



[2025] JMSC Civ. 30

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2017 HCV 04131

IN THE MATTER of the Property (Rights of Spouses) Act, 2003.

AND

IN THE MATTER of the Home, known as Lot 8 Rainbow Cresecent, Wickie Wackie, 8 Miles, Bull Bay in the parish of Saint Andrew registered at Volume 1465 Folio 966 of the Register Book of Titles.

AND

IN THE MATTER of the Poultry business known as Ina's Farm located at Hampstead, Cane River District, Bull Bay in the parish of Saint Andrew.

BETWEEN

CRESLYN THOMAS

CLAIMANT

AND

CARLOS CASSERLY

DEFENDANT

OPEN COURT

Tamiko Smith instructed by Balli & Associates, Attorneys-at-Law for the Claimant.

Arnaldo Brown instructed by Arnaldo Brown and Co, Attorneys-at-Law for the Defendant.

Division of Matrimonial Property – Whether the property -a business- is jointly owned by both Spouses or by the one Spouse and Third Parties - Whether the Claimant Spouse made any financial contribution to the development of the

business - whether the Claimant spouse made any non-financial contribution to the development of the business. Occupation Rent - Whether the Claimant spouse is entitled to occupation rent.

Heard ; February 27 & 28, 2024, June 26, 2024, October 7 & 8, 2024 and December 11 & 12, 2024 and February, 14th 2025

THOMAS, J:

Background

[1] The Claimant, CRESLYN THOMAS, the spouse of the Defendant Carlos Casserly, in Fixed Date Claim Form filed on the 1st of December, 2017, sought certain declarations against the Defendant in relation to the Family Home and another Property. Prior to the commencement of the trial the parties arrived at a consensus regarding the family home. A consent judgment was thereby entered. During the course of the trial, Mr. Casserly agreed for Ms. Thomas to be awarded half the value of the household furniture. Therefore, the remaining aspects of the Claim brought by Ms. Thomas on which the Court is now required to make pronouncements are;

1. A DECLARATION that the parties are the joint legal and beneficial owners entitled in equal shares in the family poultry business called Ina's Farm located in Newstead, Cane River District, Bull Bay in the parish of Saint Andrew;
2. A DECLARATION that the Claimant is entitled to one half of the net income from the poultry business from January 2017 to the date of the order herein;
3. She also seeks the following remedies:
 - a. The Claimant be credited occupational rental at the current market rate from January 2017, the date of separation until the granting of this order;

- b. The Claimant be credited her proceeds of the profits of the business known as Ina's Farm from January 2017 until the granting of this order herein;

The Division of Property/ Ina's Farm

The evidence of the Claimant

[2] The Claimant has given evidence as to the circumstances which precipitated the establishment of the business. Her evidence is that as the demands of their family grew, She and Mr. Casserly realized that they could not accomplish all they needed to pay bills and maintain their lifestyle. She states that they discussed the fact that they needed an avenue to earn extra income, so they decided to do some domestic chicken rearing to earn some extra cash.

[3] She contends that her family had a large piece of land in Cane River district of Bull Bay on which there was an old chicken coop. She states that she spoke to her cousins Ina Bennett and Oscar Bennet who are the owners and asked them for permission to do the business on the land with the coop in order to rear layer chickens. She contends that the Defendant did not know her family well enough, so she had to make the initial contact and requests. However, she states further that her cousin Delroy Roberts had direct supervision of the property which is owned by his mother and they spoke to him. She then says that it was Mr. Roberts who contacted his mother and they agreed for them to use the land. It is her evidence that part of the agreed terms for them using the property was that the outstanding property taxes and all related charges such as National Water Commission should be paid. She asserts that both herself and Mr Casserly provided equally the financial resources to take care of these charges. She also indicates that they took possession of the property in or around 2005 and started the business of rearing layer chickens. She states that from the income proceeds; they paid up the property taxes.

[4] Ms Thomas further testifies that after herself and Mr. Casserly started the business they realized they needed someone to be up-front for the business by dealing directly

with the stores as their jobs prevented them at the time, from doing any kind of business in that consumer goods area.

[5] She says Calvin Reid was employed to do deliveries and transport the feed for the chickens. She says also that she and Mr Casserly both agreed that since Calvin Reid was doing the deliveries he would be the best person to assisted with the slaughtering of the chickens, She further contends that in 2008 when they started with the layer chickens and as the business progressed they recognized that there was a need for a commercial vehicle to transport the eggs to their customers and also for transportation of feed; Delroy Roberts loaned them money to help with the purchase of a Hiace Bus and was repaid from the income from the business. She asserts that it was then, that Calvin Reid was employed as the driver to transport both eggs and chicken feed and he was paid a salary for his service. She insists that neither Mr. Reid nor Mr, Roberts was ever taken on as a partner.

[6] On cross examination Ms Thomas confirms that it was Delroy Roberts, her cousin, whom they spoke to about the use of the land for the farm and not Ina Bennet nor Oscar Bennet. She says this was because they were not in the island. She is however adamant that it is not through a discussion between Delroy and Mr. Casserly the idea of raising chicken was borne. She agrees that she has not provided receipt for the property tax she said she paid for property.

[7] However, Mr. Casserly testifies that Ms Thomas never made any investment in the business. He avers that he operated the business with his 2 partners – Delroy Roberts and Calvin Reid. He admits that Delroy is the Claimant's cousin but asserts that in January 2007, it was he and Delroy Roberts who, decided to start a chicken rearing business called "Ina's Farm", named after Delroy's mom. He indicates that the business commenced with land belonging to Delroy's mother, Ina Bennett, who gave Delroy permission to use the land and its facilities

[8] He explains that Ms Thomas knew what was happening, because he shared that information with her as his spouse but her statements as to any in depth involvement are

simply untrue. He states that for the broiler business to work more space was needed and it was he who made enquiries about an empty piece of land that was adjacent to the land that the farm was operating on. This land he says belonged to Oscar Bennett, Delroy's uncle. He says that it was Delroy who sought and received permission for them to expand onto the land.

[9] He says further, that the outstanding lease on that property was \$9,200.00 and that this was paid from his salary. He also states that they found **that** the broiler business wasn't very profitable and so in January 2008, he and Delroy ventured into the layer chicken aspect of the business instead and that it was at that time that Calvin Reid joined the business. He states further that Delroy is in charge of the day to day operation of the farm; Calvin is responsible for the delivery of eggs and for the transportation of feeds and other farm supplies. He asserts that he and Ms. Thomas had no joint finances that were used to do anything and that the two expenses that the Claimant and he agreed she would handle at the family home often time fell back on him; the telephone and cable service were disconnected from time to time because she was unable to pay them. He states that everything came from his salary. (He tendered into evidence his payslips from Grace Kennedy Co LID from 2012 to 2018).

[10] He avers that Ms. Thomas had no money to put into the business at the inception and it was never intended nor was she a business partner in the venture. He says that whatever she knows about the operation of the farm is what he told her given that they were then living a life together.

[11] On cross-examination Mr, Casserly admits that he met Mr. Roberts through his involvement with Ms. Thomas. He however asserts that he already knew Calvin Reid prior to his involvement with her. He acknowledges that Mr. Roberts is Ms. Thomas's cousin. In refuting the assertions of Ms Thomas he denies that without the relationships among Ms. Thomas, Mr. Roberts, Ms. Bennett, and Mr. Reid, Ina's Farm would not have come into existence. He also denies the suggestion that Ms. Thomas had goodwill among her relatives or at her work place

[12] He agrees that the land on which Ina's Farm is situated was not owned by Delroy Roberts but his mother and further admits that both Delroy Roberts and Calvin Reid were paid a salary. He further agrees that part of the duty of Calvin Reid was to collect payments. He asserts that Delroy Roberts also provided customers to Ina's Farm to include customers from the airport where he used to work, especially during December when eggs were short, but that his position in the business was more than that. He, however, agrees that he did not indicate in his affidavit that Delroy Roberts provided customers.

[13] Mr. Casserly disagrees with the suggestion by counsel for the claimant that both Delroy Roberts and Calvin Reid were only employees of Ina's Farm and not partners. He indicates that the business was not registered and disagrees that the reason that he alleges that Mr. Roberts and Mr. Reid are partners is because he wants to diminish Creslyn Thomas' share in the business

Issues

[14] The Court is required to make a determination of the respective interest of the parties in relation to the Property, Ina's Farm. As such the issues which arise for the court to resolve are

- (i) Whether the Claimant is joint owner with the Defendant in this property or whether it is jointly owned by the Defendant and other parties
- (ii) Whether the Claimant made any contribution to the establishment or the development of this property.

The Law

[15] Section 13 (1) of the Property Right of Spouses Act, (PROSA) states 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 a marriage or termination of cohabitation; or*

- (b) *on the grant of a decree of nullity of marriage; or*
 - (c) *where a husband and wife have separated and there is no reasonable likelihood of reconciliation; or*
 - (d) *where one spouse is endangering the property or seriously diminishing its value, by gross mismanagement or by wilful or reckless dissipation of property or earnings.*
- (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 of marriage, or separation or such longer period as the Court may allow after hearing the applicant*
- (3) *For the purposes of subsection (1) (a) and (b) and section 14 the definition of "spouse" shall include a former spouse.*

[16] Section 14 provides that:

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

- (a) make an order for the division of the family home in accordance with section 6 or 7, as the case may require; or*
- (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),*

or, where the circumstances so warrant, take action under both paragraphs (a) and (b).

(2) *The factors referred to in subsection (1) are –*

- (a) *the contribution, financial or otherwise, directly or indirectly made by or on behalf of a spouse to the acquisition, conservation or improvement of any property, whether or not such property has, since the making of the financial contribution, ceased to be property of the spouses or either of them;*
- (b) *that there is no family home;*
- (c) *the duration of the marriage or the period of cohabitation;*
- (d) *that there is an agreement with respect to the ownership and division of property;*
- (e) *such other fact or circumstance which, in the opinion of the Court, the justice of the case requires to be taken into account.*

(3) *In subsection (2) (u), "contribution" means-*

- (a) *the acquisition or creation of property including the payment of money for that purpose;*
- (b) *the care of any relevant child or any aged or infirm relative or dependant of a spouse;*
- (c) *the giving up of a higher standard of living than would otherwise have been available;*
- (d) *the giving of assistance or support by one spouse to the other, whether or not of a material kind, including the giving of assistance or support which –*
 - (i) *enables the other spouse to acquire qualifications; or*
 - (ii) *aids the other spouse in the carrying on of that spouse's occupation or business;*
- (e) *the management of the household and the performance of household duties;*
- (f) *the payment of money to maintain or increase the value of the property or any part thereof;*
- (g) *the performance of work or services in respect of the property or part thereof;*
- (h) *the provision of money, including the earning of income for the purposes of the marriage or cohabitation;*

(i) *the effect of any proposed order upon the earning capacity of either spouse.*

(4) *For the avoidance of doubt, there shall be no presumption that a monetary contribution is of greater value than a non-monetary contribution.*

Submissions

On behalf of the Claimant

[17] Mr. Brown on behalf of the claimant submits that **section 13** of PROSA allows a spouse to apply for property division in specific circumstances, including separation with no likelihood of reconciliation or gross mismanagement of property. Such applications must be made within twelve months, unless the Court allows an extension.

[18] He places reliance on **Section 14** which grants the Court discretion to divide property other than the family home, considering factors such as financial and non-financial contributions, the duration of cohabitation, and any relevant agreements. He outlines that the section provides that contributions include financial investments, caregiving, household management, and income generation, with no presumption that monetary contributions outweigh non-monetary ones. He also relies on **Section 15 of PROSA** which empowers the Court to alter property interests through settlements or transfers, ensuring fairness.

[19] Mr. Brown submits that on the balance of probability, based on the weight of the evidence, the Claimant is entitled to an interest in the Defendant's business, as provided under **sections 14(1)(b) and 17(2) of PROSA** due to their 20-year cohabitation. He also submits that the Claimant directly and indirectly contributed to Ina's Farm, particularly by securing Progressive Grocers as a customer, accounting for \$7,000,000 in sales between 2015 and 2017.

[20] He argues that although the Defendant attempted to minimize her role, he admitted in his affidavit that she secured Progressive Grocers as a customer. Mr Brown submits that the Defendant's assertion that this did not amount to sales and marketing should be rejected, as invoices confirm significant sales.

[21] He argues further that Ina's Farm was a profitable business, with earnings of approximately \$13,142,215 between 2016 and 2019, despite a loss in 2017. The Court is invited to infer that Progressive Grocers significantly contributed to these earnings.

