

evidence in the instant matter on 26 September 2018, at which time it made Orders that required each party to prepare, file and serve Written Submissions and Authorities, on or before 30 November 2018. Up to the time of the delivery of this judgment, the Claimant had failed to comply with those Orders. The Court, through its civil registry, made contact with the Claimant's Attorneys-at-Law, in an effort to ascertain whether Written Submissions and Authorities had been filed on the Claimant's behalf. The last occasion on which the Court did that was on 7 December 2018.

- [2] Subsequent to 7 December 2018, the Court directed the Court Administrator to send correspondence to the Claimant's Attorneys-at-Law, with a view, once again, to ascertaining whether Written Submissions and Authorities had been filed on the Claimant's behalf. This correspondence was sent by way of an email which was copied to the Defendant's Attorney-at-Law, and which requested that the Court be furnished with a copy of any Submissions and Authorities that had been filed on the Claimant's behalf, on or before 5 April 2019. At the time of the delivery of this judgment, that request remained unmet.
- [3] On 11 April 2019, the Defendant's Attorney-at-Law indicated to the Court that he had not been served with any Written Submissions and Authorities that had been filed on the Claimant's behalf. He indicated further, that, on 18 December 2018, he attended at the office of the Claimant's Attorneys-at-Law and enquired there whether there were any Submissions and Authorities that had been filed on the Claimant's behalf that could be served on him. That request was not met.
- [4] This Court is of the view that the Claimant has been afforded ample opportunity to file and serve his Written Submissions and Authorities and that the delivery of this judgment should not be delayed any further. The Court has also had regard to the fact that the Defendant has complied with all the Orders of the Court.
- [5] Notwithstanding the absence of the Claimant's Written Submissions and Authorities, the Court has sought to conduct a thorough examination and analysis of the evidence adduced on behalf of the Claimant and the Defendant,

and has sought to exercise a careful application of the Law in this area to the issues that arise for its determination. The following is the considered decision of this Court in the instant matter.

INTRODUCTION

[6] By way of an Amended Fixed Date Claim Form, dated and filed on 27 October 2016, the Claimant, Mr. Clarence Fearon, seeks the following orders against the Defendant, Mrs. Lunett Fearon: -

- (1) A Declaration that the Claimant is entitled to a half share in the publishing business started by both parties shortly after their marriage;
- (2) A Declaration that the Claimant is entitled to a half share in Lot number 10, 71 Manchester Road, registered at Volume 1375 Folio 42;
- (3) A Declaration that the Claimant is entitled to a half share in Lot 11, 71 Manchester Road, registered at Volume 1349 Folio 116;
- (4) A Declaration that the Claimant is entitled to a half share in Lot number 12, 71 Manchester Road, registered at Volume 1349 Folio 117;
- (5) A Declaration that the Claimant is entitled to a half share in the Plaza building built on Lots 10,11 and 12, 71 Manchester Road, Mandeville, in the parish of Manchester;
- (6) A Declaration that the Claimant is entitled to a half share of all rental income collected by the Defendant from the shops situated on Lots 10, 11 and 12, 71 Manchester Road, Mandeville, in the parish of Manchester;

(7) A Declaration that the Claimant is entitled to a half share of the Toyota Camry motor car owned by the Claimant and the Defendant;

(8) A Declaration that the Claimant is entitled to a half share of the Honda CRV motor car owned by the Defendant and the Claimant;

(9) A Declaration that the Claimant is entitled to a half share in ALL joint accounts operated by the Claimant and the Defendant, namely: -

- a. Scotia Bank Mutual Funds account bearing number 30869;
- b. National Commercial Bank account bearing number 767606;
- c. JMMB account bearing number 22599966;
- d. Bank of Nova Scotia account in Mandeville;
and
- e. Any other joint accounts held by Mr. Fearon and Mrs. Fearon;

(10) An Order for specific disclosure of the details and balances of all accounts operated by the Claimant and the Defendant;

(11) An Order that, where necessary, the Defendant holds the Claimant's interest in the proceeds of the sale of the Honda CRV motor car and the Camry motor car, rental income plus account balances, on trust for the Claimant;

- (12) An Order that the premises known as Lots 10, 11 and 12 with plaza building thereon, situated at 71 Manchester Road, Mandeville, in the parish of Manchester, be valued and the valuation report provided to the Court;
- (13) An Order that the Defendant has first right of refusal with respect to the sale of Lots 10, 11 and 12 situated at 71 Manchester Road, Mandeville, in the parish of Manchester;
- (14) An Order that, if either party refuses to sign the Transfer documents, the Registrar of the Supreme Court is empowered to do so;
- (15) Costs; and
- (16) Such further and other relief as this Honourable Court deems fit.

BACKGROUND

- [7] The Claimant, Clarence Fearon, an Agronomist by profession, was married to the Defendant, Lunett Fearon, a Teacher by profession, on 8 July 1995. At the commencement of the marriage, Mr. Fearon and Mrs. Fearon resided at premises owned by Mr. Fearon. During the course of their marriage, a number of assets were acquired by either or both of them, including real estate, motor vehicles and monies. Many of these assets were registered in their joint names.
- [8] Mr. and Mrs. Fearon were divorced on 22 March 2013.
- [9] Mr. Fearon and Mrs. Fearon have two (2) children together, a daughter and a son. Two (2) years after the birth of their daughter, Mrs. Fearon went to the United States of America ("USA") where she worked as a caregiver. This she did for approximately five (5) years.

- [10] Mrs. Fearon returned to Jamaica in October of 1997 and began teaching. Subsequently, she published and distributed textbooks for use in primary schools. These textbooks were first published in September of 1998. This publishing business was named Mid Island Educators, which later became Independent Integrated Publishers (“the publishing business”).
- [11] In 1998, Mrs. Fearon purchased a Toyota Camry motor car, which was registered in the joint names of the Fearons. This motor car was later sold by Mrs. Fearon.
- [12] In November 1999, the Fearons acquired real property situate at 71 Manchester Road, Mandeville, in the parish of Manchester, being the land comprised in Certificate of Title registered at Volume 1349 Folio 117 and Certificate of Title registered at Volume 1349 Folio 116, respectively, of the Register Book of Titles (“The Manchester Road Properties”). The Manchester Road Properties were registered in the joint names of Mr. Fearon and Mrs. Fearon.

THE CLAIMANT’S CASE.

- [13] Mr. Fearon averred that he is entitled to a half share in all the properties acquired by himself and his former wife, during the course of their marriage. In an effort to ground this averment, he asserted that he contributed to the family in different ways. He asserted that during the period of time that Mrs. Fearon worked in the USA, as a caregiver, he was integrally involved in the upbringing of their daughter and was solely responsible for her care.
- [14] Mr. Fearon gave evidence that he was earning at least twice the amount of money that Mrs. Fearon earned and that he earned additional income by conducting private consultations, as well as, from his farm located in Mandeville, in the parish of Manchester.
- [15] Mr. Fearon agreed that Mrs. Fearon worked as a caregiver in the USA. He asserted however, that he is unaware of her returning to Jamaica with any portion of money. Consequently, it was his contention that the majority of the

money held by himself and his former wife, in the various bank accounts maintained by them, belongs to him.

- [16] Mr. Fearon contended that before he and Mrs. Fearon were married, he added her name to his Bank of Nova Scotia (“BNS”) account numbered 30869. He asserted that he did this while Mrs. Fearon was still in the USA, and that by doing so, he was acting in good faith. He added Mrs. Fearon’s name to his National Commercial Bank (“NCB”) account numbered 767606, from which Mrs. Fearon liberally withdrew sums of money. These accounts were subsequently closed by Mrs. Fearon, who transferred the funds to other bank accounts. At the time of the closure of the accounts, the sum of money in the BNS account numbered 30869 amounted to Three Million Two Hundred and Seventy-one Thousand Four Hundred and Eighty-eight Dollars and Twenty cents (\$3,271,488.20). The sum of money in the NCB account numbered 767606 amounted to Nine Million Five Hundred and Ninety-nine Thousand Five Hundred and Ninety-six Dollars and Six cents (\$9,599,596.06).
- [17] On Mrs. Fearon’s return to Jamaica, she got a job as a teacher at the Mandeville Primary and Junior High School. Overtime, she began to derive extra income from teaching extra classes and later, from writing and publishing children’s books. Mr. Fearon contended that he provided Mrs. Fearon with money to be used as ‘seed capital’ in the establishment of the publishing business. He contended further, that he would assist Mrs. Fearon to deliver books during the early years of the publishing business.
- [18] In relation to the Manchester Road Properties, Mr. Fearon contended that he and Mrs. Fearon actively sought and identified these properties and that both of them were involved in purchasing same. They obtained a permit to build on the Manchester Road Properties and eight (8) shops were subsequently constructed on same. A shopping complex, with four (4) additional shops, was subsequently constructed on the Manchester Road Properties, making a total of twelve (12) shops. Most of these shops were made available for rent, which was collected by

Mrs. Fearon. Mr. Fearon asserted that whenever he collected the rental income from these shops, he would hand over same to Mrs. Fearon. This money was lodged into a savings account maintained at the NCB, Mandeville branch. Mrs. Fearon subsequently withdrew the money from this account and closed same.

