



[2021] JMSC Civ 176

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

**IN THE CIVIL DIVISION**

**CLAIM NO. 2018 HCV 02916**

<b>BETWEEN</b>	<b>CHRISTINE JOHNSON</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>RICHARD JOHNSON</b>	<b>DEFENDANT</b>

**IN CHAMBERS (VIA VIDEO CONFERENCE)**

**Miss Kadian Davidson and Miss Melissa Watson instructed by Nelson Brown Guy and Francis for the claimant.**

**Canute Brown instructed by Brown Godfrey Morgan for the defendant.**

**Heard: 20<sup>th</sup>, 21st October and 1<sup>st</sup> November 2021**

**Civil Procedure - Application for specific disclosure - Claim under the Property (Rights of Spouses) Act - Rule 28.16 of the Civil Procedure Rules - whether documents which are sought to be disclosed are directly relevant to the claim.**

**MASTER C. THOMAS (AG)**

**Introduction**

**[1]** This is an application for specific disclosure by the defendant. More specifically his notice of application, the defendant seeks the following:

1. An Order for Specific Disclosure of:
  - A. That the claimant be compelled to disclose all stocks, shares, investments and bank accounts

held by the claimant, since the commencement of the business known as C & D Variety Store and all sources of income other than that derived from the business of C & D Variety Store;

B. All property whether real or personal acquired by the claimant whether jointly with the defendant or other persons since the commencement of the business C & D Variety Store in Christiana, Manchester.

2. Details of income from any source other than the said business, by way of employment, trade or otherwise;
3. Details of the financing of the purchase of the lands comprised in Certificate of Title registered at Volume 395 Folio 97 on or about the 16<sup>th</sup> April 2017;
4. Details of the loan from the Bank of Nova Scotia Jamaica Limited, the date and stated purpose of the loan and how the proceeds were applied;
5. The proposed source of financing of the acquisition of the interest of the defendant in the business C & D Variety Store at Christiana in the parish of Manchester;
6. A Declaration that the defendant is entitled [to] one half interest in the lands comprised in Certificate of Title at Volume 395 Folio 97 and that the registered proprietors, namely Christine Johnson, the claimant and Tina Netesha Johnson hold one half share interest in the said land on trust for the defendant.

## **Brief Background**

- [2] The parties to the application were married on 17<sup>th</sup> January 1991 and following on their separation, the claimant, pursuant to the Property (Rights of Spouses) Act, by way of fixed date claim form filed on 2<sup>nd</sup> August 2018, sought a division of property, namely the business known as C & D Variety Store (“the business”). The claim was amended on 25<sup>th</sup> January 2021 to include two additional properties, namely, property located at Job Lane in the parish of Manchester registered at Volume 1469 Folio 438 of the Register Book of Titles (“the Job Lane property”); and property located at Straun Castle in the parish of Manchester (“Straun Castle property”). The claimant seeks a 50% interest in all the properties.
- [3] The bases of the claim broadly, as revealed by the claimant’s affidavits, is that she and the defendant operated the business sometime in or about 2004. Sometime in 2018, the defendant offered a “buy out of the business” and that he agreed to sell his share in the business to her for \$4,000,000.00. In May of 2018, she told him that she was ready to proceed and he said that he had changed his mind; however, she had not changed hers. In respect of the Job Lane property, the parties jointly own the property (which was their former matrimonial home) they having acquired it during the marriage; and in relation to the Straun Castle property, the land was given to the defendant as a gift by his father and she and the defendant had decided that they would build apartment units on the land and this was done.
- [4] The defendant’s position broadly as revealed by his affidavits was that he did not deny the claimant’s assertion of the joint ownership of the business by both parties. He also did not deny that there had been a proposed “buyout agreement” and that he “had been willing to take a buyout, which the [claimant] agreed”. He, however, deponed that a buyout would put him permanently out of business and that he would want the affairs of the business to be structured so that he would continue to play his part in making the purchases for the business from abroad and in Jamaica and that the claimant “if she so desires” would continue to “work and

manage the store”. He deponed that the claimant had taken money out of the business to buy land and to invest. He also deponed that since the claim was filed, the claimant had been promising to settle by paying him half of the value of the business and to resume paying him a weekly take of \$15,000 from the business but she had not done so. This was not a salary, he stated, but that was what was agreed on by the parties as being his share. With respect to the Job Lane property, the defendant did not deny that it was the family house; and in relation to the Straun Castle property, the defendant denied that he built and owned the apartments or that he owned the land.