[22] Counsel posits that Ina's Farm, though unregistered, qualifies as property under the Property Rights of Spouses Act, and the Claimant is entitled to an interest in its generated income. He submits that the Claimant asserts her right to the full \$13,142,215, rather than just one-third, as employees Calvin Reid and Delroy Roberts worked for the business. He suggests that based on the balance of probability, the Claimant is entitled to at least a 30% share of Ina's Farm.

The Defendant's submission

[23] Ms. Smith in her submission on behalf of the defendant posits that the date of separation is a critical issue in the matter and urges the court to determine the date of separation, as it is essential for establishing the point at which the value of any interest in Ina Farms, if found attributable to the Claimant, should be assessed. To buttress her point, she relies on the Court of Appeal decision of **Suzette Ann Marie Hugh Sam v Quentin Ching Chong Hugh Sam** [2018] JMCA Civ 15 where it was enunciated that the date of separation is a pivotal consideration when determining a spouse's share in matrimonial property under the Property Rights of Spouses Act (**PROSA**).

[24] She further submits that the judgment aligns with the statutory mandate in **section 12 of PROSA**, which states that the value of a spouse's interest in property must be assessed as of the date the spouses ceased to live together as husband and wife.

[25] She cites the case of **Donnetta Jaddoo v David Jaddoo** where it was emphasized by Reid J that section 14 of PROSA does not presume equal entitlement to property other than the family home. Counsel emphasizes that the Court must consider the factors outlined in **sections 14(2), 14(3), and 14(4)**, particularly the financial and non-financial contributions of each spouse. She argues that credibility plays a crucial role, and greater weight may be assigned to the testimony of the more truthful and forthcoming party.

[26] Additionally, she relies on the decision of **Steve Cespedes v Audrey Cespedes** where the Court reaffirmed that the burden of proof lies with the spouse asserting an interest in property other than the family home. That spouse must demonstrate their contributions with clarity and precision.

[27] She asserts that; “the Claimant has failed to substantiate her claim to an interest in Ina’s Farms with adequate evidence of financial or non-financial contributions. Her vague assertions about involvement in “building, feeding, cleaning, and preparing birds for marketing and sales” lack specificity regarding the nature, duration, or impact of these activities. By contrast, the Defendant’s detailed and corroborated evidence demonstrates that the business was initially funded by him and Delroy Roberts, with no significant financial or non-financial input from the Claimant”.

[28] On the issue of credibility, Ms. Smith posits that the importance of credibility in assessing conflicting evidence was underscored in the case of **Sirjue-Sinclair, Maureen v Sinclair, Welsford Leo** [2021] JMSC Civ 104 where it was stated that credibility often determines the outcome where parties present contradictory accounts, especially regarding contributions to matrimonial property. She indicates that the Claimant’s evidence contains multiple inconsistencies, such as misrepresenting the start date of the poultry business and misstating the date of separation. These contradictions “significantly undermine her credibility. Conversely, the Defendant’s consistent and well-documented testimony, including bank records, receipts, and detailed accounts of business operations, provides a reliable basis for the Court’s findings”.

[29] In her submission, Ms. Smith cites the decision of **Donnetta Jaddoo v David Jaddoo**, where the Court emphasized that the division of property other than the family home should be guided by an equitable, not equal, distribution. This principle requires the Court to evaluate factors such as the length of the relationship, the parties’ respective contributions, and any agreements regarding property.

[30] She argues that while the Claimant seeks an interest in Ina’s Farms, the evidence overwhelmingly shows that her contributions were negligible. She further argues that the

Defendant's testimony details his financial investment, labour, and management of the business, as well as significant risks undertaken to sustain its operations. She emphasizes the fact that the Defendant does not deny that the Claimant introduced Progressive Groceries of Jamaica as a customer, but takes the position that this represents the sole contribution advanced in her claim regarding Ina Farms.

[31] Ms. Smith submits that the Claimant has failed to provide any evidence or information quantifying the portion of sales attributable to this customer in proportion to total business revenue. She takes the view if the Court were to consider this as a contributing factor, the lack of substantive detail renders her evidence insufficient to meaningfully assist the Court in ascribing an interest to her in Ina's Farms.

[32] She posits that; "the Claimant's evidence fails to substantiate the factors set out in **s. 14 of PROSA**. There is insufficient evidence of financial contribution, she fails to adequately particularize her role and responsibilities in the day-to-day operations of the business and her evidence contains contradictions and gross exaggerations'

[33] According to Counsel, the Claimant's case lacks substantive documentary evidence to substantiate her financial contributions to the household or business. This Counsel submits, prevents the Court from assessing whether the Claimant truly had the means to afford the contributions she claims. She further argues that the Claimant asserted that the business earned an average monthly net income of \$550,000, yet this claim is unsupported with any documentation. In relation to the claim made by the claimant regarding the vehicles the business owned, Counsel argues that the Claimant has failed to provide critical details such as purchase dates, prices, financing arrangements, licensing, insurance, or maintenance costs. Counsel submits that the lack of these details and misidentifying the vehicle with license number CK4896 as a Probox demonstrates that the Claimant was not well informed about the affairs of the business or its capital assets. It is her view that the Claimant's claim merely contains information shared with her by the Defendant during the course of their marriage rather than from first-hand knowledge.

[34] Ms. Smith submits, that the Claimant's claim that she sold her Nissan Sunny for \$250,000 and gave the entire proceeds to the Defendant for purchasing a Honda Civic is unconvincing. She submits that the credibility of the claimant is undermined for the following reasons:

- a. Initial claims that the poultry business began in 2005, later revised under cross-examination to 2007;
- b. Stating that the date of separation was January 2017 but admitting during cross-examination that she began renting alternative accommodation in September 2016, when confronted by her own rent receipts.

Discussions

[35] In these proceedings, I bear in mind that it is the responsibility of the Claimant to prove on a balance of probabilities that she is entitled to the remedies set forth in her claim.

[36] Having reviewed all the evidence, the submissions of both counsel and the applicable law to include cases submitted by both counsel for which I am grateful I will proceed to highlight the salient facts and the applicable law that have impacted by decision regarding each issue.

Whether the Business Inas Farm's was Jointly Owned by the parties or Co-owned by the Defendant Spouse and Third Parties

[37] It is the contention of Ms, Thomas that it was herself and Mr. Casserly who equally provided the financial resources to commence the operations of Ina's Farm. It is also her contention that she was instrumental in securing the acquisition of the lands on which the farm was being operated. She is claiming that the farm is equally owned by herself and Mr. Casserly. However, Mr. Casserly is refuting Ms Thomas' claim He contends that Ina's Farm was a partnership between himself, Delroy Robert and Calvin Reid who were the persons who provided the start-up capital for the business. Mr. Casserly asserts that

Ms Thomas has no interest in the business in that she provided no capital for the establishment

[38] On a proper reading of **section 14 of PROSA** and the cases I share the view of counsel Ms. Smith that the authorities have clarified how property other than the family home is to be divided. It is in fact a true statement of the law that with the exception of the family home, there is no entitlement to half of other matrimonial property in the absence of proof of contribution amounting to half share in the property. (See also the cases of of *Sirjue-Sinclair, Maureen v Sinclair; Welsford Leo; Donnetta Jaddoo v David Jaddoo; and Suzette Ann Marie Hugh Sam v Quentin Ching Chong Hugh Sam*)

[39] The burden therefore rests on Ms. Thomas to prove her contribution to the property in the share she is claiming. On my review of the evidence I find that the evidence of both parties establishes that land owned by Ina Bennett was a primary capital asset from the commencement the business. However, in my view the preponderance of the evidence does not support Ms Thomas' evidence that the Land on which the farm was located can be properly described as (her) family-owned land. She is not claiming neither legal nor equitable joint ownership with the owner Ina Bennett

[40] The evidence does establish Ms. Bennett as her relative. However, she, being a cousin, would not be considered a near relative. Additionally, in Jamaican parlance, the term "family Land" is generally used by a lay person to refer to land, to which persons would be asserting a claim of right of inheritance or possession through the familial connection in addition to occupation in some instances. This is so even where the legal title is not in the names of the persons so claiming.

[41] In this case, Ms. Thomas is not claiming a right of occupation or inheritance to these lands. In fact, she admits that Delroy Roberts is the child of the owner. Consequently, it is my view that Delroy Roberts would be better placed to claim that the land is family land.

[42] Additionally, despite denying that Delroy Roberts was a partner in the business, Ms. Thomas admits that he had some connection, with the business. On her evidence, he was creditor in addition to being a paid employee. Furthermore Ms. Thomas on cross-examination reveals that she did not in fact speak to Ms. Ina Bennet about the land. Her evidence on cross-examination is that it was Mr. Roberts whom she spoke to concerning the land.

[43] Nonetheless, in circumstances where he would be in the position to receive a greater benefit from the business as a partner than a mere employee I am more inclined to the view that Mr. Roberts would have persuaded his mother to contribute the land on his behalf, rather than on behalf of Ms. Thomas. Additionally, I pause at this juncture to express the view that nothing in law prevents a partner in a business from also being a paid employee.

[44] In any event, I find the evidence of Mr, Casserly more convincing on this issue. His version surrounding the establishment of the business is more convincing. Consequently, I accept his evidence that Mr. Delroy Robers was his partner in the business.

[45] Ms. Smith has taken issue with the fact that Ms. Thomas has not provided any documentary evidence of financing the establishment of the business. However, I am mindful of the fact that as it relates to any transaction concerning the business the parties were not strangers to each other but spouses. I am guided by the principle stated in the case of **Rimner v. Rimner** [1952] 2 All E.R. 863, where at page 870, the view of the court was expressed as follows;

*“cases between husband and wife ought not to be governed by the same strict considerations, both at law and in equity, as are commonly applied to the ascertainment of the respective rights of strangers...” (See also the case of **Warren Preswidge v Valrie Prestwidge** (Supreme Court Civil Appeal L No. 60 of 1999)*

[46] Consequently, in light of the nature of the relationship it is not unusual that as spouses the parties would not have created and retained documentary evidence of all their financial transactions between each other. As such I do not subscribe to the view of

counsel Ms. Smith that the Claimant's failure to provide documentary evidence of her financial contribution to the business is intrinsically fatal to her case.

[47] However, in view of the entirety of her evidence I am not persuaded by Ms Thomas that both herself and Mr. Casserly provided equally the financial resources to take care of the outstanding property taxes and all related charges such as National Water Commission in order to obtain the use of the land.

[48] Whereas I do not expect her to provide individual receipts for these payments I find Ms. Thomas' evidence to be vague and unconvincing. She has provided no details as to how much these expenses were and the sum even if it was an approximation she contributed. Consequently, I reject her evidence that herself and the Defendant contributed equally to the payment of outstanding taxes and water commission charges in order to secure the use of the land for Ina's farm.

[49] I accept the evidence of the Defendant that the Claimant did not assist in paying off outstanding taxes and water charges for the business. Consequently I find that the business did not commence with Ms. Thomas contributing to the start-up capital.

[50] Nevertheless, I am not convinced that Mr. Reid is a partner in the business. I take note of Mr. Casserly 's evidence that the business did not commence with Mr. Reid as a partner. His evidence is that Mr. Reid came on board after. However, I find that there is no evidence supporting Mr. Casserly's assertion that Mr. Reid was taken on as a business partner. There is no evidence of the nature of Mr. Reid's investment in the business if any, or the agreement or circumstances surrounding him becoming a partner to the business. Therefore I find that the evidence leans more in favour of him being a paid employee. Consequently, I accept the evidence of Ms. Thomas that Mr. Reid was a paid employee and not a partner in the business. As such, I find that the partners in Ina's farm were Mr. Casserly and Delroy Roberts.

Whether the Claimant made any contribution to the further development of the business

Financial Contribution

[51] Ms. Thomas testifies that in 2008, the business started with the rearing of layer chicken. She contends that both herself and Mr. Casserly provided the finances to repair the chicken coop that was already on the farm. It is also her evidence that when the business expanded in 2015, she pumped \$100,000.00 from her personal funds in the business to purchase young layers to see how they would progress and that she helped to pay up the property taxes She says previously they purchase ready to lay hens.

[52] Ms. Thomas also alleges that she and Mr. Casserly also used individual funds from their salary. She states that every night they would go to the farm to see how the baby birds were progressing and how the others were progressing. On cross examination She disagrees that she has not provided evidence of financial contribution to the business.

[53] The Defendant, Mr. Casserly insists that the claimant did not make any contribution or investment to the business whether by way of time, labour or money. He denies that the claimant invested \$100,000.00 for the purchase of layer chicks as in 2015 the business was still in expansion. He says that it was in October of 2014 that they moved from Oscar Bennett's property to a piece of land owned by Mr. Biggs.

[54] He indicates that the business currently operates from Mr. Biggs property as well as Ms. Ina's property. The outstanding lease on this property, he says was \$9200, payment of which was made from his salary as the business was and still is in a building mode. Mr Casserly has submitted pay slips in his name from Grace Kennedy Company Limited for the period 2012 to 2018 and information on an account in his name from NCB Sunshine Savers Club which were tendered into evidence.

