[2015] JMSC Civ. 121

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2012 HCV 00684

BETWEEN	**MARY MAUD TAYLOR**	**CLAIMANT**
AND	**MIKE ALPHANSO TAYLOR**	**DEFENDANT**

Ms L Parker Mrs. W. Irving for Claimant/Applicant.

Mr Charles R. Campbell for Defendant/Respondent.

Family Home – Whether Claimant entitled to one half share therein principles – Property (Rights of Spouses) Act – Whether one half share rule to be varied – Principles to be applied.

Heard on: 19th September, 7th October 2014 and 19th June 2015

Coram: Morrison, J.

[1] That no man acquires property without acquiring with it a little arithmetic also is the provenance of Ralph Waldo Emerson. It is a poignant observation.

On a different but quite related matter is the unprovenanced observation that "If you do housework for $150.00 a week, that is domestic service. If you do it for nothing – that is matrimony". If by "$150.00 a week" is meant the minimum wage for a day's labour, then this observation is also applicable in our jurisdiction.

[2] So then, it is the arithmetic in the acquisition of matrimonial property by the parties that will determine the parties' respective shares in it. To a degree, that was the case under the rules of the common law and of equity. However, the Property (Rights

of Spouses) Act 2004 (PROSA), has now overtaken the said rules of the common law and of equity and has instead laid out the regime of entitlement to a share in the family home and matrimonial property for consecrated and unconsecrated unions. It is to this piece of social engineering legislation that an aggrieved party must look to for his/her salvation.

BACKGROUND FACTS

[3] The parties herein has had a relationship in which the phases of their involvement were somewhat akin to that of the moon. They enjoyed an intimate relationship sometimes before 1984 and during its tenure their first child was born. After ending the first phase of their relationship the Claimant got married to another in 1993. However, by 6th April 2001 that marriage collapsed into its dissolution.

[4] With self-surrender the Claimant re-entered the second phase of their relationship which blossomed into their marriage in the very year of the ending of her first marriage. This marriage produced their second child. The parties lived and cohabited at various addresses: Portmore, Saint Catherine; Grants Pen Road, Saint Andrew; Gallery Way, New Kingston, Saint Andrew; and finally at 13A Galina Close, Manley Meadows, Kingston.

[5] It is the latter property which has provoked a dispute in law as to its ownership, this after the Claimant had moved out of the home. The parties' relationship had gone from matrimonial accord to matrimonial discord.

[6] In going to the law the Claimant filed Fixed Date Claim Form on February 1, 2012.

In it she has asked the court to make orders, *inter alia*, that –

1) The Claimant is entitled to one half interest in premises situated at 13a Galina Close, Manley Meadows, Kingston, registered at Volume 1333 Folio 232 of the Register Book of Titles pursuant to the provisions of the Property (Rights of Spouses) Act.

2) A valuator be appointed to determine the current market value of the said premises.
3) The Defendant to pay to the Claimant half of the current market value of the said premises as determined by the valuator within 120 days of the date of the receipt of the said valuation.
4) Alternatively, the premises be sold on the Open Market and the proceeds of sale be divided equally between the parties.
5) If either party refuse to sign the agreement for sale the Registrar of the Supreme Court or the Deputy Registrar of the Supreme Court be empowered to sign all such document necessary to the completion of the sale of the property.

THE CLAIM

[7] On the other hand, the Defendant filed a Notice of Application for Court Orders to Vary Equal Share on 4th December 2013 in which he has asked the Court to divide the family home "in a proportion that is other than equal".

[8] The pertinent facts are to be gathered from the two (2) affidavits of the Claimant dated the 26th January 2012 and 4th April 2013 and that of the Defendant dated the 22nd March 2013 coupled with what emerged under cross-examination of both litigants.

THE EVIDENCE

[9] Significantly, the Claimant asserts that the Defendant and herself commenced their relationship in or around 1997 and that they lived together at 13A Galina Close, Manley Meadows, Kingston which was at that time a Studio Apartment.

According to the Claimant, "Together we built on the Studio Apartment until there are now three bedrooms, two bathrooms, living room, dining room, a kitchen and a wash area".

