IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2006/HCV02453

BETWEEN	DOROTHY PATRICIA BOSWELL	CLAIMANT
AND	KENNETH DELROY BOSWELL	1st DEFENDANT
AND	TEINO BOSWELL	2nd DEFENDANT

For the Claimant:

Dr. Lloyd Barnett and Mr. Keith Bishop
instructed by Bishop & Fullerton;

For the 1st Defendant:

Mr. Gordon Steer, instructed by
Chambers Bunny & Steer;

For the 2nd Defendant

Miss Leila Parker.

Heard: January 21; March 11; May 12 and July 31, 2008.

N. E. McINTOSH, J.

The Claimant and the 1st Defendant solemnized their common law union of some six years or so, in May of 1984. However, 2002/2003 saw each party taking steps to have the marriage dissolved, resulting in a Decree Absolute being granted to the 1st Defendant on June 3, 2005. Then, on July 11, 2006 the Claimant filed an application under **The Property (Rights of Spouses) Act, 2004,** by way of a Fixed Date Claim Form, seeking a declaration that she is "entitled to a fifty per cent (50%) share" of all the assets they acquired during the course of their common law union and subsequent marriage. It is her contention that she is so entitled because she made both direct and indirect contributions to the acquisition of the assets specified in her supporting affidavit.

Her claim underwent some amendment in July of 2007, however, after one of the children of the union, Teino Boswell, sought and obtained leave to intervene in a bid to protect his interests in certain of the assets to which the claim relates. Accordingly, apart from adding Teino Boswell as the 2nd Defendant, the claim became one for a fifty percent share in the assets "or such other percentage as the circumstances warrant."

Although at the hearing of Teino Boswell's application, leave was granted to him to file, by November 12, 2007, an affidavit in response to the Claimant's affidavits, no affidavit was filed. His evidential input into this matter consisted of what could be gleaned from the affidavit filed in support of his application to be joined as a party to these proceedings.

The Claimant's Entitlement to Apply

Section 13 of the Property (Rights of Spouses) Act, 2004 - ("the Act") provides as follows:

> *" ---(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 willful or reckless dissipation of property or earnings.*

and **subsection (3)** provides that

"For the purposes of subsection (1), (a) and (b) of this section and section 14 the definition of spouse shall include a former spouse."

The Claimant is therefore entitled to make this application by virtue of **Section 13 subsections (1) (a) and (3).**

Time for Making the Application

Section 13 subsection 2 provides that:

> ***"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."*** (emphasis added)

Both parties had petitioned the court for dissolution of their marriage and there was some initial uncertainty as to the effective date of the decree absolute which was eventually granted but it was confirmed from the court's records to have been the 3rd of June, 2005. Therefore, the Claimant's application, having been filed on July 11, 2006, fell just outside of the twelve month period provided for by subsection 2 and she endeavoured to address that issue with the order sought in paragraph 2 of her Fixed Date Claim Form, namely an order that "the time prescribed for the Claimant to seek orders under the said Act be extended to the date hereof."

There was a less than vigorous objection by the 1st Defendant to the enlargement of time stating that there was no affidavit filed by the Claimant indicating a basis for the grant of an extension. However, from the wording of subsection 2 this court was of the view that oral submissions were permissible and after hearing from Dr. Barnett, the Applicant's Attorney-at-Law, the extension of time was granted. There was no objection from the 2nd Defendant. Accordingly, the Application was held to be properly before the Court.

THE ISSUES

The first issue concerns the matrimonial home and whether it is subject to the application before the Court. The answer is to be found in the provisions of **section 14 subsection (1) (b) and subsections (2) to (4)** of the Act.

Subsection (1) (a) referring to sections 6 and 7, is of no relevance. By virtue of section 6, the Claimant would have been entitled to a one half share of the family home on the grant of a decree of dissolution of the marriage.

This Act came into effect on April 1, 2006 and the marriage was dissolved on June 3, 2005. Since there is no retroactive provision, the Claimant's claim for a share of property under the Act can therefore relate only to property other than the family home. (See section 14 (1) (b)).

Section 7 is equally inapplicable as it relates to the power of the Court to vary the equal share rule for division of the family home.

