



[2022] JMSC Civ. 246

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO 2017HCV02112

BETWEEN	DONNETTA JADDOO	CLAIMANT
AND	DAVID JADDOO	DEFENDANT

IN CHAMBERS

Ms. Jacqueline Cummings instructed by Archer Cummings & Company for the Claimant

Mr. Steve O. Jackson instructed by the Law Office of Steve Jackson for the Defendant

Heard on: February 24, July 21, December 1, 9 and 19, 2022

DIVISION OF MATRIMONIAL PROPERTY – PROPERTY (RIGHTS OF SPOUSES) ACT– SECTIONS 2, 6, 7, 13 AND 14 – THE FAMILY HOME – OTHER MATRIMONIAL PROPERTIES – WHETHER WIFE IS ENTITLED TO A SHARE OF THE OTHER MATRIMONIAL PROPERTIES – WHETHER WIFE IS ENTITLED TO PART OF THE BUSINESS – HOW TO CALCULATE WIFE’S INTEREST IN BUSINESS WHICH HAS BEEN SOLD

REID, ICOLIN J.

Background

[1] Donnetta Jaddoo (hereinafter referred to as ‘the Claimant’) and David Jaddoo (hereinafter referred to as ‘the Defendant’) were married on June 4, 1989, and the union produced three children. During their marriage, a business was established, and three properties were acquired: 23 Begonia Lodge in the parish of Saint Catherine (hereinafter referred to as ‘the matrimonial home’); Mickleton called Venecia Lane in the parish of Saint Catherine (hereinafter referred to as ‘the Mickleton property’); and 25 Begonia Lodge in the parish of Saint Catherine

(hereinafter referred to as 'the Apartment Complex'). However, the marriage broke down due to irreconcilable differences and the Defendant filed a Petition for Dissolution of the Marriage on October 25, 2013, and was granted a Decree Absolute on May 9, 2016.

The claim

[2] This is an application for, inter alia, division of property. It was filed by the Claimant against the Defendant by way of Fixed Date Claim Form filed June 30, 2017. The Court had earlier granted permission for the Application to be brought under the Property (Rights of Spouses) Act ('PROSA'), more than 12 months after the Decree Absolute had been granted.

[3] The Claimant, seeks against the Defendant, the following orders:

- “1. *The time to make the application for the division of property pursuant to the Property Rights of Spouses Act be extended to the date of the filing of this Fixed Date Claim Form herein.*
2. *The Fixed Date Claim Form and all supporting documents be permitted to stand as if filed in time.*
3. *A Declaration that both the Claimant and the Defendant are equally entitled to a one half (1/2) interest in the following properties:*
 - i. ***ALL THAT*** parcel of land part of ***BEGONIA LODGE*** situate at ***LINSTEAD*** in the parish of ***SAINT CATHERINE*** being the Lot numbered ***TWENTY-THREE*** on the Plan of part Begonia Lodge aforesaid deposited in the Office of Titles on the 3rd of September, 1959 of the shape and dimensions and butting as appears by the Plan thereof hereunto annexed and being part of the land comprised in Certificate of Title registered at Volume 950 Folio 499 hereinafter referred to as 'The matrimonial home'.
 - ii. ***ALL THAT*** parcel of land of part of ***MICKLETON*** called ***VENEZIA LANE*** in the parish of ***SAINT CATHERINE*** containing by survey Eight Hundred and Twenty- Three Square Meters and Seventy-Seven Hundredths of a Square Meter of the shape and dimensions and butting as appears by the plan thereof comprised in Certificate of Title registered at Volume 1369 Folio 976 of the Register Book of Titles herein referred to as "The Mickleton Property".

- iii. **THAT THAT** parcel of land part of **BEGONIA LODGE** situate at **LINSTEAD** in the parish of **SAINT CATHERINE** being the Lot numbered **TWENTY-FIVE** on the plan of Begonia Lodge aforesaid deposited in the Office of Titles on the 3rd day of September, 1959 of the shape and dimensions and butting as appears by the plan thereof hereunto annexed, and being the land formerly comprised in Certificate of Title registered at Volume 1164 Folio 792 now comprised in Certificate of Title registered at Volume 1327 Folio 784 of the Register Book of Titles hereinafter referred to as "The Apartment Complex".
4. *Either party will have the option to purchase any or all of the other party's interest in the properties namely "the matrimonial home" "the Mickleton property" and "the Apartment Complex" within 90 days of the date of the order herein, failing which the said properties "the matrimonial home" "the Mickleton property" and "the Apartment Complex" be sold on the open market and the net proceeds of the sale be divided equally between the Claimant and the Defendant.*
5. *A valuation of "the matrimonial home" "the Mickleton property" and "the Apartment Complex" be conducted by a valuator agreed upon by both the Claimant and the Defendant failing which the Registrar of the Supreme Court be empowered to appoint the valuator. The market value named in the said valuation report be deemed as accepted by the parties as representative of a true market value of the respective properties.*
6. *The cost of the valuation be borne equally by both parties.*
7. *In the event that the option to purchase is exercised by either party within the time stipulated herein the cost of transfer shall be borne by the party exercising the option solely.*
8. *The Claimant's Attorney-at-Law having carriage of sale of any of the properties to be sold on the open market.*
9. *If any or all of the properties, namely "the matrimonial home" "the Mickleton property" and /or "the Apartment Complex" are sold on the open market then the cost of transfer including but not limited to the closing cost, government rates and taxes, Attorney's cost on transfer and realtor's commission, if any, are to be shared equally by the parties.*
10. *The Defendant be restrained from taking any steps by way of sale, mortgage transfer, assignment or whatever means from the dispensing with any right, title, interest which he now purports to have in any of the said properties or to do any act whatsoever to create any right, title, interest herein pending the determination of this matter by this Honourable court.*

11. *The Registrar of the Supreme Court be empowered to sign all such documents necessary for the completion of any and all transfers and /or sales of the properties subject to this order in the event of the incapacity, neglect or wilful refusal of either the Claimant or the Defendant to sign any such documents.*
12. *The Defendant give a detailed accounting of the rental collected for “the Apartment Complex” from February 2011 to date and pay to the Claimant the net rental proceeds within 30 days of the date of this order. In the alternative, the Defendant pay the Claimant no less than the sum of Five Million and Sixty Thousand Five Hundred and Twenty Dollars (\$5,060,520.00) being rental proceeds earned from “The Apartment Complex” from February 2011 to date and continuing plus interest.*
13. *The Defendant is to give a detailed accounting as to the location, disposal and current status of all the bank accounts, assets, machinery, and equipment of the business the parties started together.*
14. *The said business and all its assets are to be valued and the Defendant pay the Claimant the equivalent net value of her half share of the business and its assets.*
15. *There be such further and other relief as this Honourable court deems just.”*

[4] The Defendant, in response, has disputed the 50% interest claimed in the Mickleton property and the business and has asked the Court not to declare any interest in the property or business for the claimant. He agrees that the property described as the matrimonial home is to be shared equally but asked that it be transferred 100% solely to the claimant and the Apartment Complex be transferred solely to him. He further asserts that the claimant has no interest in the Mickleton Property by virtue of the Limitations of Actions Act ('LAA').

The Evidence

[5] At the hearing of the matter, the Claimant relied on the evidence contained in two affidavits filed on June 30, 2017, and August 28, 2018. Both affidavits were accepted as her evidence-in-chief and she was cross-examined.

[6] The Defendant relied on the evidence contained in one affidavit filed on January 29, 2018. It was allowed to stand as his evidence-in-chief, along with his oral testimony elicited by way of amplification and he was cross-examined.

Claimant's evidence

[7] The Claimant stated that all three properties and the business were acquired through their joint efforts and resources. They both own the Apartment Complex and the Mickleton property as joint tenants.

The Business

[8] The Claimant stated that she and the Defendant started a Frozen Meat Distribution business "from scratch" in 1988. She said that when the business started, she was working at the Milo Factory and also doing all the "bookwork" or accounting for their business. The working capital of the business was financed by them getting goods on consignment, on credit, using their joint savings, borrowing from the bank, and the use of overdraft facilities. The Claimant said she also had to borrow money from her father to get the business running. She stated that they started with one Volkswagen van and then over time as the business expanded, by acquiring two more vans and thereafter a Leyland truck. She emphasized that both she and the Defendant worked hard in the business.

[9] When the business started, they were both living in rented premises, but they later married and used some of the proceeds of the business along with their combined savings to purchase the land at Begonia Lodge. They started to build the matrimonial home out of their combined savings and also from earnings from the business.

[10] She said that the business was operated from the Matrimonial home, and as the business grew and after having their first two children, they decided that she should stay home and look after the children, with the assistance of the helper, and concentrate on the day-to-day operations of their business. She thereafter

resigned from her job at Milo and worked full-time in their business while taking care of the children.

