[2014] JMSC Civ. 197

IN THE SUPREME COURT OFJUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO 2012 HCV 03744

BETWEEN	***SUZETTE ANN-MARIE HUGH SAM***	***CLAIMANT***
A N D	***QUENTIN CHING CHONG HUGH SAM***	***DEFENDANT***

IN CHAMBERS

Mr. Wentworth Charles and Mr. Pearnel Charles Jnr. instructed by Wentworth Charles and Co. for the Claimant.

Mr. Gordon Steer and Mrs. Judith Cooper-Bachelor instructed by Chambers Bunny and Steer for the Defendant.

Heard: May 12, 13, 14; July 9 and December 16, 2014

Property (Rights of Spouses) Act – Determination of interest in land on which house is located – Whether house is family house – Determination of interest in land on which businesses are located – Declaration of entitlement to interest, shares and profits in businesses, - Order for transfer of ownership of motor vehicle.

P.A. Williams, J.

[1] This is an application by way of a Fixed Date Claim Form pursuant to the provisions of the Property (Rights of Spouses) Act 2004 ("PROSA") whereby Mrs. Suzette Ann-Marie Hugh Sam (the claimant) is seeking declarations and orders relative

to various properties and businesses. Her husband Mr. Quentin Ching Chong Hugh Sam ("the defendant") opposes her application for most of these matters maintaining she has no interest in them.

[2] The parties were married in November of 1998 after having lived together from 1995. At the time of their marriage the claimant was pregnant with their first child who was born in May of 1999. A second child was born in April 2001. The marriage deteriorated and by 2010 the parties resided in separate quarters in the same house. The defendant say that "differences" had started from in or around 2008 whereas the claimant say they started in or around 2005. In any event it was the defendant who filed for divorce and the claimant was served with the petition for dissolution of marriage on the 26th of May 2012.

[3] The parties were engaged in negotiations/mediation in an effort to reach an amicable settlement regarding the division of property, maintenance and custody issues. It was when the claimant viewed these attempts as bearing no fruit that she filed her Fixed Date Claim Form seeking the court's determination of the matters.

[4] By way of Fixed Date Claim filed on July 4, 2012 the claimant claimed against the defendant for the following declarations and orders inter alia:-

(1) That the Claimant is entitled to one-half interest in all that parcel of land situate at Lots 15 and 16 Peter's Rock in the parish of Saint Andrew registered at Volume 1189 Folio 95 and Volume 1178 Folio 458 of the Registrar Book of Titles;

(2) That the Claimant is entitled to one-half interest in all that parcel of land situate at Lot 4 Dillsbury Avenue, Kingston 6 in the parish of Saint Andrew registered at Volume 1209 Folio 156 of the Registrar Book of Titles;

(3) That the Claimant is entitled to one-half interest in all that parcel of land situate at 103-105 Barry Street, Kingston;

(4) That the Claimant is entitled to one-half interest in all that parcel of land situate at 14 Race Course Road, Mandeville in the parish of Manchester.

(5) A Declaration that the Claimant is entitled to one-half of the net annual interest and profits of the aforementioned business including: Clean Chem Limited, Sure Save Wholesale Limited, Xtra Supercentre, Hoven Enterprises Limited and Microage Enterprises Limited since incorporation or the commencement of trading, and that an account be taken by the Registrar of the Supreme Court of the receipts, payments, dealings and transactions of the defendant, his servants or agents in respect of the management/operation of the said businesses from their incorporation or the commencement of trading.

(6) A Declaration that the Defendant is liable to account to the Claimant for all sums of money removed from their businesses and invested in the several other businesses referred to in the claimant's affidavit.

(7) An order that the Land Rover, 2008, Registration Number 4949 FM, Chasis Number SALLSAA138A185418, Engine Number 0326576DT truck be transferred into the name of the claimant free from all encumbrances;

(8) That the aforementioned properties be valued by a reputable valuator to be agreed by both parties and in the absence of an agreement by a valuator appointed by the Registrar of the Supreme Court.

(9) That the Registrar of the Supreme Court be empowered to execute the relevant transfers on behalf of the defendant in respect of the properties to be sold and the motor vehicle , in the event that the Defendant refuses or neglects to do so.

(10) That the Claimant has the first option to purchase the properties referred to and mentioned at paragraphs one (1) and two (2) above. The said option to be exercised within thirty (30) days after Notice of Valuation being given, failing which the said properties be sold on the open market by private treaty or public auction;

(11) That the Defendant had the first right of refusal to purchase the properties, shares and interest referred to and mentioned at paragraphs three (3), four (4), five (5) and six (6) above. The said right to be exercised within thirty (30) days after notice of valuation has been given, failing which the said properties be sold on the open market by Private Treaty or by Public Auction;

(12) That there be partition and sale of the said properties and the net proceeds of sale shared equally between the claimant and the defendant.

The Response

[5] The defendant in opposing the claim is disputing being owner of some of the properties the claimant seeks an interest in. Further he disputed that the claimant made any contributions to or any meaningful contribution to the acquisition, conservation or improvement of the properties, the subject of the claim, as is required to satisfy the provisions of "PROSA". In the closing submissions made on behalf of the defendant there was concession that the two (2) lots of land at Peters Rock is owned by the parties in equal shares. There was also an acknowledgement that the claimant may have a limited interest in Clean Chem Limited.

The Approach

[6] Given the nature of this claim involving various properties and businesses, it is considered best to start by identifying the provisions under which the claim is brought which are relevant in resolving the issues. The evidence and submissions made in respect of those properties and businesses will then be considered against the backdrop of those provisions identified. This approach will mean that not all the evidence presented will be reviewed and only submissions made considered relevant to the issues as defined by the legislation will be noted.

The Law

[7] The interpretation section of PROSA is the obvious place to start in establishing the parameters within which this matter is to be considered.

Section 2 (1) includes the following relevant definitions:

> "*family home" means the dwelling-house that is wholly owned by either or both of the spouses and used habitually or from time to time by the spouses as the only or principal family residence together with any land, buildings or improvements appurtenant to such dwelling-house and used wholly or mainly for the purposes of the household, but shall not include such a dwelling-house which is a gift to one spouse by a donor who intended that spouse alone be benefit".*
>
> *"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."*

[8] The next provision which is considered relevant is the section which can be viewed as providing guidance as to how this matter should be considered.

Section 4 states:-

> *"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."*

[9] It is useful to note the view expressed by the local Court of Appeal as to significance of this section. In **Annette Brown v Orphiel Brown [2010] JMCA Civ. 12** Cooke J.A. at paragraph 10 had this to say:

> "*By section 4 of the Act, the legislature directed that there was to be an entirely new and different approach in deciding issues of property rights as between spouses. Section 4 is a directive to the Courts as to what the approach should be."*

[10] In deciding the issue as it relates to the family home, sections 6 and 7 of "PROSA" are the next relevant provisions.

