

Lake, who are minors. At the time of his death the deceased was cohabiting with the Claimant at Lot 1, Rhyne Park Village, Montego Bay, Saint James. Though she appears to bear the same surname as the deceased, the two were never married. The Claimant says that the common law relationship they shared spanned about 22 years and that she was engaged to be married to the deceased and lived with him as man and wife for just short of five years. After the deceased's passing, by way of by Deed Poll signed on October 25, 2013, she changed her name from Christine Nicole Marie Johnson to Christine Nicole Marie Johnson-Lake.

- [2] The two adult children are the named Interested Parties.
- [3] Up to the time of his death, the deceased carried on a business enterprise known as Miniature Essentials (ME) which was registered in his sole name. He is the sole registered proprietor of Lot 1, Rhyne Park Village, registered at Volume 1412 Folio 874; land part of Culloden, Whitehouse, in the parish of Westmoreland, registered at Volume 1390 Folio 192 and land part of Richmond, registered at Volume 1342 Folio 902. He was also the sole registered owner of 2007 BMW motor car and a 2005 Toyota van.
- [4] The Administrator General of Jamaica is the person with conduct of the administration of the estate having been appointed by the court to represent the estate of the deceased on December 18, 2013, and having received a grant of Letters of Administration in his estate on November 14, 2014.

The Claim

- [5] On January 7, 2014, the claimant filed a Fixed Date Claim Form (FDCF) with affidavit in support, joining the Administrator General as defendant. By this FDCF she is claiming declarations that there was a partnership between herself and the deceased through which they operated the business, (ME), in equal shares. She claims also that the partnership has been dissolved on the death of the deceased; that the deceased held on trust for her, half of the interest in all that

parcel of land called Rhyne Park Village, registered at Volume 1412 Folio 874 of the Register Book of Titles; half share in land part of Richmond registered at Volume 1342 Folio 902; half share in BMW motor car registered 8383EP and that all other motor vehicles registered in the name of the deceased are assets of the partnership and that she is entitled to half share therein. She is also claiming for accounts and enquiries to be done and for the property of the partnership to be sold and that she should be offered the first option to purchase. She also sought orders that she be appointed trustee for the share of her two minor children in the deceased's estate.

- [6] The FDCF was subsequently amended and filed on February 5, 2014. The following was added:

"That the deceased held on trust for the claimant half of the interest in all that parcel of land part of Culloden, Whitehouse in the parish of Westmoreland registered at Volume 1390 Folio 192 of the Register Book of Titles" and in relation to the claim for accounts and enquiries it was stated to be "in particular the determination of the sums held in all accounts at National Commercial Bank, Half Moon Branch in Montego Bay".

- [7] The FDCF is also supported by the further affidavits of the claimant and the affidavits of Terrian Wilson, Robert Stapple, Rose Lee and Michael Lake, all filed on June 10, 2014
- [8] On May 12, 2014 and July 29, 2014, respectively, the Interested Parties Shari-Dee Lake and Christopher Lake Jnr. acknowledged service of the claim and they have filed affidavits in opposition to the Claimant's claim. Their case is supported by the affidavit of Charmaine Campbell-Lake, their mother and the former wife of the deceased.
- [9] On June 11, 2014, the defendant filed an affidavit of Stacie-Ann. N. Christmas, attorney-at-law, in response to the FDCF in which she states that the death of the was reported to the Administrator General's Department on October 15, 2013. In the affidavit, she sets out the names of the beneficiaries in the estate of the

deceased, lists the realty of, and some of the personalty falling to the estate, and indicates that the Defendant entered into an agreement for sale, with the claimant, in respect of the BMW motor car and the Toyota Hiace Super GL motor van.

- [10] It is not disputed that Christopher Lake died possessed of realty and personalty and that his liabilities were a mortgage in respect of the Rhyne Park property and Bank of Nova Scotia USA and JMD credit card debts. It is also not in dispute that the business was registered in his name, as a sole trader. What is in dispute is whether the business was operated as a partnership with the Claimant and whether the deceased held on trust for the Claimant half interest in properties he held in his sole name and half interest in the BMW motor car, and whether the Toyota van was an asset of the business and the claimant is entitled to half interest therein.

The Claimant's Case

- [11] The Claimant states that all of the mentioned assets were acquired during the lifetime of the business. She asserts that as a partner of the business, she is entitled to an equitable interest in these assets, save and except the Culloden property in respect of which she withdrew her claim while giving evidence during the course of the proceedings.
- [12] A lot of evidence was led on behalf of the Claimant and I have chosen to set it out in some detail. She presented evidence, by way of eight affidavits to which a number of photocopy documents were attached. She called four witnesses, Rosemarie Pasmore-Lake, Michael Lake, Terrian Wilson and Robert Stapple and relied on evidence of Rose Lee and Sheldon Anguin contained in their affidavits filed on June 10, 2014 and October 6, 2015, respectively. These two affiants were not cross examined.

Christine Johnson-Lake's evidence

- [13] The Claimant's evidence is that she met the deceased in 1991 and in 2003 they were living together in a rented apartment in Sea Castles. She states that she was a partner with him in the business from its inception and that she worked in it while she was employed as Duty Manager at Half Moon Hotel. Her evidence further is that she contributed the sum of US\$10,000.00 to start up the business and that, with the deceased, she got a lump sum loan of US\$10,000.00 from his sister, Rosemarie Lake-Pasmore, to start the business and that she shared in the profits.
- [14] She also states that she took part in the operations of the business by the taking of orders for goods and importing them, going to the wharf with the deceased and taking goods directly to the hotels which placed the orders, and that extra supplies would be stored at the Sea Castles apartment and when the business grew larger, they stored goods at the house of Rosemarie Lake-Pasmore, in Montego Bay. She indicates that she took part in important negotiations affecting the business including negotiating the lease for the shop at #16-18 Parkway Plaza where the business operated for many years until the death of the deceased.
- [15] She claims that after the deceased was injured in an accident in 2004, she assumed full responsibility for the business while he recuperated, and she was also his caregiver. She indicates that at this time Patrick Burke, who had been interviewed by both herself and the deceased, was employed to do deliveries and that she would pack and invoice the goods and this caused her to experience difficulties with her job at Half Moon Hotel and in October 2005 she was forced to resign. She states that in a discussion she had with the deceased at that time he said, "You are not going to work for anybody else, we are going to build this business together".

