

IN THE SUPREME COURT OF BELIZE, A.D. 2013

ACTION NO: 33 of 2013

IN THE MATER OF Sections 148.01 and 152 of the Supreme Court of Judicature Act, Chapter 91 of the laws of Belize, Revised Edition 2003.

IN THE MATTER of an Application by Maria Lucina Alcoser under Section 16 of the Married Women's Property Act, Chapter 176 of the Laws of Belize, Revised Edition 2003.

BETWEEN

MARIA LUCINA ALCOSER

APPLICANT

AND

LUCIO ALCOSER

RESPONDENT

Keywords: Matrimonial Property; Supreme Court of Judicature (Amendment) Act; Declaration of Title and Right in Property; Alternation of Property Order; Settlement of Property; Contributions; Financial Contributions; Indirect (Non-Financial) Contributions; Contribution by Woman as Housewife, Homemaker or Parent; Earning Capacity of Wife; Long Marriage; Protection of Position of a Woman; Wife's Beneficial interest & Right in Property; Maintenance.
Married Woman's Property Act.

Before the Honourable Mr. Justice Courtney A. Abel

Hearing Dates: 20th June 2014
18th July 2014
31st March 2015

Appearances:

Mrs. Magali Marin Young, SC for the Applicant.

Mr. Hubert Elrington, SC for the Respondent.

JUDGMENT
Delivered on the 31st day of March 2015

Introduction

- [1] This case involves a disputed application by way of Originating Summons filed on the 30th August 2013 by the Applicant, a wife, against the Respondent, her husband.
- [2] The application is brought against the Respondent as the legal owner of various real and personal properties and in which application the Applicant claims to be entitled to certain Declarations and Orders relating to rights and interest in such properties as beneficial owner.
- [3] The Applicant's entitlement, it is claimed, has arisen at law and in equity, as a result of the long marital and financial relationship between herself and the Respondent which has now broken down irretrievably and which the Applicant wants determined as a final prelude to them going their separate ways.
- [4] Involved is the important and oftentimes necessary matter of disentangling the business and family life of married couples or individuals who were in a long relationship which may have once been sweet and has gone sour - frequently not an easy task for the parties, their lawyers and the courts.

Background

- [5] The Applicant is a housewife and the Respondent is a professional musician and teacher.
- [6] The Applicant and the Respondent were married on the 31st August 1975 at La Immaculada Church in Orange Walk Town, Orange Walk District of Belize when the Applicant was 17 years old and the Respondent was 26 years old.
- [7] After the marriage, the Applicant and the Respondent at first lived and cohabited at No. 34 Guadalupe Street, Orange Walk Town ("the matrimonial home") and following a number of years living in the USA, resumed living and cohabiting at the matrimonial home until the initial breakdown in the relationship.

- [8] There are four children of the marriage, namely Lucio Jr. (DOB 1st June 1976), Lucilo Enrique (DOB 10th October 1979), Luciano Ricardo (DOB 24th October 1982) and Luis Carlos (DOB 24th October 1995). All the children are now adults but Luis Carlos was a minor at the time of the Application.
- [9] On the 10th June 2013 the Respondent commenced, by way of Petition, proceedings against the Applicant for the dissolution of the marriage between the Applicant and the Respondent on the ground of irretrievable break down of marriage (since 2005 and upwards) the parties having lived separate and apart for over 5 years.
- [10] On the 13th May 2014 the Court granted a decree nisi dissolving the marriage between the Respondent and the Applicant. A decree absolute has yet to be granted at the time of delivery of this judgment.¹
- [11] There has been no separate Petition for maintenance by the Applicant against the Respondent.

The Court Proceedings

- [12] The Applicant by the Originating Summons herein, filed on the 30th August 2013, claimed the following reliefs:
1. A Declaration under Section 16 of the Married Women's Property Act, Chapter 176 and/or under Section 148.01 of the Supreme Court of Judicature (Amendment) Act No. 8 of 2001 that the Applicant is beneficially entitled to one half share in all the real properties listed in the Schedule I hereto.
 2. A Declaration that the Applicant is beneficially entitled to one half share or interest in the personal properties listed in Schedule II hereto or such share or interest as the Court shall deem just.
 3. A Declaration that the sale/transfer of freehold premises being the matrimonial home situated at No. 34 Guadalupe Street, Orange Walk

¹ In D/Action 141 of 2013 Lucio Alcoser v Maria Lucina Alcoser.

Town from the Respondent to Abraham Rempel is, pursuant to section 148:08, void as a transaction prejudicing the Applicant.

4. In the alternative a Declaration that the Respondent shall account to the Applicant fully regarding the proceeds of the sale of the said matrimonial property at No. 34 Guadalupe Street, Orange Walk Town and therefore give to the Applicant her fair share of the said proceeds of the sale thereof.
5. An Order that the aforementioned real properties and personal properties be sold and the net proceeds of sale be shared equally between the Applicant and the Respondent, or an Order that the said real and personal properties be settled or interest altered as the Court deems fit.
6. An Order that the Respondent do pay to the Applicant such monthly or weekly sum and make such other financial arrangements in respect of the maintenance of the Applicant as may be just.
7. An Order of injunction restraining the Respondent by himself, his agents and servants or howsoever from selling, transferring, leasing, charging, or in any way dealing with the said real properties and personal properties aforementioned until determination of this Action herein or further Order.
8. Such further or other Order or relief as the Court may deem just.
9. Costs.

[13] In support of her claim herein the Applicant at the same time filed a detailed 28 paragraph Affidavit together with significant and relevant Exhibits in support of her application and by which she sought to substantiate her claim.

[14] The Affidavit recited in some detail the history of the then 38 years of marriage between the parties including: the fact that they had 4 children together, their working life, the movements of the young family (including as a musical band) from Orange Walk in Belize to Chicago, Illinois USA for 8 years, and their struggles and sacrifices there, their further movement to Houston Texas USA for one year and then their return to Orange Walk in 1994, the continuous contribution (financial as well as in kind) of the Applicant to the relationship and

the family, and the financial improvements which the Respondent sought to obtain by placing in his name alone various properties, even while the Applicant in the later years suffered a number of physical and health issues.

