

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

**IN FAMILY DIVISION**

**CLAIM NO. 2005HCV00670**

**BETWEEN            LORNA ANGELA PRYCE            CLAIMANT**  
**AND                    CLAUDE ALFANSO PRYCE            DEFENDANT**

**IN CHAMBERS**

**Mrs. Althea McBean-Wisdom instructed by  
Frater, Ennis & Gordon for the Claimant.**

**Mrs. Judith Cooper- Batchelor instructed by  
Chambers, Bunny & Steer for the Defendant.**

**APRIL 21 and MAY 1, 2006**

**McDONALD- BISHOP, J (Ag)**

**THE CLAIM**

By Fixed Date Claim Form, dated March 17, 2005, the claimant/ wife brought this action against the defendant/husband pursuant to the Married Women's Property Act seeking the following declarations and orders:

1. The claimant is entitled to a one-half share in premises located at Lot 5, 4 West Greater Portmore in the parish of St. Catherine.
2. The said property be sold and the proceeds divided equally between the parties.

3. The claimant is the sole owner of a 1996 Nissan Bluebird registration number 0393DQ.
4. The property at Lot 5, 4 West Greater Portmore be valued by a licensed valuator to be agreed on by both parties and the cost of such valuation to be borne equally.
5. The Registrar of the Supreme Court be empowered to sign any agreement, transfer or other document necessary to effect the sale of the said premises should either party neglects, refuses or is unable to sign;
6. Liberty to apply.
7. Costs of the application to be the claimant's.
8. Such other orders and /or relief as the Honourable Court deems just.

### **THE DEFENCE**

The defendant responded to this claim by affidavit dated 16<sup>th</sup> January, 2006 wherein he denies that the claimant is the sole owner of the 1996 Nissan Bluebird (hereinafter the motor car). He claims joint ownership thereby denying the claimant's assertion of 100% interest in that piece of property.

While not expressly admitting the claimant's claim to a one half share in Lot 5, 4 West Greater Portmore (hereinafter the matrimonial home) in his affidavit, the defendant has not joined issue with the claimant in relation to this property.

Consequently, it was declared at the commencement of the hearing that the question between the parties as it relates to their respective interest in the matrimonial home is not in dispute. It is, therefore, agreed that both parties are beneficially entitled to a 50/50 share in the beneficial interest of the matrimonial home.

### **THE ISSUE**

The sole issue between the parties that was left to be determined by this Court concerns the respective interest of the parties in the motor car. Accordingly, the ultimate question is whether the claimant is entitled to the entire beneficial interest in the motor car as claimed.

### **THE BACKGROUND**

The claimant is an accounting officer employed in the banking industry and the defendant is an accountant. They were married in July 1988 in St. Andrew, Jamaica. In October 1995, based on joint decision and agreement, they jointly purchased the matrimonial home and subsequently did substantial improvements to it in order to make it more comfortable and to accommodate their family. The deposit and mortgage payments were shared by the parties. In August 2001, the motor car in question was acquired. It is the circumstances of its acquisition that is now in dispute between the parties. No reference had been made to any other property acquired by the parties during the course of the marriage.

In or around 2002, the relationship started to deteriorate eventually resulting in the irretrievable breakdown of the marriage and the resultant grant of a Decree Absolute in or around March 18, 2005 at the instance of the defendant- one day after the

commencement of these proceedings. The parties are, therefore, now divorced and the property settlement was left to be determined by this Court.

### **THE EVIDENCE**

Both parties relied on their affidavits sworn to in these proceedings. There was no election for cross-examination of either party. The case, therefore, rests solely on the evidence provided in the affidavits filed. Before proceeding to embark on a determination of the issue between the parties, I have considered it useful to distill and illuminate the material evidence adduced by both sides in the proof of their respective assertions.

### **THE CLAIMANT'S CASE**

It is the claimant's contention that the motor car in question was bought in August, 2001 from Von's Japanese imports in her sole name and for her personal use. The purchase price was \$500,000.00 and she paid the deposit of \$250,000.00. In support of this, she exhibited a receipt from Von's Japanese imports showing payment of the said sum on August 7, 2001.

