

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

**CLAIM NO. 150 OF 2016**

**(HECTOR SANTOS**

**CLAIMANT**

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**BETWEEN (AND**

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**(RICARDA SANTOS**

**DEFENDANT**

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***BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA***

**Mrs. Nazira Espat Myles for the Claimant**

**Mrs. Deshawn Arzu Torres for the Defendant**

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**J U D G M E N T**

**Facts**

1. This is a claim for specific performance of a contract dated 26<sup>th</sup> June, 2015 made between the Claimant Hector Santos and his wife the Defendant Ricarda Santos. The parties were married on September 13<sup>th</sup>, 1985 and remain legally married to date. There were previous proceedings in the Supreme Court between the parties where both parties sought a divorce,

with the wife seeking a division of matrimonial assets. That proceeding before another court ended in the divorce not being granted on the petition of either party, and as such the application by Mrs. Santos for a division of matrimonial assets was withdrawn. Sometime after those court proceedings ended, there was an agreement drawn up and signed between the parties on June 25<sup>th</sup>, 2015. The Claim has arisen because the Defendant refuses to fully comply with provisions of the agreement as she states that the agreement is invalid and unenforceable as she signed it under duress. The Claimant seeks the relief claimed as he is asserting that the agreement is valid and binding on both parties.

### **Issues**

2. The following issues are for the determination of the Court:

- i) Whether the agreement dated the 25<sup>th</sup> day of June, 2015 is valid and unenforceable
- ii) Whether the agreement dated the 25<sup>th</sup> day of June, 2015 is unenforceable due to duress, undue influence or the parties still being married;
- iii) Whether the Claimant is entitled to damages claimed.

### **Evidence on behalf of the Claimant**

3. At trial, there were three witnesses on behalf of the Claimant: Hector Santos, Oscar Selgado and Cardinal Lopez. Mr. Selgado was the first witness to testify. He said that he is an attorney-at-law and that sometime in 2015, Mr. Santos approached him to retain his legal services. Mr. Santos instructed him to draft a contract between his wife and himself. He and Mr. Santos met so that he could take instructions for the drafting of the agreement. Once he had obtained clear instructions from Mr. Santos, Mr. Selgado proceeded to draft the agreement as requested. He says that Mr. Santos then verified that the agreement reflected the terms and conditions as agreed with his wife. After setting out the major terms of the agreement in his witness statement, Mr. Selgado goes on to say that Mr. Santos asked him to accompany him to Orange Walk on June 25<sup>th</sup>, 2015 to ensure that the agreement was properly executed by himself and his wife. Once Mr. Selgado arrived in Orange Walk, he was met by Mr. Santos and by Justice of the Peace Cardinal Lopez. They proceeded to meet with Mrs. Santos. After inspecting the property on Queen Victoria Street along with Mr. Santos, Mrs. Santos, Mr. Lopez and another gentleman, Mr. Santos and Mrs. Santos read the agreement, signed and Mr. Selgado explained to Mrs. Santos that Mr. Lopez was a J.P. and he needed to witness their signing. There were no

objections raised by either party. A copy of the agreement drafted by Mr. Selgado and signed by Mr. and Mrs. Santos in his presence is attached as **“Exhibit O.S. 1.”** After the signing, he asked Mrs. Santos to visit his office in Belize to have the document notarized. She did not do so. On a later date in January 2016, Mr. Selgado once again travelled to Belmopan to deliver the title to the Queen Victoria Street property in the name of Ricarda Santos to her. She accepted the title but she did not pay Mr. Santos any monies as per the agreement. Mr. Santos then visited Mr. Selgado’s office to ask that he take measures to demand payment be made to him by Mrs. Santos, but as Mr. Selgado was very busy he advised Mr. Santos to seek legal services of another attorney.

4. Mr. Selgado was cross-examined by Mrs. Torres for the Defendant. He said that he was approached by Mr. Santos to prepare this agreement for him in 2015 and he had received instructions only from Mr. Santos. He said he did not know who was representing Mrs. Santos. When asked whether he contacted the wife to confirm the terms of this agreement, Mr. Selgado said yes. He said he personally visited her place of work in Orange Walk Town on 25<sup>th</sup> June, 2015. He agreed that by that time the agreement was already prepared. He said that he did not contact the wife prior to that date. Mr. Selgado was asked whether

it is a practice of his firm to visit clients for the purpose of execution of documents. He replied that he personally practices that. He goes personally where there is a requirement for those signatures in the presence of a Justice of the Peace; he personally keeps the documents to be executed. He was referred specifically to the following clause in the agreement: *“Mr. Santos then verified that the agreement reflected the terms and conditions as agreed with his wife.”* Mrs. Arzu Torres then asked the witness when was it that Mr. Sanchez issued that verification to him. Mr. Selgado said he could not say a date but it was about a week before the 25<sup>th</sup> of June, 2015 when the agreement was signed. He agreed that the contract’s primary focus was the division of matrimonial property. He was aware that at the time he drafted this contract that the parties had previously sought divorce and division of matrimonial property in the Supreme Court. Mr. Selgado that based on what his client told him he believed divorce proceedings were completed and a decree absolute issued. He was then referred to the initial words of the agreement which state: *“The parties are married but are living separately and apart for more than three years since the date this document is signed.”* The witness explained that that was probably the instruction given to him at the time of the initial drafting of the agreement. He took his client’s word and did not check to confirm if the

parties were still married or divorced when the agreement was to be signed. Mr. Selgado said that on the day of the signing of the agreement he travelled with Mr. Lopez to Orange Walk where he met Mr. Santos at his residence. He said there was no discussion with Mr. Santos as all discussions had taken place about a week before. They all went over Mrs. Santos' business place on Fonseca Street where they met Mrs. Santos. They then left and headed over to the property at Desantos Plaza. He said they had spent about 15 minutes at the Fonseca Street property waiting for her son to arrive. He insisted to Mrs. Arzu Torres he gave the son a copy of the agreement to read for himself at the Fonseca Street property. Mr. Selgado said that at the Desantos Plaza, the signing of the document took place inside on a counter in an area that served as a pawnshop. Mrs. Santos arrived about five minutes after they arrived, accompanied by her son. Contrary to Mrs. Arzu Torres assertions that the son stayed inside the car during the time the agreement was being signed, Mr. Selgado stated that Mrs. Santos' son was with her at all times, at every move. Mr. Selgado was asked whether, prior to entering the building or while he was inside the building, did he say to Mrs. Santos or ask of her whether she needed to consult with an attorney. He said he personally did not ask her that because of the instructions of his client. He was asked whether he gave

Mrs. Santos an opportunity to consult with a client of her choice. Mr. Selgado said Mrs. Santos had opportunity about a week before. Mrs. Arzu Torres asked whether in that week before, did he e-mail, send via PPMS, send on the bus, fax a copy of the agreement to Mrs. Santos' attention. The witness said he gave a copy to her husband as he was his client. The witness was asked whether he, acting as Counsel for Mr. Santos, sent a copy of the agreement to Mrs. Santos. Mr. Selgado said she was not his client. He insisted that as Mrs. Santos was not his client, he did not contact her. He was asked whether when they attended the building at Desantos Plaza this was the first opportunity that Mrs. Santos had to look at that contract. He replied not to his knowledge. Mr. Selgado agreed that he did not read the agreement to the parties in the building. He said he could not recall if Mr. Lopez, Justice of the Peace, was in the building with them at all times. He disagreed with Mrs. Arzu Torres' suggestion that by virtue of his not reading the document to the parties before execution, he had no idea whether they were *ad idem*, save and except what his client had told him. Mr. Selgado was asked whether, as draftsman, he did not find it necessary to confirm that the agreement reflected what the parties desired. He said he did confirm. Mr. Selgado was then referred to the following clause in the agreement:

*“Be it known that on the 25<sup>th</sup> day of June, 2015 personally came and appeared before me were Hector Santos and Ricarda Santos, parties named in the foregoing agreement, and whom in my presence executed the said agreement as their own voluntary act and deed and who acknowledged to me that they signed and executed the said agreement of their own free will and the signatures \_\_\_\_\_ and \_\_\_\_\_ by the attestation at the foot or the end of the agreement is in the true and proper handwriting of the said Hector Santos and Ricarda Santos respectively.”*

Mr. Selgado agreed with the suggestion that he inserted that clause in the agreement because he knew that it was critical as an attorney and as a draftsman that parties must engage in agreement voluntarily and of their own free will. He was asked whether that particular clause would bind the parties and he said yes. Mr. Selgado said that Ms. Cynthia Pitts was not in Orange Walk that day at the time of signing the agreement. He said the addendum was signed in Belize City. He agreed that Mrs. Santos did not execute that portion of the document which was require to be executed before Ms. Pitts. He was then asked whether the court can therefore safely say that Mrs. Santos did not sign the agreement as a voluntary act or of her



own free will, since there was no acknowledgment by her as provided in the agreement. Mr. Selgado said Mrs. Santos did sign the agreement in the presence of the Justice of the Peace voluntarily and of her own free will. He agreed the document was not signed by Mrs. Santos in the presence of Ms. Pitts. He explained that he took the agreement to Ms. Pitts' office in Belize City for execution and she signed it. He agreed that Mrs. Santos never showed up to execute that portion of the agreement.

