IN THE COURT OF APPEAL OF BELIZE, A.D. 2022

CIVIL APPEAL NO. 23 OF 2019

GULAB LALCHAND **APPELLANT**

V

RUTILIA OLIVIA SUPALL **RESPONDENT**

BEFORE:

The Hon. Madam Justice Hafiz Bertram	President (Ag)
The Hon. Madam Justice Woodstock Riley	Justice of Appeal
The Hon. Madam Justice Minott-Phillips	Justice of Appeal

A Jenkins for the appellant.
N Myles for the respondent.

22 March and 30 December 2022

JUDGMENT

HAFIZ BERTRAM, P.

[1] I have read the draft judgment of my learned sister, Woodstock-Riley JA and I agree with the Order proposed by her and the reasons to dismiss the appeal with costs to be paid by the appellant and affirm the judgment of the trial judge. I have also read the draft judgment of my learned sister, Minott-Phillips JA and I respectfully disagree with the Order proposed by her and the reasons for doing so.

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HAFIZ BERTRAM, P.

WOODSTOCK RILEY, JA

Introduction

[2] This was an application by Rutilia Olivia Supall ("Ms. Supall") under sections 148E of the Supreme Court of Judicature Act, Cap. 91 ("the Act"), arising out of her common law union with Gulab Lalchand ("Mr. Lalchand"). She sought by amended originating summons the following:

> *[1]. A Declaration under section 148:05 of the Supreme Court of Judicature Act, Chapter 91 of the Laws of Belize that the Applicant and the Respondent were in a common law union for a period of five years or more.*
>
> *[2]. [a] A Declaration under section 148:05 of the Supreme Court of Judicature Act, Chapter 91 of the Laws of Belize that the Applicant is beneficially entitled to a one-half share or such other interest as the Court shall deem just in the properties listed in the FIRST SCHEDULE below.*
>
> *[b] A Declaration that the Applicant is beneficially entitled to one-half share or such other equitable interest as the Court shall deem just in the shares of the 5th Interested Party and that the purported transfer of shares in the 5th Interested Party to the 1st to 4th Interested Parties dated 31st of May 2015 were void and of no legal effect; such transfers having been done in contravention of and in disregard of the equitable interests of the Claimant in an effort to defeat the(sic) Further a consequential order that the said transfers be set aside and the share register of the second Respondent (the Second Respondent became the 5th interested party) be amended accordingly.*
>
> *(c) A Declaration that the Applicant is beneficially entitled to one-half share or such other interest as the Court shall deem just in the 5th Interested Party and the properties owned by the parties listed in the SECOND SCHEDULE below.*

(d) A Declaration that the Applicant is beneficially entitled to 100% share in interest in the personal properties listed in the THIRD SCHEDULE below.

[4] An Order that the aforementioned properties contained in the First and Second Schedules should be sold and the net proceed of sale be shared equally or in such proportion as the Court shall deem just between the Applicant and the Respondent; and or

[5] In the Alternative, an Order that the 5th Respondent be valued as an asset acquired during the union of the Applicant and the 5th Respondent together with the aforementioned properties be settled or transferred equally or equitably between the Applicant and the Respondent as the Court may deem just.

[6] An order that one-half of the amounts standing to the credit of the following bank accounts or such sum as the Court deems just be paid to the Applicant namely:

[a] Checking Account #100111870 at Atlantic Bank in the name of Gulab Lalchand T/A Miryani's Store.

[7] An Order that the Respondent and the Interested Parties do provide an accurate account of the importation of all containers imported directly or indirectly by either of the 5th Interested Party and or any Company or entity on its behalf during the period January 2015 to the date of judgment and that the Respondents do pay to the Applicant the sum of $2,000.00 per container after deduction of the sums paid to the Applicant with respect to such containers during this period. That a further lump sum payment be made with respect to said containers post judgment.

[8] An Order that the Court doth order that the Respondent is entitled to a beneficial interest in any other assets not mentioned herein acquired by the Respondent during the common law union, in such shares as the Court shall deem just.

[9] *An order that the Respondent do pay to the Applicant such monthly or weekly sum or such lump sum and make other financial arrangements in respect of the maintenance of the Applicant as may be just.*

[10] *An Order of injunction restraining the Respondents by themselves, their servants or agents or whosoever from selling, transferring, leasing, charging, or in any way dealing with any of the real and movable properties aforementioned and the inventories until the determination and satisfaction of the orders made in the Action herein or further order of the Court.*

[11] *An Order of injunction restraining the Interested Parties by themselves, their servants or agents or whosever from in any way dealing with any of the shares in the 5th Interested Party until the determination and satisfaction of the Action herein or further order of the Court.*

[12] *Such further or other Order or relief as the Court may deem just.*

[13] *Costs.*

FIRST SCHEDULE

1. *Home situate at #6 North Venezuela site, Corozal, Corozal District Belize being parcel 2081, Block 1, Corozal North Registration Section registered in the name of Shyam Armanani and charged to Heritage Bank Limited.*
2. *Parcel 400 Block 1 in the Paraiso/ Santa Rita Registration Section beneficially owned by the Respondent and held in the name of Jesse Robert Vellos Sr.*
3. *Parcel 401 Block 1 in the Paraiso/ Santa Rita Registration Section beneficially owned by the Respondent and held in the name of Jesse Robert Vellos Sr.*
4. *Beneficial or equitable interest in property in the Benque free zone area being purchased or purchased from Billy Musa in payment by installments.*
5. *Parcel #2191 situate on Peter August Street, San Ignacio Town, Cayo District in the name of the Applicant.*

6. *25 acres leasehold property located in Buena Vista Village in the Young Gal Mccrae Registration Section in the name of the Applicant.*

SECOND SCHEDULE

1. *Vehicle -2000 Toyota Sierra Van in the name of the Respondent.*
2. *The issued shares in Benzer International Company Limited numbered 1 to 10,000.*

THIRD SCHEDULE

1. *2008 Hummer licensed CZL 01050 registered in the name of Rutilia Supall."*

[3] Before hearing the substantive matter the Trial Judge had made two prior rulings. The first arising from a challenge to the Court's jurisdiction to hear the matter on the basis of Mr. Lalchand's denial of the existence of a common law union between the parties. The Court found the parties to have been involved in a common law union for just over eight years from August, 2007 to October, 2015. This finding was not appealed.

[4] The second, an application to strike out portions of the Originating Summons, namely, the relief seeking to set aside Mr. Lalchand's transfer of shares in the 5th Interested Party Benzer International Co. Ltd. ('the company'), to his children, and to strike out Ms. Supall's application for maintenance.

[5] The court ruled that the validity of the transfer of shares was a matter for determination at trial and Ms. Supall was permitted to apply for maintenance. This Ruling also dealt with the 5th Interested Party's application to be struck out as a party (it was then the 2nd Respondent). The company was struck out as a substantive party but remained as an interested party (5th) along with the 1st through 4th Interested Parties who are Mr. Lalchand's children.

