

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

CLAIM NO. 37 of 2014

ASTRY GALVEZ

APPLICANT

AND

RAMON GALVEZ SR.

RESPONDENT

BEFORE the Honourable Madam Justice Sonya Young

2016

Hearings

21st April

22nd April

Submissions

Respondent – None - relied on written submissions made before trial

25th May - Applicant

Decision

16th June

Mr. Hubert Elrington, SC for the Applicant.

Mr. Sabido for the Respondent.

Keywords: Divorce – Distribution of Property – Property bought before Marriage – Maintenance Application joined – Married Women’s Property Act (MWPA) Cap. 176 – Supreme Court Judicature Act (JA) Cap. 91

JUDGMENT

1. Astry and Ramon Galvez were married on the 14th May, 2007. Prior to this they cohabited as a couple from September, 2003. That union produced two beautiful children. However, the marriage has come asunder and their property, much like their marriage, must be divided according to law.

2. The Applicant, Mrs. Galvez brings her application under both the Married Women's Property Act and the Supreme Court of Judicature Act and prays for declarations and orders giving her rights and interests in the following property:

FIRST SCHEDULE

1. Parcel No. 663 Lake Independence Registration Section, Belize City (also referred to as MJ's Bar & Pool);
2. Parcel No. 2108 Caribbean Shores Registration Section, Belize City (situated on Park Street, Belama Phase 1);
3. Parcel No. 2271 Caribbean Shores Registration Section, Belize City (also referred to as the Matrimonial Home situated at Starfish Crescent, Belama Phase 1);
4. Parcel No. 463, Kings Park Registration Section, Belize City (also referred to as No. 5303 B Street, Kings Park);
5. Lot No. 111 situated at Mile 8 on the Western Highway, Belize District;
6. Parcel No. 2122, Vista Del Mark, Ladyville, Belize District.

SECOND SCHEDULE

1. Parcel No. 882, Lake Independence Registration Section, Belize City (being a Laundromat & Apartments situated on Vernon St.)
2. Parcel No. 961, Kings Park Registration Section, Belize City (being a three storey concrete structure situated across from the BTL Park).

THIRD SCHEDULE

1. 33 Pool Tables;
2. 38 Juke Boxes;
3. 2007 Ford Ranger bearing license plate BCC 45844;
4. 2012 Nissan Titan bearing license plate BCC 46091;
5. 2003 Hyundai Santa Fe bearing license plate BCC 47707;
6. Scotiabank Account(s) in the name of the Respondent;
7. Checking Account No. 100061860 and all other accounts in the name of the Respondent held at Atlantic Bank Limited.

3. More specifically she desires a half share in the schedules above, and in any bank accounts in the Respondent's name. She also asks that full accounts be given of all funds in the bank accounts and of all loans that are secured on the properties, proceeds of sale of assets or of any properties listed in the schedules above. She sought a declaration of sole entitlement to the contents of the matrimonial home. Finally, she has joined her application for maintenance or other financial arrangements.

4. After many, many attempts to settle, and after the Applicant had changed counsel numerous times, the matter eventually came on for hearing. Before trial began the Respondent conceded all the items in the fourth schedule, (the contents of the matrimonial home) which I have declined to list for obvious reasons. Counsel for the Applicant also conceded any claim to the real property listed in the first and second Schedules save and except Parcel No. 2271 Caribbean Shores (The Starfish Property), Parcel No. 463 King's Park Registration and Parcel No. 2122 Vista Del Mar, Ladyville. This was a particularly wise decision since the other properties are without a doubt considered immune assets and are not eligible for distribution.

The issues to be determined:

5.
 1. Whether the court has jurisdiction to deal with an application for Mrs. Galvez's maintenance in these proceedings.
 2. What properties were acquired by the parties during the subsistence of their marriage.
 3. Whether Mrs. Galvez is entitled to share in property acquired by Mr. Galvez while they cohabited but before they were married.
 4. Should the rights of the parties in property acquired during the

subsistence of the marriage be altered in Mrs. Galvez's favour.

Whether the court has jurisdiction to deal with Mrs. Galvez's maintenance application in these proceedings:

6. The law is clear on this issue. In accordance with Rule 6(1) of the Matrimonial Causes Rules of the JA a wife's maintenance application must be made by a separate petition after the decree nisi is granted but not later than one calendar month after decree absolute and by a separate petition. The court therefore has no jurisdiction to deal with the present application on an originating summons. That application is accordingly dismissed.

