IN THE SUPREME COURT OF BELIZE, A.D. 2009

ACTION NO. 16 of 2009

	MARIA ELDA HANCOCK	**PETITIONER**
BETWEEN AND		
	PETER HANCOCK	**RESPONDENT**

Hearings
2009
2nd June
30th June

Ms. Deshawn Arzu for the Petitioner
Mr. Dean Lindo S.C. for the Respondent

LEGALL J.

JUDGMENT

The petitioner and the respondent were married on 29th May, 1976. At that time, he was a fisherman. There is no evidence of her employment at that time. There are four children of the marriage. One is Peter A. Hancock who was born in 1977. There is no evidence of the date of birth of the other children. The petitioner and the respondent are fifty-six and sixty-three years old respectively.

The respondent acquired in 1976, after marriage, a property, parcel No. 1035 Block 7 San Pedro Registration Section situate at No. 21 Angel Coral Street, San Pedro Town, Belize (the property). There was at that time a wooden house on the property which became the matrimonial home. The parties claim that over the years they obtained several loans from banks and financial institutions, and used the loans to restructure and improve the house. It is now a two flat building, containing several rooms, with a grocery shop operated by the claimant at the lower flat. The parties lived together at the property, as husband and wife, for about 24 years, between 1976 and 2000, when the respondent removed from the home and took up residence elsewhere at San Pedro Town. The petitioner is still residing at the matrimonial home with some of her children. Divorce proceedings were filed to dissolve the marriage, but these proceedings are pending in the Supreme Court.

The petitioner on 27th March, 2009 issued a summons against the respondent in which she applied to the Supreme Court for the following –

1. **A declaration under section 16 of the Married Women's Property Act, Revised Edition 2000 that the matrimonial home situated at #21 Angel Coral Street, San Pedro Town and more particularly described as Parcel 1035, Block 7, San**

Pedro Registration Section is held by the Respondent on trust for himself and the Applicant in equal shares or in such shares as the Court deems just.

2. **An order directing the Registrar of Lands to rectify the Register for Parcel 1035, Block 7, San Pedro Registration Section by adding Maria Hancock as co-proprietor of the land comprised therein.**
3. **That an injunction be granted restraining the respondent from further dealing, transferring, mortgaging, leasing parcel or otherwise.**
4. **Such further or other relief as the court may deem just.**
5. **Costs.**

<u>Relief under Section 16</u>

The relevant part of section 16 of the Married Women's Property Act Chapter 176. (the Act) states:

> **"16.(1) In any question between a husband and wife as to the title to or possession of property, either party, ….. may apply by summons in a summary way to a judge of the court who may make such order with respect to the application as he thinks fit …..".**

A generally similar worded section 17 of the Married Women's Property Act 1881 (U.K.) was interpreted in several decisions, including the House of Lords decisions in ***National Provincial Bank v. Ainsworth 1965 AC 1175, and Pettitt v. Pettitt 1979 AC 777*** as "a purely procedural section and did not entitle the court to vary the existing property rights of the parties." In other words, section 16 of the Act does not confer on the court a discretion to override existing title rights in the property and dispose of the property in whatever manner the court thinks fit. The court under section 16 is not authorized to take away property from one spouse, and give it to the other.

But where the court is satisfied, by the words or conduct of the parties, that it was their common intention that the beneficial interest in the property was not to belong solely to the spouse who had title in her name alone, but was to be shared between them in some proportion or the other, the court is authorized under section 16 of the Act to declare the beneficial interest of the parties. The court should ask what the spouses or reasonable people in their shoes, would have agreed if they had directed their minds to the question of what rights should accrue to the spouse who had contributed to the acquisition or improvement of the property owned by the other spouse. ***See Lord Reid in Pettitt v. Pettitt at page 795.***

From such common intention, the court may find a resulting trust in favour of a beneficial interest in the property. ***Viscount Dilhorne in Gissing*** v***. Gissing 1970 2 A.E.R. 792*** states the principle to be applied –

"In every case it has to be established that the

> **circumstances are such that there is a resulting, implied or constructive trust in favour of the claimant to a beneficial interest or a share in it. .In the case of former spouses that will ordinarily depend on whether it can be inferred from the evidence that there was such a common intention.”**

The common intention of the parties can best be known by examining the facts and evidence of the case. About three years after marriage, the petitioner obtained a job as a maid at Roots Inn Hotel at San Pedro Town at a salary of three hundred dollars a week. She held the job for about four and a half years. She left Roots Inn Hotel and obtained another job at Belize Yacht Club Hotel where she did cleaning and maintenance at a weekly salary of three hundred fifty dollars. She worked at the Yacht Club for about nine and a half years. In 1999, she opened a grocery store, at the bottom flat of the property, which is still at present in operation, and she earns a weekly profit of two hundred dollars. The respondent in his evidence agreed that his wife worked. This is what he said:

