IN THE COURT OF APPEAL OF BELIZE AD 2023

CIVIL APPEAL NO. 17 OF 2018

BETWEEN:

CARL RANEY

Appellant

and

(1) WAYNE RANEY

1st Respondent

(2) WAYNE RANEY (Representative of the Estate of Rosa Lee Raney, deceased)

2nd Respondent

(3) ERIC S. MEYERS (Legal Representative of the Estate of Larry L. Meyers, deceased)

3rd Respondent

BEFORE:

The Honourable Madam Justice Woodstock-Riley	Justice of Appeal
The Honourable Mr. Justice Bulkan	Justice of Appeal
The Honourable Madam Justice Arana	Justice of Appeal

APPEARANCES

Mrs. Deshawn Torres for the Appellant.
Ms. Stacey Castillo for the Respondents.

2023: March 2,

September 29

JUDGMENT

[1] **WOODSTOCK RILEY, JA:** The Appellant, Carl Raney, and the 1st Respondent, Wayne Raney, are brothers; both being the offspring of Rosa Lee Raney, the represented 2nd Respondent, who passed away in 2016. Larry Meyers, the represented 3rd Respondent, was a family friend and died in 2015. Carl, Wayne, Rosa and Larry purchased together Parcels 79 and 80, Block 9, August Pine Ridge, Belize (the Property) with the intention of entering a commercial agriculture enterprise.

[2] The Appellant claims that the Respondents charged him with the managerial duties of the property upon his relocation to Belize from the United States where all the parties were resident and had conducted such business of a similar nature prior. The Appellant claims that there was an oral agreement consented to by all co-owners whereby he was to be paid a fixed sum of US $60,000 per year with interest at 6% when the Property was sold as fees for said duties and that he was owed $1,920,000 BZ for his claimed 16 years of managerial service of the property.

[3] By **Claim No. 672 of 2015**, the Appellant as Claimant had sought the following relief:

1. *The sum of $1,920,000.00 being the fees due from the Defendants to the Claimant for work done between July 1999 and July 2015 under a verbal contract made between February and June of 1999 and made between the Claimants and the Defendants, Rosa Lee Raney and Larry L. Myers.*

2. *That additional sum of $30,000.00 in management fees from the period July 2015 to November 2015 under the said contract.*

3. *Interest on the said sums pursuant to Section 166 of the Supreme Court of Judicature Act, Cap. 91 of the Laws of Belize.*

4. *Costs*

[4] The First and Second Respondents therein counterclaimed the following:

1. *A Declaration that the property now described and registered as Parcel 79, Block 9, August Pine Ridge Registration Section and Parcel 80, Block 9, August Pine Ridge Registration Section was from the time of acquisition, held by the Claimant and the First and Second*

Defendants, and Larry Myers on Trust for themselves as beneficiaries in equal shares pursuant to two Deeds of Trust dated 1st day of December, 1992.

2. *A Declaration that pursuant to the Deeds of Trust dated 1st December 1992 the Claimant Carl Raney, the First Defendant Wayne Raney, the Second Defendant, Rosa Lee Raney and Larry Myers are tenants in common of the beneficial interest in respect of Parcel 79, Block 9, August Pine Ridge Registration Section and Parcel 80, Block 9, August Pine Ridge Registration Section.*

3. *A Declaration that the Claimant and Defendants are each entitled to one quarter of the net rents and profits derived from the property described as Parcel 79, Block 9, August Pine Ridge Registration Section and Parcel 80, Block 9, August Pine Ridge Registration Section being beneficiaries pursuant to the Declarations of Trust contained in the Deeds of Trust dated the 1st day of December, 1992.*

4. *An Order directing the Claimant to furnish and verify by affidavit, accounts of the rents profits, dividends, interest and income received by the Claimant or by any other person by the order or for the use of the Claimant of the Property subject to the Trust.*

5. *An Order directing the Claimant to pay to the First and Second Defendants any and all sums in respect of rents, profits and interest found to be due to them as Tenants in common of the beneficial interest and beneficiaries pursuant to the express Deeds of Trust.*

6. *An Order directing the sale of the property described as parcel 79, Block 9, August Pine Ridge Registration Section and Parcel 80, Block 9, August Pine Ridge Registration Section.*

7. *An Order that the conduct of the said sale be committed to the Defendants.*

8. *An Order that any sums due to the Claimant in respect of the net proceeds of sale shall first be applied to of any sums owing to the First and Second Defendants in respect of rents, profits and interest.*

9. *An Order that the Claimant do contribute to the payment of taxes outstanding or to indemnify the Defendants in respect of any such taxes paid by them proportionate to his beneficial interest in the property.*

10. *Any necessary or consequential accounts, inquiries and directions.*

11. *Interest.*

12. *An Order that the Claimant do pay the costs of this Claim.*

13. Such further or other relief as the Court deems fit."

THE JUDGMENT

[5] The Trial Judge identified on the claim two issues for her consideration, namely:

1. Whether there was a verbal agreement for manager's fees to be paid by the Respondents to the Appellant and at what rate; and
2. If there was such an agreement whether there are manager's fees outstanding for the period July 1999 to July 2015 in the sum of Bz $1,920,000.00 or at all.

