



[2023] JMSC CIV 239

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

**IN THE CIVIL DIVISION**

**CLAIM NO. 2018HCV02415**

**BETWEEN                      ANDREW FRANCIS-XAVIER MCKENZIE                      CLAIMANT**  
**AND                              SHORNA TONETA FARQUHARSON-MCKENZIE                      DEFENDANT**

**IN CHAMBERS**

Mr. Raymond Samuels instructed by Samuels Samuels for and on behalf of the Claimant

Mr. Courtney Williams of Counsel for and on behalf of the Defendant

**Dates Heard: July 3 & 4 and December 7, 2023**

**CIVIL PRACTICE & PROCEDURE – Section 14 of the Property (Rights of Spouses) Act – Division of property other than the family home – Considerations under section 14 (2) and (3) of PROSA – Section 15 of PROSA – Partition Act – Occupation Rent – Principles upon which an award is made – No ouster – Defendant undertaking not to occupy jointly owned property**

**PALMER HAMILTON J**

**BACKGROUND**

[1] By way of an Amended Fixed Date Claim Form, the Claimant claims against the Defendant the entire beneficial interest in all that parcel of land part of Duckett's Pen now called No. 2 Molynes Road being the Strata Lot numbered 16 on Strata Plan 2500 together with one undivided 2/103<sup>rd</sup> share and interest in the common property therein and being all the land comprised in Certificate of Title registered at Volume 1453 Folio 13 of the Register Book of Titles (hereinafter called 'the

subject property') pursuant to the Property (Rights of Spouses) Act and the Partition Act. The Claimant is seeking the following Orders:

1. *A legal declaration that the Claimant, Andrew Francis-Xavier McKenzie is entitled to the entire legal and beneficial interest in the subject property, or in the alternative, to such shares as this Honourable Court deems just;*
2. *That the Registrar of Titles is hereby directed pursuant to section 158(2) (a) of the Registration of Titles Act to cancel Certificate of Title registered at Volume 1453 Folio 13 of the Register Book of Titles and to issue a new Certificate of Title in duplicate in the sole name of the Claimant, Andrew Francis-Xavier McKenzie, Commissioned Land Surveyor of 11 Camperdown Terrace, Kingston 10 in the parish of Saint Andrew, or in accordance with such shares as are determined by this Honourable Court in accordance with paragraph 1 herein;*
3. *Further and in the alternative, that the subject property be sold and the proceeds of sale be divided between the parties pursuant to section 3 of the Partition Act;*
4. *Further and in the alternative, that the subject property be sold and the proceeds of sale be divided between the parties pursuant to section 4 of the Partition Act;*
5. *That the property be valued by a reputable valuator appointed by the Registrar of the Supreme Court with the cost of the valuation to be borne equally by the parties;*
6. *The Defendant has the first option to purchase the Claimant's half-share. Said option is to be exercised within thirty (30) days after notice of valuation is given;*
7. *If the Defendant chooses to exercise the option to purchase, that she signs the Agreement for Sale and deliver the required deposit to the Claimant's Attorneys-at-Law within fourteen (14) days of advising her of her intention to exercise the option;*
8. *That the Defendant deliver to the Claimant's Attorneys-at-Law within forty-two (42) days of signing the said Agreement for Sale, a letter of commitment from a reputable financial institution for the balance of the purchase price;*
9. *If the option is exercised and the Defendant refuses or neglects to sign the documents to effect the sale and transfer, the Registrar of the Supreme Court is empowered to sign;*

10. *All reasonable costs attendant upon the sale be borne by the parties equally;*
11. *If the Defendant chooses not to exercise the option to purchase or if she fails to comply with any of the foregoing paragraphs, then the said property will be sold by private treaty or public auction with the valuation being the reserve price. The Claimant's Attorneys-at-Law shall have carriage of the sale of the subject property in any event;*
12. *Occupational rent at the rate of \$70,000.00 per month from April 2015 to the date of the final determination of the matter;*
13. *Costs to be costs in the claim; and*
14. *Such further and/or other relief as this Honourable Court deems fit.*