[10] The Claimant then trenchantly asserts that she helped physically and financially in expanding the Studio Apartment. As to the latter, her source of funding was from

payment for work which she did in the United States of America which payment she then repatriated to Jamaica, “to build”. Additionally, she continues, “Even here in Jamaica on one occasion I gave a worker as payment my gold chain”. Further, she advances, “I bought all the furnishings in the house as well as the furniture”.

[11] The above represents the core of the Claimant’s thrust in her request for an Order that she is entitled to one half interest in the subject property, and to which the Defendant joined issue.

[12] In joining issue the Defendant reposed on the following: “That in 1996 I saw an advertisement in the Sunday Gleaner Newspaper which was placed by the National Housing Trust, “The Trust”, indicating that residential Quad Units were being constructed for sale during the following year in 1997”. At that time, he asserts, being in the employ of Key Insurance Company, he made an application for one of the units.

[13] He was successful in his application to The Trust, and, in consequence he made, “a request to his employers for a loan of Seventy Thousand Dollars ($70,000.00) which was towards the required deposit from National Housing Trust”.

[14] Also, he applied for and got a $800,000.00 loan from The Trust with a repayment period of the loan of twenty seven (27) years. He then emphatically refutes that at the time of making his application to The Trust, and of his being selected, that “I was not in a relationship with Claimant”.

[15] He then robustly denies that both he and the Claimant lived together at the Studio Apartment in 1997; that their relationship actually started in 1999; that the Studio Apartment was built or extended by them both; that the furnishings were bought by the Claimant only.

[16] However, he was to admit that he did receive financial and physical help from the Claimant but characterised it as, “minimal”.

[17] The Defendant goes on to say that the mortgage payments to The Trust were done by him, solely, “over the past fifteen (15) years from 1998 to the present; and that the payment were done through salary deduction”.

[18] According to the Defendant, in respect of the extension of the Studio Apartment, he received a loan of $70,000.00 from the Insurance Employees Co-operative Credit Union which he used to purchase material for the expansion of the unit. Further, to that End, he also secured two (2) personal loans from a Mr Sonny Gobin, former General Manager or Key Insurance Company Limited; donations of some windows and doors from his co-workers; a “Partner” draw of $100,000.00. Continuing, the Defendant conceded that, during 2004 he started to build a bedroom downstairs and that his wife took responsibility for the costs of that labour and for which she paid to the contractor the sum of $6,000.00 and the value of her gold necklace.

[19] The Defendant then goes on to say that whilst it is true that the Claimant started going to the United States of America in 2005 where she spent six (6) months periods, that the Claimant was not always gainfully employed. This fact reflected on his being called upon to take care of their infant children what with the Claimant sending periodic small sums for groceries only.

[20] In fact, urges the Defendant, he had to be sending monies to the Claimant in the United States of America, via Western Union, owing to the Claimant’s precarious employment while there. As to the proof of the veracity of his contentions, the Defendant supplied the relevant documentary evidence.

[21] To the above the Claimant filed her response through her 17 paragraph affidavit of 4th April 2013. In it, all but four inconsequential paragraphs were admitted.

EVALUATION OF THE EVIDENCE

[22] To even a casual observer it will become obvious that it is not until there is a breakdown within a domestic union that the question of the parties’ possessive property relations emerge. The corollary is also virtually axiomatic: the records of their individual input concerning transactional property dealings are seldom addressed, let alone kept, in reference to the day of reckoning, which is seldom contemplated, if at all.

[23] The Defendant at bar has honoured that observation more in its exception than in the observance of it: he has kept his records concerning the subject property from start

to finish. Not so the Claimant. That being the case, it is fair to say that, whereas the Claimant's case rests primarily on proof by assertion that of the Defendant's rests on proof by demonstration. Accordingly, where there are conflicts on the evidence between them, I am inclined to accept that of the Defendant's above that of the Claimant's. Having said that, there can be no gainsaying that the Defendant who, having started to build "a bedroom downstairs," that the Claimant took the responsibility for the labour costs attendant to that room. Further, that the furnishings, for the family home, as admitted by the Defendant, were the acquisition of the combined efforts of both litigants. Furthermore, admits almost grudgingly by the Defendant, in response to the Claimant's assertion that she had helped physically and financially with respect to the expansion of the then Studio Apartment, "The Claimant gave minimal help financially and physically". I think that the nadir depth of deception which the Clamant would have this court believe that the family home was acquired jointly by the litigants has been exposed by documentary evidence. Even if they were in a relationship at that time, without saying more, it is incapable of relevance.