Discussion

[55] As I have previously indicated in my earlier discussions, I do not consider the lack of documentary evidence to support her assertions of financial contribution during the

operation of the business as negatively impacting Ms. Thomas' credibility. However, her evidence would have been more convincing had she provided further details regarding the personal funds to which she refers. That is, details as to whether it was from her savings kept in an account in a financial institution or otherwise. Additionally, she has not provided sufficient clarity, as to the quantity of the young layer birds that were purchased; who did the actual purchase, herself or Mr. Casserly; whether this was her own personal experiment or a joint venture, whether these baby birds did mature into adult layer birds contributing to the production of eggs on the farm

[56] Ms. Thomas' evidence of contribution from her salary is equally dubious. Having examined Mr. Casserly's pay slips, his net pay for the year 2012 was not discernible. However, for January to December 2013, the net pay reflected is in the sum of \$60,854.39 and the year to date figure is \$1,600,839.74. For January to December 2014, the net pay reflected is \$181,387.18 and the year to date is \$1,318,876.52. For January to December 2015, the net pay reflected is \$85,691.09 and the year to date is \$1,692,837.43. For the year January to December 2016, the net pay is \$63,004.01 and the year to date is \$2,217,904.86. For January to December 2017, the net pay is \$144,261.79 and the year to date figure amounts to \$3,181,769.57 and for January to October 2018, the net pay is \$332,015.19 and the year to date is \$2,044,541.70. Additionally, Credit Union deductions were also reflected on his pay slips.

[57] Furthermore, his Sunshine Savers Account indicate that as at the 5th of October 2004 he had a balance of \$388,893.21. While there were some small deposits noted between the 5th of October 2004 and the 17th of February 2005 there were three significant deposit of \$360,408.15; \$263,096.64 and \$100,000.

[58] However, of greater significance is the fact that there were consistent withdrawals which brought the balance down to \$74,605.47. Between the 18th of February 2005 and the 16th of May 2005, the last date reflected in the book, along with smaller deposits there have been three other significant deposits of \$231,407.92; \$186,182.82 and \$251,675.20. This in essence is strong evidence that Mr. Casserly possessed the financial resources to invest in the business.

[59] Conversely, Ms. Thomas has provided no such evidence, despite her attempts at refuting Mr. Casserly's assertions that she was not financially able to contribute to the business. This is against the background that he also asserts that some of her agreed financial responsibilities in the home fell back on him. Accordingly, I have not been persuaded by the evidence of Ms. Thomas that she made any direct financial contribution to the business.

[60] Nonetheless, taking into account **Section 14 of PROSA**, it is apparent that in determining whether there was any contribution to property other than the family home the court should not restrict its consideration to financial contribution.

Whether there was any nonfinancial contribution by Ms. Thomas to the Business

[61] In the case of **Carol Stewart v Lauriston Stewart** [2013] JMCA Civ 47. Brooks JA made the observation that;

"Whereas, by section 14, the legislature specifically allows the consideration of financial and other contributions in considering the allocation of interests in property, other than the matrimonial home,"

[62] It is Ms Thomas' evidence is that she was deeply involved in the daily operations of the business. She asserts that she was the person responsible for seeking customers for the sale of the eggs and poultry meat and the Defendant was responsible for doing the deliveries using her 1990 Nissan Sunny motor car. She states that the Defendant and herself shared equally the responsibilities of caring for the chicken coop and stock of chickens. She testifies that she would attend to them while she was at home and the Defendant was at work and he would do the same while she was at work and he was at home. She asserts that the business thrived after she was able to secure customers one of which was Universal Stores Limited, now Progressive Groceries of Jamaica Limited where she still works as a warehouse supervisor.

[63] She says that from the inception of the business, it was agreed and understood that the defendant would provide direct supervision of the employees and be more

physically present on the farm on a regular basis ,as his working hours were more flexible than hers as the business was not intended to be a replacement of their employment .She states that she also did the marketing, accounts and maintained the records of the business.

[64] She says that in or around 2006, they sold her 1990 Nissan Sunny motor car and purchased another more reliable 1999 Honda Civic motor car that they used as a business vehicle to deliver chickens and eggs as well as their family vehicle. She also says that the Defendant also got a loan to assist with the purchase of this Honda Civic but purchased it in his sole name. She states that a Honda CRV that was later purchased for her use was used in delivery for the business.

[65] She admits that she disliked the foul smell of the chicken coop but states that although she complained about the smell of the coop she was deeply involved in the business. Ms. Thomas asserts that she was physically involved in building, cleaning, feeding and preparing the birds for marketing and sales. She contends that when the business expanded into layer birds she was equally involved in, managing and getting customers.

[66] She however states the Defendant was able to be on the farm more often during the daytime than her. She states that she did most of her work on the farm very early in the mornings before leaving for work and after work in the evenings. She states that feeding the chickens among other things, was one of her frequent activities and though she disliked the smell of the chicken coop, she loved feeding the chickens. She exhibits a photograph of her in the coop feeding the chickens.

[67] Ms. Thomas indicates that construction materials that were left over from building their home were used in helping to build the additional coops. She also says that she and Mr. Casserly also contributed individual funds from their salary, and that every night they would go to the farm to see how the baby birds and others were progressing.

[68] . She says she has exhibited the report of the sales and marketing to show that she contributed to the business. (The Document she exhibited indicates sales to Progressive Grocers.)

[69] Ms. Thomas also testifies that the business was able to purchase several vehicles, a cold room and other expensive equipment. She contends that this would not have been possible if the business was unprofitable.

[70] She later asserts that in 2005 she sold her Nissan Sunny motor car for \$250,000.00. This money she says was given to the Defendant toward purchasing the 1999 Honda Civic in that same year, which costs \$750,000.00. She contends that the defendant put \$500,000 and used his other funds to register and insure the vehicle and that the vehicle was purchased and registered in his sole name.

[71] She also states that the business purchased a Honda Accord which was primarily for her use. This she states was sold and the funds were used to purchase a third vehicle, a Toyota Tacoma. She says a Honda CRV was again purchased for her use since the Defendant was using the Tacoma. She states that the defendant has now sold the Honda CRV and purchased a new vehicle. She asserts that at the time she last went on the farm in 2016, there was a total of four vehicles that were being shared between business use and personal use. She asserts that the customers that she got for the business are still doing business with the farm until present. She states that they now have in excess of 5000-layer chickens and over 200 broiler chickens for delivery at every maturity.

[72] Ms. Thomas indicates the business now owns the following namely:

- i. Probox license Number CK 4896
- ii. Honda CRV License Number 3856 GG
- iii. Toyota Tacoma License Number 5701 FL
- iv. Hiace Bus License Number CH 7359
- v. Large cold room for storing over 400 cases of eggs

vi. 2 deep freezers for storing in excess of 350 pounds of poultry meat.

[73] She says after paying all expenses including wages, they earn an average net monthly income of \$550,000.00 from the business. She says further that in 2008 when they started with the layer chickens and as the business progressed they recognized that there was a need for a commercial vehicle to transport the eggs to customers and also for transportation of feed. She indicates that it was at that time that Delroy Roberts loaned them money to help with the purchase of Bus.

[74] It is also Ms. Thomas' assertions that when the business expanded and she sought permission to use an adjoining property owned by relatives of Delroy and herself it is not true that the lease was paid from the Defendant's salary ,as from her own knowledge and seeing the expenses, the lease and all other business related expenses were paid from the business because they were making a profit.

[75] She also asserts that in or around 2013, the Defendant took approximately One Million Dollars (\$1,000,000). from the business to rent a shop space in Islington, Portland for his brother stocked with groceries, animal feed, cosmetics, garden supplies. She says that it was agreed between herself and the Defendant that this shop was to be included in the business and she was to benefit from it financially. She states that initially she received \$15,000 in cash for approximately three times from the Defendant from this business, and thereafter she never received any more money from it. She says further that in or around November 2015, the Defendant and his brother had disagreements and the Defendant discontinued maintaining the business

[76] On Cross-Examination Ms. Thomas admits that she did not set out what the substantial profit was in 2007. She agrees that she did not state the amount of money she claimed the Defendant took from the business to rent the shop. She says it was a discussion between them. She says she is not sure of the cost of motor vehicles she says the business owns or the deep freeze. She then says the value of the deep freeze is \$500,000 and the value of the truck 110,000.

[77] She also says that she cannot recall the licence plate of the truck but she knows it is a Probox. When it was suggested to her that the business does not own a Probox she says she may not remember the type of vehicle but there was a truck for delivery. She however cannot remember the date when it was purchased or if it was a cash purchase.

[78] Ms. Thomas also says that she cannot remember how much money Delroy loaned the business nor how much he was repaid. She does not remember the lease amount for the land from Mr. Biggs in 2009. She does not know if there was any loan to the business. She does not remember how much went towards household expenses, how much to savings and how much to maintenance. She cannot remember if Mr. Delroy Roberts resigned from his job at the airport and came to work on the farm full-time.

[79] She says she does not remember the circumstances of his employment. She does not remember how much salary Delroy Roberts was paid. She agrees that she was employed full-time while also taking care of the triplets. She cannot remember when the business launched into Layer Birds but knows that the business started in 2007.

[80] The evidence of Mr. Casserly on this issue is as follows;

At no time did the Claimant participate in the business or its operations. While she knew what was happening, as he shared that information with her as his spouse, she was not willing to do the hard work that is needed in rearing chickens. It was in January 2008, that he and Delroy ventured into the layer chicken aspect of the business. He was the one who made enquiries about an empty piece of land, adjacent to the land that they were operating on owned by Oscar Bennett, Delroy's uncle. There was some outstanding lease that was on property in the sum of \$9,200.00 that they paid off. This was paid from his salary.

[81] He states that the material to make the new coops was a combination of the leftover construction material from the house and what he bought using funds from his salary. He says over the years, he invested in the business using his salary for funding, and the Claimant never made any contribution or investment in the business whether by

way of time labour or money except in 2015 when she gave them some pallet boards, which were used to do minor repairs on the farm.

[82] He states that in April 2008 they stopped the broiler chicken aspect of the business entirely because they had a high number of bad debts due to creditors. He states also that the peak operating hours of the farm are 6.30 a.m. to 4.00 p.m. for seven days per week. He maintains that the Claimant has a full-time job and therefore could not have shared any of the responsibilities on the farm as the job is a very labour intensive one and the Claimant was never in any physical shape to manage that type of work.

[83] He however says that she may have on occasion helped with feeding the chickens so as to be able to take a photograph of herself doing so however, it was not her job responsibility or a necessary chore for her. He asserts that the Claimant's dislike of the smell of the coops was such that she hardly visited the farm, and it cannot be said that she had to feed the chickens frequently or clean the coops as alleged.

[84] He says that; It is Delroy who was in charge of the day to day operation of the farm; Calvin was responsible for the delivery of eggs and for the transportation of feeds and other farm supplies; He, (Mr. Casserly) also did deliveries and was responsible for the sales and marketing as also the bookkeeping. Other workers – Kemoni, Maurice and Johnai were responsible for the cleaning, preparation and packing of eggs.

[85] He says Delroy's contribution towards buying the Hiace bus was not a loan to the Claimant and himself but was part of his contribution and investment in the business. He asserts that he and Delroy put money together to buy that vehicle which is used exclusively for the business. This he says was done 2 years after they had gone into eggs and seeing the business expanding.

[86] Mr. Casserly says further that; based on that potential, the business grew well for the first 5 years of its operations, and they were in expansion mode, ploughing back profits into the business. He however states that, in 2014 the market conditions changed for the worse resulting in hundreds of cases of eggs being dumped during the summer

[87] He states that for the first 5 years there was no profit being generated and whatever surplus was there was used to expand the business. He admits that both Calvin and Delroy receive a salary for their work in the business but to date he still does not receive a salary from the business and continues to rely on his salary from Grace Foods.

[88] Mr. Casserly admits that the Claimant did tell her workplace and other businesses about the farm. He admits that she initiated the contact with Progressive Groceries Jamaica Limited, and they came on board as a customer. He however contends that after the relationship ended in 2016 those few customers who the Claimant had introduced stopped doing business with them except for one location of Progressive Groceries which still purchases 3 cases of eggs per week.