5. Under re-examination by Mrs. Myles, Mr. Selgado said he had no direct discussion with Mrs. Santos, except on June 25<sup>th</sup>. He said that on that date she indicated to him and to Mr. Santos that she had an attorney but she did not give them a specific name. He further explained that the reason he did not ask Mrs. Santos whether she needed an attorney while they were in the building is that it was his understanding through his client that the draft was prepared on the instructions of Mr. and Mrs. Santos. As far as he knew at the time Mrs. Santos knew the content of the agreement. He further explained that he did not read over the document to Mrs. Santos because when they arrived the Fonseca Street building on that day, he gave Mrs. Santos a copy of the document, and she held onto it for at least 20 minutes before she arrived at the Desantos Plaza. He was therefore content that she had

reviewed the document with her son who was with her, and she did not indicate that she needed time to peruse the document.

6. The next witness for the Claimant was Cardinal Lopez. He said in his witness statement that he is a Justice of the Peace. On the 25<sup>th</sup> day of June, 2015 he was asked by Mr. Hector Santos to review and witness an agreement drafted by Mr. Selgado and signed by both himself and his wife Mrs. Santos. He received the agreement and reviewed it; he also visited the properties described in the agreement. He states that upon signing the agreement both parties agreed to the terms and conditions set out and signed on their own free will.

7. Under cross-examination by Mrs. Arzu Torres, Mr. Lopez said that he was introduced to Mr. Hector Santos by Mr. Selgado. He was introduced to him when Mr. Selgado asked him to accompany him to Orange Walk to witness the signing of an agreement between Mr. Hector Santos and Mrs. Ricarda Santos. Mr. Lopez said he lives in Lords Bank, Belize District and that his work is mainly in Belize City, not in Orange Walk. He and Mr. Selgado travelled alone to Orange Walk, and their first stop was Fonseca Street. He agreed that upon their arrival, Mr. Santos was outside and Mrs. Santos was inside. He

recalled that after having a short discussion, they were invited by Mr. Santos to the Victoria Street property. Mr. Lopez said that he never met Mrs. Santos until she arrived at the Victoria Street property. Mr. Selgado was with him at all times. He never witnessed Mr. Selgado speaking with Mrs. Santos at the Fonseca Street property. They arrived at Fonseca Street property at approximately 5:00 pm; they stayed there about 15 or 20 minutes. They were discussing the agreement with the attorney. Mr. Lopez says he was not a party to those discussions; he was merely a witness. Mr. Santos rode with Mr. Selgado and Mr. Lopez over to the Desantos Plaza that day. Mrs. Santos and her son were at that location. The agreement was signed outside on the veranda. Mrs. Santos and her son invited them to take a tour of the area. When it was time for execution of the agreement, the attorney, the parties, Mr. and Mrs. Santos and Mr. Lopez as the Justice of the Peace were all present. Mrs. Santos' son was in the building. He wasn't focused or involved on what they were doing. Mr. Lopez said that he cannot recall if a copy of the agreement was given to Mrs. Santos at the Fonseca Street property. He says that Mr. Selgado read the contents of the entire agreement aloud to Mrs. Santos. Then it was given to Mr. Lopez and he read it. The agreement was then given to Mrs. Santos and Mr. Santos and each of them read it. The

witness insisted, despite learned counsel's suggestion to the contrary, that the agreement was never read by Mr. Selgado or Mrs. Santos on that day. Mr. Lopez also said that Mr. Selgado signed the agreement but he was unable to explain where Mr. Selgado signed. He went on to state that it appeared to him that Mrs. Santos did not appear to be somebody who was not comfortable with anything. After the signing of the document, they discussed that they were to leave to Belize City where the document was to be notarized, and Mrs. Santos was invited. It was about 6:00 pm when he, Mr. Selgado and Santos left Orange Walk.

8. Under re-examination by Mrs. Myles, Mr. Lopez said that he was told that he was to witness the signing of an agreement between Mr. and Mrs. Santos. He explained that when he said that they all read the document, he meant that they read it to themselves, not aloud. He further explained that when he said that Mrs. Santos appeared to him to be happy, he meant that she appeared enthusiastic to be going through and doing the signing.
9. The final witness for the Claimant was Mr. Hector Santos himself. In his witness statement, he explained that he and Ricarda Santos were married but they have been living separate and apart. There had been previous

proceedings in the Supreme Court between the Defendant and him for division of matrimonial assets. Those proceedings ended in the divorce not being granted and the application by the Defendant for division of matrimonial property being withdrawn. Orders of the court are attached as **Exhibits “HS 1” and “HS 2”**. Sometime after the court proceedings came to an end, Mr. Santos and his wife decided to discuss their separation and commenced negotiation of a possible settlement of their separation and assets. He said that he approached the Defendant asking her to talk to him in order to reach a fair and justifiable solution in regards to the properties, particularly No. 6 Queen Victoria Avenue and 13 Fonseca Street. Mr. Santos says that at no time did he harass Mrs. Santos. He did ask her to try to settle their differences since the divorce was not granted, her application for division of property was not granted and substantive legal fees were incurred by both of them. During their discussions, Mr. Santos says that he reminded Mrs. Santos that he had bought the property at 13 Fonseca Street from Mr. Chico Urbina, and in 1976 he constructed a two story concrete house on it. At the time he made a loan at the Development Finance Corporation (D.F.C.) for \$45,000 and he alone repaid that loan while working in the U.S.A. in 1996 after his last loan payment was made, Mr. Santos received a Deed of

Cancellation now attached and marked “**Exhibit HS 3**”. In 1985, eight years after he built the Fonseca Street property, he married the Defendant and asked her to go to live with him at the property. He said that he was paying off a loan of \$45,000 on which he had a supermarket named “*Master Food*” and was doing good business. Both Mr. and Mrs. Santos left Belize and went to live in the USA. He said that while they were in the USA, he made 2 bedroom additions to the upper flat of the house at Fonseca Street with financial assistance from his daughter. Mr. Santos said that the property at #6 Queen Victoria Street Avenue (also known as Desantos Plaza) was purchased from Diana Francisca Diaz and Maria Garcia who had been appointed executors of the Defendant’s mother’s estate. In 1998, Mr. and Mrs. Santos left the USA to travel to Belize to make a loan to purchase this property. Once the loan was received from Scotiabank Ltd., Mr. Santos said that he proceeded to make cheques to the Defendant’s six sisters of \$8,572 each. The payment was equally among the sisters as indicated by the will of the Defendant’s mother. The cheques were issued from Mr. Santos’ bank account to the sisters, as evidenced by a letter attached and marked “**Exhibit H.S. 4**”. He and his wife cosigned for the \$75,000 to pay her sisters for the Queen Victoria Street property; the balance of the loan was used to clear

two old buildings off the property and to repair property in Miami Florida. Mr. Santos said that during the discussions with Mrs. Santos in negotiating this agreement, he reminded her that the Queen Victoria Street property had two outstanding loans: Loan #59285 for \$75,000 and loan #77703 being a three part loan for \$73,000. With these monies outstanding and transferring full title to the Queen Victoria property to the Defendant only, that would leave Mr. Santos with the burden of paying the loans and not having access to the rents being collected in the sum of \$2,100. It was against this background that Mr. Santos suggested to Mrs. Santos that she takes responsibility of the lesser loan (#59285) which stood at \$35,000 at the time of their negotiations. Mr. Santos would then take full responsibility for the larger loan (#77703) which stood at approximately \$67,000 at the time of negotiations. A copy of the loan history is attached as **“Exhibit HS 5”**. Mr. Santos states that at no time during their negotiations did Mrs. Santos raise any issue that she is paying for a loan she made at Credit Union for Desantos Plaza (#6 Queen Victoria Avenue). To his knowledge the Defendant never had an account with La Inmaculada Credit Union; it is her sister who has an account with the Credit Union that the Defendant uses whenever she needs money. As far as Mr. Santos knows, Desantos Plaza (#6 Queen Victoria

Avenue) has always been free of any lending institution. The outstanding loan to build and to construct a building at Desantos Plaza was made by Mr. Santos and 13 Fonseca Street was used as collateral for that loan.

10. After some weeks had passed, Mr. Santos says that Mrs. Santos approached him and told him that she agreed to vacate the Fonseca Street property and to take the Queen Victoria Street property in her name only. She further agreed to take responsibility for the lesser loan of \$35,000 but she wanted no dealings with the bank. She said that she would get a loan from La Inmaculada Credit Union and give him the \$35,000. At the end of their negotiations, Mrs. Santos requested that they employ different attorneys. Mr. Santos said that for this reason, he terminated the services of his previous counsel and hired Oscar Selgado, while Mrs. Santos also terminated the services of her previous attorney and hired Mrs. Arzu Torres. Before signing the agreement on that day, the Defendant insisted that she needed to go and make an inspection of the Queen Victoria Avenue property; she inspected the entire property with her son Roberto.

11. After the inspection, Mr. Santos said that Mrs. Santos was introduced by Mr. Selgado to Mr. Lopez, JP, and Mr. Selgado in his presence explained to Mrs.



