



[2016] JMSC Civ. 204

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

**IN THE CIVIL DIVISION**

**CLAIM NO. 2013 HCV 01870**

<b>BETWEEN</b>	<b>HERBERT REID</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>MICHELLE NEITA REID</b>	<b>DEFENDANT</b>

**IN CHAMBERS**

**Mr. Ruel Woolcock instructed by Ruel Woolcock & Co. for the Claimant**

**Ms. Marlene Uter and Ms. Anastassia McLeish instructed by Messrs. Alton E. Morgan & Co. for the Defendant**

**Heard: 29<sup>th</sup> and 30<sup>th</sup> June, 2016 Delivered: 15<sup>th</sup> November 2016**

**Family Law - Division of matrimonial property - Whether property bought before marriage is matrimonial property - Whether section 13 and 14 of PROSA are relevant - Whether application under PROSA is within time - Whether husband entitled to rent for use of property.**

**CORAM: BERTRAM LINTON, J. (AG.)**

**Background**

[1] The Claimant husband has applied for orders in relation to the division of two properties namely 7 Hollywood Close, Kingston 6, Saint Andrew (hereinafter referred to as Hollywood) and 25 Bridgemount Heights, Kingston 8, Saint Andrew (hereinafter referred to as Bridgemount) pursuant to the Property Rights of Spouses Act (hereinafter referred to as PROSA). The Defendant wife has also

applied for determination of her interest in the two properties and disclosure of the Claimant's interest in several motor vehicles and assets.

- [2]** The parties were married on 23<sup>rd</sup> of April, 1993 and separated sometime in either 1996 or 1997. Mrs. Reid applied for dissolution of the marriage and a Decree Nisi was granted. No Decree Absolute has yet been applied for.
- [3]** In 1989, Mr. and Mrs. Reid purchased Bridgemount for the sum of Four Hundred Thousand Dollars (\$400,000.00). This was prior to their marriage. They contributed jointly to the deposit of one hundred thousand dollars (\$100,000.00). Thereafter, they each acquired mortgages to cover the additional cost while still residing at Mrs. Reid's apartment.
- [4]** After the purchase of Bridgemount, the couple renovated the property in order to make it tenable. An additional sum of one hundred thousand dollars (\$100,000.00) was borrowed among other costs incurred. Both contributed to the renovations. They carried out extensive works to the property to include plumbing and gardening services as well as the rebuilding of walls and the installation of an automatic gate and water tanks. The Claimant also used funds from the sale of a property he owned at Worthington to assist in this regard. Thereafter, the duplex on the property was rented.
- [5]** In 1992, the couple purchased Hollywood for One Million Three Hundred and Fifty Thousand Dollars (\$1,350,000.00). In order to cover the cost, the parties acquired additional mortgages. Again, they both contributed to the renovation of this property. Mr. Reid by providing financial support and Mrs. Reid by contribution to the running of the home and some financial assistance. The rental income from Bridgemount was used to pay the mortgages for both Bridgemount and Hollywood as well as assisting with living expenses. They were both also employed.
- [6]** When they got married in 1993, they resided at Hollywood. In 1997 when they separated, Mrs. Reid and the two children relocated to live in one of the Flats at

Bridgemount. At this time, the rental income was reduced as Mrs. Reid occupied one of the duplexes. She collected the rental from the other and continued making the mortgage payments for both Hollywood and Bridgemount. In 2008, she unilaterally took the decision to reconfigure Bridgemount and convert the duplexes into one house giving her reason, as the fact that the boys needed their own rooms. Later in 2009 after she was made redundant, she modified the property to facilitate a 'bed and breakfast' establishment in order to generate income for herself. In 2010, she ran into financial difficulty as the business could not sustain them. As such, she sent the children to reside with Mr. Reid at the Hollywood property. None of these decisions were made with consultation or with the agreement of the Claimant.