- [11] The Claimant indicated that sometimes she had to lift some of the goods even though they were heavy, but she did it for the sake of their children's future education. She said that she received goods from the truck and assisted in packing them into the cold room in their home. Her role in the business included but was not limited to the "bookwork" or accounting, writing cheques and banking but included buying goods, receiving and selling goods, as the need arose.
- [12] The Claimant also stated that from time to time over the years the truck or van would break down usually with goods in it. The Defendant would inform her of his location, for example in Duncans in the parish of Trelawny or Brown's Town in the parish of St. Ann and she would arrange for a mechanic to have the vehicle repaired. In such cases, with the assistance of the side man, she would take the goods and sell them while the vehicle was being repaired to ensure that the goods did not spoil. Their business would start as early as 2:00 a.m. On many occasions, she took the children with her on early morning missions which resulted in them missing school as the Defendant had developed "extra-curricular activities" and was missing in action both at home and in the business.
- [13] The net income from the Frozen Meat business was approximately \$300,000.00 monthly. She maintained that the Defendant has excluded her from the operation of the business since 2010, and she was not aware of the business being closed since 2013. She emphasized that they started, operated and together slowly built the business from joint funds with goodwill and sweat equity, and therefore, the Defendant had a duty to account to her for the business and its assets.
- [14] She pointed out that they had no separate individual resources before they got married, and the Defendant had no personal resource other than their business from which to purchase or build anything. All their earnings were from the rental

they obtained from the apartments and the frozen meat and transportation businesses which they both operated.

- [15]** Upon cross-examination, when asked if the Defendant supported her financially, she stated that they both operated the business, and the Defendant gave her money each week from the business to take care of the house and give the children lunch money. She asserted that before the marriage she was working at Nestle Jamaica Limited and was financially stable. She rejected the suggestion that the Defendant paid all the bills, and she did not contribute. She said that during the marriage, they were both responsible for the bills which included water, light, and the internet. She maintained that she did the accounts weekly for the business and she would include things such as light bills, lunch money, school fees and internet bill as expenditures.
- [16]** She insisted that monies came from her personal savings account and her resources during the marriage. The Claimant said personal money would be shared between them in the business. She said the Defendant would give her \$16,000.00 from the business each week to take care of the house and give the children lunch money.
- [17]** She denied that only the Defendant contributed funds towards the purchase of the land upon which the matrimonial home was built. She insisted that the money for the purchase of the land and the construction of the matrimonial home came from the revenue of the business.
- [18]** She stated that the Defendant hired a helper to assist with the household duties but denied that he was primarily responsible for paying the helper. She said when she did the accounts, this payment came from the business. She admitted obtaining a motor car, benefitting from utilising a gym and travelling at least once per year, all of which were funded by the business. She denied that she travelled four times per year. She also denied receiving \$25,000.00 each fortnight as payment from the business. She maintained that it was \$16,000.00 per week to

pay the helper, buy food and go to the gym and this was not at the start of the business. She said this was around 2000.

- [19]** She denied that the business was started in 1984. She maintained it began in 1988 and that they both worked in the business. The Claimant admitted that people were employed to do the movement and transportation of goods, but she pointed out that she assisted when no one else was available to transfer the goods from the truck to the house for storage. She emphasized that she had to do both physical labour and administrative work in the business.
- [20]** The Claimant explained that the business dealt with heavy goods such as rice, peas, chicken back, liver, chicken, fish, kidney, and oil. She would take up 40lbs packs and the guy would take up the 60lbs packs. She agreed that the primary duty of the staff was to take up heavy goods but said that that was only if they were present and, therefore, she engaged in physical labour whenever the need arose.
- [21]** She rejected that she had watched the Defendant in the early mornings when she took the children out of their beds to follow him and was not transacting business. She testified that she would be on the road from early mornings conducting business on behalf of the Defendant. She stated that the Defendant left home at 2:00 a.m., and he would then call to say the truck broke down about ½ hour or 1 hour later. She would put the children in the pick-up, go get the mechanic, and drive them to Trelawny. She indicated that this happened a lot of times either in Duncans, Trelawny or sometimes around town.
- [22]** She acknowledged that they both owned the apartment complex but denied that she collected rent for six years from the apartments. She stated that the Defendant gave her four apartments. She said that she was unaware that the apartments ran into a wreck after the tenants stopped paying rent. The Claimant said that the last time she visited the apartments was sometime after 2011, after the tenants had vacated the property. She pointed out that in or about February 2011, she lost

access to the premises on which the apartment complex is located and since then, she had not spent any money on the upkeep of the apartment complex.

- [23]** She stated that when the Defendant left the matrimonial home, the children were all living with her until her son, Jeason, left after finishing high school. She expressed that she had equally assisted financially with their children's education and upbringing, but she did not have the resources the Defendant possessed since he took sole control of the business and the apartments. She contended that the Defendant used the resources they both created to support the children and deprive her of the fruits of her labour.
- [24]** She admitted that there was a trust fund set up to assist Raschell to attend university. She asserted that she contributed to Raschell's University education.
- [25]** On re-examination, she stated that she and the Defendant did not have separate bank accounts during the marriage. She said that both their names were in the Scotia Bank chequing account and the Workers Bank chequing account. With respect to the monies from the business, she explained that they took out the expenditure and then lodged some to take care of the cheque and overdraft. She stated that after separation, she maintained the children out of the rent that she collected from the apartments, and she did not receive \$16,000.00 per week from the Defendant after he left the marriage.
- [26]** On the Court's enquiry, the Claimant said the business was operated from the family home and goods were kept in the cold storage area. She said when the Defendant left out in the mornings, he would return home after 5:30 p.m. She explained that her day started by getting the children off to school, going back to the house to do some housework, thereafter, doing bookwork for the business, and then returning to collect the children from school.

The Apartment Complex

[27] The Claimant explained that as the business grew, she proposed to the Defendant about purchasing another piece of land to build apartments for rent since it would be difficult to deal with the business of buying and selling in their old age. He agreed and they later acquired lot 25 at Begonia Lodge as joint tenants, and built the Apartment Complex, out of their joint savings, earnings from the business, and a bank loan. The property comprised six, two bedrooms-one-bathroom units which they rented out to tenants. The net income from the apartments was approximately \$105,000.00 monthly.

[28] She said that after the Defendant left the matrimonial home, she collected the rental income from four of the six apartments which allowed her to support herself and the children. The Defendant collected the rental income from the other two apartments. She said that the Defendant later befriended the daughter of one of the tenants at the Apartment Complex and all her tenants started refusing to pay her the rent. He also conspired with the tenants, so that they surrendered the keys to those apartments to him and after they vacated the property, he changed the locks without her knowledge and took all six apartments for himself. She added that the Defendant has since rented out her four apartments and collected all the rental income from the Apartment Complex from February 2011 to date. She said that he, therefore, owes her \$4,864,000.00 in misappropriated rental income calculated as follows: \$16,000.00 per apartment for four apartments for seventy-six months and continuing.

The Mickleton Property

[29] The Claimant further explained that she also made another proposal to the Defendant that in their old age, they would not be able to manage to move up and down the stairs in their matrimonial home, so they should buy a flat piece of land and build a small house for retirement. He agreed and they bought the Mickleton property as joint tenants, using cash from their joint bank account. She asserted

that the house that was built on their land at the Mickleton property was financed from the earnings from their business and the apartments.

Defendant's evidence

[30] The Defendant agreed that the Mickleton property and the Apartment Complex were registered in their joint names. He agreed that although lot 23 Begonia Lodge is registered in his sole name, it was the matrimonial home. He denied that the properties were purchased from their joint resources. He outlined that the Claimant was employed and whatever she earned she generally used to sustain herself, and her activities. He stated that she did not contribute to the purchase of the properties.

[31] The Defendant asserted that by the time the business had started, they had also started having their children; the Claimant lost her job, and she became a housewife. He added that the Claimant stayed at home, and in addition to the money he gave her to run the matrimonial home, he gave her at least \$40,000.00 each month for her personal use. He said their livelihood was sustained solely by the business he operated. He pointed out that she stayed at home and assisted in caring for their children even though there was a full-time helper that came in five days each week and assisted with the cleaning, washing, and general household duties. He contended that if the Claimant was to benefit, it was not on the basis that she had contributed, but rather on the basis that they shared a relationship, and it was in this regard that he added her name to the two titles on which her name now appears.

The Business

[32] He denied that the Claimant assisted in starting the business. He maintained that he started his business alone with his sole funds. He stated that the Claimant was a factory worker and was not able to assist in the business at all. He stressed that he did his books himself, which was not a lot at the time. He asserted that the business was conducted mainly on the road whereby he would travel into Kingston

to purchase chicken back, then he drove around the “country” areas where he sold it. The Defendant pointed out that it was never a structured business where it needed any timely supervision nor was there any office for the business as this was never necessary. He said the business simply involved him going on the road purchasing the chicken back and distributing it on the road.

