



[2020] JMSC Civ 81

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. 2015 HCV 03445**

<b>BETWEEN</b>	<b>SUZETTE DAVIS</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>ALLAN DAVIS</b>	<b>DEFENDANT</b>

**IN CHAMBERS**

Mr. Gordon Steer instructed by Chambers Bunny and Steer for the Claimant

Mr Chad Lawrence instructed by Samuda & Johnson for the Defendant

Heard: December 3, 4 and 5 2019 and April 3, 2020

**Application for division of property and maintenance – PROSA – Maintenance Act**

**T. HUTCHINSON, J (Ag.)**

**INTRODUCTION**

[1] On the 10th of July 2015, the Claimant Mrs Suzette Davis filed a fixed date claim form along with an affidavit in support in which she seeks the following orders against the Defendant Mr. Allan Davis;

1. That property situated at 3 Laidley Close, Kingston 8 n the parish of St. Andrew and registered at Volume 1454 Folio 152 of the Register Book of Titles (the family home) be valued and sold on the open market and the net proceeds thereof be shared equally between the parties.
2. That Messrs Karl Wilson and Company, Land Valuers be appointed to value the said real estate and prepare a valuation thereon. The upfront cost

of the said report is to be paid by the Defendant and one-half of the said costs shall be later deducted from the Claimant's ½ of the net proceeds of sale of the real estate and repaid to the Respondent.

3. That unless the parties agree to their apportionment, the furniture contained in the family home be valued and sold and apportioned equally between the parties.
4. That the Claimant's Attorney's-At-Law shall have the carriage of sale of the said real estate and furniture.
5. That the Claimant be given the option to purchase the family home situate at 3 Laidley Close, Kingston 8 in the parish of St Andrew said option to be exercised within 180 days of the date of the order.
6. That she be awarded half the value of the Defendant's Company – Davis Transport Services Ltd.
7. The Registrar of the Supreme Court be empowered to sign any Sale Agreement, Instrument of Transfer and any other relevant documents whatsoever which may be necessary to give effect to the Court's Orders.
8. The Respondent do pay to the Petitioner the sum of \$231,000 as monthly maintenance or such other reasonable amount as this Honourable Court sees fit until she remarries or further order of this Court.
9. Any further and other relief.

**[2]** During the course of the trial, Mr. Steer indicated that the order sought at paragraph 6 was no longer being pursued. The Defendant raised an objection to any of these orders being granted.

## **CLAIMANT'S CASE**

### **Suzette Davis**

- [3] The Claimant's evidence in chief is outlined in 3 affidavits provided by her. In her first affidavit which was filed on the 10th of July 2015 she stated that she met the Defendant on the 7th of February 2009 and they went on their first date on the 14th of February 2009. She then outlined a period of courtship after which she said the Defendant accompanied her to England to meet her family.
- [4] She stated that in August 2009 they returned to Jamaica and commenced living at 3 Laidley Close, Kingston 8, St Andrew, hereinafter referred to as 'the disputed property'. She averred that she took up residence at this address at the invitation of the Defendant, who she said made promises to her and her family to provide for her financially, physically and emotionally.
- [5] She outlined that while in the UK she had a number of business interests which provided her with a far superior quality of life compared to what she experienced in Jamaica. She stated that having relocated to Jamaica she had to hire someone to run her business Allfor Care Recruitment which formerly provided her with a gross income of £2,000,000 annually but had since fallen into ruin.
- [6] She stated that during the course of her relationship with the Defendant she made a number of large financial contributions to his business, provided him with foreign exchange and paid his creditors.
- [7] The Claimant deponed that she worked in the Defendant's business from 2009 until 2011 when he brought in his daughter to replace her. She said that in the course of their relationship she purchased personal items for the defendant and furnishings for the home. She averred that the monthly cost of running the household was \$350,000 which would be covered by the Defendant, but after 2011 he only paid \$50,000. She said he continued to pay this sum to her up to September 2014 when he stopped.

- [8]** She outlined her current monthly personal expenses as amounting to \$231,000 which included payment for medication, kidney scans, visits to the gynaecologist, IVF storage, travel expenses, household helper, food and clothing. In relation to her physical health she stated that she suffered from uterine fibroids and had challenges becoming pregnant.
- [9]** At paragraph 14 of her affidavit, the Claimant said that they got married on the 20th of April 2013, at Leith Hall Baptist Church in St Thomas after which they went on their honeymoon and then 'commenced living together as husband and wife at our home at 3 Laidley Close in the parish of St Andrew.
- [10]** She said that in April 2014 she gave birth to a daughter who died shortly after. She was then in and out of the hospital as a result of complications. She also had to do surgery to remove kidney stones. She stated that she became ill with kidney problems and had to undergo an operation and that she now sees a kidney specialist twice a year and has monthly kidney scans. In this regard she produced SD12 to 16 but a review of these documents revealed that they contain no reference to doctor's visits for kidney issues or scans. In relation to her monthly visits to the Gynaecologist and bi-weekly visits to the psychiatrist, up to September 2014, no documentation has been produced.
- [11]** She outlined that the Defendant became distant and subsequently ceased all communication. She stated that she received a text message from him in October 2014 asking her to leave his house keys with his brother and in December 2014 he sent someone to retrieve his clothing and other personal items from their bedroom. She stated that she received information which suggested infidelity on his part. She said that she was served with divorce papers on the 2nd of July 2015 after which she was driven from the home by the hostile behaviour of the Defendant's daughter.
- [12]** In her affidavit filed on the 9th of January 2019 she clarified that the sum of £10,000,000, which she said had been paid on behalf of the Defendant was an

error and should have been £10,000, and this sum had been paid on two occasions.

- [13]** She stated that she lived at the disputed property until she was forced out in March 2016, during which she carried out substantial repairs to the roof and structure and updated the property. She also deponed that she would care of the defendant's younger child whenever he visited.
- [14]** She outlined that she had owned a business with her brother but it had failed. She also stated that she had operated a chicken farm but the chickens had died. She acknowledged that the Defendant had contributed towards the acquisition of property in Bull Bay, but insisted that it was only \$500,000 which covered the closing cost and this sum was repaid to him.
- [15]** In respect of her application for spousal support, the Claimant produced an affidavit of disclosure with several attachments. The affidavit was filed on the 25th of March 2019 and had attached several exhibits to include mortgage statements, unaudited financial reports for Allfor Care Recruitment and statements for a number of bank accounts.
- [16]** She was cross examined and insisted that she met the defendant in February 2009. She acknowledged however that she had owned property in Jamaica before 2009. She then changed her response to state that it was actually her parent's home and not her own.
- [17]** She accepted that prior to 2009 she had owned a business called Caribbean Distributors Ltd. She then stated that the only business interest she had was Sue True Distributors which was incorporated in April 2009.
- [18]** She insisted that she moved in with the Defendant within 6 months of meeting him and that she had only moved back to Jamaica based on his promises. She accepted however that her company Sue True Distributors had been incorporated

two months after she said she met the Defendant and before she moved back to Jamaica.

- [19]** She was asked about 2 companies owned and managed by her in the UK namely Allfor Care and Home Care and stated that she had managed them for about 9 to 10 years. She was asked if she had said in her affidavit that she would receive an income of over £2 million from them and she responded that she had said JMD\$2 million. She was shown her affidavit and the reference to £2 million and responded that it was a typo. She then stated that it was the company which would earn this figure and not her. When pressed on whether the company had earned £2 million she responded that that was also a typo.
- [20]** She then stated that she could not remember if this company had ever made a profit in the years she had been its manager. In response to the suggestion that the company made a good amount of money she said that she didn't know what that meant.
- [21]** She agreed that she had been financially independent but insisted that she was now in need of financial support from the Defendant. It was suggested to her that the Defendant never told her that he would support her financially and after some hesitation she responded that he had.
- [22]** She agreed that Allfor Care was still in operation while she was in Jamaica and that it had two locations. She then stated that the business had in fact fallen into ruins. In response to questions whether she still received an income from this company she hesitated but eventually responded that she didn't. She stated that the business was being run by her mother but subsequently stated that her mother had been in Jamaica and had left someone else in charge. She denied however that her parents received an income from the company.
- [23]** She was asked about the property at 3 Laidley Close and agreed that it had already been owned by the Defendant when she met him. She also agreed that at the time she got married to him his daughter was already living at the house.