The balance purchase price was obtained by way of a staff loan to her from her employer, Union Bank, now RBTT. She repaid this loan entirely by way of salary deduction with those payments completed in October 2004. In support of this contention, she tendered into evidence her receipt, loan application/ agreement, RBTT bank statements, pay advice slips and the certificate of title for the said motor vehicle.

She maintained that the defendant made no contribution to the acquisition of the motor car. However he is the one in possession of the car, driving it and refuses to

hand it over to her. It is against this background that she seeks a declaration that she is the sole legal and equitable owner of the motor car and an order that the car be released to her.

### **THE DEFENDANT'S CASE**

The defendant has taken no issue with the claimant's assertion that the car was bought in August 2001 and that it was bought from Von's Japanese Imports. Neither has he denied that the deposit of \$250,000.00 was provided solely by the claimant. It is, however, his contention that both parties decided to purchase the motor car and that it was intended from the outset to be equally owned by them. He maintained that it was decided by them that the balance of the purchase price would be borrowed from the claimant's employer.

According to him, it was agreed between them that the claimant would take the initial monthly repayment of \$10,000.00 per month out of their joint account to cover the sum deducted from her monthly salary for the car. It was to this joint account that he would deposit his salary for the claimant to repay herself the \$10,000.00 deducted from her salary as agreed between them.

In support of his contention, he tendered into evidence an Application to Register and License Motor Vehicle and/ or for Motor Vehicle Certificate of Title in respect of the said motor car, dated August 30, 2001. This application bears the names of both parties under particulars of owners and bears the signature of both parties as owners. He also exhibited statements from an account in the sole name of the claimant indicating that this was operated as a joint account and the account to which it was agreed he would lodge his salary cheques.

He further contended that after this application was signed, the claimant informed him that she could not get the loan if his name was on title. He, therefore, agreed to cancel the first application in both names and allow her to make a new application in her sole name as legal owner. Despite this cancellation, he continued to lodge his salary cheques to the account in furtherance of the agreement between them for repayment of the loan.

Sometime in October 2002, they had a dispute over the joint account and he stopped lodging his salary to the account but he would continue to give the claimant \$10,000.00 monthly until she left the matrimonial home. He subsequently discovered that the claimant had re-financed the loan and was actually paying less than \$10,000.00 per month. It is against this background that he denies the claimant's claim as sole owner of the motor car.

### **SUBMISSIONS**

In the final analysis, the thrust of the claimant's case was encapsulated in the oral submission of counsel on her behalf, Mrs. McBean- Wisdom. She asked the Court to find that the claimant's version should be believed that she is the sole owner of the motor car. According to her, it is undisputed that the claimant paid the deposit solely and that the balance of the purchase price was also paid solely by her by way of salary deductions. She argued that there is no loan agreement in evidence showing that such application was made by both parties.

Furthermore, there is no proof of the defendant giving the claimant \$10,000.00 per month as contribution to the payment on the balance purchase price. The loan repayment is \$8,409.00 per month and not \$10,000.00 as the defendant claims and so this indicates that the defendant is not aware of the amount that was deducted

from the claimant's salary towards loan repayment. This, she stated, exposes the defendant's claim of giving this money to the claimant towards the loan repayment.

Accordingly, she asked the Court to hold that there was no arrangement for the defendant to be repaying the claimant for the sum deducted from her salary. The defendant is in possession of the car and the claimant is incurring expenses at great cost to afford transportation. In her words: "legally and equitably, in those circumstances, it is only fair that an order be made granting Mrs. Pryce sole ownership of the motor vehicle."

