



N/A

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV 01261 OF 2007

BETWEEN	BEVERLEY CRAMMER	CLAIMANT
AND	LINFORD CAMPBELL	DEFENDANT

Mr. Donald A. Scharschmidt QC and Mrs. Suzanne Ridsen-Foster instructed
by Livingston Alexander & Levy for the Claimant

Mrs. Gloria Langrin for the Defendant

Heard: June 18, and 20, July 28, October 22 & 23, 2009 & November 16,

2009

McDonald J

The claim in this matter is set out in Fixed Date Claim Form filed on 20th
March 2007 and Amended Fixed Date Claim Form filed on 31st August
2007.

In summary the Claimant seeks declaration that she is entitled to fifty per
cent interest in:-

(a) Property registered at Volume 1117 Folio 248 and situate at 1032

Patricia Park Way, Willowdene, Spanish Town, St. Catherine.

(b) Land situate at 51 Red Hills Road, St. Andrew registered at Volume

1071 Folio 415.

(c) A business operated by the Defendant trading as "Campbell's

General Iron Works" with a branch known as "Campbell's

Hardware" operated at 51 Red Hills Road St. Andrew.

(d) A guest house constructed on land at Blue Fields Westmoreland.

(e) An Isuzu motor vehicle

(f) Maintenance for herself

The claim was supported by an affidavit dated 15th March 2007 and in response the Defendant filed two affidavits dated 24th April 2007. Numerous affidavits were subsequently filed by the parties in support of their contentions.

The parties were cross-examined. No other witnesses were called although several affidavits from witnesses were filed.

The claim was brought under the Property (Rights of Spouses) Act 2004 and the maintenance Act 2005.

It is undisputed that the parties both of whom are single lived together for approximately twenty-five years and two children were born to the union, Dwayne in February 1988 and Chantelle in August 1996.

The Claimant's Entitlement to Apply

Section 13 of the Property (Rights of Spouses) Act 2004 – (the Act) provides inter alia:

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

(a) an the grant of a decree of dissolution of a marriage or termination of cohabitation; (emphasis added)...

(b) section 13(2) provides that:-

(c) "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)

The unchallenged evidence before the court is that the parties ceased cohabitation on the 21st March 2006 and the Fixed Date Claim Form was filed on 20th March 2007.

There is no dispute that the Claimant qualifies as a spouse under section 2 of the Property (Rights of Spouses) Act 2004 which states:

“Spouse” includes –

(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;immediately preceding the institution of proceedings under this Act or the termination of cohabitation, as the case may be.”

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)”

the factors that the court must consider are set out in subsection 2 which are relevant to this case reads as follows:-

“(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 the 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.”

Subsection 3 defines the term “contribution” used in subsection 2(a) above. This includes the payment of money for the acquisition of the property other than the family home, care of the relevant children, giving of assistance or support by one spouse to the other, whether or not in a material kind, including the giving of assistance or support which aids the other spouse in the carrying on of that spouse’s occupation or business; management of the household; the performance of household duties, or services in respect of the property or part thereof, the provision of money including the earning of income for the purposes of the marriage or

cohabitation and the effort of any proposed order upon the earning capacity of either spouse.

Section 14(4) provides:-

“For the avoidance of doubt there shall be no presumption that a monetary contribution is of greater value than a non-monetary contribution.”

Section 15 of the Act requires the court to be satisfied that in all the circumstances, it is just and equitable to make the orders in relation to the alteration of property interests.

1032 Patricia Parkway – Willowdene

The Claimant seeks 50% interest in this property. Section 6 (1) of the Act provides the following:-

“6-(1) subject to section (2) of this section and share of the family home – Sections 7 and 10, each spouse shall be entitled to one-half (a) on the grant if a decree of dissolution of a marriage or the termination of cohabitation.

The Defendant’s case is that he purchased Sunnyfield Parkway in 1981 and got a loan off Sunnyfield Parkway and with the proceeds of the loan he purchased 1032 Patricia Parkway.

There is no dispute that both parties lived there from 1986 until March 2006 when the relationship came to an end.

I find that this was the family home within the meaning section 2(1) of the Property (Rights of Spouses Act).

