



[2021] JMSC Civ 15

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

**IN THE CIVIL DIVISION**

**CLAIM NO. SU 2019 CV 00538**

<b>BETWEEN</b>	<b>ATOYA NEWMAN</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>DUWAYNE HOWELL</b>	<b>DEFENDANT</b>

**IN CHAMBERS**

**Mr. Ruel Woolcock, Attorney-at-Law for the Claimant.**

**Mr. Kevin Williams instructed by Grant, Stewart, Phillips & Co. for the Defendant.**

**Heard: 3<sup>rd</sup> December, 2020 and 5<sup>th</sup> February, 2021.**

**Matrimonial Property - Property Rights of Spouses Act - Spouses acquired home as joint tenants prior to marriage - Application to vary equal share rule - Marriage of short duration - Considerations - Unavailability of commercial interest for sums paid towards mortgage by one party after date of separation.**

**C. BARNABY, J**

**INTRODUCTION AND SUMMARY CONCLUSION**

**[1]** The Defendant, who is thirteen (13) years the Claimant's senior, met her whilst she was a teenager and student. They entered into a romantic relationship shortly after meeting and commenced living together in a house located in Portmore (hereinafter called "the Portmore House"), which was owned exclusively by the Defendant. The Defendant sold that property and the parties removed to a rental in Kingston. On the 9<sup>th</sup> December 2013, they acquired 23 Moreton Park Terrace in the Parish of St. Andrew which is registered at Volume 956 Folio 69 of the Register Book of Titles (hereinafter called "the Property"). They are registered as tenants in common in equal shares. Mortgages were

entered into by the Claimant and the Defendant with the National Housing Trust (NHT) and the National Commercial Bank (NCB) respectively, to cover the purchase price in part. Whether the Claimant contributed to the shortfall after application of the mortgage amounts is disputed, but it is common evidence that the Defendant applied proceeds from the sale of the Portmore House to the acquisition of the Property. Approximately three and a half years after acquiring the Property, the parties married on the 24<sup>th</sup> June 2017. On both accounts, the marriage was short. The parties have one minor child.

- [2] Consequent on the demise of the marriage, the Claimant filed a claim pursuant to the **Property Rights of Spouses Act (PROSA)**, seeking a declaration that she and the Defendant are each entitled to a fifty percent (50%) share in the Property. She also seeks other consequential relief which would enable her to realise the value of her share in the said home. The Defendant prays for a refusal of the claim, a declaration that he is entitled to an eighty-five percent (85%) interest in the Property; and in the alternative, that that the Claimant's share and interest be sold to him; that all amounts paid by him to the NHT be refunded with interest at the commercial lending rate as established by the Bank of Jamaica; and that the parties' declared shares and interests be made subject to the payment of mortgages to the NHT and NCB.
- [3] The claim came on for trial on the 3<sup>rd</sup> December 2020 where both parties were in attendance and subjected to cross examination. The parties were permitted to file and exchange written submissions and authorities by the 9<sup>th</sup> December 2020 and any responses to authorities by the 14<sup>th</sup> December 2020. Both parties duly filed their submissions and authorities as ordered. Judgment was reserved to today's date.
- [4] Having considered the applicable law, the evidence and the submissions of the parties, I find that Claimant should succeed in her claim for a declaration that she and the Defendant are equally entitled to the legal and beneficial interest in the Property which was the family home. Although the marriage between the parties was a marriage of short duration and the Claimant's financial contribution to acquisition of the Property was significantly less than the Defendant's, having regard to all the circumstances of the case, including the

Defendant's conduct in contributing to the breakdown of the marriage, it would not be unfair or unjust to apply the equal share rule to its division. The reasons for these conclusions are set out below.

## REASONS

### Date of separation without reasonable likelihood of reconciliation

[5] A spouse is permitted to apply for a division of property pursuant to section 13 (1) of the **PROSA**,

*(a) on the grant of a decree of dissolution of a marriage or termination of cohabitation; or*

*(b) on the grant of a decree of nullity of marriage; or*

*(c) where a husband and wife have separated and there is no reasonable likelihood of reconciliation; or*

*(d) where one spouse is endangering the property or seriously diminishing its value, by gross mismanagement or by wilful or reckless dissipation of property or earnings.*

[6] Where an application is made on the basis that any event prescribed at sections 13 (1) (a) to (c) exists, it is to be done within twelve (12) months of the dissolution or annulment of marriage, separation, termination of cohabitation, or such longer period which the Court allows after hearing the applicant: section 13 (2) of the **PROSA**. Where separation is the event relied upon by an applicant, it is my view that it is separation without any reasonable likelihood of cohabitation which is relevant in computing time for the making of an application.