The Evidence:

Mrs. Galvez:

7. When the parties met in 2003 and up to January 2008, Mrs. Galvez worked as a cashier or customer service representative at the Belize Electricity Limited. She earned approximately \$1,750. per month. She says she used that money mostly for personal needs as well as the upkeep and improvement of their home (wherever they cohabited). Mr. Galvez is a businessman with various ventures during the marriage, mainly the operation of a bar and a nightclub and the rental of gaming machines, juke boxes and sundry premises. His income per month far exceeded hers. Mrs. Galvez says that very soon after they were married she acceded to the Respondent's constant request that she resign her job to become a fulltime wife, mother and homemaker. He was a conventional man. She did not work outside the home for an approximate period of seven months thereafter.

8. This was her first serious relationship, whereas Mr. Galvez had been married and had a family previously. He is twenty years her senior, she being only 21 years old when, at his request, they began to cohabit. She had never cohabited with anyone before or since. Originally, they resided at the Respondent's home but eventually moved to The Starfish Property after their second child was born. Mrs. Galvez refers to this property as the matrimonial home. She says she contributed directly in cash and kind to the development of this property. She took a loan, gave the proceeds and other sums totalling \$25,000 or \$30,000 to Mr. Galvez to assist in construction.
9. They lived well and she believed they would be together forever. Mr. Galvez introduced Mrs. Galvez to a life of luxury. He moved her up and into the penthouse apartment. At one point he employed, for her assistance, a nanny and a housekeeper. Eventually, when she stopped working, only a nanny remained. He made sure that the family wanted for nothing. They both drove substantial vehicles, the children went to private school and she became accustomed to a certain standard of living. All paid for through the profits from the many business endeavours.
10. Mrs. Galvez says she filled the position of assistant manager to Mr. Galvez and worked primarily at MJ's small – a bar owned by Mr. Galvez. There she did the accounts, paid salaries, emptied slot machines and juke boxes, both at MJ's and in the out districts) and made pay outs to gaming customers. She locked up at closing time and made bank deposits. She travelled to Guatemala and neighbouring countries to seek potential employees for both MJ's small and MJ's Grand. She also assisted in the

upkeep of the rental premises. In Mr. Galvez's absence she was solely in control of all the businesses.

11. She says she was never paid a salary and this was always a point of contention between them. However, she exhibits a job letter dated 2nd December, 2008 which is signed by Mr. Galvez on her behalf. In that letter she is stated as the Assistant Manager of MJ's business group at a salary of \$18,980 per annum.
12. When Mr. Galvez left The Starfish Property, those who remained experienced a drastic decline in lifestyle. Mrs. Galvez was excluded entirely from the business though she continued to live at The Starfish Property with their two children. All of the home's contents were left intact. Mr. Galvez promised to continue to pay all of the family expenses but as time progressed his remittances were lowered. An order of the court was eventually secured to ensure that a specific sum would be paid for the maintenance of the children. She lamented that her vehicle was no longer functional and since Mr. Galvez has remained in possession of all the income earning assets she and her children have been living most uncomfortably.
13. It is Mrs. Galvez's testimony that all that was acquired during the marriage was as a result of their joint effort in the joint businesses of which she was an integral, reliable, and hard working party. She says her happy life and marriage fell apart because of Mr. Galvez's "*domineering, loud, aggressive, selfish behaviour*" which presented in "*embarrassing outbursts and mental and emotional abuse directed at me.*" She stated further "*(o)ur Marriage broke down because of his infidelity and his decision to abandon me and our home and our small children and to*

live with his current mistress in September 2011.” An order of legal separation was subsequently order on the ground of irretrievable breakdown. They were granted joint custody of the children with Mrs. Galvez having primary care and control.

Mr. Galvez:

14. When the parties met in 2003 Mrs. Galvez moved in with him at his fully furnished home on Vernon Street. She then earned a small salary which she used on herself for recreational purposes and nothing else, as she is by nature very selfish. He says he was reluctant to get married but wanted to raise his children and he intended to be a good husband. Since the breakup he has moved on with his life and is currently in another union which has produced two more children. He continues to be a good father to their children.