[19] Mr. Fearon contended that Mrs. Fearon removed the monies from, and subsequently closed, account numbered 22599966, which was maintained at Jamaica Money Market Brokers Limited (“JMMB”).

[20] Finally, Mr. Fearon asserted that he and Mrs. Fearon acquired a Honda CRV motor car and a Toyota Camry motor car. These motor vehicles were sold by Mrs. Fearon, who has not accounted to him for the proceeds of those sales.

THE DEFENDANT’S CASE

[21] By way of response to the Fixed Date Claim Form, Mrs. Fearon asserted that any contribution made by Mr. Fearon, was made in the early part of their marriage. At that time the household expenses were shared between them. This changed as the relationship progressed. Mr. Fearon gave increasingly less financial support to the family after the publishing business was established in 1998. This, Mrs. Fearon asserted, forced her to bear most of the responsibilities in the home, including paying the bills, and purchasing the Manchester Road Properties, while Mr. Fearon observed, without making any contribution.

[22] Mrs. Fearon contended that Mr. Fearon has no interest in the NCB account numbered 504443558. Her evidence was, that, while she was working in the USA, and before they were married, she asked Mr. Fearon to open this account on her behalf. Mr. Fearon’s name was added to this account merely as a matter of convenience. Mrs. Fearon contended further, that, prior to the marriage, she operated several savings accounts, including one with the Jamaica Teachers’ Association Cooperative Credit Union and another with the Manchester Cooperative Credit Union.

- [23]** Although Mr. Fearon's name appears on her NCB account, Mrs. Fearon contended that all the money contained therein belongs to her. She gave evidence that this money came from her earnings as a caregiver, as well as, from other sources, such as the proceeds of the sale of her motor car.
- [24]** She denied that she benefited from the funds in Mr. Fearon's savings accounts and maintained that she was unaware of his having added her name to any of his accounts. Mrs. Fearon maintained that any liberal withdrawal from any bank account, that was made during the course of the marriage, was made from her accounts, as Mr. Fearon was not a generous man.
- [25]** Mrs. Fearon asserted that she was the only one who contributed to the account maintained at JMMB. Mr. Fearon had withdrawn the existing funds in this account and had given same to a family member. It was her decision to close this account. Mrs. Fearon contended further, that, at the time of the closing of this account, she reimbursed Mr. Fearon the sum of Six Thousand United States Dollars (US\$6,000.00), with interest.
- [26]** Mrs. Fearon insisted that Mr. Fearon's name was added to the Certificate of Title in respect of the Toyota Camry Motor Car and the Honda CRV motor car, respectively, as a matter of convenience, and that Mr. Fearon made no contribution to the acquisition or conservation of either motor vehicle.
- [27]** Mrs. Fearon denied that Mr. Fearon contributed to the acquisition, conservation or improvement of the Manchester Road Properties. She asserted that whatever financial contribution Mr. Fearon made to the acquisition of the said properties was small and has been returned to him. Mrs. Fearon asserted that Mr. Fearon loaned her a sum of money to complete the construction of the building on the Manchester Road Properties, which she has returned to him, with interest. It was for this reason, she contended, that Mr. Fearon's name was placed on the Certificate of Title, and merely as a matter of convenience.

- [28]** Mrs. Fearon asserted that Mr. Fearon was abusive towards her, unhelpful and unsupportive. She averred that he would often call her a 'fool' and an 'idiot', even in the presence of their children, that he never encouraged her to do anything and was derisive of her family background.
- [29]** Mrs. Fearon insisted that Mr. Fearon left the lion's share of the maintenance of their two (2) children to her. She agreed that Mr. Fearon had their daughter in his sole care and control while she was in the USA but maintained that she continued to contribute towards her maintenance and upbringing, despite her physical absence. Mrs. Fearon asserted that she paid the school fees and other expenses of their daughter while she [their daughter] pursued her undergraduate studies. She also paid for their son's education, by herself, until 2009.
- [30]** Mrs. Fearon contended that she had to employ a household helper because she worked outside of the home and that Mr. Fearon did not provide much assistance.
- [31]** Mrs. Fearon insisted that Mr. Fearon has no interest in the publishing business. She admitted that, in the first year of the operation of the publishing business, Mr. Fearon assisted her by delivering books island-wide. She averred that, by virtue of his job with the Sugar Industry Research Institute, Mr. Fearon was a travelling officer and that it was convenient for him to assist her in this regard. Mrs. Fearon was insistent that it was because it was convenient to him that Mr. Fearon assisted her to make these deliveries, and not because he had a share in the publishing business.
- [32]** She asserted that she was unaware of Mr. Fearon operating a farm in Mandeville, in the parish of Manchester, or any at all, or of his offering any private consultation service(s).
- [33]** Mrs. Fearon contended that the NCB account numbered 504369625 is registered in the name of the publishing business. The account numbered 531645 is one that she maintained with their daughter, which was opened after the marriage

had broken down. She contended that the monies that were lodged to BNS account numbered 30869 came from the profits from the sale and distribution of her books. She maintained that she closed this account when the stock market went into rapid decline and that she is solely entitled to the funds contained therein.

[34] Mrs. Fearon acknowledged that the publishing business became very successful and that this led to her eventually resigning from teaching. This she did in order that she could focus on writing and publishing. Unable to satisfy the demand for books, Mrs. Fearon began to co-author with other writers who became her business partners. She acquired other real properties, including those in dispute, and insisted that Mr. Fearon made no monetary or non-monetary contribution toward the acquisition, conservation or improvement of these properties. Mrs. Fearon insisted that Mr. Fearon's name was placed on the respective Certificates of Title, merely as a matter of convenience.

[35] Mrs. Fearon averred that the money that was used to purchase the Toyota Camry motor car and the Honda CRV motor car came from her account that contained the proceeds of the sale and distribution of her books. Again, Mr. Fearon's name was added to the respective Certificates of Title, merely as a matter of convenience.

[36] Mrs. Fearon asserted that the Manchester Road Properties were specifically acquired to house the publishing business and that in May of 2003, the publishing business was relocated there. Before that, both herself and her business partners operated from their respective homes, as well as, from rented premises.

[37] Finally, Mrs. Fearon asserted that she is solely entitled to the legal and beneficial interest in the Manchester Road Properties.

ISSUES

[38] The following issues arise for the Court's determination: -

- (1) Is the Claimant entitled to a one half share in the publishing business?
- (2) Is the Claimant entitled to a one half share in the Manchester Road Properties?
- (3) Is the Claimant entitled to a one half share in the Plaza that was constructed on the Manchester Road Properties?
- (4) Is the Claimant entitled to a one half share of all the rental income collected by the Defendant as a result of the rental of the shops located on the Manchester Road Properties?
- (5) Is the Claimant entitled to a one half share in the Toyota Camry motor car?
- (6) Is the Claimant entitled to a one half share in the Honda CRV motor car?
- (7) Is the Claimant entitled to a one half share of the money contained in the following accounts maintained by the Claimant and the Defendant?
 - (i) Bank of Nova Scotia Mutual Funds account numbered 30869;
 - (ii) National Commercial Bank account numbered 767606;
 - (iii) JMMB account numbered 22599966;
 - (iv) Bank of Nova Scotia account in Mandeville; and
 - (v) Any other joint accounts maintained by the Claimant and the Defendant.

(8) Is the Claimant entitled to an order for specific disclosure of the details and balances of all accounts maintained by the Claimant and the Defendant?