Santos that the agreement must be witnessed by a JP. They each read the agreement and since there was no objection to any term or condition by the Defendant, they signed the agreement. When the signing was completed, Mr. Selgado asked Mrs. Santos to travel to Belize to obtain a copy of the document once it had been notarized. She did not do so, so her signature is not on the agreement where the notarization section is filled out by Ms. Pitts. A copy of the agreement is attached as **“Exhibit HS 6”**. As stated in the agreement, Mr. Santos says he has relinquished all his legal and equitable rights to the Queen Victoria Street property and ensured that title to the property was issued in the name of the Defendant, with each party bearing the fees associated with the transfer in equal shares. He and the Defendant had also agreed that the Defendant would surrender all her legal and equitable rights to the property at Fonseca Street to Mr. Santos; she was to vacate the premises within two months of signing the agreement and pay Mr. Santos \$35,000 upon her receiving title to the property on Queen Victoria Street. There was a delay from June 2015 to January 2016 in the process to transfer title to Mrs. Santos, as an application for first registration of title needed to be submitted, title to be issued jointly in their names and then transfer of title to Mrs. Santos solely. When Mr. Santos went to Mrs.

Santos with the title in their joint names to have her sign as Transferee on the Transfer of Land form transferring the property to her solely, he says that Mrs. Santos initially refused on the basis that the transfer was long overdue. She told him that she would only sign if he allowed her two more months at the Fonseca Street property, as shown by a declaration dated January 22, 2016 (**Exhibit HS 7**). Mr. Santos said that the consideration on the land transfer form was submitted as \$10,000 as a money figure has to be written in the transfer land title process as Deeds of Gifts are no longer accepted at the Lands Department. On January 29<sup>th</sup>, 2016, Mr. Santos and his attorney Oscar Selgado delivered title to Mr. Santos for the Queen Victoria Street property which she now holds solely in her name, as shown by the copy of joint title **Exhibit "HS 8"**, the Transfer of Land Form **Exhibit "HS 9"** and the title in her sole name **Exhibit "HS 10"**. Mr. Santos said that once he handed over title to the property at Queen Victoria Street, he wrote letters to each tenant informing them that full payment of rent should now be made to Mrs. Santos (**Exhibits "HS 11" and "HS 12"**). Despite repeated demands, the Defendant has failed to pay Mr. Santos the sum of \$35,000 despite her having received title as agreed. She also refused to pay half of the expense associated with the transfer of title as per their agreement. Since the

commencement of this Claim, Mrs. Santos has vacated the Fonseca Street property, but she destroyed a storeroom which was part of that property and Mr. Santos is claiming damages for that destruction. Finally, Mr. Santos says that the Defendant agreed to all the terms of the agreement, she read the agreement and signed the agreement of her own free will. The Defendant was not under any duress, harassment or fear of harm from him. The Defendant is enjoying her property, making profits from rents and from her own business as he has fulfilled his part of the agreement, the Defendant is bound by accepting even a part of that agreement.

12. Mr. Santos was cross-examined by Mrs. Arzu Torres. He was asked whether he and his wife resided in Orange Walk for several years after their marriage in 1985. He explained that after their marriage, they lived in Orange Walk about a year or less, then they moved to the States. Mr. Santos said that he used to work in a restaurant washing dishes when they first arrived in the US. He then delivered pizza, then sold auto parts for about 10 to 15 years to different dealerships. He said that he and his wife worked as a team. Whenever he went to a dealership to work, he said he would also get her a job in the same dealership and she would work along with him. His wife was in the Shipping Department and he was selling auto parts in the front

counter. They both worked at different dealerships over the years. At this time, they both had the Fonseca Street property which was bought from Mr. Urbina in 1977. Eight years after he constructed a 2-storey building on that property he married the Defendant. He then started a supermarket in that building by the name of Master Food Supermarket. Mr. Santos disagreed with counsel's suggestion that improvements were made to the Fonseca Street property; he said there were no improvements or additions made. He was asked whether he and his wife sent monies to Belize to pay the loan at the DFC; he said that he was the one paying the loan because he was making more money than his wife; she would take care of other bills but he was responsible for sending monies to Belize. The supermarket was paying for the bill too. He disagreed that his relationship with his wife has been a rollercoaster from 1985 to the present. Mr. Santos agreed that he and his wife have been separated two or three times. He also agreed that they have had to have the police intervene in their marital affairs due to threats of violence and abuse. He agreed that he commenced divorce proceedings but the divorce was dismissed and the application for the assets was withdrawn. He disagreed with counsel's suggestion that he started calling his wife repeatedly after the divorce was dismissed in 2015. Mr. Santos said that he

would walk to his wife's shop to talk to her and get her to agree to a division of their assets. He said that he and his wife had both spent \$50,000 on fees to attorneys so they were both happy to have this matter settled. He did not agree that after several visits to her shop, the Defendant got tired of him. He said that he hired Mr. Selgado at his wife's request and he instructed him to prepare an agreement. This was after about 12 times that he and his wife had held discussions and negotiations to divide their assets. He would then visit Mr. Selgado at his office in Belize City to give him details as to the terms of the agreement. He paid Mr. Selgado and it took him one or two weeks to prepare the agreement. Mr. Santos is not aware if Mr. Selgado sent a copy of the agreement to Mrs. Santos. Mr. Selgado was acting on behalf of Mr. Santos. He said that there was no attorney present on behalf of his wife when the agreement was signed. He said that as part of the agreement his wife was to pay him \$35,000. He said that there was no obligation on his wife to pay \$10,000 to any bank with regard to any of these properties. Upon being shown the letter from Scotiabank about the loan, he said that on both loans there is a balance that is not paid as yet. He said the Scotiabank loan was originally \$75,000 in 1998 and the balance is now around \$22,000. Mr. Santos says that he currently manages a rental business and he is now living

at 13 Fonseca Street. He does not know if Mrs. Santos is working. After she vacated the matrimonial home, she took over the rentals at 6 Queen Victoria Street which yields \$2,100 per month. He does not know where she lives or whether she resides with family. Mr. Santos agrees that he had his attorney sent several notices to his wife to get her to leave the property; he says that was in relation to the agreement that they both signed. He said that even after the agreement was signed, Mrs. Santos refused to leave the property and to obey the agreement. Mr. Santos said that the \$35,000 he requested from his wife was the lesser loan pending to the bank; they agreed that she would take the lesser loan and he would take the larger loan of sixty plus thousand. Mr. Santos stated that the \$10,000 on the Transfer of Land form was put there by him due to the Lands Department required that he put a figure just for the purpose of processing the transfer of title to his wife's name alone. There was no transactional money involved. He agreed that when the agreement was to be executed he had his attorney travelled from Belize City together with a Justice of the Peace for that purpose. Mr. Santos disagreed with the suggestion that he did not inform Mrs. Santos that he was attending at the property on that day for the purposes of signing any agreement. He said that he was with his wife talking the whole week and

that they were both anxious for the attorney to come. He said that they wanted to get to this agreement so that they could go on with their lives separately; he was always in touch with her to let her know what was going on after both of them had reached an agreement. He agrees that he met Mr. Selgado and Mr. Lopez at Fonseca Street then they all left and headed over to Queen Victoria Street. Mrs. Santos met them at Queen Victoria Street along with their son Robert. Mr. Santos said that both Mr. Lopez and Mr. Selgado went inside the Fonseca Street property and spoke to Mrs. Santos there. Mr. Santos said he could not recall who was driving when they went over to the Victoria Street property but he believed it was the JP. He said he did not give them a tour of the property when they arrived. Mrs. Santos arrived about five minutes later along with their son Robert. Mr. Santos said he introduced Mr. Selgado to his wife at the Fonseca Street property, long before they arrived at the Queen Victoria property. He claims that it was his wife who suggested that he gets Mr. Selgado as his attorney. The agreement was signed on the verandah of the property, and prior to her signing it, Mr. Santos said that Mrs. Santos did not read it aloud, nor did Mr. Selgado read a copy out to loud to her. However, he says a copy of the agreement was given to Mrs. Santos at Fonseca Street and she read it there; she also read it

at Queen Victoria Street before she signed it. He disagreed with counsel's suggestion that Mr. Selgado never spoke to Mrs. Santos about the terms of the agreement. He agreed that only a portion of the agreement was signed in Orange Walk. It was put to Mr. Santos that that portion of the agreement indicating that Mrs. Santos signed the agreement of her own free will was not signed by her. He said nobody put a gun to her head; she signed it in front of Mr. Santos and in front of the attorney. The question was repeated and the specific clause which was to be signed by Mrs. Santos before a Notary Public drawn to the witness's attention. He then agreed that that portion of the agreement remained unsigned by his wife. He insisted that his son Robert was physically present during the signing of the document. He agreed with counsel's suggestion that his behavior in calling his wife 12 times or more to get her to agree to the terms of the agreement amounted to harassment and intimidation. He said he was completely wrong. He said he did not force his wife into signing the agreement. It is not true that he intimidated his wife by taking an attorney and a Justice of the Peace to her to force her to sign the document. He disagreed that his wife was fearful and tired of the constant back and forth with him. Mr. Santos did not agree with counsel's suggestion that the terms of the agreement are unfair in that they favour Mr. Santos



alone. He said it is not true that all his wife got were debts and a property which had in fact been in her family for many years. He agreed that he had been the one collecting rent from the Victoria Street tenants. He is not sure if Mr. Selgado was with him when the title to the Queen Victoria property was given to his wife on January 29<sup>th</sup>, 2016. This was six to seven months after the signing of the agreement.

