



[2022] JMSC Civ. 196

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2020CV04246

BETWEEN	CEDRIC PILGRIM	CLAIMANT
AND	ANNMARIE WYNTER	DEFENDANT

IN CHAMBERS

Mr Nicholas Chambers and Miss Krystle Ann Fleming instructed by Legal Chambers for the claimant.

Mr Courtney Rowe and Miss Jodi Kay Anderson instructed by Jacob's Law for the defendant.

Heard March 7,8 and 9, 2022 and November 4, 2022

Whether claimant a common law spouse – Whether claimant has acquired an interest in disputed property – Whether a constructive trust arises in favour of the claimant.

PETTIGREW-COLLINS; J

INTRODUCTION

[1] The claimant and the defendant entered into a sexual relation in or around July 2009. The defendant's husband died in March 2011. The claimant moved into the defendant's residence in February 2012 and they lived as partners. The claimant says he is entitled to a fifty percent interest in this house located at Seaview Road, Hart Hill, Buff Bay in the parish of Portland (hereinafter referred to as the disputed property or the property) because the defendant became his common law spouse

and the residence is the family home within the meaning of the Property (Rights of Spouses) Act (PROSA). In the alternative, he claims an interest in the house on equitable grounds, on the basis that he expended monies towards the improvement of the property in circumstances where he relied upon the defendant's assurances that he would derive an interest in the property and so he acted to his detriment in expending those sums. The defendant denies that she was ever involved in a common law relationship with the claimant and says that the relationship was merely a sexual one. She also denies that he expended sums towards the improvement of the property. She says that when she met him, he had been deported and had nothing. The parties do not only disagree as to the nature of the relationship but also as to how long it lasted. Although each disputes the length of the period during which the claimant lived away from the property on an occasion when he moved out, it is not disputed that a relationship subsisted during the period.

THE CLAIM

- [2] The claimant, by way of Fixed Date Claim Form dated November 4, 2020 seeks the following:
- i. A Declaration that the claimant is a spouse under and in accordance with the Property (Rights of Spouses) Act and alternatively in common law and equity; and
 - ii. A Declaration that the claimant is entitled to one-half beneficial interest in All that parcel of land part of HART HILL in the parish of PORTLAND containing by survey one rood twenty-five perches and Tenths of a Perch and being the land comprised in Certificate of Title registered at Volume 1188 Folio 967 of the Register Book of Titles.
 - iii. The claimant also sought orders for his share of the property to be sold to the defendant or in the alternative on the open market and for

the net proceeds of the sale to be divided equally between them. He also sought orders consequential to the sale of the property.

THE CLAIMANT'S CASE

Evidence of Cedric Pilgrim

- [3] The claimant asserts that he was in a common law relationship with the defendant since July 27, 2009 and that they have been cohabiting at the defendant's residence since February 2012. He stated that from 2009 to 2012, the defendant would visit him and stay over at his family house in Hope Bay, Cooling Spring in the parish of Portland and that during her visits she would bring him food. However, he said that during this period he did not visit the defendant at the property because he found out that her husband was still alive.
- [4] The claimant averred that he used to give the defendant a stipend. He also said that in January 2012, he secured permanent employment at the National Solid Waste Management Authority (NSWMA).
- [5] The claimant's evidence was also that in 2012, the defendant asked him to move in with her, since her husband had died and she was single and living alone. When he began residing at the property, he said, he slept in the master bedroom with the defendant. In his second affidavit, he stated that when he moved in, he brought several pieces of furniture. He said they also purchased items of furniture using their pooled funds. He gave further evidence that he slept on the upper floor with the defendant every night after they moved upstairs.
- [6] He also said that the defendant's daughter Georgette Matthews and the defendant's grandson resided at the premises and that her other children would visit periodically. He said he had a good relationship with all the defendant's children.
- [7] In his affidavit, the claimant said he solely paid the monthly cable bill which was registered in his and Georgette Matthews' name. He exhibited cable bills as proof

of this. The other bills, he said, were in the defendant's name, however, he averred that he contributed to the payment of those bills intermittently.

[8] The claimant further stated that he and the defendant discussed repairing the roof, and adding a studio for rental income. They also decided to construct a kitchen to compliment a two-bedroom apartment that was a part of the house and to rent that portion in order to improve their finances. This he said was in fact done and that section of the house was thereafter tenanted. He pointed out that he assisted with construction of the kitchen and the hiring of workmen.

[9] He deponed that the defendant secured several loans to include one from Worldnet in 2013 which he guaranteed, and assisted to repay by giving the money to the defendant to make monthly payments. He said he guaranteed the loan because the defendant's pension of 43 pounds was inadequate to secure the loan. He exhibited a letter from Worldnet Investment Co. Ltd which he claims confirms that he was a co-applicant for the defendant on several loans from the company.

[10] Thereafter, he said, the parties agreed that they would secure another loan to repair defects at the property including changing the windows. According to him, all the spaces were addressed except one of the rooms.

[11] In late 2013, early 2014, he said he and the defendant agreed to construct a two-bedroom apartment on the deck and to tenant the entire ground floor. He highlighted that the defendant secured a loan from the National Housing Trust (NHT) to construct the two-bedroom apartment, however, the funds were exhausted before construction was completed. Further, he said the defendant secured a loan from Unimart to complete the construction and that he took several loans to assist in satisfying the NHT debt.

[12] He further averred that he and the defendant would argue about the loans because he gave the defendant money to repay loans that he did not know about. The claimant also stated that he informed the defendant in 2015 not to borrow any additional money and stated that he used the money from his work and a partner

draw to complete the construction. Further, that one-bedroom, a kitchen and a bathroom were completed in 2017.

[13] In his affidavit in response, the claimant exhibited receipts showing payments made to Ur Monie Mart Financial Services in 2016 and 2017. He also exhibited receipts of partner draw received in 2019. He stated in cross examination that he would give the money to the defendant to make the payments.

[14] According to the claimant, long after the completion of the construction, he has had to repay loans acquired by the defendant on his account at Ur Monie Mart Financial Services. He exhibited receipts showing payment made in his name from the year 2016 to 2020.

[15] The claimant in his affidavit informed the court that in July 2017, the defendant served him with a Notice to Quit which he ignored as an emotional ploy. He said, the parties continued to sleep together as "*a loving spouse*". He denied in cross examination that any notice was served on him by the defendant in July of 2017

[16] He further stated, that in 2018, the defendant decided to add another bedroom on the second floor which is still incomplete. In December 2019, the claimant said, the defendant started to stay away from the property, ceased sleeping in the same bedroom with him and began to be disrespectful when he told her he would not assist in repaying another loan which she obtained from Jamaica National Bank. He said after the defendant gave him notice on or about February 6, 2020 she changed the locks to upstairs and he could not gain access to upstairs anymore so he went back to sleeping downstairs.

[17] He further informed the court that the defendant has been harassing him. He said she sent unknown men to knock off the lock to his room and destroyed his stove. Also, that servants or agents of the defendant constructed a wall which has blocked his access to the remainder of the house. When asked in cross examination about the timing of that incident, he eventually said that it happened on February 10, 2020.

- [18] The claimant asserts that the relationship between the parties was completely over in January 2020 and they lived separate and apart at the property. He expressed that he has no other home as he spent all his earnings expanding and improving the property. He said he believed he was doing so to secure extra income for the purposes of their retirement. Further, that he will be prejudiced if he does not recover the money spent expanding and improving the property.
- [19] In his affidavit in response to the defendant, the claimant emphasized that when his sister and father died in 2010 and 2011 respectively, the defendant attended their funeral and provided moral and emotional strength. Also, that she was treated as a member of the family.
- [20] The claimant denied that he was hired by the defendant and her husband as a gardener and that he met the defendant's husband and was paid \$5000 fortnightly.
- [21] He agreed that he moved away from the disputed property and lived in St Margaret's Bay. He said that this was in 2016. He said rental of \$5000 was paid for this place and that he gave the defendant the money to pay the rent. He explained that he moved to St. Margaret's Bay because he and the defendant were having issues due to the defendant's extensive borrowing. He informed the court that he resided in St. Margaret's Bay for six months and that the defendant was there with him for the six months and she had a key. That after the six months he returned to the disputed property.
- [22] He divulged that when he received his pay from NSWMA, the defendant would withdraw the money from his account because she had the [ATM] card. Further, the claimant said the defendant would use this money to shop and do everything that needed to be done at the property. According to the claimant, he was in many partners to help with running and expanding the property for their benefit. He said he did all of this because the defendant said she got very little money from England, the expansion of the house was extremely expensive and the idea was to fix downstairs to rent so that they could get an income.

- [23] The claimant averred that he gave the defendant \$70,000 at one point to finish the kitchen. Further, he denied that he loaned the defendant any money, instead, he said the parties pooled their money.
- [24] He then said the defendant loaned him \$20,000 to purchase a weed wacker and he paid the balance. He pointed out that it was the defendant who went to Kingston and purchased the weed wacker.
- [25] He gave further evidence that the defendant is the one who purchased the materials as he had to go to work and that he was more concerned with the costs, debts and payment of same. Without providing proof, the claimant averred that he earns at least \$100,000 monthly from his job at NSWMA, landscaping and other odd jobs.
- [26] He vacillated between January and February 2020 when asked about the date when the relationship ended. The claimant said he could not remember during which six-month period of 2016 he lived in St. Margaret's Bay.

Evidence Yvonne Pilgrim

- [27] The sister of the claimant, Yvonne Pilgrim gave evidence on his behalf. She stated that she saw the defendant at the claimant's residence and the defendant used words to her acknowledging that she was her sister-in-law.
- [28] She also deponed that in 2011 or 2012 the claimant began to visit the defendant at the property. Further that the claimant and the defendant had a loving relationship but the defendant was jealous.
- [29] Miss Pilgrim deponed that in 2012, the defendant told her that she asked the claimant to move in with her permanently and that a few days later the defendant chartered a taxi to move the claimant's belongings to the property. She additionally stated that the claimant was the only one working. Miss Pilgrim said that on days when she was not working, she would visit the claimant and defendant. She also gave evidence that the defendant cared for the claimant's brother at the property

when he was ill. Further, that the defendant attended all family funerals and seemed to be very supportive of the claimant.

[30] Miss Pilgrim further told the court that the defendant told her that she is the one who wash, cook and clean for the claimant and it is not fair for another woman to have him.

[31] She gave evidence that the defendant rented and put the claimant in a house in St. Margaret's Bay but that the claimant was there for a very short time. She said the defendant told her one day that she was uncomfortable and unhappy being at the property alone and she wanted the claimant to come back.

[32] Miss Pilgrim said the defendant told her on an occasion she saw her in Buff Bay, that she was going to purchase wheel barrow, shovel and bucket because construction was being done at the property and when she asked for the claimant, the defendant told her that he was at the house helping to dig the foundation. Miss Pilgrim was unable to say the nature of the claimant's contribution to the construction and how it was funded. However, she said the claimant worked hard to support his household with the defendant and to make them comfortable.

[33] She concluded by highlighting that the parties lived as man and wife based on observations she made when she visited the property.

THE DEFENDANT'S CASE

Evidence of Annmarie Suragh

[34] The defendant gave her name as Annmarie Suragh in her affidavit sworn to on March 9, 2021. It was revealed from her marriage certificate that her maiden name is Wynter and her married name is Suragh The defendant denied ever being in a common law relationship with the claimant. She described the relationship as a sexual one which commenced on July 27, 2009. At the commencement of the relationship, the defendant said she was still living with her husband. The defendant further contended that the claimant told her that he wanted a job and

she and her husband employed him as a gardener at her house and paid him \$5000 fortnightly.

[35] According to the defendant after her husband's death in 2011, she continued to employ the claimant as a gardener. She said that in 2012, the claimant informed her of a dispute with his family members regarding the property where he lived and that he was seeking somewhere to live. The defendant stated that she told him that he could stay at her house until he found somewhere to rent.

[36] The defendant further stated that she rented a room for the claimant in St Margaret's Bay and the claimant moved there in March 2012. In cross examination, she expressed uncertainty about the claimant moving to St Margaret's Bay in 2012, saying that he was at her house in 2012. She claimed that he stayed in St Margaret's Bay for some three years, returning in 2016 to the disputed property. She exhibited receipts evidencing rent of \$10,000 paid in her name for December 2012 and January 2013. She stated further that in December 2013, the claimant was given notice as he was taking several different women to the premises and he returned to the disputed property to stay. She stated in cross examination when confronted with this evidence that she really didn't remember when it was that the claimant was given notice. In essence she said that his return to her house and remaining there was supposed to be until he found another place to rent.

[37] In cross examination, the defendant was asked about the period when the claimant moved out of the master bedroom. She responded that it was about three months before he moved to St Margaret's Bay. She said that he moved out when there was an argument sometime between February and April; close to Easter. The defendant later said that the claimant lived with her in the master bedroom for about three months and then he, without reason, moved into another bedroom.

[38] She stated that while the claimant lived at her house, he would sometimes contribute on average \$5000 fortnightly towards groceries. Further, the defendant contended that the claimant has only two barrels of clothing at her house. She said

that when the claimant went to the rented premises in St Margaret's Bay, she bought him the furniture. She stated that the claimant brought back the furniture with the exception of the mattress, when he moved back into her house in December 2013.

[39] The defendant agreed that the claimant paid the cable bill as he was the one who applied for it but explained that the cable box was kept in the room that he occupies and is attached to his television only. She averred that the claimant did not contribute to any of the bills in the house. She said that the defendant sometimes paid the water truck to fill the water barrels.

[40] The defendant admitted to the various renovations of which the defendant gave evidence. She admitted receiving loans from the NHT as well from Scotia Bank in the sum of \$1.5m from each institution. She said the mortgages were paid by her solely and she had no discussion with the claimant about the improvements to the property.

[41] She gave further evidence that the claimant was not a guarantor of her loan at Worldnet and that he gave her no money to repay the loan.

[42] Additionally, the defendant contended that the claimant did not assist with the construction of the kitchen and the bedroom on the house. She stated that the only money she received from the claimant was a loan of \$10,000 to purchase 5 gallons of paint and that when she attempted to repay him he told her that she did not have to, as he was eating and drinking from the money she collected for rent.

[43] The defendant informed the court that she took a loan of \$30,000.00 from Ur Monie Mart Financial Services to assist the claimant to purchase a weed wacker for the sum of \$58,949.00. The receipts she exhibited as proof of the loan were dated 2017 and 2018 while the purchase invoice was dated July 3, 2012. She altered her position in cross examination when she was confronted about the discrepancy with the dates and said that the money to repair the wacker came from JN.

- [44] She said the claimant has never taken out any loan to assist with the improvement of the property. She highlighted that the loans of \$30,000.00 from the National People's Co-operative Credit Union and New Era Finance Ltd were taken to repair the claimant's weed wacker. She exhibited documents evidencing the loan from New Era Finance Ltd and its payment. The loan proposal and payment receipts showed that a loan of \$30,000.00 was obtained and paid in 2020. She said that she had no knowledge that the claimant was repaying loans to Ur Monie Mart, that she did not apply for any of the loans and that she could not borrow on someone else's loan account without the account holder authorizing her to do so.
- [45] The defendant informed the court that the claimant spent no money to improve her house. Also, that she has not slept with the claimant since about 2014. She said since that time, the parties have been living separate and apart as the claimant is very disrespectful and physically and verbally abusive and she has had to report him to the Police on several occasions. She exhibited receipts of reports made to the Police in 2012, 2018 and 2020 although there is no indication as to whom the reports were made against.
- [46] She agreed that she prepared meals for him because they were living together. When confronted with her evidence that the defendant told her that she did not have to repay the \$10,000.00 she borrowed from him because he was eating and drinking from the money she collected for rent, the defendant sought to deny that the claimant was eating out of the rent money. She admitted that his clothes and shoes were kept in the master bedroom in 2012 and she accepted that he lived in the master bedroom then. The defendant also agreed that she washed for the claimant when he moved in with her. She further agreed that she visited him while he was in St Margaret's Bay.
- [47] In cross examination the defendant said that the claimant visited the property in 2013, but he did not move back then. She said the landlord gave them the notice in 2016.

In re-examination, the defendant told the court that the claimant was living downstairs when he returned to live at the property. Further, that she visited the claimant while he was living in St Margaret's Bay because she was afraid to let him go because of the aggressive person that he was.

Evidence of Georgette Matthews

[48] The defendant's daughter Georgette Matthews also gave evidence on her behalf. Miss Matthews swore to an affidavit on July 20, 2021. The affidavit evidence of Miss Matthews reflects in large measure that of the defendant but did not offer certain details.

[49] Miss Matthews gave evidence that she moved out of the property in February 2012, but that she still visited. She deponed that her mother rented a room for the claimant in St Margaret's Bay in March 2012 and she supported the defendant's affidavit evidence that the claimant moved back to the disputed property in December 2013. She said that since 2014, the claimant and the defendant no longer shared the master bedroom. She agreed that it was fair to say that she could not speak to all financial dealing between the claimant and the defendant.

THE CLAIMANT'S SUBMISSIONS

[50] In his closing submissions, Mr Chambers highlighted that the claimant and the defendant satisfied the requirement of a single man and a single woman under section 2 of the Property (Rights of Spouses) Act (PROSA). He argued that on the death of the defendant's husband she became a single woman and that no issue was taken with whether the claimant was a single man. He urged the court to accept that the common law relationship between the claimant and the defendant continued during the period the claimant resided at St. Margaret's Bay. Further, counsel suggested that the court should not place much weight on the notice given to the claimant by the defendant before February 2020. He asked the court to view it as part and parcel of the challenges in the parties' relationship.

- [51] Mr. Chambers submitted that if the court is minded to accept that the relationship ended in July 2017 this would not assist the defendant as computation of time would commence on the death of her husband in 2011. To support his argument, counsel highlighted that the defendant's evidence confirms that the relationship continued after her husband's death and that the claimant visited her at the property. Mr. Chambers argued that whether the claimant was doing gardening or not at the property prior to February 2012 is of no moment. He said the crucial consideration is that they were in a relationship on or about March 2011 and the property was used habitually or from time to time by the spouses. He argued that 2017 would be well in excess of the five years to satisfy section 2 of PROSA.
- [52] In his earlier submission, counsel said that the claimant and the defendant cohabited together in the family home for over eight years between 2012 and 2020 and during this period used the home as the principal family residence where they both slept, ate, retained their personal items and received correspondence. Therefore, he argued, the claimant would be entitled to one half share of the property pursuant to section 6(1) of PROSA. To support this submission, counsel relied on the definition of family home provided in **Nilza Smith v Estate of Owen Dean Smith [2018] JMSC Civ 82** and **Shirley-Stewart v Stewart** 2007 HCV 0327 which highlighted the factors to consider when determining whether a property is the family home.
- [53] In his closing submissions, Counsel argued that if the court accepts that the claimant resided at St Margaret's Bay since 2012 or 2013, the court is not precluded from finding that the property was the family home or that St. Margaret's Bay can also be considered the family home. He pointed to the defendant's visits to the house in St. Margaret's Bay to support his argument that both locations were used habitually or from time to time by both spouses. He further argued that the entitlement under section 6(1) of PROSA has nothing to do with the claimant's contribution to the improvement of the property.

- [54] Further, in his final closing arguments, Mr Chambers relied on **Kimber v Kimber** [2000] 1 FLR 383 for his submission that no single factor or exhaustive list is conclusive of the existence of a relationship between a man and a woman as if they were in law husband and wife, The court he said should embark on an assessment of the whole circumstances of the evidence presented by the parties as to their interactions between themselves and others which would give rise to a reasonable perception of the existence of a common law union. Additionally, he asked the court to note that there is no generalized conduct or activities or objective test which can be applied. Each case argued counsel, must be considered in the context of the peculiarities of that particular matter. Mr Chambers highlighted that in the matter at bar, the parties had a particular 'modus' in that the relationship continued irrespective of a cooling off period to resolve the financial disputes which existed between them.
- [55] Counsel urged the court in his closing submissions to resist all arguments as to varying the equal share rule. However, he submitted, if the court considers varying the equal share rule, it should take into consideration the claimant's contribution to the improvement and construction of the property pursuant to the parties' agreement for this to be done as a source of income and pension cushion.
- [56] Further, Mr Chambers submitted that it is not uncommon for common law husbands to leave the payment of bills and other financial dealings to the common law wife. He stated that it is in fact part of our cultural and historical development as a nation. As such he urged the court to attach no adverse weight to this cultural norm.
- [57] Additionally, counsel for the claimant submitted that the receipts presented by the defendant as proof of loans she solely repaid should be rejected as they are all dated long after 2017 when she purported to give the claimant a notice and after her attorney-at-law wrote the claimant to vacate the property.

[58] Mr Chambers submitted in the alternative, that the claimant's interest in the property is additionally or alternatively derived from and proven by the irrefutable doctrine of constructive trust. He relied on **William Rainford v Opal Rainford** [2017] JMSC Civ 102 and **McCalla v McCalla** [2012] JMCA Civ 31 to ground his claim under this heading. In his closing submissions, he argued that regardless of whether the property is the matrimonial home, a constructive trust may nevertheless be imposed, making it unconscionable and or inequitable for the defendant, as the legal owner of the property to hold it purely for her benefit. Furthermore, he stated, the authorities also confirm that to establish such a constructive trust the claimant must prove the existence of two essential ingredients, namely common intention that each party have a beneficial interest in the property and detrimental reliance by the claimant on that common intention.

[59] The claimant's counsel stated that the position advanced in **Lloyds Bank Plc v Rosett** [1991] 1 AC 107 is that common intention can be established in one of two ways, expressed common intention based on evidence of expressed discussions between the parties and inferred common intention deduced from the conduct of the parties. In this regard counsel argued that the conduct of the claimant in contributing towards the improvement/expansions of the property and the conduct of the defendant in acquiescing to the claimant making these contributions, is both conducive with the claimant's evidence that the parties had an understanding that the property was for their mutual benefit and that the improvement to same would be for their joint financial benefit in providing retirement income as well as conclusive of a common intention between the parties that the claimant would have a beneficial interest in the property.

[60] In his closing submissions, Mr Chambers argued that the relatively strict position advanced by Lord Bridge in **Lloyds Bank Plc v Rosett** (Supra) as it relates to the contribution required to establish common intention has been overruled by cases such as **Stack v Dowden** [2007] 2 AC 432. For this, he referenced Lord Walker's speech at paragraph 26 "*whether or not Lord Bridge's observation was justified in 1990, in my opinion the law has moved on...*" and Baroness Hale at paragraph 60

“The law has indeed moved on in response to changing social and economic conditions. The search is to ascertain the parties’ shared intentions, actual, inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it.”

- [61] He submitted that Baroness Hale further suggests that in seeking to ascertain the parties’ shared intention the evidence can come from a range of factors (other than direct financial contribution to the purchase price) as “context is everything” and the domestic context is different from the commercial world.
- [62] Mr Chambers submitted that in the instant case there is evidence of an expressed agreement between the parties as to their respective beneficial interest in the property. In support of this he said it was the claimant’s consistent evidence that that the parties discussed and agreed that the improvement was their retirement and a source of additional income as the claimant was the only person working at the time.
- [63] Nevertheless, counsel argued that in any event, the intention of the parties should be ascertained by analysing their whole course of conduct in the context of how the improvements were done and whether both parties were to benefit from it. Further, he submitted that on a balance of probabilities, the context and conduct of the parties makes it more believable that the claimant and the defendant repaid the loans taken to improve the cohabitation home to provide an additional source of income.
- [64] Counsel for the claimant urged the court to consider the detriment suffered by the claimant. He highlighted that approximately one year after the claimant moved into the subject property, the parties began to improve and expand the property, with the claimant expending time, talent and substantial sums of money towards the improvement and expansion, based on the common intention that the cohabitation home would be for their mutual benefit and that the improvements to same would be for their joint benefit in providing retirement income. The claimant utilized his

earnings from the NSWMA, as well as earnings from partner plans and loans from various agencies to fund his significant contributions towards the development of the property on the reasonable expectation that he would thereby acquire an interest in the property. The claimant is now 50 years of age and is not at an age nor does he have the financial capacity to build another home as he has depleted all his savings improving and expanding the residence with the defendant and helping to maintain the said residence in a liveable condition for approximately eight years.

[65] Finally, he submitted that it would be unconscionable or contrary to fundamental equitable principles for the defendant to hold the property solely for her own benefit.

THE DEFENDANT'S SUBMISSIONS

[66] Counsel on behalf of the defendant filed skeleton submission but there is no indication that final submissions were filed. He submitted that it is clear that both parties were at some point involved in a sexual relationship with each other. What is important, submitted counsel, is the fact that the relationship between the parties must not merely be of a sexual nature but must, through their actions reach the threshold of what would appear to be husband and wife. This is explicitly stated in PROSA and emphasized by the requirement of continuous actions representing that of a husband and wife nature for an extended period of five years.

[67] It was counsel's submission that from the affidavits before the court, it would be unfounded for the court to find that the parties share a husband and wife relationship instead of a mere sexual relationship. Counsel further argued that without satisfying the court that the defendant acted in a manner causing her to be considered his wife, then the claimant's application ought to be rejected and the orders sought refused.

- [68] Counsel submitted further that the service of the Notice to Quit on the claimant shows that the defendant in no way considered herself the claimant's spouse but more supports the fact that they shared a sexual relationship. Further, that there is nothing before the court other than the self-serving affidavit of the claimant to support that their relationship was of the structure and nature that would cause them to be considered husband and wife. However, If the honourable court considers the possibility of their being some structure to the relationship between the claimant and the defendant being that of a committed one, the court should consider that the supporting Affidavit of Yvonne Pilgrim is void of any convincing evidence that can cause this court to glean that the relationship between the claimant and the defendant possess traits that would cause it to be elevated from a basic relationship for sex.
- [69] Additionally, counsel maintained that if this court entertains the thought that the parties shared a spousal relationship, then the court should start counting the five-years requirement from December 2013 to July 2017. This counsel argued would total 4 years and 7 months. Further, it must follow that having failed at his application for a declaration from this court as being the spouse of the defendant, then the property cannot be considered a family home based on the definition in PROSA.
- [70] Counsel for the defendant also submitted that, if the claimant is considered as a spouse then he is not entitled to 50% share in the property. Counsel directed the court to consider his contributions pursuant to section 14(2) of PROSA.
- [71] Counsel placed reliance on **Lloyd's Bank v Rosset** [1991] 1 AC 107 and argued that based on the evidence in the claimant and the defendant's affidavits, there is no indication of any agreement, arrangement or understanding between them that the property is to be shared beneficially. The claimant acted on his own volition and ought not to be considered to have acted to his detriment based on any action or utterance explicitly or implicitly from the defendant when he allegedly obtained those loans. Further counsel submitted that the receipts exhibited as repayment of

loans by the claimant are inconsistent and unreliable as they do not represent the loan allegedly taken out by the claimant to contribute to the construction of the property. Additionally, he argued, the claimant has failed to exhibit any convincing material to this court which can show a nexus between any loans allegedly taken out by him, and their direct or indirect contribution to any construction on the subject property and any benefit to the standard of living of the defendant.

[72] Counsel argued that there was no common intention between the parties that they would share beneficial interest in the property. To that effect, counsel maintained that the claimant's conduct did not give rise to a constructive trust that would cause him to have any beneficial interest in the property.

[73] According to counsel, the service of the notice to quit is a clear indication that there is no intention or understanding between the parties that there would be beneficial interest shared between them at any point. Further, even if the claimant were to establish a common intention to do improvements on the property, this would not give rise to a right to have a beneficial interest. Counsel relied on **Lloyd's Bank v Rosset** [1991] 1 AC 107 and **Grant v Edwards and another** [1986] 2 All ER 426, in support of this submission. The defendant's counsel concluded that the claimant should satisfy the court on a balance of probabilities that there was at least a common intention between himself and the defendant that he would somehow derive a beneficial interest in the property and through his affidavits, he has not done so. He argued that in the absence of such agreement, arrangement or understanding, or at the very least a common intention, the court ought not to consider the shares to which the parties may be entitled.

THE ISSUES

[74] The following issues have been raised based on the evidence in this case.

1. Whether the parties are spouses.

2. If the parties are spouses, was the disputed property the family home?
3. If the parties do not fulfil the requirements under PROSA, whether the conduct of the parties regarding the improvements to the disputed property is such as to give rise to a constructive trust in favour of the claimant?
4. If the claimant is entitled to a beneficial interest in the property, to what share is he entitled?

Whether the Parties Are Spouses

[75] Section 2(1) of the Property (Rights of Spouses) Act define a spouse as including:

(a) a single woman who has cohabited with a single man as if she were in law his wife for a period of not less than five years;

(b) a single man who has cohabited with a single woman as if he were in law her husband for a period of not less than five years, immediately preceding the institution of proceedings under this Act or the termination of cohabitation, as the case may be.

[76] Section 2(2) states:

The terms "single woman" and "single man" used with reference to the definition of "spouse" include widow or widower, as the case may be, or a divorcee.

[77] In **Lisa Cohen v Administrator General for Jamaica**, JMSC [2020] Civ. 155 Wolfe Reece J considered whether the deceased and Miss Cohen cohabited as husband and wife for five years immediately preceding the date of death of the deceased. In doing so, she gave a full exposition of the relevant law and the various factors to be taken into consideration. She said:

[21] It is not sufficient for a single man and a single woman to share a sexual relationship or a visiting relationship, in order for the parties to fall within the definition of a spouse, they must have cohabited as man and wife for a period of not less than 5 years. Lord Denning M.R. explained in the case of Davis v Johnson - [1978] 2 WLR 182 that a

'common law wife' should be distinguished from a mistress. His Lordship expressed as follows: -

8 - "...She might be a wife properly married to her husband: or she might only be a woman called, falsely, a "common law wife." No such woman was known to the common law, but it means a woman who is living with a man in the same household as if she were his wife. She is to be distinguished from a "mistress," where the relationship may be casual, impermanent, and secret." [Emphasis mine]

[78] She continued at paragraph 22:

[22] The dicta of Lord Denning M.R. is even more relevant to present day Jamaica where common law unions predominate the social sphere and has since been given statutory recognition. The need for common law unions to be distinguished from less stable unions was also expressed by McDonald-Bishop J (as she then was) in the case of Millicent Bowes v Keith Alexander Taylor unreported Claim number 2006HCV05107 delivered January 19, 2009. Her Ladyship expressed that while common law unions are not identical to marriages the nature of the cohabitation should be similitude to that of a marriage in order for the classification to be lawfully ascribed to it. Her Ladyship opined as follows:

"So, it seems safe to argue that the conjugal union outside of marriage, even if not identical to marriage, must be, at least, akin to it. This means too that the union should be monogamous in that there can only be one common law spouse at a time (as distinct from mere sexual partners or lovers) for the purposes of the law since in marriage there can only be one husband and one wife at any given time. This would be necessary in order to give effect to the statutory phrases "as if she were in law his wife" and "as if he were in law her husband." I believe that to hold otherwise would be an affront to common sense".

[23] In determining whether the parties have cohabited as if they were in law 'man and wife', I have stressed the need to avoid a blanket approach due to the multifaceted nature of marital relations and in this case; common law unions. In the often cited case of Kimber v Kimber - [2000] 1 FLR 383 on page 391 of the judgement Tyrer, J expressed as follows:

"It was held that the matter should be determined by asking whether, in the opinion of a reasonable person with normal perceptions, it could be said that the two people in question were living together as husband and wife. Consideration of the question should not ignore - 9 - the multifarious nature of marital relations. The detail is to be found at 883-884 of the

judgment. It is foolhardy to attempt to reduce to a judicial soundbite a comprehensive list of criteria and the authorities are replete with warnings of the dangers of doing so. But through what I hope has been a careful reading of the cases, whilst it is impossible to provide a checklist or set of tests, factors or criteria to cover every scenario, it is possible to draw some factors together. Such factors cannot be complete nor comprehensive but should be sufficient to cover the facts of the case that I am called upon to decide”.

[79] At paragraph 24, Wolfe Reece J listed some criteria as distilled from the case of **Kimber v Kimber** (supra) and which have been applied in local cases:

[24] While it is clear that Tyrer J stressed the point that it is not wise or practical to try to develop a comprehensive list or criteria in determining whether a common law union existed, after exploring the authorities, he found a list of factors which he thought would be useful in determining the issues which were before him. These factors or ‘signposts’ have been applied in several cases which came before this court to include the case of Millicent Bowes v Keith Alexander Taylor, supra and Re Robert Charles Morrison [2016] JMSC Civ 18.

[25] To adopt the term used by McDonald Bishop, J in Millicent Bowes v. Keith Alexander Taylor, supra, the ‘signposts’ which were distilled by Tyrer J and applied by Her Ladyship are as follows:

i. Living together in the same household

ii. A sharing of daily life.

iii. Stability and a degree of permanence in the relationship; that is, not a temporary infatuation or passing relationship such as a holiday romance.

iv. Finances, that is to say, is the way in which financial matters are being handled an indication of a relationship?

v. A sexual relationship.

vi. Children.

vii. Intention and motivation.

viii. The ‘opinion of the reasonable person with normal perceptions’.

[26] In coming to a conclusion it is important to assess the evidence against each signpost to determine whether the applicant can rightfully be considered as Mr. Hyman’s ‘common law wife.’

[80] Having regard to all the evidence presented to this court, I am of the view that the relationship between the claimant and the defendant was not merely a sexual relationship as the defendant contends. The relationship was more in the nature of that which would ordinarily exist between a husband and wife. I will say at the outset that neither party to this claim was being entirely truthful. Of the two, the claimant seemed more intelligent. Although each of them sought to modify the truth and to mislead the court in various aspects of the evidence, in some instances, the defendant's inaccurate answers appeared to be the result of faulty recollection.

[81] What seems clear enough, even from the defendant's own admission, is that when the claimant moved into the disputed property, he began to share the master bedroom with her. The period for which he did is what is contested. The defendant accepted in cross examination that when the claimant moved in, his clothing was kept with hers in the master bedroom because that was where he lived. It is not disputed that after he moved in, she prepared his meals and that he contributed towards the purchase of grocery. The defendant also admitted that she did the claimant's laundry. The defendant admitted that the claimant was permitted to have the cable connected in his name and her daughter's name. The claimant also alleged and the defendant did not specifically deny that she had access to his ATM card.

[82] I do not accept that the claimant was as integrally involved in the decision making process especially as it relates to the taking of loans, as he alleges. It is apparent that she discussed those matters with him although she acted as she wished ultimately. I formed this view from the defendant's acknowledgement that nothing that she did he approved of thus she made decisions behind his back and from the claimant's own assertion that she took loans without his knowledge. I reject the claimant's evidence that when they started to live together, he brought several pieces of furniture to the residence. I accept the defendant's account that the claimant had been deported. The claimant's evidence was that he would receive money from a female in the United Kingdom whilst he lived at Cooling Spring. This assertion was supported by various Western Union receipts that were exhibited

which showed that he in fact received a total of approximately \$70,000 from two different females through Western Union over the period 2009 to 2010.

[83] The claimant's history of employment prior to his engagement at the NSWMA however, suggests that his income was minimal. The defendant said that the claimant had nothing and did not move to her house with any furniture or buy any. Although the claimant was in receipt of money, it appears to me that these were sums, along with his earnings, that enabled him to take care of his personal needs, buy food and contribute to electricity bills where he was living at Cooling Spring. I accept the defendant's evidence that he did not move to her property with the furniture he claimed he moved in with and that he did not buy any when he moved there.

[84] In order to determine whether the relationship qualifies as one between common law spouses, the duration of the relationship will be the critical factor in this instance.

[85] It is not in dispute that the parties started to reside together at the defendant's residence in or about February 2012. The claimant stated in cross examination that he moved to the residence about a year or so after the defendant's husband had died. The claimant's position initially as indicated in his affidavit, was that the common law relationship commenced on July 27, 2009, but counsel readily recognized that that position was untenable. The claimant now says that in the circumstances, the common law relationship should be reckoned as having commenced in March of 2011 when the defendant's husband died. I disagree with this position.

[86] It is not in dispute that what existed between the parties could not have qualified as a common law relationship prior to the death of the defendant's husband. Not only was the defendant's husband alive, but they were living together as husband and wife. The evidence which I accept is that which came from the defendant in cross examination which is that her husband was ill and had dementia. It may very

safely be said that what existed prior to his death was a sexual relationship. The claimant initially sought to say that while he knew that the defendant was married, the defendant never said if her husband was dead or alive. According to him, the reason he never went to her home was because she never invited him there. Given the definition of spouse especially having regard to the element of cohabitation, it could not be said that a common law relationship began before 2012 when the parties commenced living together.

[87] It is the defendant's account in her affidavit evidence that the claimant moved from the disputed property to St Margaret's Bay sometime in March 2012 and returned in 2013. In fact, counsel for the claimant alerted her in cross examination that she stated some four times in her two affidavits that he returned in December 2013. The defendant changed tunes and said that the claimant moved in 2013 and insisted that he returned in 2016. She further said that when he returned, he lived downstairs and she lived upstairs and that he had moved back because the landlady wanted him out because he had been taking various different women to the rented property.

[88] The defendant presented receipts which evidenced payment of rent in St Margaret's Bay made in January 2013 for the period December 2012 to January 2013, to a Miss Campbell who it is not disputed, was the landlady. I therefore reject the claimant's evidence that he moved to St Margaret's Bay in 2016. Although I find it odd that the defendant would not have remembered at the time of giving her affidavit that he had lived away from the property for a very extended period, I do accept on a balance of probabilities that he moved in 2013 and returned in 2016. I am mindful of Miss Matthews' affidavit evidence to the effect that when the defendant travelled to England in September 2015, she and her sister were responsible for paying the utility bills from her mother's pension account which they had access to. The preceding paragraph was to the effect that when her mother travelled, the claimant did not pay any of the bills. An inference to be drawn is that the claimant was living at the disputed property in 2015.

[89] Even if I am wrong as to the date of the claimant's return from St Margaret's Bay, I fully accept that the sexual relationship did not resume after his return. It is instructive that at the very end in re-examination the defendant said that there was an incident and that is why she remembered that he moved March 2013 and that she had spoken to the landlady the day prior to returning to court, on which occasion she was re-examined. This court recognizes that the assertion that he moved in March 2013 would still be inaccurate based on the receipt. I formed the very distinct impression that the defendant's recollection was faulty as it relates to this and other aspects of the evidence.

[90] It is important to note however, that the defendant accepted that while the claimant lived in St Margaret's Bay, she would visit him and sleep over. Thus contrary to any suggestions or questions from counsel for the defendant seeking to establish that there had been a break in the relationship, I find that there was none during the period the claimant resided in St Margaret's Bay, although during that period the defendant may not have performed certain of the domestic chores such as washing for the claimant and preparing his meals. In my view, the relationship continued. The fact that the subject property was not then the family home does not affect the status of the relationship during that period. The question of the status of the property is a separate matter. She allowed him to move back to the disputed property.

[91] I accept the defendant's evidence however, that upon the claimant's return, he occupied the downstairs portion of the property. The next question is when did the common law relationship come to an end. The claimant's account ultimately was that the relationship ended in January 2020. When asked if in December 2019 he and the defendant were having sexual intercourse, he said "yes." When confronted with his affidavit evidence to the effect that the defendant stopped sleeping in the same bed as he in 2019, the claimant said "yes, 2019 December she stop come down there." When it was suggested to him that before December 2019, he and the claimant were not living in the same room and that is why he said the defendant "stop come **down** there in December 2019", the claimant said that he had made

an error and added that in the early part of January 2020 all sexual activity ended. Further, he said that was when the relationship between them ended. I find this aspect of the evidence to be important. It is to be recalled that the claimant's evidence is that they had moved upstairs, that is the master bedroom was moved upstairs and the lower floor had been rented out. The defendant agreed that that is indeed what had happened. The question then, is when did he move back downstairs. I say this is a relevant question because having regard to the manner in which the evidence was extracted, that is, that the defendant stopped coming downstairs, I am firmly of the view that the claimant was not mistaken, but rather that it was one of those instances when the truth came out inadvertently.

[92] If it is that they had been living upstairs in the master bedroom, why then was he speaking about the defendant coming down to his room in December 2019? This is clearly evidence that they were not in 2019 occupying the same space. His statement is suggestive of him occupying a separate bedroom downstairs while the defendant was occupying the upstairs master bedroom. The defendant was adamant that when the claimant returned from St Margaret's Bay, he occupied the same space downstairs where he now lives while she was occupying the master bedroom upstairs. I accept that evidence. I am mindful however, that that fact may not necessarily have signalled the end of the sexual relationship.

[93] I do not accept the claimant's evidence that the sexual relationship ended in 2020. The question is when did it end. The defendant said it ended in 2014. It is my firm position that neither the claimant nor the defendant was entirely truthful on this matter. But the defendant was also adamant that the sexual relationship ended when the claimant moved back from St Margaret's Bay. It appears more probable than not that the sexual relationship came to an end in 2016 when the claimant returned from St Margaret's Bay.

[94] I am mindful of the defendant's evidence that after his return, she would still purchase groceries for him. She gave this evidence when she was being asked about the contribution of \$5000 weekly that she said the claimant made towards

groceries. She explained that she bought his groceries and gave him the non-perishable items like syrup, noodles, cornflakes and milk (presumably canned) and she kept the other items. I find that it was the end of the sexual relationship and the parties occupying separate areas of the house that signalled the end of the common law relationship rather than the notice in 2017. I believe that the giving of notice in 2017 was her clear indication to him that she needed him to vacate the property rather than the “emotional ploy” that the claimant said it was.

[95] The defendant spoke of three incidents when according to her, the claimant came upstairs and tried to rape her and that she stabbed him on one such occasion. There was no suggestion that she was not being truthful about such occurrence. She also said that he was taking several women to the house and when she spoke to him, he said that he was paying rent. I believe these incidents she spoke of happened. I find that on the claimant’s return from St Margaret’s Bay he did not return as a partner in the relationship. Even though this might appear odd that she accepted him back at the property yet did not continue the relationship, this conduct should be understood in a context where even Miss Pilgrim considered the defendant to be a nice person. What emanated from the evidence is that she is a kind hearted, empathetic and very generous individual.

[96] The defendant was adamant in cross examination that Miss Enid (Miss Campbell the landlady for the premises in St Margaret’s Bay) wanted him out and “I was the one who rent the place so I bring him back. I live upstairs he live downstairs” She went on to say that when he moved back in 2016, “he carry woman there and I talk to him. Him say him a pay rent.”

[97] I am mindful of the findings of Pusey J in the case of **Nilza Smith v The Estate of Owen Dean Smith** [2018] JMSC Civ 82 which was relied on by the claimant but I think the circumstances are different in the instant case. To my mind the fact that the claimant felt that he could bring a female companion to the defendant’s house was a clear indication that he considered that they were separated.

[98] In that case, the claimant and her late husband were married in 1997 and lived separate and apart since 2008. The claimant brought proceedings against the estate of her late husband for an order that she is entitled to 50% of the family home by virtue of Section 6(2) of PROSA. The estate claimed that the property was owned by the deceased prior to the marriage and he solely financed the renovation and improvements works. Additionally, the defendant claimed that awarding a fifty per cent share in the property would be unjust and unreasonable. One of the issues before the court was whether the property was the family home of the claimant and the deceased at the time of his death.

[99] Pusey J. J found that the consortium vitae continued between the claimant and the deceased despite their living arrangement up to the time of the deceased's death. Also, that the property remained the family home as the couple still met there, the claimant maintained her room there with furniture and clothing. She continued to take her mail there, had free entrance and exit there and it was the only place that the couple lived.

[100] Ultimately, the onus is on the claimant to establish that a relationship in the nature of that which would ordinarily exist between husband and wife existed between himself and the defendant and that it persisted for 5 years or more. The evidence which I accept is that the common law relationship began in February 2012 and ended sometime in 2016 just about the time that the claimant returned from St Margaret's Bay to reside at the disputed property. This court cannot be satisfied on a balance of probabilities that a common law relationship was established.

[101] It means therefore that there is no question of the disputed property being the family home. The question of whether the claimant is entitled to a share in the disputed property will turn on the rules of equity.

Whether the conduct of the parties show that there was a common intention that the property is to be shared beneficially so as to give rise to a constructive trust in favour of the claimant?

[102] Mr Chambers relied in the alternative on the doctrine of constructive trust in order to establish the claimant's interest in the disputed property.

[103] In **Halsburys Laws of England**, (2019), Volume 98, paragraph 114, it is stated as follows: -

“A constructive trust attaches by law to specific property which is neither expressly subject to any trusts nor subject to a resulting trust but which is held by a person in circumstances where it would be inequitable to allow him to assert full beneficial ownership of the property.”

[104] In **Lloyds Bank PLC V Rosset and Another** [1991] AC 107. Lord Bridge of Harwick at page 22 of the judgment, in expounding the principle of the constructive trust said:

“The first and fundamental question which must always be resolved is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially. The finding of an agreement or arrangement to share in this sense can only, I think, be based on evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been. Once a finding to this effect is made, it will only be necessary for the partner asserting a claim to a beneficial interest against the partner entitled to the legal interest to show that he or she has acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or proprietary estoppel.”

[105] He went on to say that:

“In sharp contrast with this situation is the very different one where there is no evidence to support a finding of an agreement or arrangement to share, however reasonable it might have been for the parties to reach such an arrangement if they had applied their minds to the question, and where the court must rely entirely on the conduct of the parties both as the basis from which to infer a common intention to share the property beneficially and as the conduct relied on to give rise to a constructive trust. In this situation, direct contributions to the purchase price by the partner who is not the legal owner, whether initially or by payment of mortgage installments, will

readily justify the inference necessary to the creation of a constructive trust. But as I read the authorities, it is at least very doubtful whether anything less will do. “

[106] In **Dean Hinds v Janet Wilmott** 2009 HCV 00519 Edwards J, as she then was, at paragraph 25 usefully summarized the relevant principles which are applicable in circumstances where a person in whom the legal title to property is not vested claims a beneficial interest in same on the basis that the one who holds the legal title holds it as trustee on trust for the beneficial interest of the claimant. She said the following:

- I. *“Evidence of a common intention can either be expressed or implied. In the absence of an expressed intention, the intention of the parties at the time may be inferred from their words and/or conduct.*
- II. *Where a common intention can be inferred from the contributions to the acquisition, construction or improvement of the property, it will be held that the property belongs to the parties beneficially in proportion to those contributions. See Nourse, L.J. in Turton v Turton (1987) 2 ALL ER 641 at p. 684.*
- III. *In the absence of direct evidence of a common intention, any substantial contribution to the acquisition of the property maybe evidence from which the court could infer the parties’ intention: Grant v Edwards [1986] 3 WLR 120, per Lord Brown-Wilkinson. The existence of substantial contribution may have one of two results or both, that is, it may provide direct evidence of intention and/ or show that the claimant has acted to his detriment or reliance on the common intention.*
- IV. *The claimant must have acted to his detriment indirect reliance on the common intention.”*

[107] In **Stack v Dowden** [2007] UKHL 17, the principles relevant to a consideration of whether the beneficial interest in property differs from the legal interest, hence whether a trust exists, were discussed. The first point to note is that the burden is on the person seeking to show that the parties intended their beneficial interest to be different from their legal interest.

[108] At paragraph 36, Lord Walker agreed with Chadwick’s LJ statement of the law in **Oxley v Hiscock** [2005] Fam 211 at paragraph 69 that:

But, in a case where there is no evidence of any discussion between them as to the amount of the share which each was to have – and even in a case where the evidence is that there was no discussion on that point – the question still requires an answer. It must now be accepted that (at least in this court and below) the answer is that each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property. And, in that context, ‘the whole course of dealing between them in relation to the property’ includes the arrangements which they make from time to time in order to meet the outgoings (for example, mortgage contributions, council tax and utilities, repairs, insurance and housekeeping) which have to be met if they are to live in the property as their home.

[109] Lord Walker said:

That summary was directed at cases where there is a single legal owner. In relation to such cases the summary, with its wide reference to “the whole course of dealing between them in relation to the property”, is in my opinion a correct statement of the law, subject to the qualifications in paras 61 of Lady Hale’s opinion. I would only add that Chadwick LJ did not refer to contributions in kind in the form of manual labour on improvements, possibly because that was not an issue in that case. For reasons already mentioned, I would include contributions in kind by way of manual labour, provided that they are significant.

[110] At paragraph 56 Baroness Hale stated: “

Just as the starting point where there is sole legal ownership is sole beneficial ownership, the starting point where there is joint legal ownership is joint beneficial ownership. The onus is upon the person seeking to show that the beneficial ownership is different from the legal ownership. So in sole ownership cases it is upon the non-owner to show that he has any interest at all. In joint ownership cases, it is upon the joint owner who claims to have other than a joint beneficial interest.

[111] At paragraphs 69-70 she considered the factors to be taken into account when determining the parties’ intentions

[69]” In law, “context is everything” and the domestic context is very different from the commercial world. Each case will turn on its own facts. Many more factors than financial contributions may be relevant to divining the parties’ true intentions. These include: any advice or discussions at the time of the transfer which cast light upon their intentions then; the reasons why the home was acquired in their joint

names; the reasons why (if it be the case) the survivor was authorised to give a receipt for the capital moneys; the purpose for which the home was acquired; the nature of the parties' relationship; whether they had children for whom they both had responsibility to provide a home; how the purchase was financed, both initially and subsequently; how the parties arranged their finances, whether separately or together or a bit of both; how they discharged the outgoings on the property and their other household expenses. When a couple are joint owners of the home and jointly liable for the mortgage, the inferences to be drawn from who pays for what may be very different from the inferences to be drawn when only one is owner of the home. The arithmetical calculation of how much was paid by each is also likely to be less important. It will be easier to draw the inference that they intended that each should contribute as much to the household as they reasonably could and that they would share the eventual benefit or burden equally. The parties' individual characters and personalities may also be a factor in deciding where their true intentions lay. In the cohabitation context, mercenary considerations may be more to the fore than they would be in marriage, but it should not be assumed that they always take pride of place over natural love and affection. At the end of the day, having taken all this into account, cases in which the joint legal owners are to be taken to have intended that their beneficial interests should be different from their legal interests will be very unusual.

[70] This is not, of course, an exhaustive list. There may also be reason to conclude that, whatever the parties' intentions at the outset, these have now changed. An example might be where one party has financed (or constructed himself) an extension or substantial improvement to the property, so that what they have now is significantly different from what they had then."

[112] There is no question in my mind that if the claimant made any contribution to the expansion of the property, it was quite minimal. This is a case where the claimant simply did not have the means to make much in the way of financial contributions to the improvement of the disputed property. The claimant exhibited his pay advice dated the 3rd of March 2012. That document reflects that his gross earnings was \$9000 weekly and his net earnings \$8419.50. In cross examination, the claimant stated that he was making \$30,000 per fortnight in 2018 and took home \$27,000 after tax. He said that he earned \$1500 per day in 2013 and that he worked 5 days per week. He was in 2012, and at the time of giving evidence, still employed to the National Solid Waste Management Authority. In his affidavit, he said that he earned up to \$100,000 per month from extra work. It is noteworthy that when he was being

pressed in cross examination about his earnings with a view to contradict his ability to make the input he claimed he made towards the expansion of the property, the claimant did not mention his extra earnings. Overall, even if on occasions he earned extra income, I do not accept his evidence that he earned \$100,000 on average each month.

[113] On the other hand, the defendant highlighted that she was getting two monthly pensions from the United Kingdom of 43 pounds and 283.30 pounds. She exhibited proof of her monthly income from the United Kingdom. The documents exhibited reflected payments of sums in excess of 400 pounds from one of the two sources each month. Counsel pointed the defendant to documents exhibited by her at pages 83 to 93 of the trial bundle. It also emerged in cross examination that she would receive other significant sums by way of tax returns. The defendant agreed with counsel that some of those tax refunds would amount to well over 600 pounds. When asked if some of those returns were sums in excess of 900 pounds, she stated that she only received one amount in that sum. The documents revealed that she in fact received a refund of over 990 pounds on one occasion, and a sum of 2718.47 pounds in or around September 2018. Her evidence was that the pound was then 135 Jamaican dollars.

[114] It was the claimant's evidence that they discussed and agreed upon the work that was to be done to the house. This included repairing the roof, adding a studio for rental purposes and adding a kitchen to create a two-bedroom apartment. Towards these endeavours, he co-signed for a loan with the defendant from an entity called Worldnet. He said he also assisted with the construction of the kitchen and he hired workmen. Regarding the loan from Worldnet, the documentation produced by the claimant does not reveal the amount of what appears to be several different loans. A letter was produced indicating that he had guaranteed loans for the defendant and that payments towards the loans were made by the defendant. The defendant has said that she was the one who introduced the claimant to Worldnet so that he could get a loan in order to work on his wacker. I am doubtful that that was the

reason for the several loans indicated in the letter. The claimant chose not to say what sums were borrowed from Worldnet. This court will not speculate.

[115] Regarding the NHT debt, the claimant said that he took several loans in order to repay that debt. He has not attempted to put a dollar figure to any such alleged loans or payments made in respect of such loans. He complained of the defendant taking several loans and of having to repay these loans that he did not know about, presumably he did not know when they were taken. Again, he has not attempted to assign a dollar amount to any such payment. The only sum that the claimant spoke about was \$70,000.00 he said he gave her towards the completion of a kitchen.

[116] The claimant produced receipts which he claims shows that he received partner draws in April, May and September 2019 in the sums of \$44,000.00, \$22,000.00, and \$52,000.00 respectively. The first observation is that there is overwriting of the year on the April and September receipts. Secondly, the receipt showing the payment received in April shows both the (first) names of the claimant and defendant as receiving the money. Thirdly, and most importantly, even if the court were to say the claimant received these sums, that is not to say that the sums were expended towards the disputed property. I place no reliance on these documents as evidencing expenditure made on the disputed property and I do not believe that any sums received by the claimant at that time were used towards the construction.

[117] I agree with counsel for the defendant that the claimant has failed to exhibit any convincing material to this court which can show a nexus between any loans allegedly taken out by him, and their direct or indirect contribution to any construction on the subject property. The fact that on the face of the documents no such connection can be made out is of course not the decisive factor, since logically, it will hardly happen that the purpose of a loan is stated on the loan document or on any receipt evidencing repayment of a loan. It is largely a question of the reliability of the evidence of the party.

[118] While I accept that the defendant told the claimant of her plans to expand her home in order to earn income and clearly embarked on the expansion, I definitely do not form the view that the expansion project was a joint effort. I also do not accept that the claimant made consistent monthly payments in respect of any loan taken to finance any of the projects. I also reject his evidence that he took several loans in order to repay the debt to the NHT. The claimant, exhibited a letter dated December 14, 2016 from Ur Monie Mart which he claims shows that the defendant took a loan on his account. The letter does not in any way so indicate. The letter is addressed to the claimant and confirms that a personal loan of \$60,000.00 was being made to him and that the monthly repayment would be \$26,000.00. I totally reject the claimant's assertion that he took a loan from Ur Monie Mart in November 2019 which was for purposes of the construction.

[119] Even if I were to accept that the claimant helped to repay the loan taken from New Era Finance for example, it was observed that the amount of that loan was a grand total of \$50,000. At least one of the loans from Worldnet was taken in the early stages of the period when the claimant moved in with the defendant and it is quite conceivable that he may have made contributions towards repaying that debt. It is not evident from the letter exhibited when the loans were taken and the amounts loaned but the letter indicates that there were some six loans. It is quite instructive that he was unable to say in cross examination what was the amount of the loan from Worldnet in respect of which he stood guarantee. He also said he didn't know how much was being paid back monthly but he claimed he was making the monthly payments because the defendant was not working. He insisted that he gave her the money. The claimant acknowledged that the defendant paid workers and purchased material for the construction. He said however that they discussed the payments and he contributed. He never said what his contribution was on any occasion that he helped to pay workers.

[120] It was the defendant's evidence that the NHT loan was \$1.5m and there was also a \$1.5m loan from the Bank of Nova Scotia. She said that a number of loans in smaller sums were taken in one instance because her pension payments had

temporarily been halted. She received substantially larger sums of money than the claimant on a monthly basis. It is quite evident that even if the claimant contributed small sums occasionally towards the repayment of debts, given his much lower earnings, the fact that he was responsible for the monthly cable bills, contributed towards the purchase of grocery and the occasional trucking of water, meant that he could not afford to be making the various payments towards the various loans he claimed he was making. Further, he was residing at the property and still resides there, no doubt, rent free. Although it is not directly relevant to the circumstances that obtained when the parties resided together, it is the defendant's evidence which I accept, that she purchased a television for the claimant and gave him ply board so that he could construct his own kitchen at Cooling Spring where he resided prior to moving in with the claimant. I make that observation because it shows that the defendant was not the taker that the claimant makes her out to be but rather that she is someone who was quite willing to assist and did assist the claimant.

[121] It is the claimant's evidence that when he commenced living at the disputed property, the house consisted of master bedroom and an additional four bedrooms, three bathrooms, a hall, a verandah and a car porch. The additions according to his evidence were a bedroom, kitchen and bathroom on the second floor. It may also be gleaned that there were additions to an upper floor. It was revealed in cross examination that a kitchen was added on the lower floor. Thus two kitchens were constructed as confirmed by the defendant. The windows were also changed and the leaking roof repaired.

[122] The claimant is seeking to recover a fifty percent interest in a house based on his contributions, although the greater portion of that house had been constructed prior to him having any knowledge about the existence of that house. He has not attempted to quantify his contributions, but simply seeks to say that he and the defendant agreed to carry out the improvements, and further, that he has no other home as he spent all his earnings expanding and improving the property. It is of significance that he said he **believed** he was doing so to secure extra income for

the purposes of their retirement, He did not say he acted based on **any agreement, arrangement or understanding reached between them that the property is to be shared beneficially. Neither has he given any** direct evidence of a common intention in that regard. The claimant said rather, that he acted based on his own belief. He further advanced as a reason why the court should award him an interest in the property, that he will be prejudiced if that does not happen. Although the claimant has said he and the defendant discussed and agreed on the work that was to be done, he stopped short of saying that they agreed that he would derive an interest in the property as a consequence of his assisting with the work.

[123] I am mindful of the caveat issued by Lord Diplock in **Gissing v Gissing** [1971] AC 886 that:

.. parties to a transaction in connection with the acquisition of land may well have formed a common intention that the beneficial interest in the land shall be vested in them jointly without having used express words to communicate this intention to one another; or their recollections of the words used may be imperfect or conflicting by the time any dispute arises. In such a case - a common one where the parties are spouses whose marriage has broken down - it may be possible to infer their common intention from their conduct.

As in so many branches of English law in which legal rights and obligations depend upon the intentions of the parties to a transaction, the relevant intention of each party is the intention which was reasonably understood by the other party to be manifested by that party's words or conduct notwithstanding that he did not consciously formulate that intention in his own mind or even acted with some different intention which he did not communicate to the other party. On the other hand, he is not bound by any inference which the other party draws as to his intention unless that inference is one which can reasonably be drawn from his words or conduct. It is in this sense that in the branch of English law relating to constructive, implied or resulting trusts effect is given to the inferences as to the intentions of parties to a transaction which a reasonable man would draw from their words or conduct and not to any subjective intention or absence of intention which was not made manifest at the time of the transaction itself. It is for the court to determine what those inferences are.

[124] The court fully recognizes that the common intention may be inferred from conduct where there is no evidence of express agreement.

[125] The claimant is in essence saying that he placed a great deal of reliance on the assurance given to him that he would benefit from the rental income from the property and his place of residence would be secure for the foreseeable future. Since there is no indication from the claimant of any agreement, arrangement or understanding between them that the property was to be shared beneficially, conceivably, he is asking the court to infer that by agreeing that he would derive income from the property then she was guaranteeing him a beneficial and legal interest in the property. Whilst it would not be necessarily farfetched that the court could infer from such agreement a common intention that the claimant would derive an interest in the disputed property the court does not accept that he was promised rental income from the property. In any event this court finds that there can be no prejudice to the claimant in circumstances where he has not made out that his contributions were substantial.

[126] There is really no evidence based on what this court accepts, from which the court could infer any intention on the part of both parties that the claimant would derive a beneficial interest in the disputed property.

[127] Any conversation to the effect that the defendant invited him to move in with her 'to avoid supporting two yards' cannot reasonably be understood to mean that he would derive an interest in the property. Other assertions allegedly made by the defendant such as "a woman yuh want to have why yuh want to stay yah suh and nuh come live wid mi and I have a big house and I am there on my own" cannot support such an inference either. Neither do I think that the defendant's alleged statement assuring him that he would not be put out if she dies because he has a good relationship with her children sufficient.

[128] At paragraph 27 of **McCalla v McCalla** [2012] JMCA Civ 31 McIntosh JA laid out the law in relation to constructive trusts as follows:

[27] "It is settled law, approved and applied in this jurisdiction in cases such as Azan v Azan (1985) 25 JLR 301, that where the legal estate in property is vested in the name of one person (the legal owner) and a beneficial interest in that property is claimed by another

(the claimant), the claim can only succeed if the claimant is able to establish a constructive trust by evidence of a common intention that each was to have a beneficial interest in the property and by establishing that, in reliance on that common intention, the claimant acted to his or her detriment. The authorities show that in the absence of express words evidencing the requisite common intention, it may be inferred from the conduct of the parties.”

[129] The claimant has not established that a constructive trust has been created in his favour and his claim for an interest in the disputed property must fail.

Whether the disputed property is the family home

[130] Even if I were to be wrong in saying that a common law relationship in accordance with the legal definition had not been established, my position that the claimant is not entitled to a share in the defendant's home would be no different. On the evidence presented, had the criteria for a common law spousal relationship been established, it would not have been difficult for the court to say that the disputed property had become the family home. However, due to the relatively short duration of the relationship, the fact that the defendant owned the home prior to her involvement with the claimant, and what I found to be his very minimal if any contribution to the improvement to the house coupled with the fact that he had the opportunity to reside there, would be relevant considerations. Further, the defendant is older than the claimant. She is about 58 years old and has lower prospects of obtaining employment again. It was said that the claimant is now fifty years old. The claimant being younger, can continue in his employment and carry on with his life. These are factors that would have caused me to say that in accordance with section 7 of PROSA, his interest should be varied to 0%.

If the Claimant is entitled to a beneficial interest in the property, to what share is he entitled?

[131] Since the claimant is not entitled to an interest in the disputed property, this issue does not arise for discussion.

CONCLUSION

[132] In the final analysis, the claimant has failed to prove on a balance of probabilities that he is a spouse in accordance with the provisions of the Property (Rights of Spouses) Act or any other law. The claimant also fails to secure a declaration that he has derived a beneficial interest in the disputed property. In the circumstances, the declarations and orders sought by the claimant are refused and his claim is dismissed.

[133] The costs of this claim are awarded to the defendant and are to be taxed if not sooner agreed.

.....
A. Pettigrew-Collins
Puisne Judge