Section (6) states inter alia:-

(1) Subject to subsection (2) of this section and sections 7 and 10, each spouse shall be entitled to one-half share of the family home;

(a) on the grant of a decree of dissolution of a marriage or the termination of cohabitation;

(b) on the grant of a decree of nullity of marriage;

(c) where a husband and wife have separated and there is no likelihood of reconciliation.

Section 7 – (1) where in the circumstances of any particular case the Court is of the opinion that it would be unreasonable or unjust for each spouse to be entitled to one-half the family home, the court may, upon application by an interested party, make such order as it thinks reasonable, taking into consideration such factors as the court thinks relevant including the following:-

(a) that the family home was inherited by one spouse;

(b) that the family home was already owned by one spouse at the time of the marriage or the beginning of cohabitation;

(c) *that the marriage is of short duration*.

[11] In dealing with the division of the matrimonial property sections 13 and 14 would be the next important sections. It is to be recognized that section 13 (1) which states the time when application may be made to the Court for division of property has already been called in aid of this case presented by the Claimant. She sought leave and was granted permission to apply out of time for an order extending the time within which to make this application.

[12] In any event, it is to be noted that at the time this matter commenced the parties though separated had commenced divorce proceedings but the decree nisi had not yet been granted. Hence the claimant would have been entitled to rely on section 11 of PROSA. This section empowers the court to make orders regarding property during the subsistence of marriage.

[13] It is section 14 which deals specifically with factors to be taken into consideration when an application such as this is made.

Section 14 – (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 17 (2) divide such property, other that 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 paragraph (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 the 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 circumstances which, in the opinion of the court, the justice of the case requires to be taken into account.

(3) In subsection (2) (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 material kind including the giving of assistance or support which –

(i) enables the other spouse to acquire qualifications

(ii) aids the other spouse in the carrying on of that spouses 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 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 proposal ordered 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*.

[14] Another relevant provision which will be borne in mind is section 15 which empowers the court in any proceedings in respect of the property of the spouses or of either spouse (other than the family home) to make such order as it thinks fit, altering the interest of either spouse in the property. In making an order the court must be satisfied that it is just and equitable to do so. Once again the matters referred to section 14 (2) should be regarded as well as the following–

15 (3) (a) the effect of the proposed order upon the earning capacity of either spouse.

(b)……..

(c) any other order that has been made under this Act in respect of a spouse

[15] Further at section 23 the orders which the court may make are outlined. It is provided there that without prejudice to any other provisions of this Act, the Court may make any of the following orders – (inter alia)

> *(g) for the sale of property or part thereof and for the division, vesting or settlement of the proceeds thereof;*
>
> *……..*
>
> *(i) for the payment of a sum of money by one spouse to the other spouse;*
>
> *(j) for the transfer of land;*
>
> *(k) for the transfer of shares, stocks, mortgages, charges debentures or other securities or of the title to any other property.*

The evidence and the submissions

[16] The first item in the Fixed Date Claim Form is the parcel of land situate at Lots 15 and 16 Peters Rock in the parish of Saint Andrew. It has already been noted that the defendant admits that this parcel of land comprising the two (2) lots was owned by them in equal share. The admission was grounded in his evidence that this property was bought out of their resources and they therefore were registered as joint tenants.

Re: the parcel of land situate at Lot 4 Dillsbury Avenue, Kingston 6, registered at Volume 1209 Folio 156 of Registrar Book of Titles.

[17] It is undisputed that the parcel of land to which the claimant is seeking one-half interest is that piece of a larger parcel on which a townhouse is constructed. It is also evident that the parties resided in this townhouse along with their children for some time, hence the claimant in her first affidavit refers to this property as the family home. Although she initially said they moved into this house in 2006 she later agreed with the defendant's assertion that it was in fact in 2009 that this was done.

[18] There is clear evidence from the title exhibited, that this parcel of land is registered in the name of the defendant and his father. Upon the defendant exhibiting the title for the lot on which the townhouse is located, it was noted that the actual volume number is 1396 and the folio number is 753. It is the defendant's evidence that this entire property was registered to a company owned by his father who had entered a joint venture with KES Development Co. Ltd to develop the property into a townhouse complex. However KES Development became bankrupt and was unable to complete the project.

[19] It is agreed that the townhouse unit that the parties occupied had to be completed by them. The claimant says that it was part of the deal with the construction company that one of the units would be transferred to the defendant and her on completion. She said she directed and supervised what was to be done to make the townhouse habitable and comfortable.

[20] It is her evidence that by 2010 their relationship had deteriorated to the point where she and the children moved to the ground floor of the family home while the defendant remained upstairs. This would suggest that the parties had moved into the townhouse after difficulties had begun to plague the marriage and had separated within a year or so of moving in.

[21] In the submission for the claimant, Mr. Charles urged that the claimant's assertion as being that the land was intended as a gift to both herself and the defendant and not exclusively for the defendant as he had testified. He pointed to the explanation for the delay in transferring the title into the names of the parties as being occasioned by unrelated litigation. He then went on to explore the concept of a gift by discussing the case of **Abbot v. Abbot [2007] UKPC 53.**

[22] Mr. Charles then proceeded to urge that it was the claimant's further assertion that the defendant's father was registered on the title purely as a nominal party with no beneficial interest of his own in the property. He referred to the case of **Grant v. Edwards and Anor. 1986 Ch. 638** as demonstrative of the fact that a joint registered proprietor could be found to have no interest in the property. It was the submission of

Mr. Charles that "the court has always recognized the distinction between parties having a legal interest in property and consequently a party's name may be on the title nominally."

[23] Another bit of evidence that Mr. Charles referred to in support of his assertion that the claimant was entitled to a share in this home is from a letter that the defendant admitted writing to the claimant after the parties had separated. The defendant explained that the claimant had expressed numerous times to his cousin a concern about his saving for the children's education and making provisions in the event of his death. He thus wrote a letter/e-mail, on the instructions, of this cousin to put the claimant at ease that in case of his death, the children would be looked after.

[24] In the letter the defendant had stated "your biggest expense which is your house is already taken care of……" It is these words that Mr. Charles pointed to as being an express declaration by the defendant which "gave rise to a constructive trust and/or proprietary estoppel in the context of the parties relationship whereby the defendant recognized the claimant's beneficial interest by the use of clear and unambiguous words." He relied on the words of Scarman L.J. in **Paul v. Constance [1997] All ER 197** insofar as it commented on the issue of the creation of a trust.