15. He said he never asked her to quit her job or to stay at home with the children. She quit because *“she could not get along with her co-workers due to her hostile and aggressive personality which also caused problems in our marriage.”* Under cross-examination he volunteered that she had in fact been fired, but he offered no proof. He says he provided her with a very good standard of living - a penthouse, a nanny and a housekeeper. This translated to Mrs. Galvez having a lot of free time so she went out most nights to socialize and often came home late and heavily intoxicated. She became exorbitant and spent his money recklessly. She was given to violent outbursts and aggression towards him and they often quarrelled over money. She was never satisfied with what he gave her. She had an irrational desire to control the money derived from the business although she never helped in running

or managing same. She never travelled to neighbouring countries for the business. Whenever he had to travel his nephew or his son would run the business and be in charge. They were the ones who regularly assisted him. He claimed that the letter of employment she exhibited was, pure fabrication on his part, intended to assist her in securing a personal loan.

16. He maintains that The Starfish Property is commercial property, the top floor of which he adapted as a home for his family after a murder had been committed within viewing distance of their previous home. Mrs. Galvez had witnessed same. He says they moved for security reasons and not because there was an intention to create a matrimonial home there. He denies that Mrs. Galvez could have any claim at all to this property.
17. He says he took a loan from Atlantic Bank to construct the building and is still repaying that loan. He strenuously denies any monetary or other contribution by Mrs. Galvez towards its development. He said her loan was to purchase *“luxuries like interior home decorations, personal clothing and going out with friends.”* Furthermore, she was unable to pay that loan and he was obliged to pay it off. Any other monies she claimed to have withdrawn during the marriage would likewise have been for her own personal use since he alone furnished The Starfish Property.
18. Any money the businesses made was used to cover the family’s living expenses and, as he is heavily indebted, to pay off loans. He places his indebtedness to Atlantic Bank at \$1,245,203.01 and Scotia Bank Belize at \$1,308,685.68. He exhibits bank statements in support. He states that he also pays property insurance of \$8,500 and property taxes of \$4,266 annually. His arrangement with Arion Company of Mexico who provide the

juke boxes and pool tables which he rents to customers is \$16,000 annually. He says his mounting debt has caused him to have to sell some of his properties and the proceeds were applied directly and completely to his loans. He now only has MJ's grand which is lease out. Currently, his monthly earnings are \$33,050.00 his expenses are \$32,809.00 which leaves a mere \$241. as surplus.

19. He adds that he pays \$1,400 per month towards the living expenses of Mrs. Galvez and his two children. Furthermore Mrs. Galvez is competent and capable of being gainfully employed. She simply refuses to work.

What Properties were acquired by the parties during the subsistence of their marriage and their value:

The Law:

20. *Vidrine v Vidrine Civil Appeal No. 2 of 2010* thoroughly explains the application of both pieces of legislation. It makes very little sense to attempt to solve any of these property issues (save The Starfish Property perhaps) under the MWPA. It is clear that any direct monetary contributions made by Mrs. Galvez would have been towards development of the property only. In any event those same contributions could equally and adequately be considered under the JA. Moreover, the court has no jurisdiction to alter property rights under the MWPA. It is clear and settled law on the principles and guidelines enunciated in *Vidrine v Vidrine (ibid)* that only property acquired during the currency of the marriage could be considered.

The Properties:

21. Parcel No. 2271 Caribbean Shores registration Section, Belize City (The Starfish Property) is referred to as the matrimonial home by the Applicant.

It was bought by Mr. Galvez in 2004 and registered in his sole name. Construction of a three storey building thereon begun soon after purchase. This property is charged to the Atlantic Bank Ltd. We will discuss this property in detail later.

22. Parcel No. 463 King's Park Registration Section, Belize City (also referred to as No. 5303 B Street, King's Park: This property was acquired on November 1st 2007 in Mr. Galvez's sole name; with funds he says he borrowed from the Atlantic Bank Ltd. He says this property is still charged to Atlantic Bank. It has been valued by a valuator at \$538,000.00. There are two buildings thereon. Their use is stated in the valuation report as Building 1 – apartments and Building 2 – Residence and storage. This evidence is undisputed. Mr. Galvez lives here in a new union. This property was bought during the subsistence of the marriage, it falls to be considered.
23. Parcel No. 2122, Vista Del Mar, Ladyville: This property was acquired in 2008 in Mr. Galvez's sole name. He says it was bought with funds borrowed from the Atlantic Bank Ltd. He values it himself at \$50,000.00 and says it is charged to Atlantic Bank. There is no evidence provided to the contrary. This property, having been bought during the subsistence of the marriage, falls to be considered.