- [33]** The Defendant vehemently denied that the Claimant did any physical labour for the business. He further expressed that they had one truck, and he was the driver, and at no time was the Claimant called upon to deliver any goods. He did not recall any time that the Claimant had to receive any goods or lift any heavy goods, because they had a sideman, and it was he and the sideman that did the lifting of goods.
- [34]** The Defendant accused the Claimant of waking up the children sometimes when he is leaving, putting the children in her car, and driving behind him “to watch him”. He maintained that there was never any need for her to travel early mornings. He said that the Claimant’s contribution to the business was always very minimal and was limited to writing cheques now and then and calling the mechanic when the need arose. The Defendant said that for the duration of the business, the Claimant received monthly sums above \$40,000.00 for her personal use. He said he sold the two Volkswagen motorcars that he previously owned to purchase the Leyland truck. He stated that the business closed in 2013 and the Leyland truck was sold.
- [35]** The Defendant added, in amplification, that every fortnight the Claimant got \$25,000 in her hand, this was more like a salary for what she had done and which included taking care of the kids and receiving some goods from time to time by just checking them off. There was no truth to her doing manual work, as most of the goods weighed 100 lbs.
- [36]** He said the business started sometime in 1984 and he acquired a Volkswagen motor car from Charles Borrow. He was assisted by a mechanic named Dermot

William, and a family friend named Errol Barrett who assisted him in putting the vehicle together to start selling chicken back.

- [37]** Upon cross-examination, he testified that he got the money to buy the Volkswagen from his savings at Workers' Savings and Loan Bank, but he could not recall how much he paid for it. He reluctantly acknowledged that he personally borrowed monies from the Claimant's father to help start the business and that he and the Claimant also took out bank loans to start the business. He said he was working at Sugar Industry Research before he started the business.
- [38]** At first the Defendant denied that he took the first set of goods on consignment but later admitted that, in time, they did take goods on consignment and on credit. He admitted that the first money he borrowed for the business was from the Claimant's father.
- [39]** The Defendant said he bought a Volkswagen van which he used to transport the goods for the business. He said that after a while he bought another Volkswagen and a truck from the proceeds of the business. He could not recall if he had a Bulldozer but said it was possible that the Claimant could have bought one for the business and he did not know.
- [40]** The Defendant said that both he and the Claimant took out a loan to work on the matrimonial home, but he denied that it was also to invest in the business. He admitted that he took out more than one loan, but he could not recall the purpose of the second loan. He was unable to recall whether the second loan served two purposes, which was for the building of the 1st and 2nd floor of the dwelling and also to continue an existing facility to provide capital to support the meat distribution business. It was only after he was confronted with a document that he agreed with counsel that the business operated an overdraft facility in both his and the Claimant's names.
- [41]** He said the business has not been operational since it closed in 2013 and the Claimant was fully aware of this.

The Mickleton property

- [42] He said the Mickleton property was acquired in 2004 as a vacant parcel of land and over the years he constructed a dwelling house on the land. He denied that the money from the business bought the Mickleton property. He said he had friends in the hardware and trucking business, and they were the ones who helped him to put the money together. He stated that they donated most of the material to him and he also got free labour. He insisted that he got free labour from them from time to time, and family also dropped by to help.
- [43] He highlighted that since its acquisition, the Claimant has never occupied or exercised any rights of ownership over the said Mickleton property. He added that according to the Limitations of Actions Act (LAA), the Claimant has dispossessed herself of any interest in the said property. He accepted that the title is recorded in their joint names, but he said that her name was placed on the title because they were husband and wife, and not because she had any interest or input in the said property. He said because they were husband and wife during the marriage, they shared everything including joint accounts.
- [44] He said he used part of his funds from the business to build the Mickleton property. He again reluctantly acknowledged that when he was building the Mickleton property he knew that the Claimant owned a part of that property.

The Apartment Complex

- [45] The Defendant stated that the Apartment Complex was duly registered in their joint names, and that they have both benefitted from the property over the years. The Defendant admitted to borrowing monies from the bank when he was building the apartment. He agreed that when it was fully rented it yielded a net income of approximately \$105,000.00 monthly. He also said the Apartment Complex consisted of 6 apartments and he had told the Claimant to collect the rent each month to maintain herself and the children. However, he said that shortly after their separation, their son Jason came to live with him, and he then changed the

arrangement for the collection of the rent with the Claimant. He started collecting the rent for one of the apartments to assist in the maintenance of Jeason.

[46] For five years after their separation, the Claimant alone collected the rent for five of the six apartments that existed at the time. He stated that he later borrowed money from the bank and added another apartment. He said that the Claimant changed the arrangement with her tenants, in terms of the collection of the rent and they failed to pay the rent in the bank as she had requested. The tenants also vandalized some apartments and later moved out. The Defendant said that it cost him over \$300,000.00 to effect repairs to the apartment to place them back in a tenantable state of repairs.

[47] He denied taking a deep freezer with him when he left the matrimonial home. Instead, he explained that what he took was described as a cold room and he carried it to the Apartment Complex. He admitted that he took the truck with him and continued the business from the Apartment Complex for a while.

[48] In cross-examination, the Defendant denied that he excluded the Claimant from the business when he took the cold room and truck to the Apartment Complex. He acknowledged that he said in his statement that the Claimant did administrative work and that when he left, she no longer did the administrative part of the business. He accepted that when he left, he no longer gave her \$40,000.00 or \$16,000.00 monthly from the business. He said she got money, but he did not give her money in her hand. This is in contrast to when he lived in the matrimonial home and would give her money in hand or she would take it from the business or the rental of the Apartment Complex. He also accepted that when he left, she no longer had access to take money out of the meat business.

[49] He stated that the business closed in 2013 because of the market and he had to stay home at the Mickleton property, and look after his daughter Janell, who was just starting high school. At first, the Defendant denied that he came with the police one night and took both daughters from the Claimant. However, after he was

pressed by counsel, he later recanted and admitted that he never asked the Claimant for the children, but he just came with the police and took them. He denied that he closed down the business after they had discussions about the division of property. He also denied that after he took the children from the Claimant, he took over all the apartments. He admitted that he is now in control of all the apartments but can't recall when he assumed control. He later agreed with the suggestion that it was from 2011. He further agreed that when he collected all the rent in 2011, he never gave the Claimant any of it until a Court ordered him to do so. He reluctantly admitted that the Claimant owns half the apartments.

[50] He indicated that in 2011, he believed the rent was somewhere about \$75,000.00 per month, for the six apartments at a rate of \$15,000.00 per apartment per month. After being pressed by Counsel Ms. Jacqueline Cummings, the Defendant grudgingly admitted that in 2011, it would be about \$90,000.00 for the rental of the apartments. He said in or about 2015, he borrowed money from the bank and added a 7th apartment. He was now getting \$25,000.00 per month for each apartment and so was collecting \$175,000.00 per month in total. He acknowledged that the court ordered him to pay the Claimant \$75,000.00 of that amount. However, he disagreed that if the Claimant owned 50% of the apartment, she would be losing \$12,500.00 per month.

[51] He agreed that they were married on June 4, 1989, and later had three children. He warily agreed that he bought the Begonia land on which the matrimonial home was built somewhere about 1990; the Begonia Apartment land in about 2001; and Mickleton land, somewhere about 2004. He agreed that all the properties were vacant land when they were purchased and he later built houses, and an apartment complex on them.

[52] He said he recalled that he took the children from the Claimant sometime in 2011 and not 2009. He denied the suggestion that in 2011 he took over the apartments from the Claimant. After being confronted with his Affidavit he accepted that he was aware that some of the tenants had stopped paying rent to the Claimant. He

denied the suggestion that he lived at the same Apartment Complex when the Claimant was supposed to be collecting rent. He also denied that he told the tenants not to pay the Claimant any more rent.