- [24]** In relation to the disputed property she accepted that the Defendant paid the household expenses through his business but insisted that she paid the helper. She agreed however that the Defendant would give her money.
- [25]** She denied that she had ever received an income from her business Sue True Distributors and stated that it had never made a profit and collapsed in 2013. She initially denied naming her sister as company secretary in September 2015 but later accepted that she had done so.
- [26]** She initially denied advising the Tax Admin in 2016 that the company had ceased operations in 2015, but accepted that she had when shown a copy of a letter which bore her signature. She denied knowledge of the deposits and withdrawals made on the Company's accounts between 2015 and 2016 and insisted that the account was being used by her sister at this time.
- [27]** She was unable to provide proof of her re-payment of the sum of \$500,000 to the Defendant and stated that this was because he had taken back his money from her Attorney. She was also unable to provide proof of mortgage payments on the Alexander property by her parents.
- [28]** She was asked about a number of properties owned by her in the UK but responded that they were in ruins. When shown her affidavit where it had been stated that they were rented she insisted that they were now in ruins or under renovation. She stated that the properties were all mortgaged but was unable to state the account from which the mortgages were paid.
- [29]** She accepted that she had produced no proof of payment for work done at the disputed property but then insisted that she had in fact produced proof. She was then shown her affidavit where she had said that the receipts were destroyed and stated that she could not recall saying that but eventually accepted that she had.

### **Tameich Hamilton**

- [30] Ms. Hamilton provided an affidavit in which she stated that she moved to Jamaica in September 2012 to live with her sister who was then recovering from surgery. She said during this period she attended Norman Manley Law School and in May 2014 she was sued by a friend for damage done to her vehicle at the disputed property by the Defendant's dogs.
- [31] She was cross examined and agreed that her sister had involved her in Sue True Distributors. She denied however that she had any control over the business account. She agreed that her sister would check on her business in St Thomas but said this was mostly on weekends.
- [32] She stated that her sister made several upgrades to the house at her personal expense but conceded that although her sister left money with her to pay the workmen she could not say with certainty the source of these funds.

### **Marlon Harriot**

- [33] Mr Harriot outlined that he carried out extensive work to the property in 2010, 2012 and 2013 all at the behest of the Claimant who also paid him. He said that the work ranged from cleaning and polishing the kitchen to extensive repairs to the roof and the conversion of an outdoor area into an office for the Claimant. His payment for these projects ranged from \$92,000 to \$680,000.
- [34] He was cross examined and accepted that the statements in his affidavit was all the proof he had of the work done by him. He outlined the different tasks he performed as well as the payments received and acknowledged that he had no receipts for monies spent.
- [35] He stated that he never provided receipts to the Claimant as it was not his practice. He also testified that he worked at the house for 3 weeks straight and returned on one other occasion.



## **DEFENDANT'S CASE**

### **Allan Davis**

- [36] The Defendant provided three affidavits. In his account, he took issue with the Claimant's assertion that she had resided at the property from 2009 to 2016. He stated that between 2010 and 2014 she used his home in a transient manner.
- [37] According to the Defendant, he first met the Claimant in early 2007 when she came to his business place as a customer. He stated that after the passing of his first wife he saw her again and on the 14th of February 2009 she invited him out. He acknowledged that the Claimant stayed at his house that night but said this was because she had a concern about driving home to St Thomas at that hour.
- [38] He agreed that he met the Claimant's family in the UK and that travelled back with her on the same flight. He denied however that they lived at the disputed property on their return. He averred that at the time he met the Claimant she already had business interests in Jamaica and he denied that she had ever worked in his business.
- [39] He denied that he had ever promised the Claimant that he would provide for her and indicated that he was already financially responsible for 2 dependent children whereas the Claimant was financially independent and had remained that way throughout their time together.
- [40] He denied that a payment of £10,000,000 or £10,000 had been made by the Claimant on his behalf and he also insisted that whenever she made payments for him she would be reimbursed. He denied that he had ever operated a business in St Thomas in which the Claimant worked and he stated that he had assisted her to purchase land in St Thomas to be used for business but the Claimant began to treat it as hers.
- [41] He denied that the Claimant had ever purchased personal items for him or furnishings for the house. He stated that the only appliance bought by her was a

television which had been purchased for her sister's use and was later removed by the Claimant. He denied that the Claimant ever had the responsibility of running the house and asserted that all expenses for the home were paid through his business. He accepted that he gave the sum of \$50,000 to the Claimant but stated it was to assist in her business Sue True Distributors.

**[42]** He also asserted that he had previously assisted the Claimant by investing in her businesses which included Sue True Distributors, the property bought in Bull Bay, a chicken farm and the home owned by her in Alexander, St Thomas.

**[43]** He took issue with the expense claimed for monthly kidney scans and stated that the Claimant had never spoken about this before. He also stated that, in respect of the cost of the IVF storage, as the partner he had never given his consent for this to be done. He denied that the Claimant lived at the property before his daughter moved in and asserted that when she moved in she wanted his daughter and her husband to leave.

**[44]** He said that in 2014 the Claimant went to the UK and Canada for two months and he went to the USA for 6 months. He outlined that in spite of efforts to communicate with her he heard nothing from the Claimant. He said that before her departure the Claimant had become very cold and insulting towards him and on his return to Jamaica, he realized that she no longer visited the house.

**[45]** In relation to the acquisition of the property he stated that it was purchased as joint tenants with his first wife in 1998 and her name was removed from the title after her death. He denied that the Claimant had any legal or equitable interest in the property and he also denied that she had carried out any maintenance or upgrading work there. In terms of furnishings he stated that the only items taken to the house by the Claimant were a washing machine and an electric stove.

**[46]** He outlined that his monthly income was \$100,000 per month and his recurring expenses for food, doctor's visits, glasses, personal care, medication, helper and lawn care accounted for \$93,700 of this amount. He noted that in respect of his

larger expenses for water, electricity, cable and internet, gas and/or taxi fare, travel, cell phone, dog food and pool maintenance these amounted to \$164,500 per month and were covered by the company.

- [47]** He denied that the Claimant had ever been his brother's caregiver and asserted that he had employed a helper who carried out this function. He also insisted that the Claimant had never performed any domestic functions at the house.
- [48]** He acknowledged that, in addition to the disputed property, he owned property at Whitehall Avenue which was the location of his business. He also acknowledged being the owner of another property in Kingston 8, which was the residence of his adult son who suffered a disability and he was the co-owner of a property in Florida.
- [49]** He outlined that in addition to her businesses and homes in Jamaica, the Claimant also had several properties and business interests in the UK from which she derived a healthy income. He indicated that he is 75 years old and isn't able to work as he once did neither would he in a financial position to maintain the Claimant.
- [50]** In his third affidavit the Defendant outlined that he is entitled to a salary of \$140,000 each month but had not cashed his cheques as the company has not been doing well. He also stated that he received an allowance of \$75,000 each month and it was from this sum that he covered his utilities from July 2015 to March 2016. He attached a number of pay cheques which bore his name and showed a net salary range from \$95,000 to \$119,000 per month. He stated that for the period July 20th, 2015 to March 31st, 2016 his monthly earnings were JMD \$1,120,000.
- [51]** He disclosed 2 accounts held at Sagicor with balances of JS\$455,932.03 and US \$1,180.93 respectively. He said that he also had a Wells Fargo Account with a balance of US\$779 but no documents were attached in respect of these accounts. He attached documentation in proof of a Scotia Credit Card which revealed a balance of JA\$3,270 but the documents presented did not state the card limit.

- [52]** He was cross examined and accepted that work was done at the property by Mr. Harriot. He maintained that at the time the work was being done the Claimant was a visitor and not actually residing at the house.
- [53]** He agreed that the membrane for the house was purchased in the UK and that he had produced no evidence of repaying the Claimant for same. In relation to the membrane he stated that he had the pounds to pay for it but was informed that they were outdated. He said the Claimant informed him that she had some pounds and would pay. He said she then took his pounds and gave them to her father to change and he heard nothing further thereafter.
- [54]** He was unable to provide the cost of the membrane but stated that he could recall that the money he had was just enough to pay for it. He maintained that goods shipped by the Claimant arrived in a container at his premises at White Hall Ave but said that she took some items to St Thomas for her partner.
- [55]** He said that the membrane which had been purchased in the UK had been used at his business place but he also accepted that a membrane had been attached to his house by Mr. Harriot. He acknowledged that Mr. Harriot had done some work in the kitchen as well. He testified that it was the Claimant who selected Mr. Harriott to do the work as she knew him before as her grandmother's tenant.
- [56]** He was asked about the statement in his affidavit that both he and the Claimant owned property in Bull Bay and he denied saying this. When pressed further he said he didn't remember. He was shown his affidavit and accepted that it stated there that he owned the property in Bull Bay with the Claimant but stated that it was an oversight as he had walked out of it.
- [57]** He was unable to recall if he took the Claimant to Andrews Hospital when she miscarried but stated that he visited her there. He denied that she went to the hospital from his address and insisted that she was taken there from St Thomas. He said she had mentioned having some problems to him the night before but her mother and sister had been with her in St Thomas.

