IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NO. HCV 723 OF 2004

BETWEEN	SELWYN FINDLAY	CLAIMANT
AND	INGRID FINDLAY	DEFENDANT

IN CHAMBERS

Laurel Gregg for the claimant
Marjorie Shaw Currie for the defendant

November 6, 2006, March 27, 28, April 7, 8, 11, 18, 25 and May 9, 2008

DIVISION OF PROPERTY - PRESUMPTION OF ADVANCEMENT - RESULTING TRUST - CONSTRUCTIVE TRUST - COMMON INTENTION - ACTS AMOUNTING TO ACTING ON COMMON INTENTION - SECTIONS 7 AND 8 OF THE STATUTE OF FRAUDS - MARRIED WOMEN'S PROPERTY ACT - PROPERTY (RIGHTS OF SPOUSES) ACT - POWER OF JUDGE TO REVISIT DECISION BEFORE PERFECTION OF ORDER.

SYKES J

1. This is an application brought by Mr. Selwyn Findlay under the Married Women's Property Act (MWPA) asking that the court declares the extent of his beneficial interest in three properties. The properties in order of acquisition are, (i) land registered at volume 1059 folio 228 of the Register Book

of Titles in the names of Mr. Selwyn Findlay (the claimant), Mrs. Ingrid Findlay (the defendant), and Mr. Findlay's two sisters, Mrs. Ingrid Lake and Mrs. Soraya Angela Hardie ('the Ironshore property'); (ii) land, also located in Ironshore, registered at volume 1059 folio 237 of the Register Book of Titles in the names of Mr. Selwyn Findlay and Mrs. Soraya Hardie ('the Charles Street property') and (iii) an apartment registered at volume 1234 folio 232 of the Register Book of Titles in the names of Mr. Selwyn Findlay and Mrs. Soraya Hardie ('the Sea Castle property'). The properties were acquired in 1996, 1999 and 2001 respectively. I have decided that Mr. Findlay has 100% beneficial interest in all three properties. These are my reasons. However, before giving the reasons I shall deal with a procedural matter that arose after I delivered by oral judgment on April 11, 2008.

2. The current proceedings which were launched by way of a fixed date claim form filed March 26, 2004 was supported by an affidavit filed on the same date. This claim form concerned only the Ironshore property. An amended fixed date claim form was filed on September 24, 2004. This amended claim now included the Charles Street property. Mr. Findlay filed a second affidavit in support of his case on September 24, 2004. Mrs. Findlay responded with her affidavit sworn on March 31, 2005. Mr. Findlay further amended his claim by filing another amended claim form filed on November 23, 2004. He now included the Sea Castle property. The last affidavit filed on September 13, 2005 in this matter was the third affidavit of Mr. Findlay.

An application to admit a new claim and an application to hear other evidence

3. Apparently, there are several claims in the Supreme Court dealing with various matters between Mr. and Mrs. Findlay. One of those matters is claim no. 722/2004. Shortly after I delivered oral judgment and made the order in respect of the properties at the end of this judgment (which was not perfected), I came across claim no. 722/2004. I looked in the file and saw a notice of application for court orders in which Mrs. Findlay was claiming, among other things, a half share of each of the properties that are the subject matter of this claim. This application was filed on February 21, 2005. The application was supported by an affidavit sworn by Mrs. Findlay on the same date. I mistakenly thought that they were documents filed in claim no. 723/2004. However, Miss K. Morgan, one of the clerks in the civil registry, pointed out my error, after counsel on both sides were contacted and the notice of application for court orders and supporting affidavit were brought to their attention.

4. Mrs. Shaw Currie saw notification of these documents as an opportunity to utilize the principle which allows a judge to revisit his judgment at any time before the order is perfected (see ***Stewart v Engel*** [2003] 3 All E.R. 518; ***Venetia Robinson v Fernsby*** [2004] W.L.T.R. 257). The result was that Mrs. Shaw Currie filed an application asking that the court (and here I am summarising) permits Mrs. Findlay to raise an additional claim in claim no. 723/2004 under the Property (Rights of Spouses) Act (PROSA) or in the alternative, to permit the consolidation of claims no. 722/2004 and 723/2004. This application came before me on April 18, 2008, one week after oral judgment was delivered. On April 18, 2008 I pointed out to

Mrs. Shaw Currie that section 24 of PROSA barred her application and so it was pointless hearing submissions on what I considered to be an extraordinarily difficult application which did not have the slightest possible degree of success.

5. Section 24 of PROSA reads:

> *The commencement of this Act shall not affect -*
>
> *a) any legal proceeding in respect of property which has been instituted under any enactment before such commencement; or*
>
> *b) any remedy in respect of any such legal proceeding to enforce or establish a right, privilege, obligation or liability acquired, accrued or incurred before such commencement,*
>
> *and any such legal proceeding or remedy may be continued or enforced as if this Act had not been brought into operation.*

6. Mrs. Shaw Currie sought to say that PROSA permitted a court to apply this new statute to matters begun under the MWPA. She relied on the words "any such legal proceeding or remedy may be continued or enforced as if this Act had not been brought into operation". According to her, the word "may", being permissive, allowed the parties to choose whether to continue under the old law or under the new. In my view, this is a difficult position to maintain given the clear words of the legislation. In addition, section 25 (2) of the Interpretation Act emphasizes that accrued rights are not lost merely because a new statute is in place. There would need to be either an express provision to that effect, or by necessary implication, no other interpretation is possible. PROSA has no such express words and needless to say, it does not lead to any

such necessary implication. My decision, therefore, is that the application to bring a claim under PROSA is dismissed. Mrs. Findlay is to pay the costs of the application to bring a claim under PROSA.

7. Mrs. Shaw Currie then applied for leave to appeal against the decision to refuse to allow a claim under PROSA. This application for leave to appeal was dismissed because it was not demonstrated that Mrs. Findlay had a real chance of success. The Court of Appeal has held that judges should not grant leave to appeal as a matter of course. Judges are to apply the test in rule 1.8 (9) of the Court of Appeal Rules. The rule provides:

> *The general rule is that permission to appeal in civil cases will only be given if the court or the below considers that an appeal will have a real chance of success.*

8. This provision was referred to by the Court of Appeal in ***Paulette Bailey v Incorporated Lay Body of the Church in Jamaica and the Cayman Islands in the Province of the West Indies*** SCCA No 103/2004 (delivered May 25, 2005). In that case Campbell J. correctly declined to permit an amendment under rule 20.4 of the Civil Procedure Rules as they were before the 2006 amendment. That rule stated that no amended should be granted to a statement of case after the case management conference unless there was a change in circumstances which became known after the case management conference. Rule 20.4, as the Court of Appeal held, was very clear and admitted of no interpretation other than what the words clearly meant. Thus Campbell J. was correct in his interpretation and application of the rule. Nevertheless Campbell J. granted leave to appeal his decision. The Court of

Appeal held that Campbell J. ought not to have granted leave because rule 20.4 was correctly interpreted and applied by him and there was no real chance of success. The order of Campbell J. granting leave to appeal was set aside. The principle therefore, broadly stated, is that where the words of document (including a statute or procedural rule) admits of only one reasonable interpretation and that interpretation is identified and applied then it necessarily follows that there is no real chance of success on appeal and so leave to appeal ought not to be granted. This principle applies here. There is no real chance that the Court of Appeal is going to say that section 24 of PROSA does not mean what it clearly says. Mrs. Findlay is to pay the costs of this application as well. This ruling did not exhaust the notice of application for court orders. The other applications were stood over until April 25.