Current status regarding the matrimonial home

- [53]** The Defendant said he did not know if the Claimant went to work overseas in 2001. He admitted that he broke off the locks at the matrimonial home in 2021 and took possession of the property. He said he didn't realise that his actions amounted to a criminal offence. He denied knowing that the Claimant had a gardener and a caretaker looking after the property while she was overseas. He agreed with the suggestion that the Claimant still had all her furniture and her things in the home.
- [54]** He said he has since rented out part of the eight-bedroom matrimonial home for \$20,000.00 per month. He said that he started collecting rent from the tenant at the matrimonial home in May 2022. He also accepted that he had never disclosed that he was renting out the matrimonial property.
- [55]** He denied the suggestion that he excluded the Claimant first from the children but accepted that he did exclude her from the business and then from the apartments. He also accepted the suggestion that he excluded her when she was a housewife, not working for anybody but the business. He agreed that he wanted to deprive her of any proceeds of the meat business after he carried the business to the Apartment Complex. He reluctantly agreed that he did not want to give her any of the proceeds of the rent from the Apartment Complex after he took it over in 2011 and that it was the Court that made an order for him to pay her a portion of the rental proceeds.
- [56]** He admitted that from 2011 to June 2019 he collected all the money for the apartments. He denied that he was still in arrears even though the judge ordered him to pay \$75,000.00 per month. He said all monies had been paid up and he had a June 2022 receipt. He agreed that he was ordered to pay the sums on 1 July

2019 and thereafter on the 1st day of every month. However, he said that he had the receipt for monies paid on the 25th of June for the month June.

[57] He stated that he makes a living from the rental of the property, and he does farming just to keep himself occupied, exercise, and keep fit. He said Janell was 20 years and presently attending university. He accepted that when he left the Claimant, the children were 4, 12, and 16 years in 2006, and when he took them from her, they were 7, 16, and 19 years in 2009.

[58] He could not recall how much he sold the truck for in 2013. He denied the suggestion that even when he left the Claimant, she paid the taxes for all the properties. He denied that he bought his daughter a Pajero or Prado or any vehicle or that he bought his son an apartment overseas. He hesitantly accepted the suggestion that he was not speaking the truth that he used his funds to buy the 1st Volkswagen. He grudgingly accepted that at all times the Claimant was integral in the operation of the business, in that she helped him to run the business.

[59] On the Court's enquiry, the Defendant said they had one joint account at Workers Savings and Loan Bank and after that bank closed, they moved the account to Scotia. He said the meat business operated from the matrimonial home and covered the areas from Kingston to Trelawny. He reluctantly admitted that the Claimant's administrative function was receiving and signing for goods. He said the goods were made up of chicken back, turkey neck, liver, red peas, and cooking oil. He also conceded that no one else worked at the business from the house except the Claimant. He said the Claimant's things are all over the place at the matrimonial home and so only one of the bedrooms was rented to a doctor.

Submissions

Claimant's Submissions

[60] The Claimant's written submissions were supplemented by further written closing submissions. Counsel submitted that there is no issue with the matrimonial home

and the Claimant's entitlement to 50% interest (see **Carol Stewart v. Lauriston Stewart** [2013] JMCA Civ 47). She indicated the parties have agreed that they each have a 50% interest and the Defendant has admitted that he will give the Claimant 100% interest in the matrimonial home. She noted, however, that while this matter was pending before the court and the Claimant was out of the jurisdiction, the Defendant forcibly took possession of the matrimonial home by breaking off the lock, entering, and renting it. She submitted further that the Court should order that the Defendant transfer all his interest in the matrimonial home to the Claimant without consideration or the payment of any money to him and the costs of so doing should be shared equally by both parties.

[61] Counsel relied on **Goreth Gordon v Elvis Gordon** [2015] JMMC MC 2. It was also counsel's submission that there is no dispute regarding the Claimant's interest in the Apartment Complex. It was argued that both parties are equally entitled to 50% interest. The Claimant does not wish to hold this property jointly with the Defendant any longer and wishes to realize her interest. She was also requesting an account of the rental proceeds from February 2011 to present. Counsel advocated that the Court should give the Defendant 180 days to purchase the Claimant's interest in the Apartment Complex.

[62] Counsel also provided a brief calculation for the rental collected from the Apartment Complex from February 2011 to present. Ms. Cummings submitted that the Defendant owes the Claimant the sum of \$6,356,000.00 for her share of the rental proceeds that he has collected from February 2011 until June 2019, when the Court ordered him to pay her \$75,000.00 per month. She argued that the sums due and owing by the Defendant to the Claimant should be deducted from the Defendant's share of the net proceeds of any sale of the properties herein before he received his payment of the proceeds.

[63] Counsel argued that the Defendant has not raised any convincing argument to defeat the Claimant's interest in the Mickleton property. She pointed out that the parties were registered as joint tenants. Counsel indicated that the Defendant

admitted that money from the business purchased the land in both their names. However, to escape the natural suggestion that the money from the business, which he continued to the exclusion of the Claimant, built the house thereon, he invented this story that it was built with the generosity of his friends' labour and donation from his friends' hardware stores. Ms. Cummings asked the Court to reject this recent concoction by the Defendant. Counsel contended that the Defendant's attempt to argue the separation of the building from the land has no merit and relied on the cases of **Minshall and another v Lloyd, Esq** (1837) 150 ER 834 and **Patsy Powell v Courtney Powell** [2014] JMCA Civ 11.

[64] Counsel contended further that, the fact that there is no mortgage on the title suggests that the building was constructed with the means of the parties; that is, from the business. Counsel relied on the Defendant's admission that while it was being built, he knew that the Claimant's name was on the title. When he separated from the Claimant, he took the cold room (deep freezer) and the truck and continued the business; and thereafter excluded the Claimant from all activities of the business. She asked the Court to find that it was the money from this business that he used to construct the Mickleton property. She argued that the Claimant would have been entitled to an interest in the profits of the business and therefore, it was her submission that the Claimant had an interest in this property and there was no evidence before the Court that would disturb the natural presumption of her 50% interest therein. She submitted further that the Court give the Defendant 180 days to purchase the Claimant's interest in the Mickleton property.

[65] Concerning the business, counsel submitted that the Defendant finally admitted that the Claimant was integral to the business, and that he excluded her from it after he left the matrimonial home. However, she pointed out that it would be difficult at this time to determine what had happened to the assets of the business namely the truck and the cold room/deep freezer. The Defendant has not provided any information on how much he sold them for, and as such she submitted that it is going to be difficult to calculate how much profit was lost. The Defendant says the business was closed in 2016 as the market was slow. Counsel stated that she

found this assertion questionable, however, she has advocated that since the Defendant declared that he used to give the Claimant the sum of \$40,000.00 per month for her personal use, then the Court should use that same figure to calculate the amount of monies due and owing to the Claimant for the 10 years (120 months) that the Defendant excluded her from the business before its demise. She calculated that the Defendant would owe the Claimant the sum of \$4,800,000.00 from the business.

Defendant's Submissions

- [66] The Defendant's submissions were contained in skeleton submissions supplemented by closing submissions. The crux of Mr. Steven O. Jackson's submissions on behalf of the Defendant surrounded three bases:
- [67] First, he stated that a brief analysis of the case law on section 7 of PROSA should be applied. He indicated that there are two distinct views on section 7 of PROSA: one, where the Court of Appeal in the case of **Carol Stewart v. Lauriston Stewart** (supra), which is the one to be followed, has established that there is a need for the existence of at least one of what may be referred to as the three 'gateway factors' mentioned in section 7, before other factors may be considered to decide whether to adjust the equal share rule. Counsel indicated that the judgment also explained that while there are existing gateway factors, this does not automatically mean that the subject property is to be deemed as entirely owned by the party benefitting from said factor, as other factors are to be weighed on a case-by-case basis, to determine to what other extent the 50/50 presumption is to be varied.
- [68] Counsel submitted that what is to be garnered from the above is the consideration of the applicability of the equal share presumption; whether its application would be unjust and unreasonable. He pointed out that in deciding this issue, consideration must be given to the facts of each case and whether or not a gateway factor was present. The gateway factors are of special importance in the determination but thereafter other factors such as relative contributions can be

considered. Counsel relied on **Donna Marie Graham v. Hugh Anthony Graham** No. 2006HCV03158, delivered on April 8, 2008 (Unreported), and **Margaret Gardner v Rivington Gardner** [2012] JMSC Civ 54.

[69] Secondly, counsel sought to advance his perspective as to certain “facts” in the case in an effort to bolster his client’s position. He argued that it would be unfair and unjust for the equal share rule to be applied with respect to the Apartment Complex and Mickleton property. He made certain submissions which I found quite challenging, to say the least, as none of those pieces of evidence was revealed by his client in this case before the court. Paragraphs 7-9 and 12 of counsel’s submission are as follows:

“7. The defendant concluded that in order to support his growing family after years of marriage and the birth of three children, he would need to pursue more than one career. Having said that, he set aside sufficient funds to purchase Lot 25 Begonia Lodge, investment property that he constructed as an apartment, with the intention of using the money earned to pay for his children's education. Although this is factual, the Defendant was pressured by the Claimant to add her name to the property's title, and as a result, out of fear for the safety of his family, he was forced to comply with the Claimant's request.

8. The home at Venecia Drive was also bought with the goal of using it as an investment property to support the defendant's children. To his surprise, however, the Defendant was forced to leave the marital house as the difficult circumstances worsened and was forced to utilize the land to build a new home for himself and eventually his children with assistance from friends and relatives who gave financial support. Evidently, the defendant built this property from top to bottom without any assistance from the claimant. Determining that the claimant is only entitled to a part of the land's value, the defendant persists in this position.