- [16] She also indicates that they decided that she would go abroad to work to inject money into the business and she travelled abroad between October 2005 and "the beginning of 2006", and worked and saved US\$10,000.00, which she contributed towards the business, using the banking facilities of her friend Terriann Wilson to transfer the money to Jamaica. This money, she says, in addition to her labour, was her early financial contribution to the business. She adds that on her return to Jamaica in early 2006, she has been an equal partner in the business and that the deceased made it clear to the staff that she had full authority and was part owner of the business and would say "When you see me, you see Miss J, when you see Miss J, you see me"
- [17] Her evidence further is that in 2006 there were discussions between herself and the deceased concerning the acquisition of Rhyne Park, and it was bought from funds provided by the business and that the Richmond property was purchased out of money jointly owned by them. She adds that in June 2011, the deceased and herself, transferred JD\$5,000,000.00 profit from ME to an investment account which they held together.
- [18] The Claimant also states that since the death of Christopher Lake she has been paying the mortgage on the property which now amounts to \$35,830.00 per month. She also says that she pays the security charge of \$6,698.75 per month, carries out all maintenance and repairs and pays the property taxes.
- [19] Under cross examination by Ms Chambers, she agreed that the deceased registered the business in 2003 and that the registration shows that it was registered as "Christopher Lake t/a Miniature Essentials". She also agreed that for the ten years he operated the business, he was the registered owner and that it started at the Sea Castles Apartment which he rented.
- [20] She maintained that she contributed start-up money for the business and stated that she would not say the first money she put in the business was US\$10,000.00. When pressed, she said she could not recall how much she

contributed, but indicated that it was used for deposit of rent and as initial start up for buying stock for the business. She agreed that Mr Lake died leaving real estate, two motor vehicles and bank accounts and stated that all the property he left were obtained through the partnership. She said she could not recall if she used the Deed Poll on October 26, 2013, or if she went to the Tax Office in Montego Bay, and when asked if she used the Power of Attorney and collected the title for the BMW, she said, "I have no idea what you are talking about".

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- [21] In relation to assertions made by Shari-Dee Lake, she stated that in 2003 Shari-Dee was eight years old and has no personal knowledge of how the business began or how it was financed. She later admitted that the older children helped in the business to pack boxes and that Christopher, Jnr. would help at "Body Art".
- [22] She agreed that she was not a joint registered owner of any of the businesses operated by Mr Lake and indicated that she did not resign her job at Half Moon Hotel in 2003 to come into the business. She maintained that she was not paid a salary, but was paid profits and when asked how much profit she was paid and how often, she said she could not recall. She admitted that she did not make any contribution to the deposit for Rhyne Park, but that she gave "emotional support".
- [23] She also stated, in cross examination, that she could not recall how many cheques she signed and whether she had signed any before Mr Lake's death, but agreed that the cheque she signed on October 1, 2013, was dishonoured by the bank with the notation that the drawer was deceased. She agreed that she withdrew money from the account after his death and said she could not recall if she withdrew money from the US account at the Bank of Nova Scotia or if she drew other cheques which were also dishonoured. When asked if on September 30, 2013 she made seven withdrawals at an "ABM", she admitted to making a number of withdrawals, but said that she "wasn't counting".
- [24] She agreed that she was a signatory to the bank account on Thursday and Friday, September 26 and 27, Mr Lake died on September 28, and that the

Power of Attorney had no effect once Mr Lake had died. She also agreed that cheques signed by her subsequent to Mr Lake's death, should not have been signed.

[25] When cross examined by Ms Mullings, the Claimant indicated that they did not have initial start up cash for ME and that she did not recall what was the initial start up capital. She admitted that Christopher Lake Jnr helped out at Body Art at times, that he used stencil to create tattoos and that he assisted his father with making deliveries, but said that he was never assigned to do so. She admitted that she was not seeking to make a claim as spouse of the deceased and agreed that after his death, his personal property were handed to her. She indicated that in 2005 her name could "possibly" be on the title for the property at Moneague.

[26] She said she treated the Falmouth kiosk as part of ME, agreed that ME paid her National Housing Trust contributions and her loan, and agreed that in relation to the Tax returns, the Tax Registration Number related to Mr Lake, only. She agreed that it had been established that she had no official tax return document associated with the business and admitted that since the death of Mr Lake, the Richmond property was sold under Power of Sale by the bank and she bought it. She also admitted that in none of her affidavits does she state how the Culloden property was bought and also indicated that that property was not noted in the particulars required by the Administrator General of Jamaica.

Rose Lake Pasmore's evidence

[27] Rosemarie Lake Pasmore, gave evidence that the claimant and the deceased were running the business ME together until he died. She indicates that she persuaded the deceased to go into the business and that she gave a loan of US\$10,000.00 to them both to put in the business soon after it began and she was repaid by them, in small amounts.

[28] When cross examined by Ms Chambers, she indicated that at no time she operated a "kiosk" but that it was a "push cart" and that she first operated a push

cart for the deceased in October 2012 at the Falmouth Pier and she is still there as her brother offered to sell her the cart with the stocks and she accepted the offer and paid him. She indicated that when she operated the push cart, before she took control of it, she checked off money daily and gave it to the deceased.

[29] She agreed that her brother operated ME as a sole trader and admitted that ME was started by him alone, in 2003. She stated that her basis for saying the Claimant was a part owner, was that she "always see her working in the business". She admitted to holding a bank account jointly with her brother at Bank of Nova Scotia and that she encouraged him to start the business. She said she did not know how much he used to start the business, but that about two months into the business he asked her for a loan and she gave him US\$10,000.00. She indicated it "would have been cash", but not given all at once, "US\$200 - US\$300 and it added upsmall increments..." She also indicated that she was repaid in increments, but said she could not recall when the first payment on the loan was made. She said ME started at his apartment and she extended her home as storage. She also said she would describe the Claimant as co-managing ME.

[30] In response to Ms Mullings, she admitted that after the death of Christopher Lake she lived at the Rhyne Park home, and that in 2012 she came to live with her other brother Michael Lake, in Rhyne Park. She indicated that prior to 2012, she was a gift shop manager for four resort shops in hotels, for "almost all [her] life" and that in 2012 her brother "would give her something with the Push Cart". She also indicated that when she assisted with the Push Cart, every week when she was not busy, she would go to ME to help with deliveries or anything that needed to be done, "like banking".

Michael Lake's evidence

[31] Michael Lake gave evidence that he remembers the "circumstances surrounding the purchase by my brother and Christine Johnson-Lake of Rhyne Park Village"

and that he went with them to look at the model unit. He states that he knew that his brother and the Claimant shared everything but was unable to say what contribution each may have made in acquiring the property. He also states that they were always making decisions for their mutual benefit and that he was aware that his brother and the Claimant "both worked tirelessly at building ME".

[32] In cross examination, he admitted that he came to give evidence after the Claimant spoke to him about the case in court. He indicated that his brother started ME, but he did not know if he started it alone or when he started it. He admitted that he was the person who got his brother to be interested in purchasing the Rhyne Park property and that he was not sure if he purchased it alone. He said he was aware that ME was registered to his brother as a sole trader but that he was not aware that all the bank accounts relating to ME were in his brother's name only. He admitted that the statement in his affidavit that "...they visited the actual site at Rhyne Park together and chose the unit which they eventually bought and lived in until his tragic passing" was incorrect. He also indicated that he could have said "in passing" that the deceased and the Claimant "run ME together".

[33] In answer to Ms Mullings, he indicated that he did not work in the business and was not in a position to say how business decisions were made.

Terrian Wilson's evidence

[34] Terrian Wilson's states that she met the Claimant between 2002 and 2003 when she worked at Half Moon Hotel, and that she later relocated to the United States of America (USA) and in 2005 the Claimant came to the USA and was working as a baby sitter and care giver. She states that a mutual friend of theirs, Audrey, transferred money, US\$10,000.00, to her account and she transferred it to Christopher Lake in Jamaica. She states that she recently made attempts to get copies of the documents used in the transfer, from the bank, but was told that too much time had passed.