9. Not to be deterred, Mrs. Shaw Currie, on April 25, 2006, amended her application by deleting the application to consolidate claim no. 722/2004 with claim no. 723/2004 and substituted instead an application to rely on the notice of application for court orders and supporting affidavit both of which were filed on February 21, 2005 in claim no 722/2004. That is to say, I was to take into account this evidence in the current claim before perfecting the order.

10. In supporting her application to take account of the "new found" affidavit and notice of application for court orders, Mrs. Shaw Currie sought to say that I could proceed by analogy with fresh evidence cases and take the "new evidence" into consideration. According to her, she did not know of this evidence before it was brought to her attention by the court. However, as Miss Gregg indicated, this evidence is not new in the way "new" is understood in the fresh evidence cases. It was

evidence, if not known to the attorney, certainly known to Mrs. Findlay and so it could not be said that the evidence was unavailable at the time of the hearing. Miss Gregg also submitted that when claim no. 723/2004 was set down for hearing, Mrs. Findlay had every opportunity to add to her affidavit evidence filed in claim no. 723/2004 and she declined to do so. I would add to this submission that the fact that there was a long adjournment from November 16, 2006 to April 2007 because the court had ordered that all documents file in claim no. 723/2004 be served on Mrs. Soraya Hardie and Mrs. Ingrid Lake, sister of Mr. Findlay, who resided in the United Kingdom. In this long period, Mrs. Findlay could have filed other affidavits. Consequently, Miss Gregg continued, any reliance on an analogy with fresh evidence cases is misconceived. Miss Gregg submitted, in the alternative, that if I should take the affidavit into account, the material has not raised any issue that was not ventilated and brought out during the hearing.

11. I agree with Miss Gregg. I have serious doubts about whether I can take this evidence into consideration at this stage. It certainly was within the power of Mrs. Findlay to point out to her attorney that the affidavit filed in claim no. 723/2004 does not contain all the evidence she has to put before the court. Assuming I am incorrect on this point, having looked at the affidavit there is nothing there that would cause me to change my ultimate conclusion on the beneficial interest in the three properties. On reading the cross examination of Mr. Findlay and examining the affidavit it is obvious that the material in the affidavit was available to counsel because virtually all the material in the affidavit was used to cross examine Mr. Findlay.

12. In this affidavit, Mrs. Findlay alleges that she worked in a clothing store operated by her husband and the understanding was that whatever assets were acquired, were jointly owned by her and her husband. According to her, the money earned from the clothing store was placed in her husband's bank account with some of it being reinvested in the shop. She added that it was agreed between herself and her husband that she would stay at home and raise the children while he worked. She also swore that her husband constantly reassured her that she was not to worry. He also told her that adding her name to the various land titles was costly. She claimed that on her return to Jamaica in 1999, she and her husband worked tirelessly to get the Charles Street property in proper living condition. Mrs. Findlay even claimed that she saved £5,000.00 from child support monies she received from the British Government. My reasons for not accepting the evidence in this affidavit will be made clear as the analysis of the case continues.

The evidence

13. Mr. and Mrs. Findlay met in London in early 1991 and were married in March 1994. The union produced four children who were born between 1991 and 1998. The parties separated some time around 2002. During the marriage the three properties mentioned already were acquired.

14. It is agreed that Mrs. Findlay left Jamaica for the United Kingdom in early 1991. She began working in the business establishment of one of her cousins as a clerical officer and receptionist. Shortly after her arrival, she met her husband and a relationship developed and blossomed. At the time she met her husband he was already, by all accounts, a successful business man. He operated two businesses known as

Ace Mount and Licence Trade Computer Systems respectively. He also traveled outside of the United Kingdom in pursuit of his business interests. When it was time for Mrs. Findlay to return to Jamaica her husband agreed to sponsor her so that she could remain in the United Kingdom.

15. The family was peripatetic. Between 1994 and 1999 they moved from the United Kingdom to Jamaica, then to the United States of America, back to the United Kingdom and finally back to Jamaica in 1999. During this time, Mr. Findlay paid for two courses for his wife. One at a college in the United Kingdom which was never completed and another in Jamaica, at Leon's School of Beauty, which Mrs. Findlay completed in 1996. The beauty course was done during the time the family was in Jamaica after they had come from the United Kingdom and before they went to the United States of America.

16. Between 1991 and 1994, while in the United Kingdom, Mrs. Findlay had two children and more often than not was unemployed or at least not engaged in occupations that provided earnings of any significance. From the evidence, it seems that she was not able to work legally in the United Kingdom because she entered the country on a visitor's visa. It was not until August of 1994 that the immigration authorities permitted her to work without a work permit (see letter dated August 12, 1994). There is no evidence that Mrs. Findlay had a work permit between 1991 and 1994. There is no reliable evidence that she worked after August 12, 1994. It is not disputed that between 1994 and when the separation occurred in 2002 Mr. Findlay bore most if not all of the household expenses.

17. Mrs. Findlay's affidavit filed in claim no. 723/2004 was quite slim on details surrounding the acquisition of the three properties. The affidavit only deals with the Charles Street property. She submitted that she was entitled to at least a half share in each of the three properties.

18. In respect of the Charles Street property, Mrs. Findlay said in her affidavit that she contributed £5,000.00 to the purchase of this property even though her name does not appear on the title. However, when the evidence surrounding this alleged contribution is examined it will be seen that this assertion is difficult to maintain.