This house at Patricia Parkway is registered in the sole name of the Defendant.

At paragraph 7 of his affidavit dated 3rd May 2007, the Defendant states "I am advised that the law requires that fifty percent of the family house be given to each spouse on termination of the relationship. I am relinquishing my right to my fifty percent and giving the entire home to Claimant, Dwayne and Chantelle, the children of the relationship for whom the house was originally intended".

This offer is made against the background that the Defendant's case is that the Claimant has no entitlement to the property at 51 Red Hills Road, the business, the land at Bluefields or the Isuzu motor vehicle.

The Claimant in her pleadings is not seeking a declaration that she is entitled to the whole house.

The courts finding has to be based on the evidence accepted and is not limited to any option the Defendant's Attorney is putting forward i.e

1. "That the family home at Patricia Parkway be transferred to the Claimant and the two children of the parties Chantelle and Dwayne.
2. That the Defendant pay to the Claimant a lump sum of three million dollars, (\$3,000,000) or
3. Alternatively, should the lump sum be in excess of three million dollars that the house at Patricia Parkway be sold and the proceeds be divided equally between the parties".

There is no dispute that the family home was purchased by the Defendant in 1986 and that the Claimant made no direct contribution to its acquisition.

I find that she did contribute to the improvement of the home by purchasing blocks from Hopkins Block Factory to build the kitchen and that she painted the house.

I find that there was an agreement between the parties to share the house. The Defendant's affidavit dated 24th April 2007 at paragraph 6 expressly so states – "I did express that we would share the house".

I accept the Claimant's evidence as true when she said that she questioned the Defendant as to the reason why her name was not on the title and he told her not to worry and that the Secretary of the Real Estate Agency (Derrick Chung) on Church Street had forgotten to put her name on the title.

I find that the Claimant did make an indirect contribution to the acquisition of 1032 Patricia Parkway and that she is entitled to a fifty percent share in this property.

Property at 51 Red Hills Road

(Claimed for division other than the family home)

It is undisputed that this property was purchased in early 1987 in the sole name of the Defendant.

It is on this property that the business "Campbell's General Iron Works" and "Campbell's Hardware" operate up to the present and where the Claimant's flower shop business and snack counter operated until 2006.

It is also on this property that six shops were constructed and rented to various businesses.

At paragraph 4 of his affidavit dated 24th April 2007 Mr. Campbell states inter alia. "I later sold Sunnyfield Parkway and from the proceeds of sale purchased premises at 51 Red Hills Road. From the money obtained from the building and iron work I gradually built up six shops on the premises which I rent. I have another area for the iron work and an office which includes a small shop all on the same compound."

It is the Defendant's case that he purchased Sunnyfield Parkway later in the year in which he met the Claimant, having already saved towards the purchase prior to his meeting her. Along with a loan he effected this purchase with no help from the Claimant.

He therefore asserts that the proceeds of sale of Sunnyfield Parkway which purchased Red Hills belong solely to him, and that the Claimant made no contribution to the purchase of 51 Red Hills Road.

The Claimant does not dispute the Defendant's claim that it was he alone who purchased Sunnyfield Parkway in 1981. The Claimant's case is that although she made no contribution to the purchase of the land at 51 Red Hills Road, the business complex thereon was constructed through her direct and indirect contributions.

She said that in 1992 or 1993 the Defendant and herself took the joint decision to sell Wicky Wacky and use the proceeds of sale to construct 6 shops at 51 Red Hills Road.

Miss Crammer's evidence contained in affidavit dated 15th March 2007 is that Wicky Wacky was bought in the name of the Defendant only although she made a direct contribution to the acquisition of this property by way of obtaining a loan from Mutual Security Bank to pay towards the purchase price of the property.

At (paragraph 9) of the said affidavit she said that Sunny field Parkway was sold and they purchased Wicky Wacky. She said "we both obtained joint and separate loans from the Portmore branch of Mutual Security Bank Limited in or about 1992 to 1993 to construct a house on the Ocean Lake property." (ie Wicky Wacky) exhibit BC2 includes a copy of her saving passbook; notice dated 29th December 1994 from Mutual Security Bank which cancelled promissory notice executed by Claimant on 8th January 1992 and copy of the Promissory note dated 8th January 1993.