- [15] The Respondent in response to the Application on the 15th November 2013 filed a somewhat skimpy 4 paragraph answer in which the Respondent merely claimed that the “property belongs to me at the time of my marriage”; and that improvements to the property were made out of his income: “as my wife had no income”; and that he gave her \$50,000 “not because she was entitled to it in law but because she was my wife and we had been together for a long time”; and finally that he did not believe that his wife: “is entitled to any share in whatever property I have left.”
- [16] On the 22nd November 2013 the court gave directions, inter alia, permitting the parties to file further Affidavits.
- [17] The Applicant filed a Second Affidavit (with Exhibits) on the 22nd November 2013 updating the earlier Affidavit and adding additional information.
- [18] The Applicant also filed a Third Affidavit (with Exhibits) on the 17th June 2014 in which she significantly added to the information which she had presented to the court.
- [19] The Originating Summons came up for trial on the 20th June 2014 by which time the Respondent had not filed any further Affidavit and indeed failed to appear in person. His Counsel, who did appear on his behalf, asked for an adjournment on the basis that the Applicant had an obligation (an engagement at a school Commencement exercise) of which he was trying to relieve himself but was unsuccessful. The Court not being satisfied with the explanation which the Respondent’s Counsel offered for his client’s non-appearance and the need for an adjournment, therefore refused the requested adjournment and proceeded with the hearing.

- [20] The Applicant was the only witness in support of her claim and she was cross-examined at length by Counsel for the Respondent. The Applicant closed her case.
- [21] Learned Counsel for the Respondent, in support of his clients renewed application for an adjournment, then, somewhat unusually, went into the witness box and testified in support of his client's application for an adjournment, which this court, again not being satisfied with, refused.
- [22] The Case for the Respondent was therefore closed.
- [23] It was then agreed by Counsel for the parties that written submissions would be filed by 11th July 2014 and Counsel for the parties agreed to rest on their respective submissions – without the need for further oral arguments – and an order was made by the court in such terms.
- [24] Counsel for the Applicant filed her Skeleton Arguments on the 11th July 2014.
- [25] On the 31st July 2014 the Respondent then filed a detailed Affidavit containing some 57 paragraphs, along with a large number of Exhibits.
- [26] Counsel for the Respondent then filed written Arguments on behalf of the Respondent on the 8th October 2014.
- [27] In this Judgment, as a result of the way in which the case developed (the Respondent not appearing personally and not complying with the directions of the Court), this Court felt obliged to disregard the evidence which was submitted to the court by the Respondent after the close of the Respondent's case and after the court had refused the application for an adjournment. As a result, the only evidence before the court was the evidence of the Applicant as contained in her 3 Affidavits and which, of course, included the evidence she gave under cross-examination.
- [28] The Applicant's Affidavit evidence was not significantly shaken by the cross-examination by Counsel for the Respondent and this Court was therefore obliged to largely accept the testimony of the Applicant.

Evidence

Early Days in Orange Walk

- [29] At the commencement of their marriage the Respondent worked at the Belize Sugar Industries as well as being a professional musician (having earlier played in several bands) and continued to do so while the Applicant stayed at home to raise their first three sons and take care of the household.
- [30] In 1977 the Respondent started a band in which he continued playing until 1985.

Chicago & Sacrifices and Financial and Non-Financial Contributions to Family Life by Applicant

- [31] In 1985 the Applicant and the Respondent moved to Chicago, Illinois, USA and the following year they started the band: "Lucio and the New Generation". The Applicant the Respondent and their three sons were the band members of this band ("the Family Band") in which the Applicant played bass guitar.
- [32] By 1987 the Family band was already playing at clubs and other venues as well as for parties and was enjoying local success having received several awards, being featured in newspapers, and having won the Chicago Talent Search. They (the Family band) were granted a one year scholarship which all, except the Applicant, benefited from to learn music. The Applicant was not able to benefit from this opportunity as she was occupied doing all the housework in addition to working other jobs and she therefore had no time to attend school. As a result the Applicant never learned to read music as did the Respondent and their children (the other members of the Family Band).
- [33] The Applicant worked two babysitting and housekeeping jobs for the eight years the family stayed in Chicago. All of the family were supported from the Applicant's earnings as well as earnings from the band with a portion of the earnings from the band being contributed to the Respondent's education at Roosevelt University which he attended.
- [34] The Applicant would hand her paychecks to the Respondent and he would put this money together with the band's earnings in order to pay the rent, buy groceries

and pay all of the family's other bills. The Applicant never drew a salary from the Family Band's earnings for the eight years they were in Chicago.

Texas

[35] The Family then moved to Houston, Texas, USA for one year when they Family Band continued to perform before returning to Orange Walk in 1994.

Return to Orange Walk

[36] On the family's return to Orange Walk the Family Band played at a large concert in Orange Walk Town, which was the last time the Applicant played with them as the Applicant had become pregnant (with Luciano Jr.); and as Carlos, who was by then able to play the bass, took over this position which the Applicant had previously held and the Applicant was retired as a band member. The Applicant thereafter reverted to being a full time homemaker as well as helping to raise her several grandchildren. And so the situation remained for the following 10 years.

Legal Separation in 2005

[37] In or around 2005 the Applicant learned that the Respondent was having affairs with other women and though she tried not to let this affect their home life, but it eventually did by 2007, when she had, so she alleges, obtained proof of his philandering, and then went to the Magistrate's Court in Orange Walk Town to apply for a legal separation.

[38] On the 17th August 2007 the Applicant was granted legal separation, on her application, on the ground of the Respondent's adultery, with the result that since that time she and the Respondent have not cohabited.

[39] Legal custody was granted to the Applicant of Luciano and as well as an order for weekly maintenance for this child and the Applicant. An Occupation order was also granted to the Applicant in respect of the Family Home in which both the Applicant and the Respondent resided.

[40] Although the Applicant and Respondent still continued to live under the same roof, the Respondent, however, moved to a separate room in the matrimonial

home, in which he put in his own bathroom. The Applicant, however, continued to care for the home and to cook for the Respondent and their sons.

[41] Despite the fact that the Respondent was ordered to pay maintenance for the Applicant and their son Luciano, the Respondent had not complied with the order of the court and the Applicant therefore had to do embroidery, handicrafts and catering in order to support herself and the household. These activities the Applicant still had to carry on as the Respondent only provided a very small sum in order for her to cook, but provided nothing else for her other needs, especially her significant medical bills and expenses.

Sale of the Matrimonial Property

[42] In our about the middle of 2011, prior to the institution of divorce proceedings, and without the Applicant's knowledge or consent, the Respondent entered into discussions with a Mennonite gentleman, one Mr. Abraham Rempel, the owner of a business which adjoined the matrimonial home, RB Multi-Service, wherein the Respondent agreed to sell the matrimonial home to Mr. Rempel.