13. Mr. Santos was re-examined by Mrs. Myles. He was asked to explain the loan balances remaining on the properties. He said that initially the loan was \$72,000/\$75,000 in 1998. The last time he checked around six months ago, the first loan was around \$22,000. The other loan was for about \$77,703 and it had a balance of around \$60,000 or less. He clarified whether Mrs. Santos would dismiss him each time he came to see her after the divorce and explain why he said she was happy. The witness said he didn't visit his wife until two to three months after the divorce was dismissed. He explained that they discussed that they had both spent over \$50,000 in lawyer's fees as both attorneys charged \$500 per hour, and they still had not gotten a divorce nor divided their properties. He explained to her that he was willing to let her have the Desantos Plaza which he personally built without hiring contractors. She would get title to that property and transfer title to her name only. She

would also collect rent of \$2,100 per month from that property. She agreed that he would keep the Fonseca Street property which he had bought in 1977 and where he had built a supermarket. They discussed that she would take furniture but leave a stove and bed for him and she agreed to this. They discussed the stock of the business which they had both worked for in the US, and agreed that she would take everything. They discussed that he would take the larger loan and she would take the smaller loan. The witness said they discussed the same thing over and over again.

**Evidence on behalf of the Defendant**

14. There were two witnesses called on behalf of the Defendant. The first of these was the Defendant's sister Ms. Susana Garcia. She said in her witness statement that in May 2004, her sister Ricarda Santos opened a business called "*Rica's Imports*" downstairs of her home at Fonseca Street. She was living alone at the property when the business opened as her husband had left her, but they were still legally married. He stayed for about two weeks and then he left. About one month later after they had gotten the store ready, Mrs. Santos moved back to the US with Hector Santos in February 2006. She would then travel back and forth from the US to Orange Walk and would bring back stock for her store. Ms. Garcia said that she worked for her

sister as her Store Manager from 2004 until 2010 where she paid all of the business's expenses, the employees and all her sister's bills including payment of property taxes, her loan at Scotiabank and other expenses. The taxes on the properties at Fonseca Street and Queen Victoria Street were in arrears so she had to make a payment plan with the Orange Walk Town Board so that the arrears could be cleared. The business on average generated \$2,500 per month initially. There was a steady decline in sales thereafter as there was competition in the used clothes business. In 2008, her sister Ricarda returned from the US to live in Belize and they both worked at the store. The loan was still being paid from the business. In 2010, she decided to stop working as she had adequately assisted her sister. The taxes were all cleared and Ricarda just had to work on paying off the bank loan.

15. Ms. Garcia was cross-examined briefly by Mrs. Myles as counsel for the Defendant. She said that yes she is the Defendant's sister and she is familiar with the divorce proceedings between Hector and Ricarda Santos. She does not know the outcome of those proceedings. She is not aware of the agreement that Mr. Santos and Mrs. Santos signed. She was finally asked about the bills she said she paid for her sister, employees, sister's bills and Scotiabank loans. She agreed that those were all the bills she paid for her

sister. That was the end of cross-examination. The witness was not re-examined.

16. The final witness for the Defendant was Mrs. Ricarda Santos. She gave a witness statement that she and Hector Santos have been married since September 13<sup>th</sup>, 1985. Her son was born one month before their wedding, and she and her husband left Belize one month after their wedding in search of a better life in the United States. Mrs. Santos says that at the time of their marriage in 1985, the Fonseca Street property was in foreclosure as her husband was indebted to the Development Finance Corporation. Both parties decided to move to the US to work and remove the property from foreclosure. Mrs. Santos said that her husband had promised her that when they had paid off the loan, he would also place her name on the title. They lived in the US for six months then he moved to another state to live with another woman. She says that each month she would purchase a money order and send payment to DFC for the loan. He would give her a portion of the funds for the money order and she would come up with the remaining funds. They finished paying DFC for the Fonseca Street property in 1992 from their earnings in the US. Mrs. Santos said she also sent \$13,000 for use by her husband in paying Scotiabank obligations. She sent these sums to her

niece Elsa Cuello, as illustrated by the attached letter from her niece **Exhibit “RS 1”**. In 2009, Mrs. Santos and Mr. Santos borrowed \$26,500 from Scotiabank to extend the Fonseca Street property and to add a large master bedroom as shown in the before and after photos of the property **Exhibits “RS2, RS 3 and RS 4”**. Mrs. Santos said in 1998 her husband obtained a loan of \$75,000 from Scotiabank. He signed receiving the cheque and he paid off her sisters for the purchase of their interest in the Desantos (Queen Victoria) property which they had all inherited from their mother. He used the small balance which remained to purchase a vehicle. She did not receive a dime from the \$75,000 borrowed. She exhibits a copy of a loan note as **Exhibit “RS 5”**. Mrs. Santos said that she was paying the loan in 2002 in the monthly sum of \$1,082.00 until 2009 when her husband started to pay it from rents he received from the Desantos Plaza. The Fonseca Street property was also rented for all the years that they were in the US but she does not know what he did with the monies. In 2003 her husband called to apologize and asked to come back to her. In May 2004, Mrs. Santos moved back to Orange Walk to open a store at the Fonseca Street property which she named “*Rica’s Imports*”. She said she sold used clothing and her sister Susan Garcia used to manage the business while Mrs. Santos was in the US. She was also a

guarantor for her loans at La Inmaculada Credit Union. Her sister would deposit \$250 weekly from the earnings from Rica's Imports to cover the loan from Scotiabank. Mrs. Santos earned \$20,000 from a job at a Volkswagon dealership in Florida which she gave to her husband. They started clearing the land in 2007 for the Queen Victoria Street property, and she made a loan at the Credit Union for \$10,000 to finish that property, as shown by Loan Note "**Exhibit R.S. 6**". At the time of their purchase of the Queen Victoria Street property from her sisters, Mrs. Santos says that there was only the land itself. Her interest was never purchased because she considered it a part of her investment in the marriage. Construction of the building on that property started in 2007 and it was funded by monies from her store and from loans that she made at the credit union. Mrs. Santos said that she worked for three years in the US and built that property. Her husband was in charge of the construction in Belize and she would simply forward the monies to him to purchase materials and pay the workers. The building has four units and was finished in 2009. Her husband then collected rent from all the units. She says she presently owes the Credit Union \$70,000. In 2013, she took her husband to court in order to get a portion of the rent from the Queen Victoria property; he was ordered to pay her half of the sum of the

rent collected. Shortly after the Claimant's petition for divorce was dismissed in the Supreme Court, Mrs. Santos said that her husband approached her and requested that she transfer certain properties to him. They are still legally married, but have been living separately and apart. She had filed an application for division of matrimonial property but decided to withdraw that application since the divorce was not granted. Mrs. Santos states that she is still at liberty to file an application for division of matrimonial property as the petition for divorce was dismissed as shown by Order of the Supreme Court **Exhibit "RS 6"**. The Claimant kept approaching her about the properties and due to his constant harassment by way of threats of removing her from the property as well as constant phone calls and visits, she decided to sign the agreement dated June 25<sup>th</sup>, 2015. Mrs. Santos says that she was at Rica's Imports on that day, and her son was with her, when Mr. Selgado came around 5:00 pm and introduced himself to her as an attorney. She says that she was tired of her husband's constant visits and phone calls and she did not read the document presented. There was another gentleman with them. She said that she felt intimidated and as if she was being forced into signing the document. She told the Claimant that the document was not to be notarized until they had travelled to Belmopan to discuss the transfer of

the properties, but he went ahead and notarized the document in her absence. Later that year Mrs. Santos said that she received a letter from her husband regarding her stay at the property **Exhibit "R.S. 7"**. The following month she received a letter from Mr. Selgado stating that she had signed the agreement in the presence of Ms. Pitts and Mr. Lopez. The witness said that she did not sign in their presence; she signed at her store on Fonseca Street in the presence of her husband Hector Santos, Mr. Selgado and another gentleman that she does not know. She recalls there was a gentleman along with Mr. Selgado, but he was never introduced to her. Mrs. Santos said that she was not given a copy of the document and has only read it since being served with a copy of this claim. After carefully studying the agreement she says that the portion that states that she and her husband are married but living separate and apart for more than three years is untrue; she and the Claimant lived as husband and wife until the year 2013. As at 2015 when she signed the agreement, she and her husband were only separated for two years. She did not carry out any inspection of the property as alleged by the Claimant. She trusted her husband and thought that he had her best interest at heart. In 1998 she said she bought the Queen Victoria Street property from her six sisters as it was left to them by their mother. That property was valued



at \$125,000 at the time of purchase; however, her sisters agreed to sell their interest to Mrs. Santos for the sum of \$60,000 so that it could remain in the family. So she and the Claimant borrowed \$75,000 from Scotiabank formerly Royal Bank of Canada and the Claimant paid her sisters and kept the balance for his personal use. Mrs. Santos said that she decided that after her sisters sold their interest in the Queen Victoria property and the San Lorenzo farm to her and her husband, that their joint names would be placed on the title because she was of the view that she and the Claimant would at all times share equally in any property division. Mrs. Santos says that she invested heavily in the Fonseca Street property so she is also entitled to an interest in that property. Mrs. Santos claims that the division of assets in the agreement is totally unfair and unconscionable having regard to the fact that she invested much more in the acquisition of the assets than the Claimant ever did. The constant pressure and threats from the Claimant did not allow her to seek the services of her attorney for legal advice prior to the execution of the agreement. Mrs. Santos said that she feared more mental abuse and stress if she had disagreed with him concerning the division of their matrimonial assets. She says she was tired of being harassed and pressured

by Mr. Santos. She says she did not enter into this Agreement of her own free will.