[25] Mr. Steer in his response on behalf of the defendant found it best to remind the Court that under "PROSA" such issues as trusts, have no bearing in this matter, this being even more so since this is not a claim in equity. He submitted that it is the requirements as set out in section 2 of PROSA that must be satisfied in establishing that the property was the family home.

[26] He referred to two (2) cases from our jurisdiction to support his contention. Firstly he noted the Supreme Court decision of **Johnson v. Cole-Johnson [2012] JMSC Civ. 142** where Mr. Justice Sykes considered the issue of whether a house was wholly owned by one or both spouses and the meaning of wholly owned. He reviewed the evidence and concluded at paragraph 38 –

> *"The conclusion from all this evidence is that the property was not 'wholly owned' by Mrs. Cole-Johnson. She and her*

> *brother together decided to acquire the property and build on it. Therefore the property was not owned solely or exclusively by Mrs. Cole-Johnson or her husband or both of them and so was not the family home within the meaning of the statute…..The claim was not contested on an alternate basis, that is to say, the claim did not require the court to consider whether Mr. Johnson's claim was sustainable on normal equitable principles outside of the legislation."*

[27] Mr. Steer also relied on the Court of Appeal decision of **Patsy Powell v. Courtney Powell 2014 JMCA Civ.11** where the court had found that the learned Trial Judge's findings that the claimant/appellant was the sole owner of the land on which a house was constructed allowed a finding that the property was the family home for the purposes of PROSA.

[28] After reviewing the bits of evidence he thought relevant, Mr. Steer concluded that this property in question could not have been the family home. He noted that under cross-examination the claimant had admitted that the entire lot at 4 Dillsbury Avenue had been acquired by her husband and his father. She however explained that she was not exactly clear as to the terms of this acquisition but believed it was out of circumstances where the men had been assisting someone out of a gambling debt. She did not know if money was passed. She was however aware of the deal with KES constructions and it was out of that deal that she was maintaining one of the townhouses was to be transferred to her husband and her.

[29] He went on to note the contrary bit of evidence given by the defendant who maintained that his father had placed his name on the title in circumstances where he had made no contributions to its acquisition. He acknowledged that his wife had been involved with the construction and had suggested a construction company to do the work. This was not the company that completed the work, however. Mr. Steer noted that in all of the evidence nowhere could it be pointed out that the claimant had made any contribution of whatever nature to the acquisition, conservation or improvement of the property and therefore had no interest in it.

[30] The property, in any event, he maintained was not wholly owned by the defendant and thus the claimant could not get any interest in it as the family home.

[31] Mr. Charles did in fact urge that in the alternate, if the claimant was unsuccessful in securing a claim under this limb, she was entitled by virtue of the alternative position of section 14 (2). He noted that in the case **Whilby-Cunningham v. Cunningham Claim No.2009 HCV02358** Del September 16, 2011, Mrs. Justice McDonald-Bishop at paragraph 35 poised the view that -

> *"Even if the property is not the family home, which by extension would mean that section 6 (1) does not apply, then section 14 (1) (b) of the Act would still be applicable. That section gives the Court the power to deal with the property other than the family home and section 14 (2) specified the factors to be taken into account by the court in dividing the property as it sees fit."*

[32] Mr. Charles further relied on the judges' comments at paragraph 62 –

> "*The material question at this point therefore is whether the fact that the legal title for the land does not reside in any of the parties would affect the standing of the house as the parties' family home. In this regard what the undisputed evidence does prove is that the land has been used wholly by the parties and their family for well over two decades. This would therefore satisfy the requirements in law for the land together with the house, to be taken as the family home. There is nothing in the Act to say that the land must be owned by either party or both of them, it only stated the dwelling house should be."*

[33] Mr. Charles also found assistance for his submission in the case of **Greenland v. Greenland** 2009 HCV 2805 delivered February 9, 2011 where Mr. Justice Brooks having found that the property in question was not the family home at the conclusion said:-

> *The matrimonial home in his case did not become the family home. This is because it was, at no time, "wholly owned by either or both of the spouses." It,*

> *therefore is not subject to the provisions of section 6 of the Act. It may however be considered for the purposes of section 14 of the Act. Despite the fact that Mr. Greenland had intended for the matrimonial home to belong to the children of his first marriage, Mrs. Greenland had contributed to its acquisition, and by her role as homemaker and caregiver to Mr. Greenland's children to it conservation and improvement. This is especially so as he was away from home working for extended periods at a time. Her contribution may be recognized as compensation by a lump sum payment. For that purpose the property must be valued and the value of her paid to her by way of lump sum."*

[34] As has already been noted, the defendant has acknowledged that the claimant did play a role in suggesting a construction company to assist in completing the townhouse. It is her evidence that she directed and supervised what was to be done to make it habitable and comfortable. It is his evidence that he had to fire this company and hire another company and a supervisor to finish the job and he would visit the site often to see it was being done correctly. He however, accepted that she would also go to the site to see how the work was progressing.

[35] Under cross-examination the defendant insisted that it was his father who made it possible for him to do the construction. He said his father would give him the money which he used to pay the construction company some payments would be in cash and others by way of cheques. The claimant gave no evidence as to where the monies had come from to do the construction.

[36] Mr. Charles concluded his submissions that having regard to the authorities, "on both limbs of the law the claimant has satisfied on a balance of probability that the 'home' was the family home in the context of the relationship of the parties and the statutory provisions [i.e. Section 6 (1) and 14 (1) (b)]"

Re: The other properties, and interest, shares and profits of the businesses.

[37] I propose to consider the evidence as it relates to each item of the fixed date claim separately and then consider the submission. This is deemed the best course especially since Mr. Charles in making his submissions made one general argument in relation to all of what he described as "the distribution of property other that the family home." Mr. Steer however did identify and make submissions in relation to each item.

Re: The parcel of land situate at 103-105 Barry Street, Kingston.

[38] This parcel of land is where one of the businesses was operated from. This business was called Xtra Wholesale. This operation however the defendant said was closed in 2014.

[39] It is not disputed that at the time the parties met, the defendant was working with his father in a business called Xtra Trading Company Limited. The defendant explained that he had been working there from 1991 and he had been given shares in that company but he had earned a salary for the work he did as his father and partner maintained control of the company.

[40] The claimant maintained that it was after they had met that they had discussions with the defendant telling her of his intention to start a business because the family business was not working out. She said it was out of those discussions the business was commenced at 103-105 Barry Street.

[41] It is noted that there has been nothing exhibited to prove in whose name this parcel of land is registered. The defendant exhibited documents relating to Xtra Wholesale itself. The Memorandum of association is dated the 17th day of June 1993 and has as its share distribution between Quentin Hugh Sam and Noel Tappin 29999 to 1. This supports the defendant's assertion that the business commenced before he had even met the claimant and therefore could not have been born out of any discussions with her.