- [58] In relation to his pay slip he was asked about his basic pay which he acknowledged was stated as \$46,000. He also confirmed that he was not paid overtime. He was then asked to explain the fact that his gross salary amounted to 120,000 and was unable to provide an explanation. He was shown another payslip and asked if in 2016 he had gotten a pay increase from 46,200 to 140,000 and he stated that it was a possibility but he wasn't aware. He also stated that he wasn't the person who prepared his payslips.
- [59] He was asked about the law suit in which the Claimant had been named as an occupant of the house and he agreed that she had been. He stated that at the time she had been staying there on and off. He also agreed that this was the address he had provided for her in the divorce proceedings.
- [60] In re-examination he stated that after the work at the house was completed he repaid the Claimant the cost for same as he had told her previously that he didn't want her to spend any money on his house.

### **Wills Small**

- [61] In his affidavit, Mr Smalls stated that he is the brother of the Defendant. He outlined that he had worked at the company owned by the Defendant for 15 years and had never seen the Claimant working there. He was cross examined and he agreed that he had attended the wedding. He also stated that the wedding reception was held at the house in St Thomas after which the Claimant and Defendant went to a hotel.

### **Additional Witnesses**

- [62] There were four additional affidavits which were provided by Noel Small, Natoya Porter, Wellesley Spencer and Donald White all of whom stated that they worked in the Defendant's company. The contents of these affidavits confirmed that Davis Transport Services is owned by the Defendant and took issue with the Claimant's

assertion that she had worked with the enterprise. These individuals were not called and their affidavits were not challenged.

## **CLAIMANT'S SUBMISSIONS**

### **Family Home**

- [63] It was submitted on behalf of the Claimant that the issues that arise on this matter are (i) whether 3 Laidley Close is the family home of the parties; (ii) whether there should be a variation of the equal share rule and (iii) whether the Defendant ought to be liable to the Claimant for spousal maintenance in the sum of \$231,000.00.
- [64] Mr Steer submitted that although the Defendant described the Claimant as 'transient', and insisted that she worked in St. Thomas, he admitted that she returned 'home' and shared a bed with him at the premises. Counsel also pointed out that 3 Laidley Close was the Claimant's address on the marriage certificate and on the divorce document filed by the Defendant and met the requirements of Section 2 of the Act.
- [65] Counsel referred to and relied on the dicta of Phillips JA in ***Weir v Tree [2014] JMCA Civ 12*** where it was stated that although spouses may travel back and forth between a property, it did not negate a finding that this was the family home as defined in the Act. Counsel also referred to the case of ***Peaches Annette Shirley-Stewart v Rupert Augustus Stewart Claim No. 2007HCV0327*** where Sykes J (as he then was) set out the definition of the family home between paragraph 22 to 24 of the judgment.
- [66] In relation to whether the equal shares rule should be displaced, Counsel submitted that Section 7 of the Act clearly mandates that an application for such a departure ought to be made in order for the Court to consider varying the equal share rule as provided by section 6 of the Act. In support of this argument he referred to the dicta of Brooks JA at paragraph 47 of the decision ***Carol Stewart v Lauriston Stewart [2013] JMCA Civ 47***.

[67] He argued that the question to be asked is whether the Defendant has made any application to displace the equal share rule to which he submitted the answer was no. He submitted that nowhere in his evidence did the Defendant state that he wanted the Court to make certain orders or any orders adverse to the Claimant and that he only averred that the Claimant has "...no equitable or legal interest in my home at Laidley Close or any other property that belongs to me.' Mr. Steer submitted that these statements ought not to be construed to mean that the Defendant has made an application under Section 7 of the Property (Rights of Spouses) Act to prompt the Court to vary the equal share rule.

[68] He submitted that in the event that the Court found that there was in fact an application pursuant to this section, it has to determine what lesser percentage the Claimant is entitled to. In this regard he pointed the Court to her evidence where she stated that she had invested money in the family home by carrying out substantial repairs to the roof and structure of the building as well as the evidence of Marlon Harriot who spoke about work done by him at 3 Laidley Close. He noted that in cross-examination the Defendant agreed that Mr. Harriot must have been paid for his work done and didn't disagree with Mr. Harriot's statement that 'Suzette' the Claimant, paid him. He also asked that the Court dismiss the Defendant's remarks in re-examination where he stated that he had repaid the Claimant and prefer the statements previously made.

[69] Counsel submitted that if the Court were to find that a Section 7 factor existed under Property (Rights of Spouses) Act by which the Claimant's entitlement to an equal share ought to be decreased, then by virtue of the fact that she spent considerable sums of money on the improvement and/or maintenance of the family home, her award should be no less than thirty-five percent (35%).

### **Spousal Maintenance**

[70] Mr Steer submitted that Section 6 of the Maintenance Act establishes that each spouse has an obligation to maintain the other to allow them to meet their

reasonable needs so long as they do not remarry or commence cohabitation with another. He also noted that the Court's power to make an order for the maintenance of a spouse is derived from the Matrimonial Causes Act section 23.

[71] He submitted that where an application for division of property has been made pursuant to the Property (Rights of Spouses) Act, the Court may make such order for the maintenance of a spouse pursuant to section 3(2) of The Property (Rights of Spouses) Act. He argued that in coming to a decision, the Court should consider the factors set out under section 14(4) of the Maintenance Act and pointed out those which he identified as being most relevant to these proceedings.

[72] In highlighting the relevant factors, Mr Steer also made reference was made to the case ***Suzette Ann Marie Hugh Sam v Quentin Chin Chong Hugh Sam [2015] JMMD: FD 1***, where E. Brown, J opined at paragraphs 51 and 52 of the judgment that the duty to maintain a spouse is circumscribed by capability, necessity, reasonability and practicality.

[73] Counsel submitted that the evidence showed that the Defendant maintained the Claimant, fully throughout the marriage and during their common law relationship. He argued that this was so even though the Defendant attempted to downscale his means by adducing 'fallacious pay slips' which he took issue with during cross-examination stating that he had no idea where they came from or who produced them.

[74] Mr Steer referred to the statement in the Defendant's affidavit that his business afforded him the opportunity to purchase two (2) properties in upscale neighbourhoods. Counsel also stated that the Defendant gave evidence that he assisted financially in the Claimant's acquisition of other properties but later recanted same.

[75] It was submitted that all the evidence before the Court, established the four ingredients of capability, necessity, reasonability and practicality as the Claimant is in no position to reasonably meet her needs without assistance from the



Defendant and in these circumstances the Court ought to award the Claimant spousal maintenance, whether by periodic payments or lump sum, in a sum deemed fit given the circumstances.

## **DEFENDANT'S SUBMISSIONS**

- [76] It was submitted on behalf of the Defendant that the court must enter judgment in favour of the Defendant as there are conflicts which have arisen on critical issues of the Claimant's case and she has substantially failed in law to prove her case.
- [77] In examining the Claimant's account, Mr Lawrence submitted that her evidence in chief and cross examination disclosed that she had acquired property in Jamaica prior to meeting the Defendant. He submitted that the Claimant had already established a life in Jamaica prior to meeting the Defendant and in this regard he pointed out the fact that she had made been a patient of Dr. Garth Rattray from 2006 and had incorporated her business Sue True Distributors less than two months after meeting the defendant.
- [78] He asserted that the Claimant had sought to mislead the Court when she stated that she had little to no interests in Jamaica prior to meeting the Defendant and that he was the sole reason for her return. He argued that she also attempted to mislead the Court as to her capability to support herself even though the evidence showed that she owned multiple properties and successful businesses both in the United Kingdom and Jamaica.
- [79] Counsel submitted that there were questions in relation to the Claimant's credibility as she gave evidence that she had worked at Davis Transport & Services Limited for two years but could provide no supporting evidence. He also highlighted that although she referred to working at a "St. Thomas location" she later accepted that the business only had a Kingston location.
- [80] Counsel asked the Court to note that while the Claimant testified that she had ceased operations of her business Sue True Distributors in 2013 and had never

received any income from same the evidence revealed that she was still operating up to 2015. He also highlighted the fact that monies were still being deposited and withdrawn from the Company's account up to 2016.