In paragraph 16 of the said affidavit the Claimant states inter alia....

"Sometime in or about 1992 or 1993 the Defendant and I took the joint decision to sell the property at Ocean Lake Pen, on which a house was constructed using the proceeds of the loan we both obtained from the Mutual Security Bank Limited as I have stated earlier."

The Claimant said that the loan of \$150,000 was repaid by income earned from her snack counter business as well as assistance from her father who

gave her some of the money necessary to pay off the loan, and I so find. There is an inconsistency in the Claimant's evidence as to whether or not the loan from Mutual Security Bank was used to construct the house or it was used to purchase the property.

In cross-examination the Claimant said that money from the business purchased Wicky Wacky - only the land.

She said it was not money from the contract to build bus stops island wide that was used to purchased Wicky Wacky.

In cross-examination she said a house was built partly by Mr. Campbell with her assistance - financially, and by her visits on the site, preparation of estimates for material, purchase of material and paying workmen.

The title of Wicky Wacky indicates that it was acquired by the Defendant in 1992 and sold in April 1994.

The Defendant's case is that the Claimant's contribution to Wicky Wacky is nil. He purchased Wicky Wacky from contract funds he received to construct bus stops island wide. He said that he took a loan from Mutual Security Bank to build a house on the Wicky Wacky property.

This loan was insufficient and the bank officer told him that he needed his wife to guarantee the additional loan. He told her that he did not have a wife and was told that he could bring a female friend if he had one and she could sign as guarantor.

Mr. Campbell said that he discussed this with the Claimant and she agreed to act as guarantor in the name of Beverley Campbell and signed

a promissory note in favour of the Bank pursuant to the agreement. The loan documentation was therefore in her name.

In cross-examination the Defendant said that he did not need a guarantee to purchase Wicky Wacky, and he insisted that the promissory note executed by Miss Crammer was infact the guarantee.

Later in cross-examination he agreed that it was a promissory note.

It is clear that the promissory note dated 8th January 1993 and numbered 1001 is a promise to pay Mutual Security Bank Limited – Portmore Mall Branch \$150,000 and is signed as Beverly Campbell.

By memo dated 29th December 1994 Mutual Security Bank issued to the Claimant the cancelled promissory note numbered 1001 and dated 8th January 1993 which indicated that the loan had been repaid in full on the 29th April 1994.

The Bank statements exhibited to the Claimant's affidavit dated 15th March 2007 indicate that there were statements requiring payment by Miss Crammer of principal and interest in relation to the said promissory note number 1001.

The Defendant in his affidavit dated 15th February 2008 states that the house on the Wicky Wacky property registered at Volume 1046 Folio 511 was financed by himself alone with the assistance of loans from Eagle Commercial Bank Limited that that when he was completing the fixtures for he house he took a personal loan from Mutual Security Bank. He ran

short of money, approached the Bank for an additional amount and this was the amount the Claimant was supposed to have guaranteed.

Mr. Campbell said he was surprised to see the document entitled promissory note exhibited to the Claimant's affidavit but later realized that it related to property registered at Volume 1117 Folio 248 – 1032 Patricia Parkway St. Catherine.

In cross-examination it was suggested to the Claimant that the said \$150,000 was in relation to mortgage number 753466 given in favour of Mutual Security Bank to secure the sum of \$150,000 and which is evidence on the title of Patricia Parkway.

This contention is unsustainable as the said title indicates that the mortgage 753466 was discharged by discharge number 1210440 entered on the 25th November 2002 and which bears no relationship to the discharge in relation to the promissory note 1001 dated 8th January 1993 and cancelled on 29th April 1994.

I find the Defendant's evidence clearly unreliable on this point.

It is also the Claimant's evidence that she was issued a letter dated 7th January 1993 (exhibit BC3) on the letterhead of Campbell's General Iron Works and Construction – 51 Red Hills Road containing an estimate for building materials required for the construction of a house on the property. According to the Claimant the Bank requested it to justify their loan application.