Assets Claimed for Division (other than the Family Home)

The assets identified by the Claimant as being subject to her claim are set out in paragraphs 13 to 16 of her supporting affidavit and are as follows:

(a) Real Estate

i) 11 James Avenue, Ocho Rios, in the parish of St. Ann – land purchased in 1996; building constructed in 1997 from which Boswell's Steel and Hardware is operated;

ii) Content Gardens, Ocho Rios, St. Ann – house and land purchased in 1983/1984;

iii) land at Marvins Park, White River, Ocho Rios, St. Ann, the purchase of which commenced in 1980 but to date has not been completed;

iv) 4 Evelyn Street, Ocho Rios, St. Ann – land purchased in 2000 and house built thereon in 2003;

v) 8 (corrected to 6) Evelyn Street, Ocho Rios, St. Ann – land and building purchased in 2003;

vi) two lots of land with buildings thereon, situated at 23 and 25 Park Avenue, St. Ann's Bay, in the parish of St. Ann, purchased in 2005;

vii) 84 Vista-Del-Mar, Drax Hall in the parish of St. Ann – house and land purchased in 1995;

viii) land at 11 Harbour Street, St. Ann's Bay, in the parish of St. Ann,

(date of alleged purchase not provided); [Lot 9 was also said to have been purchased but she makes no claim to a share in that lot].

ix) First house constructed at 5 Bonham Park, Ocho Rios, St. Ann, on land purchased in 1978 – This house is no longer considered as the family home and at one tome was rented:

x) fourteen acres of land at Rio Nuevo in the parish of St. Mary, purchased in 2006;

There is disagreement as to the ownership of properties situated at 9 and 11 Harbour Street and 84 Vista-Del-Mar. It seems that the Claimant is unable to provide any proof of ownership but she exhibits a letter dated July 10, 2001, addressed to the 1st Defendant, which refers to certain construction on the property at Vista-Del-Mar, in support of her contention that he is the owner. However, no questions were asked of him in cross-examination by way of explanation of the letter which at the very least raised an inference of some proprietary interest so that at the end of the day, the court is left in a state of uncertainty as to what, if any, interest he has in that property and if he had an interest, when it was acquired.

(b) <u>Motor vehicles:</u>

1. 1998 Isuzu Elf;
2. 1995 Toyota Rav 4;
3. 2001 Toyota Townace;
4. 2005 Mercedes Benz;
5. 1997 Toyota Corolla;
6. 1997 Leyland Truck;
7. 1991 Nissan Atlas;
8. One Isuzu NPR;
9. 2002 Mitsubishi Pajero;
10. 2000 Toyota Avalon;
11. 2001 Honda Civic;
12. 1990 Mitsubishi Canter;
13. 2006 Prado.

(c) **Rental Income**

From Residential Property at:

i) Content Gardens,
ii) 23 Park Avenue,
iii) 25 Park Avenue

From Commercial Property at:

i) 4 Evelyn Street
ii) 6 (8) Evelyn Street
iii) 9 Harbour Street.

The Claimant then ended her supporting affidavit at paragraph 29 with a prayer that the Court will grant her

" one half of all assets consisting of lands owned, income from businesses owned, rental income from properties owned, moneys in accounts held in various financial institutions, all motor vehicles, moneys invested in several financial organizations houses owned"

APPLYING THE PROVISIONS OF THE ACT TO THE CLAIM

Section 12 (2) 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."

Spouse in this section would be as defined in **section 2 (1)** which reads as follows:

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

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

Therefore, in the case of a husband and wife **section 12(2)** makes the operative date the date on which the spouses ceased to live together as man and wife and in the case of a single man or woman the date would be the date when they ceased to cohabit. If the husband and wife have not ceased to live together as man and wife and if the single man or woman has not ceased to cohabit, then the operative date is the date of the application to the Court. By virtue of these provisions it is clear that this application can only relate to property acquired as at the date of separation and the submission that the operative date in this case is the date of the application to the court is misconceived. The relevant date in this case is the date of separation. It is for this reason that Counsel for the 1st Defendant sought to bring the Court's attention to the discrepancies in the evidence concerning the date of separation of this couple.