[42] It is the defendant's bald assertion that he does not own the parcel of land, in any event. He claimed that it is owned by Microage Enterprises Limited which is owned by

his mother who resides in California but maintains business interest in Jamaica and elsewhere.

[43] The claimant said it had been suggested to her by the defendant that they incorporate this company as a holding company for another of the businesses Clean Chem Ltd. She said she signed the documents of incorporation given to her by the defendant explaining that the defendant had informed her that it was best to incorporate the company in an off-shore location, the British Virgin Islands, in order to enjoy certain tax principles and benefits.

[44] The defendant countered this by maintaining that Microage was incorporated in 1998 or 1999 and this was before Clean Chem was conceived. He never intended or discussed and it was never for Microage to be a holding company for Clean Chem. The certificate of incorporation for Clean Chem indicates that it was incorporated in 2001 as a limited company by the Registrar of Companies here in Jamaica and not in the British Virgin Islands. There are no documents exhibited concerning Microage as the defendant seems to be satisfied in asserting it is not owned by him.

Re: All that parcel of land situate at 14 South Race Course Road, Mandeville, in the parish of Manchester.

[45] This property is the location of another business named Sure Save Wholesale Ltd., which is operated as a Supermarket. The claimant said that they purchased the business in 2001. She explained that they saw it as a good business opportunity although it was different from their usual business model. The business was purchased first and later the property was purchased using capital from which the business was operated. She exhibited the annual return for the company filed in 2012. The registered office and the mailing address given is 103-105 Barry Street, Kingston, St. Andrew. It list the persons holding shares in this company as Quentin Martin with 990 shares and Alva Martin with 10 shares.

[46] The title for this parcel of land is not exhibited. The defendant maintained that the money put up to purchase this property was from Microage Ltd. and rental for this property is paid to Microage. He denied purchasing the business with the claimant. He

re-iterated that he has no shares or interest in Microage and therefore does not own the property.

[47] Alva Lobban nee Martin gave evidence on behalf of the defendant with whom she has worked since 1995. She was once personal assistant to him and had knowledge of the companies in which he had an interest. She now describes her work as essentially running Sure Save. It is her evidence that she has never seen or done any rental cheques for Sure Save but neither has she seen any documents relating to the ownership of the building where the business is located

Re: The Land Rover 2008 – Registration Number 4949 FM

[48] The Certificate of Registration for this vehicle bears the owner's name as being Sure Save Wholesale Limited of 14 South Race Course, Mandeville. The claimant acknowledged this fact in her affidavit and explained that it was assigned to her to be used on a daily basis to transport the children as well as for her personal use. The defendant explained further that he took out a loan to purchase the vehicle.

Re: interest, shares and profits of the company Clean Chem Limited of 1 Golding Avenue, Kingston 6.

[49] It became apparent from the evidence of the defendant, that he acknowledged that the claimant did do some work on behalf of Clean Chem. There is some dispute as to how much, but she did assist from the time the company was incorporated in 2001.

The claimant list her early responsibilities in the company as including the implementation of the processes by which the chemicals were made, maintaining inventory, quality control, product development, managing of operations, hiring, training and managing of staff, including managers among a host of others.

[50] She gave further detail of her intimate knowledge of the company explaining how it started with one (1) mixing tank and two (2) employees. She started out on the production floor, producing and perfecting the product line. The company grew from its small beginning to twenty-five (25) employees and three (3) mixing tanks. Then the company became automated resulting in the reduction of personnel to fourteen (14).

The business went from purely manufacturing to a packaging facility and progressed from hand-labeling their products to automatic labeling.

[51] It was her contention that the start-up capital for this business came from the other business Xtra Wholesale Limited which was later named Xtra Supercentre. Thus she claimed her financial contribution to this business would have come from the other stores just as his, the defendant's was. She however conceded that she had no physical evidence of where the monies came from to invest in any business.

[52] The claimant explained that Clean Chem was her major responsibility. Her husband was concerned mainly with the wholesale businesses. While she would confer with him on certain managerial discussions she was in charge of the day to day management of the business. She said she worked at Clean Chem until February of 2012. She had the support of two (2) nannies from 2001 to 2005 to assist with the children. She also highlighted the fact that the defendant was a golf –enthusiast and spent much time participating in tournaments locally and overseas.

[53] She said after the relationship between herself and the defendant began to deteriorate she felt unsupported; with him hardly being at home or at the business. She trained a manager and once she was satisfied of that person's capability of overseeing the day to day operations of the factory, she began to work more from home, doing payroll billing and related activities, and going into the factory three (3) days per week in the morning. She maintained constant contact with her manager. This working from home began in 2010.

[54] The defendant said it was he who asked his wife to run this business as he said she had been home doing nothing since 1996. He said she ran the business for about four (4) months and then lost interest and stopped going to the business place every day. He hired a manager to run the business in January 2003. It was his evidence that the only thing that she did for Clean Chem on a continuous basis was the payroll. He however acknowledged that the claimant was signatory on the account for this business.

[55] He challenged the evidence as to the source of the capital used to invest in the establishing of the business. He said Clean Chem was financed by his father. He exhibited the returns for the company as filed in 2010 which states that it is he and Alva Lobban who hold shares in the company – he 990 and Mrs. Lobban 10.

Re: interest shares and profits of the company Sure Save Wholesale Limited.

[56] It had already been noted that the parties disagree as to the formation of this company. The claimant said it was a business they purchased together and renamed Sure Save Wholesale. The defendant said it was his father who decided to invest in this business and put up the money.

[57] It was maintained by the claimant that although she did not remember how much money was paid to purchase the business, the money came from the other businesses and their savings. She admitted that she had no physical evidence to support this assertion. She could not say when this business commenced operations but thought it was incorporated around the same time as Clean Chem in 2001.

[58] The defendant agreed that it was incorporated in that year but he maintained that the business began operations in 2004. Mrs. Alva Lobban gave evidence that she was instrumental in setting up the store. It is already noted that she has some ten (10) shares in this company and she essentially runs the store.

[59] There was no evidence that the claimant had anything to do with the establishing or operating of Sure Save. She was also not said to be a signatory on this business' bank accounts.

Re interest, shares and profits of the businesses trading as Xtra Supercentre

[60] The first reference to Xtra Supercentre by the claimant came when she asserted that this was the name used upon the renaming of the business Xtra Wholesale. She said that together, she and the defendant had commenced operating Xtra Wholesale. She further asserted that upon his urging she had discontinued pursuit of her academic qualifications to join him full time in running the business. They worked tirelessly to make this new business successful she said, while she acted as assistant manager

overseeing the operations, attending her job from eight in the morning until five in the evening, six days per week.