THE LAW

- [39] It would be appropriate to commence this analysis with an examination of the relevant provisions of the Property (Rights of Spouses) Act (“the Act”). It may first be stated that the Act utilizes what Morrison JA (as he then was) in **Annette Brown v Orphiel Brown** [2010] JMCA Civ 12, at paragraph [34], termed a ‘composite approach’ to matrimonial property. In this approach, the ‘family home’ is treated differently from other property owned by either or both of the spouses. Unlike its treatment of other property owned by either or both of the spouses, the Act creates a statutory rule of equal entitlement to the beneficial interest in the ‘family home’.
- [40] The ‘composite approach’ is in contrast with the equivalent English legislation, the Matrimonial Causes Act, 1973, where there is no statutory equal share rule in respect of matrimonial property. The Courts are given a wide discretion, largely unrestricted by statutory provisions.
- [41] Although the ‘composite approach’ is not unique to Jamaica, the position taken by the Act is not as detailed as the equivalent legislations in some other jurisdictions that have adopted that approach. The equivalent legislation in New Zealand, the Matrimonial Property Act, 1976 (which was amended and renamed The Property (Relationships) Act, 1976), also utilizes the ‘composite approach’. This legislation specifically addresses the matter of contribution in respect of the matrimonial home in certain circumstances and applies the equal share rule not only to the matrimonial home but also to certain other family assets.

When can an Application be made under the Property (Rights of Spouses) Act?

- [42] Section 13 of the Act provides that a spouse shall be entitled to apply to the Court for a division of property on the grant of a decree of dissolution of a marriage or termination of cohabitation or on the grant of a decree of nullity of marriage or where a husband and wife have separated and there is no reasonable likelihood of reconciliation or where one spouse is endangering the property or is seriously diminishing its value, by gross mismanagement or by wilful or reckless dissipation of property earnings.
- [43] Any application made under section 13(1)(a), (b) or (c) of the Act, shall be made within twelve (12) months of the dissolution of a marriage, termination of cohabitation, annulment of marriage or separation or such longer period as the Court may allow after hearing the Applicant.

The definition of 'property' under the Property (Rights of Spouses) Act

- [44] Section 2(1) of the Act provides that 'property' means any real or personal property, any estate or interest in real or personal property, any money, any negotiable instrument, debt or other chose in action, or any other right or interest whether in possession or not to which the spouses or either of them is entitled.

Who can apply?

- [45] Section 2(1) of the Act defines a 'spouse' as including: -
- (i) *a single woman who has cohabited with a single man as if she were in law his wife for a period of not less than five years;*
 - (ii) *a single man who has cohabited with a single woman as if he were in law her husband for a period of not less than five years.*
- [46] For the purposes of sections 13(1)(a) and (b) and 14 of the Act, the definition of 'spouse' shall include a former spouse.

Division of properties 'other than the family home'

Contribution

[47] Section 14 of the Act reads as follows: -

(1) *Where under section 13 a spouse applies to the Court for a division of property the Court may –*

- (a) *Make an order for the division of the family home in accordance with section 6 or 7, as the case may require; or*
- (b) *Subject to section 17(2), divide such property, other than the family home, as it thinks fit, taking into account the factors specified in subsection (2),*

Or, where the circumstances so warrant, take action under both paragraphs (a) and (b).

(2) *The factors referred to in subsection (1) are –*

- (a) *The contribution, financial or otherwise, directly or indirectly made by or on behalf of a spouse to the acquisition, conservation or improvement of any property, whether or not such property has, since the making of the financial contribution, ceased to be property of the spouses or either of them;*
- (b) *That there is no family home;*
- (c) *The duration of the marriage or the period of cohabitation;*
- (d) *That there is an agreement with respect to the ownership and division of property;*
- (e) *Such other fact or circumstance which, in the opinion of the Court, the justice of the case requires to be taken into account.*

(3) *In subsection (2) (a), a 'contribution' means –*

- (a) *The acquisition or creation of property including the payment of money for that purpose;*
- (b) *The care of any relevant child or any aged or infirm relative or dependant of a spouse;*
- (c) *The giving up of a higher standard of living than would otherwise have been available;*
- (d) *The giving of assistance or support by one spouse to the other, whether or not of a material kind, including the giving of assistance or support which –*
 - (i) *Enables the other spouse to acquire qualifications; or*
 - (ii) *Aids the other spouse in the carrying on of that spouse's occupation or business;*
- (e) *The management of the household and the performance of household duties;*
- (f) *The payment of money to maintain or increase the value of the property or any part thereof;*

- (g) *The performance of work or services in respect of the property or part thereof;*
 - (h) *The provision of money, including the earning of income for the purposes of the marriage or cohabitation;*
 - (i) *The effect of any proposed order upon the earning capacity of either spouse.*
- (4) *For the avoidance of doubt, there shall be no presumption that a monetary contribution is of greater value than a non-monetary contribution.*

The power of the court

[48] Section 15 of the Act provides as follows: -

- (1) *In any proceedings in respect of the property of the spouses or of either spouse (other than the family home), the Court may make such order as it thinks fit altering the interest of either spouse in the property including –*
 - (a) *An Order for a settlement of the property in substitution for any interest in the property;*
 - (b) *An Order requiring either or both spouses to make, for the benefit of either or both spouses, such settlement or transfer of property as the Court determines; or*
 - (c) *...*
- (2) *The Court shall not make an Order under subsection (1) unless it is satisfied that it is just and equitable to do so.*
- (3) *...*

The law before the Property (Rights of Spouses) Act

[49] In discussing the Law prior to the Act, which he later termed the 'old regime', Morrison, JA in **Brown v Brown** (supra), at paragraph [21], summarized it based on the decision of **Gissing v Gissing** [1970] 2 All ER 780. He stated as follows: -

"...this case decided that the mechanism for the resolution of disputes between husband and wife as to the beneficial ownership of property vested in the name of one or the other of them was to be found in the law of trust, in particular in the principles governing resulting, implied or constructive trusts..."

[50] Section 4 of the Act makes the position subsequent to its coming into effect quite clear and provides as follows: -

“The provisions of this Act shall have effect in place of the rules and presumptions of the common law and of equity to the extent that they apply to transactions between spouses in respect of property and, in cases for which provisions are made by this Act, between spouses and each of them, and third parties.”

- [51] Section 4 of the Act therefore directs that there is to be an entirely new and different approach in deciding issues of property rights between spouses. This section directs the Courts as to what that approach should be.
- [52] Since the passing and implementation of the Act, the ‘presumptions of common law and equity’ are no longer applicable when deciding issues of property rights between spouses and between spouses and third parties. All claims to an entitlement to a share in property other than the ‘family home’, must satisfy the factors set out in section 14 of the Act.
- [53] The Privy Council, in **Miller and another v Miller and another** [2017] UKPC 21, made the comment that the Act is a robust enactment which stood on its own two feet and there would rarely be occasion to resort to English authorities under the Married Woman’s Property Act. However, the Board cautioned that the issue of the intention of the parties should not be disregarded, as it was an issue that could be considered as a question of fact as a starting point, without regard to the rules or presumptions of common law and equity.

The approach of the Court

Fairness

- [54] In **Carlene Miller v Ocean Breeze Suites and Inn Limited, Harold Miller and Ocean Breeze Hotel Limited** [2015] JMCA Civ 42, Brooks, JA, at paragraph [36], discusses the overriding objective of the Act.
- [55] Brooks, JA stated as follows: -

*“In his comprehensive judgment in **Brown v Brown** [2010] JMCA Civ 12, Morrison JA traced the process by which the PROSA was devised and promulgated. It may be gleaned from each of the judgments cited in that important case that the object of the PROSA is to achieve fairness between the parties upon the breakdown of their marriage.”*

[56] Brooks, JA continued at paragraph [45] as follows: -

*“The respective interests of spouses at the time of separation or termination of the marriage was considered by Lord Nicholls of Birkenhead in **Miller v Miller; McFarlane v McFarlane** [2006] UKHL 24; [2006] 2 AC 618. In addressing certain elements or strands that comprise the principle of fairness in the division of matrimonial property, Lord Nicholls said at paragraph 16 of his judgment, that unless there is good reason to depart from it, fairness requires that when the partnership ends each is entitled to an equal share of the property. He said that the principle was applicable to both short and long marriages: A third strand is sharing. This ‘equal sharing’ principle derives from the basic concept of equality permeating a marriage as understood today. Marriage, it is often said, is a partnership of equals. In 1992 Lord Keith of Kinkel approved Lord Emslie’s observation that ‘husband and wife are now for all practical purposes equal partners in marriage’: **R v R** [1992] 1 AC 599, 617. This is now recognised widely, if not universally. The parties commit themselves to sharing their lives. They live and work together. When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary. Fairness requires no less. But I emphasise the qualifying phrase: ‘unless there is good reason to the contrary’. The yardstick of equality is to be applied as an aid, not a rule.”*

[57] This Court cannot improve on the analysis of Brooks, JA. Fairness has indeed been the stated objective of the Law in the approach to be adopted in relation to these types of matters. Applications like the one in the instant case become necessary when the legal interest does not reflect the beneficial interest to which the Applicant/Claimant is claiming to be entitled. Between spouses, these issues must be settled or determined based on the provisions of the Act when an Application is made under and by virtue of it.