9. Shortly after being exiled from the marital home, the defendant learned that the claimant had been physically assaulting their son by striking him with electrical cables and other techniques. As a result, the defendant was forced to intervene on behalf of his son since the way he was treated was showing up in both his character and academic performance. In a similar manner, the claimant sought to alternate between verbal and physical abuse toward the daughters of the parties. Despite teachers' warnings and police records mentioning bruising on their daughter's skin, the abuse persisted. Until one afternoon, when the claimant chose to repeatedly kick and push their daughter down the stairs. Due to this, the defendant was forced to take custody of his children immediately on the advice of police, and as a result, he was responsible

for providing for them financially without the claimant's help moving forward.

...

12. *Let it be known to the court that after the defendant left the property known as the matrimonial home, the claimant received 100% of the income earned from the apartment listed at Lot 25 Begonia Lodge. This ceased when the claimant ran the business into financial ruin, fleeing all the tenants from the premises, after which completely defacing and sabotaging the property, which led to my intervening to restore the property to its original state."*

- [70] Thirdly, Counsel submitted that according to the law, the Claimant is entitled to 50% of the matrimonial property. There is no dispute that this property was the parties' family residence. In respect to the Apartment Complex, it is submitted that the Claimant is legally entitled to half of the joint tenancy apartment. Nonetheless, counsel argued that the defendant is still supporting the daughter of both parties and that it's also crucial to keep in mind that he relies completely on the income from the rental complex because he was forced to resign from his job due to the failure of the business and to effectively tend to his children. Additionally, the property's utilities and taxes continue to be paid solely and independently by him.
- [71] Counsel argued that based on the evidence the Claimant has no interest in the business. He asserted that although the Claimant mentioned that both parties participated in the start-up of the business by taking out loans neither party was in any position to secure a loan at the time when the Defendant established his business. Instead, counsel argued that it was the Defendant's relatives and his personal savings that invested capital into the company in 1984.
- [72] Counsel therefore asked the Court to find that the Defendant is entitled to 100% of the business.

Issues

1. How should the matrimonial home be divided between the parties?

2. Whether there is sufficient evidence of contribution on the part of the Claimant for her to be entitled to any interest in the Apartment Complex and the Mickleton property.
3. If the answer to question #2 is in the affirmative, what is the extent of the Claimant's entitlement in these properties.
4. Is the Claimant entitled to any interest in the business; and if yes, how is her entitlement to be apportioned.
5. Should the Defendant account for the rent received from the matrimonial home?

Issue 1: The Matrimonial Home

[73] There is agreement between the parties that 23 Begonia Lodge was the family home of the parties, and in accordance with Section 6 of the *PROSA*, I find that each party is entitled to a 50% interest in lot 23 Begonia Lodge, registered at Volume 950, Folio 499 of the Register Book of Titles.

Issues 2 and 3: The Apartment Complex and Mickleton Property

The Relevant Law

[74] In dealing with the division of property between spouses, other than the family home, as defined under *PROSA*, the relevant sections are 13, 14, 15, and 23. Section 14 specifically sets out the factors to be considered in the determination of the division of other matrimonial property, whilst section 15 empowers the Court to alter the interest of either spouse in property other than the family home.

[75] Section 14 of *PROSA* does not prescribe a presumptive equal entitlement regarding other matrimonial property. In an examination of section 14, it is quite clear that contribution is a pertinent consideration as it relates to the division of property other than the family home. The contribution need not be solely financial. Consideration should therefore be given to financial and non-monetary contributions in determining the allocation of interests in property, other than the

family home. In ascertaining the parties' interest in the remaining properties the Court must consider the respective contributions of the parties in light of sections 14(2) and (3).

Discussion and Analysis

- [76]** Based on the evidence elicited the relevant factors to be considered are sections 14(2)(a), (c), (e) and sections 14(3)(a), (b), (d), (e), (g) and (h) and 14(4).
- [77]** Credibility is pertinent for the assessment of the evidence relating to the parties' contribution to the properties in question. Where there is contrasting evidence of the parties I believe and prefer the evidence of the Claimant who was more truthful and forthright as opposed to the Defendant, whom I find, throughout, to be mostly untruthful at times and evasive.
- [78]** I believe that the starting point in determining whether the Claimant should benefit in either of these properties is to consider the evidence relating to the commencement of the business. How did the business start? Where did the initial funds come from? The answer here is important because it is agreed between the parties that these properties were bought from the profits obtained from the business and bank loans through their joint efforts.
- [79]** The Claimant stated that the working capital to commence the business was financed by getting goods on consignment, on credit using their joint account, borrowing from the bank, the use of overdraft facilities from the bank and borrowing from her father. The Defendant, after facing strenuous pressure in cross-examination, eventually agreed that the monies used to start up the business came from these various sources. I note that it was only when he was confronted with the hard evidence that he accepted that they had taken out the second loan and it was used both for the construction of the 1st and 2nd floors of the matrimonial home and also to provide capital to support the meat distribution business.

- [80] I further note that the Defendant, later in cross-examination, admitted that they operated a chequing account in both their names and that as husband and wife, they shared everything. I believe the Claimant that the vehicles were purchased from the proceeds of the business. This was later confirmed by the Defendant.
- [81] The Defendant was at great pains to convince the Court that the Claimant made very little contribution to the start-up and the day-to-day operations of the business. However, as the evidence progressed in cross-examination, the truth was revealed. It was exposed through the very mouth of the Defendant. The Defendant admitted that the Claimant did assist in the business with the writing of cheques, accounts, receiving of goods, and arranging for the mechanic to repair the vehicle whenever necessary.
- [82] I accept the Claimant's evidence that they had a sideman whose job it was to carry the goods from the truck into the home but that there were times when she had to assist to carry the lighter goods.
- [83] I believe that the parties were financially intertwined, everything was done together, and all assets were financed by the business and loans taken out by the parties. Marriage is a partnership and the parties' day-to-day activities exemplified this. It was an integration of their financial affairs regardless of the Defendant's argument of the financial disparity. Their actions were indicative of the intentional integration of their financial affairs and shared property. I am reminded and guided by **Suzette Ann Marie Hugh Sam v Quentin Ching Chong Hugh Sam** [2018] JMCA Civ 15, where the court took into consideration the non-monetary contributions of the wife: caring for the children, transporting them to and from school, even though she had helpers and nannies that would not have reduced the value of the contribution as it was clear from the evidence that she was the primary caregiver. I also note that it was stated by Edwards JA (Ag) (as she then was) in paragraph [133] that:

“... if there is evidence of the parties' clear intention that one spouse should work outside the home and the other in the home and that the assets

acquired during the marriage would belong equally to both spouses, it is difficult to see how the court would disregard that intention because the application was made under PROSA. So too, an agreement under section 14(2)(d) would be evidence as to the common intention of the spouses and any other evidence of intention can be taken into account under section 14(2)(e), if the justice of the case so requires.”

[84] The Claimant, in the case at bar, has given extensive evidence of the range of her involvement in the acquisition, conservation and improvement of the meat distribution business, while taking care of the children and her household. The dicta of Edwards JA (Ag) again comes to mind, where at paragraph [151] of **Suzette Ann Marie Hugh Sam v Quentin Ching Chong Hugh Sam** (supra), she opined:

“The appellant was a wife and mother and for much of the relevant period she was a working wife and mother. Not only did she manage the household but she managed the affairs of the children as well, all the while contributing to the development and expansion of one of the family companies ...”

[85] In **Suzette Ann Marie Hugh Sam v Quentin Ching Chong Hugh Sam** (supra), the court found that the Appellant was entitled to a 50% share based on her non-financial contributions to one of the businesses that the respondent had acquired before they were met.

[86] I consider also the case **Goreth Gordon v Elvis Gordon** (supra), where the Claimant, who was the wife of the Defendant, had worked in the business and made a significant contribution to its growth. The Defendant, in that case, sought to diminish the extent of her worth in the development of the business. The Court, upon evaluation of the evidence, found that the Claimant was an integral part of the conservation and improvement of the property and was entitled to a 40% share in the business.

[87] I accept the Claimant’s evidence that her duties at home entailed generally managing and running their household daily. It included doing the domestic work of ensuring that the children were looked after, taking the children to and from school, and helping them with their homework and other necessary chores. In

addition to her role in the home, she also assisted in the business. The Claimant explained that the goods were kept in the cold storage area at the family home. The business operated from the house. The Defendant would leave very early in the morning and return at about 5:30 p.m. Her day started with getting the children off to school, followed by housework and then bookwork for the business. She would return to pick up the children from school. I find that the Claimant was fully in charge of the household while still very active in managing the administrative part of the business.