THE ARGUMENTS

[24] The submissions of the Claimant are simple without being simplistic: The evidence confirms that the subject property is the family home to which she is entitled to one-half share. That this is so is based on the fact, first, that prior to the marriage the parties were both living at the subject property. Second, that the children of the marriage were born there. Third, that the parties took up residence at the subject property at the same time, they having moved from Gallery Way, St. Andrew. Fourth, that the Claimant had to seek employment in the United States of America in order to maintain herself and the children as the Defendant had neglected so to do.

[25] The Defendant is defiant in his opposition to any suggestion that the Claimant is entitled to one-half share interest in the subject property. In the first place, he submits, that the acquisition of the subject was entirely as a result of the his sole endeavour, and that this was achieved prior to his being married to the Claimant.

[26] In the second place, he advances that, the Claimant did not have the requisite standing as a spouse in that her capacity to pursue this claim in June 2001, as her previous marriage had been dissolved on 6th April 2001.

[27] In the third place, the presumption of an equal share in the family home under the Property (Rights of Spouses) Act, 2004, can be varied, where for example, it was acquired by one party before the marriage.

[28] In the fourth place, the facts of the case do not consort with the factual contentions of the Claimant.

[29] Collectively, both parties reposed on the Property (Rights of Spouses) Act, 2004, (PROSA) only. I shall here point out that, where it was felt to be necessary, the Court on its own motion relied on a few case law authorities to aid it in its consummation of this judgment.

THE LAW

[30] Here, the Property (Rights of Spouses) Act, 2004 (PROSA), is the governing legislation. Certain key concepts are therein defined, one of which is the family home: "…the dwelling-house that is wholly owned by either of both of the spouses and used habitually or from time to time by the spouses as the only or principal family resident together with any land, building or improvements appurtenant to such dwelling-house and used wholly or mainly for the purposes of the household, but shall not include such a dwelling-house which is a gift to one spouse by a donor who intended that spouse alone to benefit".

[31] From Section 6, which falls under the rubric of "Family Home", and , with regard to the question of the entitlement of the spouses to it, subsection(1) mandates that subject to subsection (2), each spouse shall be entitled to a one-half share of the family home on the grant of a decree of dissolution of a marriage or the termination of cohabitation, or, on the grant of a decree of nullity of marriage, or, where a husband and wife have separated and there is no likelihood of reconciliation.

[32] From the Claimant's first affidavit she depones that, since 2009, the parties have not lived together as man and wife although they both lived in the same house. Additionally, the Claimant depones in the said affidavit that, she has now "filed a petition for divorce". It is significant to note that no further details concerning the status of the petition was forthcoming. Thus, the entitlement factors in Section 6 should be restricted to Section 6(c), that is, where a husband and wife have separated and there is no likelihood of reconciliation.

[33] It is, of course, to be borne in mind that both the Claimant and the Defendant filed their respective claims some considerable time after the section 6(1)(c) requirement of PROSA.

[34] The other requirements under Section 6(1)(a) being disjunctive, I will here say that no evidence was placed before this Court to say whether, pursuant to the alleged filing of a Petition for divorce by the Claimant, that there has been a grant of a decree of dissolution of the parties' marriage, though it has amply been borne out that there has been termination of cohabitation.

[35] It is as a result of the above that Section 13 of PROSA comes into prominence.

That being the case, it is worth observing that neither party has addressed the fact that no application has been made in conformity to Section 13(2) of PROSA. What then, having regard to the fact that Section 7(1) is in its nature, jussive?

[36] Section 7(1) reads:

> "Where the circumstances of any particular case the Court is of the opinion that it would be unreasonable or unjust for each spouse to be entitled to one-half of the family home, the Court may, upon application by an interested party, make such order as it thinks reasonable taking into consideration such factors as the Court think relevant including the following:-
>
> (a) That the family home was inherited by one spouse;

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

(c) That the marriage is of short duration."

[37] Subsection 2 of section 7, defines "interested party", inter alia, as a spouse.