[43] As a result of this sale Mr. Rempel commenced paying the Respondent by installments between \$500.00 and \$7,800.00 monthly for a total purchase price of \$250,000.00.

[44] At the time of the sale (in 2011) the Applicant was living in and therefore in actual possession of the matrimonial home and Mr. Rempel had notice of the Applicant's presence and interest in this property.

[45] It was, however, only in 2012 that the Applicant in fact discovered, for the first time, that Mr. Rempel had agreed with the Respondent to buy the matrimonial home and had in fact already begun paying installments to the Respondent, and had by then had already made substantial payments to the Respondent. None of these payments the Respondent had shared with the Applicant.

[46] The Applicant had however noticed that the Respondent was buying musical instruments and other items from E- ZONE (an internet shopping service). The

Applicant exhibited 4 copies of two receipts for instruments and equipment purchased by the Respondent in 2012.

- [47] Some months later, although the Applicant and Respondent rarely spoke with each other, the Respondent approached the Applicant and asked her to sign a paper to accept \$50,000.00 in full settlement for her share in the matrimonial home, which the Applicant refused to do, and in fact has never made any agreement with the Respondent as to what her share of the matrimonial home would be.
- [48] A few days later Mr. Rempel approached the Applicant with the same request which was again refused, at which point Mr. Rempel then told the Respondent that he would give her \$50,000.00 out of the \$250,000.00 that he was paying as the purchase price for the matrimonial our home.
- [49] The Applicant had not sought nor received any legal advice at that time, and feared, so she testified, that she would be put out of her home. Mr. Rempel then said stated that he could not pay the Applicant in cash, but that he could obtain a house lot and a Mennonite house for her to move into when the sale of the matrimonial home was completed, to which the Applicant reluctantly agreed and she did then sign a cash voucher saying that she was receiving \$50,000.00.
- [50] The Applicant had not received any cash whatsoever, but Mr. Rempel had informed the Applicant that he had purchased the lot and has acquired a Mennonite house and placed it on the said lot.
- [51] In May of 2013 the Applicant took the Respondent to court in Orange Walk Town for recovery of arrears of maintenance over the previous six years. The case has been part heard, as of today, as it has not been concluded.
- [52] The Applicant exhibited a copy of a valuation report for the matrimonial property, Parcel 2190, prepared by one Mr. Armin Cansino, which had been requested by Mr. Abraham Rempel (also known as Mr. Abe Rempel). The valuation was done on 27th May, 2013 and the value of the matrimonial property as at that date was stated to be \$215,000.00.

- [53] As already noted² in June 2013 the Respondent petitioned for Divorce and the Applicant went to an attorney, and was advised to go as a result of which she brought the proceedings herein for her share of all matrimonial property, as well as of the real and personal property owned by the Respondent and for maintenance from him.
- [54] As at the 1st July 2013 the payment for the full purchase price of the matrimonial home, it would appear, was complete.
- [55] The Applicant exhibited a copy of the signed cash voucher dated 1st July 2013 showing that \$200,000.00 had been paid to the Respondent and \$50,000.00 to the Applicant.
- [56] The Applicant also exhibited a complete copy of a ledger of payments for the period 30th September 2011 to 1st July 2013 for the monies paid to the Respondent by Mr. Abraham Rempel.
- [57] From the hand written ledger provided to the Applicant, the proceeds of sale for Parcel 2190 that were all paid to the Respondent who signed acknowledging receiving the same, and, also too, from the proceeds of sale, on the 3rd May, 2013, Mr. Rempel paid \$21,611.70 to the Development Finance Corporation (DFC) which had acquired the mortgage portfolio of Belize Mortgage Company, with respect to a mortgage which was on the matrimonial property.
- [58] By letter from Mr. Rempel/RB Multiservice, to the Applicant dated 22nd July 2013, the Applicant was asked to vacate the matrimonial home.
- [59] The matrimonial property at No. 34 Guadalupe Street was bought in the Respondent's name alone at a time when the Applicant and the Respondent were already married for six years as evidenced by a copy of the first page of the Deed of Conveyance and Deed of Mortgage which pertain to the said matrimonial property, and both of which are dated June 1981.

² See Paragraph 8 above.

Caution and Leaving of Matrimonial Property

- [60] On the 31st August 2013 the Applicant executed a Caution in relation to the matrimonial property which was registered. In support of the application for the caution the Applicant outlined the history of her relationship with the Respondent, expressed her belief that she had a beneficial interest in the Family home and out of which she considered the Respondent intended to deprive her.
- [61] The Applicant resisted leaving the matrimonial home until 1st November 2013 by which time the matrimonial home was, she testified, in a deplorable condition, (as there had been absolutely no upkeep to the premises since the Applicant and the Respondent were legally separated in 2007). The inside was damp and was full of mold, the backyard was completely overgrown with high grass, and all of which, the Applicant testified, had a serious negative effect on her health; and she therefore, in these circumstances, felt she could no longer live there.
- [62] The Applicant has since been living at a house that is owned by her son Lucilo Enrique, whom they called Ricky, and who since October 12, 2013, got married and went with his wife to live in the distant Cayo District of Belize.

The Family Band

- [63] The Applicant testified that over the years the Respondent has done very well as a musician and is still operating the Family Band which is considered and has been described as "One of the finest musical bands in Belize," as stated on the band's letterhead.
- [64] The Family Band is still going strong, and charges between BZ\$2,500.00 to BZ\$3,000.00 per performance and there are now nine band members, each of whom is paid \$150.00, so that after payment of the musicians and the fuel cost of approximately \$350.00 for transportation, the Respondent can make a profit of between \$800.00 and \$1,300.00 for himself for each performance. The Family Band performs on average four times per month.
- [65] The Respondent has, in the process, also acquired valuable musical instruments to a value of close to \$128,000.00 (excluding transport truck).

[66] The Applicant exhibited a listing of the said musical instruments with their value, and also the insurance papers and a relevant letter regarding the said pickup and the said truck.

Dodge Pickup and Truck

[67] The Respondent owns a 1998 Dodge Dakota pickup; and he has bought a large truck which is used to transport the instruments to various locations as necessary. Although the title for this truck is still in the name of Belize Foam and Furniture Ltd., of which the Respondent is the beneficial owner thereof, and in which he has taken out the insurance policy in his name. The Respondent rents the truck that he owns to supplement his income as a high school teacher and his other income as leader of the Family Band.

No. I Kiskidee Street

[68] In addition to the matrimonial home, the Respondent acquired a property at No. I Kiskidee Street, which the Respondent placed in the name of their eldest son Lucio Jr.

