

IN THE SUPREME COURT OF BELIZE, A.D. 2020

CLAIM NO. 75 OF 2020

BETWEEN

CHARLOTTE JONES

CLAIMANT

AND

JAMES JONES DBA

1st DEFENDANT

RAGGAMUFFIN TOURS

2nd DEFENDANT

RAGGAMUFFIN TOURS LIMITED

BEFORE THE HONOURABLE MADAM JUSTICE SONYA YOUNG

Decision Date:

18th August 2022

Appearances:

Ms. Priscilla Banner, Counsel for the Claimant.

Mr. Allister Jenkins, Counsel for the Defendants.

**KEYWORDS: Partnership - Contractual Nature - Oral Agreement - Terms -
Circumstances - Intent - Sharing Assets and Liabilities - Deed Estoppel -
Transfer of Assets to Third Party - Pleadings - Damages**

JUDGMENT

1. “We could not have done it without each other,” Mrs. Jones surmised in reference to the success of a business called Raggamuffin Tours (the Business). The very name invites visions of unrivaled flip flops and t-shirt clad freedom from the shackles of all stress-related burdens. And for a time, it seemed that this was the life the Jones’ would live, thanks, in the main, to this business.
2. At the date of filing this Claim, the Parties were husband and wife. They have since been divorced.
3. The Claimant says that in 2002, even before they were married, they began conducting the Business pursuant to an oral partnership agreement and with the proceeds of the sale of her London flat.
4. Although the Business is registered in Mr. Jones’ name only, they had agreed that they were to be partners in equal shares in terms of ownership of assets, profits, and liabilities. Mrs. Jones was the managing partner for 18 years. She was never paid a salary but collected a portion of the profits.
5. There is now also the Raggamuffin Tours Ltd. (the Company) incorporated on the 4th December 2019 of which Mr. Jones is a 60% shareholder and two of his close friends hold the remainder. He is also a director along with the other two shareholders and another close friend. Mrs. Jones is not involved in this Company at all.
6. Mrs. Jones narrates how in October 2019, after their marriage went into decline, they began to live separately. By December 2019, Mr. Jones began to strip the

business of its assets which he held on trust as partnership assets. He has transferred two boats (MVs Ragga Empress and Ragga Queen) from his sole name to that of the Company without proper consideration or Mrs. Jones' consent.

7. She now seeks declarations of her partnership rights and interest, a permanent injunction, damages, interests, and costs.
8. The First Defendant says that the registration of the business name in his sole name is conclusive evidence that there was never any agreement or intention that the Business was to be a partnership. In fact, even before marrying the Claimant he alone had established and operated the Business and the Claimant was employed as his office assistant
9. It was only after they were married that the Claimant was employed to perform managerial and administrative duties and they then conducted the Business as husband and wife. As his wife, she also assisted with the purchase of two yachts, the MVs Ragga Gal and Ragga King, which they agreed could be used in the business operation and for which she would be paid a portion of the profits.
10. She was also given full access to the business account and could withdraw funds as she saw fit for the needs of the family and the business.
11. As the sole owner of the boats (MVs Ragga Empress and Ragga Queen), he rightfully and lawfully transferred them to the Second Defendant. There was no need for the Claimant's consent, and he certainly had no intention to commit fraud.

Preliminary Issue:

Objection was raised re: admissibility of WhatsApp message dated 3rd March 2020:

12. The Defendant claimed that the message was made in settlement negotiations and was therefore, privileged or without prejudice communication. The Claimant sought to rely on it to prove the Defendant's acknowledgement of a partnership regarding the Business.
13. The Courts will always welcome a settlement and any attempt is to be encouraged. So, there is a public policy justification to preventing statements made during genuine attempts to negotiate a resolution from being admitted into evidence. This protects the parties while allowing them to negotiate freely, unafraid that their words would be brought before the Court as an admission of liability - *Grenada Rice Mills v Grenada Marketing and National Importing Board GDAHCVAP2015/002*.
14. The Court considers the circumstances of the conversation. It was made between the parties themselves (not Counsel) so the Court must take a broad view - *Suh v Mace (UK) Ltd [2016] EWCA Civ 4*. They are not really to be expected to say this is privileged or without prejudice communication. The Court will put no stay on the absence of those words.
15. The conversation takes place after the Claim had been filed and served but a Defence had not yet been entered. It deals with a host of other issues, the children, the parties' feelings about what they have been going through and how they have all been affected. Then, Mr. Jones exclaims that he has had enough and just wishes it to be over. He was ready for a "new beginning" and he did not want Mrs. Jones to be a part of "my future".

16. He proposes that Mrs. Jones could buy his shares in the Business and then “*stay out of my life.*” He refers to making an agreement as to the house and she speaks to two other businesses. He makes an offer of the house with a buy-out which the Claimant refuses. He then asks repeatedly that the Claimant make him an offer for the Business so he could pay her off and she could get out of his life. He did not want to have “*a partnership with you in Raggamuffin I want you out...*”
17. Even when given the broadest possible consideration, this Court can not find this conversation to be a genuine attempt at settlement. Here was a husband making an attempt to disentangle himself from the business and personal relationship they shared.
18. He is simply making statements that seem not to have been thought through or to have any reasonable basis. Moreover, he then tells the wife to make him an offer. I do not believe these parties could honestly see this as an attempt at settling the issues. For these reasons, the conversation will not be excluded.

The Issues:

1. Whether a partnership, pursuant to the Partnership Act, exists between the Claimant and the First Defendant in the Business?
2. If a partnership exists, what is the extent of each partner’s share and what comprises partnership property?
3. Should the transfer of the MVs Ragga Empress and Ragga Queen to the Second Defendant be set aside?
4. Are the MVs Ragga Empress and Ragga Queen held on trust by the Second Defendant for the Claimant and the First Defendant?

5. Is the Claimant entitled to a permanent injunction against the Defendants to restrain any dealings with the MVs Ragga Empress, Ragga Queen and Ragga Prince or in transferring shares in the Second Defendant without the Claimant's consent?
6. Is the Claimant entitled to damages, interests, and costs?
7. Does the Claim amount to an abuse of process?

The Evidence

19. This matter is heavily fact based, so the Court thinks it necessary to give an outline of the evidence presented by the parties.
20. **James Jones** testified that he met the Claimant in 1999 but they became romantically involved in February 2002. He then owned a tour business called Jimmy's Tours which he had established after working with his father's tour company for some time. His father eventually handed over that tour company to him and he used its assets to operate Jimmy's Tours.
21. In September 2002, he wanted to operate his business under a new name and rebrand, so he changed its name to Raggamuffin Tours, a name he created. He was the sole proprietor and registered the Business name accordingly.
22. He had no agreement with the Claimant for any partnership and had no need to do so as he had the experience and the use of his father's boat as well as three boats owned by other persons which he rented.

23. When he registered the Business, he and the Claimant were in the early stages of their romance. She was fascinated with the tour business and had been looking for work and an investment opportunity in the tourism industry.
24. She had no experience in sailing or touring but began to assist him first as only an employee (bookings, guests, and administrative duties) and later as his wife. He, doing business as the Business, helped her to get a work permit and she managed the office while he physically conducted the tours. She received a salary but as the relationship progressed, he took care of her financially.
25. Later in 2002, he informed her that she could purchase a boat for use in the Business and she would be entitled to a portion of the profits made by its use. By then, the Business was booming, and he needed an additional boat. She bought MV Ragga Gal in 2003 which was registered in their joint names in 2005 as she did not have a boat captain's licence.
26. In 2003, she also paid the deposit on another boat, the MV Ragga King, while he paid the remainder. This was registered in their joint names in 2006. In 2007, he alone purchased the MV Ragga Queen pursuant to a land exchange agreement. The Claimant co-signed for a loan of \$95,000.00 for the purchase of engines for and improvements to the boat. It was registered in his sole name.
27. In 2009, he alone purchased the MV Ragga Prince for \$6,000.00 and invested in its improvement and maintenance from funds earned from the Business. It was registered in his sole name that same year.
28. Together they borrowed \$162,000.00 from Atlantic Bank for the purchase and improvement of the MV Ragga Empress. The bill of sale refers to Mr Jones

trading as Raggamuffin Tours and to the Claimant in her personal capacity. The boat was registered in his sole name. The loan was repaid with profits from the Business.

29. He also purchased two other boats Ragga Boy and Dis and Dat, and they were registered in his sole name. They were sold as they were not useful to the Business. Throughout the years, he has solely taken loans to invest in the growth of his Business. The bank account for the Business is in his sole name. The Claimant was added as a signatory and given full access to this account once they were married. Together they obtained an overdraft facility.
30. The Claimant has contributed and assisted as his wife but there was never any partnership agreement. She has been compensated from the profits of the Business for her investment and her contribution as wife.
31. He subsequently incorporated the Second Defendant to limit his liability. He invited the Claimant to be a shareholder, but she refused. The ownership of the Business was changed or transferred to the Company with her knowledge. He then transferred the MVs Ragga Queen and Ragga Empress to the Second Defendant.
32. **Charlotte Jones**, a British national, said she decided to start a life in Belize. In 2002, she sold her London flat and after much discussion with Mr. Jones with whom she had started an intimate relationship they decided to open the Raggamuffin Tours Business. It was to be a partnership in equal shares and all assets purchased would be equally owned. Once expenses were paid, they would split the profits equally.

33. She had the capital to invest, he did not. They registered the Business in Mr. Jones' name; she paid for it and filled the forms. In October 2002, she rented and renovated the business premises, purchased equipment and supplies. She worked in the office once it opened and Mr. Jones operated the tours using boats belonging to his father and a friend.
34. By March 2003, she had bought a boat for use in the business - Ragga Gal which was in her sole name but registered many years after purchase. Then came the Ragga King in December 2003 which she says she also paid for. It is registered in their joint names (also done many years later).
35. They were married in April 2004. Between 2007 and 2010, three more vessels were purchased: two by bank loans and the Ragga Prince with profits generated by the Business. The loans were also repaid with profits from the Business. These three boats were in Mr. Jones' name alone.
36. Neither she nor Mr. Jones ever took a salary. She managed the business, its staff, and finances. She was a signatory on the Business's bank account up until she was removed in December 2019 following the breakdown of their marriage in October 2019.
37. By January 2020, Mr. Jones was asserting to staff that he was the sole owner to whom they should be answerable. She later discovered he had transferred two vessels to a company, Raggamuffin Tours Limited. These vessels were the two most valuable partnership assets, and she was not a shareholder in the Company.

38. She then discussed damage to the vessels, loss of sales, diminished walk-ins, loss of inventory, mounting debt, negative online reviews, and unilateral changes made to the business plan and the ownership structure of assets.

The Partnership Act Cap (the pertinent parts)

“3. -(1) A partnership is the relation which subsists between persons carrying on a business in common with a view of profit.

(2)

4. In determining whether a partnership does or does not exist, regard shall be had to the following rules-

(a) joint tenancy, tenancy in common, joint property, common property or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof;

(b) the sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived;

(c) the receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business, and in particular-

(i) the receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as a partner;

(ii) a contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as a partner;

(iii) a person being the widow or child of a deceased partner and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner in the business or liable as a partner;

(iv) the advance of money by way of a loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such, provided that the contract is in writing, and signed by or on behalf of all parties thereto;

(v) a person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the goodwill of the business is not by reason only of such receipt a partner in the business or liable as a partner.”

Whether a partnership, pursuant to the Partnership Act, exists between the Claimant and the First Defendant in the Business:

39. The Claimant relies on the oral agreement made between the parties where they were to be partners in equal shares and any assets purchased for use in the Business would be owned equally. Since the Business began, this is how they have operated the Business.
40. She provided the capital which then covered the Business' associated expenses. She bought the MVs Ragga Gal and Ragga King and they jointly obtained loans to purchase additional assets. She was a signatory on the account and could independently withdraw funds.
41. The Defendant says the Claimant's evidence is insufficient to prove a partnership. The oral agreement is lacking in certainty. It speaks only to the decision to commence the venture together, using her capital and owning the assets equally. She chose the Business name, but it was registered in his name solely although she was present. This, he asserts, is conclusive evidence that she was not and was never intended to be a partner.
42. Even if the Court were to believe her stated reason that she was not a Belizean at the time of registration (which is not prohibited by law), she eventually did become a Belizean through marriage but still made no effort to rectify the register accordingly. So, the Business continued to operate in the First Defendant's name only.
43. He pointed out that there were absolutely no official documents in the Claimant's name which relate to the Business. The bank accounts and overdraft promissory note were all in the Defendant's sole name. The tour operator's licence was similarly so.