[58] In **Suzette Ann Marie Hugh Sam v Quentin Ching Chong Hugh Sam** [2018] JMCA Civ 15, the evidence as to the contribution of the Appellant was that she and the Respondent had commenced a business called Xtra-Wholesale, which, according to her, later became Xtra-Supercentre. The Appellant contended that she left her studies to join the Respondent in the running of the business in which she worked tirelessly without pay from 8:00 a.m. to 5:00 p.m., six days per week.

[59] However, the incorporation documents for Xtra-Wholesale showed that the business began in 1993, prior to the parties having met. The evidence was that Xtra-Supercentre is a different company from Xtra-Wholesale. Xtra-Supercentre

was incorporated much later. Xtra-Wholesale ceased operations in 2000. The learned trial Judge accepted that the Appellant had worked at Xtra-Wholesale from 1997 to 1998.

[60] The clearest evidence of the Appellant's contribution to Xtra-Supercentre was that she visited the stores to arrange shelves to allow it to sell groceries and chemicals without contamination.

[61] At paragraph [146], Edwards, JA stated that the evidence was that the Appellant basically took charge of the operations of Clean Chem Limited, to the extent that she undertook training in the subject of mixing chemicals. The evidence was also that the Respondent focussed mainly on expanding the wholesale business through the expansion of Xtra-Supercentre and others. Clean Chem Limited seemed to have operated as a central sorting office for the other companies.

[62] The Appellant's evidence was that she concentrated on the business of Clean Chem Limited and later employed managers so that she could spend time with the children. She later spent more time at home doing payroll, billing and other related activities. After the children got older she went to Clean Chem three days per week in the mornings, which allowed her more time to dedicate to the children and supervise their extracurricular activities. She worked from home, up until 2012, when she stopped working.

[63] At paragraph [150], Edwards, JA stated as follows: -

"It seems to me that if the parties order their affairs in such a way that one party concentrates on one business and the other concentrates on another business and these businesses co-mingle in the way described in the evidence, it would suggest that the spouses were working for the benefit of the family as a unit. The Court should be slow to say that the spouse who has not concentrated on working in one of the family businesses but worked in another, should be shut out of sharing in that business simply because that spouse did not contribute financially to its acquisition and/or expansion."

[64] The Appellant was a wife and a 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, in circumstances where that company was contributing to the expansion of the other businesses, by providing products free of cost to them, for resale. There was no evidence that the Respondent helped with the household or the children. He played golf. He travelled frequently. Both he and Xtra-Supercentre benefitted from the Appellant's work as a wife and her work in Clean Chem Limited.

- [65] Section 14(2)(a) of the Act speaks to contribution that may be financial or otherwise and subsection (3) defines 'contribution' as including the care of any relevant child, the giving of assistance or support to one spouse to carry on his occupation or business, the management of the household and the performance of household duties.
- [66] Section 14(4) of the Act states categorically that, for the avoidance of doubt, there shall be no presumption that a monetary contribution is more valuable than a non-monetary contribution.
- [67] The Court of Appeal held in the authority of **Hugh Sam** (supra), that the Court below ought to have found that the Appellant had made a valuable non-monetary contribution to the conservation and improvement of Xtra-Supercentre and that she was entitled to a one-half share of the Respondent's share in that business and a thirty-three and one-third percent (33 1/3%) interest in the business known as Super Save Wholesale Limited.

ANALYSIS

- [68] There can be no doubt that the Claimant, Mr. Fearon, is allowed by Law to make this application for the division of matrimonial property. The Act provides that, for the purposes of an application such as this, 'spouse' includes a former spouse.
- [69] Whilst the Fixed Date Claim Form was initially filed outside of the twelve (12) month period as required by the Act, the Claimant sought and obtained an Order

of the Court, that the time within which he is to make this application, be extended.

The legal burden of proof

[70] The legal burden of proof is the obligation of a party to meet the requirement of a rule of law that a fact in issue be proved (or disproved) by a preponderance of the evidence. What is the degree of the legal burden borne by Mr. Fearon in a civil proceeding such as this?

[71] In **Miller v Minister of Pensions** [1947] 2 All ER 372 at 373-374, Denning J, speaking of the degree of cogency which evidence must reach in order that it may discharge the legal burden in a civil case, said: -

“That degree is well settled. It must carry a reasonable degree of probability but not so high as is required in a criminal case. If the evidence is such that the tribunal can say ‘we think it more probable than not’, the burden is discharged but if the probabilities are equal it is not.”

The issue of credibility

[72] This is a case in which the central issue is that of the credibility and reliability of the witnesses from whom the Court has heard.

[73] In **Sonia Stanginer-Reid v Robert Lloyd Lee and others** [2016] JMSC Civ 185, Laing, J noted at paragraph [19], that, in assessing the evidence, he would be guided by the observations of Lord Pearce (dissenting) in the House of Lords decision of **Onassis v Vergottis** [1968] 2 Lloyd's Rep 403 at page 431.

[74] Lord Pearce is quoted as follows: -

“Credibility involves wider problems than mere demeanour, which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be. Credibility covers the following...Firstly, is the witness a truthful or untruthful person? Secondly, is he, though a truthful person, telling something less than the truth on this issue, or though an untruthful person, telling the truth

on this issue? Thirdly, though he is a truthful person telling the truth as he sees it, did he register the intentions of the conversation correctly, and if so, has his memory correctly retained them? Also, has his recollection been subsequently altered by unconscious bias or wishful thinking or by over discussion of it with others? ...Lastly, although the honest witness believes that he heard or saw this or that, is it so improbable that it is on a balance of probabilities that he was mistaken?

On this point it is essential that the balance of probability is put correctly into the scales in weighing the credibility of a witness.

All these...compendiously are entailed when a Judge assesses the credibility of a witness; they are all part of one judicial process..."

- [75]** In assessing the credibility and reliability of the witnesses in the instant case, as well as that of the evidence that it has heard, this Court will also be guided by the observations of Lord Pearce.

The publishing business

Acquisition

- [76]** Section 2(1) of the Act defines property as any personal property, or any interest in personal property. The publishing business would therefore fall within the definition of property, as contemplated by section 2(1) of the Act. The undisputed evidence before the Court is that the publishing business was established during the early years of the marriage of the parties. Mrs. Fearon testified that she was 'called by God' to create or establish the publishing business. This later became a partnership, which did not include Mr. Fearon. Mrs. Fearon was supported in this regard by the Certificate of Registration, in respect of the publishing business, which she produced in evidence.
- [77]** Therefore, Mr. Fearon can only properly make a claim to a share of Mrs. Fearon's interest in the publishing business on the basis of a monetary or non-monetary contribution towards the creation or establishment, the conservation or the improvement of same.

Financial contribution

[78] Mrs. Fearon contended that Mr. Fearon made a minimal financial contribution of Fourteen Thousand Dollars (\$14,000.00) towards the creation or establishment of the publishing business. It is her evidence that Mr. Fearon subsequently demanded that this sum of money be repaid to him, with interest.

[79] Mr. Fearon, on the other hand, insisted that he made a substantial monetary contribution towards the establishment of the publishing business, as, whatever sums of money were invested in the said business, were taken from the joint accounts of the parties. He denied that he received the sum of Fourteen Thousand Dollars (\$14,000.00) from Mrs. Fearon and, by extension, that he made any demand that that sum be repaid to him.