Lots 593 and 594

[69] The Respondent in addition also owns two Lots of land at Trial Farm Village, Orange Walk being lots 593 and 594.

[70] Lots 593 and 594 were acquired by the Respondent in or around 2008 during the subsistence of the marriage. The Respondent has commenced construction of a large building on these properties which is intended to be the Respondent's dwelling house. Pictures of this house under construction were exhibited in the Applicant's affidavit.

Additional Property sold to Miriam Adelaida Chan

[71] There is in addition, a property that had been in the Respondent's name, which he sold/transferred to Miriam Adelaida Chan in August of 2010. The Applicant exhibited copies of the title reports, obtained from the Lands Department in Belmopan, for the matrimonial property and these other properties.

General Contributions to Acquisition of Properties and Role of Wife & Mother by the Applicant

- [72] All of the above real and personal properties, which the Respondent purchased, were acquired during the course of the marriage.
- [73] The Respondent also has monies in accounts at Atlantic Bank and the Bank of Nova, the details of and to which the Applicant is not privy (which together with the real and personal properties owned by the Respondent shall be collectively hereinafter referred to as “the subject Properties”).
- [74] The Applicant testified that she has always worked along with the Respondent, her husband, whether in the band (while in Chicago), or as a homemaker, and while raising their children and caring for the home, which she has done for the good of their family, and always putting the interests of the Respondent and family first, and always sacrificing her own interest for their welfare.
- [75] The Applicant testified that although she and the Respondent are legally separated and do not cohabit, she still continues to care for the home and to cook for him and the children and sometimes even their grandchildren.
- [76] The Applicant testified, which the court accepts, that she has continued in her domestic duties largely caring for the then minor child of the marriage, namely Luciano, and to ensure that he is was not adversely affected by the breakup of their marriage and the severely strained relationship that existed between the Applicant and the Respondent.

State of Applicant's Health

- [77] The Applicant testified, which is accepted by the Court, that her health is not in a good state as she has had to undergo several operations, including for abdominal hernia and hysterectomy and she suffered, in 2003, a herniated disc of her spine, and she was partially paralyzed for several months. She was cared for and assisted by her sons as well as relatives in the United States (all of whom took care of the medical bills) as the Respondent made no contribution whatsoever in this regard.

- [78] In addition, the Applicant testified, again accepted by the Court, that she suffered a broken shoulder in 2012 which has not healed well, and from which she is still experiencing pain.
- [79] The Applicant also complained of having suffered a fall and burst the ligaments in her right knee, which has given her significant pain and which has affected her ability to get around and again, the Respondent made no contribution at all to the medical bills associated therewith.
- [80] The Applicant exhibited some of the medical reports that document and substantiate her stated health conditions.
- [81] The Applicant also testified that due to the stress she has been experiencing because of the pending divorce and court matters, she has suffered outbreaks of rash and abscesses on her skin, and has had to visit the doctor several times. The Applicant produced to the court, as an exhibit, the medical assessment of Dr. Jair Osorio made on October 15, 2013, which stated that her then health issues, which include anxiety and depression, diabetes, and a chronic skin condition, have been "exaggerated due to her current marital legal issues and environment (household) she dwells in."

Just and Equitable to make Alteration of Property Order

- [82] The Applicant therefore applied for separation of the matrimonial property so that she can receive her fair share thereof, as well as for adequate maintenance from the Respondent.
- [83] The Applicant also testified that with the support of her son Ricky, who has since left the Family Band (leaving the other three children of the marriage in the band) she (the Applicant) has now, in fact, left the matrimonial home for good, but that she is in need of maintenance in order for her to cover all of her expenses, especially her medical bills.
- [84] The Applicant has further testified that she is still doing her best to have a small earning for myself so as to have pocket money by selling Tupperware and doing some catering, but that these cannot sustain her. That although her son Ricky has

helped her he is not able to provide fully for her, as a result of his marriage and his own commitments.

[85] Since filing the Application, on the 24th October 2013, the youngest child of the marriage, Luciano, has recently turned 18 years of age though he continues to live with the Respondent.

The Law

Married Women's Property Act.

[86] Under Section 16(1) of the Married Women's Property Act this court has power, indeed a wide discretion³, to determine in a summary way any question between a husband and wife, on application by summons of either of them, as to the title to or possession of property.

[87] Although an application has been made in the present case under the Married Women's Property Act, it is unnecessary for the purposes of the present case to expatiate at any greater length on the learning under this provision, as the present case has been primarily argued under the following, at least as wide, following statutory provisions, and the decision of this court can be fully subsumed under such provisions.

The Supreme Court of Judicature Act

[88] Section 148:01 of the Supreme Court of Judicature Act⁴ ("Act") provides as follows:

(1) Notwithstanding anything contained in this Part or in any other law, a husband or wife may during divorce proceedings make an application to the court for a declaration of his or her title or rights in respect of property acquired by the husband and wife jointly during the subsistence of the marriage, or acquired by either of them during the subsistence of the marriage.

³ Indeed the discretion is drafted so widely as to grant the power to the judge to make such order with respect to the application and any inquiry touching the matters in question to be made "as he thinks fit".

⁴ The Laws of Belize, Revised Edition 2000- 2003.

- (2) *In any proceedings under subsection (1) above, the court may declare the title or rights, if any, that the husband or the wife has in respect of the property.*
- (3) *In addition to making a declaration under subsection (2) above, the court may also in such proceedings make such order as it thinks fit altering the interests and rights of either the husband or the wife in the property, including-*
- (a) *an order for a settlement of some other property in substitution for any interest or right in the property; and*
 - (b) *an order requiring either the husband or the wife or both of them to make, for the benefit of one of them, such settlement or transfer of property as the court determines.*
- (4) *The Court shall not make an order under subsection (3) above unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.*
- (5) *In considering whether it is just and equitable to make an order under subsection (3) above, the court shall take into account the following:-*
- (a) *the financial contribution made directly or indirectly by or on behalf of either the husband or the wife in the acquisition, conservation or improvement of the property, or otherwise in relation to the property;*
 - (b) *the non-financial contribution made directly or indirectly by or on behalf of either the husband or the wife in the acquisition, conservation or improvement of the property, including any contribution made in the capacity of housewife, homemaker or parent,*
 - (c) *the effect of any proposed order against the earning capacity of either the husband or the wife;*
 - (d) *the age and state of health of both the husband and the wife, and the children born from the marriage (if any);*
 - (e) *the non-financial contribution made by the wife in the role of wife and/or mother and in raising any children born from the marriage (if any);*