44. He asked the Court to consider the difference in the Claimant's approach when she actually had an interest in a business or an asset. Her name then appeared on the record. She was a prudent businesswoman so one would expect to see some documentary proof of the partnership, but there is none.
45. The loans which were in the First Defendant's name but which the Claimant co-signed stated quite clearly that the First Defendant was the owner of the Business. Counsel vigorously contended that the Claimant was estopped from asserting otherwise at this time and "*(a)s a matter of evidence, this further negatives any oral agreement or intention as to a partnership between the Claimant and the 1st Defendant.*" (Paragraph 64 Defendant's submissions).
46. The only joint assets (the two boats) were an investment in two vessels and not an investment in the Business or as a partner. Any share in the profits which the Claimant received was in relation to that investment.
47. She had access to and control of the Business accounts only to enable her to take care of her needs and that of the family. It was connected to her being his wife and not his business partner. It certainly does not amount to a share of the profits in the sense of being evidence of a partnership.
48. There was no evidence that there was an accounting of profits which were then shared. There is no allegation or evidence that gross returns were shared. The First Defendant assisted the Claimant in obtaining a work permit showing she was an employee and not a principal in the business. She did take an active role in the business but that was as his wife and not a partner.

The Court's Consideration:

49. Both parties agree that a partnership is of a contractual nature and is made between two or more persons or entities to carry on a for profit business in common (see Section 3(1) of the **Partnership Act Cap 259**, *Alfredo Gomez etal v Wilfredo Gomez etal Action No. 449 of 2000*, *Pooley v Driver (1877) 5Ch D 458*, *Davis v Davis [1984] 1 Ch. O 393*).
50. The Court must be able to confidently conclude that there was an intention to create a binding agreement between the partners - *Sidhu v Rathor [2020] EWHC 1916*. So, the essential terms ought to be agreed. These expected terms would include the purpose, ownership, control, liability, responsibility, and dissolution of the partnership business. The fact that one or more of these terms have not been agreed does not mean that a contractual relationship had not been created.
51. The **Partnership Act** itself refuses to lay down what such an agreement or arrangement should entail. Rather, it sets out certain rules to guide a court in determining whether there was in fact a contract entered into, that is, the existence of a partnership.
52. The parties also agree that there was no written partnership agreement. The Claimant says there was an oral contract. The Defendant denies this. The Court must, therefore, consider all the circumstances in determining whether there was a true contract and the requisite intention of the parties.
53. The Claimant alleges that there was an oral agreement prior to embarking on the Business. She was to inject startup capital because that's what she had. The

First Defendant had the knowledge of the tour boats and the tours so clearly that was to be his area of responsibility. They also agreed that the profits were to be shared equally between them and the assets were to be owned jointly. The Business was to be called Raggamuffin Tours and the Business name was to be registered.

54. There was nothing said as to dissolution, but this does not strike the Court as odd. Too often persons in the excitement of a new venture fail to consider an end and what would then obtain.
55. Mr. Jones says there was no agreement, save that the Claimant's boats would be used in the Business, and she would receive a share of the profits. He does not state in what quantum. Rather, he asserts that the terms as set out by the Claimant lack certainty, a position with which the Court can not agree.
56. The Court is not asked to find a perfect agreement but to find evidence that there exists a binding agreement. This Court is of the view that the terms are sufficiently clear. We now consider the other circumstances to determine whether the parties carried on as if they were bound by an agreement made within the confines of these same terms.
57. The circumstances as the Court finds them are such that Mr. Jones never saw it necessary to register his business name, Jimmy's Tours, although he says he operated that Business just before he began Raggamuffin Tours.
58. It is noticeable that as soon as Charlotte entered the picture, Mr. Jones was stirred sufficiently to register a business name. He admitted too that it was Mrs.

Jones who filled out the form. She said she paid for the registration and this all seems supportive of the agreement made. She was to put up the capital.

59. Mrs. Jones explained further that her name does not appear on the registration of the Business name because as a foreigner she could not be joined as a co-owner. Although this is not borne out by the legal requirements in Belize, it seems just as reasonable to me as the First Defendant's assertion that Mrs. Jones would have insisted her name be included if indeed, she was a partner.
60. The First Defendant placed much significance on the fact that her name was not included. He relied on *Barnes v Bennett et al Civil Appeal No's. 58 and 59 of 1991*. The Jamaican Court of Appeal found that the trial judge, in considering whether a partnership existed, had failed to give weight to the documentary evidence, one of which was the registration of the business which was in a single name.
61. The Jamaican Business Name Act much like Belize (Section 6) required that all partner's should sign the statement accompanying the application. It also allowed for the registration to be rectified, by order of the court, where there had been an omission of any person claiming to be a partner (also Section 6).
62. Since none of the purported partners had availed themselves of this particular provision to rectify the register, the Court found the registration to be cogent evidence refuting the existence of a partnership.
63. That decision is highly persuasive. But the Court distinguishes this case as it was not a case between parties who soon became husband and wife. The

dynamic between such persons must be understood to be somewhat different than ordinary partners doing business. The Court would be disengaged not to recognize this.