19. This is Mr. Findlay's account of the £5,000.00. He was not successfully impeached on this issue. According to Mr. Findlay, the money in this account was for emergency purposes and he it was that caused the money to be in that account. He stated that he contributed to a national insurance scheme in the United Kingdom. One of the benefits of this scheme was that parents would receive money from time to time to assist in meeting child rearing expenses. A precondition for receiving benefits was contribution to the scheme. His wife could not receive these payments because she did not contribute to the scheme. She could not have contributed to the scheme because she was not able to work lawfully in the United Kingdom until after August 12, 1994. When the child support cheques arrived Mr. Findlay gave them to his wife to deposit. She began to deposit the sums in an account in her name alone. It is not quite clear how this was done if the cheques came in Mr. Findlay's name. However, this version of events was largely accepted by Mrs. Findlay. Mr. Findlay changed this arrangement and opened an investment account with Charles Schwab, a financial service provider, and placed the money in that account. This is how the

Charles Schwab account came to have £5,000.00. It is this sum that Mrs. Findlay claims she contributed to the purchase of the Charles Street property. Both names were on the account. I accept Mr. Findlay's version about the account. It follows, therefore, that Mrs. Findlay cannot lay exclusive claim to any money in the account. The money in the account was not a gift to Mrs. Findlay. Thus even if the money was used to purchase the Charles Street property that would not give Mrs. Findlay an interest in the property because the money was not hers to do as she pleased.

20. It is significant to note that in Mr. Findlay's affidavit of March 25, 2004, filed in support of the claim he states, in respect of the Ironshore property (the one that has Mrs. Findlay's name on the title): "*The land cost US$55,000.* ***Since I was anticipating that the defendant would soon be working and in a position to pay me back, I paid my share of the cost and also advanced the defendant's share with the intention that she would repay me after she started to work.*** *... The defendant did not contribute any money towards the purchase of the said land. All the monies toward the purchase were paid by myself and my sisters Ingrid Lake and Soraya Hardie. Further, the defendant has not repaid the money I paid on her behalf when her name was included on the title*" (my emphasis) (see paras. 4 and 5). Mrs. Findlay's affidavit of March 2005 did not refute these specific points, particularly the assertion that she was to repay Mr. Findlay the portion of the purchase price advanced by him on her behalf. He repeated this assertion in his affidavit dated September 13, 2005. I also read and reread the cross examination of Mr. Findlay and there is no suggestion by counsel that what he asserted was not true. Mr. Findlay's assertion rebuts any possibility of the operation of the presumption of advancement.

21. Mrs. Shaw Currie sought to say that Mr. Findlay was discredited totally. I do not agree. I will say that there were some inconsistencies in his evidence but on this specific point, he was not challenged either in affidavit evidence or by cross examination. The inconsistency is with regard to the contribution by his sisters. It turned out that his sisters, to date, have not paid their portion of the purchase price for any of the properties as stated by him in the affidavit. But this inconsistency does not enure to the benefit of Mrs. Findlay. The failure to pay their portion may explain why the sisters say that they hold on trust for Mr. Findlay. They may have appreciated that they did not hold up their end of the bargain and therefore any claim to a beneficial interest in the property on the basis of a contribution would be hard to sustain. I, therefore, accept his evidence that he paid for all the properties. This finding has important consequences for Mrs. Findlay's claim to an interest in all three properties.

22. I now refer to the other affidavit evidence in the case. Mrs. Hardie states that in respect of the Ironshore property she held a 25% share in the land as trustee for her brother Mr. Selwyn Findlay. In respect of the Charles Street and Sea Castle properties she swore that she is holding a 50% share as trustee for her brother. Her affidavit has mixed up the volume and folio numbers but she has referred to the location of the properties and it is clear that in respect of all properties on which her name appears she is not claiming any beneficial interest. The affidavit of Mrs. Lake is to like effect. She holds a 25% interest in the Ironshore property as trustee for her brother. The evidence from the sisters is consistent with Mr. Findlay's account of the acquisition of the properties.

23. If it is that Mrs. Findlay did not contribute directly to the acquisition of any of the properties one might ask, how, then, is she seeking to sustain the claim? According to her counsel, Mrs. Shaw Currie, Mrs. Findlay made an indirect contribution to the acquisition of the properties. The indirect contribution has two components. First, she looked after the children and did house work and this enabled Mr. Findlay to work and acquire capital to facilitate the purchases. Second, Mr. Findlay told her that "all he had was hers". Taking the latter point first, it is my view that these words are far too vague and imprecise to confer any beneficial interest on Mrs. Findlay. In any event because we are dealing with land, the absence of evidence in writing as required by the Statute of Frauds puts an end to this submission unless it can be said that Mrs. Findlay relied on those words and acted to her detriment. Going back to the first point, I have very grave doubts whether these words were ever uttered by Mr. Findlay. The defendant constantly sought to portray Mr. Findlay as a man consumed by work. He was an empire builder; a man of action. He was constantly exhorting his wife to place herself in a position to improve her earnings. When Mrs. Findlay identified courses she wanted to do Mr. Findlay did not discourage her. In fact, he gave her all encouragement. He paid for two courses for her because he wanted her to improve her earnings so that she would be able to contribute financially to the household. If Mr. Findlay was always exhorting, encouraging and financing Mrs. Findlay's courses why would he tell her that he wanted her to stay at home to look after the children? Mr. Findlay did not strike me as a man given to maudlin sentimentality and it is difficult to see him uttering the words attributed to him. The very act of demanding that his wife repay him for advancing her share of the purchase price in respect of the Ironshore

property proves the point that he is not the type of man to be found uttering words such as what is mine is thine.

24. Mrs. Findlay sought to say that she worked at a store operated by her husband. This was supposedly done while the family lived in the United Kingdom. The ultimate conclusion being that her husband derived profit from this enterprise which was used to acquire the properties in Jamaica and so she made an indirect contribution to the acquisition of the properties. Mr. Findlay denied this and responded by saying that it was his father who operated the store. Mrs. Findlay suggested that the father could not have operated the store because he was ailing. I do not accept Mrs. Findlay's account on this because the evidence in support of it is thread bare. There was no document or photograph or anything consistent with an ailing father who was unable to operate the store.

25. There is another point to be made about Mrs. Findlay's case both in her affidavits and as projected during cross examination that makes her claim to have worked in a store operated by her husband simply not credible. The details and nuances of cross examination are important here. It is agreed that the first child was born in late 1991. Mrs. Findlay's case is that she was the primary care giver and did not receive much help from Mr. Findlay or his relatives. In fact it was said that no nannies were hired to assist in the care of the child. By early 1993, Mrs. Findlay was pregnant with the second child which was not born until late 1994. This would mean that she would have had a child who was less than or just about two years old by the time she was pregnant with the second child. When the marriage took place in March 1994 she was pregnant with the second child. It is said that Mr. Findlay left the United Kingdom for the United States of America in July 1994.