I comment here that the Court is not required to trace profits and make a determination involving the use to which profits were put after the parties separated. What is relevant is the property acquired up to the date of separation – not after-acquired property.

When did the Claimant and the 1st Defendant Separate?

In her viva voce evidence the Claimant testified that she separated from her husband in the year 2001 because although she had removed from the matrimonial home in 1998, they had resumed some kind of visiting relationship. She said he would come and go. She found that quite romantic as she felt as if they were courting again. "He can seek out and I can seek out."

The Defendant denies the occurrence of this romantic interlude but it is my view that even if this period of virtual courtship had occurred they were not then living together as man and wife. It seems to me that when the Act speaks of living together as man and wife it does not contemplate a mere visiting relationship – a period of "courtship." So that, in effect, when the parties established separate households they had ceased to live as man and wife. She did say that she still washed and cooked and cleaned during this period of courtship but it appeared from her answer to a question put to her in cross-examination, that these were services performed for the children.

There would have been a resumption of married life when, on her evidence, she returned to the matrimonial home but again this resumption was denied by the Defendant. On the Claimant's account that "reunion" lasted for about one year so she would have returned in 1999/2000 and left again in about 2001.

The first determination for the court then is the date of separation. Mr. Steer for the 1st Defendant would have the court accept the 1998 date advanced by his client in support of his petition for divorce, filed in 2002, but the Claimant had also petitioned for divorce. Her petition was filed in 2003 and she gave an April 2002 date as the date of separation. Oddly enough, both petitions resulted in the grant of a Decree Nisi which means that the Court acted upon both dates. Mr. Steer submitted that the 1998 date given by his client was never challenged by the Claimant but her petition filed after his and bearing a different date was, in effect, such a challenge.

It is clear that neither party has been quite frank with this court about the separation. In her supporting affidavit the Claimant averred that the parties lived together as man and wife until April 15, 2002 when the 1st Defendant left the matrimonial home and went to live at Drax Hall. Even when the 1st Defendant stated in his affidavit in response that the date of separation was February, 1998 she stuck to the 15th of April 2002, saying that they lived as man and wife right up to that date. She went on to state that she had moved out for one night in 1998 and then the following night the 1st Defendant had joined her there until she moved back home. But, in cross-examination, that position changed and the year of separation was given as 2001.

Then, although the 1st Defendant maintained that they parted in February, 1998 and that there was no reconciliation, there was no challenge to her evidence that at his behest she had returned to the matrimonial home and rented the house to which she had moved and the suggestion to her that it was a mere two months after her return that she was chased from the matrimonial home/bedroom is an indication that there was a reunion albeit of a short duration. Furthermore, he does not deny that the 2000 Toyota Avalon, which he purchased and registered in his name, was given to her for her personal use and that would seem to lend some support to the Claimant's contention that there had been some degree of reconciliation.

It seems that there were two separations – one in 1998 and the final one in 2001. I accept that their reconciliation after the first separation was of a very

short duration – at best from sometime in 2000 to 2001. For my part, that would mean that she would not be entitled to a share in any property acquired by the 1st Defendant during that period. Therefore, only those assets acquired up to 1998 would be subject to division

What then are the relevant assets for division?

On the evidence before this court the assets relevant to this claim are as follows:

Real Estate

i) First house situated at Bonham Park

ii) Content Gardens

iii) 11 James Avenue ; owned by the 1st and 2nd Defendants, as tenants in common;

Business Enterprise

Boswell's Steel and Hardware

(Continued ownership and operation of Boswell's Ironworks is denied by the Claimant although the 1st Defendant maintains that it is merely managed by someone employed to him)

Motor Vehicles

1 1997 Leyland Truck owned by Boswell's Steel and Hardware;
2. 1998 Isuzu Elf;
3. Isuzu NPR owned by Boswell Steel and Hardware – (Although the date of acquisition was not given, there was no indication from the defence that this was acquired after the separation and it is therefore included here.)

The 1st Defendant's evidence is that he (or the Hardware) no longer owns the 1990 Mitsubishi Canter, the 1995 Toyota RAV 4 and the 1997 Toyota Corolla and since she made no "financial" contribution to their acquisition it would seem that they are no longer factors to be considered in a

determination of this matter. (See reference to "the making of the **financial** contribution" in section 14 (2) below).

Rental Income

$14,000 per month from rental of the property situated at Content Gardens.

Abandoned Claims

The Claimant seems to have abandoned her claim to a share of ***moneys in accounts held in various financial institution*** and ***moneys invested in several financial organizations,*** as no evidence was led to indicate where these accounts were, how they were held and what and where these investments were. Some bank statements were attached to her second affidavit but they were not referred to in the affidavit and were included among receipts which were exhibited to support her contention that she had a beneficial interest in the Hardware business. Those statements were really not made a part of the evidence before the Court for its consideration.

The Claimant must prove her case and her application cannot simply be an application for a share of assets leaving it to the Court "to ascertain the extent of the family assets" It was open to her to seek disclosure in all the areas in which she required details for the purpose of her claim. If the Claimant had challenges ascertaining details of the assets there are provisions which are available to her to seek the assistance of the Court in having the Defendant make the required disclosures or provide the required information. She has strong legal representation. An attempt was made in closing submissions to seek a report on the 1st Defendant's assets under Rule 32.11(2) but that was hardly the time contemplated by the Rules for such an application.

Further, the fact that the Claimant does not have certain information relating to the assets is in itself significant. It suggests that she was not privy to the 1st Defendant's business ventures as she would have the Court believe.

The Powers of the Court

Section 14 provides as follows:

"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)"

Insofar as they relate to the case at Bar the factors for the Court's consideration as set out in **subsection (2)** are as follows:

i) 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 the property of the spouses or either of them; (emphasis added)
ii) ...
iii) the duration of the marriage (or the period of cohabitation);
iv) ....
v) such other fact or circumstances, which in the opinion of the Court, the justice of the case requires to be taken into account;

and **Subsection 3** provides the meaning of the term "contribution" used in subsection (2) (a). This includes payment of money for the acquisition of the property other than the family home; care of the relevant children; management of the household, the performance of household duties and the performance of work or services in respect of the property or part thereof.

The Claimant would therefore be entitled to a share of the property identified above on a consideration of the factors outlined in **section 14 (2) and (3).**

The Claimant's Contribution

My first observation is that the union was of long duration, lasting over twenty years and this is a significant factor for consideration.
In her viva voce evidence, the Claimant admitted that in the early days the 1st Defendant operated a successful business (Boswell's Ironworks). They maintained separate business interests and they did not assist each other in the operation of these business ventures. He owned properties prior to their marriage and all the properties he purchased were purchased in his sole name – nothing was bought in her name or in their joint names.

With the exception of forty (40) sheets of ply boards which the Claimant said she gave him towards the construction of the roof of the house at 4 Evelyn Street, Ocho Rios, St. Ann, all the funds for the purchase of the lands she listed and the houses constructed on them came from the 1st Defendant. This is denied by the 1st Defendant and it is instructive that in cross-examination the Claimant admitted that the house on this land was constructed in 2003, which, according to her evidence, would be the year she filed for divorce, having separated from the 1st Defendant in 2001. She clearly is mistaken about this contribution. She had nothing to do with the property at 4 Evelyn Street.

She was asked how many pieces of real estate her husband had prior to opening Boswell's Hardware and she responded "Bonham Park, Content Gardens, (Marvin Park is a mix up), James Avenue and Drax Hall." This was followed by another question:

Q. And it would be correct to say that your husband found all the money by himself to make all of these purchases?

A. Yes

She agreed that he always had an income from his own sources – from his own business.

Q Have you made any financial contribution towards the purchase of any of the properties you are claiming?

A. No

Then, in answers to questions put to her by Dr. Barnett about the household expenses and whether her husband bore any of those expenses she explained that he undertook "just a small portion." She took care of the rest. "That is what he told me. He said he was going to buy the land and so forth. I provide the food, pay the helper, look after school fees, buy uniforms and books." Although in her supporting affidavit she stated that she "always worked and operated several businesses in order to contribute financially to all household expenses as well as to the upkeep of our children", she did not mention then that this contribution was in accordance with an agreement with her husband.

She said he told her that he was going to buy land and other things. The little that he gave her could not suffice to maintain their children. She was supposed to buy the food and look after the house. She had to work to pay these expenses. He had told her that the helper worked for her so he would not pay the helper. It was when she had stopped carrying on her own business and started working in the Hardware that the 1st Defendant started paying the helper.

In sum, she made no direct contribution to the acquisition of the properties subject of her claim but made indirect contributions as defined in **section 14 (3).**

She also worked as a cashier in the Hardware business from its inception in 1997 to sometime in 2001 when the 1st Defendant chased her from the business place. He admits that she did perform duties as cashier from the commencement of the business but maintained that she was paid a salary for her services. While admitting that she did receive some compensation the Claimant maintained that it was a small sum because her husband had told her that it was their business and the profit would be needed to invest in other projects such as the purchase of real estate (See Claimant's second affidavit)

The First Defendant's Position

Mr. Boswell's demeanour during his cross-examination was that of a self-made man who felt that he was fully in charge of his business ventures and did not require or seek his wife's input. He sought no assistance from her in connection with his business activities. That it seems to me, is the reason

that she is unable to provide details in so many instances regarding the property acquisitions and could only say that she could not recall.

On his evidence when their son Teino's name was added to the title for James Avenue he did not tell his wife and he had no reason for not telling her. Neither did he tell her about the shares in the hardware business that he was allotting to Teino. He said he had not discussed the construction of the hardware with her and had not intended for her to work in the business but he agreed that from its inception she had worked in the business. In fact, the impression he conveyed was that it never occurred to him to enter into any discussions with her about his business.

Here is a husband who purchases every asset either in his sole name or in the business name or in his name and that of his children (because another of the properties that the Claimant is seeking to have divided between them is in the name of the 1st Defendant and that of their daughter). At no time did he include his wife in any of the acquisitions. Even the motor vehicle she drives was purchased in his name.

His evidence is that he provided for his household and that she was never financially able to do other than to take care of herself. Her earnings were sufficient only to supply her personal needs. Nevertheless, he admitted that she provided care for their four children and ran the household and at no time did he indicate that she was a neglectful mother. He obviously cares for his children, making financial provisions for them while making none for his wife. He discounts her contribution and asserts that she is not entitled to the order sought in her claim.

Conclusion

Even if they did not make the arrangement that the Claimant spoke of in her evidence, she undoubtedly did make her contribution as recognized by law and this she clearly did throughout their common law relationship which lasted for six years and then into the marriage. . During that time while she raised four young children, including twin sons and ran the household, he was free to devote his attention to his business interests and was able to purchase several pieces of real estate, several vehicles and successfully operate his businesses.

I accept that she did use her earnings to supplement the household expenses and did not believe the 1st Defendant that he alone provided for the household while she used her earnings for her own personal needs.

She made her contribution also by working in the hardware business. Her work as a cashier was in a critical area of the business operation. She was the sole cashier and the discharge of those duties must have been important to the successful operation of the business. She handled the money. He said she was a source of problems at the business place but there was never an allegation that she did not discharge the duties of cashier effectively. Their son recalls that he too worked in the Hardware and it was his impression that his parents both managed the business and I accept that she provided more than the services of cashier.

The 2nd Defendant's Input

As the 2nd Defendant's Attorney expressed it in closing submissions the main purpose and intent of the application by the third party is to sensitize the court as to the property over which it was entitled to exercise discretion in respect to the application to divide property in the event of any dispute by the Claimant as to the interest claimed by the 3rd party.

The 2nd defendant's interest has been disclosed and it is clear that the Claimant and the 1st Defendant both admit that the 2nd Defendant has an interest in the land and building situated at 11 James Avenue, as tenant in common with the 1st Defendant. They also do not dispute that he owns a 30% share of the hardware business operated there. The Claimant's claim to a share of this property is therefore limited to the 1st Defendant's interest in it.

Section 22 of the Property (Rights of Spouses) Act prayed in aid on behalf of the 2nd Defendant does not assist him as there is no disposition of property made in this case in order to defeat the claim or rights of any other person and in any event that "other person" would need to make an application for the intervention of the court to rectify the position. After being added as a 2nd Defendant no further application was made and although the court had ordered that any further affidavits were to be filed by the 28th of September, 2007 no further affidavit was filed by the 2nd Defendant. Instead what was filed on the 21st of January, 2008, the very day that the hearing of this matter was to commence, was a "Notice of Intention to make an application for

Court Orders." It was in furtherance of the overriding objective of the Civil Procedure Rules, 2002 that the court allowed reliance on the affidavit filed in support of the application to be joined in these proceedings. I therefore am in full agreement with Counsel for the 2nd Defendant that the purpose of his intervention is to "sensitize" the court as to his interests in the James Avenue property and business thereon.

The case of **Tebbot v Haynes and another** (1981) 2 AER 238 is equally of no assistance to the 2nd Defendant as the interests of the 2nd Defendant have not been challenged and they remain as disclosed. There is no dispute. The 2nd Defendant's purpose was accomplished and the court need make no pronouncements in that regard.

THE CLAIMANT'S SHARE OF THE ASSETS

The Court must now seek to determine the extent of the Claimant's share of the property identified as being subject to the claim.

i) 5 Bonham Park -

As stated earlier, the first house was no longer the family home when the parties separated and as such is subject to division. On the evidence in this case, there is no reason to depart from what is now widely settled as the formula of equality of division adopted by the courts in several jurisdictions including the Jamaican courts. The authorities clearly indicate that the courts should only depart from the yardstick of equality of division to the extent that there is good reason for doing so and there is no good reason here (See for example, **Martin v Martin** [1988] 1NZLR 722; **White v White** [2000) 3 WLR 1571; **Lambert v Lambert** (2003) 2 WLR 631). The Claimant is accordingly declared to be entitled to a 50% share in this house.

ii) Content Gardens –

The Claimant is similarly entitled to a fifty percent share in this property. In addition, the 1st Defendant is to account to her for all the rental income from this property from it was first rented up to the date of this order and she is entitled to a fifty percent share of that rental income .

iii) 11 James Avenue –

The 1st Defendant owns a 50 percent interest in this property and up to the date of their separation, he owned and still owns 70% of the shares in the business thereon. In my view, her contribution to the acquisition of this asset must not be viewed as of little or no significance since it was acquired in 1996/1997 and the parties separated in 1998, as is to be inferred from the submission on behalf of the 1st Defendant. Undoubtedly, it was her contribution over the years that enabled the 1st Defendant to successfully conduct his business ventures leading up to this acquisition. In addition, she worked in the business from its inception and so provided a service as contemplated by ***section 14(3)(g)***

His business acumen and his hard work played a great part in the success of this business but this, in my view, does not warrant consideration as a special contribution on his part which would operate to displace the application of the equality of division formula. In the case of **Charman v Charman [2007] EWCA Civ 503,** cited on behalf of the Claimant, the husband had exceptional business skills, achieving international recognition and the court approved the departure from the formula.

However, I find the yardstick of equality of division inappropriate in this case for other reasons deemed to be good reasons by this Court. Over the five years that the Claimant worked in the business she did receive compensation for her services. She did not disclose how much she was paid other than to say it was a small sum and the 1st Defendant also made no disclosure in that regard but I am of the view that it was a sufficient sum as to have her continue there for five years.

She was unable to say whether the 1st Defendant was similarly compensated and no questions were asked of him in that regard. Further, I accept that the business was incorporated in 1998, expanded in 2000 and that the Claimant's services were terminated in 2001. After considering all the factors relevant to a determination of this issue I find an interest of 20% of the 1st Defendant's 50% interest in the property (land and building) and a 20% share of his interests in Boswell's Steel and Hardware together with its assets, to include the motor vehicles registered in the Company name, as at the date of this order, reasonable in all the circumstances.

I would give to the Claimant full ownership of the 2000 Toyota Avalon owned by the 1st Defendant and driven by the Claimant. In her affidavit in support of her claim she asserts that the 1st Defendant bought this vehicle for her in 1999 and she should have outright ownership of this vehicle.

Application for Advancement

On the understanding that there was ample foundation in law for an award to her of a share in the assets claimed, the Claimant seeks a monthly payment of one hundred and sixty thousand dollars ($160,000.00) as an advance against that award. The 1st Defendant mistakenly thought this to be an application for maintenance but that is not the case. This advance would be deducted from her award in the final analysis.

Section 23 -1(i) gives the court the power to make an order for the payment of a sum of money by one spouse to the other spouse. She has given an indication of factors relating to her health and medical expenses which would seem to make this application reasonable at this time since the final outcome of this matter might take some time.

By virtue of **subsection 2,** the Court may direct that the payment be a lump-sum payment or by installments and in this case payment by installments is favoured by the Claimant. Consequent upon the determination of her share of the assets, a sum of one hundred thousand dollars ($100,000.00) per month should be able to assist the Claimant until this matter is finally resolved.

THE FINAL ORDER

By virtue of section 12 (1) the value of property subject to an application under the Act shall be the value at the date the order is made "**unless the Court decides otherwise.**" In this case I elect to utilize the provisions of section 23 (1) (a) which provides for sale of the property and division of the proceeds therefrom and accordingly I make the Declarations and Orders appearing below:

1. The Claimant is declared to be entitled to:

A. a 50% share in the first house constructed on land situated at 5 Bonham Park, St. Ann;

THE FINAL ORDER

By virtue of section 12 (1) the value of property subject to an application under the Act shall be the value at the date the order is made "**unless the Court decides otherwise.**" In this case I elect to utilize the provisions of section 23 (1) (a) which provides for sale of the property and division of the proceeds therefrom and accordingly I make the Declarations and Orders appearing below:

1. The Claimant is declared to be entitled to:

A. a 50% share in the first house constructed on land situated at 5 Bonham Park, St. Ann;

B.. (i) a 50% share in property situated at Content Gardens, St. Ann and
(ii) a 50% share in the rental income from the said property up to and including the date of this Order;

C. a 20% share of the 1st Defendant's 50% interest in property situated at 11 James Avenue, St. Ann and a 20% share of his 70% interest in Boswell's Steel and Hardware situated thereon, inclusive of the motor vehicles registered in the Company's name;

2. The Claimant is declared sole owner of the 2000 Toyota Avalon motor car now registered in the name of the 1st Defendant and the 1st Defendant is to transfer ownership of the said vehicle to the Claimant within 30 days of this Order ;

3. The assets subject to the orders at A, B and C above, are to be valued by an expert valuator or valuators agreed on by the Claimant and the 1st Defendant within 21 days of this Order and if the parties fail to agree on a valuator or valuators the Registrar of the Supreme Court is hereby empowered to appoint same;

4. The 1st Defendant is to meet the cost of the valuation initially and will be reimbursed to the extent of 50% of the cost by the Claimant from her share of the assets;

5. After valuation, the property at B above is to be sold by private treaty or public auction and the net proceeds of sale divided in accordance with this order within 30 days of receipt of the said proceeds of sale;

6. The Claimant's Attorney-at-Law is to have carriage of sale

7. In the event that the 1st Defendant fails or refuses to sign the documents to effect transfer of the said property to facilitate the sale then the Registrar of the Supreme Court is empowered to sign same;

8. The 1st Defendant is at liberty to elect to purchase the Claimant's interest in the property situated at Content Gardens and must indicate his election within 90 days of his receipt of the valuation;

9. The 1st Defendant is to pay to the Claimant the monetary value of her 50% interest in the first house situated at 5 Bonham Park as well as her 20% interest in the property subject of the order at C above within 180 days of his receipt of the valuations;

10. The 1st Defendant is also to pay to the Claimant a monthly sum of $100,000.00 by way of advancement against her share of the assets as set out in this Order. Payment is to commence on the 29th of August 2008.

11. Liberty to apply.

The 2nd Defendant's interests in 11James Avenue and in Boswell's Steel and Hardware remain as recognized and accepted by the Claimant and the 1st Defendant.