[89] He explains that when he started living together with the Claimant, they each had their motor vehicles and that he sold his Uno motor car in 2004 for \$90,000.00. He says at this time the Claimant was still using her 1990 Nissan Sunny motor car

[90] He further explains that in January 2005 he bought a 1999 Honda Civic to replace his Uno. He says he paid \$780,000.00 for the Honda Civic which was paid for solely by him with cash from his salary and savings. He denies taking a loan to purchase this vehicle. He asserts that he bought this car before the Claimant sold her 1990 Nissan Motor Car for \$130,000.00 in 2005 and he is not sure what she did with the proceeds (He refers to his NCB bank account as evidence of this transaction)

[91] He further asserts that the business does not own any motor vehicles as alleged by the Claimant. He says all the vehicles except the HiAce bus were purchased by him through obtaining personal loans from Grace Co-operative Credit Union. The loan payments were made from his salary. (He exhibits payslips from 2012 showing the Credit Union deductions from his salary for the personal loans he took out to purchase his vehicles.) He says he owns four vehicles, and even though they are his personal vehicles, they are used to support the business.

[92] He insists that the business does not own a Probox motor car with license Number CK4896 or any vehicles at all. He explains further that; the license plate number CK4896

belongs to his Isuzu Elf 5-ton box body truck that he bought from savings that he had at his credit union; and that he sold his Honda CRV with license Number CK4896.

[93] He states that in addition to the vehicles, there is a small chill room with storage capacity for 200 cases of eggs, which was purchased in May 2016 with funds from his salary.

[94] He indicates that he continues to invest heavily in the business as he considers it to have a lot of potential and can be quite lucrative. He explains that 2016 was to have been their turnaround year but the introduction of liquid eggs into the market caused a significant setback and that expectation was not met.

[95] He insists that the business to date has not realized a profit as he Delroy, and Calvin have been building out the business to ascertain the true market potential. They expected to realize profit by the end of 2016. He however says that, the demand for eggs that they were producing fell significantly resulting in them having to discard several cases of eggs.

Discussion

Whether the Claimant Maintained the Accounts and Financial Records / Day to Day Running of the Business

[96] I find that the evidence that Ms. Thomas has adduced does not point to her having intimate knowledge of the day-to-day operations of the farm or the intricacies of the business. She has made general statements without sufficient supporting details. She said she was the person who did the accounts and maintained the records of the business yet there is so much she cannot remember, bearing in mind that the evidence indicates that the business did not have many (that is six) employees.

[97] It is significant that she said Delroy loaned the business money to purchase a vehicle, yet she cannot recall the sum that was loaned or repaid. She does not remember

the lease amount for the land from Mr. Biggs in 2009. She does not know if there was any loan to the business. She does not remember Delroy Roberts' salary. She does not remember the circumstances of his employment.

[98] Furthermore, while it is quite comprehensible that Ms. Thomas may not have committed the licence plate of the truck she says was bought by the business to memory, I find it quite incredible that on cross examination she could not distinguish between a truck and a probox (i.e. a motor car).

[99] Moreover, I take into account the conflict on her evidence regarding the time she spent on the farm. She says she has "spent as much as the Defendant in time and money to make the farm successful" Notwithstanding, she also says that it was agreed that the defendant would be more present physically on the farm on a regular basis due to his flexible work hours.

[100] I took into consideration the photograph Ms. Thomas exhibited of her being on the farm at night feeding chickens. However, I find that this is insufficient to establish a pattern or an indication of how often she would carry out this activity. Essentially, I find that Ms. Thomas has not convinced me that she was deeply involved in the day-to-day running of the business as she alleges. This is borne out by her lack of knowledge in relation to crucial information concerning the business. While it is acceptable that she not remember every minute detail about every event and transaction concerning business, it is rather significant that there are so many important information relevant to her participation and contribution to the day-to-day running of the business that she cannot recall. This is a rather compelling factor that negatively impacts the credibility of her evidence in this regard.

[101] Furthermore, despite her evidence that her contribution was early in the morning and after work, Ms. Thomas also admits that she was employed full time while also taking care of the triplets. In my view this would limit her available time for the business. Consequently, I find that the evidence leans more in favour of the assertions that whatever knowledge Ms. Thomas had in relation to the financial management of the business was

what Mr. Casserly conveyed to her and not as a result of her personal involvement in the business. As such, I find that Ms Thomas has failed to prove that she was responsible for the management, accounting or maintaining the record of the business

Physical Work in the Business

[102] Ms. Thomas maintains that feeding the chickens was one of her frequent activities on the farm. Mr. Casserly contends that she was never in any physical shape to manage work on the farm. He however has admitted that “She may have on occasion helped with feeding the chickens” I notice he has qualified this aspect of his evidence by saying that “it was not her job responsibility or a necessary chore for her”

[103] However, I accept that as a spouse Ms Thomas would have visit the farm from time to time and got involved in activities such as feeding the chickens. Furthermore, despite the fact that this was not a designated responsibility for her, this does amount to contribution as a spouse to the development of the business. In this regard I find that Ms. Thomas in feeding the chickens despite not doing so as often as a regular worker did amount to a small contribution to the development of the business.

Whether the Claimant contributed Material to the Business

[104] Both Mr. Casserly and Ms. Thomas have indicated that material left over from the construction of the family home and pallet boards contributed by the Claimant formed part of the materials that were used to build the new coops and repairs on the farm. Considering that Mr. Casserly has not denied Ms. Thomas’ half entitlement to the family home I consider half of this leftover construction material as well as the pallet boards to be part of her contribution to the development of the business.

The Delivery of Eggs

[105] It is Ms. Thomas' evidence that the Motor vehicle that was initially used for the delivery of eggs in the business was her 1999 Honda Civic motor car that was purchased after she sold her 1990 Nissan Sunny. I also note her evidence that she was not the sole contributor to the purchase of this vehicle but that Defendant got a loan to assist with the purchase of this vehicle. Nonetheless the Defendant contends that he was the sole purchaser of the Honda Civic. He has denied that the Claimant made any contribution to the purchase of this vehicle. He asserts that the evidence of withdrawal from his NCB Sunshine Savers Club Bank Book is proof of him financing the purchase of this vehicle. I note that a withdrawal of \$580,150.00 on the 14th of January is in fact reflected in this bank book.

[106] Additionally, I considered that in the early part of her evidence in chief, that is in her affidavit filed December 1, 2017, Ms. Thomas states that it was in or around 2006, that she sold her 1990 Nissan Sunny motor car and that the 1999 Honda Civic was purchased. In this affidavit, she provided no details of the sale price of her Nissan Sunny or the purchase price of the Honda Civic.

[107] This would be more consistent with Mr. Casserly's version that she was still in possession of the Nissan Sunny in 2005 when the Honda Civic was purchased. However, it was in a subsequent affidavit filed June 28th 2019 in reply to Mr. Casserly's affidavit filed November 5th 2018 that she states that her Nissan Sunny was sold in 2005 and that the Honda Civic was in fact purchased in 2005. Additionally, I notice that it was in this affidavit that she mentioned anything about the purchase price of the Honda Civic which notably accords with the price stated by Mr Casserly in his affidavit of November 5th, 2018.

[108] In any event there is a clear inconsistency on Ms. Thomas' evidence regarding when her 1990 Nissan Sunny was sold. Evidently, Mr Casserly's evidence appears to be more consistent and credible concerning this vehicle than that of Ms. Thomas. Consequently, I do not accept her evidence regarding this property. I accept the evidence of Mr. Casserly that he was the person who provided the financial resources for the purchase of the Honda Civic motor car.

[109] It is also Ms. Thomas' contention that the Honda CRV, later purchased from funds from the business was for her use. Mr. Casserly however, while admitting that the Honda CRV was purchase for use by the Claimant contends that it was purchased also with the intention to be used for delivery in the business. I however take into account Mr. Casserly's evidence that he provided her with a fully maintained car and that even after the separation he was prepared to allow Ms. Thomas to continue using this vehicle. That, she chose to return the Honda CRV despite no demand being made for its return. Therefore. in my view, based on how the parties ordered their lives, regardless of the source of funds this Honda CRV was purchased for Ms. Thomas

[110] Therefore, the fact that this vehicle was also used in the business would mean that she would have given up her right of use during the period that it was being used for delivery of eggs and poultry. This in my opinion can be viewed as a contribution to the development in the business on the part of the claimant. In any event, Mr. Casserly has also admitted that Ms. Thomas did do some delivery for the Business. That is to Progressive Grocers. In this regard, I find that Ms. Thomas made a nonfinancial contribution to the business in the form of delivery of eggs

Whether the Claimant Contributed to Marketing / Securing customers

[111] Ms Thomas contends that the business thrived after she was able to secure customers. However, she has identified only one such customer which is Universal Stores Limited, now Progressive Groceries of Jamaica Limited. The Defendant has not denied that it was as a result of Ms. Thomas' efforts that Progressive Groceries became a customer of the business for the purchase of eggs. He has admitted that she was the person who initiated the contact. He has also admitted that she assisted in the delivery to these customers. In an attempt to diminish Ms. Thomas' contribution in this area, Mr. Casserly asserts that "the relationship ended in 2016 and those few customers whom the Claimant had introduced stopped doing business with them". He has however admitted that one location of Progressive Groceries still purchases 3 cases of eggs per week.

[112] Furthermore. despite his evidence that for the first 5 years there was no profit being generated Mr. Casserly has said that “whatever surplus was there” was put back that is “used to expand the business”. He also spoke about ‘ploughing back profits into the businesses for expansion. Therefore, in these statements Mr. Casserly has in fact admitted that profit was in fact made during the first 5 years which was reinvested in the business.

[113] Therefore, even if Progressive Grocers had ceased to be customers in 2016, the contribution of the Claimant in this area would still be impacting the business in the form of the surplus or the profit, of which none was paid to Ms. Thomas, but was reinvested into the business.

The value of the non-financial contribution

[114] Having determined that Ms. Thomas made some non-financial contribution to the business, the next step is for me to determine the value of this contribution.

Sales Report of Progressive Grocers of Jamaica Limited for 2016-2017

[115] The claimant sought to rely on a copy of the vendor transaction from Progressive Grocers Jamaica, dated January 16, 2017, which was filed on June 28, 2019, and tendered into evidence as exhibit 2. This vendor transaction reflects sales for the period from 2015 to 2018, totalling \$7,000,698.31.

[116] In her evidence in chief Ms. Thomas states that Progressive Grocers Jamaica Limited was the largest customer of the business, accounting for more than half of the farm's sales. During cross-examination, she admits that the document she submitted only relates to sales from the farm to Progressive Grocers during the period 2015 to 2018 and it does not indicate whether Progressive Grocers was the largest customer of the

business. She also states that she cannot say if Papine Warehouse accounted for approximately 60% of the business's sales.

[117] Mr. Casserly in his evidence contends that the document shows a history of the product delivered to that customer and the cost of same. It is also his contention that it does not represent any sales and marketing work done by the Claimant in the business. He says also that the print-out does not give any indication of the expenses associated with running the farm or the costs of inputs over the 3 ½ years represented.

[118] However, in my view, I find the information in this document relevant in so far as it will assist in my determination of the percentage of the sales to Progressive Grocers. This information is relevant to my determination of Ms. Thomas' share in the business due to her contribution in introducing Progressive Stores as a customer to the business.

[119] Section 12 (2) of the Property Right of Spouses Act states that

“A spouse's share in property shall, subject to section 9, be determined as at the date on which the spouses ceased to live together as man and wife or to cohabit or if they have not so ceased, at the date of the application to the Court”.

[120] Accordingly, the court considered the sales period of ending December 2016 as a starting point of my calculations based on the parties' separation date.

Doc. Date	Due Date or Check Number	Batch Entry	Days Over	Transaction Amount
Jan 4,2016	Jan 18 2016	61157-61	0	39,000.00
Jan 6, 2016	Jan 20, 2016	61225-7	0	19,500.00
Jan 11, 2016	Jan 25, 2016	60106-43	0	26,000.00
Jan 13, 2016	Jan 27, 2016	61021-62	0	39,000.00
Jan 19, 2016	Feb 2, 2016	61432-17	0	39,000.00
Jan 22, 2016	Feb 5, 2016	61530-115	0	26,000.00
Jan 22, 2016	Feb 5, 2016	61530-64	0	31,200.00
Jan 25, 2016	Feb 8, 2016	60159-46	0	39,000.00
Jan 25, 2016	Feb 8, 2016	61528-57	0	24,808.33

Jan 30, 2016	Feb 13, 2016	61660-59	0	19,500.00
Feb 1, 2016	Feb 15, 2016	61662-48	0	19,500.00
Feb 8, 2016	Feb 22, 2016	61801-45	0	13,000.00
Feb 9, 2016	Feb 23, 2016	60224-55	0	52,000.00
Feb 12, 2016	Feb 26, 2016	61916-29	0	19,500
Feb 14, 2016	Feb 14, 2016	62110-14		-108.33
Feb 15, 2016	Feb 29, 2016	61953-23	0	39,000.00
Feb 18, 2016	March 3, 2016	62035-31	0	19,000.00
Feb 21, 2016	Feb 21, 2016	60248-18		-2,275.00
Feb 22, 2016	March 7, 2016	60249-52	0	39,000.00
Feb 23, 2016	March 8, 2016	62123-34	0	32,500.00
Feb 26, 2016	March 11, 2016	62199-24	0	32,500.00
Feb 28, 2016	Feb 28, 2016	62235-6		-1,408.33
Feb 29, 2016	March 14, 2016	60281-47	0	26,000.00
March 1, 2016	March 15, 2016	62274-52	0	39,000.00
March 3, 2016	March 17, 2016	60315-36	0	32,500.00
March 4, 2016	March 18, 2016	62373-36	0	26,000.00
March 8, 2016	March 22, 2016	62410-40	0	51458.33
March 10, 2016	March 24, 2016	60357-38	0	39,000.00
March 11, 2016	March 25, 2016	62506-30	0	26,000.00
March 15, 2016	March 29, 2016	62742-34	0	65,000.00
March 15, 2016	March 29, 2016	62562-42	0	52,000.00
March 16, 2016	March 30, 2016	62936-49	0	39,000.00
March 21, 2016	April 4, 2016	62821-54	0	19,500.00
March 23, 2016	April 6, 2016	62832-30	0	27,491.67
March 29, 2016	April 12, 2016	62921-67	0	32,500.00
March 29, 2016	April 12, 2016	62956-52	0	32,500.00
April 2, 2016	April 16, 2016	63002-14	0	32,500.00
April 4, 2016	April 18, 2016	63067-79	0	52,000.00

April 6, 2016	April 20, 2016	63110-32	0	32,000.00
April 8, 2016	April 22, 2016	63175-38	0	52,000.00
April 11, 2016	April 26, 2016	63326-33	0	39,000.00
April 12, 2016	April 26, 2016	63252-27	0	32,500.00
April 13, 2016	April 27, 2016	63307-32	0	19,500.00
April 18, 2016	May 2, 2016	63423-59	0	39,000.00
April 19, 2016	May 3, 2016	63457-94	0	19,500.00
May 19, 2016	May 3, 2016	63453-47	0	39,000.00
May 19, 2016	May 3, 2016	63443-15	0	26,000.00
May 25, 2016	May 9, 2016	63763-112	0	52,000.00
May 26, 2016	May 10, 2016	63606-43	0	25,566.67
May 2, 2016	May16, 2016	63834-51	0	39,000.00
May 3, 2016	May 17, 2016	63759-52	0	26,000.00
May 3, 2016	May 17, 2016	63891-32	0	52,000.00
May 7, 2016	May 21, 2016	63877-67	0	19,500.00
May 9, 2016	May 23, 2016	64139-33	0	19,066.66
May 10, 2016	May 24, 2016	63943-13	0	26,000.00
May 13, 2016	May 27, 2016	64035-96	0	19,500.00
May 16, 2016	May 30, 2016	64103-49	0	52,000.00
May 16, 2016	May 30, 2016	64200-100	0	39,000.00
May 25, 2016	June 8, 2016	64341-113	0	39,000.00
May 30, 2016	June 13, 2016	64456-63	0	19,500.00
May 30, 2016	June 13, 2016	64529-57	0	39,000.00
May 30, 2016	June 13, 2016	64452-32	0	32,500.00
May 31, 2016	June 14, 2016	64472-19	0	39,000.00
June 1, 2016	June 15, 2016	64508-79	0	12,133.33
June 6, 2016	June 20, 2016	64625-62	0	39,000.00
June 7, 2016	June 21, 2016	64662-54	0	19,500.00
June 13, 2016	June 27, 2016	64807-37	0	39,000.00
June 14, 2016	June 28, 2016	64826-29	0	25,566.66
June 21, 2016	July 5, 2016	64997-41	0	26,000.00
June 21, 2016	July 5, 2016	65002-18	0	18,850.00
June 24, 2016	July 8, 2016	65085-41	0	39,000.00
June 27, 2016	July 11,2016	65229-57	0	39,000.00
June 27, 2016	July 11,2016	65171-37	0	39,000.00
June 29, 2016	July 13,2016	65207-64	0	25,350.00
July 4, 2016	July 18,2016	65295-65	0	19,500.00
July 5, 2016	July 19,2016	65365-58	0	39,000.00
July 6, 2016	July 20,2016	65395-30	0	13,000.00
July 6, 2016	July 20,2016	65366-47	0	39,000.00
July 11, 2016	July 25,2016	65503-47	0	51,783.33
July 11, 2016	July 25,2016	65465-54	0	39,000.00
July 12, 2016	July 26, 2016	65494-195	0	11,916.66
July 15, 2016	July 29, 2016	65585-86	0	32,500.00

July 20, 2016	August 3, 2016	65727-36	0	52,000.00
July 25, 2016	August 8, 2016	65932-37	0	34,883.33
July 25, 2016	August 8, 2016	65933-45	0	26,000.00
July 25, 2016	August 8, 2016	65805-55	0	13,000.00
July 27, 2016	August 10, 2016	65992-21	0	13,000.00
August 3, 2016	August 17, 2016	66025-38	0	39,000.00
August 8, 2016	August 22, 2016	66151-23	0	39,000.00
August 9, 2016	August 23, 2016	66168-46	0	39,000.00
August 9, 2016	August 23, 2016	66164-128		26,000.00
August 11, 2016	August 25, 2016	66208-194	0	13,000.00
August 15, 2016	August 29, 2016	66306-68	0	25,350.00
August 16, 2016	August 30, 2016	66322-51	0	26,000.00
August 19, 2016	August 22, 2016	66367-57	0	65,000.00
August 22, 2016	September 5, 2016	66444-199	0	39,000.00
August 22, 2016	September 5, 2016	66795-42	0	39,000.00
August 23, 2016	September 6, 2016	66512-20	0	25,133.33
August 29, 2016	September 12, 2016	66620-93	0	26,000.00
August 30, 2016	September 13, 2016	66652-47	0	26,000.00
August 30, 2016	September 13, 2016	66647-131	0	38,675.00
September 5, 2016	September 19, 2016	66773-106	0	39,000.00
September 5, 2016	September 19, 2016	66759-44	0	26,000.00
September 7, 2016	September 21, 2016	66847-21	0	32,500.00

September 12, 2016	September 26, 2016	66955-43	0	38,241.67
September 15, 2016	September 29, 2016	67022-351	0	52,000.00
September 15, 2016	September 29, 2016	67008-19	0	77,891.67
September 17, 2016	October 1, 2016	67616-78	0	32,500.00
September 19, 2016	October 3, 2016	67210-21	0	39,000.00
September 19, 2016	October 3, 2016	67210-40	0	32,500.00
September 20, 2016	October 4, 2016	67112-12	0	39,000.00
September 20, 2016	October 4, 2016	67601-21	0	39,000.00
September 26, 2016	October 10, 2016	67234-52	0	65,000.00
September 26, 2016	October 10, 2016	67253-31	0	26,000.00
September 27, 2016	October 11, 2016	67352-22	0	32,500.00
September 27, 2016	October 11, 2016	67393-119	0	39,000.00
September 28, 2017	October 12, 2016	67353-24	0	19,500.00
October 4, 2016	October 18, 2016	67498-28	0	78,000.00
October 5, 2016	October 19, 2016	67433-51	0	65,000.00
October 21, 2016	November 4, 2016	67999-43	0	39,000.00
October 26, 2016	November 9, 2016	67937-68	0	45,500.00
October 26, 2016	November 9, 2016	67961-25	0	39,000.00
November 1, 2016	November 15, 2016	68073-82	0	39,000.00
November 6, 2016	November 20, 2016	68420-70	0	39,000.00
November 9, 2016	November 23, 2016	68318-41	0	39,000.00
November 14, 2016	November 28, 2016	68395-33	0	70,000.00

November 22, 2016	December 6, 2016	68642-40	0	68,250.00
November 30, 2016	December 14, 2016	68817-41	0	70,000.00
November 30, 2016	December 14, 2016	68819-38	0	42,000.00
December 12, 2016	December 26, 2016	69211-47	0	40,133.33
December 14, 2016	December 28, 2016	69166-130	0	35,000.00
December 16, 2016	December 30, 2016	69219-36	0	56,000.00
December 23, 2016	January 6, 2017	69471-39	0	35,000.00
December 24, 2016	January 7, 2017	69372-40	0	21,000.00
	Vendor Total		JAM	4,618,458.31

As I noted earlier in contradiction with his own evidence that surplus and profits were ploughed back into the business, Mr Casserly insists that the business is yet to realize any profit. Nonetheless the court cannot place reliance on Mr Casserly's evidence that the business was not making any profit without having the benefit of an independent assessment. In my view this the very reason why the provision of section 12(3) was included in **PROSA**. That is to assist the court in determining the true and independent valuation of the property. **Section 12 (3) reads;**

(3) In determining the value of property the spouses shall agree as to the valuator who shall value the property, or if there is no agreement, the Court shall appoint a valuator who shall determine the value of the property for the purposes of this subsection

[121] In compliance with the mandate under the aforementioned provision judges of this court made orders on the 4th of November 2020, and variations on June 18, 2021, requiring the parties to “engage the services of a mutually agreed Chartered Account to prepare a Financial Statement of Ina’s farm from 2007 to 2020”. The Chartered Accountant mutually agreed by the parties was Precision Accounting and Business Consultancy Services. The report from Precision Accounting and Business Consultancy

Services under the signature of Ms. Carlene Ferguson dated the 24th of January 2024 was admitted into evidence during the trial. This report provides statements of the Financial Position of Ina's Farm for 10 years culminating at December 31st 2019. However, **Section 12 (1) of the PROSA** provides as follows;

*"Subject to sections 10 and 17 (2), the value of property to which an application under this Act relates shall be, **its value at the date the Order is made**, unless the Court shall otherwise decide".*

[122] In light of the foregoing provisions, the relevant information for my consideration would be the share as at the date of separation and the most current value of this share. Ms Thomas says she left the family home in 2017. However, her first rent receipt is dated September 1st, 2016. Her explanation for this is that this was the time that she started paying rent.

[123] However, Mr. Casserly's evidence is that it is not true to say that the relationship continued into 2017. He asserts that it ended in August of 2016 when the Claimant left for good and took all of her belongings.

[124] It is evident that there is no consensus between the parties as to the date of final separation. That is as to the date they ceased living together as man and wife. The Claimant is contending that it is January 2017, while the Defendant is contending that it is August 2016. However, considering the fact that Ms. Thomas has relied on a rent receipt dated, September 2016, claiming that was the date she started paying rent, I hold that the relationship ceased in August 2016.

[125] As such I find that the relevant data for my consideration is the data covering the period 2016 to 2019. This information as contained in the financial statement under the signature of Ms. Ferguson is noted below.

Ina's Farm Financial statement for 2016 -2019

	2016	2017	2018	2019	TOTAL
Sales Farm	35,895,600	36,816,208	31,984,602	35,262,753	139,959,163.00
Total Income	35,895,600	36,816,208	31,984,602	35,262,753	139,959,163.00
Cost of Sales-Farm	24,757,196	26,394,422	17,817,680	13,619,682	82,588,980.00
Write down of Biological Asset	3,301,384	3,730,578	3,728,125	3,680,650	14,440.737.00
Total COGS	28,058,580	30,125,000	21,545,805	17,300,332	97,029,717.00
Gross Profit	7,837,020	6,691,208	10,438,797	17,962,422	42,929.447.00
Expense:					
Repairs and Maintenance-I,General	360,000	240,000	240,000	180,000	1,020,000.00
Electricity	180,000	180,000	180,000	180,000	720,000.00
Lease-Farm	10,000	10,000	10,000	10,000	40,000.00
Salary-Farm	3,032,000	3,032,000	3,032,000	3,032,000	12,128,000.00
Security	-	-	-	-	-
Transportation	1,320,000	1,200,000	1,200,000	960,000	4,680,000.00
Depreciation-Furniture	119,354	119,354	119,354	119,354	477,416.00
Depreciation-coop	1,342,250	1,477,500	1,526,875	1,576,250	5,922,875.00
Water	206,618	191,945	130,932	58,990	588,485.00
Professional Fees	325,114	325,114	325,114	325,114	1,300,456.00
Printing and Stationery	240,000	180,000	120,000	-	540,000.00

Written off inventory	-	1,050,000	1,320,000	-	2,370,000.00
Total Expenses	7,135,336	8,005,913	8,204,275	6,441,708	29,787,232.00
Net income	701,684	(1,314,705)	2,234,522	11,520,714	13,142,215.00

[126] Ms. Ferguson was cross-examined at length by Counsel for Mr Casserly, that is Ms Tamiko Smith. I will seek to highlight the salient aspects of the cross-examination. During cross-examination, Ms. Ferguson states that she was provided with documents from both parties, Ms. Thomas and Mr. Casserly. She further states that Ms. Thomas provided customer statements: listings; records of sale that was made to customers and the selling price of the eggs. However, she states that the specific sale price or prices is not indicated in her report.

[127] Ms. Ferguson mentions that Mr. Casserly provided information about sales revenue; information related to expenses incurred in the business; information related to expenditures for expenses in the business; bank statements and information through discussions about how he operated the business; the persons who were involved and worked in the business.

[128] Ms. Ferguson states that she was able to verify the accuracy of the information provided by the claimant by reliable and credible third party sources. She further states that the information was verified through third-party sources; specifically, for sales records. She states that a customer statement listing was obtained from Progressive Grocers.

[129] She also states that the information from Mr. Casserly was not independently verified except for the bank statements. Ms. Ferguson disagrees that parts of the financial statement were incomplete. However, she acknowledges that certain sentences in the "Basis of Preparation" and "Revenue Recognition" sections of the financial statement were incomplete as printed. She maintains that these financial statements were prepared in accordance with international financial reporting standards.

[130] She testifies how the figures were verified in relation to the responses received from the parties. She states that the verification included relying on each party to confirm the accuracy of the information they provided. She notes that not all information from Mr. Casserly was independently verified. This, she states was due to a lack of available independent verification. She says she was able to verify the information provided by Ms. Thomas from Progressive Grocers by relying on the statement obtained from them. She further defines "independently verifying" as relying on third-party sources, or on information passed through the claimant or defendant that originated from those third parties. She states she contacted the Jamaica Egg Farmers Association to verify the sales prices provided by Ms. Thomas and the Consumer Affairs Commission to verify the reasonableness of the information from Ms. Thomas.

[131] In relation to Mr. Casserly, Ms. Ferguson states that in addition to the bank statements provided by him, she also consulted the Egg Farmers Association and the Consumer Affairs Commission and other egg farmers with over 20 years of experience in the business for independent verification. She states that she recalls receiving a summary of sales from 2008 to 2020 from Mr. Casserly.

[132] Ms. Ferguson agrees that in her report sales for 2016, amounted to \$35,895,600.00, while Mr. Casserly reported sales of \$17,170,000.00. She also agrees that in her report sales for 2017, amounted to \$36,816,208.00, while Mr. Casserly reported a decrease to \$14,820,000.00. She further agrees that in her report, sales for 2018, amounted to \$31,984,602.00, while Mr. Casserly reported a slight reduction to \$14,040,000.00.

[133] She confirms that in her report for 2019, sales amounted to \$35,260,753.00, whereas Mr. Casserly reported a further decrease to \$12,960,000.00. She states that she is not able to confirm Mr. Casserly's reported sales of \$3,744,000.00 for the entire year of 2020.

[134] She agrees that Mr. Casserly provided additional details in his emails for each year, including the number of egg cases sold. He also provided the cost per case of eggs,

which fluctuated over time. However, Ms. Ferguson states that the cost per case was not explicitly stated in the report because it was not a requirement. Similarly, she states that the information obtained from the Egg Farmers' Association and the Consumer Affairs Commission was not included in the report, as it was not necessary for the report's requirements.

[135] Ms. Ferguson explains that she deducted from sales revenue any losses, including eggs reported as dumped by Mr. Casserly and that she used his price for most years, though in some cases, it was adjusted if the price significantly differed from third-party preparation data.

[136] Ms. Ferguson then delves into the issue of chicken output and productivity, explaining that Mr. Casserly had indicated that the production of eggs from chickens starts high and gradually declines, with a 70% drop in output over time, after which the chickens are disposed of when their egg production drops to about 30%. He had also shared that the average lifespan of chickens is 60 weeks. This declining output was cited by Mr. Casserly in his email as a reason why Ina's Farm could not have reached the profits claimed in the draft report.

[137] She, however, rejects the suggestion from Counsel that she has not explained the differences in the sales figures. Ms. Ferguson states that repairs and maintenance include the cost of maintaining the farm, licensing, and registration of units; and servicing the equipment used on the farm, as reported by Mr. Casserly. When asked about the electricity cost, which remains consistent across multiple years except for 2014, Ms. Ferguson states that no electricity bills were provided to substantiate the cost of \$180,000 per year. She mentions that Mr. Casserly indicated that where the farm was located they just used electricity, but there was no documentation to verify this amount. She similarly notes the lack of documentation for water expenses.

[138] She further states that when information was not provided by Mr. Casserly such as receipts or bills, she relied on signed representations from him to ensure the information provided was true and accurate. When questioned about the consistency of

certain costs, such as electricity, she disagrees with the assertion that no such costs were provided.

[139] Ms. Ferguson acknowledges that she did not see documents supporting the reported cost increases for the lease from \$5,000 to \$10,000 but like other instances, she relied on information provided by Mr. Casserly, without supporting documentation in many cases. She confirms multiple correspondences with Ms. Balli. (Mr Casserly's attorney at law) When asked whether she requested source documents from Ms. Balli, she clarifies that she had indeed asked for source documents at the very beginning and also from Ms. Balli's assistant.

[140] Ms. Ferguson confirms receiving a letters from Ms. Bailii d where she was asked to provide details of; the assumptions used to determine the volume and sale price of the eggs produced over the period; the discrepancy between the sales figures reported by Mr. Casserly and those reflected in the financial statements from 2010 to 2019; how egg losses and bad debts are reflected in the accounts, and whether these losses have been factored into the income and sales figures reported; the loss of birds been treated in these accounts given their lifespan expectation of five years and also the reduction in their productivity over their lifecycle and about the increasing value of biological assets over the period.

[141] Ms. Ferguson affirms that she addressed these questions noting that biological assets, which refer to the chickens, were considered in the financial reporting. When asked about the meaning of "capital" in the context of the company's financials, Ms. Ferguson explains that capital refers to the value invested in the business, which can include the money spent on assets or other resource

[142] Ms. Ferguson states that she addressed the questions posed by Ms. Bailii in her letter dated March 17th, 2023 regarding transportation expenses; whether these expenses included fuel, maintenance, third-party transportation costs and which vehicles were taken into account; the individuals whose salaries were reflected in the financials

and how these were broken down; the depreciation costs of the chicken coops and the value attributed to the coops.

[143] She states that one of the responses was on February 26th, 2024. She clarifies that this was the date she responded to the email containing the 15 questions. However, Ms. Ferguson does not recall receiving a letter from Ms. Bailii dated August 29th, 2024, requesting responses to the March 17th, 2023 letter. When the suggestion was made that she had never provided responses to the 15 questions in the March 17th, 2023 letter, Ms. Ferguson disagreed with that suggestion.

[144] Ms. Ferguson explains that she was engaged to prepare an audited financial statements for Ina's Farm for the years 2010 through 2019. She clarifies that she was not instructed to ascertain the business value of the farm, as that would require a different set of expertise. When asked what documents comprise financial statements, Ms. Ferguson explains that the primary documents would be the statement of comprehensive income and the balance sheet, with the cash flow statement included if the necessary information was available.

[145] She was then asked about the salary expenses listed in her reports. She explains that these figures were based on weekly salary amounts provided by Mr. Casserly and Ms. Thomas. She further clarifies that Mr. Casserly had provided credit card statements (which she had referred to as bank statements) for 2018 and part of 2019. These statements were used to verify some of the salary amounts.).

[146] Ms. Ferguson further explains that the figures for salaries came from the clients, Mr. Casserly and Ms. Thomas. To the suggestion that that some of the total figures were grossly understated, while some items, like salaries, were overstated. Ms. Ferguson reiterated that the salary information was provided by the parties.

[147] She further indicates that the information for the weekly salary came from Ms. Thomas while that for the monthly salary was from Mr. Casserly. Mr. Casserly did not provide information regarding two casual workers, so the salary computation for them came from Ms. Thomas. There was no agreement between Ms. Thomas and Mr. Casserly

on the weekly salaries. To calculate the weekly salary, the amount provided by Ms. Thomas was used. As for the permanent workers, Mr. Casserly's salary figure was accepted.

[148] Ms. Ferguson confirmed that Mr. Casserly's figure of \$840,000 was accepted for monthly workers, with the remaining \$2,192,000 allocated to casual and weekly workers. She further states that the salary figures include monthly, casual and seasonal workers. She confirms that the information on casual workers was not provided by Mr. Casserly. She admits that Ms. Thomas provided no supporting financial documents such as bank statements, pay slips, or deposit slips.

[149] Ms. Ferguson does not recall receiving from Mr. Casserly documents including income and expenditure details for 2017 and 2018. She however mentions that, had she received these income and expenditure statements, she would have asked Mr. Casserly for the supporting information he used to prepare those figures, as the financial statements being prepared required full visibility of source documents. This is because, as a professional, she could not accept the statements without knowing how they were derived.

[150] She recalls Mr. Casserly's email expressing disappointment with the draft financial statement, claiming that assumptions were made instead of using actual data. She states that the financial statements for the period 2010 to 2019 include professional fees, which have been split across the table. She confirms that professional fees are included on page four as a line item under expenses for each year from 2010 to 2019, and she asserts that this inclusion is appropriate.

[151] Ms. Ferguson asserts that the information regarding printing and stationery expenses for the period 2014 to 2018 were representations from Mr. Casserly, but he had not provided her with receipts, invoices, or bills to confirm these figures.

[152] She further confirms that net profit declined to \$701,684 in 2016 and that the business suffered a loss of \$1,314,705 in 2017. She acknowledges that these figures are based on the information provided by Mr. Casserly

[153] She states that, in response to Mr. Casserly's indication of losses in a declining industry, she acknowledges the increase in transportation costs of \$1,250,000 in 2016, reaching \$1,320,000 before slightly declining to \$1,200,000 in 2017, as reflected in the report. She further clarifies that although Mr. Casserly presented figures showing losses for certain periods, he did not indicate that losses occurred throughout the entire span from 2014 to 2017. She states that Mr. Casserly specifically communicated losses for the years 2012, 2017, and 2018. She maintains that written off losses due to market conditions and industry saturation, including losses from spoilage or death of stock, were recognized in her report, as per Mr. Casserly's figures.

[154] When asked whether losses like bad debts are accounted for as expenses, she, states that any losses of this kind would be included if they were reported. She further explains that in the context of an egg farm, such losses would include things like broken eggs or dead chickens, which are considered normal expenses. She further states that written-off inventory figures for, 2017, and 2018 align with losses not typically accounted for as part of the usual industry norm. Regarding the figures, she explains that normal losses, such as broken eggs or chickens dying, are factored into the sales revenue line, with an accepted industry standard loss of around 10%.

[155] Ms. Smith asked if stock includes feed, to which Ms. Ferguson states that "stock" refers to both feed and chickens. She confirms that inventory reports for both feed and chickens were indeed provided, and these reports included the purchase costs for the feed.

Submissions

[156] Counsel Ms. Smith, in taking exception to reliance on Ms. Ferguson's report. She submits that.

'the Claimant relies on unaudited financial statements prepared by Ms. Carlene Ferguson of Precision Accounting and Business Consultancy Services Limited. Although both parties shared the cost, their contents are not agreed upon. The Defendant has raised significant concerns about their accuracy and reliability, which remain unaddressed. Therefore, these statements should be approached with caution and cannot be accepted as definitive evidence in support of the Claimant's case.

[157] Counsel states that Ms. Ferguson acknowledged under cross-examination that the "Notes to the Financial Statements" on pages 21 and 22 of her report were incomplete. She posits that this is critical, as these notes clarify the assumptions, methodologies, and adjustments underlying the financial figures. Counsel strongly contends that Ms. Ferguson admitted that her report relied on unverified and undocumented third-party information. She submits that Ms. Ferguson did not contact Progressive Groceries of Jamaica Limited to verify the A/P Vendor Transaction statement provided by the Claimant, nor did she inquire with the Companies Office of Jamaica or the Tax Administration of Jamaica regarding the business's registration status or corroborative filings. This lack of detail, she submits, prevents the Court from properly assessing the reasonableness and fairness of her assumptions and adjustments.

[158] Counsel further argues that Ms. Ferguson admitted that she was neither engaged nor competent to provide a valuation of the business. She asserts that given the stated purpose of the financial statements and the costs associated with their preparation, this limitation further undermines the reliability and usefulness of her report for this claim. She argues that Ms. Ferguson dismissed the Defendant's reported salaries and wages without proper justification but admitted relying on verbal and written information from the parties without verification and confirmed that she was unable to independently verify the amounts provided by Ms. Thomas including figures for casual workers' wages without any supporting evidence from the Claimant.

