



[2020] JMSC Civ 80

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

**IN THE CIVIL DIVISION**

**CLAIM NO. 2015 HCV 04720**

<b>BETWEEN</b>	<b>DELSHA HYMAN</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>IAN RAMOR STEPHENSON</b>	<b>DEFENDANT</b>

**IN CHAMBERS**

Joseph Jarrett instructed by Joseph Jarrett and Associates for the Claimant

Gordon Steer instructed by Chambers, Bunny and Steer for the Defendant

Heard: December 11, 2019 and April 3, 2020

**Application for Division of Property**

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

[1] The matter before me is a FDCF filed on the 5th of October 2015 in which the Claimant seeks the following orders;

1. A Declaration that the Claimant is entitled to Eighty per cent share in Apartment No. 5, 17 Roosevelt Terrace, Kingston 8 in the parish of St. Andrew, registered at Volume 1333 Folio 789 of the Register Book of Titles.
2. An order that upon the determination of the interests of the parties in the aforesaid property, the property be valued by The C D Alexander Company Realty Limited and the costs of the valuation shared equally.
3. An order that Apartment No. 5, 17 Roosevelt Terrace, Kingston 8 be sold when Tristan Stephenson reaches the age of 18. In the event that she is

pursuing tertiary education the sale is postponed until she attains the age of 21.

4. That the Claimant is given the first option to purchase the Defendant's share within 90 days of Tristan attaining age 18 or age 21 if she is pursuing tertiary education.
5. In the event that the Claimant fails to exercise her option the property is to be sold on the open market and the net proceeds shared in accordance with the above division
6. That the Defendant is to pay his mortgage contribution to the National Housing Trust for apartment No. 5, 17 Roosevelt Terrace until the property is sold or his share is transferred to the Claimant.
7. An order that the Registrar of the Supreme Court be empowered to execute all documents, necessary to effect a sale and transfer of apartment No.5, 17 Roosevelt Terrace, Kingston 8, in the event that either party fails or neglects to do so.
8. That all costs incidental to the sale of apartment No. 5, 17 Roosevelt Terrace, Kingston 8, including but not limited to the preparation of a valuation report for the property, the payment of transfer tax, stamp duty, carriage of sale, registration and attorney's fees to be borne by the Claimant and the Defendant equally.
9. That Joseph Jarrett & Company, Attorneys-at-Law shall have the carriage of sale.
10. That the Claimant is entitled to 50% share in monies held in bank accounts and with financial institutions retained by the Defendant and or his nominees.
11. Costs to of the Claim to the Claimant to be agreed or taxed.

- [2] There were a number of other orders sought by the Claimant but they have not been listed as those matters were not scheduled for trial before me. During the course of the proceedings it was indicated by the Claimant that she was no longer seeking an order in respect of her entitlement to monies held by the Defendant and as such there was no need to consider this any further.

### **CLAIMANT'S CASE**

- [3] The Claimant provided a number of affidavits two of which were of relevance to the proceedings before me, these were filed on the 15th of October 2015 and 14th of April 2016 respectively. In these affidavits which stood as her evidence in chief, the Claimant outlined that she met the Defendant in 2008 and they began living together 4 months later. At the time of this cohabitation she was still married to someone else but she later obtained her divorce in 2009.
- [4] She stated that she had been saving towards purchasing a place for herself and had had this intention before she become involved with the Defendant. In 2013 she became aware of the disputed property and on making her enquiries of NHT she became aware that she would not qualify to purchase this property on her home. As such she had a conversation with the Defendant who agreed to give her his points and the mortgage was subsequently approved and the purchase made. She stated that it was never her intention to give an interest to the Defendant.
- [5] She outlined that in March 2014 they moved into the property and thereafter the relationship began to deteriorate. She said that the Defendant moved out of the premises in March 2015 and stopped paying the mortgage payments in
- [6] August 2015. She provided receipts for payment from the NHT to the payment of \$120,000 on the Defendants account in October 2015 to clear mortgage arrears. She also produced receipts to show that thereafter she paid both his payments as well as hers.