[6] The evidence before the Court below included; seven Affidavits of Ms. Supall; on behalf of Ms Supall, Affidavits of Selena Marin, daughter of Ms. Supall and Lilian Perez who worked with the family, on the issue of cohabitation and whose Affidavits were included in the Record of

Appeal; ten Affidavits of Mr. Lalchand, Affidavits of Nimmi Lalchand, daughter of Mr. Lalchand, Shyam Armanani, the registered owner of the Venezuela site property, Isodoro Charles Galvez III on behalf of Mr. Lalchand and who was the campaign manager for Ms. Supall, Sherwin Garbutt, building contractor on behalf of Mr. Lalchand re the Belmopan house, Ismael Manzanilla, accountant on behalf of Mr. Lalchand and Wendy Babb, bank official who had been subpoenaed re the Venezuela site property. Viva voce evidence from Ms. Supal and Mr. Lalchand, both of whom were extensively cross examined by opposing counsel and viva voce evidence of Nimmi Lalchand, Miriane Lalchand and Shyam Armanani.

[7] The factual matrix as outlined by the Trial Judge was:

> "*The parties (as found by the Court) were involved in a common law union for just over eight years, having come together from respective previous relationships. Both parties had been involved in their own businesses prior to their union and as such came to the union with property already individually owned. Additionally, during the union, property was acquired primarily concerning or through the company Benzer International Ltd ('the company'), which by virtue of its shareholding and legal ownership of a number of properties acquired during the union, occupies its position as the 5th Interested Party herein. The Applicant's claim in the round, is that she and the Respondent worked throughout their union as partners (in the matrimonial sense of the word) to establish the company Benzer International and thereafter the company's main business was the successful wholesale/retail shop in the Corozal Free Zone which traded in a number of consumer goods. As further claimed by the Applicant, the business was the couple's source of income for all aspects of their lives, and the company was used to hold all their property (real and personal), which they acquired as the fruits of their labour in the business.*
>
> *Upon the demise of their union, the Applicant says she was put out from the business and has been deprived not only of a source of income from which to live her daily life but has been deprived of the benefit of the investments she helped to build, as part of what she believed was the parties joint pursuit of a successful life together. This issue*

of interest and entitlement to property acquired during the parties' union is complicated by the following:-

(i) use of the corporate vehicle of the company to acquire property;

(ii) vesting of shares in the company by the Respondent to his children, so that the ownership of the company involves the rights of third parties;

(iii) ownership by the company itself, of property said to be acquired by the parties, thus raising the separate legal personality of the company in relation to such ownership;

(iv) the existence of an agreement covering ownership and entitlement to several properties during a particular period of the union, which affects the composition of assets forming the matrimonial pool."

[8] The Trial Judge's decision was as follows:

IT IS HEREBY ORDERED THAT:

*"**Validity of July, 2011 Agreement***

1. (a) The July, 2011 Agreement ('the Agreement') between the parties is valid and enforceable and the property therein is excluded from the application for division of property; however

(i) The Agreement applies only to the property and obligations listed therein and does not exclude property acquired subsequent to the date of, or otherwise excluded by the terms of that Agreement;

(ii) The property and obligations to which the Agreement applies is as follows:-

(i) Provision of 4 cylinder vehicle to Applicant;

(ii) *Payment of $30,000 towards the Applicant's Belmopan house and lot;*

(iii) *Transfer of 25 acres of leasehold land in Buena Vista Village, Cayo;*

(iv) *Transfer of 25 acres of leasehold land in Young Gal Macrae Registration Area, Cayo;*

(v) *Transfer of the Peter August St. property;*

(vi) *Payment of $2,000 to Applicant for importation of containers of cigarettes.*

Property subject to the Application

2. *The following properties comprise the assets acquired during the parties' union not covered under the Agreement, and which are to be subject to the Court's determination under the application for division of property:-*

(i) *Shareholding of Benzer International Company Ltd (Company's property includes the business carried on by Benzer International Company Ltd. in the Corozal Free Zone, land and vehicles);*

(ii) *The Venezuela Site home situate in Corozal (Parcel 2081 Block 1 Corozal North Registration Section);*

(iii) *Parcel 400 Block 1 Paraiso/Santa Rita Registration Section in the name of Jesse Robert Vellos Sr;*

(iv) *Parcel 401 Block 1 Paraiso/Santa Rita Registration Section in the name of Jesse Rebert Vellos Sr;*

(v) *Benque Free Zone property owned by or purchased from Billy*

Musa;

(vi) The Hummer and Toyota Sienna vehicles;

(vii) Monies held in the Respondent's Bank Account.

3. Of the properties identified under paragraph 2 above, the following are dismissed from consideration under the application for division of property:-

(i) Parcel 400 Block 1 Paraiso/Santa Rita Registration Section in the name of Jesse Robert Vellos Sr;

(ii) Parcel 401 Block 1 Paraiso/Santa Rita Registration Section in the name of Jesse Rebert Vellos Sr;

(iii) Benque Free Zone property owned by or purchased from Billy Musa

Application of Section 148E

4. Pursuant to section 148E(2), the following declarations of ownership are made with respect to the property remaining for determination under the application for division of property:-

(i) The 10,000 shares of Benzer International Co. Ltd. ('the company') were acquired by and on behalf of the Respondent only;

(ii) The Applicant does not have a beneficial ownership in the shares of the company;

(iii) The 10,000 shares of the company were legally transferred by and on behalf of the Respondent to the 1st – 4th Interested Parties and the transfer by the Respondent in May, 2015 of 9000 shares was

not made in contravention of Section 148H of the Supreme Court Act, Cap. 91;

(iv) Notwithstanding the transfer of legal ownership of the shares the Respondent retains beneficial ownership of the shares assessed by the Court at not less than 51% of the total shares issued;

(v) Shyam Armanani holds the legal title to the Venezuela Site home, however the Respondent holds a beneficial interest in this property;

(vi) The Applicant does not hold a beneficial interest in the Venezuela Site home.

5. Pursuant to section 148E(3)(b), (4) and (5) the Court finds it just and equitable to make the following order requiring the Respondent to make a transfer of property for the benefit of the Applicant:-

(i) The Respondent shall pay to the Applicant the sum of BZ$240,000 less the sum owed by the Applicant for any loan taken out on the Peter August property;

(ii) The sum of BZ$240,000 (less the sum owing on any loan as stated in paragraph 5(i)) is to be paid to the Applicant within 6 months from the date of this order;

(iii) The Respondent may with the consent of the Applicant, satisfy payment of the sum of $240,000 (less the sum owed on any loan as stated in paragraph 5(i)), by cash or transfer of other property including unencumbered land;

6. *The following orders are made in respect of other properties subject to the Application:-*

   (i) *No orders are made in respect of monies in either the Respondent's or Applicant's bank accounts;*

   (ii) *The Hummer was a gift by the Respondent to the Applicant;*

   (iii) *Monies paid to or on behalf of the Applicant in her political campaign in 2013 were advanced as a gift by the Respondent.*

Performance of the Agreement.