The defendant's response to the claimant's contention came through the oral submission of his counsel, Mrs. Cooper- Batchelor, the main features of which I will now summarize. She urged on behalf of the defendant for the Court to consider the RBTT statements exhibited in the defendant's affidavit. These statements, she submitted, show that an account in the name of the claimant was operated as a joint account by the parties and that it was to this account that the defendant would lodge his salary to offset the sum deducted from the claimant's salary for the loan repayment. She pointed out certain salary cheques going to the said account that were not cheques of the claimant based on the pay advice slips the claimant has tendered into evidence and asked the Court to accept that they were, in fact, the salary cheques of the defendant.

She argued that evidence of the lodgments of these cheques to the account supports the defendant's case that he assisted in paying back the loan as the money deducted from the claimant's salary was paid back to her by the defendant by this means.

In addition to this, she placed much reliance on the initial application made by the parties for the registration and/or issuance of title for the motor car. On this application both parties' names appear as owners. She asked the Court to accept the explanation of the defendant, which has not been refuted by the claimant, as to how his name was eventually removed as a joint owner and replaced by another application naming the claimant as the sole owner. This original application, she maintained, is evidence of a common intention between the parties that the car would be owned jointly by them.

In support of her submission, she relied on the case of **Beryl Nembhard v. Hopeton Nembhard S.C.C.A. # 49/98 del. 10.5.1999** which, according to her, bears a similarity to the present case as to the existence of a previous document on which both parties' names appeared which was taken as indicative of a common intention between them.

She has asked the Court to find that the defendant has acted to his detriment in reliance on this common intention. He had provided his salary to this account thereby providing a pool of funds out of which the claimant was allowed to repay herself for monies used from her salary towards the car repayment. The defendant has contributed to the purchase of the car and is in possession of the car as owner.

Mrs. McBean-Wisdom in reply to the authority cited stated that **Nembhard v. Nembhard** (supra) is readily distinguishable from the instant case and as such is of limited assistance on the issue to be determined.



## THE RELEVANT LAW

The certificate for the motor car, as exhibited, is in the name of the claimant. She is therefore, shown to be the legal owner and would be, prima facie, the sole beneficial owner. The defendant, however, has challenged the claimant's assertion as sole beneficial owner and is thereby asking the Court to go behind the title to find that, although the legal title vests in the claimant, she is not entitled to 100% beneficial interest as claimed.

It is settled law that the beneficial interest does not inevitably follow the legal interest, otherwise the operation of resulting trust would be precluded where the legal estate or interest is in one person but the beneficial interest is really in another: **Whitter v. Whitter (26) JLR, 185**, per Wright, J.A. It stands to reason, therefore, that the mere fact that the motor car's certificate of title reflects the claimant as owner is not determinative of the matter. It is incumbent upon me to consider the defendant's assertion of a beneficial interest therein.

An apt starting point in matters of this nature is to be reminded that there is no doctrine of community of property or any separate rules applicable to family assets: **Pettit v. Pettit [1970] A.C. 777**. Therefore, it is well established on the authorities that the law does not make any presumption of beneficial interest merely because the parties are married to each other. So, if one spouse acquires property intended for common use with the other, this cannot, per se, give the latter any proprietary interest.

From this followed another well settled principle of our law that if either spouse seeks to establish a beneficial interest in property, the legal title to which is vested in the other, he or she can only do so by establishing that the legal owner holds the property on trust for the claimant: **Gissing v. Gissing [1971] A.C. 886**. It follows

then that the party in whom the legal estate is not vested must resort to the law of trust to establish such a beneficial interest. The applicable principle was authoritatively laid down by Lord Diplock in **Gissing v. Gissing** and restated and adopted by the Jamaican Court of Appeal in **Azan v. Azan**, per Forte, J.A. (as he then was): It states in part:

**“Any claim to a beneficial interest in land by a person whether spouse or stranger in whom the legal estate is not vested must be based on the proposition that the person in whom the legal estate is vested, holds it as trustee on trust to give effect to the beneficial interest of the claimant as cestui que trust. The legal principles applicable to the claim are those of the English Law of trust and in particular, in the kind of disputes between spouses that comes before the courts, the law relating to the creation and operation of a resulting, implied or constructive trust – and it is unnecessary for present purposes to distinguish between these three classes of trust...”**