In the consolidated appeal of **Angela Bryant-Saddler v Samuel Oliver Saddler**, S.C.C.A. No 57/2009 **and Fitzgerald Hoilette v Valda Hoilette and Davion Hoilette and Simeon Davis**, S.C.C.A. No. 147/2011, the Court of Appeal, in which Phillips JA wrote the leading judgment (adopted by Harris P (Ag) and Brooks JA), had to deal with certain issues. Among them were: whether a claim form is valid if it is filed outside the 12 month limitation period stated in section 13(2) of PROSA; whether leave/permission, together with an application for extension of time required is required prior to the filing of a claim for relief under PROSA; whether a claim made under PROSA, without leave/permission or extension of time, irregular and curable, by a subsequent application, filed pursuant to section 13(2) of PROSA; and, what, if any, is the effect of the orders made in the action prior to the filing of the application, under section 13(2) of PROSA?

[38] After a review of the relevant authorities both within and without our jurisdiction, Phillips JA, concluded, among other things –

a) 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 of the court is conferred in the main by Sections 6, 7 and 14.
b) As the provisions is procedural and, not a condition of precedent to the jurisdiction of the court, any irregularity can be remedied by a subsequent order, that is *nunc pro tunc,* in the interests of justice, particularly as the grant of the order is under the court's control through the exercise of its discretion.
c) That the claims could be considered to be irregular or, at worst, in a state of suspended validity, until the application for extension of time was granted;

d) That there are no express words used in PROSA requiring that leave be obtained;
e) That even if leave was specifically required before and action is brought and the leave was not obtained, the omission is not a fundamental irregularity and can be coured *nunc pro tunc*;
f) That the focus of Section 13 of PROSA was on, extension of time, that is, on such longer period as the court may allow and, not on leave;
g) That Section 13 of PROSA was on, extension of time, that is on such longer period as the court may allow and, not on leave;
h) That, if the claim fell outside of the 12 month time period set out in the statute, then an extension of time must be obtained from the court for the matter to proceed, but no leave is required, and so no application for leave and extension is required; and,
i) That there are no words (in PROSA) indicating that the application for extension of time must be filed before the claim form is filed, if the claim form is filed outside the time limited in PROSA. There is no indication that the application for extension of time cannot be filed after the claim is filed, and the order granted *nunc pro tunc*.

[39] The above words which reflect the judgment of the Court of Appeal require no gloss. Should I, in applying the principles derived from them, seek to 'gild refined gold', so to speak, then I would have been unfaithful in not following the law as is laid down by a superior court, which I am bound to follow. I do no such thing. I merely venture to say, however, that it seems to me that the suit having commenced under Part 8 of the Civil Procedure Rules, 2002 (CPR), the matter of Section 13 of PROSA being procedural, then any procedural irregularity under that section, is amenable to Rule 26 of the CPR.

[40] Should it be determined that I am wrong in so holding and that the action of the Claimant be stayed for want of procedural regularity pending an application to have it regularised, I will now go on to determine the parties' respective shares in the family home.

[41] Now, Section 13(1) deals with the time when an application may be made to the Court for division of property. It reads: "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 a marriage or termination of cohabitation; or
(b) …
(c) Where a husband or wife have separated and there is no reasonable likelihood of reconciliation; or
(d) …

[42] It should be noted, however, that Section 13(2) mandates that an application be made within twelve month of the dissolution of a marriage, termination of cohabitation, or separation.

[43] Notwithstanding that the application is to be made within twelve months a Court, on hearing an applicant, may allow a longer period.

[44] According to Section 14(1) where a spouse under Section 13 applies to the Court for a division of property such a Court may make an order pursuant to Sections 6 or 7.

[45] The factors referred Section 7 are set out at 7(1)(a)-(c) but the Court is by no means restricted in its authority to vary the equal share rule as it is empowered to "make such order as it thinks reasonable taking into consideration such factors as the Court thinks relevant…".

[46] In this respect it is to be noted that section 14(2) sets out the factors to be entertained in the division of property, "other than the family home": See Section 14(2)(a)-(e). On the face of Section 7 it would appear that Section 14(2) factors would be excluded. However, I ask myself, what would constitute "such factors as the Court sees fit?"

[47] I can see no valid reason for any objection should a court in its endeavour to vary the equal share rule, venture to apply the factors governing the regime of section 14(2) as being relevant in its deliberations.

SHOULD THE EQUAL SHARE RULE BE VARIED?