17. Mrs. Santos was cross-examined extensively by Mrs. Myles on behalf of the Claimant. She agrees that she had given evidence that she worked while in the US and contributed financially to the acquisition to the assets. She also agreed that this showed that she was a very independent woman. The witness admitted that while she testified that she made payments to DFC, she did not produce any receipts to prove those payments. She agreed that she also did not have receipts to prove that she made payments to Scotiabank. Mrs. Santos agreed that she did not have a Deed of Cancellation of Mortgage to prove that she had paid off the mortgage in 1992. She also agreed that she kept mentioning in her evidence that the Claimant had filed a petition for a divorce on the basis of cruelty, but failed to mention that she had filed and answer seeking a divorce on the basis of cruelty. She was asked to look at the order of the court dismissing the petition and she was asked why she withdrew her application for division of matrimonial property. The witness explained that she understood that the divorce was not granted, therefore she and her husband were still married and he could back to his house. So when he came by to ask for keys, she gave him keys to the house.

That is why she withdrew the petition for division of properties; since they were not divorced, the properties still belonged to both of them. She said Mr. Santos did not own the Fonseca Street property before he married her. He was paying DFC for it when they got married, but he did buy it prior to marrying her. The witness was shown a letter from Scotiabank attached to the witness statement of Mr. Santos. She was asked about the contents of the letter which explained that the amount of \$71,503.25 was paid to Mrs. Francisca Diaz by order of Hector and Ricarda Santos and \$3,496.75 was paid for legal fees and other loan related fees. Mrs. Santos disagreed with the letter and said the loan was not issued to Mrs. Diaz, it was issued to her husband and to her. She said her husband corrected the letter, but she did not have evidence to prove that. She claims that even though the bank draft was issued in both their names, all she did was sign and her husband put everything into his account. He paid her sisters for the property but never paid her anything. On the day of signing the agreement in this case, she just remembers two men Mr. Selgado (whom she had seen on tv many times before) and another man she had never seen before. She says she has memory problems. She saw Cardinal Lopez testify in this case but she cannot recall if he was the man who was present at the signing of the agreement.

She said she signed the document on top of Mr. Selgado's vehicle in the parking lot and then Mr. Selgado took it. She does not remember if the guy signed. She said her husband did not sign. This took place at the Queen Victoria property, not at the Fonseca Street property. She said it was a mistake when she put in her witness statement that the documents were signed at the Fonseca Street property. She never told Mr. Selgado, Mr. Santos or the other gentleman that she did not want to sign the agreement. She never told her husband that she needed time to read over the agreement and talk to her attorney before she signed it. She agreed that the day after she signed the agreement she travelled to Belmopan and met her husband at the Lands Department. That is when she learnt that there needed to be a First Registration of Title before the property could be transferred to her name alone. Mr. Santos took all the steps to do the First Registration and brought all the necessary documents for her to sign. When Mr. Santos brought the Transfer of Land forms to Mrs. Santos to sign, she said that she hesitated but she signed them. She said she hesitated because he was constantly bothering her to pay different things and she did not have any money. She agreed with counsel's suggestion that if he found the money to do the transactions, then she would have had no problem. Mrs. Santos said

that it took from six months to one year from the time she signed the agreement until she got title in her hand. She agreed that when Mr. Santos took the transfer forms to transfer title from their joint names to her sole name, she told him that she would only sign those forms if he allowed her to stay on the property a little longer. She was shown Exhibit HS 7, a statutory declaration which the witness agreed that she and Mr. Santos signed, part of which stated: *"Until title of the property for #6 Queen Victoria Street is received, you will not leave until a considerable time of two months."* Mrs. Santos agreed that there was a storeroom attached to the Fonseca Street building, but she said she did not destroy it when she left, she took it with her. It was a shed made of tarp and zinc scraps that cost her about \$400 to build. She agreed that upon receiving title to the Queen Victoria property she started collecting rent of \$2,100. There are four units on that property, one which she uses as a clothing store, one is rented out as an ice-cream shop called *"Snow Angel"*, another is rented out as a pawn shop; she says presently only one unit is rented but the others are available for rent. She was referred to the second page of the agreement which required that she vacate the first floor of the Fonseca Street property. Mrs. Santos agreed that she has in fact vacated both the business place and the residency on this

property. She said that it was after Mr. Santos brought her to Court for the \$35,000 in the agreement that she called Mr. Selgado and told him that the agreement that she had signed the day before was not valid. She also texted Mr. Selgado that the agreement was not valid because they were not able to do anything in Belmopan. Mrs. Santos agreed that it was because they were not able to do the actual transfer immediately that she texted Mr. Selgado that the agreement was invalid. She did not text him to say that she did not agree with the contents of the agreement. The witness said all she did was sign. She had no idea what she was signing. All she knew is what she and her husband had discussed before he did all these things. She agreed that she took action to proceed with the transfers, but that was for the agreement she and her husband made orally. She agreed with counsel that she signed the agreement of her own free will and she knew that there were steps to transfer the properties. She understood that they had to go to Belmopan to remove his name from the title and put her name from the De Santo property. She agreed that Mr. Santos would stay with 13 Fonseca Street. She agreed that she knew she had options other than signing the agreement. She agreed that she could have started the divorce all over again, and she said that if she had the money she would have done it. The witness said she never

wanted this (written) agreement. The (oral) agreement between them was the one she wanted, where he kept one property and she kept one and they would go their separate ways as if they never met. Mrs. Santos said that up to today's date she has not read the agreement. She was shown bank statements for two loans, Loan 77703 for \$63,000 as of January 2016, and Loan 59285 showing a balance of \$26,000 as of May 6<sup>th</sup>, 2016. Mrs. Santos agreed that the balances were outstanding after the date when she signed the agreement and after the date that she received title in her name in December 2015. She disagreed that Mr. Santos had suggested that she take the smaller loan and he take the bigger loan.

18. Mrs. Santos was re-examined by her counsel. She said she did not understand what were legal and equitable expenses referred to in paragraph 5 of the agreement. She said she did not pay Mr. Santos the \$35,000 because they never agreed to pay each other any money. Their agreement was that he would keep one property and she would keep the other and they would then go their separate ways. Nobody read the agreement to her before she signed it, and when her husband, his attorney and the person said to be a JP approached her to sign it, she did not have any attorney at that time. She never discussed any loans with Mr. Santos as part of their agreement and at

the moment he should be paying both those loans; she is paying a loan for the Desantos building at the Credit Union. She has no receipts from DFC and from Scotiabank because Mr. Santos took all of them. The witness said that she left the Fonseca Street property because she and Mr. Santos had agreed that once he removed his name from the property in Queen Victoria Avenue, she would leave the house because each of them would have one of the properties. She did not damage the Fonseca Street property when she removed the shed; it previously stood next to the building and was never attached to it, so she dismantled it and took it with her when she left the premises.

### **Legal Submissions on behalf of the Claimant**

19. Mrs. Myles states that at the commencement of this claim, the Claimant sought possession of the Fonseca Street property, and special damages in the sum of \$46,193.50, \$305.50 as half the transfer expenses and \$10,788.00 as the value of the storage room that had been removed from the premises. The Defendant in her counterclaim is seeking declarations that the agreement is unconscionable as the parties are still married and should be set aside on the basis that she signed the agreement under duress and undue influence. Learned Counsel submits that the agreement dated 25<sup>th</sup> June,



2015 signed by the Claimant and the Defendant and witnessed by the Justice of the Peace is valid and enforceable. It is also submitted that the fact that the agreement was not notarized by Ms. Pitts on behalf of the Defendant does not invalidate the agreement but serves as a mere formality. Both parties have testified that the negotiations took place over a period of time which resulted in the preparation of the agreement, and those discussions are reflected in the agreement dated June 25<sup>th</sup>, 2015. Mrs. Myles cites **Carter on Contract** on the general principle of intention to create legal relations in family situations as follows:

In **Carter on Contract** the general principle in Family, Social and Domestic Agreements is outlined as follows:

1. *In the case of a family, social or domestic agreement, there is a presumption of fact that the parties to the agreement did not intend to enter legal relations.*
2. *In particular cases, the presumption:*
  - (a) *May apply; or*
  - (b) *May be rebutted.*
3. *Whether the presumption does not apply, or has been rebutted, depends on the circumstances, including:*