- [7] She was cross examined and accepted that the property was owned by her and the Defendants as tenants in common in equal shares. She agreed that she had been living with the Defendant as if he was her husband and she also agreed that they had separated in 2015. She was asked about her evidence that the Defendant had been paying the mortgage and she stated that he had only done so for four months and had stopped in 2015.
- [8] She was asked about the breakdown of the relationship and she stated that it had in fact broken down in 2013 but they remained under the same roof until 2015. She was asked if it wasn't her evidence in chief and previously under cross examination that they had cohabited until 2015 and she agreed that it was. She again reiterated that they were under the same roof but not together and she indicated that she didn't know what cohabited meant. She was asked when it was that she had received the key to the house and she replied in December 2013, she insisted however that they moved in after in March 2014 but not as a couple. She was shown her affidavit where she stated that after living in the house in the intervening months she had stopped being intimate with the Defendant because of suspicions that he wasn't being faithful and she acknowledged that she had said this.

## **DEFENDANT'S CASE**

- [9] The defendant also provided two affidavits which were dated the 30th of November 2015 and the 16th of June 2017 and these stood as his evidence in chief. In outlining his position, the Defendant agreed that he had met the Claimant in 2008 and she moved in with him in a shared rental accommodation that he occupied in Beverly Hills, St Andrew. He said as a result of a disagreement he asked his roommate to move out and he and the Claimant continued to reside there.
- [10] He said that because of accusations of infidelity his relationship with the Claimant broke down in 2013 but after speaking with a friend he decided to give it another chance. He outlined that in the latter part of that year the Claimant approached him

with the idea of purchasing the disputed property as he was spending too much on rent and it would be a great investment for their daughter who was born in 2009.

[11] He said that they moved into the premises in March and within months the accusations began once more and he was asked to leave the house. He stated that in March 2015 he moved home to St Elizabeth but he would make periodic visits to the house.

[12] He was cross examined and he indicated that the deposit and closing cost for the unit were both paid by the Claimant. He also stated that he paid no money out of pocket towards the purchase of the property his contribution was his mortgage benefit. He also indicated that he was the one paying most of the mortgage and from the mortgage receipts provided by Ms. Hyman it is apparent that his payment was \$40,000 and hers was \$25,000. He pointed out that he qualified for \$6 million while the Claimant only qualified for \$4million. He stated that he made mortgage payments from 2013 until 2015 but accepted that he had no proof of his payments. He maintained that he had made payments up to 2 months after June 2015 and denied that his last payment was in May 2015. He explained that he had stopped making payments as he was not employed and he was also being denied access to the property. He testified that as far as he was aware his daughter was no longer living at the property as the Claimant had stated another address in other Court proceedings and his daughter was residing there with her and her spouse.

### **CLAIMANT'S SUBMISSIONS**

[13] In submissions made on behalf of the Claimant, Mr. Jarrett noted that it was accepted that the parties had resided as spouses for a period in excess of five years and accordingly the property in question would fall within the provisions of the Property Rights of Spouses Act (PROSA).

[14] He submitted that the claim had been properly brought within twelve (12) months of the Defendant moving from the property and it was the position of the Claimant that the Defendant contributed no money towards the purchase of Apartment No.

5, 17 Roosevelt Terrace, Kingston 8. Neither did he make any payment towards the deposit, legal fees and closing costs.

- [15] He asked the Court to note the Claimant's evidence that the property was purchased in 2014. as well as her contention that she had been paying the Defendant's share of the NHT mortgage since his departure from the apartment in 2015. He also commended to the Court her assertion that the Defendant only paid four months mortgage to NHT as his contribution towards the acquisition of the property before he stopped in 2015.
- [16] Mr Jarrett highlighted that it was the Defendant's evidence that he made no contribution towards the deposit in purchasing the apartment or towards the closing costs. He also submitted that it was accepted by the Defendant that his main contribution was the use of his NHT points to facilitate the purchase of the apartment.
- [17] Mr Jarrett argued that although the Defendant stated that his mortgage contributions to NHT mortgage was for the period 2013 to 2015. He was not able to provide proof of this. Counsel also asked the Court to note the concession by the Defendant that he made no contribution towards the mortgage since 2015. Mr Jarrett also made reference to the Defendant's evidence that he last knew his daughter to be living at the apartment in November 2018 and his subsequent acceptance that he was not aware of whether she had returned to live at the apartment with the Claimant.
- [18] Mr Jarrett submitted that the Claimant is a self-employed Businesswoman who operated a successful salon and did not need to approach the Defendant with the idea of acquiring a house jointly with him, neither did this happen. He asked the Court to accept that she had formulated the plan to acquire a property before she met the Defendant and had in fact began savings toward this process. The assistance of the Defendant was only sought as a matter of mere expediency in order to comply with requirements imposed by the lender (National Housing Trust)

which stated that the Claimant did not satisfy their Income-to-monthly-payment ratio in spite of her contention that she could afford the monthly repayment.