7. *The following orders are made in respect of the parties' respective rights and obligations under the Agreement:-*

   (i) *Clause 4(a) of the Agreement required the Respondent to repay $30,000 in full discharge of monies loaned to him by the Applicant before the execution of the Agreement. This obligation has been discharged by the monies gifted or advanced to the Applicant during the union;*

   (ii) *The Respondent's obligation to provide the Applicant with a four cylinder vehicle has been discharged by the Applicant having taken possession of the Toyota Sienna vehicle;*

   (iii) *There is no evidence supporting the Respondent's allegation of having transferred 25 acres of leasehold property situate in Buena Vista, Cayo to the Applicant and unless and until such a transfer is made, the Applicant is neither obliged to transfer the 25 acres of leasehold property situate in Young Gal Macrae nor account for its proceeds of sale, to the Respondent;*

(iv) *The Applicant is obliged to transfer the Peter August Property to the Respondent upon either (i) the repayment by the Respondent of the amount owing on any loan taken out against the property by the Applicant; or (ii) upon full payment of the sum of $240,000 ordered to be paid to the Applicant as provided under paragraph 5(i);*

(v) *The Applicant is entitled to receive the agreed sum of $2,000 per container of cigarettes imported by the Respondent whether directly or indirectly, or such amount as pro-rated for any portion of a container in which cigarettes have been imported. The Applicant shall receive this sum for the period commencing from the date on which she last received this sum from the Respondent or on his behalf. The receipt of this sum as per the Agreement is indefinite as until sooner determined by the consent of the Applicant and Respondent.*

Consequential Orders

8. *For the purposes of carrying out the orders made in paragraphs 5 and 7, the following consequential orders are made:-*

(i) *The Respondent may satisfy payment of the entire $240,000 payable to the Applicant under paragraph 5(i) or may directly pay any amounts owing on the Peter August Property and deduct such sum from the sum of $240,000;*

(ii) *The Applicant is restrained from transferring, encumbering or otherwise dealing with the Peter August Property save for transfer back to the Respondent;*

(iii) *For purposes of calculation of the monies owed to the Applicant*

(iv) *under paragraph 7(v), the Applicant shall be entitled to have subpoenas issued to the managing and customs authorities in the Corozal Free Zone; or such other person or institution as ordered by the Court, in order to obtain records or other information in support of the importation of containers of or containing cigarettes, directly or indirectly by the Respondent.*

Maintenance

9. *The Applicant's claim for maintenance pursuant to section 1481 of Cap 91 is dismissed.*

Costs

10. *(a) The Applicant is awarded 75% of her Costs against the Respondent;*
(b) The 1st – 5th Interested Parties are awarded their costs against the Applicant, such costs are not to exceed the equivalent of 25% of the amount of the Applicant's costs; and
(c) All parties' costs are to be taxed before the Registrar, if not agreed."

[9] The Appellant appeals the Judge's decision on the following grounds:

1. *That the Learned Trial Judge erred in her interpretation of the Separation Agreement, in particular the scope of Clause 4(2), to find that it did not preclude and/or estop the Respondent from claiming an interest in the 5th Interested Company.*

2. *That the Learned Trial Judge misdirected herself in finding that notwithstanding the transfer of legal ownership of the 9,000 (out of a total of 10,000) shares in*

the 5th Interested Party (Benzen International Co. Ltd.) by the Appellant to his children, Nimmi Lalchand, Miriany Lalchand, Demi Lalchand as trustee for Hitesh Lalchand, that the Appellant retained his beneficial interest as to 51% of the total shares when such a claim was not pleaded in the Respondent's Originating Summons and notwithstanding her finding that the shares in the 5th Interested Party were not transferred to defeat the Applicant's Interest or a court order.

3. *That the Learned Trial Judge misdirected herself in finding that, that the (Respondent) was therefore entitled to 35% of the Appellant's beneficial interest as to 51% of the total shares in the 5th Interested Party when no such a claim was pleaded in the Respondent's Originating Summons.*

4. *That the Learned Trial Judge misdirected herself when she found that the registered proprietor of Parcel 2081 Block 1 Corozal North Registration Section being Shyam Armanani held the said property on trust for the Respondent when such a claim was not pleaded against Shyam Armanani; nor was Shyam Armanani joined as a Respondent or Interested Party in the Respondent's Originating Summons as prescribed by Rule 11 Order XXIV of the Supreme Court of Judicature Rule; nor could such a claim be supported by the evidence.*

5. *That the Learned Trial Judge misdirected herself in finding that the Respondent was therefore entitled to 35% of the Respondent's beneficial interest in Parcel 2081 Block 1 Corozal North Registration Section when no such claim was pleaded.*

6. *That the Learned Trial Judge's valuation of the Appellant's beneficial interests in the shares in the 5th Interested Party and Parcel 2081 Block 1 Corozal North Registration Section was perverse in that, on the basis of the evidence in the case, no reasonable tribunal could have reached such a decision.*

7. *That the findings facts and decision of the Learned Trial Judge was against the weight* of the evidence.

[10] The Appellant applies for the following orders:

(i) *That the July 2011 Agreement is binding and enforceable as regards Benzer International Co Ltd and its assets and all properties listed therein and the Respondent is estopped from claiming any property acquired by the Appellant before, during or part (sic) the common law union.*

(ii) *That the Respondent's claim be dismissed.*

(iii) *That costs in the appeal and in the court below be awarded to the Appellant.*

[11] Counsel for the Respondent stressed the considerations of an appellate court in disturbing findings of fact by the court of first instance and the determination whether it was permissible on the evidence for the learned Judge to have made the findings that she did, whether any errors were so material as to undermine her considerations.

Ground 1

[12]

"***The Learned Trial Judge erred in her interpretation of the Separation Agreement, in particular the scope of Clause 4(c), to find that it did not preclude and/or estop the Respondent from claiming an interest in the 5th Interested Company***."

The provisions of the Agreement between the parties are as follows

*"**THIS DEED** made the 4th day of July, 2011 at the request of GULAB LALCHAND of No. 11 Eduardo Juan Street, Santa Elena, Cayo District, Belize (herein-after called "Mr. LALCHAND") of the one part and **RUTLIA OLIVIA SUPALL** of No. 11 Eduardo Juan Street, Santa Elena, Cayo District, Belize (herein-after called "Ms. Supall") of the other part.*

WHEREAS *the parties who are living together have agreed to divide the properties mentioned herein between themselves in an amicable and mutual fashion unless superseded by any order of the court. The following provisions herein shall take effect and regulate their rights and liabilities to each other.*

NOW THIS DEED WITNESSETH AS FOLLOWS:-

1. *Mr. Lalchand and Ms. Supall mutually covenant and agree that they will continue to conduct their lives in an orderly way and neither of them shall molest, annoy or interfere with the other or his or her relations, friends or acquaintances or in his or her professional business associates.*

2. *Ms. Supall shall vacate and be permitted to remove from the residential home situated at No. 11 Eduardo Juan Street, Santa Elena, Cayo District all her personal effects and chattels around the end of June, 2011 and allowed to occupy the house in front of the Loma Luz Hospital in Santa Elena until her house is completed in Belmopan.*

3. *Mr. Lalchand shall at his own expense transfer Ms. Supall's house hold goods from San Ignacio to Belmopan.*

4. *The following constitutes a final agreement between the parties in relation to the assets listed:*

    a) *Mr. Lalchand shall invest $30,000.00 for the completion of the unfinished house in Belmopan for Ms. Supall and shall purchase a 4 cylinder motor vehicle for Ms. Supall. This investment is a repayment from Mr. Lalchand to Ms. Supall for money loaned to Mr. Lalchand by Ms. Supall. Completion date shall be:*

    b) *Mr. Lalchand shall transfer 25 acres of leasehold land situate in Buena Vista Village, Cayo District, Belize to Ms. Supall.*

c) Mr. Lalchand shall pay to Ms. Supall $2,000.00 for every container of cigars imported by Mr. Lalchand either directly or indirectly or by any of his companies into Belize. This includes but is not limited to trade names like (Goal City, Royalist, Racer, Dart Deel). All monies to be deposited in the Atlantic Bank Account No. 2107 31'4 74 in the name of Rutilia Olivia Supall.

d) Ms. Supall shall transfer 25 acres of leasehold land situate in Young Gial/Macre Registration Area, Teakettle Village, Cayo District, Belize to Mr. Lalchand.

e) Ms. Supall shall transfer 1 house and lot situate on Peter August Street, Santa Elena, Cayo District, Belize to Mr. Lalchand."