[48] So, as I understand it, the Court as per Section 6 starts out with the presumption that a spouse is entitled to a one-half share in the family home. However, such a presumption can be displaced by a consideration of Section 7 factors and, in addition thereto, such other factors which the court deems relevant.

[49] In the Court of Appeal decision of **Carol Stewart v Lauriston Stewart**, S.C.C.A. Appeal No. 15/2011, Brooks, JA with the concurrence of Harris, JA and Harrison, JA at paragraph 27 noted that Section 7(1) requires the party who disputes the application of the statutory rule, to apply for its displacement. In the instant case the Defendant has done just that. Further, observed Brooks JA, the court is entitled to consider factors other than those listed in section 7(1). Still further, His Lordship said that the equal share rule has to be shown to be unreasonable or unjust as equality is the norm. After stating that very cogent evidence is required to displace the rule. His Lordship went on to say that it is the civil standard of proof which should guide the court.

[50] Paragraph 34 of the Court's judgment is particularly telling. In addressing the section 7(1) factors this is what is laid down: "The third point to e noted is that the existence of one of those factors ... does not lead automatically to the entire interest being allocated to one or other of the spouses. What may be gleaned from the section is that each of these three factors provide a gateway whereby the court may consider other elements of the relationship between the spouses in order to decide whether to adjust the equal share rule."

[51] Farther along, at paragraph 41, Brooks JA said: "Since section 7 does not allow for contribution and 'other facts and circumstances' to entitle the court to consider a departure from the equal share rule, "What else," he asks rather rhetorically, "since the

section uses the word “include”, may be considered as factors that may lead to such a departure?” His Lordship’s answer is: “Perhaps only time and experience will bring about an answer to that question.”

[52] Next, His Lordship said that the court should not embark on an exercise to consider the displacement of the statutory rule unless it is satisfied that a section 7 factor exists: See paragraph 50. However, “If a section 7 factor is credibly shown to exist, a court considering the issue of whether the statutory rule should be displaced, should nonetheless, be very reluctant to depart from that rule.” The ostensible reason behind such a posture of reluctance is based on an enshrined statutory rule, *inter alia*, “that marriage is a partnership in which the parties commit themselves to sharing their lives on a basis of mutual trust in the expectation that their relationship will endure.”

[53] In the instant case I am satisfied that a section 7 factor exists, that is, that the family home was already owned by the Defendant at the time of the parties’ marriage or the beginning of cohabitation. Also, while I do not dissent from the ‘posture of reluctance’, I am of the view that it would be unjust and unreasonable should I not accede to a variation of the equal share rule.

[54] From the evidence, it appears, on a balance of probabilities, that the Defendant’s singular, if not lopsided efforts, both in respect of the acquisition of the questioned property and of its expansion, are overwhelmingly of clear demonstration. As has been noted elsewhere, the Claimant did in fact lend a modicum of assistance both financially and physically in the expansion of then Studio Apartment to the grandiosity it is today.

[55] However, nothing of substance which the Claimant has asserted in her second affidavit can overwhelm the contentions of the Defendant, in particular, paragraphs 1 – 14 of his affidavit. Paragraph 15 of the Defendant’s said affidavit together with the exhibit attached thereto gives quietus to the Claimant’s contention: The National Housing Trust Receipt dated 13th November 1997 which was at the time when the Claimant was then into her first marriage, clearly shows a payment (deposit) by Mike Taylor in respect o Manley Meadows (Exhibit 2); so too is the deposit which was by way of a cheque issued to Mr. Mike Taylor by Key Insurance Company Limited, “... on

November 12, 1997 ...” (Exhibit 3); so too is annexure (Exhibit 4), which is a letter from the National Housing Trust to Mr. Mike A. Taylor of 47 Gallery Way, Kingston 5 dated March 1998, advising him that his application to them for a loan of $8000,00.00 has been approved.

[56] Even with the restraint of disbelief, I am prepared to say, in the face of the stark staring strands of facts that, “the obvious is better than the obvious avoidance of it”: The Defendant had acquired the subject Studio Apartment all on his own and importantly before his marriage to the Claimant.

[57] Still, I must have regard to the legal notion of what constitutes the family home: “... the dwelling-house that is not wholly owned by either or both of the spouses and used habitually or from time to time by the spouses as the only principal family residence...”

[58] Clearly, then, since the parties’ marriage in June 2001 up until 2009 when they ceased to cohabite though they continued to live at the subject property, it the subject property must be regarded as the family home.

