREAS** the parties who are living together have agreed to divide the properties mentioned herein between themselves in an amicable and mutual fashion unless superseded by any order of the court. The following provisions herein shall take effect and regulate their rights and liabilities to each other.*

NOW THIS DEED WITNESSETH AS FOLLOWS:-

1. *Mr. Lalchand and Ms. Supall mutually covenant and agree that they will continue to conduct their lives in an orderly way and neither of them shall molest, annoy or interfere with the other or his or her relations, friends or acquaintances or in his or her professional business associates.*
2. *Ms. Supall shall vacate and be permitted to remove from the residential home situated at No. 11 Eduardo Juan Street, Santa Elena, Cayo District all her personal effects and chattels around the end of June, 2011 and allowed to occupy the house in front of the Loma Luz Hospital in Santa Elena until her house is completed in Belmopan.*
3. *Mr. Lalchand shall at his own expense transfer Ms. Supall's house hold goods from San Ignacio to Belmopan.*
4. *The following constitutes a final agreement between the parties in relation to the assets listed:*
    - a) *Mr. Lalchand shall invest $30,000.00 for the completion of the unfinished house in Belmopan for Ms. Supall and shall purchase a 4 cylinder motor vehicle for Ms. Supall. This investment is a repayment from Mr. Lalchand to Ms. Supall for money loaned to Mr. Lalchand by Ms. Supall. Completion date shall be:*
    - b) *Mr. Lalchand shall transfer 25 acres of leasehold land situate in Buena Vista Village, Cayo District, Belize to Ms. Supall.*
    - c) *Mr. Lalchand shall pay to Ms. Supall $2,000.00 for every container of cigars imported by Mr. Lalchand either directly or indirectly or by any of his companies into Belize. This includes but is not limited to trade names like (Goal City, Royalist, Racer, Dart Deel). All monies to be deposited in the Atlantic Bank Account No. 2107 334 74 in the name of Rutilia Olivia Supall.*
    - d) *Ms. Supall shall transfer 25 acres of leasehold land situate in Young Gial/Macre Registration Area, Teakettle Village, Cayo District, Belize to Mr. Lalchand.*
    - e) *Ms. Supall shall transfer 1 house and lot situate on Peter August Street, Santa Elena, Cayo District, Belize to Mr. Lalchand."*