[13] Both parties submitted that the Agreement was binding. They disagreed on what it covered. The submission of the Appellant is that the agreement was intended to be a final agreement between the parties in contemplation of them going their separate ways that the Respondent is estopped from seeking a greater interest in the company Benzer other than what was provided by the Agreement.

[14] The Appellant refers to the document as "*Separation Agreement*" and "*Settlement Agreement*". Nowhere in the Agreement are those terms used. The Agreement also does not reference as submitted by the Appellant that it was a final agreement between the parties in contemplation of them going their separate ways. Nor that it was in full and final settlement of all and any claims. That is a standard term in separation and settlement agreements. In fact the Agreement limits its applicability by providing it relates specifically to '*the properties mentioned herein'* and *'the assets listed*'.

[15] The parties did not in fact after the Agreement go their separate ways and continued in the relationship for four more years. The determination of the Trial Judge of the existence and length of the relationship was not appealed by Mr. Lalchand.

[16] The Appellant submits that pursuant to the "Settlement Agreement",

(i) The Appellant and the Respondent agreed to their respected (sic) interests in the properties which were acquired by them at the time of the "Settlement Agreement". That the parties are therefore bound by the "Settlement Agreement" which they voluntarily entered into and the Respondent is not entitled to more than was expressly agreed to in the said "Settlement Agreement". The Appellant notes in fact, the "Settlement Agreement" expressly states that the parties "*have agreed to divide the properties mentioned herein between themselves in an amicable and mutual fashion unless superseded by any order of the Court. The following provisions herein shall take effect and regulate their rights and liabilities to each other*."

(ii) That the Settlement Agreement also constitutes "*a final agreement between the parties in relation to the assets listed*." The said agreement was intended to be a final agreement between the parties in contemplation of them going their separate ways. The Appellant says that this is especially so since by the very Settlement Agreement, the parties agreed that "*Mr. Lalchand and Ms. Supall mutually covenant and agreed that they will continue to conduct their lives in an orderly way and neither of them shall molest, annoy or interfere with the other or his or her relations, friends or acquaintances or his or her professional business associates*."

(iii) That the Appellant and the Respondent therefore not only agreed to divide their respective properties, but agreed that from that point on, neither of them would interfere with the other's business, which the Appellant says includes the business of Benzer.

[17] That interpretation that business associates means business, and means Benzer is not sustainable in the clear context of the use of the words "*business associates*" in clause 1. Further the Appellant ignores material provisions in the Agreement;

(i) The Agreement provided it constitutes a final agreement "***in relation to the assets listed***" and that "*the parties have agreed to divide* ***the properties mentioned herein.***"

(ii) Further, that the Agreement did not seek to oust the jurisdiction of the Court and provided the Agreement operated "***unless superseded by an Order of the Court***". It therefore would be within the jurisdiction of the Court to vary the terms of the Agreement. The Trial Judge however did not vary the terms.

The assets/properties to which the Agreement applies are therefore clearly mentioned, clearly restricted. The Appellant argues the Agreement covers full settlement of any claim with regard to Benzer Ltd. The Agreement however does not say so, it does not even mention Benzer by name and makes no such restriction as the Appellant seeks to impose. Using the very reasoning that there should be respect for parties' autonomy and not being paternalistic the Agreement must be read exactly as it provides. If it had been intended to be a resolution of all interest in Benzer it would, should or could have said so.

4 (c) of the Agreement provides – '*Mr Lalchand shall pay to Ms. Supall $2,000 for every container of cigars imported by Mr. Lalchand either directly or indirectly or by any of his companies into Belize. This includes but is not limited to trade names like (Goal City, Royalist, Racer, Dart Deel).* The Appellant says this specifically dealt with Benzer, however as noted Benzer is not mentioned nor the other assets of Benzer. There has also been the finding of fact by the Learned Trial Judge, '*and that it is clear from the evidence of both parties'* that the Freezone Shop did not exist at the time of the Agreement and accepted Ms Supall's contention that the company was not operational in July 2011 when the Agreement was signed. The Trial

Judge with the multitude of evidence before her was entitled to make that finding of fact and her interpretation of clause 4 (c) to be restricted to exactly what it provides cannot be faulted.
In fact it is the Appellant who seeks to extend clause 4(c) beyond the specific provision.

[18] Evidence was also given as to the background of the creation of the Agreement. On a review of the Agreement and the facts as determined by the Trial Judge, it was a reasonable determination that the Agreement related to the specific assets listed and the Respondent was entitled to pursue a claim and seek the Court's determination on other assets. The provision of a payment per container of cigarettes was not in full and final settlement of any and all claims in the company Benzer. The Agreement certainly did not recite that it was.

[19] Further, the Respondent makes the submission, with which I agree, that even if the Respondent's interest in Benzer was included in clause 4 (c) of the Agreement, the Agreement specifically recognised that the terms could be "*superseded by an order of the Court*" and the Appellant was thus not precluded from seeking a determination of her interest in the company.

[20] With reference to the provision "*unless superseded by any order of the Court*", the Appellant submits this can only be done if it was fraudulently or illegally obtained and that in this case there is no allegation of fraud or illegality and relies on ***Greer v Keltle a 1937*** case that dealt with a deed of guarantee for the repayment of a loan. I do not see that that supports the position that an agreement made between parties being superseded by the Court is confined to fraud or illegality. As provided in all the cases cited, a Court can consider fairness, duress, mistake, imbalance of power, whether there was adequate disclosure. There is provision for a Court to make a determination of what is just and equitable. As the Trial Judge noted the Caribbean Court of Justice decision upholding the validity of an agreement in ***Rosemarie Ramdehol v Halmwant Ramdehol*** based on section 18 of the Guyana Married Persons (Property) Act is not applicable to the instant matter where the provision in section 18 of Belize's Married Women's (Property) Act is somewhat different and in any event speaks specifically to married women.

[21] The Appellant also argued estoppel. That the 'Settlement Agreement' is binding and enforceable, that the Respondent is estopped from seeking a greater interest in Benzer other than what was agreed by the 'Settlement Agreement'.

[22] Counsel submitted on the importance of a Court respecting an Agreement between parties. That it was not part of the Learned Trial Judge's duty or jurisdiction to look beyond the 'Settlement Agreement' as it related to Benzer, as this would have the effect of the Court imposing its own views rather than respecting the parties' individual autonomy to enter in agreements. The Appellant says further that the nature of such a nuptial agreement does not contemplate that the parties are uncertain as to the future. The parties are nonetheless free to agree as to their respective interest in property. There is no disagreement with the principles noted.