Other Assets:

24. 33 pool tables, 38 juke boxes: The Respondent says he does not own these items. They are rented from a Mexican Company. He has brought his receipts to prove same and I believe that ownership of these items reside

elsewhere. They are likewise excluded from consideration. In fact, the Applicant, did not even address these assets in his submissions.

Vehicles:

25. The Applicant states that the Respondent owns three vehicles. She has not brought any evidence to support this allegation. The Respondent on the other hand, originally admitted ownership of only one vehicle which he said was for his personal use. Under cross-examination he admitted to owning two vehicles a 2012 Nissan Titan and a 2007 Ford Ranger they were both bought during the currency of the marriage and are mortgaged to the bank. Mrs. Galvez also has a 2005 Ford Escape vehicle bought by Mr. Galvez during the currency of the marriage. They all fall to be considered though no value whatsoever has been given for any of them by either party.

Bank Accounts:

26. Mrs. Galvez asks for a half share in all Mr. Galvez's accounts. She does not admit to any bank accounts or any savings of her own. She does refer to a Holy Redeemer Credit Union savings account and a loan from First Caribbean Bank. She says that at Mr. Galvez's insistence she has not been working for a salary since 2008. Further, even when she worked in the family business she was never paid. Her survival is currently reliant on Mr. Galvez's court ordered maintenance for the two children, loans and other assistance from her family members.
27. Mr. Galvez does not disclose any savings accounts. What he presents are loan accounts and credit card accounts. He says he has no other bank accounts as he is heavily indebted. He stresses that any money he makes

goes to paying those debts and to living expenses. There were no applications by the Applicant for further or better particulars or for any assistance in disclosing same. There is no evidence of joint accounts or of Mrs. Galvez actually contributing money to any account.

Mr. Galvez's accounts as at November 2014:

Atlantic Bank – one credit card and three accounts totalling loan balances of \$1,245,203.01.

Scotia Bank – one credit card and two accounts totalling loan balances of \$63,482.67

What is lacking is what debt is attached to which property. Without this the court cannot ascertain what equity, if any, exists for any of the mortgaged properties.

2. Whether Mrs. Galvez is entitled to share in property acquired by Mr. Galvez while they cohabited but before they were married:

The Starfish Property:

28. The parties cohabited for about four years which means they had not yet entered the realm of a common law union when they were married in 2007. There is no dispute that this piece of property was bought in 2004 and developed between 2005 and 2006. The Applicant submits that she has a right to this property on two fronts – 1. It is the matrimonial home and 2. it is a marital acquest intended to be equally and jointly owned.

Matrimonial Home:

29. It is clear from *Vidrine v Vidrine (ibid)* and the way the The Blue Dolphin Property was dealt with, that property acquired by one party before the

marriage and used as the matrimonial home, gives it no special status as property falling within section 148 A of the Act.

30. The Blue Dolphin Property had been bought by the husband before marriage. After marriage, the couple moved in and this remained their matrimonial home until separation. The wife contended that she had assisted in the improvement of the property and spent around US\$18,000 doing so. The Court of Appeal held that the trial judge had no jurisdiction to deal with this particular piece of property under section 148A of the JA. They referred to that property as pre-marriage property and determined that the wife's contribution to its improvement and the substantial enhancement of its value, did not entitle her to an interest in the property. Nor, for that matter, was she entitled to the proceeds of its sale where the property was sold during the currency of the marriage. They concluded at paragraph 74: *"It seems to me there is not a sufficient basis ... to treat the Blue Dolphin Property as property acquired during the subsistence of the marriage and therefore amenable to the court's declaratory jurisdiction under s. 148A(2) of the Act."*

31. Furthermore, even the court's treatment of the Boca Del Rio Property, which had been bought while the parties were separated is a demonstration of the strict interpretation applied. That property was held to have been acquired during the marriage. A marriage begins when the nuptials are taken and end when the decree absolute is made. This argument fails.

Marital Acquest:

32. To my mind, had The Starfish Property been bought while a common law union existed (i.e after five years of cohabiting) it could easily have been considered under the JA and in this present application. Justice Hafiz in

Beverly Gentle v Norman Gentle Action No. 7 of 2007 when faced with a similar issue, accepted that no separate application was necessary and I am minded to agree. The spirit of the law in giving the same rights to parties to a common law union as are enjoyed by a husband and wife would thereby be preserved. However, the legal requirements for a common law union had not yet been met in this case.