[81] Mr. Lawrence also contended that the Claimant's credibility was negatively impacted by her failure to disclose the account(s) from which her mortgages were paid as well as her failure to produce complete bank and accounting records for Allfor Care.

**Should the equal share rule be dispensed with?**

[82] It was submitted by Mr Lawrence that there are more than sufficient grounds for the court to dispense with the equal share rule as the property in question was purchased by the Defendant before his marriage to the Claimant and this marriage was of a very short duration. He asserted that the existence of these factors provide strong support that it would be unreasonable to apply the one-half rule. He also argued that the Court should find that the Claimant has no interest whatsoever in the said property and in support of this position he relied on ***Carol Stewart v Lauriston Stewart supra***.

[83] He argued that there is no legal basis for the court to take into account the period the parties cohabited before the marriage or to include it in the calculation of the duration of the marriage for the purposes of Section 7(1) of the Property (Rights of Spouses) Act. He submitted that paragraphs 14 and 18 of the Claimant's affidavit dated July 10, 2015 reveal that the marriage begun on April 20, 2013 and ended on or around October 2014 lasting approximately eighteen months which is undoubtedly a marriage of very short duration.

**Contribution to 3 Laidley Close, Kingston 8.**

[84] In respect of contributions made to the improvement of the disputed property by the Claimant, Mr Lawrence submitted that no documentary evidence has been presented in support of this claim. He argued that although Marlon Harriott claimed

that he had been paid approximately one million four hundred and seventy-seven thousand dollars (\$1,477,000) for work done at the disputed property he accepted in cross examination that he had no documentary evidence of monies paid for any of the projects carried out by him. Counsel submitted that there were also questions as to Mr. Harriot's veracity as to the period or length of time over which the work was done.

[85] Counsel also asked the Court to note that although the Claimant had indicated that she was not making money to support herself, she asserted that she was the person who financed these projects as late as June 2013.

[86] In relation to the Claimant's contention that she also made non-financial contributions to the house by caring for the Defendant's child and brother, Counsel submitted that given her evidence that she worked at her business as well as at Davis Transport, it was improbable that she was able to provide this care.

#### **Additional factors to take into consideration in varying the equal share rule**

[87] Mr. Lawrence submitted that the Court should also consider the Defendant's age, the fact that he had dependent children, the Claimant's age and lack of dependents, the fact that the Claimant resides in the UK and the absence of any proof of financial contribution to the home by her.

[88] In this regard, he relied on the case of *Allicent Kelly-Lasisi v Jimoh Lasisi Claim No. 2014 HCV 01319* and the factors noted by the court therein. Counsel also commended the fact that in somewhat similar circumstances, that Court found an award of 10% of the family home to be reasonable. He submitted that in these circumstances however no award ought to be made to the Claimant.

#### **DAVIS TRANSPORT AND SERVICES LIMITED**

[89] While acknowledging that during the trial it was indicated that the Claimant was no longer pursuing a claim for an interest in Davis Transport Services, Mr. Lawrence

submitted that this claim ought not to be granted in any event as there was no evidential basis for such an award.

## **MAINTENANCE**

[90] Counsel submitted that on the plain and literal interpretation of the statute, maintenance is not compulsory and a spouse only becomes entitled to maintenance where he/she is incapable of meeting his/her reasonable needs in whole or in part. He argued that the onus is on the Claimant to prove that on a balance of probabilities that she is incapable of meeting her reasonable needs in whole or part.

[91] He submitted that while the Claimant had provided documentation to show that mortgages were being paid on some of the properties owned by her via standing order, she had failed to provide information on these accounts. He also submitted that the Claimant provided no bank accounts for Allfor Care Recruitment Centre and Home Care Services Limited which he contended was still in operation.

[92] Mr. Lawrence also highlighted the blank profit and loss sheets for this company and what he termed as the Claimant's contradictory responses on whether she owned a chicken farm. He submitted that on the authority of *Hughes v Hughes 1993 45 WIR 149* a Court is entitled to draw inferences as to assets and income which are adverse to a party who fails to make full and frank disclosure of them and as such, the Court should find that the Claimant is not a witness of truth and her evidence cannot be trusted.

[93] Mr. Lawrence asked the Court to find that the Claimant, is still a part of Allfor Care as she still signs documents as a Director. He also pointed to a number of accounts on which she appears, specifically one held jointly with her mother (JN Account RSV -002094121567) which reflected submits deposits of several million dollars and a total of \$14,547,043.72 being withdrawn from this account between December of 2014 and March of 2016. He argued that upon an examination of these accounts, there were several transactions in Jamaica from which the Court

can draw the reasonable inference that the account was being used by the Claimant in spite of her statement of having no interest in same.

- [94] Counsel asked the court to take into consideration the fact that the Claimant is young, educated and owns several properties in and outside of Jamaica in coming to a decision on the question of maintenance. He submitted that on a balance of probabilities, the Court should find that the Claimant is financially independent and capable of meeting her reasonable needs in whole or part and is not entitled to maintenance.

### **ADDITIONAL SUBMISSIONS**

- [95] Mr Lawrence observed that the submission made by Mr. Steer that the Defendant had not applied for the variation of the equal shares rule had also been made in ***Claim No. 2006 HCV 03158 Donna Marie Graham v Hugh Anthony Graham***. He asked this Court to note that in that matter the Court in ruling against this submission found that the provisions of Section 7 had been triggered as the Defendant had indicated in his Acknowledgement of Service as well as his Affidavit that he intended to defend the claim and the property in question had not been the matrimonial home.
- [96] By way of comparison, Mr Lawrence submitted that in his acknowledgment of service dated January 28, 2016, the Defendant stated his intention to defend the claim and indicated that he admits no part of the Claim. He also referred to the Defendant's statement, inter alia, in his affidavit that the Claimant has "...no equitable or legal interest in my home at Laidley Close or any other property that belongs to me..."
- [97] He submitted that in light of the guidance provided in ***Graham v Graham supra***, the Court should find that this was tantamount to the Defendant applying for the variation within the provisions of section 7 and make an order that is fit and just in the circumstances.

## LAW

### Division of Property

[98] The Application made for an order for division of property has been made on the premise that the property in question is the family home. Section 2(1) of PROSA defines this as follows;

*"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 to benefit.*

[99] The dicta of Sykes J in ***Peaches Stewart v Rupert Stewart***, provides a useful definition of "family home" and I note his remarks at paragraphs 22 and 23:

*22. It is well known that when words are used in a statute and those words are ordinary words used in every day discourse then unless the context indicates otherwise, it is taken that the words bear the meaning they ordinarily have. It only becomes necessary to look for a secondary meaning if the ordinary meaning would be absurd or produces a result that could not have been intended...*

*23. It should be noted that the adjectives only and principal are ordinary English words and there is nothing in the entire statute that suggests that they have some meaning other than the ones commonly attributed to them. Only means sole or one. Principal means main, most important or foremost. These adjectives modify, or in this case, restrict the width of the expression family residence. Indeed, even the noun residence is qualified by the noun family which is functioning as an adjective in the expression family residence. Thus it is not any kind of residence but the property must be the family residence. The noun residence means one's permanent or usual abode. Thus family residence means the family's permanent or usual abode. Therefore, the statutory definition of family home means the permanent or usual abode of the spouses."*

[100] His Lordship also stated that in the definition of family home it was vital that the "property" was used habitually or from time to time by the spouses as the only or principal family residence.

[101] Section 6 of PROSA is also relevant and it states;

6 (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.*

*(2) Except where the family home is held by the spouses as joint tenants, on the termination of marriage or cohabitation caused by death, the surviving spouse shall be entitled to one-half share of the family home.*

[102] The application of this section was examined in ***Graham v Graham*** *supra* where McDonald-Bishop J (as she then was) assessed the statutory basis for the equal share rule at paragraphs 15-16 of that case, thus:

*“15. By virtue of the statutory rule, the claimant [applying under section 13 of the Act] would, without more, be entitled to [a] 50% share in the family home...and this is regardless of the fact that the defendant is [the] sole legal and beneficial owner. It is recognized that the equal share rule (or the 50/50 rule) is derived from the now well established view that marriage is a partnership of equals (See **R v R [1992] 1 AC 599, 617** per Lord Keith of Kinkel). So, it has been said that because marriage is a partnership of equals with the parties committing themselves to sharing their lives and living and working together for the benefit of the union, when the partnership ends, each is entitled to an equal share of the assets unless there is good reason to the contrary; fairness requires no less: per Lord Nicholls of Birkenhead in **Miller v Miller; McFarlane v McFarlane [2006] 2 AC 618, 633.***

*16. The object of the Act is clearly to attain fairness in property adjustments between spouses upon dissolution of the union or termination of cohabitation....”*

[103] It is clear from this authority, that the purpose of this provision is to ensure that each party to the marriage walks away with an equal share of the family home, unless there is good reason to the contrary.

[104] The reference by the Court to the phrase ‘unless there is good reason to the contrary’ is a recognition of the fact that there are occasions when the application of the rule can and ought to be departed from and Section 7 of PROSA addresses this as follows;

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, 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.*

*(2) In subsection (1) "interested party" means- (a) a spouse; (b) a relevant child; or (c) any other person within whom the Court is satisfied has sufficient interest in the matter.*

[105] In considering how to treat with the provisions of Section 7(1) of the Act the dicta of Brooks JA at paragraph 17 of **Stewart v Stewart** provides useful guidance where he stated;

*At least three things are apparent from section 7(1):*

*a. The section requires the party who disputes the application of the statutory rule, to apply for its displacement.*

*b. The use of the word "including", implies that the court is entitled to consider factors other than those listed in section 7(1).*

*c. The equal share rule has to be shown to be unreasonable or unjust; equality is the norm.*

[106] The effect of this position and its application to this case means that it is the responsibility/burden of the Respondent to satisfy the Court on cogent evidence that this rule should be displaced. It also means that while certain categories are outlined this is not an exhaustive list as the Court accepted that a Judge is entitled to consider factors other than those listed. The party seeking to displace this rule has the burden of persuading the Court that it would be unreasonable or unjust to give effect to it.

[107] Further guidance on the approach that should be taken to this Section is given at paragraph 34 of the judgment where Brooks JA stated;



*“What may be gleaned from the section is that each of these three factors provides a gateway whereby the court may consider other elements of the relationship between the spouses in order to decide whether to adjust the equal share rule. It is at the stage of assessing one or other of those factors, but not otherwise, that matters such as the level of contribution by each party to the matrimonial home, their respective ages, behaviour, and other property holdings become relevant for consideration. For instance, the family home may have been inherited by one spouse, but the other may have, by agreement with the inheriting spouse, solely made a substantial improvement to it at significant cost. In such a case the court would be unlikely, without more, to award the entire interest to the spouse who had inherited the premises.”*

[108] In concluding his analysis of this provision and what it entails the Learned Judge stated;

*[76] In order to displace the statutory rule for equal interests in the family home, the court must be satisfied that a factor, as listed in section 7 of the Act, or a similar factor, exists. Contribution to the acquisition or maintenance of the family home, by itself, is not such a factor, it not having been included in section 7. This is in contrast to its inclusion, as a relevant factor, in section 14, which deals with property other than the family home.*

*[77] If the court is satisfied that a section 7 factor exists, it may then consider matters such as contribution and other circumstances in order to determine whether it would be unreasonable or unjust to apply the statutory rule. The degree of cogency of that evidence is greater than that required for other property. In considering whether the equality rule has been displaced, the court considering the application should not give greater weight to financial contribution to the marriage and the property, than to non-financial contribution.*

[109] The authorities cited by respective Counsel were also reviewed. On examination of both ***Gardner v Gardner and Kelly-Lasisi v Lasisi*** it was noted that in both instances the relevant marriages had been of a short duration. In ***Gardner v Gardner*** the marriage had been in existence for a total of four years and the home in issue had been owned by the Defendant for decades' years prior to the marriage. In those circumstances the Court found as follows;

*[48] I find that it would be unfair and unjust not to vary the equal share rule prescribed by section 6, in this case. The family home was not acquired by the common effort of the parties. There is no evidence that they considered or envisaged dividing this property during the happy years. It may well be asked why a court would impose on the parties*

*at the end of a marriage, a sharing of this asset, not contemplated by them at the beginning or during the marriage. Separation or divorce is no reason for the court to depart from the principles by which the parties conducted themselves during the happier times.*

*[49] I have considered other circumstances in this case as well. Foremost, is the fact that the defendant is aging and at his retirement stage of life. The claimant is still relatively young and in good health. The marriage lasted only 4 years. The defendant made every effort to make the claimant financially independent during the marriage. She was made the beneficiary of valuable real estate to which purchase she made no financial contribution.*

[110] It was the ruling of the Court that the Defendant was entitled to retain 100% interest in the property. It is instructive that the Learned Judge took into consideration the facts that the family home had not been acquired by the common effort of the parties, their respective age and the stage at which they were in life in arriving at her decision.

[111] In respect of ***Kelly-Lasisi v Lasisi***, the parties had been married for a period of 9 months before co-habitation had ceased. They had been involved for a period of 12 years prior to the marriage. The 'family home' in question had been acquired by the Defendant prior to the marriage but during the period when he was dating the Claimant. It was her position that she had contributed to the maintenance and overall improvement of the property and had even contributed financially to work done on the structure. The Court considered her contribution and decided that in light of the other factors which included the ownership of the house prior to the marriage and the brevity of the marriage her entitlement could not be greater than ten percent.

[112] In ***Graham v Graham***, the Court found that there was a proper basis to displace the equal entitlement rule and awarded 60 percent to the Defendant and 40 percent to the Claimant. This was a situation in which the home had been acquired and an addition was done to it by the Defendant and his uncle, in order to provide accommodation for his mother and a son he had prior to the marriage. The contribution of the uncle had been made with a view to assist in providing accommodations for the Defendant's mother. The Court considered that this was

a situation in which the uncle had done this as a gift to the Defendant and not to both individuals or to the Claimant herself. This gift was determined to have enhanced the value of the house greatly and in those circumstances the Court decided that this enhanced value ought to be given to the Defendant.

[113] On a review of these cases, it is clear that the Courts have on occasion varied the equal entitlement rule both in circumstances where one of the 'gateways' factors existed as well as where similar factors existed which justified this approach.

### **Maintenance**

[114] In respect of the claim for spousal support, section 3 of the Maintenance Act provides that where there is an application for division of property under the Property (Rights of Spouses) Act, the Court may make a maintenance order in accordance with the provision of the Maintenance Act.

[115] In ***Rivington v Rivington*** Edwards J recognised the right of a 'dependant spouse' to make such an application when she stated as follows;

*[82] Parts of the Matrimonial Causes Act were amended by the Useful guidance is also found in the decision **Alfred Robb v Beverley Robb Claim No. D01148/2005 delivered on the 11th December, 2009**, a decision of this Supreme Court. Where it was noted as follows;*

*"The obligation to maintain one's spouse is in the first instance, latent. It is activated by the inability of the other spouse to maintain himself or herself. So, the court has to make, as a condition precedent to a maintenance order, a threshold finding that the dependant spouse cannot practically meet the whole or any part of her reasonable needs. The maintenance order reflects that assessment, together with the capability of the respondent to maintain the applicant to the extent that is necessary to meet her reasonable needs.*

[116] In a similar application in ***Suzette Hugh Sam v Quentin Hugh Sam*** *supra* E. Brown J stated as follows;

*So then, consistent with the underlining philosophy, the duty of spousal maintenance is not absolute (see for example **Alfred Robb v Beverley Robb**, *supra*). In the language of Edwards, J "maintenance of a spouse is not automatic": **Margaret Gardner v Rivington Gardner** [2012] JMSC*

*Civ.54. The duty is circumscribed by capability, necessity, reasonability and practicality, collectively, the four ingredients. A perusal of the MA section 4 makes this clear. I quote section 4:*

*“Each spouse has an obligation, so far as he or she is capable, to maintain the other spouse, where the other spouse cannot practically meet the whole or any part of those needs.”*

*[52] It must be demonstrated by evidence, firstly that the spouse who is tasked with the responsibility of spousal maintenance has the capability to fulfil that role. Secondly, the claimed maintenance must be demonstrably necessary. Thirdly, the needs being considered must meet the bar of reasonableness. Finally, the evidence must show that it is impractical for the spouse to wholly or partially satisfy those needs*

- [117] The dicta of Byron JA in ***Hughes v Hughes (1993) 45 WIR 149*** on the need for parties to provide full disclosure of assets is also helpful specifically where he stated as follows;