[7] The Claimant applied for a division of the Property under the Act by her Fixed Date Claim Form filed on the 14<sup>th</sup> February 2019. On her evidence, she “*permanently*” separated from the Defendant at or about the end of February 2018. This is disputed by the Defendant in his affidavit in response, where it is averred that the parties separated in December 2017.

[8] While it is the Claimant's evidence that she resolved not to continue in a relationship with the Defendant after a quarrel in July 2017, it was also disclosed by her during cross examination that they continued to reside at the premises as man and wife after that date. The Defendant, consistent with the date of separation in his affidavit evidence, stated in cross examination, that all marital relations ceased in December 2017. This notwithstanding, he held out hope for a reconciliation, including through prayer and counselling but stated that the Claimant had not demonstrated an interest. He admitted that the breakdown of the marriage was ongoing between December 2017 and early 2018.

[9] While the efforts at reconciliation ultimately proved unsuccessful, I have considered that the parties had broken up for almost a year on a previous occasion; were able to reconcile and go on to formally solidify their union by marriage; and had continued to live as man and wife even after their quarrel in July 2017. It was therefore not unreasonable that the Defendant had harboured the hope of reconciliation to which he admitted in cross examination. The Claimant, for her part, has not sought an extension of the time within which to make an application for division of the Property having expressed her own view that they "*permanently*" separated at or about the end of February 2018. In these premises, I find, on a balance of probabilities that the parties separated without any reasonable prospect of reconciliation in early 2018, and by the 28<sup>th</sup> February of that year. The claim was therefore filed within the limitation period under the **PROSA**.

*Whether it would be unreasonable or unjust to apply the equal share rule*

[10] There is no dispute that the Property was the family home of the parties. Pursuant to section 6 of the **PROSA**, each party is entitled to an equal share of the beneficial interest in the family home however the legal interest might be held. This rule can be displaced however, upon the application of an interested party; and where the court is satisfied that it would be unreasonable or unjust for the equal share rule to apply, having regard to the circumstances of the case. This is in accordance with section 7 of the **PROSA**. The Defendant has made such an application in claiming the relief he seeks in defence of the claim.

[11] It is contended on behalf of the Defendant that it would be unreasonable and unjust for the equal share rule to be applied in the following circumstances, which were summarised and adumbrated at paragraph 55 of his written submissions thus.

1. *A marriage lasting mere months (one (1) month at its shortest and eight (8) months at its longest) for there to be a declaration of 50/50 in this property;*
2. *There is no evidence as to anything unique in the relationship between the Claimant and the Defendant as to revert to a 50/50 sharing of the property, in circumstances where the duration of the marriage has provided a gate-opener under section 7 of PROSA. No evidence is before the court as to show that the Claimant, for example, gave up her “life” to take care of the household and children and by so doing has allowed for the advancement of the Defendant’s financial strength vis-à-vis her;*
3. *There is no evidence of the Claimant having given up her future to take care of the home; raising children while the Defendant goes out to work and earn. In fact, by the Claimant’s own evidence she started with CXC studies when the parties met and now has “tertiary” education.*
4. *The evidence is clear that the Defendant’s direct financial input into the acquisition of the property came from the sale of his Portmore property, a property which he solely owned some ten (10) years prior to meeting the Claimant.*

[12] It is further stated at paragraph 56 that it “...*would be unjust and unreasonable in these circumstances... for the Claimant to benefit from a windfall that would come from a 50/50 declaration and the Defendant be deprived of his investment. There is nothing unique either in the relationship between the parties and/or the circumstances of this case and/or the evidence led before the court to allow for the 50/50 rule to be applied.*”

[13] I find myself unable to agree with these submissions.