33. Counsel for the Applicant relied on *Vidrine v Vidrine (ibid) paragraph 73* which coincidentally also deals with the Blue Dolphin Property. It reads:

“There is more to the concept of acquisition of property during the subsistence of the marriage than the bare fact of when property was acquired; the underlying interest of section 148A is in the fact that such property was acquired as a fruit of the marriage or was part of the marital acquest, as it has been called; per Lord Birkenhead in Miller v Miller ...”

34. Counsel then went on to submit that *“the couple’s matrimonial home was in this sense a matrimonial acquest and is to be considered property acquired during the course of the marriage by both parties jointly 50/50, that was their intention.*

35. He does not elaborate or explain this bold, bald statement. It is my measured view that when the Court of Appeal made the statement quoted above, they were making a distinction between the fruits of the marriage and monies or property which may have actually been acquired during the marriage but were not a fruit of the marriage. The Blue Dolphin property had in fact been sold during the currency of the marriage and the wife’s counsel sought to lay claim to the proceeds as matrimonial property.

36. Their Lordships relied on *Miller v Miller (ibid)* to highlight the fact that not all property acquired during marriage would be matrimonial property. This is clear since marital acquest as described in *Miller v Miller; McFarlane v*

McFarlane [2006] UK L 24 does not have the interpretation counsel wishes to impute. Paragraph 22 of that judgment states:

“One of the circumstances is that there is a real difference, a difference of source, between (1) property acquired during the marriage otherwise by inheritance or gift, sometimes called a marital acquest but more usually the matrimonial property, and (2) other property. The former is the financial product of the parties’ common endeavour, the latter is not.”

37. This submission likewise fails. Another issue for consideration is whether the property was bought in contemplation of their marriage and that is a question of both law and fact. Moreover, such a consideration would certainly have to be done under section 16 of the MWPA because of the strict interpretation applied to section 148 of the JA. .

38. In **Pitzold v Pitzold Action No. 31/2010** Legall J at paragraph 16, while contemplating the scope and application of section 16 of the MWPA, opined:

*“Section 16 seems available while the husband and wife are living together, as well as when the marriage has broken down; and also in relation to property acquired while they were courting which crystallized into marriage later on. Section 16 does not suffer from the limitation of section 148A, as we shall see below, which limits the jurisdiction of the Supreme Court to property acquired during the subsistence of the marriage. Under section 16 monies contributed by parties before marriage, with a view to purchase property which is intended to be a family asset, are in the same position as monies contributed by them after marriage. When the marriage takes place the property becomes their joint property; becomes an asset belonging to both of them: see **Ulrich v. Ulrich 1968 1 AER 67** per Denning MR.”*

39. The Respondent in his submissions countered with **Beverly Gentle v Norman Gentle (ibid)** in which Hafiz J as she then was stated:

*“It should be noted that the cases of **Pettitt v. Pettitt** and **Gissing v Gissing** were decided before the Matrimonial Causes Act 1973 and were based on the ‘normal’ law of trusts. It is now accepted that the important point in these two cases is that the Court cannot simply find a trust because that*

would be a fair result. Also the courts cannot find an intention to create a trust where the evidence is that no such intention exists”

She went on at paragraph 69:

“In Gissing v Gissing supra it is stated that to establish such trust it could only arise (a) by express declaration or agreement (b) by way of resulting trust where the claimant has directly provided part of the purchase price or (c) from the common intention of the parties.”

This was follow up to paragraph 66 where she explained:

“In Gissing case Lord Diplock said:”

“A resulting, implied or constructive trust – and it is unnecessary for present purposes to distinguish between these three classes of trust is created whenever the trustee has so conducted himself that it would be inequitable to deny the cestui que trust a beneficial interest in the land acquired. And he will be held so to have conducted himself if by his words or conduct he has induced the cestui que trust to act to his own detriment in the reasonable belief that by so acting he was acquiring a beneficial interest in the land.”

40. When the evidence in this matter is considered it is revealed that this property was not bought in contemplating of marriage.

The Evidence:

41. The undisputed evidence before the court is that this property was bought by Mr. Galvez in his sole name in 2004. This was before the marriage but while they cohabited. He borrowed money and he alone repays that mortgage. Mrs. Galvez says that when they commenced construction it was always intended that the building would house four rental apartments and one floor - the penthouse, would be devoted to the matrimonial home.
42. Mrs. Galvez testified that she assisted physical in effecting the purchase of construction material and financially by paying for same. She further says that it was the income from their joint business which enabled payment for the construction. She adds that she also applied for a loan of \$15,000 from

First Caribbean International Bank. The proceeds of which she handed over to Mr. Galvez in their entirety to assist with home improvement and purchase of furniture. I state clearly that home improvements and purchase of furniture gives no one a right to property. Moreover, she admits that after she stopped working Mr. Galvez took over the repayment of her loan until their separation. He maintains that he paid until its eventual completion.

43. She goes on that she withdrew \$5,000 on two occasions from her credit union savings account. Subsequently, she gave him another \$5,000 which she expected him to repay. That was clearly a loan and not a contribution to the matrimonial home.
44. The original \$10,000 (2 x \$5,000) she says was her endeavour to contribute to the matrimonial home. She expected the money would be spent on purchasing material and paying workers. One of these withdrawals was in January 2006 and the other in February 2007. Again I am hesitant to believe Mrs. Galvez since it is her own testimony that construction on the Starfish Crescent was completed in the latter part of 2006. What expenses for workers or construction material could then have been incurred in February 2007? Further, the very \$15,000 which she originally said was for home improvement and furniture, she stated under cross-examination that it was to go into the businesses. She says it was a loan she made to Mr. Galvez to invest in the businesses for renovation, uniforms, salaries and upgrading the small MJ's. I am minded to believe Mr. Galvez's testimony that these withdrawals were for Mrs. Galvez's own personal use.
45. Mr. Galvez says that it was only after construction was completed that he decided to knock down a wall dividing two apartments and in 2006 he

moved his family into the extended living area on the top floor of that building. He strenuously denied that the Applicant gave any financial assistance (\$25,000. or otherwise) to the construction or purchase of building material or that she assisted physically in effecting said purchases. He also denies that the home was furnished out of their joint monies. He claims to have shouldered all and every expense solely. It was never his intention or their joint intention to have that property be their matrimonial home. Or for them to share ownership of the property. There was merely an agreement to occupy the top floor.

46. Mrs. Galvez in fact contradicted the idea of shared ownership when she volunteered under cross-examination that Mr. Galvez promised to leave the property to her in his Will. Additionally, she offered no evidence of a common intention. She explained that he had told her a couple months after he bought the property that they would raise their kids there. There was clearly no common intention at the time of purchase. She went on to explain that she only knew about the construction after the first storey was completed. Therefore, there was no meeting of the minds, no discussion, nothing. Furthermore, she speaks to the murder and said it was after that murder that he told her the third floor would be their home, where they would live. This evidence was completely contradictory. Why would he say, originally, that this would be their family home, then without any intervening discussions about building their home he suddenly states again, after the murder, that the third floor specifically would be their home? It is also her evidence that she had told him after the murder that she no longer wanted to live where they were living. Why would such a statement from her be necessary if he was already preparing a mutually agreed place for her.

47. I believe Mr. Galvez . The facts, as I find them, are that he alone bought The Starfish Property prior to their marriage but during cohabitation. They never intended it to be their matrimonial home. He intended it to be a wholly commercial property. Its very design supports this. I find that he made adjustments to accommodate the expanding family after he feared for their safety. They moved in before construction was completed although they were living elsewhere, comfortably, for a number of years. The urgency of the move which she admits, indicates that the property was never purchased in contemplation of marriage. Having so found it becomes obvious that this property is excluded from consideration both under JA and the MWPA.

Declaration of Rights:

48. On the evidence provided the court may declare rights in relation to No. 463 King's park Registration Section, Parcel No. 2122, Vista Del Mar, Ladyville and the three vehicles.

49. I find that Mrs. Galvez has no interest in either parcel of land. She maintains her interest in her own vehicle. If that vehicle is not presently in her name then Mr. Galvez must do what is necessary to effect the change. Mr. Galvez maintains his full interest in his other two vehicles as I could find no reason whatsoever to alter it. The question now is whether the court deems it just and equitable to alter Mr. Galvez's property rights and interests in relation to the two pieces of real property.

Should the rights of the parties in the property acquired during the subsistence of the marriage be altered in Mrs. Galvez's favour:

Financial Contribution:

50. It is clear that Mr. Galvez made all the financial contributions towards the acquisition of the properties. He says he has worked from the age of nine. Mrs. Galvez admits that from 2008 less than a year after they were married, she stopped working. She also admitted that she spent her income, when she had one, on herself and for items around the home. Her only stated financial contribution was around \$25,000 or \$30,000 which she said she gave her husband to help with the construction of The Starfish Property. Her evidence in this regard is contradictory and unreliable. A portion of which (\$15,000) she says was a bank loan which he repaid in part. She changed the reason for this loan under cross-examination. \$5,000 she intended to be a loan to him but he never repaid. \$5,000 was for paying workers and buying construction material after the construction had been completed. For all these reasons I do not believe that she made any of these contributions towards the development of the property. I do believe that she spent some money on household accessories but that will better be considered under her non-financial contributions as a wife.

Non-financial contribution:

51. In her role as a wife Mrs. Galvez said she did administrative work for her husband's business. Sometimes they would go to work together. When she had learnt the ropes sufficiently, she told him to let her do it alone and so sometimes they took turns. His son, Scott, also assisted but she was always second in charge to Mr. Galvez and he trusted her. She could not remember when she started working in the business. But knew it was not while she

worked at BEL and that it was after the kids were born. She placed this at six or seven months after her son was born. Then she seemed conflicted on how she worked and when she worked. At one point she said every day, every week she was there. She said she worked night and day. Then she said she worked nights, only on weekends. Later she said she worked mornings and finished in time to take the children home for lunch. She also stated that she'd finish checking up at the business by 1 o'clock which seems to me to be after the school lunch. Finally, she said she only worked in his place for a short time because she had kids to take care of.

52. As to her duties she explained that she sold tickets at the door, checked liquor and other stocks, worked the game room, emptied the juke boxes once a month and on a few occasions she deposited money for the business. She was able to name persons who went with her to collect money from the juke boxes and game machines in the district. But she signed no checks and Mr. Galvez always signed the deposit book. She did not know how purchases were made for the business. She did not admit to hiring or firing workers or assisting in these decision. She also said she helped in the upkeep of the rental properties but she offered no evidence in support. The intricacies of the businesses seemed to be beyond her.

53. Mr. Galvez insisted that she never helped in the business. Only his son and nephew helped him. He had no reason to pay her a salary. He admitted that he had prepared her employment letter using false information to assist her in getting a loan. Neither of them explained how she was to repay this loan without an income. I did not find Mrs. Galvez to be forthright in many aspects of her testimony, but I believed her when she said she assisted in the

business but was never paid a salary. I do not believe that she worked as the second in charge or that she worked consistently or extensively. But I am convinced that despite her youth, in her role as wife, she did assist Mr. Galvez in his business ventures and that has value. She said her ideas helped to improve the small MJ's so it earned more. It is accepted that his profits from both MJ's and his other businesses aided his ability to purchase the matrimonial properties. Those properties are therefore partly the financial product of the parties common endeavour.

54. She also made non-financial contributions as a mother. It is not disputed that at most times she had a nanny and sometimes a housekeeper. Certainly they would have had to be supervised. She divided her time somewhat between her husband's business and home. She did homework with the children, was their personal chauffeur and she took care of the home. Mr. Galvez seemed to ridicule her for the decorative items she bought. That however, was an admission that she took interest in the house and attempted to make it a home. That too has value. He was a busy businessman who worked long hours. Her attention to the business of the home no doubt freed him to attend to those other endeavours. Even now, she has the primary care and control of the children.

Age and Health:

55. Mr. Galvez is twenty years Mrs. Galvez's senior. He is in his early fifties but looks older. He says he has survived cancer and that may very well account for his appearance. He also claims to be a diabetic. She on the other hand says she suffers from an incurable STD transmitted by Mr. Galvez and a type of heart arrhythmia. Neither of them brought proof of any

of this. Mrs. Galvez did bring a report from Dr. Godinez of the Belize Health Care Partners Limited which indicated the heart condition but recommend forty-eight hours rest at home and continued medication. It did not seem in anyway debilitating.

56. When one considers Mr. Galvez's age as opposed to Mrs. Galvez she is certainly in a better position.

Pensions, Allowances etc:

57. No evidence of pensions or allowances exists for either party. Mr. Galvez is self- employed. There is no indication of whether he contributes to any pension scheme. Nor is there any indication of whether Mrs. Galvez had contributed to a pension scheme while she worked at BEL. She did have health insurance, the value of which is unknown. By her resignation from BEL she lost that insurance much to Mr. Galvez's dismay. He said it happened at a time when he needed coverage as he was very ill. This strengthened my belief that she did not resign at his behest.

Period of marriage and effect on education etc:

58. The marriage lasted nine years and they cohabited for four years immediately prior. The union was of fair duration although they separated since 2011. His level of education is unknown but except for a moderate inheritance from his father he seems very much to be a self-made man. She does not speak directly to her level of education but asserts that when they met she was *"gainfully employed in a position of responsibility as a cashier and as a customer service representative at one of the most prestigious companies in Belize. Because of my experience and ability, the Respondent did trust me and relied heavily on my work capacity skills and knowledge to work in the family businesses."* There is no

indication from either party that this marriage affected her education, training or development.

The effect on earning capacity:

59. Mr. Galvez will continue to earn as he has. Although he would reach retirement age twenty years earlier than Mrs. Galvez, he is the owner of his business ventures and can continue to manage for years beyond retirement if his health allows. Even then he can still earn while not being integrally or in any way actively involved in the businesses. Mrs. Galvez earns nothing at present but she does have good earning capacity when one considers her self-proclaimed skill, experience and age. When all is considered I am of the view that Mr. Galvez has a greater earning capacity than she does.

Protect her position as a mother:

60. Mrs. Galvez was firm when she said that *“for both of us the children came first.”* However, having considered the evidence I find as a fact that Mrs. Galvez did not quit her job to become a homemaker. The tone and content of the letter she exhibited partly informs this finding. Although she states that the decision was in the best interest of her family and career she does not end there. She continues to say she feels she *“fulfilled her duties to the best of my abilities. I wish I could say it has been a pleasure. But then I would be lying...”* There is a cheek and an arrogance in this statement that leads me to believe that Mrs. Galvez was experiencing other problems which caused her departure.
61. Beyond this, however, is Mrs. Galvez’s own testimony that she quit in January 2008 but her son was born almost a full year before this on 31st

January, 2007. It is her evidence that since her daughter's birth and attachment issues she had experience as an infant with a departing nanny, the paediatrician had recommended that she stay home to aid her daughter's recovery. Even then, she continued to work and she did so right up until her son was almost a year old. This makes no sense at all. Moreover, there was no evidence at all that Mrs. Galvez wanted to leave her job to take care of the kids. Her evidence always was that Mr. Galvez insisted and she complied. She placed great reliance on this.

62. I believed Mr. Galvez when he said she quit because she could not get along with her co-workers. Even more convincing is Mrs. Galvez's assertion that within six to seven months after she quit she began to work in the family business; leaving their children with a nanny, the very situation she said she wished to avoid. Mrs. Galvez has stated clearly that she will work once she feels well enough. She says she has remained at home since the separation for health reasons. She offered no evidence in support. The children are however school age now and do not require her constant attention. She has asked that this position be protected so it will be considered. However, I do not believe she needs much protection in this regard.

Other facts and circumstances:

63. The parties cohabited for four years prior to marriage during which time they procreated. The union was therefore for a longer period than just the marriage. I noted that counsel for the Claimant included a myriad of maintenance considerations in his submissions. It is quite settled law that such issues do not fall to be considered during an application for division of matrimonial property. I also consider that Mr. Galvez had other rental

properties which are not part of the matrimonial property being considered. He earned money from these and used that to assist in funding the MJs.

Decision:

64. Having considered all this, I gave the most weight to Mrs. Galvez's contribution, as wife to the business and to the marriage and as mother to their two children. In the circumstances I am satisfied that it is just and equitable to make an order altering Mr. Galvez's rights and interest in both pieces of property. Mrs. Galvez shall have a 15% interest in them both. The total value of which is more than the stated value of the Vista Del Mar Property. That property, free of any encumbrances, shall therefore be transferred into her sole name. The remainder, which I place roughly at \$38,000, should be paid to her by Mr. Galvez within three months of this order. Mrs. Galvez is also entitled to full ownership of the moveable contents of the Starfish Property and the Ford Escape. If title to the Ford Escape is not in her name, Mr. Galvez must immediately do all that is necessary to accomplish same.

**SONYA YOUNG
JUDGE OF THE SUPREME COURT**