It is, therefore, accepted that the interest of the defendant in the motor car and his consequent denial of sole beneficial interest to the claimant will have to rest upon the existence of a trust in his favour- implied, resulting or constructive- it does not matter. In order for him to establish such a beneficial interest, he has the duty to adduce some evidence to establish the existence of such a trust in his favour by demonstrating that it would be inequitable for the claimant, as legal owner, to claim sole beneficial ownership in the motor car. On the strength of the authorities, this requires the proof of two things:

- (a) that there was a common intention that both should have a beneficial interest in the motor car, and
- (b) that he has acted to his detriment on the basis of that common intention.

This common intention must be shown to have existed at the time of the acquisition of the motor car because it is trite law that that the legal and beneficial interest in property vest at the time of its acquisition. So, unless they are subsequently changed by the conscious act of the parties, the beneficial interest taken by a spouse depends on their intention- communicated between them- at the time of acquisition.

Of course, to establish this common intention to share the beneficial interest, evidence of an express agreement to that effect would be sufficient. But where there is no such agreement, then the common intention of the parties may be inferred from their words or conduct prior to and contemporaneous with the transaction relative to the acquisition. Their conduct after acquisition would also be relevant in so far as it can assist with ascertaining what their intentions were at the time of acquisition. If there is no such expressed intention or no evidence of a common intention to be inferred from their conduct then, as Lord Upjohn directed in **Pettit v. Pettit** (supra) what are called presumptions should come into play.

In seeking to ascertain and declare the parties interest in the motor car, I must state from the outset that I am mindful as to who bears the burden of proof to satisfy me to the requisite standard. It is the claimant who claims the entire beneficial interest on the ground that she bought the car solely. The defendant denies this claim. The defendant bears an evidential burden to establish his claim. At the end of the day, the ultimate burden still rests on the claimant to negate the defendant's claim and to satisfy me, on a preponderance of the probabilities, that she does not hold the legal title on trust for the defendant and that she is entitled to the entire legal and beneficial interest.

## **ANALYSIS OF THE EVIDENCE AND FINDINGS**

It is against the backdrop of the relevant principles of law summarized above, while bearing in mind the burden and standard of proof in these proceedings, that I have considered the evidence of both parties and the submissions of counsel on their behalf.

In keeping with the guidance provided by a long line of authorities, I first find it prudent to examine the evidence of the parties to see if, prior to or at the time of the acquisition of the car, there was an expressed agreement by the parties as to the acquisition of the car and how the interest in it should vest. In brief, I sought to see if “whether prior to the acquisition, or at some later date the parties had an agreement to share in the beneficial interest based on evidence of express discussions however imperfectly remembered and however imprecise the terms”: **Lloyd’s Bank Plc v. Rossett [1991] 1 A.C. 107**

I find that the claimant has not indicated anything as to any discussions or otherwise with the defendant concerning acquisition of the motor car. She only pointed to the fact that she purchased the car in August 2001 for her personal use. The defendant, on the other hand, indicated that they both decided to purchase the car. He stated that it was to be equally owned in both their names. He has, therefore, alluded to discussions between them, prior to the acquisition, about the car’s acquisition and ownership.

He goes further and shows the original application to license the car and/ or for the title signed on August 30, 2001 by both parties declaring in the particulars of

ownership that both are owners. This would have been done at a time when the claimant would have already paid the deposit on August 7, 2001. The defendant did not contribute to the payment of the deposit but this application was signed by both of them. It begs the question: Why then was the defendant's name entered on the application of August 30, 2001 as co-owner when he did not contribute to the deposit if there were no prior discussions between them? Unfortunately, this question stood unanswered by the claimant at the end of the case. She has not proffered any explanation for the presence of the defendant's name as owner on the original application.

Interestingly too, this application bears the same date as the date of acquisition of the motor car shown on the certificate of title. The lien in favour of Union Bank was also registered on the same date -August 30, 2001. The date of acquisition of the car is clear. There is evidence coming from the defendant, supported by the documents-application and certificate of title, to lead to a finding of fact that at the time of acquisition it was agreed between them and intended by them that the beneficial interest would be shared. With no explanation forthcoming from the claimant on this crucial piece of evidence, I am compelled to accept the defendant's contention that there were, indeed, prior discussions as to the acquisition of the car and that it would be jointly owned.

I accept the evidence of the original application bearing the name of the defendant as owner and signed by both parties on the date of acquisition of the motor car as cogent evidence of their common intention at the time of acquisition that the interest in the car would be shared- both legally and equitably. To this extent, I find the case of **Nembhard v. Nembhard** (supra) cited by Mrs. Cooper- Batchelor, as relevant and supportive of the principle I have applied in this case, that where both parties names

appear on documents relating to the acquisition of property, then that is evidence from which it can be inferred that there was at the time of acquisition a common intention that they were both to share in the beneficial interest.

After this expressed intention, the parties agreed that the defendant's name would have to be removed from this application if the loan was to be procured. Again, the defendant has offered what, in my view, amounts to a plausible explanation for the removal of his name from that initial application and the subsequent appearance of only the claimant's name on the certificate of title. His explanation on this critical issue has not been challenged by the claimant and is, therefore, accepted by the Court as the truth on a balance of the probabilities. From this, I conclude that the removal of the defendant's name from the application and the consequent omission of his name from the title was a matter of convenience to secure the loan rather than a revocation of, or a change in, the common intention between them as to joint beneficial ownership of the motor car.

In keeping with the relevant principles of law, the common intention of the parties as to how the beneficial interest should vest was evidently formed at the time of acquisition and in the absence of such intention been changed by the conscious acts of the parties, the beneficial interest in the car vests in both of them at that time. With such an express intention clearly manifested on the evidence that I have accepted, the question as to who subsequently pays what is immaterial to the question of the vesting of the beneficial interest.

But, in any event, I will venture further to examine the parties conduct to see if their conduct after acquisition was consistent with this common intention formed at the

time of acquisition and whether the defendant had acted to his detriment in reliance on such common intention. For it is settled law, that the common intention can also be inferred from their conduct and their conduct after acquisition is relevant in so far as it can indicate what the intention was at the time of acquisition and also can assist in quantifying the beneficial interest of the parties.

It is undisputed that the claimant provided the initial deposit for the motor car and the balance was secured by her through a staff loan. The claimant contends that she repays the loan on the balance solely from her salary and so the defendant made no contribution to the loan repayment. Again, given the relationship between herself and the lender who is her employer, this is readily appreciated. From all the evidence provided, it is accepted that she pays the loan installments directly.

The defendant is, however, saying that while she does so directly from her salary, he provided money into an account operated jointly by them from which it was agreed that she would repay herself the sum deducted from her salary each month. This he said was \$10,000.00. In support of this claim he exhibited bank statements from RBTT in respect of an account in the name of the claimant only. He contends that while it is in the name of the claimant only, it was, in fact, operated as a joint account and it was to this account that he lodged his salary and from which it was agreed that the claimant would repay herself for the loan payment. He is, therefore, saying that he makes his contribution indirectly to the loan repayment pursuant to an agreement between them.

Within this context, it is also accepted as a matter of law that evidence of substantial contribution and/or indirect contribution to the acquisition of the property made by the party who is not vested with the legal estate is evidence upon which an inference

may be drawn that the parties had a common intention to share in the beneficial interest of the property. Sir Nicholas Browne- Wilkinson stated in **Grant v. Edwards [1986] 2 All E.R. 426** that substantial contributions are relevant for four different purposes: These are:

- “(1) in the absence of direct evidence of intention, as evidence from which the parties intention can be inferred;
- (2) as corroboration of direct evidence of intention;
- (3) to show the claimant has acted to his detriment on reliance in the common intention;
- (4) to quantify the extent of the beneficial interest.”