### **The Claim**

**[7]** Mr. Reid claims the following relief against Mrs. Reid in his Amended Fixed Date Claim Form dated August 10, 2015:

- a. A Declaration that he has a 50% beneficial interest in Hollywood (the Family Home);
- b. An Order that the Hollywood property be sold and the net proceeds be divided equally;
- c. A Declaration that he has a 70% beneficial interest in Bridgemount;
- d. An Order that the Bridgemount property be sold and the net proceeds be divided in keeping with that order; and
- e. An Order that Mrs. Reid ought to pay rental income for the years 2008 to present when she unilaterally changed the agreed tenure of her occupation of the property from one which was an income earning asset for both parties to solely a residence and later to one which was an income earner for her sole benefit.

**[8]** It is to be noted that the Defendant wife had filed a Further Amended Notice of Application and a Further Affidavit in support on June 15, 2016 in contravention of the orders of Mr. Justice Laing who had specified that *'parties are at liberty to file additional evidence in affidavit on or before 30<sup>th</sup> September 2015.'* This was struck out on the application of the Claimant.

**[9]** Mrs. Reid claims the following relief against Mr. Reid in her Amended Notice of Application filed on November 5, 2014:

- a. A Declaration that she has a 50% beneficial interest in the Hollywood property;
- b. A Declaration that she has no less than 80% beneficial interest in the Bridgemount property;
- c. An Order that Mr. Reid transfer his beneficial interest in the Bridgemount Property by way of gift in exchange for her transferring her beneficial interest to him in the Hollywood property by way of gift; and
- d. An Order that Mr. Reid declare all income, investments, savings, monetary instruments, real and personal property, estate or interest in real or personal property , any money, any negotiable instrument, debt or chose in action, or another right or interest whether in his possession or not.

In other words, she was asking for disclosure of any other assets that the Claimant may have.

### **Undisputed Issues**

**[10]** From the outset several issues may be disposed of:

- (a) There has been no viva voce evidence and no cross examination or submissions in relation to this last application for disclosure of the various other assets alluded to in the application of the Defendant. Therefore,

there is no evidence on which I could rely in order to make a determination as to disclosure. So, I will make no orders in that regard.

(b) It is undisputed that the parties view Hollywood as the family home and that they both agree to they are entitled to share it equally. As such, there is no need to go into a lengthy discussion as to whether the equal share rule ought to be applied or whether it should be altered.

(c) Even though there is no agreement between the parties as to whether the application under PROSA is out of time:

- i. The Defendant is not taking issue with the substantive application itself as to determination of the property rights, and in their submissions have openly conceded that they do not object to an extension of time to bring the application being granted; and
- ii. They agree that there would have been the possibility of bringing the action when the Decree Absolute is finalized and as such, the court finds that it is in keeping with the overriding objective in relation to the reduction of litigation and the saving of expense as well as a logical and proper use of the Court's resources that the hearing on these issues should proceed.

### **Issues left to be decided**

[11] The issues which remain unresolved are:

- a. Should the extension of time be granted;
- b. What beneficial interest does each party have in the Bridgemount Property; and
- c. Whether Mr. Reid is entitled to claim rental income from Mrs. Reid for the years 2008-present and if so in what amount.

## Analysis

I have given careful thought to all the submissions presented and all the arguments and case law as cited, I have no intention of reiterating them here in detail but will refer to them as is necessary to explain my reasoning and decision in this matter.

### A. *Extension of time*

[12] This claim has been brought in keeping with the requirements under PROSA. The section to which I am referring is Section 13 which prescribes that an application for division of property ought to be made within twelve months of separation of the couple.

[13] The relevant portions of Section 13 of PROSA provides that:

*13.--- (1) A spouse shall be entitled to apply to the court for a division of property-*

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

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

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

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

*(2) An application under subsection (1) (a), (b) or (c) shall be made within twelve months of the dissolution of a marriage, termination of cohabitation, annulment or marriage or separation or such longer period as the Court may allow after hearing the applicant.*

[14] In light of this, the sub-issues which arise are :-

(a) Whether the application made by Mr. Reid is barred based on the fact that he has applied for division of property some sixteen years after his separation from Mrs. Reid;

(b) If (a) is answered in the affirmative, is there any redress for his claim.