- [5] At the first hearing of the claim on 14th January 2019, an order was made for the Registrar of the Supreme Court to appoint a valuator to determine the value of the business and trial was fixed for 8<sup>th</sup> October 2019. On 8<sup>th</sup> October 2019, the trial did not proceed; instead orders were made appointing a valuator and an alternative valuator. Orders were also made for the filing of further affidavits, among other things, and the trial date was fixed for 3<sup>rd</sup> November 2020. Sometime in May 2020, prior to the trial, the claimant obtained the permission of the court to amend her claim to include a claim for a share in the Job Lane and Straun Castle properties. Subsequently, at a pretrial review on 28<sup>th</sup> July 2020, by the consent of both parties, Ms. Ouida Dunn, certified chartered accountant was “accepted as the valuator for C & D Variety Store”. It is not apparent from the record when disclosure was ordered, but at a pretrial review on 21<sup>st</sup> January 2021, further disclosure was ordered. The trial of the claim is set for 22<sup>nd</sup> November 2021.

### **Submissions**

- [6] Mr. Brown on behalf of the defendant submitted that inasmuch as there is no affidavit filed in support of the application (and none was required by the Civil Procedure Rules “CPR”)), a number of affidavits filed by the parties raised the issues which are the subject of the application. He submitted that in considering the application, the court should take into account not only the relevant provisions of the CPR but the provisions of PROSA and the plenitude of orders that a court

is empowered to make with the object of ensuring that there is a clean break between the parties. He referred to ***Suzette Hugh Samm v Quentin Hugh Samm*** [2018] JMCA Civ 15 as demonstrating the approach of the court to division of property under PROSA.

- [7] In respect of the specific disclosure of the stocks and investments sought in paragraph 1A of the application, there was evidence from the defendant supported by documentary evidence demonstrating that the claimant had made investments in stocks using money from C & D Variety Store.
- [8] With respect to the information sought at paragraphs 1B and 3, there was evidence from the defendant that the claimant had made admissions to him that she had used money from the business to purchase the property and that property was purchased in 2017 prior to the commencement of the claim. He stated that this information was necessary in the light of her evidence that she had no source of income other than the income from the business. The financing for the purchase of the real estate was therefore from the profits of the business.
- [9] Mr. Brown submitted that in respect of the information sought at paragraph 4 of the application in relation to the loan from the Bank of Nova Scotia, the expert report prepared by the accountant in relation to the valuation of C & D Variety indicated that as at 31<sup>st</sup> July 2018, the business was indebted to the bank. Therefore, the information as to when the loan was acquired, its purpose and how it was used was important as the indebtedness of the business would impact the valuation of the business in that PROSA provides that in computing the share of assets, liability of creditors must be taken into account and thus the indebtedness to creditors would reduce the valuation of the share of the business available to the parties. In addition, it was important to know the specific date of the loan and its purpose in light of the timing of the purchase of the property in 2017 which appeared to be in or around the same period that the loan was reflected on the balance of the business. This was important in light of the claimant's evidence that she had no source of income other than the business.