In relation to indirect contribution by the party in whom the legal estate is not vested, Lord Diplock in **Gissing v. Gissing** (supra) had this to say and I adopt it for my purposes:

“ It may be no more than a matter of convenience which spouse pays particular household accounts, particularly when both are earning, and if the wife goes out to work and devotes part of her earnings or uses her private income to meet joint expenses of the household which would otherwise be met by the husband so as to enable him to pay the mortgage installments out of his money this would be consistent with and might be corroborative of an original common intention that she would share in the beneficial interest in the matrimonial home and that her payments of other household expenses were intended by both spouses to be treated as including a contribution by the wife to the purchase price of the matrimonial home.”

Against this background, I have paid close attention to the entries in the bank statement exhibited by the defendant indicating salary cheques lodged to the account for part of the period under review. The account is in the sole name of the



claimant. I have also examined the pay advice slips exhibited by the claimant for the said period. These salary slips indicate salaries received by the claimant on a particular date with no corresponding entry of lodgment of a salary cheque to the account.

The claim of the defendant that those salary cheques indicated in the account were his cheques that were lodged to the account stood unrefuted at the end of the case. These entries also serve to reveal that at the material time, the defendant's salary was higher than that of the claimant's. In many instances, it was close to three times the claimant's salary. It is therefore apparent, that he was, on the face of it, not without the means to contribute to the repayment of the loan in the manner he describes. In the end, the claimant has not explained away the reasons advanced by the defendant for the deposit of his salary cheques to this account in her sole name.

On a balance of the probabilities, I accept, as credible, the evidence of the defendant that he consciously pooled his resources in this account with that of the claimant with one specific purpose being to repay her the sum withdrawn from her salary for the car repayment in furtherance of their initial agreement concerning the purchase of the car. I find in all the circumstances that the payment of the loan from the salary of the claimant was a matter of convenience and expediency given the employer-employee relationship between the lender and her.

The lodgment of the defendant's salary to her account was in an effort to nullify the effect of such withdrawal from her salary thereby translating into his contribution- albeit indirect - to the loan repayment. I find his contribution as consistent with and corroborative of the original common intention that he would share in the beneficial

interest of the car and that his contribution to the account specifically for the purposes of reimbursing the claimant for the loan repayment deducted from her salary was to be treated as a contribution by him towards the purchase price of the car.

Thus having found a common intention- both expressed and implied- I have examined the circumstances to see if the defendant has acted to his detriment in reliance on such common intention. I find ample evidence from which to find that the defendant, in reliance on the common intention that he would have a beneficial interest, agreed for his name be removed from the title of the car as joint owner in order for the loan to be approved. I find that this was agreed to as a matter of convenience. With his name removed and not shown on title he, nevertheless, carried out his side of the bargain to ensure that the money paid out of the claimant's salary for the repayment of the loan was reimbursed from the salary he lodged to her account on a monthly basis.

I find from all the circumstances that his reason for continuing with the agreement to provide re-imbusement to the claimant for the loan by lodgment to the account was predicated on his belief and on their common intention that existed at the time of acquisition that he was part owner of the said car. Accordingly, I am satisfied that the defendant has acted to his detriment in reliance on the common intention formed at the time of acquisition of the car that he would share in the beneficial interest.

In the end, the common intention in relation to this motor car can be inferred not only from the manner in which the original document (the application) was prepared, that is in the names of both parties, but by the defendant lodging his salary to the

claimant's account as reimbursement to her for her repaying the loan thereby clearly acting to his detriment.

## **CONCLUSION**

On a totality of the evidence, I conclude that the defendant has established on a preponderance of the probabilities that there was a common intention that he would have a beneficial interest in the motor car. He has also adduced sufficient evidence to demonstrate that he has acted to his detriment in reliance on this common intention between them that he would have a beneficial interest in the motor car. The defendant has shown that it would be inequitable for the claimant to claim the entire beneficial interest.