- (f) *the eligibility of either the husband or the wife to a pension, allowance, gratuity or some other benefit under any law, or under any superannuation scheme, and where applicable, the rate of such pension, allowance, gratuity or benefit as aforesaid;*
 - (g) *the period when the parties were married and the extent to which such marriage has affected the education, training and development of either of them in whose favour the order will be made;*
 - (h) *the need to protect the position of a woman, especially a woman who wishes to continue in her role as a mother;*
 - (i) *any other fact or circumstances that in the opinion of the court, the Justice of the case requires to be taken into account.*
- (6) *Where the court makes an order under subsection (3) above, it may also make such consequential orders in respect thereto, including orders as to sale or partition and interim or permanent orders as to possession, and may further order that any necessary deed or instrument be executed, and that such documents of title of the property be produced or such other things be done as are necessary to enable the court's order to be carried out effectively, or that security be provided for the due performance of an order.*
- (7) *Any order made by the court under this section shall be binding on the husband and the wife, but not on any other person.*

[89] Section. 148:08(1) of the Act provides as follows:

(1) In cases where sections 148:01 to 148:07 apply, the court may on application by an interested party or on its own motion, set aside any instrument transferring property from a spouse to a marriage to any other person, or from a party to a union to any other person, or may restrain the making of such an instrument or disposition by or on behalf of, or by the direction and in the interest of, such spouse or party to a union, which is made or is intended or proposed to be made to defeat an existing or

anticipated order in any proceedings under the said sections, or which, irrespective of intention, is likely to defeat any such order.

(2) An instrument or disposition made contrary to subsection (1) is void.

[90] Section 152 (1) of the Act provides:

“The Court may, if it thinks fit, on any decree for divorce or nullity or marriage, order that the husband shall ...secure to the wife such gross sum of money or annual sum For any term, not exceeding her natural life, as having regard to her fortune, if any, to the ability of her husband and to the conduct of the parties, the Court may think to be reasonable...”

[91] The Court of Appeal of Belize, in the cases of **Tilvan King v Linda Aguilar King**⁵; **Thomas Vidrine v Sari Vidrine**⁶ and then in the recent case of **Elena Usher v Osbert Orlando Usher and Claudette Grinage**⁷ authoritatively considered the law as it relates to S. 148:01 and Section 152 of the Act to declare and to alter the property rights of a husband and wife during marriage proceedings on the application of either of them in respect of property acquired during the subsistence of the marriage.

[92] The existing legislation in Belize governing maintenance has been characterized as perhaps being “outdated, inadequate and reflective of male dominated Victorian society”⁸. This cannot be said about the significant provisions of the legislation as relates to matrimonial property in the Act as it does contain within it very modern perspectives and protections relating to women in our present-day more egalitarian society (including the recognition of important non-financial contributions which women do make to family life which would have found no place in Victorian society).

[93] In relation to the provisions to declare and alter the property rights of spouses as well as from the just mentioned cases, the following propositions of law can be deduced as applicable:

⁵ Unreported judgment delivered 19th June 2009 in Civil Appeal No 31 of 2008.

⁶ Civil Appeal No. 2 of 2010.

⁷ Civil Appeal No. 40 of 2010

⁸ See Judgment of Barrow JA in Vidrine V Vidrine Paragraph 41.

- (a) An application has to be made by a spouse during divorce proceedings.
- (b) The marriage ends (ceases to subsist) upon its dissolution by a court of competent jurisdiction or one of the parties dies⁹.
- (c) The property in respect of which the application must be made must have been acquired either by the spouses jointly or by either of them.
- (d) It is only in respect of property acquired during the subsistence of the marriage that the court may (has discretion) to exercise the jurisdiction conferred by these provisions¹⁰.
- (e) Such jurisdiction conferred by the Act is to make two different types of orders as follows:
 - (1) to declare the existing title or rights, if any, that a spouse already has in property acquired during the subsistence of the marriage¹¹, and
 - (2) to make an order altering the interest or rights of either spouse in such property¹².
- (f) In relation to the jurisdiction to make a declaration clearly the Court has to ascertain not only where the legal ownership lies but also determine if there is any beneficial interest held by either spouse in any property acquired by either or both of them (and if so determine the shares which any of them may hold in such property).
- (g) This jurisdiction (to make property declarations and alterations orders) had the effect of eroding the constitutional right in private property in the sphere of matrimonial (and quasi-matrimonial) relationships within specified limitations¹³.
- (h) In relation to the property alteration jurisdiction the limitation imposed by the Act included that the court must be satisfied that (in all the circumstances) it is just and equitable to make a property alteration order.

⁹ Usher V Usher per Hafiz-Bertram JA, Paragraphs 27 and 29.

¹⁰ See Judgment of Barrow JA in Vidrine V Vidrine, Paragraph 35.

¹¹ Under Section 148:01(2) of the Act & See Judgment of Barrow JA in Vidrine V Vidrine Paragraph 36.

¹² Under Section 148:01(3) of the Act.

¹³ See Judgment of Barrow JA in Vidrine V Vidrine, Paragraph 37.

- (i) A consideration of whether it is just and equitable for the court to make the order is the starting point.
- (j) The next step in relation to the property alteration jurisdiction of the court is for the court to determine the contribution(s) of the claiming party which has to be considered alongside all of the other limiting factors listed in the Act and which, before an order is made, should lead to the conclusion that an order ought be made.
- (k) An evaluation of the respective contributions of the parties to the acquisition of assets is therefore a mandatory requirement in Belize in a court determining whether to make an alteration order¹⁴; and there is no justification for relying on equality of division as a yardstick (whether as a presumption/departure point or to tailor conclusions reached after an evaluation of relevant matters according to a yardstick of equality)¹⁵.
- (l) The factors which are provided by the relevant provisions of the statute as constituting what the Justice of the case requires to be taken into account, other than those that relate to the contribution(s) of the parties to the acquisition (being financial and other facts and circumstances relating to the spouses and children born from the marriage) are those which are specifically listed¹⁶(including the earning capacity, age and, health of the applying spouse, as well as their eligibility for any benefit, the period of the marriage and the extent to which such marriage has affected the education, training and development of the applying spouse, as well as the need to protect the position of the Applicant in continuing in her role as mother).
- (m) In considering a property alteration application in Belize a two-step process has therefore to be followed¹⁷:
 - (i) Identify and value the property acquired during the subsistence of the marriage, and

¹⁴ See Judgment of Barrow JA in Vidrine V Vidrine Paragraph 58.