**[2]** The Claimant also outlined several grounds on which the abovementioned Orders are being sought. The grounds are:

1. *The Claimant and the Defendant are registered as Joint Tenants by way of Certificate of Title registered at Volume 1453 Folio 13 of the Register Book of Titles;*
2. *The Defendant's name was placed on the title on the confidence that she was carrying the Claimant's child. The Defendant breached this confidence for that, the child did not belong to the Claimant. it is uncontradicted that the Defendant engaged in acts of infidelity. The Claimant was entirely responsible for the purchase price and subsequent payments for the property. The Defendant did not offer to assist though she as well aware that the purchase price payments were being made by the Claimant. The property is of sentimental value to the Claimant due to the circumstances in which it was purchased. The Claimant has jointly operated business with the Defendant and was not opposed to the Defendant's operation of a bar and, in fact, supported it. The Defendant however, has been selfish with the proceeds and has displayed a lack of good faith in the circumstances. The parties no longer enjoy a pleasant relationship, and this has been the state of affairs for several years. The Claimant desires to recover his property. The transfer effected jointly between the Claimant and the Defendant was a mistake of fact on the part of the Claimant and a contrivance of the Defendant. The current situation is unjust and inequitable;*

3. *The Defendant has been occupying the subject property since April 2015 without accounting to the Claimant for her use and occupation;*
4. *Pursuant to section 2 of the Partition Act, “an action for partition shall include an action for sale and distribution of the proceeds...”*
5. *Sections 3 and 4 of the Partition Act permit the Court to order the sale of the subject property and distribution of the proceeds instead of a division; and*
6. *An Order of the Honourable Court is necessary to settle the dispute between the parties.*

[3] The parties in or around 2004 or 2005 entered into a relationship. Shortly after this relationship started, the Claimant who is a Commissioned Land Surveyor, offered the Defendant a job to work with him as his assistant. In or about 2008, the parties bought a house and it seems as if that house was made the family home. The parties wed in or around 2012. Prior to getting married the Defendant had a child while she was in the relationship with the Claimant. In or around 2011, the Claimant had completed work for a developer in respect of premises situated at 2 Molynes Road and owing to the fact that the developer was unable to pay him, they agreed that one of the units at the premises was to be transferred to the Claimant as payment. It is the Claimant's position that the value of the subject property was more than the amount owed to him for work done so an agreement was reached wherein he would pay the said developer \$30,000.00 per month for 2 years and thereafter the subject property would be transferred to him.

[4] The monies were paid and the subject property was registered in the names of the Claimant and the Defendant as joint tenants. It is agreed between the parties that the Defendant used the subject property to run a bulk chemical business and eventually started to operate a bar, which was still in the operation at the trial of the matter. In or about 2014, the relationship broke down and the parties got divorced in 2017. Since then, the Defendant has enjoyed the use and benefit of the subject property with no interference from the Claimant, outside of this claim being filed.

- [5] The documents before the Court are rife with claims of infidelity and abuse. However, I wish to note here that it had no bearings on the decision in this judgement. There need not be a post-mortem on the relationship between the parties as they are here regarding the subject property and who is entitled to the beneficial interest in same. I will therefore not embark on discussions regarding those allegations and I decline to make a definitive finding regarding them.

## ISSUE

- [6] The issues for my determination are:
- (a) Whether the Claimant is entitled to the entire beneficial interest in the subject property? and
  - (b) Whether the Claimant is entitled to occupational rent?

The question of the credibility of the parties is also for consideration as the decision will turn primarily on the facts accepted by this Court.