*What is clear from the evidence is that the appellant gave much less than a full and frank disclosure of his assets and income. From his evidence it was clear that his income exceeded his salary, but he left it open to the court to make estimates of that income. It was also clear that he had beneficial interests in property and businesses of value, but it was left to the court to make estimates of his net capital value. The burden of proof could not be placed on the respondent because this knowledge is peculiarly in the possession of the appellant and he was under a duty to make full and frank disclosure.*

- [118] The power of the court to draw inferences adverse to a party in such circumstances was expressed in ***Payne v Payne [1968] 1 All ER 1113*** at page 1117 by Willmer LJ in this way:

*“It is well established that the court is entitled to draw inferences adverse to a husband who has not made a proper disclosure of his available resources. That was held by Sachs J in ***J v J [1955] 2 All ER 85***, a decision which was subsequently upheld, so far as that point at any rate was concerned, by this court. It was also held by Lloyd-Jones J in ***Ette v Ette [1965] 1 All ER 341***, where it was again decided that it was proper to draw inferences adverse to the husband from the fact of his failure to make a proper disclosure.”*

- [119] The provisions of Section 14(4) of the Maintenance Act particularly the factors which should be considered, although not set out in detail for the purpose of this judgment, were also reviewed as being of relevance to this application.

## ANALYSIS OF EVIDENCE

### Family Home and Furnishings

[120] In treating with the application for the division of the disputed property, I note that it is not in dispute that the house had been owned by the Defendant as a joint tenant with his first wife until her passing in 2008 when he became the sole owner.

[121] Section 6 of the Act makes it clear that the default legal position in respect of the family home is the parties are legally entitled to an equal share. This position can only be departed from if one of the factors under Section 7 of the Act or a similar factor is shown to exist. In order to make such a ruling the Court would have to be satisfied that a division in equal shares would be unjust and unreasonable in all the circumstances.

[122] It is the Defendant's position that not only was the disputed property not the family home, but the Court should find that the presumption of an equal share entitlement is displaced by the presence of a number of section 7 factors. In respect of this contention, it has been submitted by Mr. Steer that the Defendant has made no application for the variation of this rule, a position which has been disputed by Mr. Lawrence.

[123] In the authority ***Donna Marie Graham v Hugh Anthony Graham*** where a similar set of circumstances had existed, at paragraph 23 of her judgment, McDonald-Bishop J (as she then was) dealt with the issue as follows;

*It should be noted that while the Act has outlawed the operation of the former rules and presumptions of equity and common law, this is only to the extent of the parties' transaction in respect of matrimonial property. It has not taken away the general right and duty of the court to conduct proceedings in accordance with the rules of equity. Within this context, the Judicature (Supreme Court) Act s.48 becomes instructive. This section makes provision for the concurrent administration of law and equity by the court in civil matter'.*

[124] The Learned Judge then reviewed the provisions of Section 48(b) and (g) of the Act and continued;

*“I am prepared to hold that the defendant has properly brought forward an application on his statement of case for the provisions of Section 7 to be invoked in these circumstances where the Claimant is praying in aid the statutory rule that she is entitled to 50% of the family home. I find that there is in substance an application by the defendant for the variation of the rule.”*

[125] The argument raised by Mr Steer was also examined in the decision of **Dalfel Weir v Beverly Tree 2014] JMCA Civ 12** where Phillips JA treated with it as follows;

*“In the instant case, the respondent did not apply to the court claiming that it would be unreasonable or unjust for each spouse to be entitled to one-half of the family home, pursuant to section 7 of PROSA on the basis of the factors set out in the section.*

*It is not, however, fatal for the party who is seeking, by virtue of section 7, to dispute the application of the equal share rule, not to proceed by way of a formal notice of application for court orders (**Carol Stewart v Lauriston Stewart**). The triggering events as stated in section 7 include the fact that the family home had been inherited by one spouse; that the family home had been owned by one spouse at the time of the marriage or at the beginning of cohabitation; or that the marriage was of a short duration.”*

[126] On a review of the ratio of the respective Courts, it is clear that the failure to make an application for the displacement of the rule is not a bar to the Defendant's contention being considered by the Court. As such, it my finding herein that an application to depart from the equal shares rule has been properly raised by the Defendant on his statement of case.

[127] In respect of the question whether the disputed property was the family home, the evidence of the parties are poles apart. While the Claimant contends that it had been the family home for more than 5 years, it is the Defendant's firm position that she was always a visitor to his home even after their marriage in 2013.

[128] In approaching this issue, I have noted the guidance provided by Sykes J in **Peaches Stewart v Rupert Stewart** as to the factors which should be taken into account, as well as the dicta of Phillips JA at paragraphs 42 to 44 of **Dalfel Weir v Beverly Tree** where she stated;

*“[42] It is clear in my view that the parties had made the wooden structure their home. They had so arranged their lives so that the respondent would habitually and from time to time return to Jamaica and spend weeks there.*

*She may have been ordinarily resident in the United States but she maintained her marriage here in Jamaica by regular visits where she stayed with the appellant either in their home as constructed by him or in hotels when that was not convenient due to the renovation of that home. In my opinion the wooden structure, adjusted and converted, as it was over the years was where the appellant and the respondent lived together as man and wife. It was their only family residence as they did not live together as man and wife anywhere else.*

*[44] This structure would therefore have satisfied the meaning of “dwelling house” within the definition of “family home” for the purposes of the Act. Pursuant to section 6 of PROSA each spouse would be entitled to one-half share of the family home.” (emphasis added)*

**[129]** Having noted the relevant law on this subject, I commenced my examination of the evidence provided by the parties. It was asserted by the Claimant that based on the assurances given to her by the Defendant she gave up her life and business in the UK and moved to Jamaica where they started living together in 2009. On reviewing her evidence in chief as well as the concessions made by her in cross examination, I found that I did not believe her account that this in fact had occurred.

**[130]** It was clear from her evidence that prior to the transfer of the property to her mother in December 2014 that the Claimant had purchased a home in St Thomas in April 2007 and had put in place infrastructure for her business ventures there. Her continuous presence within the country was also borne out by her established relationship with Dr Garth Rattray which shown to have existed since 2006.

**[131]** I believed the Defendant that they had in fact met in 2007 when she entered his business place to source parts for one of her trucks which was being used in connection with her business interest in St Thomas. I believe that at the time they met the Claimant had already established herself in Jamaica even though she maintained a life in the UK as well.

**[132]** I believe that they began to see each other in 2009 and that she would overnight at his house at times. I found that the Defendant was very frank in his admission that on his trip to the UK he met her family and I also believe his evidence that he made no indication to them or her, that he wanted her to move to Jamaica to live

with him and that he would provide for her. His outrage at these remarks was evident and I was left with the impression that no such conversation had ever occurred and these remarks were mere fabrications on the part of the Claimant.

**[133]** On an examination of the Claimant's own evidence she made a number of investments in St Thomas and continued to do after she had commenced her relationship with the Defendant, one such example being the incorporation of Sue True Distributors a mere two months after meeting him. In light of her business interests it followed that she needed a place to reside and I believe that this was the reason behind the purchase of the house in Alexander.

**[134]** It was her evidence that this property was her parents' home and her name only appeared on the title because they had been unable to acquire a mortgage and she had assisted them in this regard. She also insisted that her parents had in fact been the ones who had paid the mortgage but she failed to provide any proof of this assertion.

**[135]** On examining the title however, it was evident that although the mortgage was discharged in May 2011 the property was not transferred to her mother until the 12<sup>th</sup> of December 2014 two months after her separation from the Defendant and subsequent to his request that she hand over his house keys. The timing of this transfer struck me as highly coincidental and somewhat strategic and I was left with questions as to whether this was deliberately done in order to buttress her claim to an interest in the disputed property on the basis that she no longer had a home of her own. This concern was exacerbated by the fact that I was not impressed with the Claimant as a witness as I found her to be prevaricating and guilty of altering her responses with some frequency.

**[136]** On the question whether the property was the family home and for what duration, I also examined the evidence of Mr. Harriot as he had stated in his affidavit that he had done work for the Claimant at this address over a 3-year period from 2010 to 2013. Having conducted this examination however, I found that this evidence did



not assist, as Mr Harriot contradicted his account under cross examination leaving some uncertainty as to whether his evidence as to dates could in fact be relied on.