[6] On the counterclaim, the judge sought to determine:

1. Whether the Property is held by the owners as tenants in common in equal shares or as joint tenants;
2. Whether Carl Raney ought to furnish an accounting of the income and expenditure relating to the Property and if so for what period; and
3. Whether the Property must be sold and how should the proceeds of such sale be divided.

[7] The learned Trial Judge upon hearing the parties ordered that:

1. The claim is dismissed with costs to the Defendant on the prescribed basis.

On the counterclaim it is hereby declared that:

1. The properties now described and registered as Parcel 79, Block 9, August Pine Ridge Registration Section and Parcel 80, Block 9, August Pine Ridge Registration Section (the Properties) were, from the time of acquisition, held by the Counter-Claimant Wayne Raney, Rosalee Raney and Larry Myers and the Counter-Defendant Carl Raney on Trust for themselves as beneficiaries in equal shares pursuant to two Deeds of Trust dated the 1st December, 1992.

2. The Counter-Claimant Wayne Raney, Rosa Lee Raney and Larry Myers and the Counter-Defendant Wayne Raney are tenants in common of the beneficial interest in respect of the Properties.

And it is hereby ordered that:

3. *The Properties are to be valued by a licensed valuator after which they are to be sold for a price not less than the determined forced sale value without leave of the court.*

4. *The costs of the valuation and sale is to be borne by the parties equally.*

5. *The conduct of the said sale is committed to the Counter-Claimants.*

6. *Upon service of this order on Juan Martinez, he shall forthwith pay over to counsel for the Counter-Claimant the $10,000 he now holds for the benefit of the co-owners.*

7. *The payment of any outstanding taxes and fees on the Properties shall be made using the said $10,000 first and thereafter it shall be borne in equal parts by the parties. Such sum may be taken from the proceeds of sale of the Properties.*

8. *Any amount remaining from the proceeds of sale of the Properties is to be shared equally among the parties.*

9. *No order as to costs.*

[8] The Trial Judge made the order on the basis that the onus on the Claimant/Appellant to prove the existence of the alleged verbal agreement between the parties for fees was not satisfied, as "*he provided only his bald assertion*"[1] with no evidence to substantiate its existence. This included, but was not limited to, that "*he took no measures to document the agreement, he has no witnesses to it and no physical evidence which even makes some reference to it*."[2]

[9] The court could find no evidence that the Claimant/Appellant had conducted any farming or managed any farm. The court observed that, "*He seemed to be more of a custodian or property manager. This is not a foray in semantics. There is no doubt that he managed the tenant farmers, collected rent and paid taxes. The tenants managed their own farms and paid him as agreed*."[3] Ultimately, the court found that,

[1] para 9 of Judgment
[2] para 9 of Judgment
[3] para 10 of Judgment

"*if there was a management agreement, it could not be for the management of a farm since no farm existed for him to manage.*"

[10] On the point of the Claimant/Appellant being a property manager, the court further opined that, "*Carl was able to provide a spreadsheet of his fees but absolutely nothing relating to the income and expenditure of the 'farm'. He claims that he had employees over the years. Yet, not a record is provided for their payment*." The court further found it relevant to consider that a Property Manager would not have failed to inspect the Property for years and would not be unaware as to whether there were squatters on the land during that time which were the circumstances in the instant case. Significantly, the Trial Judge who saw and heard the witness noted very forcefully '*I find Carl to be a less than forthright witness' …'this court could find not a scintilla of believable evidence pointing to the existence of an oral agreement of any kind between Carl Raney and the other co-owners where he would be paid US$60,000 per year in management fees'.*

[11] In considering all of the aforementioned, the court stated that the Appellant's right to be paid does not come from what he or anyone else perceives he deserves for his effort, but what he asserted he contracted to receive, and in finding that such contract did not exist dismissed the claim.