[15] In the case of **Angela Byran-Saddler v Samuel Oliver Saddler** SCCA No. 57/2009 and **Fitzgerald Hoilette v Valda Hoilette and Davian Hoilette** SCCA No. 137/2011, Phillips, JA considered the proper interpretation of section 13 of PROSA in conjunction with sections 2,3,4,6,7,14 and 24 and its implications on the requirements of an application for extension of time. Among other findings, it was her opinion that,

*Section 13 of PROSA does not go to jurisdiction but is a procedural section setting out the process to access the Court and the remedies available. Jurisdiction is conferred by Sections 6, 7, and 14.*

*There are no express words in PROSA requiring that leave be obtained.*

*Section 13 of PROSA focuses on an extension of time as the court may allow and not on leave.*

*Section 13 of PROSA was not promulgated to create a limitation bar.*

[16] Mr. Reid's Fixed Date Claim Form filed March 25, 2013 specifically asks the Court for extension of time within which to file the application. However, there is no indication that an order was formally made granting this request.

[17] I am inclined to agree with Phillips' JA findings in **Saddler** that section 13 does not affect my jurisdiction because it is not intended to be a limitation bar. I must point out that though Mr. Reid sought extension of time within which to make his application, his affidavit filed in support of his FDCF did not specifically account for the inordinate delay in his application. I find however that in coming to a conclusion on the matter, it is for me to weigh the facts as they are presented before me.

[18] The remodelling of the Bridgemount Property is the stimulus of this application for division of property before the Court. As such, even though the couple has been separated since 1997, their disagreement as it relates to the treatment of the property only began in late 2009 when Mrs. Reid says she began to remake the property into Neita's Nest (the bed and breakfast). Indeed, this would be a good justification for the inordinate delay on Mr. Reid's part. There was no need

to bring the application before as both parties were settled in allowing the status quo to remain.

[19] There has been no application by the defence to strike out the initial FDCF of Mr. Reid which does not specifically state the section under which the application is being made, in keeping with the requirements of the CPR Part 8.8. This point was made by McDonald-Bishop J in the case of **Cunningham v Cunningham** *Cl. No. 2009 HCV 02358*.

[20] Furthermore, McDonald-Bishop J made an important point in **Cunningham**, that:

*Furthermore, the law requires parties to a marriage, for the purpose of bringing a petition for dissolution of the marriage, to satisfy the Court that they have lived separate and apart for a continuous period of no less than twelve months preceding the date of filing of the petition. Yet, the law has seen it fit to limit the parties when separated to a shorter time to approach the court in respect of the division of matrimonial property at a time when they cannot approach the court for divorce. It is hard for me to understand the reason behind the limitation under section 13 in respect of separated spouses.*

*... What we have then is that a person, who is a divorcee, who brings the action within twelve months after the dissolution of the marriage can enjoy the benefits of the Act conferred by section 13 and other related sections, but a separated spouse without reasonable likelihood of reconciliation, who has been separated for over twelve months, cannot. But yet, if that spouse were to proceed to obtain a decree for dissolution of the marriage, which would come later in time, he would be in a position to enjoy the benefit of the Act up to twelve months after the dissolution of the marriage.*

[21] It would appear that upon a literal interpretation of the relevant section of the act, the law has created a 'double panelled door' and this couple has been caught between it. In other words, though the couple has been separated for over sixteen years and the application could indeed be considered as filed out of time, once the Decree Absolute has been finalized, they would have another opportunity to apply to court for division of property.

[22] I have given consideration to the fact that, if I were to reject this application and hold that the claim has been filed out of time, there is every likelihood that once the divorce has been finalized the parties would bring another claim for division of the same properties. It seems to me then, that it is in the interest of justice as

well as in keeping with the overriding objective of the CPR that this matter should be allowed to proceed.

[23] The overriding objectives are valid considerations in matters such as this one. In the case of **Brown v Brown** SCCA No. 12/2009, Morrison JA said,

*'On an application under section 13(2), it seems to me, all that the judge is required to consider is whether it would be fair (particularly to the proposed Defendant, but also to the proposed Claimant) to allow the application to be made out of time, taking into account the usual factors relevant to the exercise of a discretion of this sort, such as the merits of the case (on a purely prima facie basis), delay and prejudice, and also taking into account the overriding objective of the Civil Procedure Rules of "enabling the court to deal with matter justly" (rule 1.1(1)).'*

[24] It is noted that in cases where there is delay in bringing an application within the prescribed time, prejudice and hardship to the parties is a relevant consideration: **Boswell v Boswell** Cl. No. 2006HCV02453. Both the Claimant and Defendant seem to agree that there would be no prejudice to either side if the court were to grant the extension of time. With this in mind, I find that they would not be adversely affected by a decision to rectify the irregularities herein.

[25] Therefore I will grant the extension of time and proceed with the matter.

[26] The division of Bridgemount can be considered in light of PROSA particularly as it relates to section 13 and 14 of the act.

[27] The only other issue which seems to be relevant here is whether the Partition Act is applicable at all. I will simply state that it does not apply in this case since I have already granted the extension of time on the basis of PROSA.

[28] In section 23 of PROSA, among the list of additional orders the court is empowered to make, is the granting of partition of property. When read in conjunction with the other sections which allow the court to vest, alter and otherwise deal with the allocation of beneficial interest in property as it relates to spouses, it would appear the PROSA is more practical to apply in these circumstances.

[29] In considering the applicability of PROSA and the Partition Act in relation to a matter of division of property between spouses, Anderson J said in **Malcolm v Malcolm** [2013] JMSC CIV 161,

*The provisions of the Partition Act, were never intended to apply as between spouses, in circumstances wherein, a partitioning of property as between themselves, was being sought. This court so concludes, because otherwise, why then would Parliament have thought it necessary to pass into law and put into force and effect on January 1, 1887, the Married Women's Property Act? That last-mentioned Act, which is the precursor to the Property (Rights of Spouses) Act, was subsequently repealed and replaced by PROSA.*

[30] Further I am in agreement with Anderson J when he says that,

*The rule of statutory interpretation, as embodied in the Latin maxim 'generalia specialibus non derogant,' which means 'general powers, do not override special powers,' is worthy of note at this juncture, although it must be stated that more typically, this now well-established principle of statutory interpretation, is typically applied in circumstances wherein a statute containing special provisions concerning a particular subject-matter, is followed on in time, by another statute containing general provisions which could be viewed as relating to that same subject – matter and other subject-matters.*

Upon closer examination of Parliament's intention when constructing these acts, it would appear that, PROSA is a special act designed to deal specifically with property disputes between spouses. Therefore, the generality of the Partition Act would be overridden.

[31] Based on the foregoing, I hold that the Partition Act is not applicable.

B. *Division of Bridgemount*

[32] The first hurdle to overcome as it relates to the Bridgemount property is to determine whether or not its division can be sanctioned under PROSA. Thereafter, consideration can be given to how the property ought to be divided.

[33] Section 14 (1) (b) provides that:-

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

*(b) subject to section 17 (2), divide such property, other than the family home, as it thinks fit, taking into account the factors specified in subsection (2)....*

In consideration of this section and the broad definition of 'Property' as outlined in section 2 of PROSA, it would appear then that the Bridgemount Property can be divided. The next consideration is what factors should be taken into account when dividing it.

**[34]** Section 14 (2) of PROSA points out the relevant factors which ought to be at the forefront of my mind when dividing 'other property'; in this case Bridgemount. As such, I will give due consideration to the relevant aspects of the section as appear on the case at hand.

**[35]** Based on the evidence, I accept that the both parties contributed to the initial deposit on the property. Mrs. Reid paid \$60,000.00 while Mr. Reid provided \$40,000.00. Thereafter, they acquired mortgages to pay the balance.

**[36]** After its purchase, the property was renovated with a view of making a profit through rent. I accept the evidence of Mr. Reid when he says that he advanced \$206,443.00 towards the renovation. Further to this, both parties undertook a joint mortgage of \$100,000.00 to help with the upgrading process.

**[37]** When the renovations were completed the property was rented. It was agreed that the rent would have been used to offset mortgage payments on both the Bridgemount and Hollywood properties. For the most part, it seems that this was done. Thus, from the initial treatment of the property it can be said that the parties had a common intention to treat the Bridgemount Property as an investment and I so find.

**[38]** However, it is also noted that after the separation both parties undertook different responsibilities. The question which arises is whether the undertaking of different responsibilities displaced the common intention displayed by their previous actions.

**[39]** During the period of 1992- 1999, Mrs. Reid says she paid the outstanding balances for the property taxes and mortgage. It is also noted that in 2001, the parties agreed to pay the mortgage instalments for the property which they each

occupied; for Mr. Reid that was the Hollywood Property and for Mrs. Reid it was Bridgemount. Mr. Reid paid his expenses solely from his salary earnings while Mrs. Reid only would have had the benefit of the rental income from the duplex. This decision was also connected to an agreement for maintenance of the children by Mrs. Reid.

[40] It is agreed that Mrs. Reid remodelled the property by converting both duplexes into one house in 2008 to make space for the boys. Further in late 2009-2010, Mrs. Reid unilaterally decided to convert the property into a bed and breakfast in order to earn an income from it.

[41] When we assess the history of the renovation of the property and how the mortgage instalments were paid, it would appear that the initial intention ought to be relied upon. I do not think that the fact that both parties started to pay the mortgage instalments for the property they occupied displaces the common intention of the property being an investment for them both. It would have been reasonable at the time for Mrs. Reid to pay the mortgage as she occupied the property and she was the reason no rental income could be collected to continue with the original arrangements. Further, Mrs. Reid's decision to modify the property into a business should not automatically convert the previous intention for the property being an investment for both their benefit to one for herself only.

[42] In the case of **Wessell Patten v Florence Edwards CA. No. 29/95**, Patterson, JA said,

*Any amount expended by the appellant to improve the property must be regarded as an accretion to the value of the property as a whole. It cannot be regarded as an accretion to the appellant's undivided share alone with the resultant diminution in that of the respondent. If that was the position, then one tenant in common could effectively acquire the entire interest in the property by making improvements without the consent of the other tenant in common.*

In keeping with this authority, it cannot be said that Mrs. Reid ought to benefit solely from the modifications which she has made. Further, it cannot be that her beneficial interest has increased because of these modifications. To make such a finding would be especially unfair to Mr. Reid in light of the fact that the

modifications were brought about by her unilateral decision. Also, it is to be remembered that Mr. Reid was to benefit from the rental income; even at one point asking her to use his portion of the benefit to maintain the boys while he undertook the responsibility to make payments on the mortgage of Hollywood which the Bridgemount rental was to have covered. Thus, her change of the tenure of the property without consulting Mr Reid would be an unsafe ground upon which to increase her beneficial interest in the property.

[43] Therefore, I hold that the interest in the Bridgemount property ought to be divided equally between Mr. and Mrs. Reid as was the common intention from the start.

C. *Determination of Rental Income*

[44] Since it has been decided that Mr. Reid has both an equal legal and beneficial interest in the Bridgemount Property it stands to reason that he is entitled to a portion of the profits which are reaped from the use of the property as an income generating asset.

[45] However, it is to be determined whether or not Mr. Reid can claim rent from Mrs. Reid in the circumstances presented. If, he is so entitled then the next consideration is when does this rent begin to accrue and at what rate.

[46] The law does not allow tenants in common to reap rent from one another for mere occupation of the premises. This position is grounded by the proposition that co-owners are jointly entitled to the entire estate and each is entitled to enjoy possession along with the other: **M'Mahon v Burchell** 47 ER 944.

[47] Notably, there are exceptions to this rule. I will discuss the ones that are more pertinent to the case at hand.

[48] Firstly, there is a presumption that a spouse is entitled to occupation rent by the other who has left the matrimonial home following breakdown of the marriage. **In Re Pavlou**, [1993] 1 WLR 1046, Millet J said

*'I take the law to be to the following effect. First, a court of equity will order an inquiry and payment of occupation rent, not only in the case where the co-owner in occupation has ousted the other, but in any other case in which it is necessary in order to do equity between the parties that an occupation rent should be paid. The fact that there has not been an ouster or forceful exclusion therefore is far from conclusive. Secondly, where it is a matrimonial home and the marriage has broken down, the party who leaves the property will, in most cases, be regarded as excluded from the family home, so that an occupation rent should be paid by the co-owner who remains. But that is not a rule of law; that is merely a statement of the prima facie conclusion to be drawn from the facts. The true position is that if a tenant in common leaves the property voluntarily, but would be welcome back and would be in a position to enjoy his or her right to occupy, it would normally not be fair or equitable to the remaining tenant in common to charge him or her with an occupation rent which he or she never expected to pay.'*

There is another important note to recover from this point, that is, equity will order the payment of occupation rent where it is necessary to *'do equity between the parties.'* As was said in the case of **Blake v Blake** [2016] JMSC Civ. 63, by Mr. Justice Evan Brown,

*'...the award of an occupation rent is not an arbitrary judicial gesture. An occupation rent only becomes chargeable to adjust the balance between co-owners. Mere occupation has never been a sufficient basis to levy an occupation rent. The balance between co-owners may require adjustment as a result of the unlawful or inequitable actions of one or more co-owners.'*

- [49] Secondly, occupation rent may be due where the occupying co-owner lets apart of the property and thus reaps a benefit: **Jones v Jones** [1977] 1 WLR 438.
- [50] Lastly, a co-owner will be liable to another for rent, in the absence of an ouster, where there is a contract or some agreement which stipulates payment. This was the salient point made in the case of **M'Mahon v Burchell**.
- [51] However, even in the absence of an ouster, it is important to note that a co-owner who voluntarily gives up occupation may lay a claim to occupation rent where he can show that the legal or equitable balance has been disturbed: **Beverley Simpson v Anslyn Simpson** Cl. No. E129/2000 (unreported). Again, as Brown J, has held in **Blake**, this is where equity must make things right.
- [52] In applying the law to the case at hand, there are a few things to note:

- (a) The Bridgemount Property is not the family home. Therefore, there is limited applicability of **Re Pavlou** in relation to being excluded from the family home due to separation. However, **Pavlou** is instructive on the point that equity will step in to make things right as between the co-owners.
- (b) There does not appear to be an ouster as there was never any real conversation between the Reids as to whether or not Mr. Reid could or could not come to the Bridgemount Property as he liked. It appears that he merely chose not to go there and to allow the status quo to remain as long as Mrs. Reid and the boys merely lived there.
- (c) On the evidence, there does not appear to be any solid agreement that Mrs. Reid should pay rent for occupation of the premises. And rightly so, as the children were living with her during the initial period after the separation. There was mention of offsetting rent for the occupation of the duplex in exchange for child support but this was rescinded when the Claimant started to pay child support for the boys.

**[53]** In my opinion, Mr. Reid would not have been entitled to occupation rent from 1997- 2009 when Mrs. Reid moved out and initially took up residence in one of the duplexes with the children. Even after she converted the duplex into one house so that the children could have more space, it could not be said that her conduct was more than mere occupation. It is to be remembered that she was entitled to enjoy possession of the property in her right as a joint owner of it.

**[54]** However, in 2010 when she completely converted the property into a bed and breakfast and started to earn an income from the premises, I believe this change in circumstances would warrant occupation rent to be paid. This is in keeping with the principle outlined in **Jones** where if the premises have been partly let then occupation rent can be due. It would appear that the very nature of the business being conducted by Mrs. Reid would mean that there is a temporary letting of the premises to strangers, albeit for a short period, for their use and

benefit just as the initial arrangement by the Reids when Bridgemount was bought.

**[55]** Also, the change in the manner of occupation of the premises would warrant equity to 'right' what would appear to be inequitable under the circumstances. I accept, based on the evidence, that Mrs. Reid unilaterally decided to use the premises for her own benefit even though Mr. Reid is a joint owner. She reaped the profit based on her use of the property and did not share them with Mr. Reid. This is inequitable and as such Mr. Reid is entitled to the occupation rent from January 2010 to present.

**[56]** I accept the Claimant's submission that one of the flats at Bridgemount could and did reap a rent of \$84,500.00 per month. I however, do not accept that the Claimant would be entitled to half of the rental based on the fact that maintenance of the property would rest squarely on Mrs. Reid's shoulder and this would have to be done out of the rental income. As such, I hold that he is entitled to at least a thirty three and a third portion of the rent per month in keeping with his obligation for maintenance which he would have been paying from that portion as agreed and which would have assisted him in paying the mortgage for Hollywood. Whether or not the place was rented consistently for the period is irrelevant as it is her conversion of the premises that would have prevented him from the projected earnings.

**[57]** The sum owed would be calculated throughout the years as follows:

(a) January 2010- November 2016 = 83 months

(b)  $33 \frac{1}{3}\% * \$84,500 = \$28,163.85$

(c) Therefore, the total of eighty three months at a rate of twenty eight thousand one hundred and sixty three dollars and eighty five cents would equal to \$2,337,599.55

**[58]** Therefore, I hold that Mr. Reid is entitled to recover this amount from Mrs. Reid. This could either be paid directly to him or be realized upon a sale of the property.

### **Conclusion**

**[59]** In consideration of the foregoing, I find that Mr and Mrs. Reid have an equal share in both the Hollywood and Bridgemount properties.

**[60]** Based on my finding I make the following orders:

- a. The court declares that the property located at 7 Hollywood Close, Kingston 6 in the parish of Saint Andrew and being the property registered at Volume 1100 Folio 125 of the Registered Book of Titles is the Family Home and is owned in equal shares by the parties;
- b. The court declares that the parties both have a 50% beneficial interest in the property known as 25 Bridgemount Heights, Kingston 8 in the parish of Saint Andrew and being the property comprised in the Certificate of Title registered at Volume 970 Folio 127 of the Registered Book of Titles;
- c. That the Family home be sold and the net proceeds of sale be divided equally between the Claimant and the Defendant;
- d. The Claimant is entitled to recover the sum of \$2,337,599.55 representing income due to the him from the Bridgemount Property;
- e. That the Bridgemount Property be sold and the net proceeds of sale be divided equally between the parties save and except that the Claimant is entitled to recover the outstanding rental income as ordered from the Defendant's share of the net proceeds of sale;
- f. That the Claimant is permitted first option to purchase the Defendant's interest in the Family Home and the Defendant is permitted first option to

purchase the Claimant's interest in Bridgemount within 90 days of the making of this order;

- g. That the Claimant's Attorney have carriage of sale in the event that the Claimant exercises his option to purchase either property and the Defendant's Attorney have carriage of sale if the Defendant exercises her option to purchase either property;
- h. That a valuator be agreed by the parties at their joint expense to value the properties for sale within 90 days hereof, failing which the properties may be valued by one party and the half cost be recovered from the net proceeds of sale;
- i. That the Registrar of the Supreme Court is empowered to execute any document or documents to effect the sale and/or transfer in the event that either party refuses or is unable to sign within 14 days of being requested to do so;
- j. Liberty to apply;
- k. Costs to the Claimant herein to be agreed if not taxed; and
- l. Formal order to be prepared, filed and served by the Claimant's Attorney at Law.