- (a) The precise relationship between the parties;*
- (b) Their age and experience;*
- (c) The nature of the subject matter of the agreement; and*
- (d) The steps to be taken prior to the performance of the agreement and its performance.*

#### *Rebuttal of the Presumption*

*In McGregor v McGregor an agreement to pay a stipulated weekly amount for the maintenance (and to indemnify her) as a part of a compromise of litigation compromising cross-summonses for assault was held to be legally binding, as was a written partnership agreement in Miliner v Miliner. Popiw v Popiw it was held that an agreement by a wife to return to live with her husband, in consideration of her husband's promise to transfer title to the matrimonial home into both their names, was a binding contract.*

**Halsbury's Laws of England**, Volume 9(1) (Reissue) Contract/3. Formation of Contract/(6) Intention to create legal relations/(iii) Family, Domestic or Social Agreements/724 states that:

*“One of the most usual forms of agreement which does not constitute a contract is the arrangements which are made between husband and wife. It is quite common, and it is the natural and inevitable result of the relationship of husband and wife, that the two spouses should make arrangements between themselves. Those agreements, or many of them, do not result in contracts at all, and they do not result in contracts even though there may be what as between other parties would constitute consideration for the agreement. Prima facie, such agreements are outside the realms of the contract altogether, because the parties never intended that they should be sued upon, but it is possible to show that this is a necessary implication from the circumstances of the parties.*

*On the other hand, the following are examples of situations where the courts have implied from circumstances an intention by the parties to enter a binding contract: a separation agreement made between spouses when they agree to live apart or after separation (but not such an agreement made during cohabitation); a promise before marriage by a man to his future wife to leave her a house if she married him, an*

*agreement whereunder the husband became the wife's tenant; and mutual wills."*

In ***Merritt v Merritt*** [1070] EWCA Civ 6, Husband and wife were married as long ago as 1941. After the war in 1949, they got a building plot and built a house. It was a freehold house, No. 133 Clayton Road, Hook, Chesington. It was in the husband's name, with a considerable sum on mortgage with a Building Society. There they lived and brought up their three children, two daughters, aged now 20 and 17, and a boy now 14. The wife went out to work and contributed to the household expenses.

Early in 1966 they came to an agreement whereby the house was to be put in joint names. That was done. It reflected the legal position when a house is acquired by a husband and wife by financial contributions of each.

But, unfortunately, about that time the husband formed an attachment for another woman. He left the house and went to live with her. The wife then pressed the husband for some arrangement to be made for the future. On 25th May they talked it over in the husband's car. The husband said that he would make the wife a monthly payment of £40 and told her that out of it she would have to make the outstanding payments to the Building Society. There was only

£180 outstanding. He handed over the Building Society's mortgage book to the wife. She was herself going out to work, earning net £7.10.0d. a week.

Before she left the car she insisted that he put down in writing a further agreement. It forms the subject of the present action. He wrote these words on a piece of paper:-

*“In consideration of the fact that you will pay all charges in connection with the house at 133 Clayton Road, Chessington, Surrey, until such time as the mortgage repayment has been completed, when the mortgage has been completed I will agree to transfer the property into your sole ownership.*

*Signed, John Merritt. 25th May, 1966.”*

The wife took that paper away with her. She did, in fact, over the ensuing months pay off the balance of the mortgage, partly, maybe, out of the money the husband gave her, £40 a month, and partly out of her own earnings. When the mortgage had been paid off, he reduced the £40 a month down to £25 a month.

The wife asked the husband to transfer the house into her sole ownership. He refused to do so. She brought an action in the Chancery Division for a

declaration that the house should belong to her and for an order that he should make the conveyance. The Judge made the order; but the husband now appeals to this Court.

In dismissing the appeal, Lord Denning, Master of the Rolls, stated:

*“I do not think those cases have any application here. The parties there were living together in amity. In such cases, their domestic arrangements are ordinarily not intended to create legal relations. It is altogether different when the parties are not living in amity but are separated, or about to separate. They then bargain keenly. They do not rely on honourable understandings. They want everything cut and dried. It may safely be presumed that they intend to create legal relations.”*

In all these cases the Court does not try to discover the intention by looking into the minds of the parties. It looks at the situation in which they were placed and asks itself: Would reasonable people regard the agreement as intended to be binding?

Mrs. Myles argues that it is clear from the Defendant's evidence that she did not attend for the notarization and now alleges that the agreement is unconscionable ONLY because the transfer of the Fonseca Street property to

her did not occur as quickly as she had expected. The Defendant intended to bind the Claimant and as such she must be bound by the Agreement. It is clear that although married, the parties were not living together and had already commenced court proceedings for divorce and separation of assets. This is undisputed evidence of the parties' intention to be legally bound by the agreement despite the agreement being an agreement between spouses.

***Halsbury's Laws of England***, Volume 9(1) (Reissue) Contract/3. Formation of Contract/(5) Consent/(iii) Duress, Undue Influence and Drunkenness states as follows:

*“By duress of persons at common law is usually meant the compulsion under which a person acts through fear of personal suffering as from injury to the body or from confinement, actual or threatened.*

*Moreover, as a general rule, a threat of civil proceedings or bankruptcy proceedings does not amount to duress, whether there is good foundation for the proceedings or not, but it may do so if it is intended and calculated, having regard to the circumstances, to cause terror in the particular case.*

*A contract obtained by one party A by means of duress exercised by A over the other party B is probably voidable by B, even though he might have entered into the transaction even if the threat had not been uttered. It is for A to prove that his threat has contributed nothing to B's decision to enter the contract. However, if the contract is voluntarily acted upon by B, it will become binding on him. The duress must be actually existing at the time of the making of the contract; and the personal suffering may be that of B, or his or her spouse or near relative; but duress of a stranger is more doubtful.*

*A court of equity will set aside a transaction entered into as a result of conduct which, though not amounting to actual fraud or deceit, is contrary to good conscience. Many of the cases in which undue influence arises relate to gifts, but the same principles apply to contracts and unconscionable bargains. In the field of contract, the doctrine has been defined as the unconscientious use by one person of power possessed by him over another in order to induce the other to enter into a contract.*



*In cases of actual undue influence, is necessary for the Claimant B to prove affirmatively that is wrongdoer A exerted undue influence on B to enter into the particular transaction which is impugned.”*

Mrs. Myles submits that the Defendant’s focus was that she could not be bound by the agreement since she had not read it as she just wanted to “*get it over with*”. Learned Counsel argues that Mrs. Santos’s aim was to make a mockery of the court, and that she testified that she has never read the document. The Defendant is not being truthful as there is no way that she could not have read the agreement, yet shown the level of knowledge of its contents that she did at trial. Mrs. Myles urges the Court to truly consider the Defendant’s testimony versus her actions. She told the court that she did not read the agreement, that she was not given an option to seek legal advice and she was not allowed to make an independent decision. She also says that she was pressured into signing the agreement so that the Claimant would leave her alone. The real evidence before the court is that the Defendant is a strong and independent woman who has admitted that although married to the Claimant she earned income and paid bills. She has admitted that her petition for divorce on the ground of cruelty (like that of the Claimant) failed, and that she withdrew her application to divide the matrimonial assets. She

admitted that she hired new counsel. She admitted she had an injunction in her favour during the matrimonial proceedings. She admitted travelling to Belmopan on her own to start the transfer process. According to her, it took many visits from the Claimant for them to agree on what was fair to both parties. Learned Counsel submits that the reason why Mrs. Santos was not asked on the day of signing whether she needed an attorney is because she had been the one to suggest to the Claimant that Mr. Selgado prepare the agreement. Mrs. Santos did not ask for any other time to seek other legal advice. She did not ask any of the gentlemen or her son to read the agreement to her. She did not express any reservation in signing the agreement, nor did she express any reservation in signing the agreement. The only conclusion that can be drawn, therefore, is that the Defendant was not forced or unduly influenced to sign the agreement. She has been shown to be a strong and independent woman who makes decisions for her own interest. It is also submitted that she has sufficient knowledge about signing legal documents, the law concerning assets and mortgages. It is also submitted that there is absolutely no evidence presented by the Defendant of duress, undue influence or unfair terms and her counterclaim should therefore fail. Even further, any claim or evidence that the parties are still

married does not invalidate the agreement. Mrs. Myles cites Action No. 17 of 2016 ***Rutilia Supaul v Gulab Lalchand*** where it was held that the Defendant was bound by the agreement that she had freely made. The Court stated thus:

*“In the Supaul case, reference was made to Greer v Kettle [1937] 4 ALL ER 396 which states:*

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

*Learned Chief Justice Griffith further stated at para 47 of the judgment:*

*‘As accepted, estoppel by deed is a rule of evidence, which operates by precluding admission of any contradictory proof in relation to that which is established by the deed... as a rule of evidence, upon determining any issue the subject matter of which is covered in the deed, short of common law exceptions*

*(fraud or illegality), or any other rule of law , the Court will be obliged to give effect to the provisions of the deed...”*

Learned Counsel submits that the evidence reveals on the contrary, that the Defendant was eager to honour the terms of the agreement as soon as possible. It was the Defendant’s evidence that she acted of her own free will in travelling to Belmopan the day following the signing of the agreement to ensure that the transfer to her was done. It was only after she learnt that there needed to be done first registration, title in both parties’ names, and the transfer to her sole name that the agreement was *“not a good idea after all”*. It was only after learning of the possible delay that the Defendant decided to call Mr. Selgado to complain that the agreement was not valid was because the transfer could not be done immediately and not because she was forced to sign the agreement. In fact it is submitted that the Defendant willingly signed the necessary documents for the process to unfold, and title was transferred to her even after her complaints. This is evident in her admission that she signed the transfers and a declaration by the Claimant allowing her more time at the Fonseca Street property before she needed to vacate. She willingly accepted the title in her sole name and vacated the Fonseca Street property. It is submitted that once Mrs. Santos

secured what was due to her under the agreement, she completely disregarded the Claimant's interest and decided to challenge the agreement in order to avoid paying the loan as had been agreed. Mrs. Myles further submits that the damages claimed should be granted and the Defendant should be made to honor the agreement by paying half the expenses of the transfer of title and pay the smaller loan.