- [10] It was also the submission of Mr. Brown that the disclosure was necessary as the defendant had no other means of acquiring this information as the claimant had excluded him from the business.
- [11] Ms. Johnson on behalf of the claimant referred to the provisions of rules 28.6 and 28.7 of the CPR and relying on ***Miguel Gonzales and Suzette Saunders v Leroy Edwards*** [2017] JMCA Civ 5 submitted that the document being specifically requested must not only be relevant, but must be directly relevant as defined by the CPR. She submitted that the claimant has no intention to rely on the documents sought by the defendant and the documents bear no relevance to the issues in this case. She also relied on ***African Strategic Investment (Holdings) Limited & anor v Main*** [2012] EWHC 4423.
- [12] Ms. Johnson submitted that information was being sought on lands that are not specifically pleaded and that the order for specific disclosure must be limited to documents that are relevant to the pleaded issues. She invited the court to ignore the defendant's attempt to add an issue concerning another parcel of land at paragraph 6 of his application. She pointed out that the defendant has not provided any affidavit evidence addressing any of the three circumstances mentioned in rule 28.6 in which a document is regarded as directly relevant.
- [13] With respect to the orders sought at paragraph 1A concerning the investments, Ms. Johnson submitted that this information would not be relevant as the claimant's evidence is that the money was taken from the business to purchase the property and the accounts of the business were disclosed. In respect of paragraph 1B and 3 of the application in relation to property owned by the claimant and another party, Ms. Johnson submitted that since this property is not specifically before the court in that it was not in the fixed date claim form or included in any affidavit deponed to by the defendant, any document in relation to that property would not be directly relevant. She conceded that the land was acquired before the commencement of the claim but contended that since it was after the separation of the parties, it would not fall within the provisions of PROSA.

[14] She also submitted that the expert valuation report had been prepared by an accountant who had been agreed to by both parties and that defendant had not indicated any objection to the 50:50 share in the business by the parties. She argued that the only issue raised by the defendant in respect of the business was that he did not wish the business to be sold, as was being requested by the claimant. Therefore, all the documents in relevant to the business had been disclosed and the question as to whether or not the business should be sold and who should have the option to do so did not require the court to embark upon what the claimant currently owns. She also argued that in respect of the Straun Castle property, the defendant's position was that he did not own the property; therefore, the claimant's liabilities and assets or financial standing cannot be directly relevant to the issue of the ownership of the property.

[15] With respect to paragraph 4 of the application concerning the loan from the Bank of Nova Scotia, Ms. Johnson submitted that the particular information could only assist in the valuation of the business and the accountant had clearly taken it into account in valuing the business and therefore disclosure would not further assist.

### **Discussion and Analysis**

[16] In determining this application, I consider the following to be the applicable guiding principles:

- (i) The purpose of disclosure is to enable the court to do justice between the parties. It provides the court with the opportunity to determine the issues between the parties after assessment of all relevant information. Specific disclosure may be ordered where it is necessary to dispose of the cases fairly (***Suzette Ann Marie Hugh Sam v Quentin Ching Chong Hugh Sam***; rule 28.7(1) of the CPR).

- (ii) An order for specific disclosure may require disclosure only of documents which are directly relevant to one or more matters in issue in the proceedings (rule 28.6 of the CPR).
- (iii) A document is directly relevant, only if: the party with control intends to rely on it; it tends to adversely affect that party's case; or it tends to support a party's case (rule 28.1 of the CPR).
- (iv) Where the court is of the view that a document is directly relevant, before granting the order for specific disclosure, it must have regard to the likely benefits and costs of specific disclosure and whether the financial resources of the party against whom the order would be made are likely to be sufficient to enable that party to comply with any such order (rule 28.7(2)).
- (v) The relevant rules of the CPR do not mandate the filing of an affidavit in support of the application; however, it is desirable for there to be affidavit evidence because "it is not unreasonable to expect that there must be some material upon which the court would be expected to exercise its discretion" (***Miguel Gonzales & Suzette Saunders v Leroy Edwards***, per F. Williams JA at [23]).
- (vi) The absence of affidavit evidence is not necessarily fatal/detrimental as a determination as to whether documents requested are directly relevant may be possible upon an examination of the claim and the law (***Miguel Gonzales & Suzette Saunders v Leroy Edwards; Maxwell Gayle and others v Desnoes and Geddes Limited and others*** claim no HCV 1339 of 2004, delivered 13<sup>th</sup> May 2005).

- (vii) An application for specific disclosure ought not to be a fishing exercise (***African Strategic Investment (Holdings) Limited & anor v Main***).

[17] With respect to the applicable law, the claim was brought pursuant to PROSA and I accept Mr. Brown's argument that there is a wide variety of orders that may be made under the Act with the aim of facilitating a clean break between the parties. However, I am of the view that in the context of an application for specific disclosure, while the orders available to a court for a division of property may be relevant, if they are to be taken into account, it must be within the confines or framework of the claim that is before the court including the respective cases of the parties.

[18] In this case, given that the application concerns a claim under PROSA for division of the matrimonial home and property other than the matrimonial home, I consider that section 12 (the date at which the value of the property in question and the share of each spouse is to be determined); section 14 (the factors to be considered in determining how the property is to be divided); and section 17 (provisions as to liabilities and creditors) may be relevant.

[19] Sections 12, 14 and 17 provide:

12-(1) Subject to sections 10 and 17 (2), the value of property to which an application under this Act relates shall be its value at the date the Order is made, unless the Court otherwise decides, property.

(2) A spouse's share in property shall, subject to section 9, be determined as at the date on which the spouses ceased to live together as man and wife or to cohabit or if they have not ceased, at the date of the application to the Court.

- (3) In determining the value of property the spouses shall agree as to the valuator who shall value the property, or if there is no agreement, the Court shall appoint a valuator who shall determine the value of the property for the purposes of this subsection.

14 -(1) Where under section 13 a spouse applies to the Court for a division of property the Court may –

- (a) make an order for the division of the family home in accordance with section 6 and 7, as the case may require; or
- (b) subject to section 17 (2), divide such property, other than the family home, as it thinks fit, taking into account the factors specified in subsection (2), or, where the circumstances so warrant, take action under both paragraphs (a) and (b).

(2) The factors referred to in subsection (1) are –

- (a) the contribution, financial or otherwise, directly or indirectly made by or on behalf of a spouse to the acquisition, conservation or improvement of any property, whether or not such property has, since the making of the financial contribution, ceased to be property of the spouses or either of them;
- (b) that there is no family home;

- (c) the duration of the marriage or the period of cohabitation;
- (d) that there is an agreement with respect to the ownership and division of property;
- (e) such other fact or circumstances which, in the opinion of the Court, the justice of the case requires to be taken into account.

(3) In subsection (2) (a), "contribution" means –

- (a) the acquisition or creation of property including the payment of money for that purpose;
- (b) the care of any relevant child or any aged or infirm relative or dependant of a spouse;
- (c) the giving up of a higher standard of living than would otherwise have been available;
- (d) the giving of assistance or support by one spouse to the other, whether or not of a material kind, including the giving of assistance or support which- (i) enables the other spouse to acquire qualifications; or (ii) aids the other spouse in the carrying on of that spouse's occupation or business;
- (e) the management of the household and the performance of household duties;

- (f) the payment of money to maintain or increase the value of the property or any part thereof.
  - (g) the performance of work or services in respect of the property or part thereof;
  - (h) the provision of money, including the earning of income for the purposes of the marriage or cohabitation;
  - (i) the effect of any proposed order upon the earning capacity of either spouse.
- (4) For the avoidance of doubt, there shall be no presumption that a monetary contribution is of greater value than a non-monetary contribution.
- 17- (1) Subject to the provisions of this Act –
- (a) secured or unsecured creditors of a spouse shall have the same rights against that spouse and any property owned by that spouse as if this Act had not been enacted; and
  - (b) property which, if this Act were not enacted would have been administered under the Bankruptcy Act by the Trustee in Bankruptcy on the bankruptcy of a spouse, shall be so administered.
- (2) The value of property that may be divided between the spouses shall be ascertained by deducting from the value of property owned by each spouse.
- (a) any secured or unsecured debts (other than personal debts or debts secured wholly by property) owed by one spouse; and

- (b) the unsecured personal debts owed by one spouse to the extent that such debts exceed the value of any property of that spouse.
- (3) Where any secured or unsecured personal debt of one spouse is paid out of property owned by both spouses the Court may, on a division of that property, order that-
  - (a) the share of the other spouse in that property be increased proportionately; or
  - (b) the first mentioned spouse pay compensation to the other spouse.
- (4) In subsections (2) and (3) "personal debt" means a debt incurred by either spouse other than a debt incurred-
  - (a) by both spouses jointly; or
  - (b) in the course of a joint venture carried on by both spouses whether or not with any other person; or
  - (c) for the purpose of effecting improvements to the family home or acquiring, repairing or effecting improvements to the family chattels; or
  - (d) for the benefit of both spouses or any relevant child in the course of managing the affairs of the household or for caring for the relevant child, as the case may be.

[20] It is now necessary to consider the specific documents being requested.

**Disclosure of all stocks, shares, investments and bank accounts held by the claimant, since the commencement of the business known as C & D Variety Store and all sources of income other than that derived from the business of C & D Variety Store; details of income from any source other than the said business, by way of employment, trade or otherwise (paragraphs 1A and 2)**

- [21]** It is noted that the documents sought to be disclosed are wide in their ambit. While the disclosure in relation to the stocks, shares and investments (hereafter referred to as 'investments') as well as bank accounts has a commencement date, there is no specificity as to the end of the period. Where disclosure of the claimant's income is concerned, there is no specificity at all whether in relation to the relevant time period or otherwise.
- [22]** It is my view that it is clear from the scheme of PROSA that, other than the family home that may have been acquired prior to the commencement of the marriage or cohabitation, the Act is concerned with property acquired by the parties during the marriage and therefore the appropriate starting point with respect to this disclosure requested, which clearly concerns property other than the family home, is the commencement of the marriage. It is also my view that in light of section 12(2) of PROSA, the end of the period relative to the documents sought to be disclosed could not extend beyond the date of separation of the parties.
- [23]** Mr. Brown's contention is that the defendant has given evidence in his affidavit that the claimant used money from the business to make investments for her benefit. Indeed, there is evidence from the defendant to this effect, although denied by the claimant, and it is clear that the business is one of the properties that is the subject of the claim. It is my view, however, that the fact that the business is one of the properties that is the subject of the claim would not be sufficient to render the information being sought directly relevant. The information must meet one of the requirements in rule 28.1 of the CPR in the light of the claim that is before the court and the parties' respective cases.
- [24]** The claimant is not relying on the information sought to be disclosed. The question therefore remains whether it could adversely affect the claimant's case or it could be relied on by the defendant to support his case. I am of the view that details as to the claimant's investments and bank accounts since the commencement of the business would not adversely affect the claimant's claim to a 50% share in the

business given the factors as outlined in section 14 of PROSA that the court is required to take into account in dividing the business.

- [25]** It is also my view that the use of monies from the business by one party for his/her sole investment purposes could provide a basis for the other party to claim a share in the investments on the basis that these comprise property that is acquired during the marriage from the use of monies diverted from another property owned by the parties. Therefore, this information could be relied on by the defendant in support of a claim for a share in the investments and proceeds of the bank account.
- [26]** In this regard, I note that despite the repeated occasions on which the claim came before the court, no attempt was made by the defendant to file a claim to a share in the investments notwithstanding the fact that the defendant was able to provide documentation of at least one specific investment by the claimant and that the claimant had as recently as January 2021 obtained the leave of the court to amend her claim to include shares in other properties she claimed was owned by the parties. In light of the absence of a claim by the defendant for a share of the investments owned by the claimant, I am of the view that there is no basis upon which it can be said that the defendant could rely on this information in support of his claim and therefore this information is not directly relevant.
- [27]** With respect to the disclosure of income, my view in relation to the relevance of the information concerning the investments and bank accounts also applies to the income in that this information is not being relied on by the claimant, could not adversely affect the claimant's case and could not be relied on by the defendant. Consequently, the information is not directly relevant. I am also of the view that the disclosure sought in relation to the claimant's income is too wide and appears to be a fishing exercise.

**Disclosure of property whether real or personal acquired by the claimant whether jointly with the defendant or other persons since the commencement of the business C& D Variety Store in Christiana, Manchester; and details of the financing of the purchase of the lands comprised in Certificate of Title registered at Volume 395 Folio 97 on or about the 16<sup>th</sup> April 2017 (paragraphs 1B and 3);**

[28] The defendant's request for disclosure is twofold:

- (i) broadly, all property (real and personal) owned by the claimant, whether jointly with the defendant or other persons; and
- (ii) specifically, the source of funding for a particular property registered at Volume 395 Folio 97 of the Register Book of Titles. In respect of the former, the request is not only wide in terms of time frame, but in terms of the specific possessions of the claimant. Even if the relevant time frame were to be limited to the period between the commencement of the marriage and the date of separation, given the claim that is before the court, it could be said that the request for disclosure of this information also amounts to a fishing exercise. I therefore find that there is no basis for a finding to be made that these documents would adversely affect the claimant's case or could be relied on by the defendant in his claim; as a result, they are not directly relevant.

[29] With respect to the source of funding of the property registered at Volume 395 Folio 97, this property is owned by the claimant and a third party. The request for disclosure appears to be again based on the assertion that monies from the profits of the business must have been used to purchase this property. Mr. Brown is

correct that the purchase of the property registered at Volume 395 Folio 97 was raised by the defendant in his affidavit filed on 21<sup>st</sup> August 2019 that the claimant was “secretly moving money from the business” and “bought 4 ¾ acres of land”; the defendant even exhibited a copy of the title to his affidavit.

[30] There is no denying that the claimant’s claim is for a share in three properties, none of which is registered at Volume 395 Folio 97; and the claimant did not deny her coownership of this property. The claimant is not relying on the source of funding of this property in support of her claim. However, it appears that the defendant may be seeking to rely on it in so far as he is now seeking, by way of the instant application, to make a claim to a share in the property by his inclusion of paragraph no 6, which seeks a declaration as to his entitlement to a 50% share in the property. The claimant’s counsel has asked the court to ignore this attempt by the defendant and has also argued that in light of the fact that the property was purchased after the parties ceased to live together as man and wife, this property would not be relevant.

[31] It is my view that in so far as counsel for the defendant, Mr. Brown indicated that the relief sought in the defendant’s application for a declaration as to his share in the property is one that ought properly to be left for trial, it is for the trial court to make a determination on whether the claim by the defendant for a share in the property has been properly brought, and if so, whether the relief sought ought to be granted. However, section 13 of PROSA requires that a claim for division of property must be brought within 12 months after separation or such longer period as the court may allow. Based on the evidence of the parties, it appears that separation occurred sometime in 2014 and therefore, the defendant would require the leave of the court to bring his claim for a share in the property in question. While the decided cases make it clear that this permission may be obtained after the filing of the claim, it seems to me that until permission is obtained, a claim that is brought outside of the 12 months’ period is not properly before the court. In **Saddler v Saddler; Hoilette v Hoilette** [2013] JMCA Civ 11, which was the landmark case that determined that permission of the court may be obtained after

filing the claim, Philips JA stated that if a claim is filed outside the 12 month period set out in the statute, extension of time must be obtained from the court for the matter to proceed. In respect of the specific cases under consideration in that appeal in which no permission had been obtained prior to the filing of the claims outside the 12 months' period, Phillips JA stated that the claims could be considered irregular or in a state of suspended validity until the application for extension of time is granted. Consequently, for the purposes of this application, no extension of time having been sought or obtained by the defendant, I cannot properly take into account the defendant's purported claim at this time. It follows that the documents being sought to be disclosed in relation to the source of funding of the property registered at Vol 395 Folio 97 are not directly relevant to the claim before the court for a share in the three properties and therefore there is no basis on which specific disclosure of these documents could be ordered.

[32] In light of the forgoing, I find that the documents being sought to be disclosed in relation to real and personal property owned by the claimant and others (including the defendant) as well as the source of funding for the property registered at Vol 395 Folio 97 are not directly relevant to the claim before the court.

**Disclosure of the details of the loan from the Bank of Nova Scotia Jamaica Limited, the date and stated purpose of the loan and how the proceeds were applied (paragraph 4)**

[33] As Mr. Brown has submitted, it is evident from the expert report that the business had a loan existing as at June 2018. This loan was owed to the Bank of Nova Scotia. He is also correct that the provisions of PROSA, specifically section 17(2), give special treatment to liabilities and creditors associated with the property to be divided. Section 17(2) provides that the value of property is ascertained by deducting the amounts owed by the spouses. Therefore, Mr. Brown is correct in his contention that the liabilities would affect the value of the property that would be available to be shared between the parties.

- [34]** This notwithstanding, I am of the view that section 17(2) is not applicable to the circumstances of this case. This is so because the Adjusted Balance Sheet presented in the expert report indicates that the long term liability of the business included a loan from Bank of Nova Scotia in the amount of \$2,714,678.00 and this amount was reflected in the statement of financial position for the period ending 31<sup>st</sup> October 2020. In light of this, I agree with Ms. Johnson's submission that the accountant would have already taken into account this liability in arriving at her valuation of the business. There would therefore be no further need for the court to again consider the impact of this liability. The valuation having already taken into account the liability, any information as to the purpose of the loan, that is, whether it was used for the purpose of the business or may have been used to purchase real estate would therefore no longer be relevant for the purpose of determining the value of the business.
- [35]** I am of the view that the defendant's evidence that the claimant bought the land registered at Volume 395 Folio 97 (owned by the claimant and a third party) at the time that she claimed that she had to borrow US\$5,000 and \$1,000,000.00 against her Scotia Mint insurance to settle debts of the business raises the issue of whether this money allegedly borrowed for the business was used by the claimant to fund the purchase of the land. If this accepted by the court at trial, it would mean that the claimant had used funds for the purpose of the business to fund her personal business. This, I think, would impact upon the claimant's share of the business. Such a scenario, it seems, is contemplated by section 17(3) of PROSA, which provides that where any secured or unsecured personal debt of one spouse is paid out of property owned by both spouses the court may order that the share of the other spouse in that property be increased proportionately or for the spouse who has benefitted to pay compensation to the other spouse.
- [36]** The claimant's counsel submitted that there is no dispute in relation to each party receiving 50% of the business and Mr. Brown in his submissions did not disagree with this assertion. I note, however, that whereas there is an unequivocal assertion from the claimant at paragraph 44 of her affidavit filed on 19<sup>th</sup> May 2020 that she

“accepts that [the defendant] has a 50% share”, the defendant’s position, although not amounting to a denial of the 50% share, is somewhat equivocal. It is for the court at trial to make findings in relation to the claimant’s share in the business and ostensibly whether there is any dispute as to the 50% respective share of the parties in this regard. Taking this into account, I am of the view that while the purchase of the property would not strictly speaking be a debt; in light of section 17(3), the documents in relation to the loan may well be adverse to the claimant’s case.

[37] Having regard to the forgoing, I am of the view that documents in relation to the date, stated purpose of the loan from Bank of Nova Scotia Jamaica Limited as well as how the proceeds were applied would be directly relevant.

**Disclosure of details of the proposed source of financing of the acquisition of the interest of the defendant in the business C & D Variety Store at Christiana in the parish of Manchester (paragraph 5)**

[38] In light of the claim that is before the court, I am of the view that this information is not being relied on by the claimant, cannot adversely affect the claimant’s claim to a 50% share in the property given the factors to be considered by the court as outlined in section 14; and cannot be relied on by the defendant in his claim. Accordingly, the information is not directly relevant.

[39] Having found that the documents in relation to the loan from the Bank of Nova Scotia are directly relevant, it is now necessary to consider whether disclosure of these documents is necessary in order to fairly dispose of the claim or save costs as required by rule 28.7 of the CPR. This requires me to consider:

- (i) the likely benefits of specific disclosure;
- (ii) the likely cost of specific disclosure; and

- (iii) whether the financial resources of the claimant are likely to be sufficient to enable the claimant to comply with the order.

**[40]** It is my view that disclosure of the documents concerning the loan from the Bank of Nova Scotia, that relate to the records of the business, and could have been disclosed during standard disclosure, would fairly dispose of the claim. Also, the claimant ought to have the said documents in her possession as part of the records pertaining to the business, and if not, she should be able to access them from the bank. Therefore, I consider that the production of this information to the defendant ought not to place too much burden on the claimant. Consequently, the documents should be disclosed.

### **Conclusion**

**[41]** In light of my finding that the documents in relation to the loan from the Bank of Nova Scotia ought to be disclosed, I make the following orders:

1. The claimant shall, on or before 8 November 2021, disclose documents containing details of the date and stated purpose of the loan from Bank of Nova Scotia Jamaica and how the proceeds were applied.
2. Costs are to be costs in the claim.