- [35] When cross examined by Ms Chambers, she indicated that she knew the Claimant from Moneague, but did not know where in Moneague she lived. She was unable to say if when the Claimant took the trip to the USA in October 2005, it was soon after her employment ended at Half Moon. When asked if she knew of the Claimant's employment there she said she did not remember. She could not recall Audrey's bank account number or the branch of the bank and also could not recall details as to why Audrey could not transfer the money herself. She also could not recall seeing the Claimant when she was in the USA in 2005, but indicated that they spoke on the phone.
- [36] She said she believed the money was transferred to Jamaica in 2006 but could not recall the date, and indicated that the money was sent to her in one tranche. She maintained that she had discussions with the Claimant about sending the money and when it was suggested to her that she had indicated that she was approached by Audrey and not the Claimant, she agreed and said she did not know anything about ME, but that she recalls the Claimant making deliveries on behalf of Mr Lake.
- [37] In response to Mr Mellish, she indicated that she did not personally receive any money from the Claimant. She maintained that what she said in her affidavit is that money was transferred in the USA, twice, that is, from Christine to Audrey and from Audrey to her.

Robert Stapple's evidence

- [38] Mr Stapple's evidence is that he was the building contractor who assisted with the construction of the Rhyne Park property. He states that while the construction took place he had far more interaction with the Claimant than with the deceased and she was the one who made payments to him. He also states that the Claimant was present at the property on most occasions and was the one he asked to order material from the truckers and to arrange their payment for material. He adds that he got the impression that she was the driving force

behind the project and he saw that Mr Lake was comfortable with how she was managing the project.

- [39] He told the court when cross examined by Ms Chambers, that he was a contractor from 2002 and that when he met the Claimant and the deceased, they were living at Lot 1, Rhyne Park and he was "not intimate" on the details as to whether unit 1 belonged to Mr Lake, but that Mr Lake engaged his service in 2007, the same year he met them, to erect a fence at the back, between Lots 1 and 2. He indicated that in 2007 he started construction work on the house and Mr Lake gave him the design and building approval. He could not recall if the drawing was in Mr Lake's name. He stated that "initially" there was a written agreement in relation to work to be carried out on the ground floor and that he prepared the agreement which was signed by three persons and that the sum of JD\$1.3 million was for all the work to be done on the ground floor. He said the sum was not paid to him by Mr Lake, and that he was paid by cash, "fortnightly" and that both Mr Lake and the Claimant would speak to him about adjusting things they did not like during the construction. He also stated that whatever material he needed he would tell the Claimant, as he interacted with her mostly.
- [40] He admitted to signing two copies of the contract in relation to the construction for JD\$1.3 million, and when shown a copy of the document, he agreed that it is dated June 28, 2009, and that the work he did to the ground floor commenced in mid 2009 and that Mr Lake's name appears on the receipts which he wrote each time he got paid. He also admitted that the seven invoices represent proof of receipt of payment by him, from Mr Lake.
- [41] Mr Stapple stated that he was paid all the money in the same year he started the work, and when asked who paid him and who would have paid him more, he said, "between both of them...it would have been Miss Christine". He said he did not know where she got the money she paid him, but that he made all invoices to Mr Lake. He expressed the view that "to some extent" Mr Lake was the driving

force behind the construction work in light of his interaction with, and the directives he got from Mr Lake.

The evidence of Rose Lee and Sheldon Anguin

[42] The evidence of Rose Lee is contained in her affidavit sworn to on June 10, 2014. She states that she was the landlord for the premises from which ME operated at the time of the death of Christopher Lake and that she met the claimant ~~sometime in 1995 when they both worked at Half Moon Hotel.~~ She states that she owned property at Parkway Plaza in Rose Hall, Montego Bay and that in 2003 the claimant spoke to her about a business she was involved in with a friend, for which she wished to rent the space. She states further that she readily agreed to rent her shop #16 -18, and that the Claimant said the lease could not be put in her name because she wanted to avoid conflict with the Half Moon Hotel. She also states that she gave the Claimant and the deceased a special deal and felt comfortable doing this as she was told by the Claimant that she was part owner of the business. She adds that she felt no need to revisit the lease arrangement for nine years, although the Claimant became involved on a full time basis.

[43] Sheldon Anguin's evidence is to the effect that he was friends with the deceased from 1989 until his passing, and that he knew Charmaine Lake very well and also became acquainted with the Claimant "who lived with him first at a rented Sea Castles apartment I was instrumental in securing for them in or around 2001...".

The case of the Interested Parties

[44] The Interested Parties' case is to the same effect as that of the defendant in that they contend that ME was registered with the Registrar of Companies as a sole proprietorship in the name of Christopher Lake and it remained so registered to the date of his death. They note that there is no dispute as to the assets that have been acquired by the deceased during his lifetime but indicate that there is

no basis in law for there to be a finding that either a constructive or a resulting trust arose in favour of the Claimant.

Shari-Dee Lake's evidence

- [45] Shari-Dee Lake's evidence is contained in three affidavits sworn to on June 10, 2014, November 4, 2014 and May 26, 2015. Her evidence is that the relationship between the Claimant and her father resulted in the breakdown in the relationship between her mother and father and that her father in 2001, moved to Content Gardens for approximately one year, and later went to the rented apartment at Sea Castles where herself, her mother and brother would visit him. She states that eventually only her brother and herself would visit and in the latter part of his residence at Sea Castles, she recalls seeing the Claimant visit her father there. She indicates that her father would do business from the Sea Castles apartment until the business grew and he began to "sort" goods from his sister's house in Bogue Village. She states that he operated his business alone and that in 2004, her father was injured in an accident for which he received compensation which he used in maintaining stock for the business.
- [46] Her evidence also is that the business grew and her father obtained a lease for shop #16-18 Parkway Plaza, Rosehall, which was used as an office as well as a warehouse. She states that the business included a gift shop and cafe and it also operated from two separate shops at the Montego Bay cruise ship Pier and grew to include a kiosk at the Falmouth Shipping Pier.
- [47] She states that in 2007 her father obtained a loan from Victoria Mutual Building Society and acquired a house at Rhyne Park because he wished for her and her brother to reside with him in close proximity to their schools. She states that they resided there and in August 2009 they were joined by the Claimant and her younger sister, Shadae, who had enrolled in Mount Alvernia High School in Montego Bay.

- [48] She also indicates that at some point in 2009/2010 her father began expanding the Rhyne Park property, and that at the same time her father built a house on land owned by the Claimant, in Moneague. In addition to the acquisition of real property, she states that her father bought a BMW motor car for recreational purposes in 2009, a Toyota Hiace bus, which was utilised in the business and that he also purchased a Toyota Corolla S motor car.
- [49] When cross examined by Mr Mellish, she agreed that in 2007 she was a student at Montego Bay High School and that she lived with her father and brother at Rhyne Park, but prior to that she would visit her father in Montego Bay every two weeks. She could not recall the year ME began, and agreed that she would not have knowledge of what happened in the business while she was living in Boscobel.

Christopher Lake Jnr's evidence

- [50] The evidence in chief of Christopher Lake Jnr. is contained in his three affidavits filed on October 2, 2014, October 9, 2015 and November 9, 2015. His evidence is that the deceased operated ME since 2003 and that he met the claimant in or around 2006 after which time she began coming to the business to visit his father. He states that the Claimant did not contribute to the initial set up of the business and that she was not living in Montego Bay at the time when the business was established. He states that at no time did the Claimant operate the business with his father as a business partner and that she did not sign any cheques or attend any marketing or sales meeting with any clients. He indicates that at times the deceased would ask the Claimant to "supervise the work and check off in the evenings".
- [51] He indicates that in 2007 his father purchased the Rhyne Park property which was registered in his sole name and that he and his sister Shari-Dee lived there with him until his death. He also indicates that in 2009, Shadae, came to live with them "and a few days after, I noticed Christine Johnson moving in as well".