[12] On the Counterclaim, the Trial Judge found that whilst the titles show that the Property was held by the co-owners as legal joint tenants, the Counter-Claimant proved to the requisite standard that the circumstances in their entirety created a beneficial tenancy in common between the parties in equal shares and therefore the right to survivorship did not herein apply between the parties. In spite of the existence of the four unities of a joint tenancy and that the Property was paid for in equal shares and transferred to the four co-owners without words of severance, the court considered upon the principle within ***Re Densham [1975] 3 All ER 726*** the evidence of the parties' intention within two deeds of trust signed by all the owners was an agreement to the contrary.

> *"NOW THIS DEED WITNESSETH that the trustees hereby jointly declare that they hold the property set out and described as mentioned in the Schedule hereto upon trust to sell the same and to stand possessed of the net proceeds of sale, after payment of costs and of the net rents and profits until sale after payment of rates, taxes, costs of insurance, repairs and other outgoing, upon trust, for themselves as tenants in common in equal shares"*

[13] Moreover, the court considered that additionally both the mortgage and release of mortgage documents signed by all the co-owners refer to the parties as tenants in common and the court could find no reason to impugn said agreements. The court also relied on equity's preference of a beneficial tenancy in common where the purchase is made for the purpose of a joint undertaking or partnership in trade, which these circumstances indisputably satisfy. No order was made for an account as requested in the counterclaim. Ultimately, the court ordered the Property to be sold, citing that clearly the parties no longer wished to do business together and therefore invoked its power under the **Registered Land Act** for the sale of the Property and the application and division of the proceeds.

THE APPEAL

[14] By **Civ. Appeal No. 17 of 2018**, the Appellant sought to appeal the Trial Judge's decision on the following grounds:

1. *That the Learned Trial Judge erred in the exercise of her discretion in failing to find that the Appellant acted as an agent of the Respondents and manager of the asset in Belize.*

2. *That the Learned Trial Judge erred in the law and misdirected herself in finding that there was no legally enforceable agreement for the payment of management fee(s) for the management of the asset by the Appellant and being the properties described as Parcels 79 and 80, Block 9, August Pine Ridge Registration Section and for the period July 1999 to November 2015.*

3. *That the Learned Trial Judge erred in law in finding that the joint tenancies of the properties as per the existing land certificates dated 11th July 2007 respectively, were severed and that the Appellant's and Respondents' respective beneficial interest in the properties are held by way of a tenancy in common.*

4. *That the Learned Trial Judge erred in law and misdirected herself in determining that the Deed of Trusts dated 1st December 1992 constituted evidence that the properties, from the date of its acquisition, was held by the Appellant and Respondents as tenants in common.*

5. *That the Learned Trial Judge erred in law and misdirected herself in determining that the Deed of Trusts dated 1st December 1992 constituted conclusive evidence of the Appellant's and Respondents' intention to sever the joint tenancy and for the properties to be treated as being held as tenancies in common.*

6. *That the Learned Trial Judge erred in law and misdirected herself in ordering that pursuant to powers in the Registered Land Act the properties be sold and with control and conduct of the sale being given to the Respondents solely.*

7. *That the decision is unjust and inequitable in all circumstance in that the Learned Trial Judge erred in that she failed to sufficiently weigh the evidence.*

8. *The judgment of the Learned Trial Judge is against the weight of the evidence.*

9. *The Learned Trial Judge erred when she ordered that the Appellant pay prescribed costs to the Respondents and that no costs were awarded to the Appellant on the counterclaim with the Respondents not having been successful on all claims.*

THE ISSUES

[15] The relevant issues on appeal will be discussed in relation to the grounds as submitted by the Appellant. In accordance with the parties' submissions, certain grounds will be addressed conjointly.

ANALAYSIS AND DISCUSSION

1. **Whether the learned Trial Judge erred in the exercise of her discretion in failing to find that the Appellant acted as an agent of the Respondents and manager of the asset in Belize; and whether the learned Trial Judge erred in finding that there was no legally enforceable agreement for the payment of management fees in respect of the aforesaid asset**

[16] The Appellant submits that there was agreement and awareness between the Property's co-owners that the Appellant would manage the Property upon his relocation to Belize. He maintained that management fees were due to him when the Property was to be sold and there was a constant refusal by the 1st

Respondent to agree to the sale. He avers that the learned Trial Judge erred in not awarding said fees considering that the Trial Judge found that an agreement did exist, citing paragraph 12 of the judgment:

> "[12] *Counsel for the Claimant tried to make much of an admission made by Wayne in other court proceedings outside Belize. The gist of which seemed to be that there existed an agreement between all the parties that Carl would manage the Property. The court found nothing significant in this, since the Defence has always alleged that Carl mismanaged the Property. The underlying admission being that he was to have managed the Property. Carl could only have been allowed to manage the Property by the agreement of all concerned. This is certainly admitted. What they denied, however, is that he was to be paid US $60,000 per year for performing and that continues to be the issue."*

[17] Furthermore, the Appellant references what he deems to be an admission upon cross examination of the 1st Respondent wherein it was acknowledged that there was an agreement that Carl Raney would supervise the property. In light of such agreement, the Appellant submits that he ought to be paid for such service. That the learned Trial Judge failed to quantify the Appellant's performance over the period claimed, even so on a quantum meruit basis. He avers that the Property had qualified to be within the productive sector and outline in submissions the minimum sum attributable to such service.

[18] The Respondents proffer that the Appellant sought the relief outlined in the Claim Form on the basis of an oral agreement for a fixed sum and had the onus of proving its existence which it failed to do. They reference the decision of ***Grenada Rice Mills Ltd. v Grenada Marketing and National Importing Board GD 2021 CA*** to support their submission that the Appellant has not demonstrated that the learned Trial Judge made a material error of law. They cite the following words of Thom JA at [45] that:

> "*It is well settled that an appellate court will only interfere with a judge's finding of fact where it is demonstrated that the learned judge made some material error of law or there was no basis on the evidence for the finding of fact or the judge failed to consider relevant evidence, or where the findings of fact cannot reasonably be explained or justified*."

They further reference '*where there is conflicting evidence her view of which witnesses are credible should be given great weight."*

[19] The Appellants pleadings were clear and concise, asserting a verbal contract for a specific sum. That he ought to be paid something, which the Appellant now claims on this appeal, and being entitled to payment on the basis of a settled agreement which is what was claimed, are two separate matters. The Trial Judge was asked to determine whether on the evidence she could discern the existence of the agreement as pleaded by the Claimant/Appellant and found that she could not.

[20] The Appellant asks that this court, if finding that an agreement existed, award fees on a quantum meruit basis, as one ought to be paid for services rendered. The Trial Judge, finding that there was indeed an arrangement which required the consent of the co-owners but one which excluded the fees as pleaded, does not constitute a material error in light of the court's examination of all the evidence submitted. The Trial Judge considered the evidence in this regard in detail including that there were no measures taken by the Appellant to document the agreement, there were no witnesses to it, no physical evidence which makes any reference to it and no attempt by the Appellant to claim or collect these alleged fees in all the years that elapsed.

[21] The judge also observed a distinction between fees for managerial duties of a farm which never materialized and supervisory duties in collecting the rent of the farm's tenants and ensuring payment of the relevant expenditures of the property. The Trial Judge states, "*…if there was a management agreement it could not be for management of a farm, since no farm existed for him to manage."* I agree with the judge's finding that she could not rightfully enforce the agreement pleaded where there was no evidence to support its existence.

[22] The Appellant urges in submissions *'the learned Trial Judge failed to quantify the Appellants' performance over the period claimed and even so on a quantum merit basis'*. Although the Appellant is one of the co-owners of the property, he assumed the responsibilities to the benefit of the other co-owners who did not share the same burden.

[23] The nature of a quantum meruit order is such that it operates within the realm of unjust enrichment. Accordingly, the three areas of dispute in respect of the quantum meruit claim are (1) the existence of enrichment, (2) the existence of an "unjust factor" and (3) the valuation of any enrichment. Such an order arises in circumstances wherein the claimant provides services to the defendant and both anticipate entry

into a contract which never materializes or is unenforceable. In such circumstances, it must be evident that the services were not expected to be rendered gratuitously.

[24] Authorities indicate that such an obligation is to be imposed only if justice so requires or if it would have been unconscionable for the plaintiff not to be recompensed. Amongst other considerations, the court must regard whether the services are of a kind which would normally be given free of charge; the extent of the risk taken by the claimant that the services would in the end be unrecompensed.