[23] The Appellant referenced ***Radmacher (formerly Granatino) v Granatino [2011] 1 All ER 373***. In ***Granatino***, the Court held that it should give effect to a nuptial agreement which was freely entered into by each party with a full appreciation of its implication unless in the circumstances prevailing it would not be fair to hold the parties to the agreement. The reasoning of the Court at paragraph 78, the Appellant argues is particularly instructive:

> 78. *The reason why the court should give weight to a nuptial agreement is that there should be respect for individual autonomy, the court should accord respect to the decision of a married couple as to the manner in which their financial affairs should be regulated. It would be paternalistic and patronising to override their agreement simply on the basis that the court knows best. This is particularly true where the parties' agreement addresses existing circumstances and not merely the contingencies of an uncertain future*.

[24] In the instant case the Learned Trial Judge did respect the Agreement and did not vary the Agreement. The specific provisions of the Agreement were upheld restricted to *'the properties*

mentioned' and the *'assets listed'* and it is clear it is the Appellant that seeks to expand the literal provisions of the Agreement.

Grounds 2 and 3

[25]

2. "*That the Learned Trial Judge misdirected herself in finding that notwithstanding the transfer of legal ownership of the 9,000 (out of a total of 10,000) shares in 5th Interested Party (Benzer International Co. Ltd.) by the Appellant to his children, Nimmi Lalchand, Miriany Lalchand, Demi Lalchand as trustee for Hitesh Lalchand, that the Appellant retained his beneficial interest as to 51% of the total shares when such a claim was not pleaded in the Respondent's Originating Summons and notwithstanding her finding that the shares in the 5th Interested Party were not transferred to defeat the Applicant's Interest or a court order*."

3. "*That the Learned Trial Judge misdirected herself in finding that, that the Appellant was therefore entitled to 35% of the Appellant's beneficial interest as to 51% of the total shares in the 5th Interested Party when no such claim was pleaded in the Respondent's Originating Summons.*"

[26] The Appellant submits that the Learned Trial Judge's determination of a beneficial interest on the basis of the evidence of a trust was not pleaded and the Appellant was not given the opportunity to answer any claim in trust. The authorities of ***Hubert Mark v Belize Electricity Ltd (Civil Appeal No 11 of 2009***) and ***The Attorney General v George Batson et al*** and ***Rupert Marin v George Batson (Civil Appeals No 26 and 27 of 2007)*** were cited by the Appellant to support the importance of holding parties to their pleadings and determining the issues which arise on the pleadings only.

[27] The importance of pleadings cannot be in dispute or the principles those cases elucidate. However, with respect to the matter before the Court, Ms. Supall sought a declaration of her

interest in certain property pursuant to Section 148E of the Supreme Court of Judicature Act. The fact that there was the *"finding that the shares in the 5th Interested Party were not transferred to defeat the Applicant's interest or a court order*," did not prevent the Trial Judge from considering whether the shares were acquired during the union and whether Mr. Lalchand had a beneficial interest in the shares. The determination by the Trial Judge with regard to the transfer of shares was on the basis of the limitation of section 148H of the requirement for the existence of an existing or anticipated order in any proceedings at the time of the transfer.

[28] Section 148E (2) requires an assessment of what "property," what assets, are to be considered. There is no definition of property in the Act, however authorities establish its wide interpretation. The Trial Judge made a finding that Mr. Lalchand has a beneficial interest in shares of Benzer (and a beneficial interest in the Venezuela property). The basis of the finding was that the shares in so far as they represent ownership of the company were acquired during the union of the parties. Further, the shares were transferred without consideration to the children and that the representation that the transfers were for valuable consideration was *'deliberately false'*. The Trial Judge also considered that Mr Lalchand obtained and retained the benefit of a debt to the Company; that at the end of the parties relationship he was still involved in the overall direction of the Company; that the Company was the primary source of income for Mr. Lalchand who "*is still entitled of his own accord, to make use of the company's resources and assets and as such retains a beneficial interest in the company*." What was the property of the Appellant and what was the Respondent's share if any was clearly identified as an issue on the pleadings and addressed extensively in the hearing. This is a finding of fact by the Trial Judge, having seen and heard the evidence and as already established a Court of Appeal would be slow to overturn findings of fact unless outside the wide boundary of reasonable disagreement. The Trial Judge therefore identified the property for consideration in the proceedings. Having made a determination of the title and right of Mr. Lalchand with regard to that property, it is within the Trial Judge's jurisdiction to make a determination of Ms. Supall's interest therein and/or alter that interest.

[29] The Trial Judge ultimately held that "*the Respondent should settle towards the Applicant the amount 35% of the value of his beneficial interest of $683,000. The amount of $240,000 is*

therefore considered a just and equitable sum to be paid by the Respondent to the Applicant upon determination of the Originating Summons".

[30] It would be best practice for Applicants to specifically identify an application for a declaration and an application for an alteration under Section 148. Here the Respondent's Originating Summons speaks to a declaration. However, section 148E (3) does still provide that "*in addition to making a declaration under subsection (2) the Court may also in such proceedings make such order as it thinks fit altering the interests and rights of the parties to the union in the property*".

[31] In the circumstances, it was within the Trial Judge's jurisdiction to make the determination she did on the facts as she found and I see no reason to interfere with that finding.

Grounds 4 and 5

[32]

4. "*That the Learned Trial Judge misdirected herself when she found that the registered proprietor of Parcel 2081 Block 1 Corozal North Registration Section being Shyam Armanani held the said property on trust for the Respondent when such a claim was not pleaded against Shyam Armanani; nor was Shyam Armanani joined as a Respondent or Interested Party in the Respondent's Originating Summons as prescribed by Rule 11 Order XX1V of the Supreme Court of Judicature Rule; nor could such a claim be supported by the evidence.*"

5. "*That the Learned Trial Judge misdirected herself in finding that the Respondent was therefore entitled to 35% of the Respondent's beneficial interest Parcel 2081 Block 1 Corozal North Registration Section when no such claim was pleaded*."

[33] The Appellant submits that findings that the Appellant held a beneficial interest in the Venezuela Site Home cannot be supported when no such claim was pleaded and Shyam Armanani

was not a party to the proceedings and so was not afforded any proper opportunity to defend any claim in trust determined by the learned Trial Judge.

[34] As noted above the Court had jurisdiction to make a determination of Mr. Lalchand's title and rights in respect of property. The Trial Judge's determination was that Mr. Lalchand had a beneficial interest in the Venezuela property.

[35] From a review there was sufficient evidence to support such a determination. The Trial Judge gave an extensive and detailed review at paragraphs 24 to 30 of the judgment. The Trial Judge noted Mr Lalchand *'had a pattern of having land held in the names of third parties for his benefit'* but that was not sufficient for Ms Supall to succeed in her claim with regard to other properties held in third parties names that it was claimed was Mr Lalchand's. However, with regard to the Venezuela Site home there was a plethora of evidence. The Appellant paid the balance of the charge of $63,481.70 to Heritage Bank, being the final payment of the charge on the Venezuela property and he collected the title documents pursuant to written instructions of Shyam Armanani; paid for renovations above and beyond what would be the responsibility of a tenant with Ms Lalchand making selections for tiles, paint, fixtures etc; Mr Lalchand sued to recover monies expended in pursuance of those renovations; and the fact that the Appellant is in possession of the house. These findings were supported by objective evidence, including the actual plaint in the Magistrate's Court and the information provided by the bank in response to a subpoena. Further, it was not lost on the Trial Judge that Mr. Lalchand had not addressed the evidence that the title documents were handed over to him by Heritage Bank and had declined to address where or by whom they are being held.