He returned around October/November 1994 for the birth of his second child and then returned to the United States and then to Jamaica in 1995 where he remained until 1996 before he left for the United States where he was until 1997. The third child was born in the United States in 1997. It was projected during the cross examination of Mr. Findlay that he, his wife and three children went back to the United Kingdom in early 1998. Mr. Findlay came to Jamaica in late 1998/1999 with his wife and family joining him in September 1999. It will be recalled that in 1995/1996 Mrs. Findlay was doing a course at Leon's School of Beauty which was completed somewhere around June 1996. Prior to this, Mrs. Findlay and came to Jamaica late 1998 or early 1999. Mr. Findlay seemed to be a person interested in computers and computer related services. If he was traveling as frequently as projected by Mrs. Findlay, if he was heavily involved in his computer business it is unlikely that he would be operating a clothing store which would require stock to be purchased, suppliers to be paid and utilities bills to meet. There is no evidence that Mr. Findlay had a business partner who would manage the business in his absence. There is no evidence that Mrs. Findlay had business management skills such that he would have placed her in charge of his store or have her run his store. Mr. Findlay was presented to me as a very business like man - a view I accept. His dealings with even his sisters were very business oriented and not savouring of maudliness. He it was that engaged the services of counsel to legalise his wife's stay in the United Kingdom. I really do not see Mr. Findlay as the kind of person who would (a) engage the services of a wife who was without a work permit to manage or work full time in his store if indeed he operated the store and (b) leave the store to his wife who at that time (1992 - 1994) was between 21 - 23 years old with no known skill or expertise in business. In light of all this I do not accept that Mr. Findlay

operated any clothing store in which Mrs. Findlay his wife worked. If such a store was in existence I accept that it was Mr. Findlay's father who operated the store. I do not accept Mrs. Findlay's evidence that the father was so sickly and frail that he could not operate the store.

26. Mrs. Findlay, through her counsel was at pains to present Mr. Findlay as a man who was constantly traveling outside of the United Kingdom. It was Mrs. Findlay who unearthed during cross examination of Mr. Findlay that he was abroad so often that he did not have the time to look after the children. The evidence from Mr. Findlay against which there was no serious challenge was that between 1991 and 1994 he was involved in his two companies Ace Mount and Licence Trade Computer Systems. At one point it was being suggested to Mr. Findlay that between December 1994 and some time in 1995 while he was busy in Saudi Arabia his family lived in the United States of America. This suggestion he denied but the point is that Mrs. Findlay was saying that Mr. Findlay was busy and she looked after the children. This looking after the children was the second peg on which the indirect contribution to the acquisition of the property rested. However, there is no evidence that Mrs. Findlay's care for the children was such that Mr. Findlay would not have been able to acquire the properties without Mrs. Findlay's efforts with the children. In other words, Mrs. Findlay, in the absence of evidence that it was agreed that the care for the children would be her specific contribution, would have to show that the savings made by Mr. Findlay because he did not have to hire a nanny was such that he would not have been able to purchase the properties. To use the idea of Nourse L.J. in ***Grant v Edward*** [1986] 3 W.L.R. 120, the law is unlikely to be so cynical so as to accept the idea

that a mother will not look after her children unless she has a beneficial interest in the property owned by the father.

The law

27. In this section I shall set out my understanding of the law. What I shall say is in the context that this is an application under the MWPA and not PROSA. It is well settled law in this country that it is the law of trusts and not the law of contract that is the applicable law whenever a court is asked to determine the beneficial interest in property. It is equally well settled law in Jamaica that the same law applies to spouses as well as strangers. The Court of Appeal of Jamaica has consistently accepted that the law as declared by the majority in ***Pettitt v Pettitt*** [1970] A.C. 777 and ***Gissing v Gissing*** [1970] 3 W.L.R. 225 to be applicable to Jamaica (see ***Trouth v Trouth*** (1981) 18 J.L.R. 409; ***Azan v Azan*** (1988) 25 J.L.R. 310; ***Lynch v Lynch*** (1991) 28 J.L.R. 8; ***Forest v Forest*** (1995) 32 J.L.R. 128; ***Whittaker v Whittaker*** (1994) 31 J.L.R. 502; ***Chin v Chin*** SCCA No. 161/2001 (delivered December 29, 2005)). The only qualification I make here is that I prefer the majority judgments in ***Pettitt*** to Lord Diplock's in ***Gissing***.

28. I adopt the following passages from Bagnall J. in ***Cowcher v Cowcher*** [1972] 1. W.L.R. 425, 429 - 430 as being a correct summary of the relevant law:

> *In my judgment, the following propositions are established beyond doubt ...*
> *1. Under section 17 the court simply decides existing rights of property; the court has no power, discretionary or otherwise, to confer or vary any such rights.*
> *2. If, under section 17, a person claims an interest in*

property other than that of an absolute legal and beneficial owner, the claim must be determined in accordance with equitable principles relating to trusts. ... I add that the relevant principles have been settled for well over 150 years ...

3. The same principles apply if the dispute is between spouses or former spouses as apply to any other dispute where equitable ownership is in question: ...

4. ...

5. Rights of property are not to be determined according to what is reasonable and fair or just in all the circumstances; in particular those rights do not alter upon the break-up of a marriage. ...

In any individual case the application of these propositions may produce a result which appears unfair. So be it; in my view, that is not an injustice. I am convinced that in determining rights, particularly property rights, the only justice that can be attained by mortals, who are fallible and are not omniscient, is justice according to law; the justice which flows from the application of sure and settled principles to proved or admitted facts. ... It is well that this should be so; otherwise, no lawyer could safely advise on his client's title and every quarrel would lead to a law suit.

29. It follows then that if the law of trusts is the applicable law then where a spouse who does not have legal title is claiming a beneficial interest in land or claiming a beneficial interest in land which is greater than which is suggested by the legal title, he or she must either be saying that the claim is based on an express trust or based on resulting or constructive trust principles. Where the claim is based on resulting or constructive trust principles the claimant must demonstrate

either that he or she contributed directly to the purchase price (resulting trust) or that it was the common intention that he should have a beneficial interest and he acted to his or her detriment in reliance on this understanding (constructive trust). Under the constructive trust, a claimant may rely on indirect contributions. The acting to one's detriment includes making an indirect contribution as was the case of ***Grant v Edwards***.