[25] In looking at the facts, the Appellant in the instant case has submitted the following extract of the 1st Respondent's cross examination:

> *Q. And in the petition you told the Court that it was an agreement that Carl Raney would manage the property and develop the same?*
>
> *A. Told the Court that Carl wouldn't?*
>
> *Q. You told the Court in your petition that Carl Raney being the Defendant, would manage the property, referring to Parcel 79 and Parcel 80 and develop the same?*
>
> *A. He would supervise, yeah.*
>
> *Q. No, I am asking if you told the Court that in your petition?*
>
> *A. If he lives here in Belize with his business he supervised this property.*
>
> *Q. Here you come to Court today saying to this Court that Carl Raney was never a manager of this farm which is the truth Mr. Raney?*
>
> *A. He was a vested owner in this property.*
>
> *Q. You would agree with me that….sorry let me rephrase that. You agree with me that managerial work normally ends in payment for those services?*
>
> *A. Yes.*
>
> *Q. Carl Raney through his management and diligence improved or I should say contributed to the increase value of that property?*
>
> *A. I think all parties contributed to the value of that property.*

[26] Therein, the 1st Respondent admits that managerial work normally ends in payment for such services but in the same breath, never admits that the Appellant conducted such service, only supervised within the capacity of a vested owner in the property who was resident in the jurisdiction nor does he admit that there would be payment. As aforementioned, the Appellant did have a burden which the other co-owners did not share. However, it cannot be completely excluded from consideration that the services could very likely be given free of charge.

[27] As to the extent of the risk taken by the Appellant that the services would in the end be unrecompensed, the Trial Judge who had the benefit of treating with the evidence firsthand observed that on several occasions attempts to sell the Property had failed. The Appellant maintained that he would be paid from the proceeds of any said sale. Therefore, it is reasonable to say that the Appellant would have foreseen some risk in continuing to conduct supervisory duties notwithstanding non-payment. It was noteworthy, as the Trial Judge pointed out when there had been a forfeiture following a failed sale the money received was shared equally among the co-owners and the Appellant *'did not then demand any management fees. This seems incredulous to say the least'.*

[28] Finally, there is a qualification on such an order that justice must require it. The Trial Judge highlighted that whilst the Appellant was able to provide a spreadsheet of his fees, he could produce nothing to the court related to the income and expenditure of the Property, including a record for employees' payments. The Trial Judge made a finding upon the evidence that the Appellant had mismanaged the Property, that he was a *'less than forthright witness'*. In the circumstances, I do not see the basis to overturn the Trial Judge's assessment. In summary, it was not unconscionable for the Trial Judge to have not ordered that the Appellant be recompensed for what he or anyone else perceives he deserves for his effort, given the circumstances and facts as she found them.

[29] In light of the aforesaid, on the basis of no material error made, the court will not disturb the Trial Judge's decision on the claim for fees owed to the Appellant and does not find the overall circumstances could support an order for remuneration on a quantum meruit basis.

2. **Whether the learned Trial Judge erred in law in finding that the joint tenancies were severed and the respective beneficial interests are held by a tenancy in common; and whether the Trial Judge misdirected herself in her consideration of the evidence leading to such finding**

[30] The co-owners paid for the Property in equal shares and ownership was transferred without words of severance, thereby creating a legal joint tenancy. This was reflected on the titles under the General Registry Act and the Registered Land Act.

[31] The Trial Judge noted **sections 36-38** of the **Law of Property Act of Belize** abolished the legal tenancy in common and established a legal joint tenancy as incapable of being severed but highlighted it was vital to consider the legal and equitable estate separately. In this vein, the equitable tenancy remains severable and where severed, the right of survivorship no longer follows. The **Registered Land Act** to which this Property is subject being registered land, permits the severance of solely the beneficial interest by virtue of **section 103.**

[32] The Trial Judge found that although the Property was held as a legal joint tenancy, the circumstances of the case led to the presumption of a beneficial tenancy in common. She found that the duly executed deeds of trust signed by all of the co-owners constituted a binding express agreement by the parties to treat the ownership as a tenancy in common and are conclusive evidence of their intention to do so.

[33] The judge also considered the mortgage documents signed by all the co-owners which refer to the parties as tenants in common in conjunction with the Respondent's submissions on the rationale of the purchase being a commercial enterprise. In support of the latter point, they referred to **Halsbury Laws of England** under the heading Equity Prefers a Tenancy in Common at paragraph 109 which notes:

> *"Where, however, parties make a purchase jointly in equal shares, then, where no contrary intention is shown, they are treated in equity, as at law as joint tenants. The latter rule does not, however apply where the purchase is made for the purpose of a joint undertaking or partnership either in trade or in any other dealing for the right of survivorship is incompatible with the relationship of partners, and in every such case whether the purchase money is advanced equally or unequally, equity treats the parties as tenants in common with regard to their beneficial interests in the property."*

The parties having purchased the properties for the purpose of a commercial agriculture enterprise and the court having found no reason to impugn the relevant documents was the basis upon which the court found in favor of the Respondents' counterclaim for a beneficial tenancy in common.