**[137]** The evidence of Ms. Tauniech Hamilton, the sister of the Claimant, was also reviewed on this point and I noted her assertion that she had resided at the address from September 2012 to June 2015 and that she had lived there with her sister and her husband on a full time basis. It is clear that the import of this evidence was to show that Mrs Davis had in fact been residing at the house and not staying over as the Defendant insisted.

**[138]** On an examination of the documents produced by Ms. Hamilton it was noted that the Court Proceedings referred to were in relation to an incident which occurred in May 2014. Additionally, the bank records produced by her were specific to her and showed transaction dates between 2014 and 2015 and nothing before then. These documents did not assist in relation to the residence of the Claimant and on a review of the evidence of Ms. Hamilton, I found that it could be taken no higher than an assertion that in late 2012, the Claimant was residing at the disputed property.

**[139]** The marriage certificate, which was highlighted by Mr. Steer, was also examined. While it provides her address as 3 Laidley Close, the document contains no information as to the length of time she resided there.

**[140]** I also examined the account of the Defendant and I found that I did not believe his assertion that the Claimant would still 'go and come' even after their wedding. I accept that even if she stayed over in St Thomas on some occasions, she had in fact been residing at 3 Laidley Close, certainly from September 2012. I believe that in spite of the defendant's assertions to the contrary this was the reason why he provided this address for the Claimant on the divorce papers served on her in 2015.

**[141]** In light of the foregoing I find on a balance of probabilities that 3 Laidley Close was the family home of the Parties and that they had lived there as man and wife from September 2012 to the date of separation which I accept was October 2014.

[142] Having arrived at this conclusion, it is evident that two Section 7 factors exists. The first being that the house had been previously owned by the Defendant for 15 years before this marriage and the second that the union had subsisted for two years or less and on the authority of *Rivington v Rivington* could properly be regarded as a marriage of short duration.

[143] These section 7 factors having been identified, I took note of the guidance of Brooks JA at paragraph 77 of *Carol Stewart v Lauriston Stewart*, which had been quoted above, in respect of the other factors that would now become relevant.

### **Contribution**

[144] While it is undisputed that the property in question had been acquired by the Defendant and his first wife, it has been asserted by the Claimant that she has acquired an interest by virtue of the extensive work done to it by her. She also asserted that she furnished the house with furniture to suit her taste. In relation to the furnishings it was disputed by the Defendant that anything more than an appliance or two were purchased for the house by the Claimant.

[145] In relation to the furnishing of the house, I noted that although the Claimant made this assertion at paragraph 8 of her first affidavit, and paragraph 13 of the second, she provided no further details as to what exactly was purchased by her neither did she provide any documentary proof in support of any such purchase. The evidence of her sister does not assist, as although she insisted that the Claimant had done extensive work to the property she made no mention of any furnishings being purchased for the home.

[146] In relation to the house itself, although the Claimant's first affidavit was silent as to any contributions made to its improvement and maintenance, at paragraphs 12 and 13 of her second affidavit she outlined investing money in the family home and carrying out substantial repair to the roof and the structure itself.

- [147]** It is accepted between the parties that work was done by Mr Harriot, the area of dispute it appears is in relation to the extent of the work and who covered the cost for same. The Defendant agreed that Mr Harriot did some work in the kitchen in relation to the installation of the Claimant's stove. He also made reference to him installing the membrane for the roof.
- [148]** In his affidavit, Mr Harriot outlined the work as dusting, polishing and spraying the inside of the home, specifically the kitchen and the replacement of an oven which he says was done in 2010. It is noted that this work closely mirrors what the Defendant said was done. He also gave evidence in his affidavit that in May 2012 he conducted repair work to the roof and attached the membrane to fix the leaking. Again the scope of this work is closely aligned with what the Defendant said he did there.
- [149]** It was stated by Mr. Harriot that on a third occasion he went back to the premises where he renovated the outer building of the home and converted same into an office for the Claimant. He also spoke about rewiring the electrical system, installing new plumbing and changing the face basin and toilet. It was noted that although Mr. Harriot gave this detailed account of the work done by him, he conceded under cross examination that he had no record of same. He sought to explain this by saying that he never kept records or gave receipts for work done to the Claimant but this was contradicted by her as she stated that she had received receipts but was unable to produce them.
- [150]** In relation to the work that was actually done and the scope of this work, while I accept that work was done in the kitchen and on the roof, in light of the contradictions in Mr. Harriott's evidence, I was left with a doubt as to whether any additional work was in fact done. Additionally, I had a concern as to whether he had been entirely candid with the Court as he had sought to downplay his familiarity with the Claimant and had not revealed that he resided at a property owned by her grandmother.

[151] In respect of the issue of contribution, I was not impressed with the Claimant's account of all the work undertaken and I found her to be an untruthful witness at several points in her evidence. As such, I was not persuaded that anything beyond the installation of the membrane and the work in the kitchen was done.

[152] In respect of the Defendant's assertion that he had repaid the Claimant for the work done by her, I noted that this re-payment was revealed for the first time during re-examination. It was not stated in his affidavits neither did he disclose this while under cross examination. In light of these circumstances, I had a doubt that this portion of his evidence was truthful and on this point I found on a balance of probabilities that the work to the kitchen and roof were all covered by the Claimant.

### **Ownership of other properties**

[153] Under cross examination it was the evidence of the Claimant that she now resides in the UK. She was asked about a total of 4 residential properties and she acknowledged that they were owned by her but had been acquired using mortgages. She also stated that one or two of them had been rented but contradicted this response shortly after by stating that they were no longer rented but were now in ruins. The sum total of her responses revealed however that she owned a number of other properties, at least one of which had been used as her residence in the UK and the transfer of the home in Alexander to her mother did not have the effect of leaving her without a home.

[154] On the other hand, the property at 3 Laidley Close was shown to be the established residence of the Respondent. He stated this was where he had resided with his spouse, daughter and her spouse until the passing of his spouse and he was still residing there at the time of his subsequent marriage to the Claimant. It was acknowledged by him that he was a part owner of a property in the United States but he pointed out that it was also owned by his granddaughter and had become the subject of litigation there.

[155] In relation to the 2 other properties owned by him, he pointed out that they had been used for other purposes. His life and his business are in Jamaica and this was the sole residence that was available to him here. Unlike the Claimant he had no other options open to him.

### **Non-financial contributions**

[156] It was contended by the Claimant that in addition to her financial contributions she made other contributions to the parties' family life by being the caregiver for the defendant's brother as well as his minor son. On an examination of the evidence on this point, I found that this assertion was contradicted by the Claimant's own account of being at work at Davis Transport Service for long hours and also by her evidence that she would also be in St Thomas attending to her own business twice a week. In light of her evidence outlining her busy schedule, I did not believe that she played any such role neither in relation to the Defendant's brother nor his son.

### **Age of Parties**

[157] It is a fact that the defendant is aging, at the time of the trial he was 78 years old and at the retirement stage of life whereas the claimant is still relatively young and in relative good health. The disparity in age between the parties is over 25 years. Additionally, this property has been his home since 1998. He first shared it with his late wife, then with his daughter, son-in-law and grandchild and finally with the Claimant. The Claimant made no contribution of any kind to its acquisition and minimal contribution to its renovation. Her non-financial contribution was di minimis.

[158] I believe the account of the Defendant that she did not cook, neither did she clean this house as there were helpers engaged for this purpose. Taking everything into consideration, I agree with counsel for the defendant that this is a fit and proper case to displace the equal shares rule as it would be unreasonable and unjust to have it applied given the circumstances which exist.

**[159]** Having determined that the equal share rule ought to be varied the inevitable question is to what? I believe that in the circumstances a fair award would be 10 percent of the value of the house to account for the work done by her in respect of the maintenance and upkeep. It is my finding therefore, that the parties hold their interest in 3 Laidley Close as follows; 90 percent of the interest is held by the Defendant and 10 percent by the Claimant herein.

**[160]** In respect of the claim for the furnishings, the evidence in support of this was sparse to non-existent. I was left in a state of uncertainty as to what were the furnishings at the premises and which ones the Claimant was asserting a claim to. Given that the onus is on her to prove this entitlement, the failure of the Claimant to provide any proof of same means that her claim must fail. As such her application for a declaration that she is entitled to an equal share in the furnishings is denied.