In addition to that objective evidence the Trial Judge made her assessment of Mr. Lalchand and his witnesses, an assessment we would not be in a position to say is plainly wrong. The Court took "*a dim view*" of the evidence provided by the Appellant and his witness Mr. Armanani, noted the three different responses given by the Appellant to the allegation that he owned the Venezuela Site Property in his Affidavits which stood as his evidence in chief. The Trial Judge's assessment of one account being "*an outright fabrication*" and inconsistent with and contradicting Mr.

Armanani, Mr. Armanani being "*at best irritated and at worst belligerent when pressed for details*".

[36] The Respondent points out that Mr. Armanani though not listed as an interested party or joined to the action he did provide Affidavit evidence and oral evidence. He is named in the Schedule that identifies the property Ms. Supall brought into issue. Both he and the Appellant had ample opportunity to address the very issue in contention, the ownership of the property and Mr. Lalchand's interest therein.

[37] There is a wealth of authority on the issue of third party rights or interest which often arises in Family matters. In the circumstances here, Mr. Armanani was not a party and there was no order compelling him to take any action. There is no order for Mr. Armanani to transfer an interest to Ms. Supall or Mr. Lalchand for that matter. There are circumstances in which the property in the name of a third party can be considered as an asset, taking into consideration a parties control of the asset and relevant facts. In the instant case, the Court set out the facts considered that led to the determination that though legally in a third party's name, the Appellant had a beneficial interest which the court could consider in making a determination of a just and equitable settlement between Mr. Lalchand and Ms. Supall.

Ground 6

[38]

> 6. "*That the Learned Trial Judge's valuation of the Appellant's beneficial interests in the shares in the 5th Interested Party and Parcel 2081 Block 1 Corozal North Registration Section was perverse in that, on the basis of the evidence in the case, no reasonable tribunal could have reached such a decision*."

[39] There was admittedly a challenge for the Trial Judge in the determination of a valuation as there was no direct evidence in this regard. In property matters a valuation is important and the process requires in identifying the assets for consideration, a value of those assets if one is to meaningfully go on to make consequential orders. The Trial Judge does point out "*there is no*

direct evidence of the Venezuela site home and this information was in the hands of the Respondent who will bear the consequences of the Court being put in a position of having to ascribe a value to the house with the evidence available".

[40] With regard to the value of the company, the information produced by Mr. Lalchand's witness was determined "*incomplete*" and was information Mr. Lalchand had the opportunity to present. The Trial Judge notes at paragraph 39 of the Judgment, that the company was subject to such poor record keeping that it was unable to meaningfully comply with the Court's order for disclosure of financial records, yet was able to produce evidence of his purported limited payments as a director and that the Court was *'constrained to treat with this evidence with a high degree of skepticism.'*

[41] It is accepted that if a party fails to provide information that it has, the Court can make adverse assumptions against that party. That would certainly be applicable with regard to the company. With regard to the Venezuela property, there is no indication of a request for and failure to provide that information. The Appellant however was in possession of the property and in the best position to provide that evidence. There is a positive obligation on a party to make full disclosure.

[42] The manner of valuation does require some consideration. It would have been preferable for there to be further exploration of the valuation. The submission of the dicta in ***Versteegh v Versteegh [2018] EWCA Civ 1050***, cited by the Appellant is accepted as a general principle *'it is undoubtedly far more satisfactory for all concerned if a court can, with sufficient confidence, settle on a valuation of a business to the necessary standard of proof, that is to say on a balance of probabilities'*. The cases cited however can be distinguished, ***Versteegh*** was extremely complex corporate structures, in ***Walters v Crane*** *and* ***Spencer v Thompson***, there was in one case no evidence, in another only oral evidence.

[43] In the instant case, the Trial Judge's determination of value was not without evidence and certainly not "*perverse*" or "*arbitrary*". At paragraphs 53 and 54 of the judgment, the Trial Judge addressed how she arrived at a value for the Venezuela property. There was evidence of the

amount of the debt of over $400,000.00 owed to the Company which correlated with the property, the $60,000.00 paid by Mr. Lalchand to Heritage Bank to discharge the mortgage on the property, and the mortgage itself of the property to secure $275,000.00 loan to assist with the purchase of the property. Thus the Trial Judge considered the property valued not less than $275,000.00 and possibly as much as $500,000.00 taking the evidence of the alleged debt owed, the balance of the mortgage paid and the $1000 a month the Appellant claimed was paid.

[44] In relation to the shares of the Company, the Trial Judge addressed this at paragraphs 55 and 56 of her judgment. She considered the evidence of the estimated net income of the Company as at October 2015, when the parties union came to an end, as being US$420,000.

[45] There is also a wealth of authority in this area and the Privy Council case of **Webb v Webb** [2020] UKPC 22 gives a useful summary of the approach of the court when there are challenges in valuations -

> *"**[100]** Mrs Webb found herself in a difficult position. Mr Webb had produced no disclosure and very little information relating to value. However, she did have a draft "Investor Update" for Solar 3000 Group Ltd, the New Zealand based parent company. She also had the last page of the final version of this document which was signed by Mr Webb as Solar 3000 Group Ltd's Chief Executive Officer.*
>
> ***[101]** The figures on the last page of this Investor Update suggested an overall value of the entire share capital of Solar 3000 Group Ltd of NZ$ 10m. The Court of Appeal accepted that this figure was speculative, as necessarily was Mrs Webb's estimate of NZ$ 3.3m as the value of Mr Webb's shareholding in the trading subsidiary Solar 3000 Ltd. However, the court continued, there was insufficient evidence on which to carry out a conventional valuation and Mr Webb had brought this on himself. The court considered that, since the relevant documents and information were in Mr Webb's exclusive possession and control, it was appropriate to draw adverse inferences against him. Doing what it described as the best it could on the sparse*

material available, the court arrived at the figure of NZ$ 2m as the value of Mr Webb's shareholding.

[102] *Mr Webb now contends before the Board that just as Mrs Webb's figure of NZ$ 3.3m as the value of his shareholding was speculative, so too was the figure of NZ$ 2m arrived at by the Court of Appeal. That, he says, was not permissible. Any process of assessment had to be logical and the outcome based on proven facts….For her part, Mrs Webb argues that the figure arrived at by the Court of Appeal is too low and it had no justification for departing far, if at all, from the figure of NZ$ 3.3m. ….*

…

[104] *The. drawing of adverse inferences in claims for ancillary financial relief in matrimonial proceedings. Such proceedings, Lord Sumption explained, at para 45, have some important distinctive features. First, there is a public interest in the proper maintenance of the wife by her former husband, particularly where the interests of children are engaged, and partly for this reason the proceedings have an inquisitorial element. Secondly, the family finances will commonly have been the responsibility of the husband, so that though technically a claimant, the wife is in reality dependent upon the disclosure and evidence he gives. The concept of the burden of proof cannot be applied in the same way to proceedings of this kind. These considerations are still not a licence to engage in pure speculation. But, in Lord Sumption's view and I would respectfully agree, they have the consequence that judges exercising this jurisdiction are entitled to draw on their experience and to take notice of the inherent probabilities in deciding what an uncommunicative husband is likely to be concealing. Lord Sumption referred to the husband because the husband is usually the economically dominant spouse, but he explained and I would reiterate that of course the same applies to the economically dominant spouse, whoever it is.*