64. Secondly, in that case the state of the register was one consideration only. More importantly, the circumstances, as they were found to be, were that there was no real proof of an agreement. The evidence simply did not support the pleadings. There was evidence of contribution but none of them carrying on a business in common as in the case at bar.
65. So, while this Court agrees that the Claimant could have rightly availed herself of this section, the fact that she did not is but one consideration in the grand scheme of things. We must return our mind to the case before us.
66. If the Claimant believed that her name could not be joined, and this Court could find no reason to believe otherwise, then why would she have insisted that her name be joined. Neither position is capable of swaying this Court in one direction or the other.
67. The Court also considers the Defendant's submission that once she became a Belizean, she could have then sought to have the information amended. The Court is also aware that by the time she became a Belizean she was already Mr. Jones' wife. The thought to secure oneself in this manner may not ordinarily occur, particularly because of the way in which things had progressed by then.
68. I remind that the fact that her name does not appear on the registration of the business is but one consideration only.

69. The First Defendant asked the Court to consider the difference in the Claimant's approach to other business ventures where she insisted that agreements be in writing and her name appear on shares or bills of sale.
70. This the Claimant adequately explained was because there were persons other than just her and the First Defendant involved. So, the level of trust which she had with the First Defendant was lacking in the other situations. By the time they ventured into Weyu Suites together, the marriage had started to collapse so her trust was waning as well. This Court could find no foothold on this slippery argument.
71. The Court then considered that Mr. Jones, before having relations with Mrs. Jones, never bought a boat for himself for use in Jimmy's Tours. He relied on his father's kindness and the rental of boats from others.
72. Suddenly, the Claimant appears and agrees that she would buy two boats to be operated by his business as an investment for a (yet undisclosed) share in profits which he also admits she never got except through direct access to all the profits as his wife.
73. It is assumed that if Mr. Jones had the wherewithal to purchase his own boats he would have done so. It also seems then that the change from Jimmy's Tours to Raggamuffin Tours was more than a mere rebranding as the First Defendant insists.

74. The Claimant explained that the Defendant's Business was to stand at the street and invite persons to go out on a boat which was moored at the wharf. Raggamuffin Tours, however, had an office with equipment, staff and paperwork. A level of professionalism which was not present in any other business which he had.
75. There is no doubt in this Court's mind that the Claimant injected the capital. She was able to show where the money came from and explain how it was spent. Mr. Jones never said how much he invested in the startup of the Business or attempted to show where the money came from. He never even alluded to a location of an office for either Jimmy's Tours or any other venture.
76. He did produce a witness, Mr. Robert Blease, who testified to the existence of Jimmy's Tours but was oddly silent on its business address, staff, or fleet. All the things which apparently made up the merely "rebranded" business.
77. Mr. Jones asked the Court to accept that Mrs. Jones was an astute businesswoman who would not have simply overlooked the need to be joined as a partner in the registration of the Business. But how astute was she then if she never got her precise share of the profits which he says they had agreed upon for the use of the boats she invested in.
78. It must be noted that the boats were purchased in 2003. The parties were not then married so any effort which the First Defendant attributed to her role as wife had not yet come to fruition. Yet, he never states what portion of the profits she was to have for the use of her boat or boats or that she ever got it. This is a significant gap especially during the period when she was not his wife.

79. It seems more likely than not that her decision not to receive a clear share of the profits had nothing to do with a lack of business acumen. Mrs. Jones accepted that her equal share would inevitably come to her because she managed the finances. She knew what was being made and from the beginning she controlled how it was being spent.
80. This is bolstered by the way in which they took out loans for the benefit of the business. They were always co-signatories. She bore the equal weight of those loans and at that time Mr. Jones was never once heard to say she ought not to do so because she was not an equal partner.
81. So to say now that Mrs. Jones is somehow estopped from claiming to be a partner because she never stated on those loan documents that she was a co-owner is preposterous.
82. Persons may agree to certain facts for the purpose of their transaction knowing the facts to be otherwise. There is nothing inherently contrary to public policy if they agree to contract on the basis of those agreed facts (see *Prime Sight Ltd v Lavarello (Official Trustee)* [2013] UKPC 22. They would certainly be estopped from claiming otherwise in the context of that particular contract or deed.
83. But where the deed is not in issue, and the Claimant has not sought to deny any facts in regard to the deed itself, then I agree with the Claimant that estoppel by deed is not applicable.

84. The Business flourished because they both contributed in their own substantive way. She was indeed the administrative brain while he was the brawn of the enterprise. He knew the boats, the sights, and the sea; she did not. She knew how to manage resources and staff and successfully market the service they provided. This Court can see it no other way.
85. She was not an employee of the Business. Mr. Jones, in the name of the Business, may have gotten a work permit for her but that is not conclusive of whether or not she was indeed an employee. Employees are paid salaries.
86. He said she had been paid a salary before they were married. He provided no proof of this. Even if his own records or banking records could not be found, then certainly Social Security could have had records available which could have supported this allegation.
87. Mrs. Jones, on the other hand, maintained that she never received a salary or paid social security (Mr. Jones admits this). Why would he, as a business owner, omit to pay social security for his employee? The answer is simple - she was not an employee. Rather, there seemed to be a division of labor between them as she alleged was a term of the oral agreement.
88. He conducted the tours, took care of the boats, maintained, repaired, and purchased equipment for them; managed and trained the boating staff. She was involved in the day-to-day management of the Business. She hired, fired, and trained the in-office staff, balanced the books, paid salaries, and bills, bought supplies, and marketed the Business.

89. The staff recognized her as a manager and so did Mr. Jones. This also supports her claim that there did exist an agreement between them as to the division of responsibilities.
90. So, heavily did Mr. Jones rely on her that she actually gave him spending money and maintained the home financially even after they began living separately. Significantly, her name was never on any of the Business accounts. Again, if we consider the arrangement, the insignificance of this becomes apparent.
91. His was the name on the registration for the Business, and the account was in the name of the Business as well. Nonetheless, she was a signatory on the account. Mr. Jones said her name was added only after they were married but there is no proof of this.
92. She also managed the online banking, Mr. Jones did not. She spent the money as she saw fit (Mr. Jones also admits this). She, therefore, had no real need to have her name added since for all intents and purposes the account was being operated as a joint account.
93. Whether or not third parties believed or knew she was a partner is immaterial. If the Court had any doubt about the existence of the partnership, then that evidence may have been useful in convincing the Court otherwise.
94. The evidence of Mr. Blease that the Claimant only assisted the office assistant goes counter to common sense. Mr. Blease was a boat captain and tour guide. He certainly would not know what obtained in the office at all times. Both the

Claimant and the First Defendant spoke to the Claimant managing the finances of the Business. How could she do this as an assistant to the assistant?

95. For what it's worth to mention, Mr. Blease's observation as an employee of Raggamuffin Tours in 2011 was vastly different to what Israel Badillo, who was a Senior Boat Captain there in 2012 also observed. He placed the Claimant in charge.
96. So too did the evidence of Edith Chavarria, a salesperson with Raggamuffin Tours for ten years from 2006 and David Moguel, a part of the management team from 2019 to 2020. Both these witnesses were in-office staff and would have had, to my mind, a better idea of what obtained in office.
97. Finally, Mr. Jones did admit that Mrs. Jones was a partner in the Raggamuffin Business in those WhatsApp messages. This is a clear acknowledgement that there must have been an agreement to start and carry on a partnership business.
98. Mr. Jones quickly points to another WhatsApp message where Mrs. Jones tells him all of the debt of the Business is on him "*as currently you own Raggamuffin Tours.*"
99. However, when one considers the entire conversation, one quickly realizes that she was actually saying that since he was currently claiming ownership of Raggamuffin Tours, the debts would also be his. That did not mean that the situation could not change since that was the very basis of her Claim before the Court. The Court can not sensibly construe it any other way.

100. Even without this admission, the Court confidently finds that there was a partnership agreement entered into between the Claimant and the First Defendant and Raggamuffin Tours Business is therefore, a partnership.

What is the extent of each partner's shares and what comprises partnership property:

101. The agreement which the Court has found to be existent, and binding expressly stated the shares to be equal. Each partner is, therefore, entitled to a 50% share.

102. The agreement also stated that the assets of the Business are owned equally. This means that all the property and assets used in the conduct of the Business are owned 50/50 by the partners.