**[19]** Mr. Jarrett also submitted that it was clear from the Defendant's evidence that there was a desire on his part to provide a roof over the head of his daughter. He argued that this is a factor which is very important in respect of any order to sell the property whilst Tristan the couple's daughter is attending school.

**[20]** Counsel submitted that the special circumstances of this case as outlined above justify the court's variation of the equal share rule pursuant to section 7 of The Property (Rights of Spouses) Act. In this regard he has highlighted the Defendant's concession of making no other concession than the award of his NHT points as well as the need to provide a roof over the head of the minor for the period during which she would be attending school are two bases on which this variation can be made. Counsel also pointed to the latter point as providing a proper basis upon which the sale of the house could be delayed until the minor has completed her tertiary level education.

## **DEFENDANT'S SUBMISSIONS**

**[21]** In his submissions on this issue, Mr Gordon observed that the questions for the Court are;

- (1) Whether the parties can qualify as spouses for which the provisions of the Property (Rights of Spouses) Act will apply;
- (2) Whether the property located at Apartment No. 5 17 Roosevelt Terrace, Kingston 8 in the parish of St. Andrew registered at Volume 1333 Folio 789 of the Register Book of Titles is the family home of parties;
- (3) Whether the Claimant has substantiated her application for a variation of the equal share rule; and;

(4) Whether the Claimant has produced sufficient reason to postpone the sale of the property.

### **Were the Parties Spouses**

[22] Mr. Steer submitted that in respect of the first issue, the evidence is clear as the Defendant was a single man and the Claimant would have been a single woman from the 1st day of January 2010, having been divorced sometime in 2009. He argued that from the 1st day of January 2010 to the 5th day of March 2015 the parties would have cohabited for more than five (5) years and therefore they would fall within the classification of spouses under the Act.

[23] In respect of the Claimant's evidence in cross examination that when they moved into the house they were not a couple, Mr Steer asked the Court to note that she had accepted as accurate the contents of her affidavit that she had been living with the Defendant as man and wife until they separated in 2015. He also asked the Court to note that she had averred that it was in the ensuing months after moving into the premises that she had ceased being intimate with the defendant but no date was provided.

[24] He submitted that based on the evidence of the Claimant the only conclusion that the Court can arrive at is that the Claimant and the Defendant were spouses as defined by the Property (Rights of Spouses) Act 2004. He also asked that consideration be given to the fact that the Title to the Apartment was taken by the Claimant and the Defendant as tenants-in-common in equal shares.

### **Was the disputed property the family home**

[25] In respect of the second issue identified, Mr Steer argued that it is clear that the property not only fits the description as set out by the Act, but was and is in fact the "Family Home". He submitted that it was the place where the parties maintained their union with the full intention to treat it as such. He referred to and relied on the authority *Peaches Annette Shirley Stewart v Rupert Augustus*



**Stewart Claim No. 2007HCV0327** and the dicta of Sykes J at paragraph 24 which he noted solidified this position.

- [26] He also asked the Court to take note that the family home is not subject to considerations such as contribution as outlined at section 14 of the Act, but rather is qualified simply by the definition. As such it was his contention that the property located at Roosevelt Terrace falls squarely within the definition as provide by section 2 of the Act.

**Whether the Claimant has provided a basis for the displacement of the equal entitlement rule**

- [27] It was highlighted by Mr Steer that Section 6 of the Act creates an equal share entitlement to the family home once spouses have terminated cohabitation and the Court of Appeal decision of **Stewart v Stewart** discussed the impact of section 6 on the law. He asked the Court to note that while the Act empowers the court to deviate from the equal share entitlement, it is limited as to when such a deviation ought to be done.