[159] She submits further that Ms. Ferguson admitted receiving emails from the Defendant expressing concerns about the financial statements. Despite this, she disregarded his information which undermines the reliability of her conclusions. It is her

submission that these deficiencies show that the statements do not accurately reflect Ina Farms' operations or value and should carry little evidentiary weight.

[160] Ms. Smith urges the Court to reject Ms. Ferguson's statements and rely on the income and expense records from Mr. Casserly, submitting that these accurately represent the business' financial standing.

Discussion

[161] I take note of the submissions of counsel for the Defendant, Ms Smith that the court ought not to rely on the report that was generated by virtue of the court's order under **Section 12 of PROSA** The basis of this submission is that the report is unaudited, and that Ms. Ferguson has admitted that sections of the report are incomplete. However, I find this argument regarding the auditing of the statement quite vaporous. Considering the fact that Ms. Ferguson is not Ina's farm private accountant, but an independent valuator acting under an order of the court I am yet to fathom the necessity for an auditor to audit her valuation report.

[162] Secondly, the incomplete sections that Ms. Smith has taken issue with are statements contained in the notes to the statement. The first on page 21 read as follow "*These financial statements have been prepared in accordance with international financial reporting standards board and have been ...*"

[163] The other is the notes on page 22, dealing with "*Revenue Recognition*". It seeks to explain when revenue is recognized and read as follows; "*Sale of goods- Revenue is recognized when the performance obligation is satisfied at a point in time when transfer of goods or services is completed. Completed is assessed when the customers take control of the goods and or obtain the benefit of the goods and services and the company presents the right of payment as...*"

[164] Nonetheless, having examined Ms Ferguson's report and having listened to her explanations on cross-examination I harbour no doubt that her report was prepared in

accordance with international financial reporting standards. She has provided sufficient clarity for me to conclude that the missing words from the notes to the statement do not affect the substance and credibility of her findings in the statement. It is pellucid that she did her best with the information provided to her by the parties and that she also sought independent verification where these were available with regards to the recognition of Revenue as also the other contents of the statement.

[165] Ms. Smith has submitted that Ms. Ferguson should have sought to obtain information from the Companies Office and the Tax office to assist in the preparation of the Financial Statement. However, I am yet to see what would be the futility of this exercise. The Defendant has admitted that the business was not registered. So clearly neither the Companies Office nor the Tax Office would have any records of this unregistered business.

[166] Ms. Smith submits that the court should instead rely on Mr. Casserly's financial statement, prepared by himself, and not audited by an independent auditor. Evidently, this report would be self-serving. Additionally, if the court were to accede to these submissions the court would be acting in contravention of **Section 12 (3) of PROSA** which requires the determination of the value of the property to be done by a valuator agreed upon by the parties or one appointed by the court

[167] I have notice that Ms. Smith spent much time on cross examination regarding Ms. Ferguson combining the figures for salary expenses provided by the parties rather than using the lower figure provided by Mr. Casserly. I am yet to grasp the basis of this challenge. Firstly Ms. Ferguson's explanation is plausible. Secondly, the higher expense would necessarily engender a reduction in the net profit. Consequently I do see how this method of calculation would be averse to the Defendant who is contending that the profit was overstated.

[168] In any event I have no reason to believe that there is any bias or error in Ms. Ferguson's report. As such I accept her report as a true reflection of the financial status of Ina's farm for the period covered in the report.

[169] Furthermore, I do not share Ms Smiths' view that the court does not have a basis on which to calculate the Claimant's share in Ina's Farm. In fact, in matters such as these even if the court cannot arrive at a precise mathematical determination of a party's share the court is required to do the best it can to ensure justice between the parties.

[170] Therefore, in applying the provisions of **Section 12(2) of PROSA** in order to determine the percentage share of Ms. Thomas in Ina's Farm I will do so by determining her share in the profit. This is considering the fact that I do not have sufficient information regarding the quantity of board and pallets that were contributed by her for the construction of the coops so as to make a useful assessment on the fixed assets

[171] In arriving at the percent shares of the profit I calculate the percentage of the total sales to Progressive Grocers in 2016 to the total sales (That is $\$4618458.31 / 35,895,600 \times 100$) This amounts to 12.8 percentage. I then add a further 12.2 percent for her total contribution to the delivery of eggs, physical work on the farm and materials. These contributions I find were minimal. However, in light of the fact that I found that the business was jointly owned by Mr. Casserly and Mr. Delroy Roberts, Ms. Thomas would only be entitled to a share in Mr. Casserly's portion of the profit. Accordingly, I find that Ms. Thomas share in Ina's farm as at the year ending 31st of December 2016 was 25 percent of Mr Casserly's portion of the net profit.

[172] I now proceed to determine the most current value to date of this 25 percent share. Considering the fact that the evidence of Mr. Casserly is that he continued to plough back the excess or profit in the business, despite the fact that the parties separated in 2016, I find that Ms. Thomas' share in the profit at that time continued to be reinvested in the business. Consequently, in order to arrive at the most current value of Ms. Thomas' share in the business profits I must take this factor into consideration.

[173] As such, while I agree with Counsel Ms. Smith that in accordance with section **12 (2) of PROSA** the portion (percentage) of her share in the property should be assessed at 2016, I do not share her view that the current value of that share should remain at the value as at 2016. **Section 12(1) of PROSA** clearly states that the value of the share should be at the date of the order or unless the court determines otherwise. I calculate 25 percent of half of the total net profit between 2016 and 2019 to be, \$1,642,776.87. I therefore hold that the value of Ms. Thomas share in Ina's farm is \$1,642,776.87.

Whether the Claimant is entitled to Occupation Rent

The Law

[174] In the case of **Patsy Powell v Courtney Powell** [2014] JMCA Civ. 1 .at paragraph 28 Morrison JA stated that:

“There is ample precedent for the court ordering one spouse, who has excluded the other from the matrimonial home, to pay occupation rent to the excluded spouse. The learned trial judge was entitled, in the face of the evidence that Mrs. Powell had excluded Mr Powell from the family home, to order the payment of occupation rent”

[175] In the case of **Mercedes Blake v Andrew Blake** [2016] JMCA Civ. 63, E. Brown J (as he then was) at para. 31 made the point that

“In fine, 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”

[176] Further at paragraph 32, he cautioned that:

“if the insufficiency of bare occupation to ground occupation rent is to remain a valid proposition, a co-owner who voluntarily gave up occupation must establish that the equitable or legal balance has been disturbed. He

does so by proving, for example, either the existence of a contract to pay rent or that the circumstances require an equitable accounting”.

The evidence of Ms. Thomas

[177] Regarding the circumstances under which she vacated the family home Ms. Thomas gave the following evidence:

Sometime in 2009, the Defendant began to get verbally abusive towards her triplets and eventually hit one of them causing them to become fearful and leave the home together to live with her relatives. She also says that as a result of the Defendant hitting one of the triplets, tension began to grow between her and the Defendant, and this caused the triplets to moved out of the family home. She says further, that the relationship between her and the Defendant continued to deteriorate. She states that she nevertheless tried to get counselling with the Defendant in the hope that things would change for the better.

[178] She states that things became even worse in 2016 when the Defendant lifted the mattress on which she was sleeping, and she fell off. She explains that the Defendant and herself had an agreement that the key for the Honda CRV was to be left at a certain spot for safety so he knew where it was in case of an emergency.

[179] She explains further that while she was asleep Mr. Casserly entered the room demanding the car key which was not at the agreed spot. She asserts that he became angry, hissed his teeth, raised the mattress and tossed her off the bed, grabbed the key and walked out of the room leaving her on the floor.

[180] She states that luckily she was not hurt. She says she “got up and went after him which resulted in an argument with both’ of them. She says thereafter she began to stay at her friend’s house in order to see if things would get better. She alleges that it only got worse, and she began to get scared for her own safety. She asserts that she eventually left the home out of fear for her safety.

[181] On cross examination Ms. Thomas agrees that she has provided no receipt that she still pays a portion of the mortgage. She agrees that even though she says that she left the family home in 2017 her first rent receipt is dated September 1st 2016. Her explanation is that she started paying the rent from that time.

[182] She insists that it was in order to retain her sanity, she finally moved out of the family home in January of 2017 and rented a house at Lot 47 Reef Avenue, Harbour View, in the parish of Saint Andrew. She however maintains that she still pays her portion of the mortgage to the National Housing Trust for the family home.

The evidence of Johnell Davis

[183] Ms Davis is one of three (Triplets) daughters of Ms. Thomas. She states that on a date in 2009 herself and her siblings were at home with Mr. Casserly their stepfather getting ready to go on the egg farm. She further states that she put on a pair of jean pants with a rip over the knees that she normally wears. She says that Mr. Casserly told her to change her pants but she refused. She says, further that Mr. Casserly grabbed hold of the rip in the pants and started to pull it, telling her to take it off but she continued to refuse.

[184] She also says that herself and Mr. Casserly normally have play fights, but on this occasion, as he punched her on her leg, she realised that this was different. This punch she says, was harder than the normal play fight. She states that she ended up falling on the floor and Mr. Casserly was over her saying, "Change the pants! Change the pants" She said "no", so he slapped her again and then she screamed out.

[185] She asserts that from that incident most of the verbal abuse against her and her sisters began. She states that they and Mr. Casserly were not really getting on long after that happened because he was saying that they were getting out of hand. She further states that Mr. Casserly had an issue with them meeting with their biological father.

[186] She says he would call them refugees and would say demeaning things like, they wanted to go on the road like how other girls on the road are, and that they wanted to

behave like they are big wild women She says also that they grew up calling Mr Casserly, daddy, but he told them, to stop calling him daddy.

[187] She indicates that when she and her sisters were supposed to go back to school the following year, that is 2010, to start at Sixth Form, they were told by Mr Casserly and Ms. Thomas they were not going to pay their school fees but they should let their Dad do so.

[188] She states that Mr Casserly said he would hit her again about the pants or do whatever he had to do to instil discipline in her. She asserts that Mr. Casserly's emotions was on and off, one moment he was good and others it was like in the house they were walking on eggshells. She says the tension in the house was like a World War which started from the last part of 2008, continued for a couple months, and then the entire year of 2009. She says further that she and her sisters left the house in 2010

[189] On cross examination Ms. Davis states that both her mother and stepfather said her biological father should pay the school fees. She says that her mother was siding with Mr. Casserly. She admits that she and her mother was having mother and daughter issues as certain things they could not agree on.

[190] She admits that she and her sisters did not tell their mother when they were leaving, they just left. She says only one physical confrontation ever occurred between herself and Mr. Casserly and that was in 2009.

The evidence of Mr Casserly

[191] Mr. Casserly's evidence is that the Claimant's daughters whom he raised and bore the responsibility for as if they were his own since 2000 began to get disrespectful both to him and the Claimant in or around 2008. He contends that the Claimant was being abused by her triplet girls who on one occasion tried to fight her and he had to intervene and told them to respect their mother. He denies abusing Ms. Davis or her sisters.

[192] He admits that there was an incident between himself and Ms. Davis regarding the appropriateness of her dress but denies punching her. According to Mr Casserly the jeans

was altered exposing too much of Ms Davis's skin for a teenager. He explains that the pants were modified from having one single rip to over the knees to having holes and rips throughout.

[193] He says when paired with the spaghetti sleeve blouse she was wearing he found the dress inappropriate for a teenager so he told her she could not go with him to the farm dressed in that manner. He says he reached over to fix the strap of her blouse which was falling down, and she boxed away his hands. He states that was when he slapped her.

[194] He says further that unlike other occasions when it would then become playful, she became defiant in both her body language and verbal responses and started hitting him. He says after she refused to change her clothes he left. He denies that she fell on the floor with him standing over her.

[195] He says on an occasion when he went to pick up the triplets from school and found that they were not there he was upset. He indicates that he would normally be advised beforehand when their father would be picking them up. He admits that when he was told that someone else had picked them up, he cursed but says this was out of concern and worry as a parent as it was in the news that other children were being abducted during this time. He also admits that he would use the words "sketel" and "refugee" to them in order to point out the undesirable aspect of their behaviour, but he did not refer to any of them personally regarding these words. He maintains that having spent over a decade caring for them as a parent all he wanted was the best for them.

[196] Mr. Casserly asserts that it was when Ms Davis and her sisters repeated the disrespect towards their mother that he told them that if they did not respect their mother they should pack their things and leave the house. He indicates that the Claimant endorsed this decision. He says they left in September 2010. He further states that when they were leaving they said their biological father told them to leave because Mr. Casserly was being too strict on them.