103. The Court also finds that any of the assets which are held in either partner's sole name is being held on constructive trust for the partnership.

Should the transfer of the MVs Ragga Empress and Ragga Queen to the Second Defendant be set aside:

104. The Claimant pleaded that the transfer of the two boats to the Company must be set aside as it was done without the approval or consent of Mrs. Jones and intended to deprive her of her interest in those assets. I do not know this to be the law.

105. In her submissions, however, she then said that the transfer effectually and unilaterally changed the nature of the partnership business contrary to the statutory mandate as contained in the **Partnership Act**. She relied on Section 26(h) which reads:

*“26. The interests of partners in the partnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement expressed or implied between the partners, by the following rules,
(h) any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners.”*

106. With respect, this regulates the conduct of the partners within the partnership and not the conduct of any third party, which the Second Defendant is. Although the First Defendant is a shareholder in the Second Defendant, it is a separate legal entity. Section 31 also regulates what the partners are required to do in relation to accounting for any benefits derived without the consent of the other partner:

31.– (1) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property, name or business connection.

107. It then seems that the Claimant went on to speak of a breach of trust in relation to the First Defendant’s actions and to ask the Court to find that since the Second Defendant had given no consideration for the boats, it was not a *bona fide* purchaser for value and so holds the property transferred to it (in breach of trust) as a constructive trustee. None of this was ever pleaded. None of this was even alluded to in the pleadings.

108. The Second Defendant was not asked to answer any case relating to it not being a *bona fide* purchaser for value. So, the Second Claimant would not be expected to state anything in this regard in its Defence and it did not. There is simply no evidence from the Claimant or otherwise that the Second Defendant is not a *bona fide* purchaser for value.

109. The specific questions which were put to Mr. Jones in cross-examination related only to the cost of the shares and not whether any other capital had been invested by the other shareholders. Proof of the actual cost of the shares alone falls alarmingly short of the fact which the Claimant now asks this Court to find.

110. There were weapons in the arsenal which the Claimant could have called to aid to prove whether or not the Second Defendant was in fact a *bona fide* purchaser for value and then amended its Claim if necessary. They were not used. This Court is in no position to make such a quantum leap.

111. The Court is unable to find that it is inequitable for the Second Defendant to assert its ownership.

112. That being said, the Court can not find a pleaded basis on which to restore the boats to the Business. Particularly, when Section 41 explains what will happen on dissolution of the partnership which seems inevitable at this stage.

113. Section 41 provides:

“On the dissolution of a partnership, every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm, and for that purpose any partner or his representatives may on the termination of the partnership apply to the court to wind-up the business and affairs of the firm.”

114. Issues 4 and 5 fall away with this decision.

Is the Claimant entitled to damages and interests:

115. There is no pleaded basis for an award of damages either. In her submissions, the Claimant said if the assets could not be transferred back then she was entitled to damages for breach of the oral agreement for transferring the partnership assets out of the partnership. This should be equivalent to her 50% interest which would necessitate a valuation of the assets.

116. The Court concludes by saying, barring the fact that there is no such pleading, there was certainly no order for the bifurcation of liability and assessment. The Claimant is not entitled to any damages or interests.

Does the instant Claim amount to an abuse of process and/or is it misconceived:

117. Having found the existence of a partnership, this issue ought to automatically fall away. But it must be stated that the power of the Court to divide property under the Judicature Act relates only to property acquired during a marriage or a common law union (*Vidrine v Vidrine Civil Appeal 2/2010*).

118. The partnership as has been found by this Court came into existence before the parties became husband and wife and there is no allegation that it was made in contemplation of the marriage or during the currency of a common law union prior to marriage.

Costs:

119. The Claimant has seen some success against the First Defendant and is entitled to some cost. The entire Claim against the Second Defendant failed. The sum agreed between the parties of \$60,000.00 will be lowered to reflect these facts. The Court awards \$30,000.00 in costs to the Claimant.

DISPOSITION:

It is declared that:

1. The Claimant and the First Defendant are partners in equal shares in the Business conducted as Raggamuffin Tours which comprises partnership property in accordance with the **Partnership Act**.
2. All the property and assets used by Raggamuffin Tours in the conduct of the partnership business comprises partnership property in accordance with the partnership agreement and the **Partnership Act**.

It is ordered:

3. Costs to the Claimant in the sum of \$30,000.00.

SONYA YOUNG
SUPREME COURT JUDGE