[61] The defendant countered these assertions by noting that Xtra Wholesale was operating as a business from June 1993 prior to his meeting the defendant. It is already noted that the Memorandum of Association for this company is exhibited in support of this assertion.

[62] He maintained that he had been operating this business two years before meeting his wife and it was fully staffed from inception. Under cross-examination the claimant conceded that this was so. He denied encouraging her to discontinue her studies and maintain she did so of her own choosing. He said she did express a desire to learn the business but she lost interest after three (3) months, left and never returned to do anything for that company. He explained that Xtra Wholesale traded as Xtra Supercentre although Supercentre is a registered company. Further, he explained Xtra Wholesale no longer trades having not done so since 2000.

[63] Mrs. Lobban said she is the person who was to have worked with the claimant when it was time for the claimant to learn the business. She said this lasted for about three (3) months during which time the claimant was supposed to be her assistant. She denied that the clamant had worked at Xtra Wholesale or ever was its assistant manager. As she explained it, Xtra Supercentre is a separate company from Xtra Wholesale and did the same business as Xtra Wholesale at the same location.

[64] The claimant agreed with Mrs. Lobban that Xtra Supercentre and Xtra Wholesale are separate trade names operated by the defendant and said this was at a point in time when similar activities were carried on at the same location. She however, took issue with Mrs. Lobban's assertion that she was employed as an assistant and spent only three months at the business.

[65] On the question of how long claimant actually worked at Xtra Wholesale, it was her evidence under cross-examination that she began working there at the beginning of 1997 and stopped going there when she got pregnant in 1998. Thus she said she

assisted with that business for about 18 – 19 months; meaning she was present there over that period. She later said that after the birth of their first child, she assisted in running the business doing administrative work from home on a computer.

[66] Mrs. Lobban explained that she worked for Xtra Wholesale from 1995 until 2000 and commenced doing work for Xtra Supercentre as well as the wholesale in 1999 – 2000. However, the evidence suggests that the wholesale ceased trading in 2000. The claimant's evidence that Xtra Wholesale stopped operating when she became pregnant with her second child in 2000 confirms both this evidence of Mrs. Lobban and that of the defendant on this point.

[67] The claimant said she did do work for Xtra Supercentre thereafter, however, she gave little detail about what that work was. She did say that her primary responsibility became Clean Chem in 2001 whereas the defendant had as his main focus the growth of the wholesale business through several businesses (Xtra Supercentre).

[68] It was Mrs. Lobban who explained that Xtra Supercentre had several branches. She was totally involved with all the locations and their operations. At one point there were some six (6) locations but three (3) closed after an average one (1) year of operation. She explained that the main emphasis for the stores is retailing of household chemicals and selling grocery items. The inter-relationship between the businesses was also explained by Mrs. Lobban. It was her responsibility to order the chemicals sold in the stores/branches from Clean Chem. Thus she would interface with the claimant as it was through her that the orders were made.

[69] Although she placed orders, Mrs. Lobban explained that the branches would not pay Clean Chem and as far as she was aware no payment was made to Clean Chem. Her explanation about this arrangement was that the companies all belonged to Mr. Hugh Sam.

[70] It was when pressed under cross-examination that the claimant expanded on what she did for Xtra Supercentre. She went into the stores to arrange them to allow

them to sell groceries and chemicals to ensure there was no contamination. She insisted that she was a signatory for the accounts for the Xtra Supercentre and it is the defendant's evidence that he was not sure if she was but he believed she could have been a signatory . It is, however, clear from the annual returns of this company that she was not a shareholder but rather the two shareholders were her husband who held 29,999 shares and Noel Tappin who held one share.

Re: interest, shares and profits of the company Hoven Enterprises Limited

[71] It is agreed that Hoven Enterprises Limited was incorporated in the British Virgin Islands in February 1998. It is also agreed that it was formed to acquire the property the parties were residing at the time. This was done for tax purposes. The claimant said it was she who suggested the name. The Certificate of Incorporation exhibited by the claimant confirms that the company was incorporated on the 23rd day of February 1998.

[72] The claimant said the defendant had given her certain incorporation documents to sign which she did as a shareholder in the company. The defendant exhibited the share certificate for this company which indicates that the authorized capital of the company was US$50,000.00 divided into 50,000 shares of par value $1.00 each and he alone is the registered holder of the shares in the company.

[73] It is undisputed that the property at 25 Hopefield Avenue in St. Andrew was eventually bought and registered to Hoven Enterprises Limited of 629 North West 103 Way, Pembrook Pines, 33028, Florida, United States of America. This property served as the home the parties resided as a family until 2009 when they moved to the town house at 4 Dillsbury Avenue. The claimant said they paid $7,000,200.00 in cash to the vendor. The defendant disputed this and said he borrowed money to make the purchase from his father. He pointed out that the claimant was not working at that time and made no contributions towards the purchase.

[74] This property at Hopefield was sold to the claimant's mother and brother. It is noted on the title that the transfer of this property was registered on the 23rd December 2010.

Re: interest, shares and profits of the company Microage Enterprises Limited

[75] It has already been noted above that the defendant has maintained that he has no interest or shares himself in Microage. The clamant has no evidence to dispute, his assertion, that the company is owned by his mother. There were no documentary evidence presented relative to the company.

The submissions

[76] Mr. Charles identified section 14(2) of PROSA as outlining the considerations of the court when determining the distribution of matrimonial property. He opined that the overarching theme of these provisions as well as the theme that permeates the Act is that of equity and fairness. He went on to submit that in the instant case it is the averment of the claimant that she is beneficially entitled to a share in the properties owned by the defendant since she contributed directly and indirectly to the acquisition, conservation and improvement of these businesses without a salary for several years during the marriage.

[77] Mr. Charles then embarked on a discussion on the establishing of a beneficial interest. He referred to such cases as **Gissing v Gissing [1971] AC 886**; **Hammond v Mitchell [1991] 1 WLR 1127**; **Lloyds Bank Plc v Rosset [1991] 1 AC107** and **Grant v Edwards [1986] Ch 638**.

[78] He referred to the letter/email sent to the claimant by the defendant dated the 17th February 2011 in which he said the defendant unreservedly and directly expressed to the claimant that the business Sure Save Wholesale, property located at Barry Street and the other companies and properties he owned was for the benefit of the family. He noted that the claimant averred that this document represents an acknowledgement by the defendant that she was entitled to a beneficial interest in all the properties referred

to therein inclusive of those owned and/or controlled and registered in the name of the companies Hoven Enterprises Limited and Microage Enterprises Ltd.