30. If the property in question is land and the claim is based on an express trust, that is to say, a voluntary declaration by the settlor, then there must be full compliance with the Statute of Frauds, which still applies to Jamaica, before such a trust is effective and enforceable in equity. Section 7 of the statute reads in the original:

> *AND bee it further enacted by the authoritie aforesaid That from and after the said fower and twentyeth day of June all Declarations or Creations of Trusts or Confidences of any Lands Tenements or Hereditaments shall be manifested and proved by some Writeing signed by the partie who is by Law enabled to declare such Trust or by his last Will in Writeing or else they shall be utterly void and of none effect.*

31. The provision requires that for an express trust of land to be effective and enforceable, it must be manifested in writing. There is no requirement that the writing must coincide with the declaration of the trust. The statute banishes the notion of an express trust of land being created by words alone. The legislation, however, left unaffected resulting and constructive trusts. These trusts would be effective in the

same manner after the statute as they were before the statute. Section 8 of the Statute of Frauds reads:

> *PROVIDED alwayes That where any Conveyance shall bee made of any Lands or Tenements by which a Trust or Confidence shall or may arise or result by the Implication or Construction of Law or bee transferred or extinguished by an act or operation of Law then and in every such Case, such Trust or Confidence shall be of the like force and effect as the same would have beene if this Statute had not been made. Any thing herein before contained to the contrary notwithstanding.*

32. While it is true that constructive trusts do not generally depend on the intention of the parties the law, in circumstances where there is a division of property between spouses, speaks of common intention constructive trusts. The reason is that equity, consistent with its historical role of demanding that persons act according to good conscience moves to prevent a person, usually the legal title holder, from resiling from a common understanding where the other person has acted on the common understanding to his or her detriment. In other words, unless the trust is manifested in writing in which event it is enforceable if there is full compliance with statutory formalities, the claimant has provided no consideration and so is considered in equity a volunteer. Under a fully constituted trust the claimant, even though a volunteer, can enforce the trust because the legal requirements to establish the trust have been met. Equity follows the law.

33. When considering a claim based on the constructive trust equity says that the legal title holder will not be allowed to

frustrate what was understood or agreed between the parties. The necessity of finding that the person acted on the promise to their detriment, in the context of a dispute of land, is that if the courts were to enforce the oral declaration without proof of acting to one's detriment, they would be (i) in effect enforcing an oral declaration of trust which is outlawed by the Statute of Frauds and (ii) infringing the equitable principle that equity does not assist a volunteer. The detriment, in this context, is the consideration that prevents the claimant from being a volunteer. This explains why, in the cases to be examined below, the courts insist on evidence of acting to one's detriment.

34. Having said this, there is still the evidential problem of identifying what acts are sufficient to persuade the court that the person was acted to his or her detriment particularly if there is no free-standing evidence of common intention. As will be discussed below, the answer suggested by an examination of the two cases relied on by Mrs. Shaw Currie is that the act of detriment must be over and above what would be ordinarily expected of the person. If it were otherwise, the courts would be ignoring the fact that the Statute of Frauds was passed to prevent *many Fraudulent Practices which are commonly endeavoured to be upheld by Perjury and Subornation of Perjury*. This means that the mere say so of the claimant coupled with ordinary domestic acts do not usually amount to acting to one's detriment. According to Professor J.E. Penner in ***The Law of Trusts*** (5th) at page 119: *the activities of a husband (doing odd jobs about the house to keep it in repair and minor renovations and improvements) and a wife (cooking, cleaning, and looking after the kids) doing what husbands and wives "normally" do were regarded as wholly insufficient*

evidence of a common intention to share the property beneficially. This expresses the real problem for Mrs. Findlay.

35. In this area of law by the time the case gets to court, memories have begun to fade, conversations are recalled imperfectly, persons tend to become revisionists and are inclined to view the past in the most favourable light to themselves. The courts have the problem of sorting out intentions which were vaguely expressed and imperfectly remembered. Hence any onerous act done by the claiming party tends to assume great significance.

36. I now turn to Mrs. Shaw Currie's principal authority. I hope to show that the case does not support the proposition for which she so forcefully contends. I regret this rather long passage from Nourse L.J. in ***Grant v Edwards*** at pp. 121 - 122 but it cannot be helped. His Lordship said:

> *In a case ... where there has been no written declaration or agreement, nor any direct provision by the plaintiff of part of the purchase price so as to give rise to a resulting trust in her favour, she must establish a common intention between her and the defendant, acted upon by her, that she should have a beneficial interest in the property. If she can do that, equity will not allow the defendant to deny that interest and will construct a trust to give effect to it.*
>
> *In most of these cases the fundamental, and invariably the most difficult, question is to decide whether there was the necessary common intention, being something which can only be inferred from the conduct of the parties, almost always from the expenditure incurred by them respectively. In this*

regard the court has to look for expenditure which is referable to the acquisition of the house: see per Fox L.J. in Burns v. Burns [1984] Ch. 317, 328H-329C. If it is found to have been incurred, ***such expenditure will perform the twofold function of establishing the common intention and showing that the claimant has acted upon it.***

There is another and rarer class of case, of which the present may be one, where, although there has been no writing, the parties have orally declared themselves in such a way as to make their common intention plain. Here the court does not have to look for conduct from which the intention can be inferred, but only for conduct which amounts to an acting upon it by the claimant. And although that conduct can undoubtedly be the incurring of expenditure which is referable to the acquisition of the house, it need not necessarily be so.

The clearest example of this rarer class of case is Eves v. Eves [1975] 1 W.L.R. 1338.

...

About that case the following observations may be made. First, as Brightman J. himself observed, if the work had not been done the common intention would not have been enough. Secondly, if the common intention had not been orally made plain, the work would not have been conduct from which it could be inferred. That, I think, is the effect of the actual decision in Pettitt v. Pettitt [1970] A.C. 777. Thirdly, and on the other hand, the work was conduct which amounted to an acting upon the common intention by the woman.

It seems therefore, on the authorities as they

stand, that a distinction is to be made between conduct from which the common intention can be inferred on the one hand and conduct which amounts to an acting upon it on the other. *There remains this difficult question: what is the quality of conduct required for the latter purpose? The difficulty is caused, I think because although the common intention has been made plain, everything else remains a matter of inference. Let me illustrate it in this way. It would be possible to take the view that the mere moving into the house by the woman amounted to an acting upon the common intention. But that was evidently not the view of the majority in Eves v. Eves [1975] 1 W.L.R. 1338. And the reason for that may be that, in the absence of evidence, the law is not so cynical as to infer that a woman will only go to live with a man to whom she is not married if she understands that she is to have an interest in their home. So what sort of conduct is required? In my judgment it must be conduct on which the woman could not reasonably have been expected to embark unless she was to have an interest in the house. If she was not to have such an interest, she could reasonably be expected to go and live with her lover, but not, for example, to wield a 14-lb. sledge hammer in the front garden. In adopting the latter kind of conduct she is seen to act to her detriment on the faith of the common intention.* (my emphasis)

37. Mrs. Shaw Currie submitted that once the court finds that there was a common intention then any act done in reliance on this intention must necessarily be an act to one's detriment. I do not agree with this. This is stating the proposition too

broadly. It would mean that ordinary domestic acts would always amount to acting to one's detriment. It must be recalled that at the time of this decision section 53 of the Law of Property Act, 1925 was still in force. This provision re-enacted the prohibition of the Statute of Frauds on the question of trusts in land, namely that for there to be an effective and enforceable express trust in land the statutory formalities must be met. The provision did not apply to constructive trusts. It is against that legal backdrop that the discussion of Nourse L.J. and indeed the other judges of the court must be understood.