- [52] He adds that the deceased, in or around 2007, acquired Port Cafe in Montego Bay and that he operated 'Body Arts' in three different hotels, had a gift shop that he rented in the cruise ship area in Montego Bay, operated a kiosk in the Falmouth Cruise ship area and had bank accounts at Bank of Nova Scotia and National Commercial Bank.
- [53] He also gave evidence that when his father was short on staff, he would ask the Claimant to "stay at the Montego Bay Shipping Pier location for a day or two and after that she would have to sit with him in the evenings and balance the books". He adds that she would help out until she got pregnant with Jordan, after which, she stayed home, and that she did not resume her assistance in the business until his father died. He also states that since the death of his father, he has been denied access to the Rhyne Park property by the Claimant.
- [54] When cross examined by Mr Mellish, he stated that he was twelve years old when ME started and he had just entered Cornwall College, but maintained that he has knowledge of what occurred. He disagreed that while at school he would have no knowledge of what happened at ME and admitted that it would not be correct to say the Claimant did not sign any cheques. He agreed that the Claimant had access to ATM card "after my father died" and admitted that when he signed his affidavit in October 2015, he did not know she had a Power of Attorney which gave her access to the bank account. He maintained that the Claimant was not in business with his father, but agreed that she was instrumental in recruiting staff for ME and that she was involved in negotiating to purchase a business and was present at a meeting with the deceased to transfer the business to ME. He disagreed that the fact that she was involved in hiring staff meant she was running the business, disagreed that she worked at ME and stated that it was his understanding that his father asked her to be present in her capacity as his girlfriend.
- [55] After examining certain documents, he agreed that his father paid a contribution of 3% from the income he earned from ME to the NHT, indicated he did not know

if it was from profit, disagreed that the Claimant was paying 3% NHT contribution from profit she received as earnings from ME, but agreed that the documents were "self employed contributions of Mr Lake and Christine Johnson and employee contributions paid by ME".

[56] He agreed that ME was the source of earning of his father but stated that he did not know if it was the source of income of the Claimant. He agreed that the deceased represented to the NHT that he was self employed, indicated that he did not know if he represented to NHT that the claimant was self employed, and later said he did not agree that his father, in his dealings with the NHT, told them that the Claimant was self employed at ME.

[57] In seeking to clarify his response to Mr Mellish in relation to having knowledge of the business when he was at school, Christopher Lake Jnr indicated that he would leave school in the evenings and go to his father's office and his father discussed the business with him.

Charmaine Campbell-Lake's Evidence.

[58] Charmaine Campbell-Lake gave evidence that she and the deceased separated in 2001 but maintained a cordial relationship and that the deceased advised her that he intended to start his own business. She states that his brother-in-law had given him the idea and his sister lent him money. She also states that he never indicated that he had a business partner and that he was a "born manager and liked to do things on his own". She also states that when she visited the Sea Castles apartment no one else was there and the deceased did not appear to be running a business with the Claimant.

[59] She was not cross examined.

The Defendant's Case

[60] The Defendant is contending that the deceased is the registered proprietor of ME which he operated as a sole trader and that the claimant has no

equitable/beneficial interest in the real and personal property left by the deceased, but that same have been left to the benefit of his estate.

- [61] The defendant's evidence is contained in the affidavits of Jacqueline Wilcott, Senior Legal Executive and Stacie Ann N. Christmas, attorney-at-law, along with the bundle of documents tendered in evidence. These affiants were not cross examined.
- [62] Ms Wilcott states that the Defendant is in the process of administering the estate of the deceased and that Claimant had indicated that she only started managing the business ME since the death of the deceased and that she did not have access to the business accounts and/or was unable to determine how employees' wages would be paid. She states further that the Claimant's file with the Defendant indicates that the Bank of Nova Scotia stated in letter dated October 14, 2013 that it was the deceased's name that was on the account. She further states that the bank indicated that at one point the Claimant was authorised to sign on the accounts and this was when she was employed as Manager of the business.
- [63] Ms. Christmas states, *inter alia*, that in the course of the administration of the estate, the Defendant conducts all necessary investigations to ascertain the assets of the estate. She also states that the Administrator General entered into an Agreement for Sale with the Claimant in respect of the 2007 BMW motor car and the 2005 Toyota Hiace van and received the consideration "pursuant to the Agreement for sale". At paragraph 13 of her affidavit sworn to on June 11, 2014, she states as follows: "that the Claimant has not provided any documentary proof as to her contribution to the purchase price of each or any of the properties, nor the common intention of the parties to hold the properties jointly and is therefore put to strict proof".

[64] The Defendant states that the Claimant has no legal obligation to make mortgage, maintenance, property tax or any other payments. Payments of that nature she states, are to be satisfied by the Administrator of the estate

The Claimant's submissions

[65] Mr Mellish submitted that the claimant was not discredited despite "withering cross examination". He expressed the view that the documentary evidence placed before the court makes the Claimant's case "very compelling". He examined the evidence of the witnesses and stated that Rosemarie Lake-Rasmore corroborated the Claimant's evidence that she gave a loan of US\$10,000.00 to her and the deceased, and that she received money from the Claimant in repayment. He urged the court to prefer the evidence of the other witnesses where they conflicted with that of Christopher Lake Jnr.

[66] Counsel further submitted that the Claimant was not an employee of ME and pointed out that Christopher Lake paid NHT contributions in respect of the Claimant and these were tendered to, and accepted by NHT, as payments of contributions by a self employed person. He pointed to the distinction in the **National Housing Trust Act**, between contributions by employed persons and self-employed persons, and submitted that in a letter written at Christopher Lake's request on September 27, 2013 the Claimant is described as Manager of ME and that she paid 3% on her earnings and was excluded from all Annual Returns. He stated that as a matter of law, self employed NHT contributions are payable on the profits made by a business.

[67] He also submitted that reliance is placed on words and deeds of Christopher Lake to support the Claimant's claim to being part owner of ME. These he pointed out as being contained in her affidavits and include words such as "you are not going to work for anybody else, we are going to build this business together" as well as his representations to NHT that she was self employed and the transferring of JD\$5,000,000.00 from the business bank account into an

account in their joint names on June 27, 2011. Counsel indicated that in 2012, this account was closed at about the same time the Richmond property was being purchased.