### **Legal Submissions on behalf of the Defendant**

20. Mrs. Arzu Torres states that the freedom to contract during and after marriage has been one of the fundamental rights of parties to a marriage. Courts are no longer hesitant to accept such agreements and to recognize the rights of the parties. Though courts have accelerated a revised approach of recent times, safeguards have been put in place to preserve the sanctity of marriage and to protect the weaker spouse. Mrs. Arzu Torres then cites ***Commonwealth Caribbean Family Law Husband Wife and Cohabitant*** (2016) at page 314 as follows:

*"The current position, which in the main is as a result, of the landmark decision in the Privy Council case of MacLeod v MacLeod with respect to post nuptial agreements and the Supreme Court decision of Radmacher v Granatino, with respect to ante-nuptial agreements, is*

*that nuptial agreements, both ante-nuptial and post-nuptial, are valid and enforceable at common law, not only in respect to arrangements made for the time when the parties are together but also with respect to future arrangements, that is arrangements for them to live separately and apart even though at the time of making such agreement, separation of divorce is not contemplated.”*

The learned authors went on at page 317:

*“As such, although nuptial agreements are now deemed to be valid at common law, the courts retain their interventionist role to enquire into, vary, and set aside the whole or part of each agreement on the grounds that the agreement is not fair and reasonable. In determining whether the agreement is fair and reasonable, as is the case with maintenance agreements discussed above, the court attaches substantial weight to the provisions of a nuptial agreement voluntarily entered into and properly negotiated even though it is not an agreement which the court itself would have made.”*

Mrs. Arzu Torres goes on to cite ***Commonwealth Caribbean Family Law Husband Wife and Cohabitant*** (2016) page 318 which sets out the elements

which a court must find to determine whether a legally binding nuptial contract exists:

*“1) The agreement must be in writing and signed by the parties and witnessed by an attorney-at-law;*

*2) There must be included in the agreement a statement to the effect that the signatory parties understand the nature and effect of the agreement consequent on the attorney explaining to the parties the effect and financial consequences of the agreement; and*

*3) The parties must have had access to and received independent legal advice.”*

It is submitted that the agreement did not comply with the formal requirement factors quoted above. Mrs. Arzu Torres further contends that the agreement in the case at bar is akin to a post nuptial agreement and the Court must examine the actual agreement to determine its scope, purport and effect. The Court must also consider the time when the agreement was prepared and what the agreement is expressed to relate to and how it came to be that the agreement was executed.

In *Edgar v Edgar* (1981) 2 FLR 19, at page 25 Ormrod LJ said in relation to a post-separation agreement, but in words which have some resonance in the context of pre-nuptial and pre-separation agreements too:

*“To decide what weight should be given in order to reach a just result, to a prior agreement not to claim a lump sum, regard must be had to the conduct of both parties, leading up to the prior agreement, and to their subsequent conduct, in consequence of it. It is not necessary in this connection to think in formal legal terms, such as misrepresentation or estoppel, all the circumstances as they affect each of two human beings must be considered in the complex relationship of marriage. So, the circumstances surrounding the making of the agreement are relevant. Undue pressure by one side, exploitation of a dominant position to secure an unreasonable advantage, inadequate knowledge, possibly bad legal advice, an important change of circumstances, unforeseen or overlooked at the time of making the agreement, are all relevant to the question of justice between the parties. Important too is the general proposition that, formal agreements, properly and fairly arrived at with competent legal advice, should not be displaced unless there are good and*



*substantial grounds for concluding that an injustice will be done by holding the parties to the terms of their agreement. There may well be other considerations which affect the justice of this case; the above list is not intended to be an exclusive catalogue.”*

In ***X v X (Y and Z intervening)*** [2002] 1 FLR 508 in which Munby held that an agreement between the parties (after the breakdown of the marriage) was a very important factor in considering what was a just and fair outcome. The court would not lightly permit parties to an agreement to depart from it, and a formal agreement, properly and fairly arrived at with competent legal advice, should be upheld by the court unless there were good and substantial grounds for concluding that an injustice would be done by holding the parties to it. The court must, however, have regard to all the circumstances, in particular to the circumstances surrounding the making of the agreement, the extent to which the parties themselves attached importance to it and the extent to which the parties had acted upon it.

The learned authors of ***Commonwealth Caribbean, Family Law, Husband, Wife and Cohabitant*** (2016) at page 317 very usefully and extensively considered the factors to be taken into account by the Court when attaching

weight and ultimately giving effect to a nuptial agreement. We shall consider these in turn against the backdrop of the evidence before this Court.

#### State of the Evidence

(a) The fairness and reasonableness factor – It is the submission of the Defendant that the terms of the agreement are unreasonable as the husband retained control of major asset of the marriage and that the division was not balanced. The property which Mrs. Sanots kept in fact belonged to her family and the parties purchased the interest of the Defendant's sisters with a loan from the Scotiabank. The loans are still mounting and remain to be repaid by the Defendant solely yet gaining a sum of \$35,000 as is being claimed by him. The Claimant had during the course of the marriage collected all the rents for the said property and to the exclusion of the Defendant. With all that said and of critical importance is that the Defendant did not obtain any independent legal advice nor did she have an opportunity to consult with an attorney prior to the execution of the agreement. In *Radmacher v Granatino* [2008] EWCA Civ 1304 Baron J gave five reasons for giving little weight to an agreement executed in such circumstances. He noted: 1. The husband had had no independent legal advice prior to his entry into the

contract. 2. The wife had given no (or no full) disclosure of the extent of her resources prior thereto. 3. There had been no negotiations between the parties or their representatives prior to entry into it. 4. That, in the events which had happened, it would be manifestly unfair to hold the husband to its terms. 5. That the arrival of the couple's two daughters had so changed the landscape as to require it to be put to one side.

(b) Children of the family – There are no children of the union.

(c) Fact sensitivity – The parties have been married for over 20 years and still remain married as at this date. The Claimant had applied to the Court for a divorce on the grounds of the Defendant's cruelty but his petition was dismissed. There was also an application for ancillary relief and which was withdrawn on account of the divorce being dismissed. Instructive is the ruling in their divorce proceedings where Griffith J details the state of the marriage and allegations of sexual abuse, infidelity, etc. on the part of the Claimant. The Claimant in his evidence admitted to calling the Defendant constantly to discuss the issue of the division of the assets and with which the Defendant became frustrated and thereafter agreed hesitantly to sign the document.

(d) Moving away from the Court knows best approach – The Court must still carefully investigate the matter in which their financial affairs were regulated. In evidence both parties told the Court that they had always shared the financial responsibilities with them living and working in the United States for many years and send payment to Belize for the payment of their mortgage and other financial expenses. The Defendant in her evidence and that of Ms. Susanna Garcia confirmed that payments were sent to Ms. Garcia to settle land tax arrears, mortgage payments and which was sent by postal money order.

Mrs. Arzu Torres urges the court to be sensitive to certain facts of this case. The parties have been married for over 20 years and still remain married to date. The Claimant had applied to the Court for a divorce on the grounds of the Defendant's cruelty but his petition was dismissed. There was also an application for ancillary relief filed by the Defendant which was withdrawn on account of the being dismissed. Instructive is the ruling in their divorce where Griffith J. details the state of the marriage and allegations of sexual abuse, infidelity etc. on the part of the Claimant. The Claimant in his evidence admitted to calling the Defendant constantly to discuss the issue of the division of assets and with which the Defendant became frustrated and

thereafter agree hesitantly to sign the document. Mrs. Torres also urges the court to carefully investigate the manner in which the parties regulated their financial affairs. In evidence both parties told the court that they had always shared the financial responsibilities with them living and working in the US for many years and sent payment to Belize for payment of their mortgage and other financial expenses. The Defendant in her evidence and that of Ms. Garcia confirmed that payments were sent to Ms. Garcia to settle land tax arrears. The intent of the parties is ambiguous in that there is a lack of signature of a notary public/attorney at law on the agreement. The proper course would be for the Court to find that there is no binding agreement. It is submitted that the notary public should not have executed the agreement in the absence of the Defendant. The agreement should also be set aside because the Defendant did not receive independent legal advice prior to signing the agreement.