Other contribution

[80] Mrs. Fearon averred that, in the early stages of the establishment of the publishing business, Mr. Fearon assisted her to deliver books to various customers across the Island. She contended that Mr. Fearon did this because he was a travelling officer with the Sugar Research Institute and, as such, it was convenient for him to do so. Mrs. Fearon was adamant that Mr. Fearon has no share in the publishing business.

[81] Mr. Fearon vehemently denied that he assisted his former wife with the delivery of her books simply as a matter of convenience. He was adamant that he made these deliveries while he was on the job, as well as, off the job, and on week days, as well as, on weekends.

[82] The Court heard evidence from other witnesses, including some of Mrs. Fearon's business partners, as well as, their spouses and the General Manager for the publishing business. They testified that Mr. Fearon was not involved in the publishing business and that he failed to assist in the delivery of books. It is significant however, that Mrs. Fearon admitted that, in the early years of the

establishment of the publishing business, Mr. Fearon assisted her by sharing the expenses of the home and by delivering books.

- [83]** It was suggested to Mr. Fearon that the role that he played in the publishing business was peripheral, which he denied. He denied at first that his name was not on the bank account of the publishing business, then later admitted to same. The Court also noted that Mr. Fearon did not know the details of the operation of the publishing business, beyond the publication of Mrs. Fearon's third book. Mr. Fearon admitted that he did not write any of these books, that he does not have an agreement with the other writers and that he had no record of the 'seed money' that he claimed to have contributed toward the establishment of the publishing business. He maintained that he provided the 'seed money' for the publication of Mrs. Fearon's first book. This, he asserted, was in the amount of Twenty Thousand Dollars (\$20,000.00). Mr. Fearon contended that, between 1998 and 1999, he delivered books and collected payments on Mrs. Fearon's behalf. He denied that he stopped making deliveries in early 1999 and asserted that he provided a support base for his former wife to write her books.
- [84]** The Court accepts the evidence of Mrs. Fearon in this regard. The Court had the opportunity to observe her as she gave her evidence, both in examination-in-chief, as well as, in cross-examination. The Court was impressed by her demeanour and formed the view that she spoke forthrightly and honestly. The Court finds that Mrs. Fearon is a credible and reliable witness.
- [85]** In the same way, the Court also had an opportunity to observe Mr. Fearon as he gave his evidence, both in examination-in-chief, as well as, in cross-examination. At times Mr. Fearon appeared confused as he testified and often times appeared uncertain of matters that were germane to his case.
- [86]** The Court accepts the evidence of Mrs. Fearon, that, in the early years of the establishment of the publishing business, Mr. Fearon assisted her to deliver books and that, on occasions, the parties made those deliveries together.

Bill Payments

- [87] Section 14(3)(e) of the Act allows the Court to consider a party's management of the household and performance of household duties, in determining that party's contribution.
- [88] In this regard, Mr. Fearon contended that he paid the major portion of the expenses of the household, including paying the bills of the home, of the motor vehicles and of the Manchester Road Properties. Mrs. Fearon paid the telephone and internet bills and the wages of the part-time household helper. Mr. Fearon contended further, that, Mrs. Fearon did not pay the utility bills until she moved into their new home in 2009.
- [89] Mrs. Fearon asserted that Mr. Fearon provided groceries over the years up to 2003, after which she agreed to purchase the groceries because Mr. Fearon complained of being tired of this routine and that the shops had been built and were generating an income that could be used to take care of this expense.
- [90] The Court accepts Mrs. Fearon's evidence in this regard.

Maintenance of the children

- [91] Section 14(3)(b) of the Act allows the Court to consider a party's care of any relevant child.
- [92] In this regard, Mr. Fearon contended that the funds that were used to cover the educational expenses of their children came from the joint bank accounts maintained by the parties. Mrs. Fearon contended that while she was in the USA she remained responsible for the educational expenses of their daughter and made no demand of Mr. Fearon for financial help. Mrs. Fearon contended further, that, she also covered the educational expenses of their son, by herself, until she 'shamed' Mr. Fearon into assisting her, in 2009.
- [93] Mr. Fearon invited the Court to examine the documentary evidence that he averred supports his position that he contributed towards their son's education.

This he described as, 'not exhaustive for education investment and back to school expenses.' He insisted that his contribution of Twenty Thousand Dollars (\$20,000.00) per month was satisfactory, as he was also making monthly contributions towards their son's education by contributing to the Heritage Education Fund, which matured when he [their son] attained the age of eighteen (18) years.

- [94]** Mr. Fearon denied that he refused to support their daughter financially and morally. He stated that he and Mrs. Fearon had agreed that she would fund the cost of their daughter's University fees, from the proceeds of the publishing business, as well as, from the income generated from the rental of the shops that had been erected on the Manchester Road Properties. He asserted that the parties agreed further, that, he would take care of their son's College and University expenses, from his salary. This agreement, Mr. Fearon averred, was arrived at because his income alone could not do both and also take care of the needs of the home. Notwithstanding this agreement, Mr. Fearon insisted that he gave their daughter pocket money occasionally.
- [95]** Mr. Fearon denied that he and his former wife employed a household helper when their son was born. He asserted that the parties had a part-time household helper before the birth of their son and employed a full-time household helper when he was born. It was agreed that Mrs. Fearon would pay the household helper, who was paid the minimum wage and a little extra at Christmas, and, accordingly, was not a great burden for her.
- [96]** The Court accepts that both Mr. Fearon and Mrs. Fearon cared for their children. Mrs. Fearon testified that at times she was required to work late. There is no evidence before the Court that, on those occasions, Mrs. Fearon took the children with her or left them in the care of someone else. It can reasonably be inferred that on those occasions the children would have been left in the care of their father. Mr. Fearon's evidence is that he cooked meals for the children, paid some of their bills and guided them as a father should, among other things, and

that he took them to school. Mrs. Fearon did not dispute this. In fact, her evidence is that, in the early years of the marriage, Mr. Fearon assisted her. The Court finds, however, that, subsequently, Mrs. Fearon had to shoulder much of the responsibilities of the home, as well as, those of the publishing business, on her own.

Pooling of finances

- [97] Mrs. Fearon asserted that when she and Mr. Fearon moved into the matrimonial home, he made a 'one off' contribution in the sum of One Hundred Thousand Dollars (\$100,000.00), towards the home. He made no other monetary contribution until December 2009. Mrs. Fearon also asserted that when she asked him [Mr. Fearon] to start making more of a contribution, he provided Thirty Thousand Dollars (\$30,000.00). Her evidence is further, that, Mr. Fearon refused to increase this sum, until she requested the intervention of their pastor, in 2011.
- [98] By way of response, Mr. Fearon averred that he asked Mrs. Fearon to join him in making a budget. This she refused to do. Her comment was that 'her money is for her to do what she wants to do with it.' He asserted that Mrs. Fearon then told him to contribute Thirty Thousand Dollars (\$30,000.00), which he did, in addition to gardening and covering the school expenses of their son. Mr. Fearon asserted that he paid the first electricity bill, a bill that was in his name. After Mrs. Fearon made her complaint to their pastor, and subsequent to his meeting with the parties, it was concluded between the parties that, Mr. Fearon would contribute Fifty Thousand Dollars (\$50,000.00), while Mrs. Fearon would contribute One Hundred Thousand Dollars (\$100,000.00), after excluding expenses such as, property tax and the cost of maintaining the motor vehicle. Mr. Fearon asserted that the parties were encouraged to open and maintain a bank account, for the purpose of financing their living expenses, which Mrs. Fearon refused to do.

The Pastor's evidence

[99] Pastor David Roomes testified that, at a meeting that he had with Mr. Fearon and Mrs. Fearon, the former complained that the latter was making more money than he was. As such, Mr. Fearon insisted that it was not fair for him to be asked to make a contribution towards the household expenses. The Pastor's evidence was further, that, Mr. Fearon stated that he [Mr. Fearon] was not in favour of Mrs. Fearon establishing a business, nor was he in favour of contributing to it, and that he did not assist Mrs. Fearon in the publishing business, save for the time when she just started same. The Pastor's evidence continued that, Mr. Fearon maintained that he assisted in transporting books, whilst he was on his way to his various work assignments across the Island.

[100] Pastor Roomes stated that Mr. Fearon told him, that he [Mr. Fearon] contributed Two Million Dollars (\$2,000,000.00) towards the acquisition of the Manchester Road Properties and that, when the publishing business became successful, he took back that which he had contributed. Pastor Roomes' evidence was that Mr. Fearon complained bitterly that he [Mr. Fearon] wanted the return of his money, with interest.