[34] The Appellant challenges this finding on the basis that the learned Trial Judge erred in considering any act which could have been deemed a severance of the joint tenancy. They refer to **section 103** of the **Registered Land Act** (RLA)which follows:

> *"(1) Where any land, lease or charge is owned jointly by two or more persons, no such person shall be entitled to any separate share in the legal estate in the land, and on the death of any such person, his interest shall vest in the surviving owner or the surviving owners jointly.*
>
> *(2) Subsection (1) shall not affect the right of a joint owner to release his interest to the other owners, or the right to sever a joint ownership in a beneficial interest whether or not the legal estate is vested in the joint owners:*
>
> > *Provided that where a legal estate (not being settled land) is vested in joint owners beneficially, and any owner desires to sever the beneficial interest, he shall give to the other owners a notice in writing of such desire and do such other acts or things as would, in the case of personal estate, have been effectual to sever the beneficial interest, and thereupon under the trust for sale affecting the land, the net proceeds of sale, and the net rents and profits until sale, shall be held upon the trusts which would have been requisite for giving effect to the beneficial interests if there had been an actual severance.*
>
> *(3) Any land, lease or charge owned jointly by two or more persons may not be disposed of except by all the joint owners acting together.*

[35] The Appellant further asks that the court consider **section 11 of the Registered Land Act** which provides:

"*From the date of any Order made by the Minister under section 4, all dealings relating to any land in the compulsory registration area named in that Order shall be made in accordance with this Act, and no dealing made otherwise than in accordance with this Act shall have any validity or effect."*

[36] That the parties acquiesced and confirmed to co-owning the properties as joint tenants, as evident from the Land Certificates; and no agreement or alteration was made by the Respondents nor was a claim for rectification of the land register for mistake and/or fraud pleaded or initiated. The Appellant submits that the requirements of the legislation were not satisfied as no such notice was ever provided to the co-owners and no evidence was provided as to any act of severance undertaken subsequent to the issuance of the Land Certificates which would warrant the judge setting aside the joint tenancy. They submit that there was no change in the course of conduct between the parties and the learned Trial Judge incorrectly considered the Deed of Trusts executed in 1992 which would have preceded the issuance of the Land Certificates in 2007.

[37] The Respondent contends that the learned Trial Judge by virtue of **section 34** of the **Supreme Court of Judicature Act** was at all times entitled to find that the circumstances before her created an equitable beneficial tenancy in common between the parties in equal shares, notwithstanding non-compliance with the statutory requirements of the Registered Land Act. The aforesaid **section 34** reads:

"(1) The Court or judge shall have power to grant to any defendant in respect of any equitable estate or right or other matter of equity, and also in respect of any legal estate, right or title claimed or asserted by him,

(a) all such relief against any plaintiff or petitioner as the parties defendant has properly claimed by his pleading, and as the Court or judge might have granted in any suit instituted for that purpose by that defendant against the same plaintiff or petitioner"

[38] Further citing **section 29** of the **Supreme Court of Judicature Act** which follows:

"*Subject to the express provisions of any other Act, in questions relating to the custody and education of infants and generally in all matters not particularly mentioned in this Act in which there was formerly*

or is any conflict or variance between the rules of equity and the rules of the common law in England with reference to the same matter, the rules of equity shall prevail in the Court so far as the matters to which those rules relate are cognisable by the Court."

[39] The Respondent omits to note that this discretion was subject to the express provisions of any other Act. **Section 103** of the **Registered Land Act** as relied upon by the Appellant expressly necessitates notice in writing to the other owners and acts of severance which the Trial Judge should have considered and does not reference in her judgment.

[40] Pursuant to the statutory requirement, the Appellant submits that no notice was issued by the 1st Respondent to the other co-owners apart from an attempt in the United States of America for the joint tenancy to be severed by way of petition with no similar application being filed in Belize.

[41] The English Court of Appeal in ***Harris v. Goddard [1983] 3 All E.R. 242*** considered the issue of whether the general prayer in a petition could constitute notice of a desire to sever the joint tenancy in the manner required **by section 36(2) of the Law of Property Act 1925**. Though the RLA is the relevant statutory instrument, the words of the provisions are indistinguishable. In said judgment, Lord Justice Lawton states:

"*When a notice in writing of a desire to sever is served pursuant to section 36(2) it takes effect forthwith. It follows that a desire to sever must evince an intention to bring about the wanted result immediately. A notice in writing which expresses a desire to bring about the wanted result at some time in the future is not, in my judgment, a notice in writing within section 36(2). Further the notice must be one which shows an intent to bring about the consequences set out in section 36(2), namely, that the net proceeds of the statutory trust for sale "shall be held upon the trust which would have been requisite for giving effect to the beneficial interests if there had been an actual severance". I am unable to accept Mr. Berry's submission that a notice in writing which shows no more than a desire to bring the existing interest to an end is a good notice. It must be a desire to sever which is intended to have the statutory consequences. Paragraph 3 of the prayer to the petition does no more than invite the Court to consider at some future time whether to exercise its jurisdiction under section 24 of the 1973 Act, or if it does, to do so in one or more of three different ways*."