### **Maintenance**

**[161]** In addition to her claim for an interest in the family home, the Claimant also sought an order that the sum of \$231,000 be paid to her monthly as spousal maintenance until she re-marries. In support of this application she outlined her monthly expenses which she broke down as follows;

1. Medication and Prescription \$20,000
2. Kidney Scans \$60,000
3. Gynaecologist \$5000
4. IVF Storage \$30,000 per month
5. Travel Expense \$20,000
6. Helper \$20,000
7. Food \$60,000 per week

8. Clothes and personal items \$20,000

- [162]** According to the Claimant she is unable to meet these recurring expenses as her relocation to Jamaica resulted in her suffering heavy financial losses and she needs the Defendant's assistance to get by.
- [163]** The Defendant on the other hand insisted that he is not in a position to maintain the Claimant based on his modest income and recurring expenses. From the payslips provided it was noted that his net income ranged from a low of just over \$90,000 to a high of just under \$120,000. There were some discrepancies in terms of the figures on the slips which he wasn't able to explain and he in fact queried the source of the documents then stated that he was not the person who prepared his payslips.
- [164]** In respect of his financial position, the Defendant outlined that the company was his sole source of income and it was operated with his brothers as well as his employees. He testified that he had two sons one of whom was disabled and the other a minor, both of whom he was financially responsible for. In addition to his off springs, he stated that he also had responsibility for his brother who resided in his home. He noted that throughout their relationship the Claimant had always been financially responsible for herself and that she had been this way from the time he met her.
- [165]** On a review of the evidence presented by the Claimant, it became evident that contrary to her claim that Sue True Distributors had been closed in 2013 the business continued to operate until 2015. It was also clear that although she insisted that the business never provided her with an income she was able to carry out the work at 3 Laidley Close at her personal expense and she was also the recipient of an award for the performance of the company. It also emerged that she had been making plans to expand the operations of the company to export goods abroad.

- [166]** In addition to this on an examination of her company's account considerable sums continued to be deposited and withdrawn after 2015. She had sought to explain that these funds did not belong to her but to her sister, but her sister denied that she had ever had access to or control over this account.
- [167]** Pursuant to the order of the Court for a declaration of their respective assets, the Claimant produced unaudited profit and loss documents for Allfor Care. On a review of the records it was noted that they related to the years 2014 and 2015. A close examination of the contents revealed that a number of pages had blank entries and some pages were completely blank. The figure 100 was the recurring figure throughout the document and no higher dollar amount appeared. For a document which had a prepared index outlining what ought to appear on each sheet and with specific headings for information where no information appeared, I was left with a doubt as to the authenticity of this report and it appeared to have been adjusted to present very little to no information at all.
- [168]** In respect of the role played by the Claimant in the Company, I noted that although she asserted that she was no longer with the company, in cross examination she admitted that she still received the company statements from the Accountant as she was a Director. I did not believe her assertion that the business had fallen into ruins and was not doing well as she also testified that the same company currently operated out of two locations. On her evidence, her mother was a pensioner, operating a business that was failing, yet she was able to meet her personal needs and assist the Claimant. In respect of the company, I noted that the current bank records were not presented and I was left with questions as to what these records would have shown in respect of its financial state.
- [169]** I noted that although the Claimant presented records for a number of local bank accounts and one in the UK, it was evident that she had other accounts in the UK from which her mortgage was being paid that she had failed to produce. The absence of these records begged the question why the Claimant had failed to disclose same, to which no explanation has been offered by her.



- [170]** The Claimant was asked about a number of other business ventures held by her locally as well as abroad, it was noted that in attempting to answer these questions her responses were often at odds with previous statements, for example, she denied that she had ever operated a chicken farm with her brother but a short time later she acknowledged that she had may have admitted owning same in more than one of her affidavits. When shown her affidavit she admitted that this was recorded there but denied that it had ever occurred. She was asked about a dry cleaning business she had opened in the UK in 2017 and acknowledged that she had this company but changed her response to say that it had never actually gotten off the ground because she had a nervous breakdown. In re-examination she was asked about this nervous breakdown and it turned out that this had actually occurred in 2013.
- [171]** She was asked about accounts held by her as well as accounts on which her name appeared and I noted that she was at pains to outline that in respect of the accounts with larger balances she held no interest in them even though her name appeared. In cross examination about one such account held at JN she said that it belonged to her mother. It was noted that a number of transactions were done in Jamaica using this account during a period which her mother would have been in the UK. The transactions related to the withdrawal of millions of dollars between December 2014 and December 2015. Given that these transactions could only have been done by her, this also called into question her assertion that she held no interest in this account and was wholly dependent on the Defendant.
- [172]** In relation to the recurring expenses outlined, while there have been documents provided from Andrews Memorial to show that the Claimant had been treated there, no documents have been provided in support of the monthly medical expenses claimed. Additionally, there is a concern whether the claim for IVF Storage has any merit as it is not an expense which would ordinarily fall within the category of a necessary recurring expense.

- [173] In respect of the figure stated as the Claimant's weekly grocery bill this would amount to \$240,000 monthly. For the Claimant as a single woman this expense seems somewhat inflated especially when compared to her assertion that \$350,000 had been sufficient to maintain a household where several adults to include herself, her sister, the Defendant, his brother, his daughter and son-in-law had resided.
- [174] It was noted in *Hugh Sam v Hugh Sam, supra*, that the evidence must show that the spouse against whom this order is sought has the capacity to provide maintenance for the 'dependant spouse'. Applying this principle to the current application, it is clear that although Mr. Davis has assets in the form of houses and a business, he bears the financial responsibility of keeping his business going, meeting the salaries of his staff and providing financially for his dependent sons and brother.
- [175] Additionally, although the accuracy of his pay slips had been attacked and he appeared not to recall having produced them, I accepted his explanation that he wasn't the one who prepared them. It was clear from the evidence that these slips had been produced a few years ago and the Defendant being an elderly gentleman had likely forgotten that he had produced them to his attorney who then produced them to the Court. At the end of the day however, the documents revealed that the Defendant's monthly earnings were just under \$120,000. Given his current obligations he would face an uphill battle in meeting the sum being requested by the Claimant.
- [176] I have considered whether the maintenance requested is demonstrably necessary and as a result of the concerns which I have identified above, I was unable to conclude this it is. It is clear from a careful examination of the Claimant's evidence that she in fact possessed far more assets and income than the Defendant does. In spite of her attempt to paint a picture of gloom she is the owner of 4 homes all of which are capable of providing her with rental income. Additionally, she is still associated with Allfor Care and I accept that in spite of her protestations to the

contrary she still receives an income from this company. It was observed that none of these homes have gone into foreclosure, which means that the mortgages are still being paid, possibly from monies held by her in undisclosed accounts. It is also evident that despite her insistence to the contrary she enjoys full access to the funds held in in the local accounts.

**[177]** In light of these factors, I was not persuaded that the maintenance being claimed is in fact necessary as it is clear that the Claimant is more than capable of providing for herself. The evidence presented by her falls far short of what would be required to show that it is impractical for her to wholly or partially satisfy her needs. Having carefully reviewed the evidence and all the relevant factors, I was not persuaded on a balance of probabilities that an order for maintenance should be made in respect of the Claimant.

## **DISPOSITION**

**[178]** As such the orders of this Court are as follows;

1. A declaration is made that the property situated at 3 Laidley Close, Kingston 8 in the parish of St Andrew and registered at Volume 1454 and Folio 152 is owned by the parties in the following shares – 90 percent to the Defendant and 10 percent to the Claimant.
2. The Parties are to agree on a valuator to provide a report in respect of this property and the valuation report in respect of the property is to be provided within 120 days of this order. The cost of the report is to be borne by the parties in equal shares. In the absence of agreement, the Registrar of the Supreme Court is to appoint a valuator and the cost for this report is to be borne by the Parties in equal shares.
3. The Defendant is given first option to purchase the Claimant's interest in this property situated at 3 Laidley Close and this option is to be exercised within 180 days of the receipt of the valuation report. If this option is not

exercised within the stipulated time, the property is to be sold on the open market and the net proceeds divided between the parties in accordance with their respective shares.

4. The Defendant's Attorney-at-Law shall have carriage of sale.
5. The Registrar of the Supreme Court is empowered to execute any document or documents to effect the sale and/or transfer in the event that either party refuse or is unable to sign within 14 days of being requested to do so.
6. The Claimant's application for a declaration that she is entitled to an equal share in the furnishings at the property located at 3 Laidley Close is denied.
7. The Claimant's application for maintenance is denied.
8. Costs of this Application to the Defendant to be taxed if not agreed.
9. Formal Order to be prepared, filed and served by Claimant's Attorney.