Mr. Fearon's response

[101] Mr. Fearon rejected this evidence of Pastor Roomes. He was adamant that he contributed to Mrs. Fearon's publishing business, by delivering the books the business had published, by providing assistance with book storage, by building commercial shops for rental, by housing the publishing business and by making a monetary contribution towards the printing of books. Mr. Fearon contended that since the publishing business had grown and had employed other persons to do these things, there was no further need for him to make a contribution.

[102] Mr. Fearon asserted that Pastor Roomes' evidence was informed by the fact that he had received monetary gifts from Mrs. Fearon, and that the Court ought not to

accept him as a credible or reliable witness and ought not to accept his evidence as being credible or reliable.

[103] Pastor Roomes admitted that he had received monetary gifts from Mrs. Fearon. The pastor's evidence was that on one such occasion the monetary gift that he had received from Mrs. Fearon was intended for his former wife, who at that time was gravely ill. His evidence continued that she has subsequently died. He testified that Mrs. Fearon has a 'ministry of giving' and that he would not want her ministry to be tainted by the suggestions being advanced by Mr. Fearon. Pastor Roomes insisted that he had spoken the truth about his recollection of the conversation that he had with the parties and that he had maintained a good relationship with each of them.

[104] The Court has had the opportunity to observe Pastor Roomes as he gave his evidence, in examination-in-chief, in cross-examination and in re-examination. The Court has had the opportunity to observe his demeanour as he gave his evidence and has assessed his evidence in the context of the suggestion that it is informed by ulterior motives.

[105] The Court finds, however, that Pastor Roomes spoke the truth in this case. The Court was impressed by Pastor Roomes and by his demeanour as he gave his evidence. The Court formed the view that he spoke truthfully about that which he could recall of the conversation that he had with the parties in the instant case. The Court accepts Pastor Roomes as a credible witness and finds that his evidence is both credible and reliable. The Court does not find that his evidence was motivated by the monetary gifts that he had received from Mrs. Fearon nor that his evidence was skewed in her favour as a result of having received those gifts of money.

[106] There is no evidence that Pastor Roomes continued to receive monetary gifts from Mrs. Fearon, outside of those of which the Court was told, nor is there any evidence before the Court, that those gifts, whether monetary or non-monetary,

have continued or were continuing at the time that this case was being tried and at the time that Pastor Roomes was giving his evidence.

[107] In any event, for the most part, Pastor Roomes' evidence confirmed what the parties themselves had already stated, that is, that Mr. Fearon's non-monetary contribution was made in the fledgling stages of the publishing business and that he made a financial contribution towards the establishment of the publishing business, which was returned to him, with interest.

Proportion of Mr. Fearon's interest in the publishing business

[108] In light of the evidence that has been adduced of Mr. Fearon's contribution, both monetary and non-monetary, towards the creation or establishment of the publishing business, this Court finds that Mr. Fearon would be entitled to a three percentage (3%) beneficial interest in the value of Mrs. Fearon's interest in same as at 31 December 1999.

The Manchester Road Properties

Acquisition

[109] Section 2(1) of the Act clearly states that property includes any real property or any interest in real property. The Manchester Road Properties would therefore fall within the definition of property, as contemplated by the Act. Mrs. Fearon asserted that the Manchester Road Properties were bought, in the joint names of the parties, in or around 2000, and that this was where the publishing business was located from 2002 to 2013.

Contribution

[110] Mr. Fearon contended that the construction of the building was a joint effort between himself and Mrs. Fearon. He asserted that he was more on the ground managing the operation and using his experience in building. Mrs. Fearon admitted that Mr. Fearon recommended an architect, assisted her by making contact with that architect, and suggested the builder who should be contracted

to do the work. Mrs. Fearon insisted however, that, it is she who had discussions with the architect, as to the design and construction of the building to be erected on the Manchester Road Properties. She asserted that she and Mr. Fearon visited the construction site, that she would visit there every day while Mr. Fearon went 'somewhat regularly.' Mrs. Fearon agreed that both of them worked on the accounting in respect of the Manchester Road Properties, and that Mr. Fearon was not paid for the recommendations that he made. When asked by Learned Counsel who appeared for Mr. Fearon, whether she paid Mr. Fearon, Mrs. Fearon responded that 'he was eating and drinking his three (3) meals every day at no cost to him whatsoever.' She maintained that 'He [Mr. Fearon] had no input to myself, the children or the building after 1999.'

[111] Mrs. Fearon admitted that the land comprising the Manchester Road Properties was cleared, more than once and that Mr. Fearon supervised the bushing of two (2) Lots. She maintained that Mr. Fearon made the payment for the clearing of the land from money that had been collected from the rental of the shops erected on the said properties. Mrs. Fearon agreed that Mr. Fearon would collect the rent and would give same to her. She stated that the contractor, Mr. Brooks, would attend at their home and that he would account for how he spent the money that was given to him by Mr. Fearon. Mrs. Fearon also stated that the money that was given to Mr. Brooks came from one of the joint accounts held by the parties. She asserted that if Mr. Fearon paid the painter, he would have done so as 'a bearer'. If there was work to be done on the Manchester Road Properties, she would act on Mr. Fearon's recommendation as to who to employ to do the work. Mrs. Fearon maintained that it was she who put the funds together to pay for the work to be done, and that those funds did not necessarily come from the accounts maintained by the parties.

[112] Mrs. Fearon agreed that Mr. Fearon got a personal rebate, regarding GCT payments made for the Manchester Road Properties, that the water for the said properties was in both their names and that Mr. Fearon signed the rental receipts, in respect of the said properties, in the capacity of landlord. Mrs.

Fearon's evidence was further that 'when the shops were refurbished and ready for rental Clarence Fearon was integral to the renting.'

[113] Mrs. Fearon contended that she obtained Two Million Dollars (\$2,000,000.00) from Mr. Fearon. She further contended that she did not ask for this sum of money, or any at all, but that Mr. Fearon offered it to her and that she accepted it. She asserted that, when she repaid that sum of Two Million Dollars (\$2,000,000.00), to Mr. Fearon, that was the extent of his monetary contribution towards the acquisition of the Manchester Road Properties and insisted that all the moneys that were invested in the said properties belong to her.

[114] Mr. Fearon agreed that he received this sum of Two Million Dollars (\$2,000,000.00) from Mrs. Fearon but contended that he did so 'under protest'. He maintained that he lodged this sum of money to one of the joint accounts maintained by the parties.

Rental accounts

[115] Section 2(1) of the Act provides that property includes any money. The money contained in the rental accounts maintained by the parties would therefore also fall within the definition of property, as contemplated by the Act.

[116] Mrs. Fearon asserted that there were two accounts from which the proceeds from the rental of the shops located on the Manchester Road Properties would be deposited. Mr. Fearon was a signatory to that account and could withdraw money therefrom. That was the account from which the persons who cleared or bushed the land were paid. Mrs. Fearon's evidence was that Mr. Fearon withdrew money from the chequing account for his personal use while she would do so from the savings account. She asserted that she did not ask Mr. Fearon to account to her for the moneys that he withdrew.

[117] The Court accepts Mrs. Fearon's evidence that Mr. Fearon made a financial contribution in the amount of Two Million Dollars (\$2,000,000.00), towards the Manchester Road Properties. Mr. Fearon was reimbursed this sum of money,

with interest. However, this represents Mr. Fearon's monetary contribution towards the Manchester Road Properties. The Court must also have regard to his non-monetary contribution towards the acquisition, conservation or improvement of the Manchester Road Properties.

Proportion of Mr. Fearon's interest in the Manchester Road Properties and the Rental Income

[118] In light of Mr. Fearon's initial non-monetary contribution towards the acquisition of the Manchester Road Properties, the Court finds that he is entitled to a ten percentage (10%) beneficial interest in its unimproved value as at 31 December 1999.

[119] The Court also finds that Mr. Fearon is entitled to a ten percentage (10%) share of the rental income generated from the rental of the shops erected on the Manchester Road Properties, from the date of first rental to 31 December 1999, less the sum of Eight Hundred Thousand Dollars (\$800,000.00), which the Court finds was already paid to him.

The bank accounts

[120] Section 2(1) of the Act provides that property includes any money. There can therefore be no doubt that the money contained in the several bank accounts maintained by the parties would also fall within the definition of property, as contemplated by the Act.