[105] *The circumstances of the present case do, in my opinion, call for a similar approach. Mrs Webb is entitled to a share of the matrimonial property. But she is essentially dependent upon the disclosure and evidence given by Mr Webb as the economically dominant spouse. This is a matter to which the Justices of Appeal were entitled to have regard and it was permissible for them to draw upon their experience and to take notice of the inherent probabilities in deciding what Mr Webb was likely to be concealing.*

[106] *That is what the Court of Appeal proceeded to do. It founded its analysis on an important piece of evidence to which Mrs Webb had access: the last page of the final investor statement bearing Mr Webb's signature. It may be the case that all of the investment sought was not forthcoming. I recognise too that the pages of the draft plan describe business activities in countries other than the Cook Islands and that it is possible that these never came to fruition. I am also conscious of what might be described as the relatively modest scale of the business in the Cook Islands described in the pages of the draft. However, Mr Webb did not disclose the information or documents that would allow the court to look into these matters fully or to quantify their impact. The court therefore had to make a broad estimate of the deduction they called for. It no doubt drew upon its experience and the inherent probabilities in so doing. I therefore feel unable to accept the criticisms made by Mr Webb of its approach. It did the best it could in all the circumstances and it arrived at a realistic figure. If Mr Webb thinks it was unduly generous to Mrs Webb, he has only himself to blame. Nor can I accept the criticisms advanced by Mrs Webb. A deduction of some kind had to be made and I think the result reached by the Court of Appeal was certainly not unduly generous to Mr Webb."*

[46] In all the circumstances, the approach taken by the Trial Judge could not be considered 'plainly wrong'. This is particularly so in circumstances where the court is entitled to make a just and equitable Order and ultimately take into account any other fact or circumstance that, in the opinion of the court, the justice of the case requires to be taken into account.

Conclusion

[47] In the circumstances, for the reasons stated, I would propose the following order:

1) The Appeal is dismissed with costs to the Respondent on the Appeal;
2) The decision of the Trial Judge is affirmed;
3) The costs to be agreed or assessed by the Registrar.

WOODSTOCK RILEY, J.A.

DISSENTING JUDGMENT OF HON. MADAM MINOTT-PHILLIPS JA

MINOTT-PHILLIPS, J.A.

[48] I detect no material difference in the relevant legislative framework applicable in Guyana to the division of matrimonial property from that applicable in Belize as would render the unanimous decision of the Caribbean Court of Justice in ***Rosemarie Ramdehol v Haimwant Ramdehol*** [1]inapplicable to this case.

[49] I say this against the background of the decision of the Hon Madam Justice Griffith entered on 19 May 2017 (and not appealed) that the Appellant ("Mr Lalchand") and the Respondent ("Ms. Supall"), though unmarried, were *"found to have been involved in a common law union for a period of 8 years, commencing from August, 2007 and ending October, 2015."*

[1] [2017] CCJ 14 (AJ)

[50] In ***Ramdehol*** the CCJ[2] pointed out that the *"Guyanese legislation does not contain any provisions … that allow the court to vary or set aside agreements relating to distribution of property between married persons based on specified factors (including because the agreement was unfair). Unless the appellant can show that the agreement was in breach of general contract principles the agreement must be enforced."*

[51] For me, the question is, in the light of the parties' agreement (struck on 4 July 2011 while living together but in contemplation of their relationship ending) to divide the properties mentioned in it between themselves in an amicable and mutual fashion, whether there is, in the circumstances of this case, any legal basis for a distribution of their property on any additional or wider basis? I see none. To my mind, the entry into the agreement ("the property division deed") by Mr. Lalchand and Ms. Supall in contemplation of the end of their relationship operates to displace the applicability of legislation governing the distribution of property of spouses.

[52] Although the property division deed does not say so, it has been accepted by both parties and by the court below that it was entered into by both parties in contemplation of their relationship ending[3]. That finding is unchallenged. To me it is immaterial that the ending took 4 further years to materialize and, in fact, occurred in 2015. When they entered into the property division deed on 4 July 2011 it was the common intention of the parties that its content reflect how their property would be divided between them when their relationship ended. Mr Lalchand, acting in keeping with his obligations under the property division deed, was found by the court below to have discharged his obligation under clause 4a; and the evidence also showed he was paying Ms. Supall BZD 2,000 per container as agreed under clause 4c. Ms. Supall, by comparison, had not carried out any of her obligations under the property division deed.

[2] At numbered paragraph 51

[3] As recognized by Griffith, J at numbered paragraph 30 of an earlier ruling by her in this case- dated 25 May 2017.

[53] Following the termination of the relationship in 2015, Ms. Supall claimed that the property division deed did not cover all of the properties she was now claiming by way of her application made under section 148:05 for the court to declare her beneficially entitled to:

a. one-half share or such other interest as the court shall deem just in:
    i. North Venezuela site home, Parcels 400 & 401 Paraiso, and property in Benque free zone purchased from Billy Musa
    ii. Parcel #2191 Peter August Street in her name, and 25 acres leasehold property located in Buena Vista Village in the Young Gal McCrae Registration Section also in her name (being property she agreed to transfer to Mr Lalchand under their 4 July 2011 agreement);
    iii. A 2000 Toyota Sierra Van registered in Mr Lalchand's name;
    iv. The issued (10,000) shares in Benzer International Company Limited.
b. A 100% share in a 2008 Hummer registered in her name.
c. One half of the amount standing to the credit of the bank account in the name of Mr. Lalchand t/a Miryani's Store.
d. Any other asset not mentioned above that was acquired by Mr Lalchand during the common law union in such shares as the court shall deem just.

Ms. Supall also sought to have the court make an order for Mr Lalchand to pay her such monthly or weekly sum, or such lump sum, and make other financial arrangements in respect of her maintenance as may be just.

[54] In her application Ms. Supall asked the court for an order that the properties at ***a*** of the preceding paragraph be sold and the net proceeds of sale shared equally (or in such proportion as the court shall deem just) between her and Mr Lalchand. Her alternative request to that was that Benzer International Company Limited be valued as an asset acquired during the union and that it, together with those properties at ***a*** of the preceding paragraph, be settled or transferred equally or equitably between her and Mr Lalchand as the court may deem just. That alternative request was struck out by order of Griffith, J. made on 13 March 2018.

[55] While the court below did uphold the parties' property division deed executed on 4 July 2011, it did not stop there but went on, wrongly in my view, to make orders granting Ms. Supall some of the additional property rights she sought by way of her application to the court under the Supreme Court of Judicature Act, section 148:05.