- [88]** The Defendant claimed he was solely responsible for the day-to-day management of the business. He contended that if the Claimant is to benefit, it is not on the basis that she has contributed, but rather on the basis that they shared a relationship, and it was in this regard he added her name to the two titles on which her name appears. He asserted that the business was mainly on the road. It was a buying and selling business where he would travel into Kingston to purchase chicken back, then he drove around in the country area where he sold it. There was no office for the business, this was never necessary, and it was never a structured business where it needed any timely supervision. The business entailed him going on the road purchasing the chicken back and distributing it on the road.
- [89]** The working capital of the business was financed by getting goods on consignment, on credit, using their joint savings, borrowing from the bank, use of overdraft facilities, and borrowing from the Claimant's father. Later they acquired assets, starting with one Volkswagen van, and then over time as the business expanded, they acquired two more vans and thereafter a Leyland truck through the sale of the vans. The Claimant testified that she and the Defendant did not have separate bank accounts during the marriage, but their names were on the Scotia Bank chequing account and Workers Bank chequing account. The Defendant himself indicated, that he and the Claimant were husband and wife and shared everything. He opened joint accounts. The Claimant also said the Defendant gave her money from the business each week to take care of the house and give the children lunch money.

- [90]** The Defendant's evidence in chief took issue with much of the Claimant's assertions. I note, however, that several critical pieces of the Claimant's evidence that was vigorously challenged by counsel for the Defendant, Mr. Jackson, was later reluctantly admitted by the Defendant in cross-examination. These included the fact that the business was started with monies from the Claimant's father, loans from the bank secured by them jointly, goods received on consignment and credit at the start of the business, monies from the business used to purchase the properties and motor vehicles, the Claimant doing more than administrative work in the business, monies used from their joint savings to purchase the Volkswagen and loans secured by them jointly to purchase the properties.
- [91]** The Defendant distinctly refused to admit the pivotal role the Claimant played in the growth of his business and the increase in his financial strength. He did not recognise her contribution to the wealth created by the business. However, it was only after being pressed by the Claimant's attorney-at-law that he reluctantly admitted that he was not speaking the truth about several issues relating to the start-up of the business and their acquisition of motor vehicles. He then accepted that the Claimant was always integral to the operation of the business and that she helped him to run the business.
- [92]** I, therefore, find that the responsibilities in the business were undertaken by both parties. The financial dividing would be quite impossible in these circumstances. The evidence was a demonstration of the arrangement of their lives, where the Claimant, a housewife, and a husband who goes on the road daily, selling food items while leaving the rest of the business at home in the management of his wife. It depicts how the parties ordered their lives, business, and finances during at least 17 years of their marriage. Therefore, I find that it was immaterial as to whether she lost her job or if she decided to stay home because it was accepted that she would stay home and take care of the house and assist in the business.
- [93]** In cross-examination, the claimant maintained that she did the accounts, and she would do the expenditure of the business, each week. Light bills, school fees, lunch

monies, and internet bills which she classified as expenditures, were all taken from the business. Both parties were paying the bills and money would be used between them or in the business. She rejected the suggestion that the Defendant paid all the bills, and that she did not contribute.

[94] I find that the Claimant was also candid when she admitted in cross-examination that people were employed to do the movement and transportation of goods. She agreed that the primary duty of the staff was to take up heavy goods; but she added that this was only possible if they were present. She maintained that she engaged in physical labour and assisted whenever the truck was out and no one else was at the house. She could not recall how many times per week this happened but said it was not every week. The operation of the business dealt with heavy goods such as rice, peas, chicken back, liver, chicken, fish, kidney, and oil. She would lift and carry 40lbs packs and the guy would carry the 60lbs packs.

[95] The Defendant, however, in his affidavit vehemently denied that the Claimant did any work or physical labour for the business. He did, however, say that she assisted in writing cheques from time to time. He did not recall any time that the Claimant had to receive any goods or lift any heavy goods because they had a side man, and it was the sideman and himself that did the work. The Defendant claimed that for the duration of the operation of the business, the Claimant received monthly sums in excess of \$40,000.00 for her personal use. He stated that every fortnight she received \$25,000.00 in her hand, and this was more like a salary for what she had done, including taking care of the kids, and receiving some goods from time to time, just by checking them off.

[96] In analysing the Defendant's evidence, one wonders if the Claimant did not do any work in the business, what should the court make of the Defendant's evidence that the Claimant only did administrative functions which he said was "receiving some goods from time to time and just checking them off"? I found the Defendant to be prevaricating quite often. He would strenuously challenge the Claimant and then, in cross-examination, he would be found contradicting himself.

- [97]** The Defendant initially denied that he excluded the Claimant from the business when he took the cold room and truck to the apartment complex. He later acknowledged that he had said in his statement that the Claimant did the administrative work but when they separated, she did not do the administrative part of the business anymore. He also accepted that when he left, he no longer gave her \$40,000.00 or \$16,000.00 from the business. He said she got money, but he did not give her money in her hand. He agreed that when he lived in the matrimonial home, he would give her money in hand, or she would take it from the business or Apartment Complex. He also accepted that when he left, she no longer had access to take money out of the meat business.
- [98]** He denied the suggestion that he excluded the Claimant first from the children but accepted that he did exclude her from the business and then from the apartment. He also accepted the suggestion that he did so when she was a housewife, not working for anybody but the business, and that he wanted to deprive her of the proceeds of the meat business after he carried the business to the apartment. The Defendant further admitted that when he took over the apartments in 2011, he did not want to give the Claimant any of the rental monies, but the Court ordered otherwise.
- [99]** The Defendant boldly admitted that he broke off the locks at the matrimonial home in 2021 and took possession of the premises and said he didn't realise that he had committed a criminal offence. He said he was unaware that the Claimant had a gardener and a caretaker looking after the property while she was overseas. He agreed that the Claimant still had all her furniture and other belongings in the home. He said he has since rented out part of the matrimonial home which consists of eight bedrooms for the meagre sum of \$20,000.00 per month.
- [100]** He said that he started collecting money from the matrimonial home two months ago (in May 2022). He also accepted that it was the first time he was revealing that he was renting out the matrimonial property. He also proudly accepted that from 2011 to June 2019 he collected all the monies for the Apartment Complex. He

denied that he was still in arrears even though the judge ordered him to pay \$75,000.00 per month. He agreed that the order said he was to pay on July 1, 2019 and thereafter on the 1st day of every month. He denied that the last payment he made was May 5, 2022, said that he had a receipt paid about June 25, 2022.

[101] The conduct of the Defendant revealed a husband who had the greater financial power in the union and so he used it to the disadvantage of the Claimant. He was also reluctant to obey the Court order to pay over the monies to the Claimant and allow her to enjoy some of the proceeds of her labour.

[102] I find that the Claimant was forthright in saying that all three properties and the business were purchased and acquired through the joint resources and effort of herself and the Defendant. Overall, I find her evidence to be more consistent. The Defendant, on the other hand, sought to paint a picture where he alone made all the substantial input towards the commencement and maintenance of the business and acquisition of the properties, specifically the Mickleton property. He emphasised that the Claimant's contribution was so minimal that it bordered on being non-existent.

[103] I pause here to consider the cases relied on by Mr. Jackson in support of his submission that the Claimant was not entitled to any interest in the Mickleton property, the Apartment, and the business. I note that counsel relied on **Graham v Graham** (*supra*) and **Gardener v Gardener** (*supra*) and **Carol Stewart v Lauriston** (*supra*) to support his contention that it would be unreasonable and unjust to grant the Claimant a 50% interest in the properties except the matrimonial home. All three cases are distinguishable from the case at bar. In none of these cases that counsel has relied on was there any mention of the Claimant working in a business with the Defendant, pooling funds, obtaining loans to investment in the business and using the proceeds from the business to acquire any disputed property. All those cases dealt specifically with the family home. The several issues that arose in the case at bar are distinguishable from all of the three cases and as such they were not helpful to the Defendant's case.

[104] There is no doubt that the Defendant carried the major financial responsibility of the family, as the breadwinner, in a literal sense, leaving home and selling their meat, etc. I accept on his part that the business was mainly on the road. It was a buying and selling business where he would travel into Kingston to purchase chicken back and other items, then he drove to various areas where he sold them and brought in the monies. However, I bear in mind that the Claimant was a housewife, taking care of children, managing the household, performing household duties, and also working in the business, through sweat equity and administrative work, even though according to the Defendant she had no income.

[105] I find that the Claimant made both financial and non-financial contributions to the business and to the advancement of the Defendant. She worked in the business for 17 years in both a financial and non-financial aspect. She was a homemaker and played a significant role in the care and upbringing of their three children. I note also that according to the Defendant, he gave her money like a salary/earning and other monies taken from the business which she would use to pay the utility bills, buy groceries, and also expenses incurred in relation to the maintenance of the children.

[106] I find that the monies to pay the bills came from the business which was operated by both parties. I note that the Claimant's contribution, which I do not find to be small, assisted the Defendant to be better able to financially provide for his family. The Claimant also gave assistance and support in carrying the business by providing administrative service, stocktaking duties, and even lifting goods that were sold by the business whenever the need arose. Edwards JA (Ag) in **Suzette Ann Marie Hugh Sam v Quentin Ching Chong Hugh Sam** (*supra.*) at paragraph [140] opined that:

“The issue the court had to decide with regard to the businesses was: how and when were these businesses acquired and what contribution, whether financial or otherwise, did the appellant make to the acquisition, conservation or improvement of them. Section 14(2) of PROSA lists the factors a court must take into account in dividing property as it thinks fit.

Section 14(3)(a)-(i) defines what the Act recognises as 'contribution' by one party."

- [107]** I find that the Claimant's contribution to the household and business led to the acquisition of the properties, including the Mickleton property and the maintenance of the business. I add with emphasis there: *"shall be no presumption that a monetary contribution is of greater value than a non-monetary contribution."*
- [108]** I believe the Claimant that as the business expanded, it was she who made the proposals to the Defendant to acquire another parcel of land to build apartments for rental since it would be difficult to deal with the business of buying and selling in their old age. He agreed and they later acquired the land as joint tenants, and built "The Apartment Complex", out of their joint savings, earnings from the business, and a bank loan. The property comprised six, two bedrooms-one-bathroom units, which they rented out to tenants. The net income from the apartments was approximately \$105,000.00 monthly.
- [109]** I further believe the Claimant that she also suggested to the Defendant that, in their old age, they would not be able to manage to move up and down the stairs in their matrimonial home so they should buy a flat piece of land and build a small house for retirement. He agreed and they bought the Mickleton property as joint tenants using cash from their joint bank account. She asserted that the home that was built on their land at Mickleton property was financed from the money earned from their business and the apartments. The Mickleton property was acquired in 2004.
- [110]** The Defendant pointed out that over the years he constructed a dwelling house and since the acquisition of this property in 2004, the Claimant has never occupied or exercised any rights of ownership over the years, and according to the LAA, the Claimant has dispossessed herself of any interest in the said property. He accepted that the title is recorded in their joint names, but it was placed on the title because they were husband and wife not because she had any interest or input in the said property.

[111] He denied that the money from the business bought the Mickleton property. I do not believe the Defendant that he received financial assistance from friends and relatives in the construction of this house. He admitted that he used part of his funds to build the Mickleton property. In his usual haughty manner, he said he used his personal resources to build Mickleton. He then stoutly declared that the personal funds came from the business he was operating. He, however, acknowledged that when he was building the Mickleton property he knew that the Claimant owned a part of it. I find the Defendant to be disingenuous to say that he solely financed the acquisition of the Mickleton property.

[112] On further consideration, I note that this was a lengthy marriage of at least 17 years. The Claimant would have dedicated 17 years of her life to the marriage and to taking care of the family and assisting in the business. She must be given credit for all of this.

Whether the statute of Limitations had run in relation to the Mickleton property?

[113] Sections 3, 4(a) and 30 of the Limitations of Action Act prohibit any person from bringing any action in relation to land after 12 years from that person discontinued possession or was dispossessed of the said land, and his or her title is extinguished.

[114] Dispossession refers to a person “coming in and putting another out of possession while discontinuance of possession refers to a case where the person in possession abandons possession and another then takes it” per **Powell v McFarlane and Another** [1977] 38 P & CR 452. Possession encompasses both factual possession and *animus possidendi*. In **JA Pye (Oxford) Ltd and Another v Graham and Another** [2002] UKHL 30, Lord Browne-Wilkinson at paragraph 40 gave the definition for these as:

“(1) a sufficient degree of physical custody and control (‘factual possession’); [and] (2) an intention to exercise such custody and control on one’s own behalf and for one’s own benefit (‘intention to possess’).”

[115] Under the LAA the possession of one co-tenant is not the possession of all. It is a question of fact in determining when the period of separate possession commenced. In **Wills v Wills** [2003] UKPC 84 it was said that there is no general presumption of a fiduciary duty between a husband and wife. In the case at bar, the Defendant has stated that the Claimant has discontinued possession of the Mickleton property because she has never been in possession or exercised any rights of ownership since it was bought in 2004. He, therefore, claims to have dispossessed her and is now the sole owner of the said property. The Defendant has admitted, however, that when he built the house at Mickleton, he knew that the Claimant was owner of half the property. So, the question is: at what point did she cease to be a joint owner?

[116] There have been several cases in which a spouse sought to argue that the title to jointly owned property was extinguished in respect of the other spouse. These cases either involved separated spouses or a new partner of a deceased spouse who was in possession. I look to the case of **Fay Veronica Wint-Smith v Donald Anthony Smith** [2018] JMSC Civ 62 and rely on the dicta of Pettigrew-Collins J (Ag) (as she then was) paragraph [80]:

“This court has not been directed to any case law which suggests that limitation can run during the subsistence of a marriage where the parties have not been separated. I would be rather surprised if such a decision were to be unearthed. The union of marriage entails two individuals in a legal relationship in which there is expected to be a high level of bonding, the essence of which is that the two have become one. Further, the promulgation of the PROSA brought about a new and different approach towards deciding matters of property rights between spouses. Section 4 makes it clear that the rules of common law and equity are no longer applicable in determining matters of division of property between spouses. Thus even if factually as the claimant asserts, she has had sole control over the property for the requisite twelve years without the Defendant’s involvement, I do not accept that limitation would have run for the purposes of the Limitation of Actions Act so that she would have acquired her husband’s interest in the property by virtue of his title to the property becoming extinct.”

[117] In **Miller v Miller; McFarlane v McFarlane** [2006] 2 AC 618, it was stated that marriage is a partnership of equals. At paragraph 16, Lord Nicholls of Birkenhead

opined that since marriage is a partnership of equals with the parties committing themselves to share their lives and living and working together for the benefit of the union when the partnership ends, each is entitled to an equal share of the assets unless there is good reason to the contrary: fairness requires no less.

[118] The concept of marriage being a partnership is however not relevant when the parties have separated, even if not legally divorced. The accrual of time for the purposes of the LAA commences at the date of separation. Likewise, pursuant to section 12(2) of PROSA a spouse's interest in property is determined at the date of separation or, if the parties are still living together, at the date of the application to the court.

[119] In the case at bar, I note that 2006 was agreed as the date when the Defendant moved out of the matrimonial home. No specific date was given for the date of separation and so, for the purposes of determining this issue the Court will use 2006 as the relevant date. The claim was brought in June 2017. Interestingly, the Claimant has stated that if the Defendant was to succeed against her then he too would be caught by the same law and have his interest in the matrimonial home extinguished by the fact that he has not been to that house since he vacated the premises in 2006. I rely on **Fay Veronica Wint-Smith v Donald Anthony Smith** (*supra.*) and find that "... *I do not accept that limitation would have run for the purposes of the Limitations of Actions Act so that [he] would have acquired [the Claimant's] interest in the property by virtue of [her] title to the property becoming extinct.*"

[120] I therefore find that the requisite period of 12 years had not been achieved to extinguish the Claimant's title to the Mickleton property.

Issue 4: How to apportion the Claimant's interest in the business

[121] The Defendant has reluctantly admitted that the Claimant played a pivotal role in the commencement, operation and growth of the business. He also conceded that after he left the matrimonial home, he took the business with him and excluded the

Claimant from its operations and its proceeds. He further said that during the time that he was operating the business from the matrimonial home, the claimant received a monthly amount of \$40,000.00 or \$25,000.00 per fortnight for her work in the business. The claimant said she received \$16,000.00 per week to buy food, pay the helper, and go to the gym. The evidence that the business survived for a further 10 years has not been challenged by the Claimant.

[122] The Claimant initially asked for an order relative to detailed accounting as to the location, disposal, and current status of all bank accounts, assets, machinery and equipment of the business. However, no orders were made for specific disclosure in relation to these matters before the trial date. During the trial, the Claimant seemed to have abandoned these specific requests as no further mention was made in this regard. The Defendant claimed that he does not recall the selling price for the truck and the cold room. Based on Ms. Cummings' submission, it can be inferred that the Claimant has accepted that the business was closed in 2016, approximately 10 years after the parties separated and there is the absence of any useful information to ground any serious challenge to this. Counsel therefore argued that it would be just for the Defendant to make a payment of \$40,000 per month for a period of 10 years to compensate the Claimant for her 50% share of the business (including profits) which she was entitled to during those years when she was excluded.

[123] Based on the authority of **Suzette Ann Marie Hugh Sam v Quentin Ching Chong Hugh Sam** (*supra.*), I find that the Defendant ought to account to the Claimant for the profit made by the business during the years she was excluded and for the monies received from the sale of the assets. The difficulty, however, is that no record was provided by the Defendant as to the business' operations during those 10 years. There is a lack of records from which the court can state a definitive amount. In order to do justice to the Claimant I believe it is proper that the Defendant pay to the Claimant a monthly sum for the 10 years, similar to that which she was getting for her work in the business during the time they co-habited in the matrimonial home.

[124] Having considered all these factors, the relevant law and applying the appropriate weight to crucial evidence in consideration of the parties' contribution, how the parties ordered their lives and their intentions as indicated from the evidence I cannot agree with the Defendant that the Claimant has no interest in the properties in question. Mr. Jackson, in his submission, gave a background to the case at bar. His analysis has wildly misinterpreted and disfigured the evidence. Much of what he has stated in paragraphs 6-13 and 16 of his written submissions is incorrect. No such evidence was given by either of the parties. With regards to paragraph 14, it should be noted that the Claimant had abandoned her claim for spousal maintenance as no mention was made of it in her submission. Likewise, there was no evidence from the Defendant of any negative treatment of the children by the Claimant. Paragraph 15 also sought to contradict evidence led by his client.

[125] I have carefully perused the submission by counsel for the Defendant and I am astonished by several of his assertions. I am left to ponder whether counsel was simply seeking to give fresh evidence in his closing submission in an effort to bolster his client's feeble attempts to deny the worth of the Claimant in the development of the business and the growth in the Defendant's assets.

[126] I have examined the various figures that the parties presented, and I have considered the lack of any documentation from the business to assist and so I believe that a reasonable and fair monthly amount, in all the circumstances, is \$30,000.00 per month for the duration of the 10 years.

Issue 5: Account for Rent Received from Matrimonial Home

[127] I note that the Defendant has asked that the Claimant account for the rental of the matrimonial home for eight years and continuing. There is no evidence before this court of the Claimant renting out the matrimonial home. The only evidence of that house being rented comes from the mouth of the Defendant who has admitted to renting the premises are the matter was brought before the Court. I note that he has kept the proceeds for himself.

[128] The Defendant has also asked for accounts in relation to the rental of five apartments by the Claimant. The evidence in relation to this activity, however, indicates that during the time that the Claimant had control of the rent from the four apartments, she was using it to take care of the children and herself along with maintaining the family home with the consent of the Defendant. The Defendant agreed that since he left the matrimonial home, he stopped giving her money. The Claimant was a housewife, who was also working in the business, and having effectively lost her job, her only source of income would then have been the rental from the apartments.

[129] I do not believe it would be just to require any accounting from the Claimant in respect of the rents received from the apartment during those years. I rely on paragraph 26 of the Defendant's affidavit dated the 23rd day of January 2018 where he said:

"... I will say that when I left the matrimonial home the Apartment complex consisted of 6 apartments and I told the claimant to collect the rent each month to maintain herself and the children."

[130] I note that counsel Mr. Jackson in his submissions did not press for an account in respect of the apartments but rather asked the court to consider that the Defendant was being deprived of the proceeds and as such their daughter was being prejudiced in her education. He highlighted too that the Defendant also was at a disadvantage because he was relying on these monies for his own maintenance and to pay the utilities and taxes for the premises.

[131] The Defendant had requested an accounting in respect of the monies withdrawn by the Claimant from the Victoria Mutual Building Society and the Bank of Nova Scotia accounts for Raschel's university education. A careful reading of the submission by Counsel Mr. Jackson indicates that the Defendant seemed to have abandoned this request although it was pursued in cross-examination of the Claimant. The Claimant has agreed that there was a trust fund set up for Raschel's education, but she has gone further to add that she gave Raschel money for her university education. She also said that she has contributed financially to her

children's education but did not have the level of resources like the Defendant since he took sole control of the business and the apartments.

Conclusion

[132] I find that the evidence led by the Defendant was unreliable to substantiate the denial of the Claimant's interest in the Apartment Complex, Mickleton property and the business. There was cogent evidence to support findings that both parties' contributions showed a common intention to integrate their affairs and the common intention to share a beneficial interest in these properties, to which end the Defendant has deprived the Claimant of these interests and benefits.

[133] Based on the above findings, the Court makes the following declarations and orders:

1. All that parcel of land part of Begonia Lodge, situate at Linstead in the parish of St. Catherine being the lot numbered twenty-three on the Plan of part of Begonia Lodge aforesaid deposited in the Office of Titles on the 3rd of September, 1959 of the shape and dimensions and butting as appears by the Plan thereof hereunto annexed and being part of the land comprised in certificate of title registered at Volume 398 Folio 88 now comprised in Certificate of Title registered at Volume 950 Folio 499 is declared the family home.
2. The Claimant and the Defendant are each entitled to a 50% share in the said family home.
3. The Claimant and the Defendant are each entitled to a 50% share in all that parcel of land part of the Mickleton Property called Venecia Lane in the parish of St. Catherine containing by survey eight hundred and twenty-three square meters and seventy-seven - hundredths of a square meter of the shape and dimensions and butting as appears by the plan thereof comprised in Certificate of Title registered at Volume 1369 Folio

976 of the Register Book of Titles hereinafter referred to as "the Mickleton property".

4. The Claimant and the Defendant are each entitled to a 50% share in all that parcel of land part of Begonia Lodge situate at Linstead in the parish of Saint Catherine being the lot numbered twenty-five on the Plan of Begonia Lodge aforesaid deposited in the Office of Titles on the 3rd day of September, 1959 of the shape and dimensions and butting as appears by the Plan thereof hereunto annexed, and being the land formerly comprised in Certificate of Title registered at Volume 1 164 Folio 792 now comprised in Certificate of Title registered at Volume 1327 Folio 784 of the Register Book of Titles hereinafter referred to as "The Apartment Complex".
5. All three (3) properties are to be valued by a reputable valuator to be agreed upon between the parties; failing which the Registrar of the Supreme Court will appoint a valuator.
6. The costs of the valuations will be borne equally between the parties.
7. The Claimant shall have the first option to purchase the Defendant's 50% interest in all the properties within 60 days after the receipt of the valuation reports; failing which the Defendant shall have the option to purchase the Claimant's 50% shares in all the said properties within 60 days after the expiration of the Claimant's options or after the Claimant has declined to exercise the options to purchase.
8. Any agreement for sale shall be executed by the parties within 30 days of the written indication by that party that he/she will exercise the option to purchase.

9. If at the end of the expiration period for the options to purchase neither party has acted to exercise the options, then the properties are to be sold on the open market.
10. The net proceeds from the sales mentioned at order #9 is to be divided equally between the parties. The costs of the transfers are also to be borne equally between the parties.
11. In the event that the option to purchase is exercised by either party within the time stipulated herein the cost of the transfer shall be borne solely by the party exercising the option.
12. The Claimant's Attorney-at-Law is to have carriage of sale of any of the properties to be sold on the open market.
13. Carriage of sale for each property that will be purchased by either party shall be to the vendor's attorney-at-law.
14. The Registrar of the Supreme Court is empowered to sign all such documents necessary for the completion of any and all transfers and/or sales of the properties the subject of this order, in the event of the incapacity, neglect or wilful refusal of either the Claimant or the Defendant to sign any such documents.
15. The Defendant is to deliver up the keys and vacant possession of the family home forthwith to the Claimant or her designated agents.
16. The Defendant is to give an account of all monies collected as rental in respect to the family home by January 20, 2023.
17. All the monies collected from all tenants in respect of the occupation of the family home is to be turned over to the Claimant within 14 days of this Order.

18. The Interim Order that the Defendant is to pay the Claimant the sum of \$75,000.00 per month as her $\frac{1}{2}$ share of the rental of the Apartment Complex shall continue until the property is purchased or sold and the Claimant is paid her $\frac{1}{2}$ share.
19. The Defendant is to pay the Claimant the sum of \$5,868,000.00 representing her 50% share of all the rentals collected from the Apartment Complex for the period February 2011 to June 2019.
20. The Claimant is entitled to benefit from the business that she shared with the Defendant. The Defendant is to pay the Claimant the sum of \$3,600,000.00 for the period 2006-2016 representing the years that she was excluded from the business until its demise.
21. All the sums due and owing to the Claimant as per Orders #17, 18, 19, and 20 are to be deducted from the Defendant's share of the net proceeds of the sale of the properties and paid over to the Claimant before he receives his share of the proceeds.
22. Costs to the Claimant to be agreed or taxed.
23. Liberty to apply.
24. The Claimant's Attorneys-at-Law are to prepare, file and serve the order.