The defendant having demonstrated the existence of a trust in his favour- constructive, implied or resulting, it does not matter which- the claimant has not, on a preponderance of the probabilities, negate the existence of such a trust in his favour. Accordingly, it is my view that it is inequitable for the claimant to claim sole beneficial ownership in the motor car. Accordingly, I am not satisfied on the claimant's case, on a preponderance of the probabilities, that she is entitled to 100% share in the beneficial interest of the motor car.

## **THE SHARE**

How then should the claimant's beneficial interest be evaluated?

I am once again guided by the words of Lord Diplock in **Gissing v. Gissing** (supra) that where there is no express agreement as to how the share of a spouse should be quantified that:

**"The court must first do its best to discover from the conduct of the spouses whether any inference can reasonably be drawn as to the probable understanding about the amount of the share of the contributing spouse on**

**which each must have acted in doing what each did even though that understanding was never expressly stated by one spouse to the other or even consciously formulated in word by either of them independently. It is only if no such inference can be drawn that the court is driven to apply as a rule of law and not as an inference of fact the maxim "equality is equity."**

I have examined closely the circumstances of this case and the parties' conduct. It is clear that the claimant provided the deposit and that represents half the purchase price of the car. The defendant stated that he made contribution to the account for paying back the loan. It would seem that the initial intention was that the defendant would have repaid the claimant through lodgments to the account, which would mean that he would have contributed wholly to the balance purchase price, if all things had remained constant.

However, he only made lodgments to the account up to October 2002. This would be approximately one year after the purchase. He claimed that he would still give the claimant \$10,000.00 to pay in the account after he stopped lodging his salary to it and this continued until she left the matrimonial home. He has not furnished a date or any indication of time as to when the claimant left the matrimonial home and so I am not in a position to give any weight to his assertion, in the absence of cogent evidence, as to the full extent of his contribution.

The claimant has shown that she continued paying the installments until August 2004 when the account was closed. There is no evidence that the defendant reimbursed her up to then. Given the absence of evidence as to the precise extent of the defendant's contribution after October 2002 and the fact that the claimant has provided 50% of the purchase price by way of deposit and was the one who finished paying the loan, I conclude, after taking all the circumstances into account, including

the parties course of dealings in relation to the purchase, and after due regard to the relevant legal principles, that equality would not be equity. Accordingly, I assess the claimant's beneficial interest in the said car to be 75%.

## **DECLARATIONS AND ORDERS**

In the premises, I make the following declarations and orders:

1. As agreed, the claimant is entitled to a 50% (half share) in the premises located at Lot 5, 4 West Greater Portmore in the parish of St. Catherine registered at Vol. 1275, Fol. 105 of the Register Book of Titles.
2. Either party may agree to purchase the share of the other or, in the alternative, the said property is to be sold and the proceeds divided equally between the parties.
3. The said property is to be valued by a licensed valuator to be agreed on by the parties and the costs of such valuation to be borne equally by the parties. If the parties cannot agree, the Registrar of the Supreme Court is empowered to appoint such valuator.
4. The Registrar of the Supreme Court is empowered to sign any agreement, transfer or any other document necessary to effect the sale of the said premises should either party neglects, refuses or is unable to sign.
5. The claimant is entitled to 75% share in the 1996 Nissan Bluebird registration no. 0393 DQ.
6. The said car be returned to the claimant within three (3) days of the date hereof.
7. The car to be valued by a valuator within twenty-one (21) days of the date hereof; the said valuator to be agreed on by the parties. 75% cost of the valuation to be borne by the claimant and 25% by the defendant. If the parties cannot agree, the Registrar of the Supreme Court is empowered to appoint such valuator.

8. The parties may agree to purchase the share of the other party failing which the car is to be sold and the proceeds divided between the parties according to the shares declared herein.
9. The Registrar of the Supreme Court is empowered to sign any agreement, transfer or any other document necessary to effect the sale of the said motor vehicle should either party neglects, refuses or is unable to sign.
10. Liberty to apply.
11. No order as to costs.