## LAW & ANALYSIS

- A. *Whether the Claimant is entitled to the entire beneficial interest in the subject property? and*

- [7] The applicable section under **Property (Rights of Spouses) Act** (hereinafter called '**PROSA**') is section 14, which deals with the division of property other than the family home. The parties are all agreed that the subject property is not the family home and falls to be considered under this section of **PROSA**. Section 14 states that:

(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 or 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 circumstance 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.*

*[emphasis mine]*

[8] Learned Counsel for the Claimant submitted that the subject property was acquired through no contribution of the Defendant and the Claimant was encouraged to add the Defendant's name to the title of the subject property on the basis that she was the mother of his child. In respect of section 14(2) of **PROSA**, Learned Counsel for the Claimant posited that there is no family home and the marriage could be considered to be of short duration as the parties got married in 2012, separated in 2014 and got divorced in 2017. It was submitted that the only factor which could have gone against the Claimant was the fact of the child, which the Claimant maintains was not his. Learned Counsel for the Claimant further submitted that the following factors should be considered in the Claimant's favour:

- (a) *his obtaining the subject property as a result of the work he had done, the property being his payment for same;*
- (b) *his making a payment of \$30,000.00 per month for two years being the payment of the difference being the value of the work done and cost of the property; and*
- (c) *the Defendant having made no financial contribution.*

[9] Learned Counsel for the Claimant contended that there was no agreement with respect to the ownership and division of the subject property and the Defendant sought to insinuate that there was some agreement but presented no evidence in support. I agree with this submission, as the Defendant did state that the agreement was for the Claimant to keep the home that they had purchased

together in Portmore in the parish of Saint Catherine and the Defendant would keep the subject property.

- [10] On the other hand, Learned Counsel for the Defendant submitted that the principal argument of the Claimant that he provided the outlays to acquire the property and that the property was placed in the name of the Defendant as a mere convenience must be viewed with the scrutiny provided by the relevant provisions of section 14 of **PROSA** and the preponderance of the evidence before the Court. It was further submitted that the unchallenged evidence before the Court is that the subject property is now the only source of income for the Defendant and that she operates a bar from the said property. Learned Counsel for the Defendant further submitted that the relevant evidence is that the Defendant was offered a job by the Claimant and worked in that job alongside the Claimant and the subject property was transferred as payment for work done. The payment therefore was to both parties as the Defendant was never paid directly by the Claimant for the work. Learned Counsel for the Defendant contended that the evidence does not support the Claimant's claim that he is entitled to the entire legal and beneficial interest in the subject property. It was further contended that the Defendant was better able to prove that she is entitled to the subject property more so than the Claimant.
- [11] There is no evidence that it was the intention of the parties for the Defendant to not have interest in the subject property. It is clear, and I accept that, the Claimant's intention was for the Defendant's name to be placed on the title for the subject property due to the fact that she was the mother of his child. However, in my view, that does not mean that the Claimant is automatically entitled to the entire beneficial interest as I am also of the view, that that was not the sole reason the Defendant's name was placed on the title. Having observed the Defendant, I formed the view that he was not completely candid and forthcoming. The parties shared a relationship and even got married, which shows that they, even if things did not work out in the end, were operating as a unit. The parties lived together and worked together and this supports my finding that the introduction of a child to the union was not the sole reason for the name being placed on the title.



- [12] It is not in dispute that the Defendant worked for the Claimant as his assistant and it is not in dispute that he paid her a salary. However, what is not entirely clear is whether the Defendant was paid for the work on the project that resulted in the acquisition of the subject property. The evidence is that the developer was unable to pay for the work that was done and thus the agreement, which is not in dispute, was arrived at. It is therefore reasonable for one to come to the conclusion that the transferring of the subject property in both their names was for payment for work done by both the Claimant and the Defendant.
- [13] The Claimant stated both in his Witness Statement and in cross-examination that he was the only one that paid the \$30,000.00 for the year in accordance with the agreement he had with the developer. The Defendant is disputing this and maintained in cross-examination that both herself and the Claimant were the ones who paid the \$30,000.00. In fact, in re-examination the Defendant further stated that there were times when they, being herself and the Claimant, were having money problems and the Defendant would say that he does not have any money and she would, “...a few times...drop in as she was using the property.” I understood this to mean that there were a few times when she would be the one to pay the \$30,000.00. It was not clear whether she would pay the full amount or even half. Nevertheless, I am willing to accept that she did on a few occasions contribute to the payment of the monthly \$30,000.00. She stated that she had receipts for these payments but she did not take them with her at the trial. However, it is my view that the Claimant was the one who bore the majority of the monthly payments.
- [14] Even though there is no burden of proof on the Defendant in civil matters, case law has shown that the party who has joint ownership of the property and is disputing that the beneficial interest ought to follow the legal interest must bear the burden of proof. (see **Stack v Dowden** [2007] UKHL 17). Therefore, the Defendant in this matter also has a burden of proof. The Defendant is alleging that she is entitled to the entire beneficial interest as since 2010 she has been solely in charge of the disputed property to the exclusion of the Claimant and since the acquisition

of the property, she made the monthly mortgage payments for two (2) years without any assistance from the Claimant. She further alleged that since 2011, when she started to operate the bar, she has been solely responsible for all expenses/outlays related to its operations and to the property. This she says includes payment for utilities, security, land taxes, stock items, salary, maintenance and general upkeep and care. She further stated that between 2020 and 2021, without the Claimant's interest or assistance, she carried out major structural and cosmetic works to the premises and exhibited a copy of an estimate of the costs of the work done on the property.

[15] However, this does not convince me that the Defendant is entitled to the entire beneficial interest in the property. Not only were the structural and cosmetic works done after the Claimant filed in his claim in court, the Defendant did not put forward any cogent evidence which the Court could readily rely on. Having regard to the nature of the case that is before me, merely stating that works were carried out and exhibiting an estimate of the costs does not in my view satisfy the burden of proof that is placed on the Defendant. No receipts, invoices or any proof of payment has been exhibited to the Defendant's affidavits. Similarly, there is no cogent evidence coming from the Claimant to support his assertion that he be entitled to the entire beneficial interest in the subject property.

[16] I have thoroughly considered the factors set out in section 14 (2) of **PROSA**. I have found that neither party was forthcoming in their evidence and that made it difficult to make a determination as to whether or not there was an agreement with respect to the ownership and division of the property. In my view, as was stated earlier, I believe that there was more to it than the Claimant let on about the reasons for putting the Defendant's name on the title of the subject property. It seems to me that he intended for her to benefit in the same capacity as he did, as she was even placed on the title as a joint tenant and given the field that the Claimant works in, he should be and he was aware of what that meant. In cross-examination the Claimant maintained that he alone was the sole contributor in the purchase of the matrimonial property and he demonstrated that he understood that he could put

the Defendant's name on the title even if she was not a part of the sale and that he could even put a child's name on it. It is not in dispute that there is no longer a family home, same having been sold. I will agree with Learned Counsel for the Claimant that the marriage was a short one. However, the evidence shows that they acquired the subject property together. Therefore, this cannot support a finding that the Claimant is entitled to the entire beneficial interest of the subject property.

[17] In considering contributions under section 14 (3) of **PROSA** I was mindful particularly of subsections (a) and (g). There is no evidence that I could properly rely on in respect of the rest of section 14 (3). I took into account the fact that the Claimant was the one who did the work for the developer which resulted in the acquisition of the property, however I was also mindful that the Defendant was his assistant and according to the Claimant's own witness that job is a very important one. I also took into account the fact that the Defendant admitted that she only made a few of the monthly payments towards the subject property, which left the Claimant to make the majority of the payments. The Claimant did not deny the assertions put forward by the Defendant regarding the structural and cosmetic works she has done or any of the expenses she has stated she was solely paying in relation to the subject property. In any event, there was no cogent evidence from the Defendant regarding her allegations. I am minded to give the Claimant majority share in the subject property having regard to the circumstances surrounding the acquisition of the subject property, as they are compelling considerations.

[18] However, that is not the end of my considerations. Section 15 of **PROSA** is also important as it emphasises the legislations stress on fairness. (see **Carlene Miller and Ocean Breeze Suites and Inn Limited v Harold Miller and Ocean Breeze Hotel Limited** [2015] JMCA Civ 42). It states that:

*(1) In any proceedings in respect of the property of the spouses or of either spouse (other than the family home), the Court may make such order as it thinks fit altering the interest of either spouse in the property including-*

- (a) *an order for a settlement of property in substitution for any interest in the property;*
  - (b) *an order requiring either or both spouses to make, for the benefit of either or both spouses, such settlement or transfer of property as the Court determines; or*
  - (c) *an order requiring either or both spouses to make, for the benefit of a relevant child, such settlement or transfer of property as the Court determines.*
- (2) **The Court shall not make an order under subsection (1) unless it is satisfied that it is just and equitable to do so.**
- (3) **Where the court makes an order under subsection (1), the Court shall have regard to-**
- (a) **the effect of the proposed order upon the earning capacity of either spouse;**
  - (b) **the matters referred to in section 14(2) in so far as they are relevant; and**
  - (c) **any other order that has been made under this Act in respect of a spouse.**

[19] There is no evidence of the effect of the proposed order upon the earning capacity of either spouse. I am mindful that the Defendant currently operates a business there and has done so without the assistance and in her words to the “*exclusion*” of the Claimant. I accept the evidence of the Claimant that operation of the bar is the only source of income for her at the moment and same is being operated from the disputed property. This in my mind, should allow for an equal share between the parties. The effect of an order giving the Claimant majority share in the subject property would be detrimental to the Defendant and has no effect on the Claimant as there is no evidence that the Claimant would be negatively affected by an order giving the parties equal share. Even though I am not accepting that the Defendant solely paid all the expenses relating to the subject property, it is interesting to me that there is no evidence from the Claimant that he has paid any expenses in the subject property since the separation. In fact, the Claimant has stated in no uncertain terms that he took no active interest in the subject property. He stated in cross-examination that he doesn’t use the subject property and he has paid no

expenses regarding same as he no longer uses it. The Claimant also made it clear in cross-examination that he would not participate in any expenses relating to the subject property since he is no longer with “*the woman*,” which was in reference to the Defendant.

[20] I see no basis for departing from the equal allocation that the parties intended at the time they acquired the subject property. It is therefore my judgment that it would be just and equitable for the parties to be entitled to one-half share each in the subject property.

B. *Whether the Claimant is entitled to occupational rent?*

[21] The law relating to occupational rent was succinctly dealt with by Evan Brown J in **Mercedes Blake v Andrew Blake** [2016] JMSC Civ 63. He stated that:

[24] *Without an exhaustive review of the cases, it appears to me that the basic proposition is this, where one co-owner goes into sole occupation of jointly owned property the bald fact of occupation does not make him liable to the other co-owners for an occupation rent: **M’Mohan v Burchell**, supra; **Jones v Jones**, supra. That proposition is grounded in the fact that co-owners are together seised of the entire estate and each is entitled to concurrently enjoy possession along with the others: **Bull v Bull**, supra; **Aggie Forbes v Victor Bonnick**, supra.*

[25] *That basic, general proposition is subject to the qualifications which follow. **Firstly, there is a prima facie entitlement to occupation rent by the spouse who left the matrimonial home following a breakdown of the marriage: In re Pavlou. However, if the co-owner who voluntarily left the property would be welcome back and would be in a position to enjoy occupation of the property, equity would not normally require an occupation rent of the occupying co-owner: In re Pavlou.***

[26] *Secondly, some forms of occupation by a co-owner will make him liable to the other co-owners for an occupation rent for example, a contract making occupation subject to the payment of rent: **M’Mohan v Burchell**, supra.*

[27] ***Thirdly, an occupation rent is payable if the claiming co-owner was excluded from the property by way of an ‘ouster’:** **Jones v Jones**, supra; **Dennis v McDonald**, supra. Actual or constructive exclusion of a co-owner is the typical case in which an occupation*

rent has been charged: **Brenda Joyce Byford v Butler** [2003] EWHC 1276 (Ch) (**Byford v Butler**).

[28] Fourthly, an occupation rent is due from the occupying co-owner where he lets part of the property: **Jones v Jones**, *supra*.

[29] Fifthly, a court of equity will order an enquiry and payment of an occupation rent in the absence of an ouster where it is necessary to do equity between the parties: *In re Pavlou (a bankrupt)* [1993] 1 WLR 1046, 1050 (*In re Pavlou*). Put another way, in declaring an occupation rent chargeable the court is “endeavouring to do broad justice or equity as between co-owners”: **Byford v Butler**, *supra*. This is particularly so where an occupying spouse wishes to be credited for solely amortizing the mortgage debt on the property without being chargeable for his or her sole use of the property. (See, for example, **Suttill v Graham** [1977] 1 WLR 819.

[30] **So then, a claim may be made against a co-owner in sole occupation, as in the case at bar, in the absence of his exclusion or ouster from the property. Although ouster from the subject property is the typical case, it appears that the overarching endeavour of the court in levying an occupation rent is to do justice between the co-owners.**

**[emphasis mine]**

[22] Even though the Defendant stated in her affidavit that she enjoyed the use of the subject property to the exclusion of the Claimant, that in my view, does not establish exclusion or ouster. Especially when considered in light of the evidence from the Claimant who stated that he left and it was the Defendant who has been enjoying the subject property exclusively since April 2015. Even though a claim may be made in the absence of exclusion or ouster from the property, there is the overarching principle to do justice between the co-owners. Having given up occupation voluntarily, it cannot be said that the Claimant would not be welcomed back into the subject property. All that was established, in my view, was bare occupation of the subject property by the Defendant and case law is clear that bare occupation by one co-owner does not make the other co-owner liable to pay an occupation rent. There is simply just no evidence that there was ouster or exclusion and frankly no conversation as to whether or not the Claimant could go to the premises as he liked. Nothing was put forward in cross-examination regarding occupation rent whether to the Claimant or to the Defendant. There is also no evidence that the Defendant let any part of the subject property and was

in receipt of any rent from the said property. In light of those circumstances, I find that the Claimant is not entitled to occupation rent.

## **CONCLUSION**

[23] Even though there is no equal presumption in respect of other property under **PROSA**, there is a presumption that parties who hold property jointly are both entitled to equal ownership. Both the Claimant and the Defendant are alleging that they ought to be entitled to the entire beneficial interest in the subject property. Notwithstanding that the Claimant is the one who commenced proceedings, both the Claimant and the Defendant carry a burden of proof. There is a burden of proof on both parties to put forward cogent evidence to convince this Court that the presumption should be discharged. However, both parties failed to put forward cogent evidence and therefore failed to convince this Court that they ought to have the entire beneficial interest in the subject property. Based on the evidence before me, it is my judgment that the joint tenancy be severed and both parties be entitled to an equal share in the subject property.

## **ORDERS & DISPOSITION**

[24] Having regard to the forgoing these are my Orders:

- (1) It is hereby declared that the joint tenancy is severed.
- (2) The Claimant and the Defendant are entitled each to a one-half share in all that parcel of land part of Duckett's Pen now called No. 2 Molyne's Road being the Strata Lot numbered 16 on Strata Plan 2500 together with one undivided 2/103<sup>rd</sup> share and interest in the common property therein and being all the land comprised in Certificate of Title registered at Volume 1453 Folio 13 of the Register Book of Titles (hereinafter referred to as "the subject property").
- (3) The said property is to be valued by a reputable Valuator to be agreed between the parties within sixty (60) days hereof. Should the parties fail to

agree on a Valuator, the Registrar of the Supreme Court shall be empowered to choose a Valuator within sixty (60) days of the date of this Order.

- (4) The cost of the Valuation Report is to be borne equally by the Claimant and the Defendant.
- (5) Upon a determination of the market value of the said property, the Defendant has the first option to purchase the Claimant's share in the subject property within ninety (90) days after Notice of Valuation has been given.
- (6) Should the Defendant fail to exercise the first option to purchase pursuant to Order number 5, then the Claimant shall be at liberty to purchase the Defendant's interest in the subject property.
- (7) Should the Claimant fail to exercise the option to purchase pursuant to Order number 6 within ninety (90) days of expiry of the Defendant's option to purchase, then the subject property may be sold on the open market with the proceeds being divided equally between the parties.
- (8) If either party is unable or unwilling to sign, then the Registrar of the Supreme Court is hereby authorized to sign any documents necessary to give effect to the Orders made herein.
- (9) Each party to bear their own costs.
- (10) Claimant's Attorneys-at-Law to prepare, file and serve Orders made herein.