[79] It was argued that the claimant organised her life in such a way as to assist her then husband in attaining assets for the benefit of the family unit. It was claimed that she discontinued her academic qualification twice and this was said to be at the behest of the defendant. She left university she said to assist him in Xtra Wholesale later renamed Xtra Supercenter. Further it was submitted that she worked in several businesses owned by the defendant without salary for years. It was said to be undisputed that she was the primary caregiver of the relevant children.

[80] In considering the significance of the contributions made by the claimant in determining the distribution of these items claimed by her, Mr. Charles referred to the cases of **Nixon v. Nixon [1969] 3 All ER 1133**; **Miller v. Miller [2006] UKHC 24** and the local decision of **Crammer v. Crammer claim No. HCV 01261 of 2007.**

[81] He concluded, after this consideration, that the claimant would not likely have committed years of her life to working in the business without salary. He submitted that the assurances given by the defendant must have convinced the claimant so that she felt satisfied to rely on same that the parties were working to build family assets for the future. It became Mr. Charles' submission that her direct and indirect non-financial contributions supported by the express declarations of the defendant are cogent evidence to establish a beneficial interest in the properties.

[82] It is to be noted that Mr. Charles was of the opinion that the letter of 17th of February 2011 is of much significance. He interpreted it as being the defendant unreservedly and directly expressing to the claimant that the business Sure Save Wholesale Ltd, property located at Barry Street and the other Companies and properties he owns was for the benefit of the family.

[83] It was highlighted that the defendant stated the following in that letter:-

(i) Most of the money is sent back into the business to maximize our returns especially at Sure Save Wholesale

(ii) If I should die [paraphrase] ....it would be up to you if you want to keep the business, if not, we own the business in Mandeville and you would have the option to rent it or sell the business and building.

(iii) The building at Barry Street will produce positive cash flow .....you are left with about 3500. In the event she [my mother] passes away you and your children will get the entire amount.

(iv) Remember to keep the companies alive by paying the fees every year because the properties are in the company name.

[84] Mr. Charles found the local decision **Downer v. Downer Claim No E 400 of 2002** useful since in that case the learned Judge had referred to the inferences which could be drawn from e-mails exchanged between the parties.

[85] Recognizing and acknowledging the fact that all of the businesses and properties that the claimant was seeking an interest in did dot bear her name in any capacity, Mr. Charles submitted that the Jamaican Courts have held that in certain circumstances it is appropriate to "pierce the corporate veil" and ignore separate corporate personality. To support this point, he relied on the case of **Crawford v. Financial Institutions Ltd. SCCA Nos. 64 and 88 of 1999** delivered July 31, 2001.

[86] He also noted that the idea of lifting the veil when it was necessary to do so was considered in **Prest v. Prest [2013] 2 AC 415** and **Trustor AB v. Smallbone (No. 2) [2001] 3 All ER 987.**

[87] Flowing from this discussion on the lifting of the corporate veil, Mr. Charles noted that in the case of **Prest v Prest (supra)** the Supreme Court there was able to hold that

there were resulting trusts in favour of the wife. He noted that they were able to do so by the silence and non-disclosure by the directors of the company. This was of particular importance to Mr. Charles since he noted that in the instant case the defendant had claimed that some of the properties were owned by offshore companies registered in the British Virgin Islands.

[88] He pointed to the failure of the defendant to produce for the Court's consideration any documentary evidence to support the assertion that rental for one of the properties is being paid to Microage Enterprises Limited. Further he noted that the property the family had first been living at had been sold to the claimant's family by Hoven Enterprises Limited on behalf of the defendant. It was further argued that as a matter of course the defendant "regularly co-mingled" the funds of the various companies with his personal account.

[89] The submission on this point was that "the cumulative effect of the foregoing demonstrates the companies were made agent of the defendant and in the circumstances given the facts in the instant case it is submitted that the court is justified in finding that the properties were held on trust for the claimant by the defendant who demonstrably has control of the companies". Mr. Charles also noted that the defendant had failed to make full and frank disclosure as ordered previously by the Court. This order for specific disclosure had been made; it was submitted, in an effort to rectify gaps present in the defendant's affidavits.

[90] It should be noted that Mr. Charles went on to consider the investments the defendant had admitted to making. It was Mr. Charles' opinion that the claimant's evidence was that the investments in several institutions were made from the joint endeavours of the parties and represents proceeds removed from the businesses and invested. Thus he submitted that the applicable principles of law to be considered were those expressed by in **Jones v. Maynard [1951] 1 All ER 802** by Vaisley J.

[91] In concluding his submissions, Mr. Charles felt it necessary to note the defendant's evidence that his father is the head of the family and that Chinese way is that the head of the family controls everything. Further he noted the defendant's assertion that it was the defendant's father who had advanced the funds necessary to initiate investments. He made these observations to note that despite these pronouncements the defendant never saw it appropriate to have this father testify and the court is urged to "ask itself the reasons therefore".

For the defendant

[92] Mr. Steer considered the evidence as given for each of the items claimed. He also noted that there was mention of other property in the affidavit of the wife but no claim has been made to these other than to say that the defendant is owner and/or beneficiary of several other properties, assets and investments. Mr. Steer submitted that the wife is not under PROSA entitled to 50% of property that the husband owns.

[93] He noted that under PROSA by virtue of section 6 a spouse gets 50% of the family home whereas other property owned by the spouses fall under section 14 of the act and this section demands some form of contribution. He also pointed out that the claimant has an application under the Matrimonial Causes Act so this application is being heard only under PROSA and a decision will have to be made under section 14 or under section 15 (2) of this legislation. He submitted that one has to first look at section 14 (2) of the Act and then to see if it would be just and equitable so to act. Ultimately he opined that section 15 would not apply.

[94] Mr. Steer choose to rely on cases based on the New Zealand legislation which he argued is very similar to our own. He noted that the Jamaican legislation speaks to the contribution directly or indirectly to the acquisition, conservation or improvement of any property. He noted further that the New Zealand Legislation uses the word "sustain" to mean to keep it up and to keep it going. He relied on the case of **Hebberd v Hebberd 3 NZLR page 198.**

[95] In noting the different legislations dealing with matters such as this, Mr. Steer pointed to the New Zealand legislation as being one that shares equally all property acquired during the marriage. The Australian legislation was noted as not having equal sharing of all property. The English Legislation still has the Married Woman's Property Act. He observed that applications under the Matrimonial Causes Act for ancillary relief are made in divorce proceedings and some legislation have a section dealing with property adjustment orders where the Court has wide powers. He urged however that the English cases on proceedings for Ancillary Relief cannot apply to applications under PROSA. Many of the cases relied on by Mr Charles were dealing with such proceedings.