[197] Mr. Casserly, however says that thereafter the Claimant began to blame him for her children leaving, which caused the relationship to deteriorate. He also says that the Claimant's behaviour started to change and things that she would do for and with him she stopped doing. He states that the Claimant, Ms. Thomas left their joint bedroom in 2012. He says further that in 2015 Ms. Thomas started to raise the issue about wanting to get married but by then he did not want to marry her based on her behaviour towards him. He contends that though he was still providing for her, in that he even provided her with a fully maintained car, she was disrespecting him and not spending any time with him as a couple, telling him that she would not be washing his clothes as they were not married. and that her church had told her to stop washing her clothes with his.

[198] Mr. Casserly says also that his refusal to marry the Claimant made her upset, and that she informed him that they could not live together because they were not married. He also indicates that he did indeed tell her that she should go and get maintenance from her Pastor. He also admits telling her that she was a kept woman

[199] Mr. Casserly asserts that in 2016 the relationship further deteriorated as Ms. Thomas was refusing him access to the Honda CRV, even though he had eggs to deliver in Portmore. He testifies that one morning in around June 2016, he had to deliver eggs to Portmore and needed the use of the Honda CRV, but Ms. Thomas refused to give him the key and hid it under her mattress.

[200] He says that this resulted in him having to lift up the mattress in order to get it. He agrees that he got upset with the Claimant because as she has stated, they had an agreement to keep the key in a particular spot. However, she did not place the key in the usual spot and hid it from him.

[201] He says further that initially he calmly asked the Claimant for the key but her response was hostile. He states that he asked again, and she told him that she would not be giving him the car key as she wanted to use the car. He also says that he asked her what time she needed the car and when she told him, he told her that he would be back before that time, however, she continued to refuse to give him the car key.

[202] Mr. Casserly, states that when he realized that the Claimant had hidden the key under the mattress, he lifted the mattress and removed the key and walked out of the room. He denies tossing her off the bed. He denies that he left her on the floor. He indicates that he was annoyed as the Claimant caused him to miss an appointment because of her behaviour. He however denies putting his hands on the Claimant in any way.

[203] He denies that there was any intense confrontation between them when the Claimant left to go on her trip overseas. He says on her return from overseas she came back to the home and had the use of the CRV motor vehicle as was customary.

[204] Mr Casserly further says that on Wednesday, August 10, 2016, he returned home to see his Honda CRV parked on the carport. Shortly after entering the house he realized that the Claimant had removed all of her belongings. He contends that he and the Claimant had no prior discussion about her wish to leave the family home nor was he contacted after her departure except when he received a letter from her lawyer in November 2016 making a claim for division of property, that the relationship was over, and she would not be coming back.

[205] He asserts that It is not true to say that the relationship was continuing into 2017. He insists that it ended in 2016 August when the Claimant left. He maintains that the Claimant is not entitled to any occupational rent as he did not force her to leave the home. He asserts that while the Claimant has been paying rent, he has been the only one who continues to pay the mortgage instalments due to the National Housing Trust (NHT), and all outgoings associated with the house. He says that on several occasions even his contributions refunds have been applied to the Claimant's mortgage account. (He has exhibited copies of the annual statements from the NHT of the mortgage account).

[206] On the issue of occupational rent, Counsel for the defendant posits that the Claimant seeks an order for occupational rent but has provided no supporting evidence. She submits that the claimant has made general allegations of verbal and physical abuse by the defendant toward herself and her daughters but failed to provide specific incidents,

dates, or contexts for her allegations. She also points out that neither the claimant's affidavits nor the testimony of her daughter, Johnelle Davis, substantiated these allegations.

[207] Ms. Smith further submits that on cross-examination, Ms. Thomas could not recall being kicked out of the family home and that she has admitted that she never asked to return. As a result, Ms. Smith submits that Ms. Thomas' claim lacks evidentiary support.

[208] Ms. Smith also submits that while the burden of proof rests on the claimant, the defendant has presented a wealth of information and documentation which proves the opposite of the Claimant's assertions.

Discussions

[209] It is the contention of the claimant that the defendant was abusive towards herself and her children. She contends that as a result of the tension that began to grow; she had concern for her safety and in order to retain her sanity, she finally moved out of the family home.

[210] However, when I examine the evidence regarding the relationship between the children and the defendant, I recognize that in her evidence Ms, Davis indicates that there was only one physical confrontation with herself and the defendant and that was in 2009. Both Ms. Davis and Mr Casserly agree that prior to this incident Mr, Casserly and the Children had a good relationship where they used to have play fights. Ms. Davis admits that he used to support them, and their relationship was as father and daughters, that they used to call him Dad. Both agree that this incident occurred over Ms. Davis refusing to change an attire which in the view of Mr. Casserly, as a parent, was inappropriate for a teenage child. Mr. Casserly has not denied slapping Ms. Davis but says he thought it would turn out into a playfight as normally happens.

[211] However, based on Ms Davis's perception she received a punch that was too hard for a play fight. Ms. Davis further alleged that Mr. Casserly expressed that he would hit her again or do whatever he has to do in order to "instil discipline in her" Ms. Davis and Ms Thomas also alleges verbal abuse on the part of Mr. Casserly. Ms. Davis has

indicated that this emanated from their reconnection with their biological father. Mr. Casserly has not denied feeling slighted and rejected on account of the girls seemingly being insensitive towards him as a result of their reconnection with their biological father. He referred to an occasion when he went to pick them up from school only to find out that they had left with their biological father without informing him prior.

[212] However, I note that on Ms. Davis evidence. up to the time she and her sisters were leaving in 2010 she has not indicated any physical abuse or threat emanating from the Defendant towards their mother. She in fact indicates that her mother was taking Mr. Casserly's side and that they both refused to pay their school fees. This to me indicates that the Defendant had no general propensity to physical violence or abuse.

[213] On my total assessment of the evidence as regarding the allegation of physical abuse by Mr Casserly towards Ms. Davis, while I am not condoning physical abuse on the part on anyone, both Mr. Casserly and Ms. Davis made reference to a history of playfight. In this regard I conclude that Mr. Casserly's hitting of Ms. Davis could have been harder than intended for her to form the impression that it was not a playfight, despite him saying that he thought it would turn out into a play fight.

[214] In any event, I find that he was not intentionally physically abusive towards the children. Additionally, I accept Mr. Casserly's evidence that the girls had begun to be disrespectful towards himself and their mother. This is supported on the evidence of Ms. Davi, in that she blatantly refused, to submit to his authority as a parent, to change an attire that he considered to be inappropriate. Additionally, Ms. Davis has admitted that herself and her mother were having mother-and-daughter issues and that when she left with her sisters they did not inform their mother. This to me is a form of disrespect.

[215] However, relevant to the issue under consideration is that up to the time the triplets left the home in 2010 there appears to be harmony between Ms. Thomas and Mr. Casserly's approach to discipline. Ms. Davis indicates that Ms. Thomas was taking Mr Casserly's side. Consequently, I do not accept the evidence of Ms. Thomas that Mr. Casserly's treatment of her children precipitated her departure from the matrimonial home

some 6years after they left. I have no doubt however that they being away from her for any extended period of time would have affected her emotionally.

[216] Consequently, I accept the evidence of Mr Casserly that she blamed him for their departure and that this was a factor that contributed to the deterioration in their relationship. Furthermore, having assessed the evidence of both parties it is evident that the relationship had deteriorated to the point where there were arguments and conflict between the parties. However, it is my view this was far from being one sided. I form the impression that the Claimant was not docile in the relationship but was also confrontational and retaliatory.

[217] This is in view of her evidence that the key for the Honda CRV was not place at the mutually agreed spot. She has stopped short of admitting to the assertions of Mr. Casserly that she had in fact placed the key under the mattress on which she was lying.

[218] Nonetheless, her evidence that Mr. Casserly raised the mattress and tossed her off the bed, and grabbed the key is sufficient for me to arrive at the conclusion that she had in fact placed the keys under the mattress. While I am in no way condoning Mr. Casserly retrieving the key in a manner that would cause her to fall, I conclude that Ms Thomas' action of hiding the key was designed to provoke Mr. Casserly to anger.

[219] Additionally, it is Ms Thomas' evidence that when Mr Casserly was exiting the room after she fell off the mattress, "she went after him" This, in my view was with the intention to confront and or retaliate. This conduct on the part of Ms. Thomas does not indicate any fear of the Defendant.

[220] Nevertheless, Mr. Casserly had admitted that he has used what can be described as hurtful words to the Claimant. He has admitted that he told her that she should seek maintenance from her pastor. He has also admitted, referring to her as a kept woman. In circumstances where a woman has lived with a man for over 10 years as his spouse, it is not inconceivable that she would wish for him to marry her even without any outside influence such as a pastor. Consequently, Mr. Casserly would have been well aware that using those words to Ms. Thomas would inevitably lead to arguments and worsen any

underlying conflict. In those circumstances, in spite of available physical space and in spite of Mr. Casserly not forcefully ejecting Ms. Thomas or demanding her departure he would have contributed to the conflict and tension in the family home. Accordingly, it would be unreasonable to expect Ms. Thomas to remain in the home with the prevailing tension.

[221] Therefore, while I am not convinced that Ms. Thomas left the matrimonial home out of fear of the Defendant, Mr. Casserly, it is clear on the evidence that there were conflict and tension in the home to which the Defendant contributed. Additionally, I also accept as a fact that Ms. Thomas having left the family home incurred expenses for alternate accommodation in the form of rent. Such circumstances are important factors for my consideration in determining her entitlement to the payment of occupation rent.

[222] However, Mr. Casserly maintains that he is the person that has been paying the mortgage for the home since Ms. Thomas' departure. While insisting that she continues to pay her portion of mortgage, Ms. Thomas has agreed that she has not produced any supporting evidence for this assertion.

[223] On the contrary. the Defendant has exhibited receipts to his affidavit in proof of mortgage payments. Admittedly some of these receipts are recorded in the name of Ms. Thomas reflecting her monthly mortgage obligation. However, I have considered the fact that these receipts are in the possession of the Defendant, having been exhibited on his case and that no explanation is forthcoming from Ms. Thomas as to why they would be in his possession and not hers.

[224] Accordingly, while not agreeing with counsel Ms. Smith that Mr. Thomas has to prove that Mr. Casserly ejected her from the family home in order to be awarded occupation rent, I agree with counsel that Ms. Thomas has failed to prove that she continued to pay her portion of the mortgage. As such I accept the assertions of Mr Casserly as the truth, that since Ms. Thomas left the family home she has not contributed to the mortgage payments.

[225] In the case of *Heather MC Laren Joseph Nigel Archibald*, [2019] JMSC Civ, 72 both parties left the family home in 2006. The defendant returned to occupy the family

home since November 1, 2010. The claimant said she continued to pay the mortgage loan to the NHT until March 2010 when her resources ran out and she could no longer afford to make the payments. It was accepted by both parties that since April 2010 the defendant had been making the NHT monthly mortgage payments. D Frazer J as he then was decided that it is:

“Simpler to regard the payment of interest as equivalent to payment of occupational rent’ in the circumstances. The defendant would likely also have been responsible for maintenance of the home while residing there. The defendant is therefore not required to pay any occupational rent to the claimant” (See paragraph 75)

[226] Similarly, in the instant case, having found that the defendant Mr. Casserly is the only person who continued to make the mortgage payment both for himself and Ms. Thomas since she left the family home I hold that he is not required to pay occupational rent to Ms. Thomas.

Conclusion

[227] Having assessed all the evidence presented and having applied the relevant law, I find that the claimant has failed to prove that she made any financial contribution or contributed any start-up capital to the business Ina’s Farm. I find that she has failed to prove that she was a partner in the said business.

[228] However, I find that she has proven that she has made nonfinancial contribution to the said business amounting to 25% off the Defendant’s share. Additionally, I find that she has failed to prove that she is entitled to occupational rent for the family home. Considering that Mr. Casserly has agreed during the trial that the Claimant is entitled to half the value of the household furniture in the family home, and considering my findings I make the following orders.

[229] Orders

- (i) Ms. Thomas is entitled to half of the value of the furniture in the family home
- (ii) The furniture is to be valued by a reputable valuator within 14 days of this order.
- (iii) The cost of the valuation report is to be borne equally by both parties.
- (iv) The Defendant has the option to purchase the half share of the furniture and pay the value to the Claimant
- (v) This option is to be exercised within 14 days after being served with the valuation.,
- (vi) If the Defendant fails to exercise the option to purchase, then the Defendant is to hand over to the Claimant half of the furniture in the house that is furniture valuing half the sum stated in the valuation report
- (vii) Ms. Thomas is entitled to 25% share of the Defendant's share of the annual net profit in Ina's farm from 2016 to 2019.
- (viii) The Defendant is to pay the Claimant, \$1,642,776.87, representing her share in Ina's Farm.
- (ix) This payment is to be made within 120 days of this order.
- (x) The Defendant is to pay to the Claimant 25 % of her Cost which is to be agreed or taxed.

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Andrea Thomas
Puisne Judge