As submitted by the Appellant, the Respondent made an unsuccessful application in the United States to sever the joint tenancy by way of petition. This is interesting as it supports that the Respondent would have at the time recognized that a joint tenancy was indeed in effect. However, even so, upon the application of the principle in ***Harris v Goddard***, this would not have sufficed as notice as it would have neither an immediate effect nor statutory consequences.

[42] As referenced by the Appellant in submissions, the Supreme Court in ***Bodden and Williams v Gentle BZ 2015 SC 30*** considered the same issue and adopted the reasoning in ***Harris***, finding that, "*The courts have not accepted words which sought anything less than an unequivocal and immediate severance. I therefore find that the claimants' stated willingness to release their interest was nothing more than an indication of what they were minded to do. It was not a release nor was it capable of constituting the Statutory notice required by the LPA or the RLA*.".

[43] On the other statutory prerequisite, whilst the Act itself does not outline the nature of "*such other acts or things as would, in the case of personal estate, have been effectual to sever the beneficial interest,"* as long-standing authority, the words of Lord Hatherley V.C. in ***Williams v Henaman 1 J&A 546*** and cited by Sterling J. in ***Re Wilks (1891) 3 ch. 59*** are instructive as to what constitutes acts of severance–

> "*A joint tenancy may be severed in three ways: in the first place, an act of any one of the persons interested operating upon his own share may create a severance as to that share. The right of each joint tenant is a right by survivorship only in the event of no severance having taken place of the share which is claimed under the jus accrescendi. Each one is at liberty to dispose of his own interest in such manner as to sever it from the joint fund - losing, of course, at the same time, his own right of survivorship. Secondly, a joint tenancy, may be severed by mutual agreement. And, in the third place, there may be a severance by any course of dealing sufficient to intimate that the interests of all were mutually treated as constituting a tenancy in common. When the severance depends on an inference of this kind without any express act of severance, it will not suffice to rely on an intention, with respect to the particular share, declared only behind the backs of the other persons interested. You must find, in this class of cases, a course of dealing by which the shares of all the parties to the contest have been affected*."

[44] It seems to me that the Trial Judge would have considered the trust deeds and the mortgage documents signed by all the co-owners as evincing a course of dealing sufficient to intimate that the interests of all were mutually treated as a tenancy in common. However, at paragraph 32 of the judgment, the learned Trial Judge observes that, "*it must be made clear at this juncture that the trust documents do not seek to sever the tenancy in common(sic) and they in fact cannot achieve a severance. They simply give a clear indication of the parties' intention to be accordingly bound.*"

[45] Lord Hatherley V.C in the aforementioned ***Williams v Henaman 1 J&A 546*** explains that it does not suffice to rely on an intention and in the instant case, it seems that there were no express acts of severance by which all co-owners would have been bound apart from said documents. The parties contributed to the Property equally, made decisions related to the whole of the Property altogether, and equally reaped the benefits of the Property.

[46] The Trial Judge observes at paragraph 44 that the case is "*predominantly a family dispute"* and characterized the agreement as having "*…the specifics of which seem more likely to have been determined over a kitchen table than a boardroom table…".* The conduct of the parties in dealing with the property supports the conclusion of an arrangement which does not fall strictly into the ambit of the envisioned partnership relationship incompatible with the right of survivorship. For one, by the Respondent's account there was no proper accounting of the income or expenses and the purpose of the enterprise being a farm was never realized as admitted by the Respondents.

[47] The requirements of the RLA are notice and acts of severance. The Respondents' submission that the Trial Judge was entitled to find that the circumstances before her created an equitable beneficial tenancy in common notwithstanding non-compliance with the statutory requirements of the Registered Land Act is not accepted. Equally, the Trial Judge's determination that the circumstances created a beneficial tenancy in common between the parties without recognition or reference to the RLA is unsustainable. The court therefore finds that the learned Trial Judge erred in law and the beneficial joint tenancy subsists.