[56] Leaving aside for the moment the scope of the property division deed, I note that the court below declared Mr Lalchand a 51% owner of the 10,000 shares of Benzer International Company Limited in circumstances where it accepted he owns only 1,000 of those shares and that his adult children are the owners of the remaining 9,000 shares. As the children are adults, and the Court found the share transfers to them were not an attempt by Mr Lalchand to conceal his assets, there was nothing that could lead the court to reasonably conclude that the children owned only the legal interest in those shares and that the beneficial interest remained with their father. Ms. Supall's acceptance of the children's' ownership entirely of the shares in Benzer International Company Limited that were transferred to them by their father is consistent with the fact that in her Amended Originating Summons (as further amended following the striking out of numbered paragraph 5), she did not even seek an interest in the shares of Benzer International Company Limited. Practically, Ms. Supall could not obtain an interest in shares that were not, in fact, beneficially owned by Mr Lalchand -- the court's declaration of him as a 51% beneficial owner of the 10,000 shares issued in the company notwithstanding. She could not obtain from him an interest in something he did not actually beneficially own. In my view it was an error for the court to so declare even were it not the case (as I think it is) that the parties were confined to the terms of their property division deed.

[57] The Court also, quite strangely, declared Mr. Lalchand to have a beneficial interest in the Venezuela Site home property that was legally owned by someone (Shyam Armanani) who is not a party to the proceedings. I cannot see how that is possible. Surely it is not open to a court to make an order declaring a party before it in a civil case to have beneficial ownership (to any extent) in property legally owned by a non-party to the proceedings. In so doing it is my view that Griffith, J erred.

[58] At the time the property division deed was entered into:

e. Ms. Supall owned:
    i. An uncompleted house in Belmopan (referenced in 4a of the deed);
    ii. 25 acres of leasehold land situate in Young Gial McCrae Registration Area (mentioned in clause 4d of the deed);
    iii. House and lot at Peter August Street, Santa Elena, (mentioned in clause 4e of the deed).
    iv. 2008 Hummer (a possible object of clause 4a of the deed)
f. Mr Lalchand owned:
    i. 25 acres of leasehold land in Buena Vista Village (mentioned in clause 4b of the deed).
    ii. 9,000 of the 10,000 shares of Benzer - being the company importing, directly or indirectly, cigars into Belize – (the subject of clause 4c of the deed).
    iii. A 2000 Toyota Sierra Van (a possible object of clause 4a of the deed).

[59] It is apparent to me, therefore, that the property division deed entered into by the parties on 4 July 2011 covered all of those assets and indicated how they would be divided between them upon the termination of their relationship. As accepted by the court below there is no evidence of any concealment by Mr Lalchand of his assets as at 4 July 2011. Therefore, the integrity of the property division deed could not be impugned on that basis.

[60] The deed has, in fact, been upheld by the court below as valid. That being so, I think that has to be where one should look to see how the property of the parties ought to have been divided when their relationship came to an end.

[61] I see no scope for the court awarding property to Ms. Supall over and above what she agreed she would accept upon the termination of her relationship with Mr. Lalchand. She must be held to her agreement once there is no question of misrepresentation, fraud, undue influence,

interests of minors or patients, or the like. No such bar to her being confined to her agreement has even been pleaded by Ms. Supall in this case.

[62] ***Radmacher (formerly Granatino) v Granatino***[4], is a decision of the Supreme Court of the United Kingdom (in a judgment considered by 9 Law Lords, 8 of which were in agreement) in which it was determined that, although a court considering the grant of ancillary relief was not obliged to give effect to ante- or post-nuptial agreements because the parties could not, by agreement, oust the jurisdiction of the court, appropriate weight had to be given to such agreements[5]. In the words of the majority's opinion:

> *"If parties who have made such an agreement [providing for future separation], whether ante-nuptial or post-nuptial, then decide to live apart, we see no reason why they should not be entitled to enforce their agreement. This right will, however, prove nugatory if one or other objects to the terms of the agreement, for this is likely to result in the party who objects initiating proceedings for divorce or judicial separation and, arguing in ancillary relief proceedings that he or she should not be held to the terms of the agreement."*[6]

[63] With her action below Ms. Supall sought to render nugatory Mr Lalchand's right to enforce their property division deed upon the termination of their relationship.

[64] Again in the words of the majority's decision in ***Radmacher (formerly Granatino) v Granatino,***

[4] [2011] 1 All ER 373
[5] At 379, letter j, Per Lord Phillips, P, Lord Hope DP, Lord Rodger, Lord Walker, Lord Brown, Lord Collins and Lord Kerr, SCJJ.
[6] At 395 letters f-g.

> *"If an ante-nuptial agreement, or indeed a post-nuptial agreement, is to carry full weight, both the husband and the wife must enter into it of their own free will, without undue influence or pressure, and informed of its implications….*[7]
>
> *Sound legal advice is obviously desirable, for this will ensure that a party understands the implications of the agreement, and full disclosure of any assets owned by the other party may be necessary to ensure this…*[8] ***What is important is that each party should have all the information that is material to his or her decision, and that each party should intend that the agreement should govern the financial consequences of the marriage coming to an end***[9]*. [My emphasis]*
>
> *It is, of course, important that each party should intend that the agreement should be effective."*[10]

The words in bold that I have emphasized from the above quotation appear to me to apply to the parties to this litigation. They had the information material to their decision regarding the division of their property upon the termination of their union, and they intended that their property division deed should govern the financial consequences of their relationship coming to an end.

[65] ***Radmacher*** shows that even where the existence of the parties' agreement does not oust the jurisdiction of the court, there must nevertheless be good reason not to hold the parties to the terms of their agreement. In my view the parties' property division deed when made covered all their assets and disclosed everything then owned by them. For me it checks all the boxes that make it binding upon each of them, as indeed it has been held by the court to be. At the time of their actual separation in 2015 the Court found Mr. Lalchand and Ms. Supall to be common law

[7] At 398 letters d-e
[8] At 398 letters g-h
[9] At 398 letter j
[10] Ibid.

spouses then in the 8th year of a relationship commenced in 2007. Their Deed dated 4 July 2011 was entered into in anticipation of their expected separation and was to come into effect when that occurred.

[66] I differ from the learned Judge below and my sister justices of appeal in being of the view that there is no sufficient basis emerging from the facts adduced at trial to, at the behest of Ms. Supall, find an entitlement by her to Mr. Lalchand's property over and above that provided for in the parties' property division deed. I come to this conclusion mindful of the reality that Mr Lalchand, when acquiring property after 4 July 2011, would have relied on the provisions of the parties' property division deed as completely addressing the property division obligations each owed to the other. This, no doubt, informed his plea of estoppel at the trial.

[67] In an earlier ruling made by her in this case on preliminary issues, Griffith, J regarded the issue of estoppel by deed as a rule of evidence that *"subject to any exceptions in law, may be raised upon the Court's determination of the Applicant's claim, to bar any contradictory proof of the matters contained in the Deed"*[11]. Her failure to find the property division deed complete and to apply that rule at trial to bar Ms. Supall from adducing evidence of her alleged entitlement to property acquired by Mr Lalchand after 4 July 2011 was, in my view, an error for the reasons I've stated above.

[68] Therefore, for those reasons I would have -

a. Allowed Mr. Lalchand's appeal dated 16 December 2019;

b. Set aside the order of Giffith J dated 5 December 2019 save and except for that part of it that declared the parties' 4 July 2011 property division deed valid and enforceable;

c. Declared the parties' division of property wholly provided for in their 4 July 2011 property division deed;

[11] Numbered paragraph 49 of her ruling dated 25 May 2017.

d. Awarded the costs of the appeal and his costs of the trial below to the Appellant, to be taxed if not agreed.

_____

MINOTT-PHILLIPS, J.A.