- [28] In respect of the effect of section 7 of the Act he submitted that neither (a), (b) nor (c) apply in this case, but he acknowledged that as stated in the case of **Carol Stewart v Lauriston Stewart [2013] JMCA Civ 47**, these are not the only consideration for reducing the equal share rule of the Family Home. He observed however that in order for the Claimant to displace the equal share rule, cogent evidence had to be adduced by the person seeking so to do.

- [29] Mr Steer argued that in respect of this evident the Claimant seemingly relied on assertions of a lack of contribution by the Defendant in order to substantiate her section 7 application. He also submitted that the Claimant sought to put before the Court the argument that the Defendant's only contribution to the acquisition of the property was the provision of his 'NHT benefit' in order to secure the mortgage on the property. Counsel also made reference to the Claimant's assertion that the Defendant failed to make mortgage payments, but contended that she contradicted

herself by stating that he made some payments, but ceased doing so for some time.

- [30] Counsel submitted that this is inconsequential and insufficient for the Court to find that the equal share rule shall not apply as the authorities unequivocally highlight that the law provides a mechanism to recover a share of missed mortgage payments upon the separation of the parties and it is not to be utilized to displace the equal share as provided by section 6 of the Act.

**Whether the Claimant has adduced sufficient reason to postpone the sale of the property**

- [31] It was submitted on behalf of the Defendant that it was noted in the authority of ***Mackie v Mackie*** [1978] (No. M. 83/78), it was noted by Somers, J, that where there is to be a division of matrimonial property and one party seeks a postponement of the sale, the Court must be satisfied of its necessity. Somers, J stated:

*“Having regard to the means of the parties I do not think the wife can expect to be maintained in a home of the present standard while the husband stands out of his share of the value of the house. The substantial equity in the house makes it practicable as well as desirable to direct a sale”*

- [32] In respect of this request by the Claimant, Mr Steer argued that there has been no cogent or any evidence led by the Claimant to substantiate any claim for the postponement of the sale of the property until the child attains the age of 18 or 21 years of age as the case may be. He noted that the child of the Claimant and the Defendant was born on the 25th day of November 2009 and it would be absolutely unjust for the Defendant to be kept out of his share of the property for another nine (9) or twelve (12) years.
- [33] In respect of this request Mr Steer made reference to a note which was produced by the Claimant which the Defendant had written to his brother on the 27th of February, 2014 which stated: -

*“Sean;*

*If I die ensure you give everything to Delsha, she will look after Tristan.  
Don't listen to your mother.*

*I have US. A/C at JNBS give everything to Delsha, as well as everything  
from my employer.*

*Love Always,*

*Ian and his signature*

*Feb 27, 2014”*

- [34] He submitted that this letter was written, not to the Claimant, but to the Defendant's brother and it could in no way be an agreement between the Claimant and the Defendant in respect of the division of property according to Section 14(2)(d) of the Property (Rights of Spouses) Act this was especially the case given the conditions under which it was written.
- [35] Counsel concluded his submissions by asserting that upon the evidence given by the Claimant and the Defendant, the parties fall squarely within the definition of spouses and as such the Apartment situated at 17 Roosevelt Terrace is the Family Home of the parties to be divide pursuant to section 6 of Property (Rights of Spouses) Act. He argued that each party ought to be entitled to fifty percent (50%) and asked that an order be made that the property be sold and the proceeds divided between the Claimant and the Defendant equally.

## **LAW**

- [36] In respect of this application, it is accepted between the parties that the legal position and governing principles has been clearly laid out in The Property Rights of Spouses Act as well as the case law which evolved out of the interpretation and application of same.
- [37] Section 2, the definition section of PROSA, sets out certain relevant definitions, namely “family home” and “property”:

In the Act;

*2(1) '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;*

*'property' means any real or personal property, any estate or interest in real or personal property, any money, any negotiable instrument, debt or other chose in action, or any other right or interest whether in possession or not to which the spouses or either of them is entitled;*

- [38] In ***Peaches Stewart v Rupert Stewart, Claim No HCV 0327/2007***, delivered 6 November 2007, Sykes J in delivering the judgment dealing with sections 2 and 13 of PROSA analysed the definition of “family home” and the interpretation to be given to these were outlined at paragraphs 22 and 23 of this judgment. Thus family residence means the family’s permanent or usual abode and the statutory definition of family home means the permanent or usual abode of the spouses.
- [39] Section 6 PROSA sets out the position in respect of property which has been accepted as the family home.