> **“During the marriage both me and my wife were employed most of the time. My wife paid for curtains, some food, chairs, television and water. I paid all electricity bills, butane gas, and doctor bills.”**

The petitioner said that she obtained loans from Atlantic Bank and Belize Bank in the amount of $25,000. She testified, and I believe her, that she used these loans to build the lower flat of the property. She agreed that the respondent obtained loans from Holy Redeemer Credit Union; that he paid for the building of the upper flat of the property; and that he owned the property. But the claimant insisted that she owned the lower flat. This is what she said in her evidence –

> **"I got a loan from Atlantic Bank and built the downstairs, but it was not enough so I got another loan from Belize Bank to continue the building …..**
> **….. I built the downstairs. I own the downstairs because I built it."**

The downstairs comprised of three bedrooms, bathroom and grocery store. The rooms were rented to others by the petitioner. The respondent was still residing at the property when the rooms were rented, after they were built. He must have been still living in the property with the petitioner at the time of the building of the lower flat, since the building of the said lower flat occurred prior to the renting; and the evidence is that they were living together from about 24 years. The respondent gave evidence, and there is nothing in his evidence to show that he objected to the building of the lower flat by the petitioner. In my judgment, the building of the lower flat was done with his approval.

I accept the evidence of the petitioner that from her earnings, she paid for some of the household expenses. The respondent, as we saw above, agreed that his wife paid for some household expenses. By doing so, she relieved the respondent of some expenses, thus creating the opportunity for the respondent to focus on paying the mortgage, which he acquired in 1991 from the Holy Redeemer Credit Union. A further mortgage was obtained by the respondent in July, 2007 from the said Credit Union. I also accept the petitioner's evidence that she used her financial resources obtained by loans to build and improve the lower flat of the property; and, in my judgment, this was done with the approval of the respondent. The question that arises is this: Are the financial expenditures of the petitioner for household requirements and for building and improving the lower flat of the property, entitle her to a beneficial interest in the property? In other words, was there a common intention between the parties that the expenditures would entitle the petitioner to a beneficial interest in the property?

Where there is express agreement between spouses as to their respective beneficial interest in property conveyed in the name of one of them, there is no need to examine the conduct of the spouses to determine whether their common intention was to confer a beneficial interest in the property to the other spouse. The express agreement itself discloses the common intention required to create a resulting, implied or constructive trust which results in the beneficial interest. But spouses may well have formed a common intention that the beneficial interest in the property shall vest in one or other spouse, without having made an express agreement to this effect. In such a case, the court is often required to infer the common intention of the spouses from their conduct. If the court is satisfied from the conduct of the spouses that their common intention was to confer a beneficial interest on a contributing spouse, then the court should give effect to that common intention. This principle was made clear by ***Lord Diplock in Gissing v. Gissing*** above –

> **I take it to be clear that if the court is satisfied that it was the common intention of both spouses that the contributing wife should have a share in the beneficial interest and that her contributions were made on this understanding, the court in the exercise of its equitable jurisdiction would not permit the husband in whom the legal estate was vested and who had accepted the benefit of the contributions to take the whole beneficial interest merely because at the time the wife made her contributions there had been no express agreement as to how her share in it was to be quantified.**

Before granting a beneficial interest to either spouse, the court has to be satisfied by the words or conduct of the parties that it was their common intention that the beneficial interest does not belong solely to the spouse to whom the legal estate was vested, but was to be shared between them in some proportion, as the facts may suggest. Applying the above principles to the evidence in this case, is the claimant entitled to a beneficial interest in the property? Let us first consider the financial contribution to the household expenses which the respondent had admitted. ***Gissing***, it may be argued, prevents the petitioner from obtaining a beneficial interest in the property based on financial contribution to household expenses because "such conduct is no less consistent with a common intention to share the day to day expenses of the household while each spouse retains a separate interest in capital assets acquired" ***See Diplock in Gissing v Gissing at p 7`92***. But circumstances may arise, for instance, where the financial contributions by a spouse to the household expenses clearly show that the other spouse would not have been able to pay, for example a mortgage, had the other spouse not paid the household expenses. In such a case, a court may be persuaded to infer a common intention to share the beneficial interest in the property, with the spouse who contributed to the household expenses. ***Lord Diplock*** did not rule this out:

> "**If the wife goes out to work and devotes part of her earnings or uses her private income to meet joint expenses of the household which would otherwise be met by the husband, so as to enable him to pay the mortgage instalments out of his moneys, this would be consistent with and might be corroborative of an original common intention that she should share in the beneficial interest in the matrimonial home."** ***See Gissing at p 791.***

But what about the claimant's financial contribution to the building of the lower flat of the property with the approval of the respondent? The resulting improvement of the property was not of an ephemeral nature, but was improvement of a capital or non-recurring nature. Improvements of such a kind may result in the claimant acquiring a beneficial interest in the property. Lord Denning speaking in relation to a husband, said as follows in ***Button v. Button 1968 A.E.R. 1064 at p 1067*** –

> **"He may, however, be entitled when the work is of a kind which normally a contractor is employed to do. The reason is because the court may then infer that the parties, if they had thought about it, would have agreed that if they separated, then in adjusting their financial affairs, the husband should be given a share in the proceeds of the house commensurate with the work he had done.**

Lord Reid in ***Pettitt v. Pettitt*** above agrees –

> **"But if a spouse provides, with the assent of the spouse who owns the house, improvements of a capital or non-recurring nature, I do not think that, it is necessary to prove an agreement before that spouse can acquire any right."**

<u>Property in trust</u>

It was submitted by senior counsel for the respondent that the property was held in trust by the respondent for his son Peter A. Hancock; and that the property was not owned by the respondent but was owned by the cestui que trust or beneficiary – the said Peter A. Hancock. No instrument that created the alleged trust was tendered in evidence. All I have is the oral evidence from the respondent and a photocopy of a page from the Land

Register with an entry date of 8^{th} April, 1991 that a trust was created. I cannot act on the photocopy from the Land Register.

In the absence of the instrument that created the trust, would it be proper to hold that a trust exists? For a trust to be valid, the object of the trust must be indicated with precision and the property concerned in the trust must be properly defined and ascertained, otherwise the trust is void for uncertainty. ***Re Moore 1901 1 Ch.d p 936***. In the absence of an instrument that created the trust, the court cannot assume that the trust, if there is one, is valid. Moreover, the trust was allegedly created in 1991 when the beneficiary was about fourteen years old: he was born in 1977. The beneficiary is now thirty-two years old. Is the trust still in operation or has it been revoked? A trust can be revoked, if a power of revocation is expressly contained in the trust. Was this alleged trust revoked?

There is a lack of evidence from which the court could decide, on a balance of probability, that there is presently in existence a valid trust, whereby the respondent is holding the property in trust for his son Peter A. Hancock. It is true that the respondent said there was such a trust; but I have to consider that the claimant also has testified on oath that the property is owned by the respondent. For the above reasons, I am not satisfied, on a balance of probability, that the respondent is trustee for the property, though I cannot rule out a possibility that it may be so.

Beneficial interest

Paying full regard to the facts and circumstances of this case, and applying thereto the principles from the authorities quoted above, I decide that the petitioner is entitled to a beneficial interest in the property based on her contribution to the building of the lower flat of the property. We now come to perhaps the most difficult task of this case, which is to evaluate or determine the extent of the beneficial interest of the claimant in the property. I got help as to the principles to be applied in making this determination. ***In Nixon v. Nixon 1969 3 A.E.R. 1133 Lord Denning*** said that 'the only thing to do ….. is to do what is fair, and reasonable in all the circumstances of the case." And ***Lord Reid in Pettitt v. Pettitt*** puts the principle this way.

> **"We can ask what the spouses, or reasonable people in their shoes would have agreed, if they had directed their minds to the question of what rights should accrue to the spouse who has contributed to the acquisition and improvement of the property owned by the other spouse."**

CONCLUSION:

Considering the facts and circumstances of this case, and applying thereto the above legal principles, and doing the best I can, I make the following orders:

1. It is ordered that the petitioner's beneficial interest in the property parcel No. 1035 Block 7 San Pedro Registration Section situate at No. 21 Angel Coral Street, San Pedro Town, Belize is to the extent of four tenths of the property.
2. An injunction is granted restraining the respondent, his servants or agents, from selling, transferring, mortgaging or leasing the

property parcel No. 1035 Block 7 San Pedro Town, Registration Section, situate at No. 21 Angel Coral Street San Pedro Town, Belize.

3. The order claimed at paragraph numbered 2 of the summons is refused.
4. There is no order as to costs.

OSWELL LEGALL
JUDGE
30th June, 2009