3. **Whether the learned Trial Judge erred and misdirected herself in ordering that pursuant to the powers in the RLA the properties be sold with control and conduct of the sale being given to the Respondents solely**

[48] The Trial Judge states at paragraph 43 of her judgment that:

> "*It is clear that the parties no longer wish to do business together. The court will invoke its powers under the Registered Land Act and an order will be made for the sale of the properties and the application and division of the proceeds."*

[49] The Appellant contends that the learned Trial Judge did not have the power to make an order for the sale of the Property upon severance of a joint tenancy within the confines of the Registered Land Act. They further challenge control of the sale being given to the Respondents' solely and without the direction/supervision of the court or a licensed auctioneer. The Respondents aver that the court has such power pursuant to the provisions in the aforementioned Act relating to trusts for sale.

[50] The Property is held as a legal joint tenancy and by **section 105 of the RLA,** a trust for sale to be held by the trustees was created and is deemed to subsist until the land has been transferred under the direction of the persons having an interest in the proceeds of the sale. These persons being the parties to the instant case submitted to the court's jurisdiction as relates to issues of ownership. Therefore, the court within such jurisdiction was entitled to direct the sale of the Property having mind to the demands of the circumstances.

[51] Therefore, whilst I agree with the Appellant that the basis for such an order may be flawed, the court nonetheless was so entitled to make an order for the sale of the Property and by extension, the manner in which the Property was to be sold.

[52] Having found that the beneficial joint tenancy subsists, any sale proceeds are to be split equally considering the right of survivorship for the benefit of the remaining co-owners. The manner of sale as ordered by the Trial Judge remains the same apart from conduct of sale, the responsibility of which shall be borne equally by the parties under the court's supervision.

4. **Whether the learned Trial Judge erred when she ordered that the Appellant pay prescribed costs to the Respondents and that no costs were awarded to the Appellant on the counterclaim with the Respondents not having been successful on all claims**

[53] The Appellant submits that as costs follow the event, the Trial Judge should have awarded costs in his favor as the Respondents were not successful on all fronts. The Respondent opposes this argument on the ground that the Appellant's claim was dismissed in its entirety and as such, the judge properly awarded costs to the Respondents.

[54] The Trial Judge made the order for costs on the basis that: "*This is predominantly a family dispute. The orders made on the Counter Claim really clarify the legal position for the parties and give guidance on the way forward. The court finds it unnecessary in the circumstances to make any award of costs."* As we disagree with the Trial Judge's decision on the Counter Claim and accept the Appellant's defence in that regard the Appellant would be entitled to costs on the Counter Claim in the court below. The Appellant's appeal with regard to the purported agreement was dismissed but the appeal with regard to the Counter Claim allowed. In the circumstances it was determined both parties should bear their own costs.

CONCLUSION

[55] In all circumstances,

1. We uphold the Trial Judge's Order dismissing the Appellant's claim and the award of costs to the Respondent below on the prescribed basis is also upheld.

2. With regard to the Trial Judge's decision on the counterclaim the declarations made at paragraphs 1 and 2 by the Trial Judge are set aside and it is ordered that the properties now described and registered as Parcel 70, Block 9, August Pine Ridge Registration Section and Parcel 80, Block 9, August Pine Ridge Registration Section were held by Carl Raney, Wayne Raney, Rosa Lee Raney and Larry Myers as reflected by Land Certificates dated 11th July 2007 as joint tenants there being no severance in compliance with the Registration Land Act effected.

3. Paragraphs 3, 4, 6, 7, of the Trial Judge's order is upheld as amended, that is

   (a) The properties are to be valued by a licensed valuator after which they are to be sold for a price not less than the determined forced sale value without leave of the court.
   (b) The costs of the valuation and sale to be borne by the co-owners equally.
   (c) If not already done upon service of this order on Juan Martinez, he shall forthwith pay over to Counsel for the Respondents the $10,000 he now holds for the benefit of the co-owners.
   (d) The payment of any outstanding taxes and fees on the properties shall be made using the said $10,000 first and thereafter it shall be borne in equal parts by the co-owners. Such sum may be taken from the proceeds of sale of the Properties.

4. The conduct of the sale is committed to the Appellant and the Respondent.

5. Any amount remaining from the proceeds of sale of the Properties is to be shared equally among the surviving joint tenants.

6. The Appellant is entitled to costs of the counterclaim in the proceedings below.

7. Both parties being partially successful on the Appeal, each party shall bear their own costs on the Appeal.

Margaurite Woodstock Riley
Justice of Appeal

I concur.

Arif Bulkan
Justice of Appeal

I concur.

Michelle Arana
Justice of Appeal