National Commercial Bank account numbered 504061612

[121] It is to this account that Mrs. Fearon contended that she lodged the earnings that she received from the USA. It is her evidence that the money from this account was used to make improvements to the property first occupied by the parties, which was owned by Mr. Fearon.

[122] Mr. Fearon contended however, that, this was the account to which the rental income was deposited. He conceded that Mrs. Fearon expended money on the

property owned by him, following the passage of hurricane Ivan but maintained that she later closed the said account and that he can only account for Eight Hundred Thousand Dollars (\$800,000.00) of the rental income.

[123] In an effort to support this assertion, Mr. Fearon exhibited an account detail for the Court's consideration. The Court observes that the account that is reflected on that exhibit is account numbered 504061613 and not account numbered 504061612. It is therefore unclear in which account Mr. Fearon is contending that the rental income was deposited.

Bank of Nova Scotia Mutual Funds account numbered 30869

[124] Mrs. Fearon contended that the monies that were deposited to a BNS Mutual Funds account came from the profits made from the publication and distribution of her books. She contended further that Mr. Fearon made no contribution to these accounts and that his name was placed on the account, merely as a matter of convenience. Mrs. Fearon asserted that she closed that account when the stock market went into a rapid decline.

[125] Mr. Fearon, on the other hand, contended that he was the one who had opened this account and that it is he who added Mrs. Fearon's name to it, merely as a matter of convenience. Mr. Fearon stated further that he was certain that '...one account that was held jointly had monies from the business. Scotia Mutual Fund.' He maintained that he made deposits to that account but failed to provide any documentary evidence to corroborate this.

[126] The Court therefore finds that Mr. Fearon has failed to prove that he is entitled to a share of the funds deposited in this account.

National Commercial Bank Capital Market account numbered 767606

[127] Mrs. Fearon asserted that the money deposited in the NCB Capital Market account numbered 767606 was also from the proceeds of the publishing

business, which grew rapidly. She asserted further that this account was subsequently closed.

- [128]** Conversely, Mr. Fearon contended that it is he who opened this account and caused Mrs. Fearon's name to be added to same. He maintained that he is the principal account holder on this account and that his contribution to this account were from the proceeds of the rental of the shops that were constructed on the Manchester Road Properties, and from the proceeds of the sale of the books published by Mrs. Fearon.
- [129]** Mr. Fearon further contended that he transferred the remaining funds in NCB account numbered 767606 to a joint NCB account numbered 504408140, which bore the name of their son.
- [130]** It is clear from Mr. Fearon's evidence in relation to the NCB account numbered 767606 that he had transferred the remaining funds from this account to another. He admits that money belonging to Mrs. Fearon was contained in this account. He admitted that this money consisted of money that represented a part of the rental income generated from the rental of the shops that had been constructed on the Manchester Road Properties. He also admitted that this money consisted of money that represented a part of the proceeds of the sale and distribution of books that Mrs. Fearon had published.
- [131]** It appears to this Court that it would be Mr. Fearon who would be obligated to reimburse Mrs. Fearon her share of the money that was deposited to this account. Mr. Fearon has failed to establish, by way of evidence, the portion of the money deposited to this account that represents the rental income generated from the rental of the shops located on the Manchester Road Properties, as well as, that which represents the proceeds from the sale and distribution of the books that Mrs. Fearon published.
- [132]** The Court finds that Mr. Fearon has failed to provide a breakdown of the funds contained in this account.

JMMB account numbered 22599966

[133] Mr. Fearon contended that he opened the JMMB account numbered 22599966 and that, at the time of closing, it contained Fifty-eight Thousand Four Hundred and Ninety-one United States Dollars (US\$58,491.00). Mrs. Fearon accepted that it is Mr. Fearon who first opened this account and subsequently added her name to same. She asserted however, that Mr. Fearon had the sum of Ten Thousand Seven Hundred and Twenty-three United States Dollars and Twenty-one cents (US\$10,723.21) in this account, from which he withdrew the sum of Ten Thousand Five Hundred United States Dollars (US\$10, 500.00) which he gave to his daughter, for the purpose of making a deposit on a house that she was buying in Canada.

[134] Mrs. Fearon asserted that, thereafter, she deposited funds into that account. She asserted that, after she had closed this account, Mr. Fearon informed her that he had made a deposit of Six Thousand United States Dollars (US\$6,000.00) to this account. Mrs. Fearon maintained that she reimbursed this sum of money to Mr. Fearon, with interest, in accordance with his demand. Mrs. Fearon produced in evidence, documents that reflect the payment of Six Thousand United States Dollars (US\$6,000.00) and a subsequent payment of Three Hundred and Twenty-eight United States Dollars (US\$328.00).

[135] The Court accepts the evidence of Mrs. Fearon in this regard. The Court finds that the total sum of money contained in this account, which belongs to Mr. Fearon, has been paid to him by Mrs. Fearon, with interest.

JMMB Account

[136] Mrs. Fearon's evidence was that this account was closed on 19 February 2009. Mr. Fearon did not dispute this. The amount of money, if any at all, contained in this account, at the time of closing, has not been disclosed to the Court. Mr. Fearon maintained that each party is entitled to a half share of this sum. This, he asserted, is so because Mrs. Fearon had deposited roughly a half of the total sum of money contained therein.

Bank of Nova Scotia account numbered 633831

[137] Mrs. Fearon asserted that this account has a balance of Five Thousand Dollars (\$5000.00), and that this represents the money that she had used to open it. Mrs. Fearon asserted further that no other deposits have been made to this account and that this account belongs solely to her.

BNS accounts numbered 402600 and 631444

[138] Mr. Fearon contended that the BNS accounts numbered 402600 and 631444, respectively, were maintained and operated jointly by the parties and that Mrs. Fearon withdrew liberally from the funds contained therein, for the purpose of meeting the household expenses. He contended further, that, his salary was deposited to the account numbered 402600 and that Mrs. Fearon withdrew money from this account, for the purpose of assisting with the education of their son. Mrs. Fearon conceded that this is the account to which Mr. Fearon's salary was deposited but contended that she only withdrew from it on his instructions and on his behalf.

[139] In her viva voce evidence, Mrs. Fearon admitted that she withdrew the sum of Four Hundred Thousand Dollars (\$400,000.00) from this account. She insisted that that sum did not include all of the money belonging to Mr. Fearon. She maintained that she refunded the difference to Mr. Fearon. She asserted that the proof of that refund is reflected in a printout that indicates that money was transferred from account numbered 602269 to account numbered 402600. To her affidavit filed on 18 September 2017, which was permitted to stand as part of her evidence-in-chief, Mrs. Fearon exhibited the bank book which reflects the withdrawal of that sum of money. (See – Affidavit of Lunett Fearon filed on 18 September 2017).

[140] Mr. Fearon contended that he and Mrs. Fearon operated a Scotia Mutual Fund account numbered 30869. Mrs. Fearon closed this account and opened a new BNS account, numbered 531645, in her name and that of their daughter. BNS

account numbered 631444 was opened for the purpose of meeting the expenses of the household. Mr. Fearon asserted that he contributed solely to this account by way of a standing order. He contended that Mrs. Fearon was the only one who withdrew funds from this account.

[141] Mrs. Fearon contended that BNS account numbered 631444 was opened in 2011, after she had 'put her foot down', and had insisted that Mr. Fearon contributed to his living expenses. Mrs. Fearon contended further that Mr. Fearon ceased making deposits to this account after he was served with divorce papers. He recommenced doing so, only after a complaint was made to his Attorneys-at-Law. Mr. Fearon, at that time, contributed Twenty Thousand Dollars (\$20,000.00), towards the maintenance of their son.

[142] The Court accepts the evidence that the money contained in BNS account numbered 631444 was used to meet the expenses of the household and towards the maintenance of their son.

[143] The Court finds that the sole BNS account, in respect of which funds would be required to be shared between the parties, is that numbered 402600. The Court accepts Mrs. Fearon's evidence that she reimbursed Mr. Fearon his portion of the sum of money that she withdrew from this account and finds that there would be no need for an Order in respect of the money contained in this account.

Other joint accounts mentioned by the parties

COK credit union account

[144] Mr. Fearon asserted that he added Mr. Fearon's name to this account before the parties were married. It is clear that this account was wholly maintained by Mr. Fearon. He does not assert that Mrs. Fearon accessed or used any of the funds contained in this account. Furthermore, Mrs. Fearon's evidence is that she was not aware that her name had been added to this account.