[96] After reviewing the evidence concerning each item claimed, Mr. Steer came to the following conclusions:-

(i) Insofar as 4 Dillsbury Avenue, Townhouse #8 is concerned the claimant has no interest since she failed to satisfy the requirement of establishing that it was the family home.

(ii) No evidence was led by the claimant as to how or why she could have a share in property not registered in the name of the claimant, thus no order can be made in respect of the property at 103-105 Barry Street since the registered proprietor is Micorage Enterprises Limited who is not a party to this claim.

(iii) The property at 14 South Race Course, Mandeville is also in the name of a company called Micoage Enterprises Limited. The defendant is not a shareholder of that company and because of this fact the claimant's claim must fail.

(iv) The Land Rover motor truck is reregistered in the name of the company Sure Save Wholesale. It is settled law that no shareholder has any right to an item of property owned by the company for which he had no legal or

equitable interest therein. He is entitled to a share of the profits while the company continues to carry on business and a share in the distribution of surplus assets when the company is wound up.

(v) The claimant did work on behalf of Clean Chem when it started when incorporated in 2001. Her imput grew less and less and by 2008 it was work from home. She made no contribution towards the capital needed to get the company up and running. She is not a shareholder and has made no application for an interest in the shares standing in the name of the defendant. The case of **Harley v. Harley SCCA 72/2007** was relied on. The claim must fail and this would be so in respect of all the companies. However, if this submission is wrong she would only be entitled to a share in Clean Chem given the work she did and would be entitled to only 10%.

(vi) As regards Sure Save, the defendant is not a shareholder and there is further no evidence of the claimant making any contribution towards this company.

(vii) The evidence of the defendant and his witness Mrs Lobban established that the claimant had little imput in Xtra Wholesale and even less in Xtra Supercentre. The claimant's evidence was not such that would give her an interest in the shares in Xtra Supercentre.

(viii) Hoven Enterprises Limited owned the property the family first lived in, hence this property would not be considered as a family home. The claimant has not been able to provide any evidence as to how she could have a share in property owned by the company Hoven as she did not provide any funds towards the acquisition of any property owned by the company.

(viiii) Microage Enterprises does not belong to the defendant and he has no shares in it and he has never had any shares in it. While it was not disputed that the address used for this company is that of the claimant's mother in Canada, the claimant admitted being told that it was his mother's. The claim to Microage Enterprises Limited and its property must therefore fail.

The analysis of the evidence and the law-

[97] The claimant seeks an interest in the land at 4 Dillsbury Avenue. There is no dispute that this land is registered in the names of the defendant and his father. The argument progressed that the land is part of the family home. It is to be noted that the claim was not for the house subsequently built on the land. This is to my mind significant as it is clear that there is a failure to appreciate that by its definition the family home is firstly the dwelling house that has to be wholly owned by either or both of the spouses and used in a particular manner and that house together with any land etc appurtenant to such dwelling house and used wholly or mainly for the purposes of the household that complete this concept of the family home.

[98] The problems that have arisen in understanding this concept have now become apparent in the differing approaches that have been taken in two (2) recent Court of Appeal decisions. In **Powell v. Powell** [supra] the court was minded to acknowledge the principle established in the law of real property and recognised in **Mishall v. Lloyd [1837] 2 M & W 450 at page 459**. The principle is that whatever is attached to the soil becomes part of it. This ultimately led to the following conclusion of the Court expressed in the judgment of Brooks J.A. at paragraph 30:-

> "*The learned trial Judge's finding that Mrs. Powell had an interest in the dwelling house which is a fixture without having an interest in the land to which it is affixed, is not consistent with the principle that what is affixed to the soil becomes part of it. Her finding that Mrs. Powell is the sole owner of the land would, however, allow a finding that the property was the family home for the purposes of the PROSA".*

[99] In a subsequent decision **Weir v. Tree 2014 Civ. 12**, the court sought to determine what is meant by appurtenant. In her judgment Phillips J.A considered the decisions from the Courts in New Zealand and found guidance there. She found that it could be seen that a determination of whether the land in issue in the matter before the court was appurtenant to the dwelling house and used wholly or mainly for the household must include an examination of the principle physical use to which the land was put, up to the parties' separation.

[100] Hence it would seem that this latter case did not necessarily accept the principle which was relied on in the case of **Powell v. Powell** [supra]. There is no necessity however for a choice to be made between these two approaches in the instant matter. The Court of Appeal decisions were referred to in an effort to highlight the distinction that can arise between the dwelling house and the land on which it is constructed. In the instant case the claimant sought an interest in the land only. This land did not belong to her husband alone. From the evidence he did not finance the purchase of the land and more significantly the claimant did not assist in the purchasing or acquiring of the land either. She may have given an input into how the house constructed thereon ought to be designed and built but that could not give her any interest in the land itself.

[101] In any event it is clear that the parties did not reside in the house as a family for very long after they moved in. The marriage had been unravelling from at least 2008. They moved into the house towards the end of 2009. They separated and occupied different sections of the house in 2010. The defendant explained that he had been willing to assist the claimant in constructing a house on the lot at Peter's Rock which he admitted had been acquired out of their joint resources. He said the discussions at that point had revolved around the claimant leaving his father's house. He did not consider it his property.

[102] The claimant has not satisfied me that she is entitled to one-half interest in all that parcel of land situate at Lot 4 Dillsbury Avenue by virtue of it being the family home.

The alternate position had also been urged on her behalf that it is in the category of other property to which she is entitled.

[103] On the question of what is meant by property under PROSA, the comment made by Morrison J.A. in **William Clarke v. Gwenetta Clarke 2014 JMCA Civ. 14** is sufficient. At paragraph 45 he said:–

> *"....it is obvious that the legislature, in crafting the definition of "property" in section 2 of the Act, was intent on making it as broad and inclusive as possible."*

[104] In the instant case the claimant is seeking entitlement to real property, personal property, interest, shares and profits in various businesses and companies. The most significant factor to be considered in this new dispensation under PROSA is to my mind, the question of the contributions, financial or otherwise which were made by the claimant as pursuant to section 14 (2) (a) of the Act.

[105] It is noted that in his submissions Mr. Charles engaged the court in interesting discussions on the creation of a beneficial trust, the necessity of piercing the corporate veil and inferentially on the claimant acting to her detriment in assisting the defendant in establishing the businesses. He however did not specifically relate the evidence presented to the requirements under PROSA.

[106] It is also noted that Mr. Charles placed some emphasis at the letter/email written by the defendant which is being relied on as clearly demonstrating the defendant's acceptance of the claimant possessing an interest – beneficial and otherwise- in the various business. The defendant acknowledged writing it but explained that he did so in an effort to comfort and reassure the claimant that the children would be provided for in the event of his death. There is no legally binding or enforceable agreement created by this document. The fact is that regardless of what the defendant may have promised the claimant, if he could not legally deal with the properties in the manner he said, the promises were of no moment.