¹⁵ Ibid Paragraph 65.

¹⁶ See Judgment of Barrow JA in Vidrine V Vidrine Paragraph 70.

¹⁷ Ibid.

- (ii) Consider and evaluate the matters listed in Sub Section (5) to determine whether it is just and equitable to make an alteration order.
- (n) If there is one application made for declaration and property alteration then the court after identifying and valuing the property acquired during the subsistence of the marriage, the court should determine the beneficial interest in the relevant property before proceeding to consider and evaluate the matters listed in Sub Section (5) to determine whether it is just and equitable to make an alteration order¹⁸.

Maintenance

- [94] The court may have jurisdiction under Section 152 of the Act to award maintenance where, as the present case, the wife made such a claim in her originating summons.
- [95] Section 152(2) extends the power of the court to order a husband to pay a wife such monthly or weekly sum for her maintenance and support as the court may think reasonable¹⁹.
- [96] The considerations for awarding maintenance are those stated in Section 152 of the Act, but under the somewhat outdated and applicable rules, the Matrimonial Causes Rules²⁰, which many consider should long have been relegated to the history's dustbin as being obsolete, it is provided that such an application for maintenance on a decree for dissolution of marriage shall be made in a separate petition which may be filed any time after decree nisi but not later than one calendar month after decree absolute (except by leave to be applied by summons to a judge)²¹.
- [97] The exercise to be conducted by the judge on a petition for maintenance is an investigation (into matters including the wife's fortune, the ability of the husband and significantly the conduct of the parties) while utilizing the rule of thumb of

¹⁸ See Judgment of Barrow JA in Vidrine V Vidrine Paragraph 70.

¹⁹ Ibid Paragraph 40.

²⁰ Ibid Paragraph 42.

²¹ Ibid Paragraph 43

awarding maintenance on the basis of one-third of the joint incomes of the parties less the wife's income.

[98] On such a petition for maintenance the court would be obliged to consider the conduct of both the husband and the wife (but significantly the weight to be attached to any such conduct is within the discretion of the judge).

[99] The conduct of the parties is therefore a factor that could affect the amount of maintenance which would otherwise be awarded.

[100] The Supreme Court Act confers no power on the court to make an order for the payment of the lump sum to the wife but confers power only to order payment of a weekly or monthly sum or to settle property on the wife to secure payment of those periodic sums²².

[101] The application for orders for maintenance and the jurisdiction for property alteration, being both confined to divorce proceedings, ought therefore to be made and considered in divorce proceedings. If there is no divorce proceeding in existence at the time of the property declaration and/or alteration application, then, there would be no jurisdiction for the court to entertain any such application; and neither would there be jurisdiction for the Court to order maintenance.

The Issues

[102] The present case involves property (both real and personal) which have all been acquired in the name of the Respondent during the subsistence of the marriage.

[103] This court therefore has to first declare the title or rights that the Applicant has in respect of the properties acquired by the Respondent. This may be done either under the Act or the Married Women's Property Act or both.

[104] After making such a declaration of title or right the court then has to consider whether it ought to make a property alteration order under s. 148:01 of the Act.

[105] Clearly such consideration involves taking into account any beneficial interest which has been declared and the court, before making any such order under this

²² Ibid Paragraph 43.

section, has to be satisfied that is just to do so after considering all the facts and circumstances of the case included in the first 8 listed matters under Section 148:01(5) and particularly the direct or indirect contributions of the spouses in the acquisition, conservation, or improvement of the property in question (including non-financial contributions by the wife in the role of wife and/or mother and in raising any children born from the marriage).

[106] In the case of alteration of an interest, the Court may order as part of the court's settlement, the substitution of a property owned by one party to the other party or may order a party to transfer property to the other.

[107] Since two of the properties have been sold by the husband after the wife had applied for legal separation, and without her consent, this Court has to determine whether to set those sales aside under s. 148:08 of the Act or to order that the husband account for one-half of the same and order that he pays the same to the wife.

Submissions for the Applicant

[108] It is submitted that the properties in respect of which the Applicant seeks declaration and orders are:

(1) Real Properties:

- (a) Matrimonial Home situate at No. 34 Guadalupe Street, Orange Walk Town – Parcel 2190 Block 4 Orange Walk Town Registration Section.
- (b) Two Lots situate in the Ann Gabourel Registration Section being Parcels 593 & 594.
- (c) House and Lot transferred to the son Lucio Alcoser Jr situate at Parcel 103 Block 4 Orange Walk Town Registration Section.
- (d) Parcel 728 Block 4 of the Orange Walk Town Registration Section which has been sold.

(2) Personal Properties:

- (a) 1998 Dodge Dakota Pick-up truck

(b) 1997 Ford Cargo Truck - 8 cylinder

(c) Musical Instruments owned by “Lucio & New Generation”

- [109] The Application for maintenance is not being pursued as it is accepted that this has to be applied for by separate petition for maintenance.
- [110] The Applicant’s evidence has not been disputed and her oral testimony given in Court was consistent with what she has averred in her claim and her affidavits.
- [111] That all real and personal properties, which were indisputably acquired during the course of the marriage, are owned by the Respondent.
- [112] The Respondent must completely account therefore, and they must be brought into consideration, in arriving at the Applicant’s fair share.
- [113] It is submitted that given the Applicant’s age, her health issues, and the duration of the marriage, factoring her financial and non-financial contribution during the marriage, that this Court should award no less than 50% of the net value of the assets.
- [114] The Applicant relies on the recent Belize Supreme Court decision in the case of Jasmin **Samuels v Winston Bucknor**²³ per the decision of Hafiz-Bertram J, invoking ss. 148:04 and 148:05 of the Act, in relation to common law unions, where this Court awarded a common law wife 50% of the beneficial interest in properties acquired during the marriage.
- [115] There is no evidence put before this Court by the Respondent that the Respondent owed any monies to any financial institution, and as borne out by the evidence, the loan to the Development Finance Corporation was paid from the proceeds of sale for Parcel 2190, and so was the loan secured on Parcel 728 which he sold to Ms. Chan.
- [116] Consequently, it is submitted that it is only just that this Court declares that the Applicant is entitled to one-half of the beneficial interest in the properties acquired during the marriage, and that the Respondent account for the proceeds of

²³ Supreme Court Action No. 24 of 2010.

sale of any properties sold and be ordered to pay one-half thereof to the Applicant.

[117] It was also submitted that in relation to Parcel 2190 the Applicant seeks a half share of the \$250,000.00, being the proceeds of the sale of the matrimonial home to Abraham Rempel.

[118] That in relation to Parcel 728 the Applicant seeks half share of the net value of this asset.

[119] Further, that on the facts and circumstances of the present case the Respondent sold both Parcels 2190 and 728 in total disregard of the interest of the Applicant in an attempt to deprive her of any application for an interest therein.

[120] The Applicant sought to rely on the Australian case, **In the Marriage of Pflugradt**²⁴, which decision was based on a similar provision to Section 148:08(1) of the Act. It was therefore submitted that given the sale, this Court may set aside the transfer of title or the sale, or in deciding what is just and equitable, order that the Respondent account for one-half of the proceeds of sale, and that he pays her one-half of the proceeds of sale or transfer some other property in her favour of equivalent value.

[121] The Applicant also relies on a further Australian case, **Ivanovic & Ivanovic & Ivanovic**²⁵ as to why the Court should exercise its discretion in favour of setting aside the relevant disposition even if it were not possible to make any order to protect the intervener.

[122] The Applicant therefore asks that this Court orders that the Respondent pays her no less than one-half of the proceeds of sale, subtracting the \$50,000.00, before the transfer to Mr. Rempel is consummated by a recordation of the transfer of title. The reason being, Mr. Rempel had notice of her interest, since at the time he entered into negotiations with the Respondent, the Applicant was residing in the matrimonial home, so that her occupation constituted notice to the world of her interest therein. He therefore purchased subject to her beneficial interest therein.

²⁴ (1981) 7 Fam L.R. 188.

²⁵ [1999] Fam CA 2087.

That this Court has therefore the power to set aside that sale as well as any transfer of title.

[123] In relation to Parcel 728, the Applicant submits that the Respondent accounts for one-half of the proceeds of sale thereof and be ordered to pay the same to the Applicant, since this property was acquired during the marriage, sold when the parties were separated, and the Respondent did not inform the Applicant of the sale nor accounted to her for the proceeds of sale.

[124] Once title to the said Mennonite house and lot is perfected in favour of the Applicant, the \$50,000.00 value thereof is to be taken into account in the property settlement of the parties.

[125] The Respondent submits that as the Respondent retains ownership of Parcels 593 and 594, the vehicles and the musical instruments this Court may therefore settle these properties upon the Applicant in substitution of any interest she may have had in relation to any of the other properties, or order that they be sold and that one-half the value of the marital interest be paid to her from the proceeds of sale.

Other Properties

[126] The Applicant is willing to forego any claim to the property which is now in the name of Lucio Alcoser Jr. on condition that the Respondent undertakes that this property shall remain legally and beneficially owned by Lucio Alcoser Jr. This is Parcel 103 Block 4 Orange Walk Registration Section.

[127] On the 13th August, 2010 the Respondent has also sold Parcel 728 to Miriam Adelaida Chan, but has not accounted for the proceeds of sale of the said property after the parties had been legally separated. A mortgage that was taken out on the property by the Respondent to secure a loan of \$12, 5000.00 was duly discharged and Ms. Chan acquired the title free of the mortgage.

[128] The Applicant has no interest in the pickup truck and cargo truck which are owned by the Respondent, or the many musical instruments of the band. However, her claim is that the Respondent must account for the full value thereof and provide to her a fair portion of the money value thereof.

[129] The Applicant submits that she should therefore get a fair share of the other properties in the Respondent's name.

Submissions for the Respondent

[130] That throughout the marriage the Respondent was the sole provider and breadwinner for the household whilst the Applicant was a homemaker and caregiver.

[131] It is accepted that the Applicant made contribution to the marriage indirectly through her role as homemaker and caregiver but denied that she made any significant direct financial contribution to the marriage save and except the contribution she made in 1986 – 1991 when the Applicant took employment as a babysitter and helper in the US while the Respondent was studying there. In the USA the Applicant was not the primary breadwinner, but the Respondent who used his severance pay from BSI and his earnings from being a guitarist in various bands in Chicago and a part time GED teacher, to maintain his family.

[132] The Respondent acquired the matrimonial home in his name in 1978.

[133] The Respondent had solely purchased Parcel 728.

[134] The Respondent has transferred Parcel 103 to his son Lucio Alcoser. Jr.

[135] The Respondent has begun construction of a new home for himself and his youngest son Luciano Alcoser on Parcels No 1583 and 584 with a loan through his own efforts.

[136] The Respondent relies on the case of **In the Marriage of Naphthali**²⁶ which suggests, somewhat surprisingly, that the contribution made by a wife as homemaker should be recognized not in a token way but in a substantial way.

[137] It is submitted that the Applicant be awarded no more than 30% of the matrimonial assets.

²⁶ 13 Fam LR, 146.

Determination

- [138] The applications which has been brought by the Applicant herein is proper as it has been brought by a wife against her husband and specifically in relation to the Act has been made by a spouse during divorce proceedings prior to the dissolution of the marriage by a court of competent jurisdiction while the parties are still alive.
- [139] I am satisfied that the subject properties, in respect of which the applications have been made, have been acquired by the Respondent during the subsistence of the marriage and therefore the court has discretion to exercise the jurisdiction conferred by the Married Women's Property Act and the Act.
- [140] Specifically in relation to the jurisdiction conferred by the Act this court has power to make the two different types of orders, namely (a) to declare the existing title or rights, if any, that the Applicant already has in the subject properties acquired during the subsistence of the marriage, and (b) to make an order altering the interest or rights of the Respondent in such properties within the limitations prescribed by the applicable provisions of the Act.
- [141] On the question as to the title or ownership of the subject properties, whether under the Married Women's Property Act, or by way of declaration under the Act, this court has carefully considered the law submitted to me, the issues and the submissions of Counsel for both parties, and generally has concluded that the submissions of Counsel for the Claimant to be more persuasive and should be followed.
- [142] This Court has in particular considered the position of each of the subject properties individually as well as them as a whole, and has determined, in a summary way, and otherwise, and has found that, based on all the facts of the case as found above (including the length of the marriage, the fact that all the subject properties have been acquired during the subsistence of the marriage with contributions of both the parties, both direct and indirect, to the acquisition of subject properties, which the court has been unable to differentiate between) that the Applicant and the Respondent have both made an equal contribution, and

therefore both share equal and joint legal and beneficial right, title and interest in and to the subject properties; and I so declare and order.

[143] This court is generally satisfied and specifically finds that the Applicant has discharged her burden of proving her case that she should therefore be awarded no less than 50% of the beneficial interest in the subject properties; and that the Respondent ought to account to the Applicant for the proceeds of sale of any properties sold and be ordered to pay one-half thereof to the Applicant.

[144] This court was unable to find any or any plausible legal or factual basis on which it could differentiate between the significant contributions which the Applicant made, directly and/or indirectly, to the acquisition of the subject properties over the very long period of this marriage, by any standard, to that which the Respondent made.

[145] It may be that if there was any significant difference between what the Applicant and the Respondent gave as evidence, then this can be accounted for by the failure of the Respondent to present such evidence to this court as a result of the neglect by the Applicant or his Counsel to present such evidence at an appropriate time or in a timely manner or to be present in court to give evidence of any such difference.

[146] For the purposes of the applications herein made for declaration and property alteration, the court, in identifying and valuing the property acquired during the subsistence of the marriage, has accepted the uncontested evidence presented by and on behalf of the Applicant and has determined the beneficial interest in the subject properties before proceeding to consider and evaluating the matters listed in Sub Section (5) of the Act to determine whether it is just and equitable to make an alteration order.

[147] In relation to the property alteration jurisdiction which this court has, it has determined that even if wrong about the above declaration of ownership, this court would in any event arrive at the same conclusion as that which it has declared, based on the following facts and circumstances of the present case:

- (a) The financial contribution made directly and/or indirectly by or on behalf of the Applicant in the acquisition, conservation or improvement of the subject properties, especially the significant financial contributions and sacrifices which the Applicant made to the family during their years in the USA and subsequently.
- (b) The non-financial contribution made directly or indirectly by or on behalf of the Applicant in the acquisition, conservation or improvement of the subject properties, including the significant, substantial and unselfish contributions made by her in the capacity of housewife, homemaker and/or as parent, which freed the Respondent from such parenting and other duties and responsibilities and allowed him to pursue his career as a musician and teacher while the Applicant, at significant times, sacrificed her own development and income earning potential to maintain a stable family life for the Respondent and the children of the marriage.
- (c) The age and poor state of health of the Applicant and the medical expenses which the Applicant has had to incur without any assistance from the Respondent which sums would therefore have been diverted by the Respondent to be used by the Respondent and made available to him to be invested into the subject properties.
- (d) The age of the children born from the marriage who are now all of majority leaving the subject properties available entirely for distribution between the Applicant and the Respondent.
- (e) The significant non-financial contribution made by the Applicant, as a wife and in the role of wife and/or mother and in raising the children born from the marriage.
- (f) The long period of time, now almost 40 years, during when the parties have been married during which the Applicant has and continues to sacrifice herself for the benefit of the Applicant and children (and now grandchildren) of the marriage, with the consequential toll on her health and the detrimental effect this has had on her education training and

development (primarily during the period in the USA when she was unable to study music along with the other members of her family including the Respondent).

- (g) The need to protect the important position which the Applicant as a woman played as she had clearly wished, or was obliged to discharge, in her duties and role as a mother and which indeed she continues in such role despite her failing health;
- (h) All the other facts or circumstances of the case as found by this court above which commutatively leads this court to the opinion the justice of the case requires be taken into account in arriving at the above determination.

[148] This court is therefore satisfied that in all the circumstances of the case it would be and is just and equitable to make the above property alteration order.

[149] For the avoidance of doubt this court has undertaken a careful evaluation of the respective contributions of the parties to the acquisition of the subject properties and assets in determining whether to make an alteration order and has not relied on an equality of division as a yardstick whether as a presumption, departure point or to tailor conclusions reached, after an evaluation of relevant matters according to a yardstick of equality.

[150] This court has also carefully considered each and every of the matters listed for consideration in the Act to be taken into account, and other financial facts and circumstances of the Applicant, the Respondent and the children born from the marriage, which the justice of the case requires to be taken into account (including the earning capacity, age and, health of the Applicant, the period of the marriage and the extent to which such marriage has affected the education, training and development of the Applicant, as well as the need to protect the position of the Applicant in continuing in her role as mother).

[151] In considering the property alteration application the Court has also considered the two-step process to be followed :

(i) Of identifying and valuing the property acquired during the subsistence of the marriage, and

(ii) Considering and evaluating the statutory matters listed in Sub Section (5) of the Act to determine whether it is just and equitable to make an alteration order.

[152] Since two of the properties have been sold by the Respondent after the Applicant had applied for legal separation, and without her consent, this Court has determined not to set those sales aside under s. 148:08 of the Act but to order that the Respondent account for one-half of the same and order that he pays the same to the Applicant or that credit be given to her for the same.

[153] As there has been no separate Petition for maintenance by the Applicant against the Respondent this court, as it is obliged not to do so, has made no such order.

Costs

[154] The Respondent shall pay the Applicant's cost of this application, to be agreed or assessed.

Disposition

[155] The Declarations/Orders which I will therefore make are as follows:

1. A Declaration under Section 16 of the Married Women's Property Act, Chapter 176 and/or under Section 148.01 of the Supreme Court of Judicature (Amendment) Act No. 8 of 2001 that the Applicant is beneficially entitled to one half share in all the subject properties.
2. A Declaration that the Applicant is beneficially entitled to one half share or interest in the personal properties the subject of the present proceedings.
3. A Declaration that the Respondent shall account to the Applicant fully regarding the proceeds of the sale of the said matrimonial property at No. 34 Guadalupe Street, Orange Walk Town and give to the Applicant half share of the said proceeds of the sale thereof.
5. Alternatively, a Declaration and Order that the subject properties have been acquired during the subsistence of the marriage with contributions, both direct and indirect, as to their acquisition that the Applicant and the

Respondent have both made has resulted in them both having an equal and joint legal and beneficial right, title and interest in and to them and/or that the subject real and personal properties be settled or interest altered accordingly.

6. An Order, in relation to the two properties which have been sold by the Respondent after the Applicant had applied for legal separation, and without her consent, that the Respondent account for one-half of the same and the Respondent either pays the same to the Applicant or that credit be given to her for the same.
7. An Order of injunction restraining the Respondent by himself, his agents and servants or assigns howsoever from selling, transferring, leasing, charging, or in any way dealing with the said subject real properties and personal properties without the written consent of the Applicant or further Order.

[156] Bearing in mind the evidence before the court (including the values, the various sale and/or transfers of the subject properties) and the declarations and orders which this court has made, I will entertain submissions from both parties as to the precise terms of the final order with respect to the properties which the Respondent now holds before settling the precise terms of such order.

The Hon Mr Justice Courtney A. Abel