[14] So far as is relevant, section 7 of the **PROSA** provides,

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 thinks relevant including the following –*

(a) *that the family home was inherited by one spouse;*

(b) *that the family home was already owned by one spouse at the time of the marriage or the beginning of cohabitation;*

(c) *that the marriage is of short duration.*

(2) ...

[15] Having earlier concluded that the parties separated without any reasonable likelihood of reconciliation at the end of February 2018, their marriage, solemnized on the 24<sup>th</sup> June 2017 lasted some eight (8) months. It was therefore objectively and admittedly a marriage of short duration. While this fact brings the possibility of displacement of the equal share into issue, that which is being prayed by the Defendant on his application is only permitted where departure is warranted on production of cogent evidence: **Carol Stewart v Lauriston Stewart** [2013] JMCA Civ 47 [31].

[16] The effect of a section 7 consideration, such as the short duration of the marriage, was aptly stated by Brooks JA (as he then was) in **Stewart** in this way.

*[34] ...[T]he 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...***

*[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”.***

**[Emphasis added]**

- [17] The short duration of the marriage having opened up a gateway for displacement of the equal share rule, I am permitted to consider other elements of the parties’ relationship in determining whether the equal share rule should be adjusted and now do so.

#### *Contribution to Family Life*

- [18] It was the Defendant’s submission that there was no evidence of the Claimant having given up her “life” to take care of the household and children to allow for the Defendant’s advancement at the expense of her own to warrant an application of the equal share rule. I do not find this submission to be

meritorious. While one spouse's contribution to family life in the manner expressed has correctly been considered in determining the division of property between spouses on the termination of their relationship in other cases, I am of the view that it is unnecessarily restrictive to view family contribution only through those lenses.

- [19] The marriage between the parties was short but they have a shared history before then, which is not insignificant. I believe that history ought properly to be considered in determining whether it is just or reasonable to depart from the equal share rule where contribution to family life is put in issue. This is so even where the period of cohabitation before marriage would not itself give rise to a spousal relationship as contemplated by the **PROSA**.
- [20] The Defendant is significantly older than the Claimant, who was just a teenager when they met. At the time the Defendant was relatively well established with a job and his own house and the Claimant was a student pursuing Caribbean Examination Counsel (CXC) certification. Shortly after meeting, they began a romantic relationship and started cohabiting, which the Defendant dates to the year 2012. They eventually had a child, who, on the date the claim was filed in February 2019, was three (3) years old. Except that the parties separated for about a year in 2016 and the Claimant after their quarrel in July 2017 had indicated she would no longer cook, wash or purchase food for the Defendant, there is no evidence that the Claimant did not contribute to family life while the relationship existed.
- [21] In any event, if 2012 is to be accepted as the year in which the parties met and started a romantic relationship, it was not long after that they came together to purchase their family home in 2013. This was after the Defendant sold the Portmore House which was solely owned by him and they had moved into a rental. While the Claimant may not have had the financial resources of the Defendant, which is understandable given the chasm in age and their respective stages in life at the time of meeting, she offered up that which she had to assist with the acquisition of the home, her NHT benefit. She undertook to pay the mortgage for that benefit and did so up October 2018. This is not an insignificant contribution by a very young woman towards family life,



especially when one has regard to the Defendant's assertions that she had no money and could not contribute to the deposit and other initial costs associated with the purchase of the Property. The home is where the parties lived together before and during the marriage and in which they expanded their family.

- [22] While the contributions of one spouse in homemaking and child rearing while the other goes out to work and earn is certainly something to consider in an appropriate case, the application of the equal share does not depend upon it. In any event, I do not believe the Claimant's contribution to family life during the course of the relationship was insignificant because she was not required to give up her life for homemaking and child rearing to facilitate the Defendant's financial advancement or because she chose to pursue an education. It should be regarded as a credit to persons in a relationship that they encourage and support the ambitions of each other, not only with a view to optimizing individual potential but that of the partnership.

*Common Intention and Financial Contribution*

- [23] It is submitted on behalf of the Defendant that if the common intention of the parties as to their beneficial interest in the Property is capable of being clearly determined, it must give way to the fact that the marriage was of short duration and the Claimant's financial contribution was less than 25% of the cost of its acquisition. I find myself unable to accept these submissions.
- [24] While reliance on common law presumptions and equitable principles are irrelevant to transactions between spouses which are covered by the **PROSA**, such as the division of the family home, the parties' common intention might be a relevant question of fact. The court is therefore permitted to have regard to the parties' common intention as a starting point, in showing what their interests were, without resort to those presumptions and principles. This was recognised by Edwards JA (Ag) (as she then was), in delivering the judgment of the court in **Suzette Sam v Quentin Sam** [2018] JMCA Civ 15 [131-133].
- [25] During cross examination, the Defendant denied that there was a common intention for the parties to have an equal interest in the property. The intention, according to him, was that each party would obtain the share in the Property

which corresponded with their financial contribution to its acquisition. This position is not supported by the other evidence in the proceedings.

- [26]** The property is registered in the names of the Claimant and the Defendant as tenants in common, holding in equal shares. Before the transaction was completed, the Defendant was aware that each would share equally in the Property and their interest registered accordingly. He nevertheless allowed the matter to proceed to completion without objection on account of the paper work said to be involved in having his intention reflected. He did not discuss the matter with the Claimant whose interest would also have been disturbed.
- [27]** As to financial contribution, the Defendant has produced documentary evidence to show that he bore the substantial burden in acquiring the property, including his use of proceeds of sale from the Portmore House to cover the short fall after application of the NCB and NHT mortgages. The Claimant, other than her say so, did not produce any evidence of financial contributions by her to the acquisition of the property except the she obtained a mortgage from the NHT. This is not surprising as the Defendant has always been the most established spouse financially. I accept the Defendant's evidence that save for her NHT contributions, the Claimant made no other financial contribution to the purchase of the Property.
- [28]** The Claimant's financial position was known and accepted by the Defendant when the relationship started and on his evidence, continued up to the acquisition of the Property. As stated previously, the Claimant offered that which she was able to, having regard to her weaker financial position. Although there was some hesitation initially, the Defendant admitted in cross examination that when he and the Claimant purchased the property he was in love with her. I do not believe it mattered to the Defendant then that the Claimant was contributing less than he was to the Property's acquisition.
- [29]** Additionally, the parties were both represented by a firm of Attorneys-at-Law in completing the purchase of the Property. I have not been given any reason which would cause me to doubt that the interest which the parties intended to have in the Property was not accurately reflected on the certificate of title; or

that their legal interest was not also reflective of their beneficial interest, inequality in financial contributions notwithstanding.

[30] As observed by Brooks JA (as he then was), it was not the intent of the legislature that issues of contribution should bedevil the family home. I also bear in mind that underpinning the equal share rule is a recognition that marriage and spousal relationships within the meaning of the **PROSA** are partnerships in which the parties have committed to sharing their lives, with the expectation that their relationship would last. This is done through solemnization by marriage or cohabitation in prescribed circumstances.

[31] I am acutely aware that the Defendant used monies from sale of the Portmore House which had been acquired solely by him long before he met the Claimant to acquire the Property; and that there is no evidence that either party currently owns property other than the family home.

[32] On the evidence before me however, it appears that for the years they were together, both parties sought to build a life together, notwithstanding their respective financial positions and stages of life. In that pursuit they purchased the Property and had their legal interest registered in equal shares as tenants in common, welcomed a child, and thereafter solidified the union with marriage, even after a period of separation. I form the view that all of this was done with the expectation that their relationship and the marriage would last.

[33] It is in all these circumstances that I find that the parties intended to hold the legal and beneficial interest in the Property equally, even though their financial contributions to its acquisition was unequal. This is the starting point.

*Spousal behaviour and marital breakdown*

[34] It was nevertheless submitted on behalf of the Defendant, that if there was a common intention that the parties' beneficial interest in the Property should be equal, having regard to the disparity in financial contribution to its acquisition and the short duration of the marriage, there should be a departure from the equal share rule. Having already addressed common intention and contribution

in the preceding paragraphs, the short duration of the marriage, in particular, the reasons for its demise, now come on for consideration.

- [35] On the Defendant's own evidence, the parties commenced cohabiting at the Portmore House in 2012. The particular date has not been stated but they continued to cohabit up to 2016 when the Claimant first removed from the Property. It is the Claimant's evidence that while she was very happy about their future together on their move to the Property, the Defendant became physically and verbally abusive. She said the abuse began with verbal insults in or about July or August of 2014 when he accused her of being unfaithful and referred to her in derogatory terms, including that which is synonymous with prostitution. She said the insults became routine and that they escalated into physical abuse and that the Defendant on more than one occasion had choked her with his bare hands. That prompted her move in 2016 as she felt it necessary to preserve her own life.
- [36] The Defendant denies the allegations in his affidavit in response and said he never referred to the Claimant in derogatory terms or choked her. He averred that at the material time he did speak to the Claimant in a stern manner because she was "*not progressing*". He did not respond specifically to the allegation that he had accused the Claimant of being unfaithful and the Claimant's "failure to progress" was not particularised.
- [37] The Defendant nevertheless admitted that when the Claimant removed from the Property in 2016 he contacted her incessantly and had begged her to return home. The Claimant eventually relented and returned shortly before their marriage in June 2017. The Defendant she said had charmed her with promises of marriage and the peaceful raising of their family but had failed to follow through when she returned.
- [38] It is the Claimant's further evidence that at or about the end of July 2017, the Defendant again started to abuse her and had choked her so badly, causing her to black out. It was then that she decided that she would not reconcile with the Defendant. That notwithstanding, she remained at the Property into the following year.

- [39]** The Defendant denies this specific allegation of abuse. It was his evidence that the Claimant went through his phone and saw messages from 2016 when she had removed from the house and while they were broken up. On cross examination, the Defendant disclosed that these messages were between him and another woman but he was reluctant to and did not state the nature of the messages. The Claimant told him she would no longer cook or wash his clothes and advised that going forward he should buy his own food. On the Defendant's evidence however, it was not until December 2017 that all marital relations ceased between them.
- [40]** On cross examination, the Defendant admitted that during the course of their relationship he thought the Claimant was being unfaithful on account that she would be brought home in different vehicles by different men and would say that they were taxis. She had also suddenly started attending the gym and would get home at after ten o'clock. He had not enquired of the Claimant as to her whereabouts or wellbeing when she came home at those times. These observations by the Defendant, even if true, are not proof that the Claimant was unfaithful to the Defendant whilst the relationship subsisted.
- [41]** The Defendant also admitted that the thought of the Claimant being unfaithful was upsetting to him but that he had not insulted or abused her in any way as a result. Having seen and heard the Defendant, I do not believe he is prone to passivity and I find it very difficult to accept that he allowed the Claimant's suspected unfaithfulness to pass without remark, or that any response would have been charitable and limited to a stern talk about her "failure to progress".
- [42]** Additionally, the Defendant admitted that in divorce proceedings, the Claimant, as she does here, attributes the breakdown of their marriage to his physical and verbal abuse of her. He has not challenged the claims of abuse in the proceedings for the dissolution of the marriage but does so here and labels them lies. In respect of the abuse claims in the divorce proceedings he said he did not challenge them on account that no one would go against the Claimant. I do not accept that the Defendant harboured any such misgiving as he has not been shy in vehemently denying the allegations in these proceedings, not knowing whether or not he or the Claimant would be believed.

[43] I accept the Claimant's evidence when she says that the marriage broke down because the Defendant was abusive towards her including in the latter part of July 2017 when she resolved not to reconcile with him. While the marriage was objectively a short one, which fact opens the gate for displacement of the equal share rule, I find that the Defendant's conduct contributed significantly to the early demise of the marriage.

[44] In all the foregoing premises, it does not appear to me to be either unreasonable or unjust that the equal share rule should apply to the family home even though the marriage was one of short duration. Accordingly, I find that the Claimant and the Defendant are each entitled to a 50% share in the Property which was the family home, which shares are determined as at the 28<sup>th</sup> February 2018, in accordance with section 12(2) of the **PROSA**.

*Mortgage payments since separation and claim for commercial interest*

[45] Since the parties' separation, the Claimant has only made payment towards the mortgage she obtained from the NHT up to the 1<sup>st</sup> October 2018. The Defendant has therefore been solely responsible for payment of the NCB mortgage since the date of the parties' separation on 28<sup>th</sup> February 2018, and the NHT mortgage after the Claimant's last payment on the 1<sup>st</sup> October 2018.

[46] In respect of the payments made solely by the Defendant towards the NHT mortgage in particular, he is asking that those sums be refunded to him with interest at the commercial lending rate established by the Bank of Jamaica. While the Claimant must share equally in the mortgage burden which has been honoured solely by the Defendant post separation, I do not believe an award of commercial interests would be appropriate.

[47] In response to the Defendant's claim for commercial interest, it is submitted on behalf of the Claimant that such an award should not be made as the Defendant, since separation, has used and occupied the Property solely and has kept all rental proceeds for himself. Enquiry in respect of possible occupational rent only arose during the cross examination of the Defendant and was not one of the relief sought by the Claimant. So while I agree with Counsel

for the Claimant that commercial interest should not be awarded to the Defendant, it is for an entirely different reason than that urged.

**[48]** Commercial interest is considered appropriate where the parties' relationship is intrinsically commercial. The Claimant and Defendant were spouses and are parents to a young child. They purchased property together but the marriage has broken down and the Claimant has removed from the Property. It is in these circumstances that the Claimant has brought the claim which would enable the parties to realise the share they each have in the family home. The relationship between them is not commercial. A like observation would be made in respect of any claim for commercial interest for any sum paid by either party towards either of the mortgages since the date of separation.

**[49]** Quite apart from claims for commercial interest, the evidence is that the parties undertook to each repay the mortgages taken out by them to assist with the acquisition of the Property, and were doing so while their relationship subsisted. The marriage has ended and the parties' share in the family home is to be determined as at the date of separation, which change in circumstance ought to be reflected in the responsibilities they have towards the discharge of the mortgages. Each party is, in my view, equally responsible for the payment of the cumulative mortgage sums which became due and payable to NCB and NHT on the Property after the 28<sup>th</sup> February 2018, and I so find. In approaching the matter in this way, each party bears responsibility for the mortgages on the family home commensurate with their determined share.

## **ORDER**

**[50]** It is ordered as follows:

1. The Claimant and the Defendant are equally entitled to the legal and beneficial interest in 23 Moreton-Park Terrace in the Parish of Saint Andrew which is now registered at Volume 956 Folio 69 of the Register Book of Titles (the Property).

2. Within thirty (30) days from the date of this Order, the Property shall be valued by D.C. Tavares & Finson Realty limited and the cost of the valuation report borne equally by the parties.
3. Subject to the existing mortgages over the Property, the Defendant shall have the first option to purchase the Claimant's 50% share in the Property and shall, in that regard, execute a written agreement for sale with the Claimant, within (14) days from the date of delivery of a copy of the valuation report to the Defendant or his Attorneys-at-Law, failing which the land shall be sold on the open market.
4. If the Defendant executes a written agreement for sale within the time set out in Order 3 herein, but fails to complete the purchase of the Claimant's 50% share in the Property within a period of One Hundred and Twenty (120) days from the date of the said agreement; and where such failure is not attributable to the Claimant, the said agreement for sale shall be cancelled and be of no further effect and the said land shall after the cancellation be sold on the open market.
5. The Claimant's Attorneys-at-Law shall have the carriage of sale in the event of the sale of the Property on the open market or the sale of the Claimant's interest therein to the Defendant.

In the event of a sale of the Property on the open market, the net proceeds of the sale shall be divided equally between the parties, taking into account the cumulative mortgage payments which became due and payable and which were in fact paid by either or both parties after the 28<sup>th</sup> February 2018, which cumulative mortgage payments are to be borne equally by parties.

6. To give effect to the completion of the sale of the Property, the Registrar of the Supreme Court is authorized to sign any Agreement for Sale, Instrument of Transfer, Consent, Authorization or any other documents (s) on behalf of either party if that party fails, neglects and or refuses to sign same within seven (7) days of being requested in writing, to do so.



7. The Defendant's claim for commercial interest on the sums paid by him towards the NHT mortgage after the 1<sup>st</sup> October 2018 is refused.
8. Each party is to bear their own costs.
9. Liberty to apply.

**Carole Barnaby  
Puisne Judge**