[59] Even having designated the subject property as the family home, I am to say that, it would be unreasonable or, indeed, unjust, to grant to the Claimant a one-half share in the family home. As I have said before, this is on the basis that the family home was already owned by the Defendant at the time of his marriage to the Claimant.

[60] In **Graham v Graham,** Claim No. 2006 HCV03158, judgment delivered on April 8, 2008 by McDonald-Bishop, J(Ag.), as she then was, the facts, in part, concerned a certain property that was transferred to the defendant solely to which the Claimant wife made no contribution towards its purchase. The Claimant had asserted that the Defendant had always said that the property was theirs though the defendant denied it. Her Ladyship found that the property were the parties’ matrimonial home. The issue arose as to whether the Claimant should have an equal share in the matrimonial home or, to state its corollary, whether the equal share rule should be departed from on the grounds that to apply it would be unreasonable or unjust in the circumstances.

[61] In the course of her judgment Her Ladyship opined that, “By virtue of the statutory rule, the claimant would, without more, be entitled to her 50% share in the family home as claimed and this is regardless of the fact that the defendant is sole legal and beneficial owner.” She then traced the genesis of the equal share rule which reflected on its overarching and underpinning philosophical considerations: Marriage is a partnership of equals with the parties committing themselves to sharing their lives and living and working together for the benefit of the union when the partnership ends, each is entitled to an equal share of the asset unless there is good reason to the contrary, fairness requires no less.

[62] The authority quoted for the fountain-head concept was Lord Nicholas of Birkenhead in **Miller v Miller**; **McFarlane v McFarlane** [2006] 2 A.C. 618.

[63] As to the instance case I am to be reminded that “a good reason for departing from equality is not to be found in the minutiae of married life”: per Coleridge, J in **G v G** (Financial Provision: Equal Division) [2002] 2 F.L.R. 1134 as reported in the **Graham** judgment. Equally it must be borne in mind that the law is that the Claimant’s role as mother of the children of the marriage as homemaker must be seen as substantial and, not merely, as a token contribution to the property of the family regardless of who legally owns it.

[64] What share of the family home should the Claimant get?

[65] As admitted by the Defendant both in his affidavit and in his Attorney’s-at-Law closing submission, the Claimant’s contribution to the physical expansion of the family home was minimal. I do not accept that characterisation wholly. While I will say that their individual efforts in expanding the Studio Apartment were disapportionate, yet I feel constrained to take into consideration other relevant factors such as those adumbrated in Section 14(2) of PROSA. In that regard I remind myself that there shall be no presumption that a monetary contribution is of greater value than a non-monetary one.

[66] In the first instance decision of **Paula-Ann Sterling v Wayne Sterling** Claim No. 2007 HCV 00069, Anderson, R. J had to grapple with, among other contentions, the question of a just and reasonable division of property. In coming to his decision the

learned judge drew succour from the first instance judgment by Her Ladyship Mrs McDonald Bishop in **Graham v Graham** Claim No. 2006 HCV 03158 *supra.* He opined that there is no slide-rule method with precise mathematical accuracy with which a court can proceed to divide the property interests between parties.

[67] The Defendant's input in acquiring the Studio Apartment and then in expanding it is quite formidable: the $70,000.00 deposit; the $800,000.00 loan from the National Housing Trust; the mortgage payments from 1998 to the present; a loan of $70,000.00 from the Insurance Employees Co-operative Credit Union to purchase materials for the expansion of the Studio Apartment; two loans from a Mr Sonny Gobin totalling $55,000.00; "partner draw" of $100,000.00 and, donations of fixture from co-workers at Key Insurance Company Limited.

[68] On the other hand, is the Claimant's taking over of the building of the downstairs bedroom by the Defendant and of her defraying the labour costs attendant thereto.

[69] Also, her "minimal" other contributions in cash, kind and other efforts without which the Defendant would have had to divert funds away from the expansion project, and the payment of the mortgage and other incidentals.

[70 Like Anderson, R. J. in the **Sterling** case, supra, and her Ladyship in the **Graham** case I feel obliged to vary the equal share rule for the reasons which I have advanced.

[71] This I do by awarding to the Claimant a 40% share in the family home.

[72] Accordingly I make the following orders: