

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

**CLAIM NO. 693 OF 2011**

**BETWEEN (MIGUEL A. RAMIREZ**

**CLAIMANT**

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**AND (**

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**( JUAN J. RAMIREZ**

**FIRST DEFENDANT**

**( ANITA A. RAMIREZ**

**SECOND DEFENDANT**

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

**Mr. Said Musa, S. C., of Musa and Balderamos for the Claimant**

**Mr. Jose Cardona of Cardona and Montalvo for the Defendants**

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

1. This is a Claim in unjust enrichment for the sum of BZ\$148, 377.88 plus Interest which the Claimant alleges that the Defendants

unlawfully withdrew from his bank account at Scotia Bank (Corozal Branch) and in addition, proceeds from the sale of a house in Miami which the Claimant alleges were due to him but which were received and applied by the Defendants to their own use.

### **The Facts**

2. The parties in this case are all blood relatives, in that the Claimant, Miguel Ramirez, is the brother of the Second Defendant, Juan Ramirez, and the First Defendant, Mrs. Anita Ramirez is the 92 year old Mother of both Miguel and Juan. Luis Reynaldo Ramirez (now deceased) was the husband of Anita Ramirez the Second Defendant, and the father of four sons including the Claimant and the First Defendant. Before he died in 1997, Luis Ramirez transferred two parcels of land in Corozal District to himself and his wife Mrs. Anita Ramirez as joint tenants. Upon Luis Ramirez's death Mrs. Anita Ramirez became the sole owner of those properties. In 1998, she transferred the Santa Rita estate to herself and to her son Juan Ramirez.

3. Shortly before he passed away Luis Ramirez also put his money into bank certificates of deposit in his name and in the name of his son, the First Defendant. One such certificate was for the sum of \$519,698.70. After the death of Luis Ramirez, \$500,000 was distributed in four equal parts of \$125,000.00 in separate saving bank accounts for each of his four sons. It is the evidence of the Claimant that he transferred \$100,000.00 to a term certificate of deposit and \$25,000.00 remained in a savings account. Both of those accounts were in the name of Miguel Ramirez and his mother Anita Ramirez. The Claimant testified that since he was living abroad, he authorized his mother to be a signatory on his account so that she could withdraw money for specific reasons, namely, to send him money in the United States and to reinvest the interest earned in new term deposits. It is also Miguel Ramirez's evidence that his mother represented to the four sons that they would all share in the ownership of the estate left by their late father. However, he claims that he learnt that she had transferred ownership of the Santa Rita estate to herself and the First Defendant as joint owners. He said he discovered upon auditing his bank accounts that his mother and his brother Juan had appropriated large sums of money totaling almost

\$100,000.00 from his account to maintain the Santa Rita estate and for her personal use. Miguel said that he then closed his joint account and savings account in August 2011 without notifying his mother. At the time of closing the account it contained \$165,817.85 which Miguel Ramirez kept for himself. The Claimant also alleges that he is owed the sum of \$42,500.00 being one quarter of the sale proceeds of a house in Miami previously owned by his father and sold to his brother Luis Ramirez (now Luis Remmer). He says that his mother received that money on his behalf from his brother Luis and that their parents had promised him that portion of the proceeds whenever his brother Luis sold the house. The Claimant therefore alleges that his father left an estate and that a constructive trust arose whereby his mother held monies left by his father in trust for him. It is his case that she breached her duty as constructive trustee by spending out his money which she knew he was beneficially entitled to.

4. The Defendants contend that there was no estate in law for the Claimant or anyone else to inherit. Since the late Luis Ramirez and his wife were joint tenants, upon his death his wife became sole owner of the land by *Jus accrescendi*. With regard to the money of

the deceased, it is the evidence of the First Defendant Juan Ramirez that when his father passed away it was the intention of his father that all the money would be left to him. Juan testified that his father never told him to give a portion of the money to Miguel, nor did his father tell him to share up the money among the four sons. Upon the death of the father, Juan became the sole legal owner of the money in the joint account of \$500,000.00 that he held with his father. He testified that he felt morally bound to transfer legal ownership of those funds to his mother, and that it was his mother who then directed him to transfer \$125,000.00 into four separate accounts which she held jointly with each of her four sons. Therefore Miguel Ramirez was not beneficially entitled to the money in the account to the exclusion of his mother; the Defendants submit that Miguel and his mother as joint signatories on the account were each entitled to withdraw monies from that account, and upon the death of one of them, the survivor would inherit the remaining funds left in the joint account. There was no constructive trust. In relation to the claim for the portion of proceeds of the sale of the Miami house, the Defendants allege that that claim is statute barred as more than six years have passed. In addition,

there is no evidence of any consideration given by Miguel for this 25% of the proceeds he says his father promised to him.

**Issues**

5. **i)** Did Luis Ramirez leave an inheritance upon his death and was his widow Anita Ramirez a constructive trustee of real property and personal property of that estate in favor of Miguel?
- ii)** Is Miguel entitled to a portion of the proceeds of sale of the house in Miami? If so, is that claim now statute barred?
6. **Issue i** Did Luis Ramirez leave an inheritance upon his death and was his widow Anita Ramirez a constructive trustee of real property and personal property of that estate in favor of Miguel and the other sons?

I agree fully with the legal submissions made on behalf of the Defendants that when Luis Ramirez passed he had already disposed of all his property. At time of his death, Luis Ramirez had already disposed of his property (both real and personal) by giving his land to

his wife and by giving his money to his son Juan. It is therefore quite clear that there was no inheritance or estate to be distributed. The deceased obviously disposed of his property by making *inter vivos* gifts to his son Juan and to his wife, Mrs. Anita Ramirez. At the time of Luis Ramirez Sr.'s death in 1997, Mrs. Anita Ramirez as the surviving spouse, became the sole owner of her husband's real estate when her husband's death brought the joint tenancy to an end. Juan Ramirez as the surviving signatory on the joint account held with his father became the sole owner of all the money in that joint account when his father died. I believe the evidence of Juan that his father did not give him any specific instructions as to how the money was to be disposed of, and that his father simply told him to take care of his mom Mrs. Anita Ramirez. I also accept as true Juan's testimony that he felt morally obligated to give his mother the funds left by his late father. Juan was the person whom Mr. Luis Ramirez chose to leave all his money to while he was alive. I find as a fact that Juan's behavior (giving his mother the \$500,000.00 and then following his mother's advice by giving the sum of \$125,000.00 of that money to each of his siblings) since his father's passing has demonstrated that the confidence Juan's father had in him was

certainly not misplaced. There was no will, and Juan, as the survivor on the joint account with his father, was the legal owner of all that money and he could have just kept all the money for himself. I do not find any evidence that the deceased left any instructions to Juan to distribute the money among his family. I fully agree with the learning on the definition of a constructive trust as set out in the written submissions of Mr. Musa for the Claimant in Snell's Principles of Equity 31<sup>st</sup> Edition Sweet and Maxwell at page 468:

*“A Constructive trust is imposed by operation of law, rather than through the express or presumed intention of the owner of the property to create a trust or to retain any beneficial interest for himself. The trust may even arise contrary to the actual intentions of the owner, as where a person in a fiduciary position makes an unauthorized profit for himself, which equity then requires him to hold on constructive trust for his principal. In other cases the distinction between constructive and express trusts is less pronounced. So a constructive trust may be imposed on a property to give enforce to a person’s intention to make a gift to another or to act as a trustee, but where the*



*necessary formalities to give effect to the gift or the trust relationship are not observed.”*

But with the greatest respect to the arguments advanced by Learned Senior Counsel Mr. Musa on behalf of the Claimant, I do not agree with the submission that a constructive trust arose in favor of Miguel in relation to the money in the joint account Miguel held with his mother. I have perused the bank records submitted and I find that the evidence bears out the fact that both Miguel and his mother were equally entitled to withdraw from the joint account. It is also clear that the money in the account accrued from the initial deposit of funds by the Second Defendant Anita Ramirez in the joint account in 1997 and subsequent deposits of interest payments on the account, and that the Claimant Miguel Ramirez made no deposit to the accounts. There is also no evidence of any special restrictions placed by Miguel on any account. I fully agree with the submission on behalf of the Defendants by Learned Counsel Mr. Cardona that the Claimant Miguel was only entitled to what remained in the account after his mother passed away. The evidence is clear that that \$125,000.00 that Miguel claims belonged to him was money which actually belonged to his mother Mrs. Anita Ramirez. The evidence shows that

Miguel was not the person who owned that money in the first place, so how could a constructive trust arise in his favor. Mrs. Ramirez chose to give that money to Juan and instructed Juan to deposit it in a joint account for Miguel and for herself. I also agree with Mr. Cardona's submission that it was the intention of Mrs. Anita Ramirez as the person who opened the joint account that is important. I found the following learning on the principles relevant to joint accounts very helpful and applicable to this case as cited by Mr. Cardona in The Joint and Survivorship Bank Account- A Concept Without A Name 41 Cal L. Rev 596 (1954) at page 596:

*"The owner of a chose in action desiring to give away his property may effectuate the donation during his lifetime through a gift or he may provide for a gratuitous transfer effective upon his death. If he pursues the former course the donor must relinquish all dominion over the subject matter of his benefaction. If he follows the latter but he retains control but at the expense of complying with the technicalities involved in the law of wills, and at the cost of subjecting the beneficiary to the delay and inconvenience of probate.*

*To avoid the above mentioned disadvantages donors have seized upon the device of transferring property through the medium of the joint and survivorship bank accounts. The account is opened in the name of the depositor and the donee and according to the terms of the deposit is payable to either or the survivor. During his lifetime the donor uses any of the funds that he may need. **Upon** the depositor's death the donee withdraws the balance which he keeps for his own use free from the claims of the depositor's estate. By this technique the depositor is able to do what heretofore the law never permitted, namely, make a gift without relinquishing control of the subject matter of the benefaction..." (emphasis mine)*

It is clear from the evidence in this case that Mrs. Anita Ramirez intended to retain control of the funds and also intended to make use of the money held in joint accounts with her sons during her lifetime, and that it was only what remained in the account upon her passing that would belong to the survivor on the joint account. For these reasons, I find that the claim of unjust enrichment in relation to the sums held in the joint account by Miguel and his mother Anita must fail.

7. **Issue ii** Is Miguel entitled to a portion of the proceeds of sale of the house in Miami? If so, is that claim now statute barred?

It is the case of the Claimant that his father had promised him \$42,500.00 being the proceeds of the sale of a home in Miami Florida. I have reviewed the evidence and I find that this claim has been substantiated by the evidence of the Second Defendant, Mrs. Anita Ramirez. In her witness statement Mrs. Ramirez acknowledges in paragraph 5 that her late husband Luis Ramirez had indeed promised to give Miguel a portion of the proceeds from the sale of the Miami house. However, that promise was made around the time the property was sold in 1993, and the cause of action arose twenty years ago and is now statute barred under Section 4 of the Limitation Act Chapter 170 of the Laws of Belize as rightly pointed out by Learned Counsel for the Defendants Mr. Jose Cardona as follows:

**Section 4** *“The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued -*

*(a) actions founded on simple contract and tort”.*

This portion of the Claim also fails.

8. The Claim is therefore dismissed. Costs awarded to the Defendants to be paid by the Claimant in the sum of \$6,000.00.

*Dated this 17<sup>th</sup> day of September, 2013*

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**Michelle Arana**  
**Supreme Court Judge**