- [68] Counsel suggested that when one takes into account the 'presumption of regularity' which the court is entitled to adopt, as can be seen by the Annual Returns and the NHT payments, the evidence is compelling that Christopher Lake considered and held out the Claimant to be part owner of the business and that this representation continued even in the month he passed, when he requested the Bank of Nova Scotia to write the letter to the United States Embassy. He expressed the view that it would be unjust for the estate of the deceased to go back on this representation and submitted that the Claimant relied on the representation and gave up alternative means of making a living as she had stated that "ever since leaving Half Moon I have not sought to obtain alternative employment as I genuinely believed in and relied upon our agreement that we were building the business together".
- [69] Mr Mellish also suggested that further evidence of the partnership is that capital of US\$10,000.00 was introduced in 2006 by the Claimant. He asked the court to "draw reasonable inference that the money was sent, by considering facts such as that the money was badly needed, at the time Christopher Lake had 3 children to support, including the Claimant's own daughter, the business had recently started, she had lost her source of income and yet she returned to participate in the business and never had another job".
- [70] He submitted that the lease for premises where the business was eventually set up was granted only because of the Claimant's involvement and that the business began at the Claimant's residence, Sea Castle, Apt C7 and that there is no documentary evidence connecting the deceased with the Sea Castle address of the business, except the Final Statement of Account in respect of the purchase of the Rhyne Park property dated September 10, 2007.

[71] Counsel also pointed to acts which he said were carried out by the Claimant such as employing staff, involvement in negotiations to acquire new business, borrowing jointly from Rosemarie Lake-Pasmore to start up the business and access to and authority over the business bank accounts by the grant of a Power of Attorney, which he suggested show evidence of a partnership. He concluded that the Claimant has provided an abundance of credible evidence "the greater part of it being unchallengeable documentary material" and that the authorities relied on support the declarations she is seeking and as such she has discharged her burden and made out her case for the declarations prayed.

The Defendant's Submissions

[72] Counsel for the Defendant submitted that the death of Christopher Lake was reported to the Defendant on October 15, 2013 and that Letters of Administration were applied for in the estate of the deceased and the Defendant subsequently entered into agreement with the Claimant for the sale of the 2007 BMW motor car and the 2005 Toyota Hiace Super GL motor van. It was also submitted that the Defendant has no knowledge of the relationship between the Claimant and the deceased nor the length of time of same, and that the deceased was granted a decree absolute on August 15, 2008 in relation to his marriage to Charmaine Lake.

[73] The Defendant's Counsel stated that in relation to the Rhyne Park property, the Claimant's stated residence on the premises for approximately six years does not of itself give rise to an equitable interest and /or a joint interest in her favour. It was also submitted on behalf of the Defendant that although the Claimant has claimed an interest in the properties registered in the name of the deceased, she has failed to provide documentary proof of her contribution to same and further that she has not shown that there existed a common intention for herself and the deceased to hold the properties jointly.

[74] It was further submitted that the Claimant is not a signatory to any of the ~~business or personal bank accounts of the deceased who has joint accounts with~~ other persons, and that no evidence has been provided to substantiate that the Claimant worked in, or had any significant part in the administration of the business. The Defendant expressed the view that there are only four beneficiaries of the estate of Christopher Lake, deceased, his four children, and that Christine Johnson-Lake holds no interest in the business.

The Interested Parties' Submissions

[75] The position of the Interested Parties is that the Claimant was not part of a partnership with the deceased. Their basis for this assertion is that from their observation, the conduct of the deceased in the operation of the business was not in keeping with a partnership. They are of the view that the deceased carried on business as a sole trader from the inception and that any assistance offered by the Claimant in the administration of the affairs of the business was by virtue of her being the mother of two of his children and an employee of the business.

[76] It was submitted on behalf of the Interested Parties that the claimant has not presented any credible evidence to support her assertion that she contributed US\$10,000.00 towards ME and in particular that there is no documentary evidence of this, or evidence of what use it was put to. Counsel urged the court to conclude that in consideration of those circumstances, there is no acceptable evidence of the alleged contribution. In any event, Counsel submitted that contributions by themselves do not qualify as a factor for consideration. To buttress this submission, Counsel relied on the case of **Pansy O'Connor Reid v Evan Reid** [2014] JMSC Civ. 110, which concerned the exercise of the court's discretion in varying the 50/50 rule applicable to the family home under the Property (Rights of Spouses) Act. The Claimant's assertion of contribution was not supported by documentary evidence and as such the court was hesitant to vary the rule.

The Issues

[77] The following issues fall to be determined:

1. Whether the photocopy documents on which the claimant is seeking to rely are admissible.
2. Whether there was a partnership between the claimant and the deceased in the operation of the business "Miniature Essentials" and if so, what is the proportion of the contribution of each party
3. Whether the real estate and other assets claimed were acquired by funds provided by the business and whether the deceased held on trust half interest in these properties for the claimant
4. I also find it necessary to address the issue of whether the fact that the claimant has purchased real and personal property belonging to the estate of the deceased, will have any effect on her claim

Whether the photocopy documents are admissible in evidence

[78] During the trial, an issue of law arose for contemplation as to whether the copy documents on which the Claimant is seeking to rely to prove her case that a partnership existed between herself and the deceased in relation to the business, were admissible. Counsel for the Defendant took issue with the fact that the Claimant did not produce the originals of the documents she exhibited to her affidavits.

[79] The Claimant gave evidence and was cross examined on a number of these documents, which were produced by her. Her witness, Mr Stapple gave evidence and was cross examined on an agreement, signed in 2009 which he said he prepared in relation to the work he carried out on the Rhyne Park property, and the 7 invoices he prepared in respect of payments made to him. Rosemarie Lake-Pasmore was cross examined on the document relating to the "Push cart" and Christopher Lake Jnr. was cross examined on documents relating to

payments said to be made to the NHT. The Claimant's evidence in relation to ~~these documents would be a question of fact as to whether she is speaking the~~ truth.

[80] It is a settled principle of law that originality and authenticity are ultimately matters affecting weight of evidence. I have no doubt that the evidence presented by way of the photocopy documents is legally admissible and believe that it is matter for this court, as a tribunal of fact, to determine the weight to be given to the evidence in relation to those documents.

[81] Additionally, Rule 28.19 of the **Civil Procedure Rules, 2002** provides that:

"(1) A party shall be deemed to admit the authenticity of any document disclosed to that party under this part unless that party serves notice that the document must be proved at trial.

(2) A notice to prove a document must be served not less than 42 days before the trial."

The matter has been before the court for some time and came on for trial on a previous occasion. There is no indication that the Defendant had required proof of the authenticity of the documents 'disclosed' in the various affidavits until the matter was part heard. Despite the objections of Counsel for the Defendant, the documents have been admitted in evidence and not marked for identity as was suggested by her. In relation to the documents that were not disclosed in the list of documents, it is my view that the question of whether they are authentic also goes to weight, and they too have been admitted into evidence.

Whether there was a partnership between the claimant and the deceased in the operation of the business "Miniature Essentials" and if so, what is the proportion of the contribution of each party

[82] As there is no written agreement between the claimant and the deceased, my decision will turn significantly on the evidence provided of the course of dealings between them to ascertain their intentions, as well as the circumstances and the

conduct of the parties to determine if there was a partnership. It is for this reason I have chosen to examine in some detail the evidence presented by the parties.

[83] The Claimant has a duty to prove to the court on a balance of probabilities that she was a partner in the business registered in the sole name of the deceased, and, that assets owned by the deceased were purchased from profits of the business.

[84] Partnership may be defined as the relation which subsists between persons carrying on a business in common with a view of profit. (See **Lindley & Banks on Partnership**, 18th Ed., page 5.) Partnership is also defined as a voluntary contract between two or more competent persons to place their money, effects, labour, skill or some or all of them in lawful commerce or business with the understanding that there shall be communion of the profits thereof between them.