*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.”*

- [40] Section 7 PROSA outlines the circumstances in which the equal entitlement rule can be displaced and provides 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, the Court may, upon application by an interested party, make such order as it thinks reasonable taking into*

*consideration such factors as the Court think 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.”*

**[41]** In respect of the interpretation given to these factors by the Courts it was noted by Brooks JA at paragraph 27 of the decision *Carol Stewart v Lauriston Stewart* [2013] JMCA Civ 47 as follows;

*[27] 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.*

**[42]** In continuing his examination of the displacement of the equal shares rule Brooks JA also observed as follows;

*[34] The third point to be noted is that the existence of one of those factors listed in section 7 does not lead automatically to the entire interest being allocated to one or other of the spouses. 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.*

**[43]** He continued his remarks in respect of the relevant factors which should be considered by the Court by noting;

*[35] The proposition that matters such as contribution may only be considered if a section 7 gateway is opened may, perhaps, be an unconventional view. It is, however, based on a comparison of sections 7 and 14 of the Act. Whereas, by section 14, the legislature specifically allows the consideration of financial and other contributions in considering the allocation of interests in property, other than the matrimonial home, such a factor is conspicuously absent from section 7. Similarly, what may, inelegantly be called, a “catch-all” clause, placed in section 14(2)(e), to allow consideration of “other fact[s] and circumstance[s]”, is also absent from section 7. From these absences it may fairly be said that the legislature did not intend for the consideration of the family home to become embroiled in squabbles over the issues of contribution and other general “facts and circumstances”, which would be relevant in considering “other property.*

[44] In light of the foregoing analysis of the sections of the Act, it is clear that it may fairly be said that sections 6 and 7 placed the previous presumption of equal shares in the case of the family home on a firmer footing. Additionally, by the establishment of these ‘gateways’ as they were termed by Brooks JA, it is evident that the court should not embark on an exercise to consider the displacement of the statutory rule unless it is satisfied that a section 7 factor exists.

## **ANALYSIS AND DISCUSSION**

[45] In treating with this matter I note that there has been no objection raised as to whether the property in question was the family home of the parties for the purpose of this application. The sole issue before me is whether a basis has been laid on which the Court can vary/displace the equal share rules pursuant to Section 7 of the Act.

[46] In coming to my decision on this point, I note the guidance which has been outlined in the decision of **Stewart v Stewart** where it was noted by Brooks JA that the Court should not embark on an exercise to displace the statutory rule unless it is satisfied that a section 7 factor exists. I have also noted that contribution by itself is not a basis on which such a variation could be made.

[47] The case for the Claimant is that it would in effect be unreasonable and unjust for the equal shares rule to be applied and an order should be made dividing their

interest in the property in the ratio of 80:20. In light of her request for the variation to be made, the onus is on the Claimant to provide cogent evidence as to why this rule should be displaced.

**[48]** On a review of her case it appears that the evidence on which she relies is as follows;

- a. Although the Defendant moved out of the premises in March 2015 their relationship had actually come to an end in 2013; and
- b. The purchase of the property had largely been funded by her and the extent of the Defendant's contribution was the use of his NHT benefits and his mortgage payments for 4 months and she has been making the payments on both accounts since then.

**[49]** While the Defendant accepts that the Claimant paid all the upfront expenses connected to the purchase of the house it is his position that in addition to providing the mortgage benefit which made the purchase possible, he also paid the mortgage for over a year. He also maintained that while the relationship had broken down in 2013 it was rekindled later the same year and he moved into the property with the Claimant and their daughter as a family.

**[50]** In examining the first limb of the Claimant's position, I note that although she made this assertion under cross-examination, which would have the effect of bringing her relationship with the defendant to less than 5 years, it had been accepted by her in her evidence in chief and even during the initial stages of cross examination that they had separated in 2015. Additionally, although she indicated that she did not know what cohabited meant she had been clear in her earlier response to Mr. Steer that she had lived with the Defendant as husband and wife until 2015.

**[51]** It was the Claimant's evidence that the sale was completed in late 2013 as she did not receive the key until December of that year and it was in March 2014 that they moved in but not as a couple. It was clear from her account that she had always

wanted a home and that she had saved towards this objective and even found a place that she subsequently purchased. My assessment of her was that of an ambitious and sensible young woman, as such it seemed extremely illogical that she would have gone through with the purchase of a home with someone she no longer shared a relationship with and who was effectively no longer a part of her family dynamic.

- [52] In this regard, I preferred and believed the evidence of the Defendant that although things had arrived at a breaking point in 2013 they had been seeking to work things out and had in fact reconciled at the time of the purchase and had been reconciled when they moved into the disputed property. I also accept and believe on a balance of probabilities that the separation actually took place in March 2015 as she had previously stated and as has been confirmed by the Defendant in his account.
- [53] In respect of the second limb of the Claimant's contention, it is apparent that this position wholly relies on the disparity between the contributions made by the respective parties. While it is evident that the Claimant bore the lion's share of the expenses associated with the purchase of the property and even had to cover the cost of mortgage payments after the Defendant moved out, the authorities have made it clear that contribution by itself is not a factor that can be relied on to displace the application of the equal entitlement rule. At paragraph 35 of the decision of Brooks JA in **Stewart v Stewart**, it was noted by the learned judge that matters such as contribution could only be considered where there was a gateway factor in existence as outlined at Section 7(1) (a) to (c) of the Act.
- [54] It is clear on a review of the evidence presented that there are no section 7 factors which fall for consideration by the Court and in the absence of same the issue of greater contribution of the Claimant cannot be taken into account. I have considered whether the fact that the young daughter of the parties is said to reside at this home with her mother would be a factor that could call for a displacement of the rule and unfortunately I am unable to conclude that it does.



**[55]** In respect of the Claimant's request that the sale of the house be delayed until the minor completes her tertiary education, while it is understood that the Claimant would wish to maintain some measure of stability in respect of the residence in which she resides with her daughter, this has to be balanced against the interest of the Defendant who has no other residence of his own and has used his NHT benefit towards the acquisition of the disputed property. I have considered whether there has been any cogent evidence presented which would justify the deferment of the payment of the Defendant's interest until his daughter who would be 11 years old this year completes her tertiary education and it is my finding that none has been provided.

**[56]** In light of these findings, the Claimant's request for a declaration of their respective interests in the ratio of 80:20 is denied and the finding of the Court is that the parties are equally entitled to the interest in the property.

## **DISPOSITION**

**[57]** Accordingly, the orders of the Court are as follows;

1. The Claimant's Application for a Declaration that she is entitled to Eighty per cent share in Apartment No. 5, 17 Roosevelt Terrace, Kingston 8 in the parish of St. Andrew, registered at Volume 1333 Folio 789 of the Register Book of Titles is denied.
2. A Declaration is made that the parties hold their interest in Apartment No.5, 17 Roosevelt Terrace, Kingston 8 in the parish of St Andrew, registered at Volume 1333 Folio 789 of the Register Book of Titles in equal shares.
3. The property is to be valued by The C D Alexander Company Realty Limited and a valuation report be provided to the parties within 120 days of this order. The costs of the valuation are to be shared equally by the parties.
4. The Claimant is given the first option to purchase the Defendant's share within 180 days of receipt of the valuation report.

5. In the event that the Claimant fails to exercise her option within the stipulated period, the property is to be sold on the open market and the net sum remaining after the mortgage balance and expenses related to the discharge of the mortgage have been paid is to be shared between the parties equally subject to order 6 below.
6. The payment to the Defendant is to be made after all arrears owed on his mortgage account from August 2015 until the date of the sale of the property on the open market or to the Claimant have been deducted from his portion of the proceeds.
7. The Registrar of the Supreme Court is empowered to execute all documents, necessary to effect a sale and transfer of apartment No.5, 17 Roosevelt Terrace, Kingston 8, in the event that either party fails or neglects to do so within 14 days of a request being made.
8. All costs incidental to the sale of apartment No. 5, 17 Roosevelt Terrace, Kingston 8, including but not limited to the payment of transfer tax, stamp duty, carriage of sale, registration and attorney's fees to be borne by the Claimant and the Defendant equally.
9. Joseph Jarrett & Company, Attorneys-at-Law shall have the carriage of sale.
10. Each Party to bear their own costs.
11. Liberty to Apply.