38. If Mrs. Shaw Currie is correct then the last paragraph in the passages already cited from Nourse L.J. at page 122 is difficult if not impossible to explain. His Lordship is plainly making the point that the conduct which is being relied on as acting to one's detriment must be over and above what is normally expected. This is why his Lordship said that mere moving into a house could not be held to be acting to one's detriment. Similarly, looking after one's children is not acting to one's detriment in the normal course of things. Of course, this does not mean that the parties are unable to state what conduct is required to constitute the detrimental conduct.

39. I now set out the conclusions to be drawn from Nourse L.J.'s exposition. First, he accepted that in many cases it is difficult to infer what was the common intention of the parties. Second, the common intention is often found or inferred from conduct and this conduct is usually the expenditure of money. Third, where the common intention is inferred from conduct alone, that is there is no free-standing evidence of the common intention, such conduct often does two things: it provides evidence of the common intention and is itself evidence of

acting on the common intention to one's detriment. This third point cannot be over emphasized. It shows the interaction between articulation of a legal principle and difficulties of proof of facts which compel the inference sought. Thus when Nourse L.J. spoke of establishing the common intention and then looking to see if the claimant acted on it to his or her detriment, the Lord Justice was not ignoring the practical problem of proof. The more onerous, exceptional or unusual the conduct being relied, the easier it is for the courts to accept that evidence as proof of the common intention and also as proof of acting to one's detriment. Fourth, there is the rare class of case, such as ***Eves v Eves*** [1975] 1 W.L.R. 1338, where there is free standing evidence of the common intention, that is, the common intention is established apart from the conduct which is being relied on as evidence of acting to one's detriment. Fifth, in this rare class of case, the task becomes one of identifying the conduct that is evidence of acting on the common intention. Sixth, in this rare class of case, the detrimental conduct need not be expenditure of money but if it is not then it must be something sufficient to compel the inference sought. Ordinary domestic activities rarely suffice for this purpose. Seventh, if there is a common intention but there is no evidence that the claiming party acted to his or her detriment then there is no constructive trust. If it were otherwise the courts would be enforcing a trust in land contrary to legal requirement that it must be supported by writing and contrary to the equitable principle that equity will not assist a volunteer. Eighth, in the rare class of case where the common intention is established the crucial issue is to determine what kind of conduct is sufficient to amount to acting on the common intention in the absence of any express or implied agreement on what that conduct would be. The difficulty here is that the court has to rely on inference. This

explains why the conduct relied as the detrimental conduct has to be of such an unusual nature that the most rational explanation is that the person was really acting on the common intention. Hence in ***Eves*** it was the arduous labour undertaken. Nourse L.J.'s conclusion was that in ***Eves*** the conduct was such that no woman would ordinarily do unless she had an interest in the house. Ninth, it is entirely possible that the parties not only expressed the common intention but also agreed on the specific conduct that will be regarded as acting to one's detriment though this kind of case appears to be exceedingly rare if one goes by the reported cases in many jurisdictions.

40. Mrs. Shaw also relied on the judgment of Browne-Wilkinson V.C. (as he was at the time) in ***Grant***. This is the passage relied on. The Vice Chancellor said at pp. 128 - 129:

> *I have sought to analyse Lord Diplock's speech for two reasons. First, it is clear that the necessary common intention can be proved otherwise than by reference to contributions by the claimant to the cost of acquisition. Secondly, the remarks of Lord Diplock as to the contributions made by the claimant must be read in their context.*
>
> *In cases of this kind the first question must always be whether there is sufficient direct evidence of a common intention that both parties are to have a beneficial interest. Such direct evidence need have nothing to do with the contributions made to the cost of acquisition. Thus in Eves v. Eves [1975] 1 W.L.R. 1338 the common intention was proved by the fact that the claimant was told that her name would have been on the title deeds but for her being under age. Again, in Midland Bank Plc. v. Dobson (unreported), 12*

July 1985; Court of Appeal (Civil Division) Transcript No. 381 of 1985 this court held that the trial judge was entitled to find the necessary common intention from evidence which he accepted that the parties treated the house as "our house" an had a "principle of sharing everything." Although, as was said in the latter case, the trial judge has to approach such direct evidence with caution, if he does accept such evidence the necessary common intention is proved. One would expect that in a number of cases the court would be able to decide on the direct evidence before it whether there was such a common intention. It is only necessary to have recourse to inferences from other circumstances (such as the way in which the parties contributed, directly or indirectly, to the cost of acquisition) in cases such as Gissing v. Gissing [1971] A.C. 886 and Burns v. Burns [1984] Ch. 317 where there is no direct evidence of intention.

Applying those principles to the present case, the representation made by the defendant to the plaintiff that the house would have been in the joint names but for the plaintiff's matrimonial disputes is clear direct evidence of a common intention that she was to have an interest in the house: Eves v. Eves [1975] 1 W.L.R. 1338. Such evidence was in my judgment sufficient by itself to establish the common intention: but in any event it is wholly consistent with the contributions made by the plaintiff to the joint household expenses and the fact that the surplus fire insurance moneys were put into a joint account.

But as Lord Diplock's speech in Gissing v. Gissing [1971] A.C. 886, 905D and the decision in Midland Bank Plc. v. Dobson (unreported) make clear, mere common

intention by itself is not enough: the claimant has also to prove that she has acted to her detriment in the reasonable belief by so acting she was acquiring a beneficial interest.

41. Here the Vice Chancellor agreed with the Lord Justice that the common intention can be found independent of evidence of contribution.

42. The Vice Chancellor, like Nourse L.J., had difficulty identifying from the cases what type of evidence amounts to acting to one's detriment. He said at page 129:

There is little guidance in the authorities on constructive trusts as to what is necessary to prove that the claimant so acted to her detriment. What "link" has to be shown between the common intention and the actions relied on? Does there have to be positive evidence that the claimant did the acts in conscious reliance on the common intention? Does the court have to be satisfied that she would not have done the acts relied on but for the common intention, e.g. would not the claimant have contributed to household expenses out of affection for the legal owner and as part of their joint life together even if she had no interest in the house? Do the acts relied on as a detriment have to be inherently referable to the house, e.g. contribution to the purchase or physical labour on the house?

I do not think it is necessary to express any concluded view on these questions in order to decide this case. Eves v. Eves [1975] 1 W.L.R. 1338 indicates that there has to be some "link" between the common intention

and the acts relied on as a detriment. In that case the acts relied on did inherently relate to the house (viz. the work the claimant did to the house) and from this the Court of Appeal felt able to infer that the acts were done in reliance on the common intention. So, in this case, as the analysis of Nourse L.J. makes clear, the plaintiff's contributions to the household expenses were essentially linked to the payment of the mortgage instalments by the defendant: without the plaintiff's contributions, the defendant's means were insufficient to keep up the mortgage payments. In my judgment where the claimant has made payments which, whether directly or indirectly, have been used to discharge the mortgage instalments, this is a sufficient link between the detriment suffered by the claimant and the common intention. The court can infer that she would not have made such payments were it not for her belief that she had an interest in the house. On this ground therefore I find that the plaintiff has acted to her detriment in reliance on the common intention that she had a beneficial interest in the house and accordingly that she has established such beneficial interest.

43. When this passage is examined it will be seen that although the Vice Chancellor expressed no definitive position on the type of evidence that would amount to acting to one's detriment, he makes the point that onerous conduct, in the absence of some other reasonable explanation, is sufficient. The Vice Chancellor also made the fundamental point that the claimant's contribution in the case before him was such that without it the defendant would not have been able to keep up with the mortgage payments. In other words there was a link

between her indirect contribution and the defendant's ability to service the loan. This conduct was above and beyond what would normally be expected in the absence of a common intention.

44. Mrs. Shaw Currie felt that she could find comfort in the judgment of the third member of the court in ***Grant***, Mustill L.J. (as he then was). Regrettably counsel has overlooked this important passage from Mustill L.J. at page 126:

> *The propositions do not touch two questions of general importance. First, whether in the absence of a proved or inferred bargain or intention the making of subsequent indirect contributions, for instance in the shape of a contribution to general household expenses, is sufficient to found an interest. I believe the answer to be that it does not. The routes by which the members of the House reached their common conclusion in Gissing v. Gissing [1971] A.C. 886 were not, however, the same and the point is still open. Since it does not arise here, I prefer to express no conclusion upon it.*
>
> *The second question is closer to the present case: namely, whether a promise by the proprietor to confer an interest, but with no element of mutuality (i.e. situation (c) above) can effectively confer an interest if the claimant relies upon it by acting to her detriment. This question was not directly addressed in Gissing v. Gissing [1971] A.C. 886, although the speech of Lord Diplock, at p. 905, supports an affirmative answer. The plaintiff's case was not argued on this footing in the present appeal, and since the appeal can be decided on other grounds, I prefer not to express*

an opinion on this important point.

Turning to the facts, the first question is whether there was an explicit bargain or a common intention at the moment of acquisition to the effect that the plaintiff should have a beneficial interest in the house. Strictly speaking, there was not. There was no discussion as to the quid pro quo, if any, which the plaintiff was to provide. Nor was there any common intention, for it is found that the defendant never intended the plaintiff to have a share. The reason given for placing the brother's name on the title was simply an untruthful excuse for not doing at once what he never meant to do at all.

45. It is important to note that for Mustill L.J. contribution to household expenses by itself without there being evidence of a proved or inferred bargain is insufficient to ground the constructive trust. That is, ordinary contribution to household expenditure in the absence of evidence that this was the agreed detrimental conduct will not suffice. His Lordship's analysis of the facts is very revealing. At page 127:

Assuming therefore that the case must be approached as if the defendant had promised the plaintiff some kind of right to the house, or as if they had a common intention to this effect - and I do not think it matters which formula is chosen - what kind of right was this to be? In particular was it to be a right which was to arise only if the plaintiff gave something in exchange; and if so, what was that something to be? These are not easy questions to answer, especially since the judge never approached, or was asked to approach, the matter in this way. Nevertheless I

consider it legitimate to hold that there must have been an assumption that the transfer of rights to the plaintiff would not be unilateral, and that the plaintiff would play her own part. ***Moreover, the situation of the couple was such that the plaintiff's part must have included a direct or indirect contribution to the cost of acquisition: for the defendant could not from his own resources have afforded both to buy their new home and to keep the joint household in existence.*** (my emphasis)

46. The highlighted portion, in my view, was the circumstance that clinched the case in favour of the claimant. Had it been otherwise, her contribution to the household expenses would be regarded as simply ordinary contribution which his Lordship had already said would be insufficient in the absence of a proved or inferred common intention that she should have had an interest in the property. Note that Mustill L.J. on his analysis of the facts held that although the claimant was to have some sort of interest in the property, such an interest would not be acquired unilaterally. The claimant had to do her part. The claimant's part included making an indirect contribution to the acquisition of the property by taking on the household expenses because the evidence showed that the defendant '*could not from his own resources have afforded both to buy their new home and to keep the joint household in existence*'.

47. ***Grant v Edwards*** therefore does not provide support for the unduly wide proposition advanced by Mrs. Shaw Currie. Neither does the case of ***Nembhard v Nembhard*** SCCA 49/98 (delivered May 10, 1999) from the Court of Appeal of Jamaica. ***Nembhard***, incidentally, accepted ***Grant v Edwards*** as

correctly stating the law applicable in Jamaica in this context. In the case of ***Nembhard***, the claimant put up her life insurance policy as collateral for a loan that enabled the husband to secure the deposit. That act was used by the court to support the findings that (a) there was a common intention that the claimant should have a beneficial interest in the property (or else why would she put her policy as collateral for the loan?) and (b) she acted to her detriment in reliance on the common intention. But for the loan on the policy there would be no deposit. In other words, the husband was not able to secure the house without the wife's contribution. Thus the rule of thumb emerging from these two cases is that where the evidence shows that the party who has the legal title was unable from his or her own resources to (a) take care of all household related expenditure or (b) service any existing mortgage in relation to the property and therefore relied on the contribution by the other party to enable him or her to do (a) or (b) or both, it is easier for the court to find that the contribution of the claiming party was over and above ordinary contribution. This is not a rule of law but simply an example of the kind of evidence from which the court may draw the inference in favour of the claiming party.