[85] In the case of **Lyle Barnes v Jocelyn Bennett, Dalton Barnes and Michael Barnes** (1993) 30 JLR 114, Carey JA outlined, quite eloquently, the considerations to be taken into account by the court in circumstances such as have been presented to this court in the instant claim. I find it quite useful to highlight his examination of the law. At page 117 of the judgment, he said:

*"The question whether a partnership existed is a question of mixed law and fact. Parties cannot by their mere say so, create a partnership, nor is the fact that they assert that they are not, determinative of the matter. See **Weiner v Harris** [1910] 1 KB 285. In **Stekel v Ellice** [1973] 1 WLR 191 at p.199, Megarry, J., helpfully suggested a test. He said this:*

"...What must be done, I think is to look at the substance of the relationship between the parties; and there is ample authority for saying that the question whether or not there is a partnership depends on what the true relationship is, and not on any mere label attached to that relationship. A relationship that is plainly not a partnership is no more made into a partnership by calling it one than a relationship which is plainly a partnership is prevented from being one by a clause negating partnership."

In Lindley on the Law of Partnership (14th edition) p. 126, the learned editors state as follows:

“As between the alleged partners themselves the evidence relied on, where no written agreement is forthcoming, is their conduct, the mode in which they have dealt with each other, and the mode in which each has, with the knowledge of the other, dealt with other people. This can be shown by books of accounts, by the testimony of clerks, agents, other persons, by letters and admissions”...

The Partnership Act [(1890) U.K.] defines partnership as the relation which subsists between persons carrying on business in common with a view of profit. This Act, it should be noted, is declaratory of the common law. One of the rules under the Act for determining whether a partnership exists is that the receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business: section 2(2) Partnership Act. It is important to bear in mind as well that the test of partnership is the carrying on of a business and not the agreement to carry it on. Partnership, properly so called, must be distinguished from some loose agreement such as was held to be in the case of Keith Spicer Ltd. v Mansel [1970] 1 WLR 333...”

- [86] A thorough examination of circumstances within which the business was operated is therefore necessary to determine whether the Claimant was a partner in ME and to lead to a determination whether she would be entitled to a share, if any, in properties acquired by the deceased.
- [87] On the evidence presented, ME commenced operation on October 6, 2003 and it started operation from his Sea Castle apartment and was last registered on October 6, 2012. It was registered as a business and issued with a Certificate of Incorporation with Christopher Lake as the sole proprietor. The registration of the business name was renewed every three years and at no time during these renewals was there any amendment to include the Claimant, or anyone else for that matter, as proprietor. From this it can be inferred that there was no intention to form a partnership as the deceased remained the sole proprietor. Additionally, the Tax Registration Number of the business related to the deceased solely and the lease of the premises from which the business operated is in the sole name of the deceased. When the Claimant started assisting in the business, the

arrangement I find, would be informal given the relationship between herself and the deceased, she being the mother of two of his children.

[88] I also find that ME operated accounts at the Montego Bay branch of Bank of Nova Scotia and that the deceased operated the accounts solely and that cheques were drawn on the account, "Christopher Lake T/A ME". The deceased also operated bank accounts in which his sister, Rosemarie Lake-Pasmore and his daughter, Shari-Dee Lake, were joint account holders. There was no account that he held jointly with the Claimant, save and except at the time when the sum of JD\$5,000,000.00 was placed in an investment account with her as joint account holder.

[89] It is clear on the evidence that they kept their financial affairs separately, as even the Claimant, on her evidence, indicated that she had her own savings account at National Commercial Bank. It is also clear on the evidence that the deceased started his business alone and carried out his business activities as a sole proprietor. There was no credible evidence that the Claimant had made a contribution to assist with the capitalization of the business. The Claimant's effort at this fell short as the Claimant and her witness Terrian Wilson, were discredited. Additionally, this court does not find that Rosemarie Lake-Pasmore made the loan to the deceased and the Claimant jointly, to start the business, as the Claimant's evidence in this regard has been found to lack credibility.

[90] The evidence shows that the Claimant was supportive of the business and I find that she assisted the deceased in its operation through the years by taking orders, acquiring goods along with the deceased and doing packaging and deliveries. I also find that the adult children of the deceased and his sister, Rosemarie Lake-Pasmore, to a lesser extent, also assisted in the business at some stage, and that, as at 2010, there were persons employed in the business. I accept the evidence of the Defendant that in reporting the death, the Claimant indicated that she started managing the business after the death of the deceased.

- [91] Although the deceased and the Claimant shared an intimate relation outside of marriage, ~~this would not preclude the court from making a finding that they were~~ business partners and that their conduct showed that their affairs were intended to be permanent. However, the documentary and other evidence point to the contrary. There is no proof of any intention of the Claimant and the deceased to start or carry on the business as a partnership at any stage. What I find is that the deceased had no common intention to operate a partnership with the Claimant who had her own source of income from her employment at the Half Moon Hotel when the business began operations and this continued for at least up to the time she said she resigned in 2005 and when she went overseas to work.
- [92] I also find that the Claimant did not have access to the profits of the business but benefitted from funds derived from the business and accessed from the credit card which was made available to her by the deceased. This, I believe the court can infer to be purely on the basis of her being the mother of two of his children.
- [93] She had limited access to sign cheques on the business' account by virtue of a Power of Attorney granted to her by the deceased on September 26, 2013, a mere two days before his death. She shared one joint account with the deceased which contained money deposited by the deceased only, at his discretion, and not money that has even been shown to be entirely from profits obtained from the business. Additionally, the deceased acquired properties in his sole name whilst he assisted in building a house for her in Moneague and it is noteworthy that he holds no legal interest in that property.
- [94] Even if the claimant and the deceased agreed to work together in the business, it is also clear on the evidence that the deceased collected money from the Claimant who assisted in the management the business at some stage, as I find as a fact that she "checked off and handed over money to the deceased". This conduct of the Claimant undermines the existence of a partnership. She has not

shown on a balance of probabilities that they were going into business together with the specific intention that they would both be benefitting from it.

- [95] I note that the Claimant agrees that she had no legitimate access to the business' accounts as indicated by the Defendant. In her affidavit filed on November 16, 2015, she says, *inter alia*:

"In addition, the unfortunate defamatory and scandalous statement that "even though her name was not on the accounts, Christine Johnson seems to have had access" is refuted by the bank itself"

- [96] The Claimant has not been described as an owner of the business in the documentary evidence presented in this matter, but has been described as a manager. The letter from the Bank of Nova Scotia, written at the request of the deceased in support of a visa application for the Claimant, reads as follows:

"Re: Ms Christine N.M. Johnson

At the request of Mr Lake, Owner/Operator of Miniature Essentials, whose accounts are held with us... We advise the following:-

Mr Lake in his capacity has been banking with us since November 2001 and maintains both Jamaican and United States saving accounts at the Montego Bay Branch.

The company presently has a balance in the low-seven figure region in the Jamaican account and low five figure for the United States account, and business dealings have been satisfactory to date.

Based on our experience with Miniature Essentials, we do not believe he would commit himself beyond his capacity to fulfill.

We advise that Ms. Christine Johnson is the Manager of Miniature Essentials to which she is also a signatory. Ms Johnson will be applying to your office for a visa and in this regard we ask that you extend your usual courtesies.

Should you require additional information, please do not hesitate to contact the undersigned..."