[107] The claimant attempted to start detailing her contribution by outlining how she had given up her academic pursuits to join her husband in his business. The major business he was engaged in when they began their relationship was not his own. He worked for and with his father. He challenges the claimant's assertion that she gave up going into University in Canada and offered documentary evidence which suggest she had never been formally accepted into that university hence had nothing to give up

[108] The claimant said it was in discussions with her that the decision was taken for him to leave his father's business and start his own. The evidence presented disproved this assertion and under cross-examination the claimant admitted that the business in question, Xtra Wholesale, had been incorporated and commenced operation from before they had even met. She gives no evidence of having made any financial contribution to the acquisition conservation or improvement of the business. There was much reluctance on the part of the claimant in admitting that Xtra Wholesale and Xtra Supercentre were not one and the same company. However, once the distinction became apparent, it was clear Xtra Wholesale was no longer operational.

[109] Her evidence as to her indirect and non-financial contribution to the business of Xtra Wholesale was challenged by the evidence of Mrs. Lobban who seemed to be more knowledgeable and involved in the operations of the defendant's businesses. Significantly she is a shareholder in them whereas the claimant is not. The claimant argued that she worked as an assistant to the manager at Xtra Wholesale as what she described as an overseer to do as the defendant requested – to watch the manager, Mrs. Lobban and another employee at the business. However it is the evidence of Mrs Lobban which is preferred as to the failure of the claimant to make any meaningful contribution to these businesses

[110] When asked about the work she did at Xtra Supercenter, the claimant noted that she went to the stores to arrange them to allow then to sell groceries and chemicals to

ensure there was no contamination. She could provide no other evidence as to what or how she contributed otherwise.

[111] The claimant gave clearer evidence as to contribution she made to the Clean Chem business. Her involvement in this business was acknowledged by the defendant. It is apparent that she was largely responsible for various aspects of this business for the significant part of its existence after being incorporated in 2001. Once again she was not made a shareholder in this company but even after the marriage was deteriorating she continued to do work for the business from home. She seemed to have been so engaged up to 2012.

[112] There was no evidence as to the contributions the claimant made to the Sure Save business. She merely said the business was purchased by them in 2001. She was not able to provide evidence as to how much it cost to acquire it and she did not work in it. She could not challenge the defendant's assertion that the monies to acquire this business were provided by his father. This business was clearly being operated by Mrs. Lobban with little or no input by the claimant.

[113] It is well recognised that the relevant legislation provides that there shall be no presumption that a monetary contribution is of greater value than a non-monetary contribution. The fact that the claimant was in no position to make monetary contributions is clear. She did not earn a salary for whatever work she did. She maintained however that monies from the various businesses were co-mingled. Mrs. Lobban also seemingly confirmed this to some extent when she spoke of how one business did not have to pay for goods received from another as they all belonged to the defendant.

[114] It is therefore the non-monetary contribution that would have to be presented that would give the claimant an entitlement to any of these properties. She did point to the fact that she was the principal caregiver for her children. However, she did also point to

the fact that at one point when she worked at Clean Chem she had the support of two (2) nannies from 2001 to 2005 to assist with the children.

[115] On the matter of her claim to entitlement in the shares in these companies in which she is not a shareholder, it is necessary to bear in mind that the memorandum and articles of association of the companies govern the rights of these shareholders. It is also useful to consider the comments of Harris J.A. in **Harley v. Harley** (supra). At paragraph 21 she observed:-

> '*A company is the beneficial owner of its property. It does not hold such property as a trustee for its members, nor does a shareholder hold any legal or beneficial interest therein. See:* ***Mucaura v. Northern Assurance Co. Ltd. [1925] AC 619 at 626.***

[116] At paragraph 23 comments made on the peculiar facts before that Court are useful:

> *"In the instant case, the respondents claim as pleaded clearly shows that she is seeking to secure an interest in properties owned by companies. Her claim as framed, obviously is not one in which she seeks an interest in shares in the companies as Miss Davis contends.....To raise a claim for an interest in the property owned by the companies in this suit, she would have been required to have named the companies parties to the action. This she did not do. It follows therefore, that no cause of action could have accrued against the appellant with respect to the respondent's claim for an interest in the companies' properties. The respondent can only successfully maintain an action against the companies' properties if her claim was made against the companies".*

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[117] In this case, the claimant is seeking interest in lands owned by a company namely Microage, and in a vehicle owned by a company namely Sure Save Ltd. In the first company, the defendant himself does not have any interest. In the latter whilst he does own shares, the vehicle remains the property of the company against which the claimant has even failed to establish any entitlement.

[118] Hoven Enterprises had the defendant as it sole shareholder. The house this company once owned may have been considered the family home but for the fact that it was not owned wholly by either party. This meant that the claimant could not have claimed any entitlement to that house. There seems to be no basis on which she can thereafter seek to establish an entitlement in the company.

The decision

[119] The claimant has succeeded in establishing an entitlement to two of the items in her fixed date claim form namely the land at Peter's Rock and the Clean Chem business. Accordingly the orders requested in relation to those items will be granted insofar as they will be considered appropriate. Given the evidence as to her contribution to the Clean Chem business, I am satisfied it was substantial and does amount to her being entitled to one-half interest. In the circumstances I deem it fair and just that she is entitled to 50% interest. I however do not think it appropriate to give her an entitlement to the net annual interest and profits of this company from the time of its commencement of operation.

It is hereby ordered as follows:-

(1) The claimant is entitled to one-half interest in all that parcel of land situate at Lots 15 and 16 Peter's Rock on the parish of St. Andrew registered at Volume 1189 Folio 95 and Volume 1178 folio 458 of the Register Book of Titles.

(2) This property is to be valued by a reputable valuator to be agreed by both parties and in the absence of an agreement; by a valuator appointed by the Registrar of the Supreme Court. Cost of the valuation to be borne equally by the parties.

(3) The claimant has the first option to purchase the property. Said option is to be exercised within thirty (30) days after notice of valuation is given. If the option is exercised and the defendant refuses or neglects to sign the documents to effect this sale and transfer the Registrar of the Supreme Court is empowered to sign.

(4) In the event the claimant does not exercise the option, the defendant is given the option to purchase the property within thirty (30) days of the expiration of the time given the claimant.

(5) If neither party seeks to purchase the property then the property is to be sold on the open market by private treaty or public auction and the proceeds of this sale is to be shared equally between the parties.

(6) The claimant is entitled to 40% interest in the shares of Clean Chem Limited in the name of Quentin Hugh Sam.

(7) Liberty to apply

(8) No order as to cost.