NCB account numbered 504306305

[145] Mrs. Fearon's evidence was that the funds contained in this account were from the proceeds of her work. The Court accepts the evidence of Mrs. Fearon in this regard and finds that Mr. Fearon would not be entitled to any share of the funds contained in this account.

JMMB accounts

[146] Mr. Fearon asserted that, while the parties were married, they maintained other accounts with JMMB. These are accounts numbered 23530412, 1275641 and 43001315, respectively. Copies of bank statements relative to these accounts were exhibited to the Affidavits that were filed on behalf of the parties and which were permitted to stand as part of their evidence. No evidence was given by either party as to the portion of their respective contributions to these accounts.

JMMB account numbered 23530412

[147] Mr. Fearon contended that the sum of Four Hundred Thousand Dollars (\$400,000.00) was withdrawn from his BNS account numbered 402600. This sum of money was used to cover the cost of printing books, at the Northern Caribbean University Press. He contended further that funds were taken from the JMMB account numbered 23530412 for printing books, at the Phoenix Printery, on 1 July 2008. Mr. Fearon averred that funds from this account were also used on numerous occasions, which included occasions on which money was used in relation to the Manchester Road Properties.

[148] Mrs. Fearon insisted that Mr. Fearon never contributed to this account. She contended that she was the only person who contributed to this account and that Mr. Fearon contributed One Million Eight Hundred and Sixteen Thousand Dollars (\$1,816,000.00). Mrs. Fearon further contended that the sum of Two Million Dollars (\$2,000,000.00), that was loaned to her by Mr. Fearon on 28 May 2003, came from that account. She asserted that she last used this account on 26 January 2009, and that, thereafter, Mr. Fearon took full control of the account.

JMMB account numbered 43001315

[149] Mrs. Fearon's evidence was that this is the account from which payment of a loan that she had secured to construct the building on the Manchester Road Properties, was made. She asserted that the total amount that she borrowed was Three Million Dollars (\$3,000,000.00), and that this loan was secured by the funds in the said account. She asserted that the bank had been directed to deposit the interest from account numbered 43001315 to the Savesmart account, which was held in the joint names of the parties. She further contended that it was agreed between them that Mr. Fearon would be the primary borrower in respect of this loan. Mrs. Fearon asserted that Mr. Fearon closed the Savesmart account in May 2012, and that, on 18 May 2012, he used the money contained in that account, in the amount of One Hundred and Sixty-seven Thousand Three Hundred and Seventy-one Dollars and Fourteen cents (\$167,371.14), to open a Sure Investor account numbered 2932508.

[150] The Court finds that Mr. Fearon has no further claim to the money contained in the JMMB account numbered 43001315, as he has already withdrawn the available balance.

The Toyota Camry motor car

[151] Section 2(1) of the Act establishes that any personal property or any interest in personal property owned by either or both spouses, fall within the statutory definition of property. Consequently, the Toyota Camry motor car also meets the definition of property, as contemplated by section 2(1) of the Act.

[152] Mr. Fearon could not recall whether he had made a claim concerning this motor vehicle. He stated that this motor vehicle was sold in 1997 or 1998. Mr. Fearon contended that he took Mrs. Fearon to purchase the said motor car and that the money used came from their joint accounts.

[153] Apart from his bald assertion, that this motor car was purchased with money that belonged to himself and Mrs. Fearon, Mr. Fearon has not proven his financial

contribution in this regard. He has failed to establish that he deposited money to this account, which he averred was held in the joint names of the parties. The Court has formed the view that this aspect of Mr. Fearon's claim seems to be based solely on the fact his name appears on the account from which money was used to purchase this motor vehicle, on his having assisted Mrs. Fearon by taking her to collect the said motor vehicle, and on Mrs. Fearon's having access to the BNS accounts numbered 402600 and 631444, respectively.

[154] The Court finds that Mr. Fearon has failed to establish that he made a contribution, whether monetary or non-monetary, toward the acquisition, conservation or improvement of the Toyota Camry motor car.

The Honda CRV motor car

[155] Section 2(1) of the Act establishes that any personal property or any interest in personal property owned by either or both spouses, fall within the statutory definition of property. Consequently, the Honda CRV motor car also meets the definition of property, as contemplated by section 2(1) of the Act.

[156] Mr. Fearon contended that the Honda CRV motor car was purchased from the joint accounts of the parties. These were the BNS account to which his salary was deposited, along with that of Mrs. Fearon, as well as, the Mutual Funds account. He was unable to provide the Court with any proof that he contributed to the Mutual Fund account.

[157] Mrs. Fearon stated that Mr. Fearon gave her a ride to purchase the motor car and that he drove it to have it serviced on two (2) occasions. She asserted that she had to give Mr. Fearon the money required to cover the cost of the servicing of the said motor vehicle, as well as, to cover the toll charge.

[158] The Court finds that Mr. Fearon has failed to demonstrate that he made a contribution, whether monetary or non-monetary, toward the acquisition, conservation or improvement of this motor vehicle.

CONCLUSION

[159] In conclusion, the Court finds that Mr. Fearon is entitled to a three percentage (3%) beneficial interest in the value of Mrs. Fearon's share in the publishing business as at 31 December 1999. Mr. Fearon is entitled to a ten percentage (10%) beneficial interest in the unimproved value of the Manchester Road Properties as at 31 December 1999. He is also entitled to a ten percentage (10%) share of the rental income generated from the rental of the shops erected on the Manchester Road Properties, from the date of first rental to 31 December 1999, less the sum of Eight Hundred Thousand Dollars (\$800,000.00), which the Court accepts has already been paid to him.

[160] Secondly, the Court finds that Mr. Fearon has no beneficial interest in the Toyota Camry motor car and no beneficial interest in the Honda CRV motor car.

[161] Finally, the Court also finds that Mr. Fearon is not entitled to a share in the money contained in the BNS Mutual Funds account numbered 30869 and is not entitled to a share in the money contained in BNS account numbered 633831.

DISPOSITION

[162] It is hereby ordered that: -

(1) The Claimant is entitled to a three percentage (3%) beneficial interest in the value of the Defendant's share in the publishing business as at 31 December 1999;

(2) The Claimant is entitled to a ten percentage (10%) beneficial interest in the unimproved value of all that parcel of land situate at Lots 10, 11 and 12, 71 Manchester Road, Mandeville, in the parish of Manchester, being the land comprised in Certificate of Title registered at Volume 1375 Folio 42, Volume 1349 Folio 116 and Volume 1349 Folio 117, respectively, of the Register Book of Titles, as at 31 December 1999;

- (3) The Claimant is entitled to a ten percentage (10%) share of all the rental income generated from the rental of the shops constructed on Lots 10,11 and 12, 71 Manchester Road, Mandeville, in the parish of Manchester, being the land comprised in Certificate of Title registered at Volume 1375 Folio 42, Volume 1349 Folio 116 and Volume 1349 Folio 117, respectively, of the Register Book of Titles, from the date of first rental to 31 December 1999, less the sum of Eight Hundred Thousand Dollars (\$800,000.00), which has already been paid to the Claimant;
- (4) The Claimant has no beneficial interest in the Toyota Camry Motor car registered in the names of the Claimant and the Defendant;
- (5) The Claimant has no beneficial interest in the Honda CRV Motor car registered in the names of the Claimant and the Defendant;
- (6) The Claimant is not entitled to a share in the money contained in the Bank of Nova Scotia Mutual Funds account numbered 30869;
- (7) The Claimant is not entitled to a share in the money contained in the Bank of Nova Scotia account numbered 633831, maintained at the Mandeville Branch;
- (8) The Claimant is entitled to a one hundred percentage (100%) share in the money contained in the Bank of Nova Scotia account numbered 402600, maintained at the Mandeville branch;
- (9) The Claimant is entitled to the balance of money remaining in the Bank of Nova Scotia account numbered 631444, maintained at the Mandeville branch;
- (10) The Claimant is entitled to a one hundred percentage (100%) share in the money contained in the COK Credit Union account;
- (11) Liberty to apply;

- (12) Each party to bear to his own costs;
- (13) The Defendant is refused leave to appeal;
- (14) The Defendant's Attorney-at-Law is to prepare, file and serve the Orders made herein.