- [97] There is nothing on the evidence to support the relationship of the Claimant to the business ME as being a partner and neither is there anything to show any

acknowledgement of the relationship between the Claimant and the deceased as partners in the business. I agree with the submission made earlier in the proceedings, that the Claimant has misconceived the nature of the relationship she shared with the deceased, and that her assertion of being a partner is to be given the ordinary 'dictionary' meaning of "lover, spouse or domestic partner".

[98] In view of the totality of evidence, the conduct of the parties in relation to the operation of ME from its inception, coupled with the fact that I do not find on a balance of probabilities that the Claimant provided any funds to start the business, there was no business account in their joint names and the facts show a strong intention for her to assist in the business, I have no hesitation in finding that no partnership existed between the Claimant and the deceased in the operation of the business and that it was operated, as registered, as a sole proprietorship by the deceased Mr Christopher Lake, from its inception to the time of his death.

Whether the real estate and other assets were acquired by funds provided by the business and whether the claimant has an equitable interest in the property claimed

[99] The Claimant is claiming an equitable interest in the properties contending that they were acquired through funds from the business, which she claimed was a partnership. However, without establishing that she is a partner in the business, she cannot succeed in her claim for an interest in the properties as her premise for that assertion is that she is a partner and the profits were used to acquire the assets. She has failed to satisfy the court on a balance of probabilities that a partnership existed between herself and the deceased in the operation of the business ME and that the properties registered in the name of the deceased were purchased from profits from the business.

[100] She claims that by virtue the doctrine of resulting and or constructive and or equitable estoppel, she is entitled to an equitable interest in the properties as she

was a partner in the business and as such she is entitled to assets that were purchased from income from the business.

[101] The law is settled that where the legal estate is vested in one person and a beneficial interest is claimed by another, the claim can only succeed if the claimant can establish a constructive trust by evidence of a common intention that she was to have a beneficial interest and by establishing that in reliance on that common intention she acted to her detriment.

[102] Sir Nicholas Browne-Wilkinson V.C. in the case of **Grant v. Edwards**, [1986] or [1968] Ch 638, at page 654, stated the criteria for the existence of a constructive trust as follows:

"If the legal estate in the joint home is vested in only one of the parties (the legal owner) the other party (the claimant) in order to establish a beneficial interest, has to establish a constructive trust by showing that it would be inequitable for the legal owner to claim sole beneficial ownership. This requires two matters to be demonstrated (a) that there was a common intention that both should have a beneficial interest; (b) that the claimant has acted to his or her detriment on the basis of that common intention...."

[103] In **Jones v Kernott** [2011] UKSC 53 Lord Walker and Lady Hale in a joint judgment said at paragraph 31:

*"...In deference to the comments of Lord Neuberger and Rimer LJ, we accept that the search is primarily to ascertain the parties' actual shared intentions, whether expressed or to be inferred from their conduct. However, there are at least two exceptions. The first, which is not this case, is where the classic resulting trust presumption applies. Indeed, this would be rare in a domestic context, but might perhaps arise where domestic partners were also business partners: see **Stack v Dowden**, paragraph 32..."*

[104] The statement of Baroness Hale in **Stack v Dowden** [2007] UKHL 17, at paragraph 56, has been stated as the classic statement of the law in relation to as claim such as the instant claim. She said, *inter alia*, that:

“.....the starting point where there is sole legal ownership is sole beneficial ownership...The onus is upon the person seeking to show that the beneficial ownership is different from the legal ownership. So in sole ownership cases it is upon the non-owner to show that he has any interest at all...”

[105] The case of **Eric McCalla, Jeneice McCalla and Jeffrey Mc Calla v Grace McCalla** [2012] JMCA Civ 31, shows that the principles stated above have been applied in this jurisdiction. McIntosh JA said at paragraph [27]:

“It is settled law, approved and applied in this jurisdiction in cases such as Azan v Azan (1985) 25 JLR 301 that where the legal estate is vested in one person (the legal owner) and a beneficial interest is claimed by another (the claimant), the claim can only succeed if the claimant can establish a constructive trust by evidence of a common intention that each was to have a beneficial interest in the property and by establishing that, in reliance on that common intention, the claimant acted to his or her detriment. The authorities show that in the absence of express words evidencing the requisite common intention, it may be inferred from the conduct of the parties.”

[106] There are therefore circumstances where the court will infer a constructive trust on the part of a Claimant where it would be inequitable to allow an individual to assert full beneficial ownership over property. In **Clinton Campbell v Joyce McCallum and Renea Whitemore**, Claim No. 2003HCV01825, unreported, delivered February 11, 2011, Campbell J considered the writings of the learned authors of **Halsbury's, Laws of England**, 4th Edition, at page 320, which states as follows:

“In recent times, Lord Denning, MR has sought to introduce ‘a constructive trust of the new model,’ that is, ‘a trust imposed whenever justice and good conscience require it, a liberal process founded on large principles of equity, to be applied where the legal owner cannot conscientiously keep the property for himself alone, but ought to allow another to have the property or a share in it an equitable remedy by which the court can allow an aggrieved party to obtain restitution. Thus, on the merits of the case, a man may be treated as holding his house on constructive trust as to some share of it for his wife, or resident mistress.”

[107] Campbell J also considered the authority of **Stack v Dowden** for the guiding principles on constructive trusts. At paragraph [12] of his judgment, he stated:

"Lord Walker opined that the House was unanimous in agreeing that a "common intention" trust could be inferred even where there was no evidence of an actual agreement..."

[108] At paragraph [21], Campbell J, continued:

"In the absence of an expressed agreement or understanding, the court is required to look if the facts disclose an implied constructive or resulting trust. The conduct of the parties may provide the basis from which the court could examine their common intention..."

[109] That case was buttressed by documentary evidence which supported a common intention. The evidence in the instant case, however, shows that the Rhyne Park property was purchased in 2007 at a time when the deceased was still married to Charmaine Campbell-Lake and the Claimant has not provided any evidence from which this court can find on a balance of probabilities that there was a common intention between herself and the deceased.

[110] The case of **Stoeckert v Geddes** [1997] UKPC 52, considered the quality of the evidence which was required to establish an interest in a business enterprise. The claim was based on the claimant's assertion that there existed an agreement, understanding or common intention between her and Mr Geddes, arising from express discussions between them that she should have a beneficial interest in his assets. She averred that she acted on this state of affairs with the result that she became the beneficiary under a constructive trust of a share in those assets. She did not suggest that she had made any direct or indirect financial contribution to any of the assets.

[111] The Privy Council stated, *inter alia*, that:

"...their Lordships agree with the Court of Appeal that no agreement, arrangement, understanding or common intention that Helga Stoeckert should have a beneficial share in Mr Geddes' assets can be spelt out of the facts and matters relied upon by the judge, whether viewed separately or cumulatively. The fact that Mr Geddes told Helga Stoeckert that if he did not return from Mexico she should be in charge of all his possessions and business does not suggest that she owned or was to own a share in

those assets... The gift of shares ... and the establishment of joint accounts again are not matters that suggest that Helga Stoeckert was or was to be the beneficial owner of a share in Mr Geddes' assets. On the contrary, as Rattray P. pointed out in the course of his judgment, these actions showed that when Mr Geddes wanted to provide for Helga Stoeckert, he made an outright gift or facilitated her ability to draw on some, but by no means all, of his accounts"

- [112] Similarly, in this case, the claimant was a beneficiary of the use of profits from the businesses operated by the deceased. Funds were placed in an account from which she could access it by way of a debit card, but in no circumstances was she allowed to draw on the accounts or take an equal share of the earnings from the business, ME.
- [113] The Claimant sought to place emphasis on issues she raised such as common intention, prior discussion she had with the deceased, contribution which she said she made and reliance on trust and the acquisition of Rhyne Park from income from ME as well as the deposit of funds in the only account held jointly by herself and the deceased, which she said was subsequently used to purchase the Richmond property, to substantiate her claim to an equitable interest in the properties. However, I am satisfied that the burden of proving a constructive trust requires concrete evidence showing an expressed common intention that there was to be a shared interest, and that contributions were made in reliance on that common intention and that she in fact relied on it to her detriment. She has failed to satisfy this burden.
- [114] According to the Claimant, her name was not placed on the title for the Rhyne Park property as she was not contributing to the NHT at the time. She says, more importantly, that she was already a beneficiary of the NHT for a property in Moneague, but I fail to see how this could have prevented her from being registered as a joint owner of the property if the deceased had so intended. It is my view that the explanation suggests that she was not added as joint owner as she made no contribution to the acquisition of the property. I am fortified in my

view as the Claimant's evidence is that they decided that if she were to be on the title she would have to sell the Moneague property.

[115] There is no evidence which supported a common intention, no evidence of her acting to her detriment financially and neither has she shown that she has suffered any financial loss. What is clear on the evidence is that she has benefitted financially, as she has shown that she was the recipient of funds from the deceased and that the deceased facilitated the purchased of a property in Moneague in her sole name, during the subsistence of the relationship, and this included paying up contributions to the NHT on her behalf and paying her loan from funds of the business..

[116] In relation to the Richmond property, the Claimant's evidence is that money which they held jointly at Scotia Investments, was used to make the deposit and that her name was not placed on the title because she was pregnant and not in a position to do the "running up and down" that was required. The evidence is clear however, that the deceased acquired it by way of a mortgage from Scotia Jamaica Building Society and that she made no direct or indirect contribution, and I accept that the money in the investment account was money transferred there by the deceased from an account held in the name of the business.

[117] The motor vehicles which the claimant is claiming a share of, have been shown on the evidence to have been bought by the deceased and registered solely in his name. She made no contribution to their acquisition or upkeep although the evidence shows that she drove the BMW. In any event, her evidence also is that after the death of Mr Lake, she purchased these vehicles from the Defendant.

[118] Although the Claimant, in her amended FDCF, claimed an interest in the property at Culloden and claimed for accounts and enquiries into sums held at National Commercial Bank, Half Moon Branch in Montego Bay, she did not pursue these claims, as when cross examined in relation to the Culloden property, she said, *inter alia*, "I have no claim on Culloden, it's a piece of land. I am not greedy. They

can have it if they want it". She provided no evidence to show that any accounts existed at the National Commercial Bank.

- [119] Throughout her testimony, the Claimant was not a convincing witness. I was not at all impressed with her as she conveniently or otherwise, could not recall relevant information, was even evasive at times, and, at the end of her case, she has failed to provide to the court a number of original documents which she should have had. Her evidence was riddled with inconsistencies and I find her evidence on a whole to be unreliable, especially her evidence of her financial contribution to the start up of the business and of receiving a loan from Rosemarie Lake-Pasmore and paying back same.
- [120] I did not find the evidence of her witnesses to be very convincing either. I found Terriann Wilson to be an unreliable witness and it is my view that Rosemarie Lake- Pasmore and Michael Lake were being witnesses of convenience, but they too, failed to assist the Claimant in substantiating her claim.
- [121] I was also not very impressed with Shari-Dee Lake or Christopher Lake Jnr. either, although I accept as true, that part of their evidence that the Claimant was not in a partnership with the deceased and that she visited him at the Sea Castle apartment and came to live at the Rhyne Park property in 2009. I also believe they assisted in the business ME and that Christopher Lake Jnr. also assisted in the "Body Art", but I do not find that they would have been so involved as to know all the details of any arrangements between the deceased and the Claimant. This, however, has not affected my findings as the Claimant had a duty to prove her case on a balance of probabilities and has failed in that regard.
- [122] I find that Christine Johnson-Lake is not entitled to a share of the properties and that the deceased is the legal and equitable owner of all the real and personal estate which he possessed at the time of his death, and the assets, including those which were acquired by him from his income from ME, are therefore his

personal property which would fall to his estate to be distributed in accordance with the law relating to intestacy.

[123] I agree with the submission of Counsel for the Defendant that the deceased must have so conducted himself in relation to the acquisition of the property that it would be inequitable to allow him to deny the Claimant a beneficial interest in it. It is clear on the evidence that the deceased acquired all his assets in his own name and at all times he was in control of his affairs. Even the Claimant in her evidence stated "...there can be no doubt about it, he was in charge". The Claimant has failed to show that she made any direct financial contribution towards the purchase of any of the properties claimed. She claims that she and the deceased had discussions about buying a house together from 2006 but there is no clear evidence of a common intention between them that at the time of the purchase of the property they would each have a beneficial interest in it and neither is there any evidence that the Claimant has acted to her detriment based on that common intention. Additionally, based on the finding that the business ME was not a partnership, it follows that any assets acquired from the profits derived from it would be the property of the deceased.

[124] In its totality, the evidence does not support the relationship of the Claimant to the business ME as a partner and neither does it show any acknowledgement of the relationship between the Claimant and the deceased as partners in the business. There is evidence that she benefitted from the business which on a balance of probabilities I find to be on the basis of her capacity as the mother of two of his children and not as any share in the profit of the business. The substance of the relationship between the claimant and the deceased leads me to find also that she was not necessarily an employee in the business, although on her own evidence she was paid a salary of \$10,000.00 per week, and neither could she be said to be "self employed" in relation to the business, notwithstanding NHT contributions being paid up on her behalf by the deceased. Where funds were paid to NHT on her behalf, I find that those payments were clearly made for convenience and this is the same effect that I find the letter by

the Bank of Nova Scotia, written at the request of the deceased, to the United States Embassy has

What effect, if any, the fact that the claimant has purchased real and personal property belonging to the estate of the deceased has on the claimant's claim

[125] Evidence adduced in these proceedings show that the Claimant purchased the BMW motor car, the Toyota Hiace van and stocks of the business of ME. It has also been shown that the Claimant is now operating a business of the same nature as ME. In relation to the real and personal estate claimed, the evidence is clear that these properties were all registered to the deceased solely. These assets, even if acquired by the deceased solely from income derived from ME, are properties of the deceased and as such they fall to his estate to be administered by the defendant.

[126] I have taken into consideration the fact that the assets disposed of by the defendant were done in the capacity as administrator of the estate of the deceased. I note that notwithstanding that some of these assets were sold to the Claimant, it is clear that the Defendant was and still is in the process of administering the estate.

[127] I find that nothing really turns on the fact that some of the assets were sold to the Claimant as opposed to a third party. I therefore do not find that such sales and purchases have any impact on the Claimant's claim.

Disposition:

[128] In view of all the foregoing, the Claimant's claim is dismissed in its entirety. Costs are awarded the Defendant and the Interested Parties and are to be taxed if not agreed.

Quindo