48. The legal position could hardly be clearer. Mrs. Shaw Currie next submitted that PROSA did not alter the law considerably; it simply changed the burden of proof. This submission is not supported by any reading of the legislation. The legislation represents such a departure from previously established judge-made law that the submission from Mrs. Shaw Currie cannot withstand even the most cursory of examination. Among the changes brought by the statute are that (a) the starting point in relation to the family home (exceptions being ignored) is equality, with a discretion in the

judge to vary that starting point; (b) contribution now as a wide meaning including caring for children and elderly persons. These two examples are sufficient to show that the submission is not sustainable.

Application of legal principle

The Ironshore property

49. Mrs. Findlay did not contribute directly to the purchase price of this property. The evidence which I have accepted is that Mr. Findlay advanced the purchase price on behalf of his wife. He said that she was to repay him. I am not saying that the law of contract applies to husband and wife what I am saying is that this finding sheds light on the intention of the parties. I have already noted that Mr. Findlay's explanation has not been discredited. The significance of this conclusion is that he did not intend to make a gift to his wife. Thus there is no room for the presumption of advancement. It is well established law that where the evidence makes the intention of the settlor clear there is no possibility of resorting to presumptions which only arise if the evidence leaves the intention unclear. Mr. Findlay was setting out the condition on which his wife would have a beneficial interest. If ever there was a rare case in which the parties agreed on what was necessary for the claiming spouse to have a claim this is such case. In relation to this property Mrs. Findlay has not acted to her detriment. Therefore even if I were to find that there was a common intention that Mrs. Findlay should have an interest in this property, Mr. Findlay laid down the act which was to be the act of detriment. She has not paid the money. There is no evidence that Mrs. Findlay even contributed to the maintenance or upkeep of this property. Therefore on ***Grant v Edwards's*** and ***Nembhard's*** analysis Mrs. Findlay has not acted to her detriment. In the eyes of equity she was and still is a volunteer.

50. All the evidence in the instant case points to Mr. Findlay being able to purchase the property and take on the full expenses of the household without any contribution from Mrs. Findlay. Therefore even if I am incorrect in finding that normal activities of husbands and wives are not in themselves capable of supporting a claim to a beneficial interest in property in this particular case, the evidence does not support the contention that Mrs. Findlay's care of the children in fact caused Mr. Findlay to be able to purchase these property. There is no link between her household activities and the acquisition of the property. This is the uncompromising logic of the law before PROSA.

The Charles Street and Sea Castle properties

51. Mrs. Findlay did not contribute directly to the purchase price of these properties. There was no common intention that she should have had an interest in either of these two properties. I have already indicated why I do not accept that she contributed the £5000.00 to the purchase of the Charles Street property. Even if there were evidence that she was intended to have a beneficial interest it cannot be enforced because the trust was not a properly constituted trust and neither did she provide any consideration by acting to her detriment. She is a volunteer. The presumption of advancement does not arise here. There is no evidence as in ***Grant v Edwards*** that Mrs. Findlay contributed indirectly as understood in the cases by taking up responsibility for any of the household expenditures to the extent that it could be said that the amount 'saved' by her husband enabled him to pay acquire the property. It will be recalled that in ***Grant v Edwards*** Nourse L.J. was able to find that the female in that case made a *'very substantial contribution ... out of her earnings*

after August 1972 to the housekeeping and to the feeding and to the bringing up of the children enabled the defendant to keep down the instalments payable under both mortgages out of his own income and, moreover, that he could not have done that if he had had to bear the whole of the other expenses as well' (see page 119).

52. As in the case of the Ironshore property, there is no evidence in this case that Mr. Findlay would not have been able to purchase the properties even if he had to pay for household helpers, baby sitters and so on.

Conclusion

53. There is no basis for me to find that Mrs. Findlay has any beneficial interest in any of the properties. Also in light of the affidavits of Mesdames Lake and Hardie I find that they have no beneficial interest in any of the properties on which their names appear. I conclude that Mr. Selwyn Findlay is the 100% beneficial owner of all three properties. Like Bagnall J., I may not like the result of the application of the law but justice is best achieved by deciding questions of property according to law rather than by trying to produce an illegitimate offspring of equity. The court makes the declaration below.

54. Finally, in accordance with the recommendation of Lawton L.J. in ***Rolled Steel Products (Holdings) Ltd v British Steel Corporation*** [1985] 3 All ER 52, 95, I state briefly the reasons for the delay in completing this matter. As state earlier, when the matter commenced on November 6, 2006, the court was of the view that Mesdames Lake and Hardie were to be served with the originating documents and all affidavits filed. These ladies live and work in the United Kingdom. The matter was set for April 6, 2007, in the event that they wished to participate

in the proceedings they would have had time to file affidavits and instruct counsel. Unfortunately, April 6 was a public holiday and thereafter it was difficult to schedule a hearing partly due to my own schedule and partly due the fact that there was difficulty in locating the file which to date has not yet been found. The matter was completed because counsel made available, yet again, all material filed. Let me apologise to the litigants and their counsel for this unforgivable delay in completing this matter. Happily with the cooperation of all parties the hearing and judgment was completed between March 27 and April 25, 2008.

55. The orders of the court are in respect of the applications made on April 18 and 25, 2008:

1. Application to make claim under Property (Rights of Spouses) Act dismissed.

2. Application for leave to appeal against dismissal of application to make claim under Property (Rights of Spouses) Act dismissed.

3. Costs of this application to the claimant to be agreed or assessed.

56. The court declares as follows:

1. Selwyn Findlay is the full beneficial owner in respect of the following parcels of land:

   a) all that parcel of land registered at volume 1059 folio 228 of the Register Book of Titles in the names of Selwyn Aaron Lloyd Findlay, Ingrid

Antonette Findlay, Ingrid Grace Lake and Soraya Angela Hardie (the Ironshore property);

b) all that parcel of land registered at volume 1059 folio 237 in the names of Selwyn Aaron Lloyd Findlay and Soraya Angela Hardie;

c) all that parcel of land registered at volume 1234 folio 232 in the names of Selwyn Aaron Lloyd Findlay and Soraya Angela Hardie.

2. Ingrid Antonette Findlay, Ingrid Grace Lake and Soraya Angela Hardie to execute all documents necessary to transfer the title on the properties where they are the registered proprietors to Selwyn Aaron Lloyd Findlay or to Selwyn Aaron Lloyd Findlay and his nominee or to a nominee indicated by Selwyn Aaron Lloyd Findlay.

3. The documents referred to in paragraph two to be executed within sixty days of this judgment and if any of the parties refuses, neglects or omits to sign any relevant document necessary to effect the transfer to Selwyn Aaron Lloyd Findlay then the Registrar of the Supreme Court is authorized to execute all such documents as are necessary to transfer the properties mentioned in paragraph one of this order.

4. No order as to costs.