Mrs. Arzu Torres also cites the factors which will lead a court to vitiate a nuptial agreement as listed in ***Commonwealth Caribbean Family Law Husband Wife and Cohabitant*** (2016) at page 318:

*“1) The absence of free will; 2) lack of understanding of the implications of the agreement; 3) non-disclosure of assets and*

*income; and 4) provisions of the agreement which on the face of it are unfair.”*

Mrs. Arzu Torres argues that the evidence in this case shows that the Claimant did not sign this agreement of her own free will, but after many phone calls to her cell phone and visits by the Claimant to the store on Fonseca Street. The Claimant in cross-examination had agreed that he had called her at least 10 times. There was a specific provision in the agreement for signing before a notary public which was not complied with to ensure that she understood the contents thereof and to that she was signing of her own free will. There was no execution before Ms. Pitts by her nor any acknowledgment or acceptance that she was signing of her own free will. Mrs. Arzu Torres further submits that there was unfair pressure by the Claimant which drove the Defendant to execute the Agreement without consulting anyone prior to her execution and she did not appreciate the terms and even so, the legal purport. The Defendant in her evidence told the court that the agreement was not to be notarized until they both travelled to Belmopan in the days ahead and that they would further discuss the transfer of the matrimonial property. The Claimant however went ahead in her absence and at around 8:30 pm executed the agreement in the

presence of Ms. Pitts the Notary Public at her home on George Street , Belize City, and then took the Defendant to Belmopan to effect the transfer.

In ***Royal Bank of Scotland Plc v Etridge (No. 2)***, Lord Nicholls stated:

*“Here, as elsewhere in the law, equity supplemented the common law. Equity extended the reach of the law to other unacceptable forms of persuasion. The law will investigate the manner in which the intention to enter into the transaction was secured: 'how the intention was produced', in the oft repeated words of Lord Eldon LC, from as long ago as 1807 (Huguenin v Baseley (1807) 14 Ves 273, 300). If the intention was produced by an unacceptable means, the law will not permit the transaction to stand. The means used is regarded as an exercise of improper or 'undue' influence, and hence unacceptable, whenever the consent thus procured ought not fairly to be treated as the expression of a person's free will. It is impossible to be more precise or definitive. The circumstances in which one person acquires influence over another, and the manner in which influence may be exercised, vary too widely to permit of any more specific criterion.”*

Mrs. Arzu Torres also states that the agreement should fail due to non-disclosure of assets, income or other financial resources of the parties in that it did not provide who would repay the loans which remain outstanding. She also contends that the agreement has provisions which on the face of it are unfair, such as the provisions which require the Defendant (though unemployed) to make payment to the Claimant for legal expenses surrounding the transfer of the property, to continue payment of a loan note and to make payment of \$35,000 to her husband. This was not addressed at all in the agreement nor was it stated therein who would have responsibility for the payment of any expenses surrounding the drafting of the same and the transfer to have been effected. Mrs. Torres also sets out in detail the relevant circumstances under which the Defendant signed this agreement: these include the fact that the Defendant is a 60 year old woman of very limited means who sold used clothing to make ends meet; the fact that her husband arrived at her place of business late in the day armed with his attorney and a Justice of the Peace and demanding that she immediately sign the agreement, and the fact that she was never given an opportunity to consult an attorney of her own, nor was she given an opportunity to read the agreement, nor was the agreement read to her and the fact that her husband



did not wait to meet with her before getting the document notarized but instead rushed off under the cover of night to have Ms. Pitts notarize the document at her home on George Street in the absence of the Defendant. There is a lack of overall fairness of the agreement, it is submitted, and it should be set aside. In addition, the claim for damages is unsubstantiated and should be dismissed.

### **Decision**

21. I am grateful to counsel for both sides for their excellent submissions which has been invaluable in assisting the court in determining this matter. Since the validity of this agreement is at the heart of this dispute, it is only fitting that it be reproduced in its entirety:

*“BELIZE: A. D. 2015*

*This Agreement made on the 25<sup>th</sup> day of June, 2015 between the parties Hector Santos of 13 Fonseca Street, Orange Walk Town, Belize (hereinafter called ‘the Husband’) of the one part and Ricarda Santos of Orange Walk Town, Belize (hereinafter called ‘the Wife’) of the other part.*

*Whereas:*

- The parties are married but are living separately and apart for more than three years since the date this document is signed.*
- There are no children below the age of eighteen years of age from the marriage of the parties.*
- The Husband and the Wife are desirous of settling their separation and the division of matrimonial property in an amicable manner as laid out in this agreement.*

*It is hereby agreed and declared by the Husband as follows:*

- 1. The Husband agrees to immediately relinquish completely, unequivocally and entirely all and any rights, legal and equitable that he currently has on the property called Desantos Plaza, situated on 6 Queen Victoria Avenue, Orange Walk Town, Belize upon the signing of this agreement by both parties.*
- 2. The Husband agrees to defray half of the fees, legal and equitable that will be associated with the official transfer from himself to the Wife Ricarda Santos of the property described as Desantos Plaza and which is located at 6 Queen Victoria Avenue, Orange Walk Town.*
- 3. The Husband agrees to completely relinquish all his legal and equitable rights over the farm property located at San Lorenzo Road, Orange Walk District, Belize upon the signing of this agreement by both parties.*

*It is hereby agreed and declared by the Wife as follows:*

- 1. The Wife agrees to vacate completely and entirely the business place described as Rica's Imports located on the first floor of the property on 13 Fonseca Street, Orange Walk Town, Belize within two months of the signing of this agreement by both parties.*
- 2. The Wife agrees to vacate completely and entirely from the residential area of the property on 13 Fonseca Street, Orange Walk Town, Belize within three months of the signing of this agreement by the parties.*
- 3. The Wife agrees to relinquish all legal and equitable rights over the property located at 13 Fonseca Street, Orange Walk Town, Belize immediately upon the signing of this agreement by the parties.*
- 4. The Wife agrees to relinquish all legal and equitable claims upon all income and revenues in the possession and ownership of the*



*and the signatures \_\_\_\_\_ and \_\_\_\_\_ by the attestation at the foot or the end of the agreement is in the true and proper handwriting of the said Hector Santos and Ricarda Santos respectively.*

*Given under my hand and seal of Office this 25<sup>th</sup> day of June, 2015.*

\_\_\_\_\_  
*Notary Public*

Having considered all the evidence in this matter, and the submissions made for and on behalf of the parties, I find that certain portions of the agreement are valid and binding on the Defendant. I say this for several reasons. The first is that I find that there is not a scintilla of evidence that would point to duress. While it is true that Mr. Santos visited Mrs. Santos and called her repeatedly to get her agreement to the division of matrimonial property, what is clear from the evidence is that both parties appear to have become battle weary and burdened by the overwhelming financial cost of attorneys' fees in previous litigation, and it is in that vein, that they spoke with each other in an attempt to settle the division of matrimonial property on their own. In the words of the Defendant, the oral agreement which they had arrived at as a result of their negotiations was that they would each get one of the properties and go to live their lives separately. The Defendant made it clear in her testimony that those were the terms that she and her husband had agreed to. She also made it very clear that the problems arose when he

was unable to transfer the property to her immediately, and it is on that basis that she called Attorney Selgado the day after she signed the document but was unable to reach him so she sent a text message to him complaining that the agreement was not valid. The other problem which has prompted her to challenge the validity of this agreement is that she is saying that there was never any agreement that she would pay the smaller loan and her husband would pay the larger loan. She also says that she never agreed to pay the cost of any legal fees for the land transfer to her name. I must state that in the ordinary course of things, the fact that the Defendant did not have independent legal counsel prior to signing this agreement would have sounded its death knell, especially in these circumstances where the parties are spouses who are still legally married. However, in the particular circumstances of this case, where the Defendant in her evidence demonstrated not only a familiarity with the majority of the clauses of the agreement, but also by her actions, an eagerness to comply with its terms, and has in fact complied in large measure with those terms, the court finds that the agreement is binding. I must state that I believe the Defendant when she vehemently protests that she never agreed to the payment of any loans. The demeanor of the witness as she testified on this point was such as to

leave no doubt that that was never a part of her agreement with her husband during her negotiations. In reaching this conclusion, I have regard to the fact that the Defendant is a woman of advanced age and of limited financial means, and I also have regard to the fact that the Claimant has been the party collecting the rent from the Queen Victoria tenants for several years, to the exclusion of the Defendant. The Court will therefore sever Clause 6 of the agreement on the basis that such a clause is manifestly unfair to the Defendant. I also find that there is a dearth of evidence with regard to the destruction of any property by the Defendant, and I accept her evidence on that issue as being true; the claim for damages for damage to property is therefore dismissed. I find it is fair and reasonable that the wife should pay half the costs of the transfer of title of the Queen Victoria Avenue property to her in the sum of \$305.50, and I so order. To the extent that the contract reflects the agreed intention of the parties, as borne out by the evidence, the contract is upheld. The Claim is allowed in part. Each party to bear own costs.

***Dated this Wednesday, 17th day of July, 2019***

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**Michelle Arana  
Supreme Court Judge**