This estimate pre-dates the execution of the promissory note, and is indicated as being issued by L. Campbell to Mrs. Beverly Campbell. The Claimant's Attorney submitted that this supports Miss Crammer's assertion that she obtained a loan facility to assist with the construction of the property in Wicky Wacky which is described in the letter as the property in Bull Bay.

In cross-examination Mr. Campbell stated that he did not sign the letter, and it does not refer to Wicky Wacky but Bull Bay and that he has done several jobs in Bull Bay and the letter could be an estimate for such a job. He said that he only wanted \$150,000 to do kitchen fixtures and closets at Bull Bay, Wicky Wacky.

I reject the Defendant's evidence that this estimate does not refer to the construction estimate addressed to Miss Beverly Crammer. It closely coincides with the sum borrowed by the Claimant and secured by the promissory note which Miss Crammer executed in order to assist as she states with the construction of the house at Wicky Wacky.

I find that the Claimant did obtain a personal loan in the sum of \$150,000 from Mutual Security Bank which was used to assist with the construction of a house at Wicky Wacky and which she repaid without any assistance from the Defendant.

The Claimant states that the shopping complex at 51 Red Hills Road was constructed partly from the proceeds of sale of Wicky Wacky and from a

loan obtained by the Defendant from Eagle Merchant Bank for one million dollars.

She said the rental from the shopping complex was intended to generate income for both herself and the Defendant and also to service the loan to Eagle Commercial Bank.

On the other hand the Defendant posits that it was money obtained from his building i.e Sunnyfield Parkway and the Iron Works that he used to build the six shops.

I find that the money used to construct the complex came from the proceeds of sale of Wicky Wacky and from a loan obtained by the Defendant in the sum of one million dollars.

I find that the Claimants construction to the house at Wicky Wacky was necessary for its acquisition. On sale of that house the purchase money was used partly to do construction of the shops.

No evidence of valuation was led to the court whether of the shops or land along with the shops.

The Claimant's contribution would therefore be a proportion of the value of the shops exclusive of the land.

In the absence of specific evidence I find that the Claimant did contribute \$150,000. the fact that there is no evidence that the Defendant refunded any portion of the sale money of Wicky Wacky meant that he probably utilized it in order to construct the six shops at 51 Red Hills Road and I find that he in fact did so.

There is no evidence of the sale price of Wicky Wacky before the court.

I find that the Claimant is entitled to 10% of the current value of the 6 shops at 51 Red Hills Road (exclusive of the land).

The Claimant gave evidence that Mr. Campbell assured her on many occasions that everything they had "belong to both of them/is for both of them".

I find that this is not a valid express agreement to determine ownership of property. It is a mere expression and cannot confer any legal rights in property. (See Azan v Azan SCCA NO. 53/87) delivered on July 22, 1988.

The Business Enterprise

It is Miss Crammer's contention that she contributed directly and indirectly to the operations of the business.

The Claimant's evidence is that the business was operated at 5 Marveley Avenue and in 1987 was issued to 51 Red Hills Road.

The Defendant registered the business on April 11, 2001.

The nature of the work specified was welding, building construction and sale of building material.

The Claimant states that she met the Defendant in January 1981 and lived with him at Marverley Avenue from November 1981 to March 1989.

At the time when they started to live together he was doing only welding and was a tenant of one Miss Morgan.

He had a shed for storing his machine, no office and an open shed.

According to the Defendant in his affidavit dated 24th April 2007 he had

“someone” employed, and in cross-examination he sought to explain his use of the term “someone” as connoting more than one person or in excess of fifty people.

In 1992 a show room and office was added for the purpose of Miss Crammer joining the business, the office was utilized for the entire business.

The Claimant said that she assisted the Defendant in paying for the addition of the office and show room, and in November 1981 she started working as a partner with the Defendant in his business.

Mr. Campbell gave inconsistent evidence as to his acquisition of a welding plant from Mr. Weir. In cross-examination he said that Mr. Weir borrowed \$500 from him in 1980 and gave him the welding plant to hold. He later asked him for another \$500. The Defendant said he held the welding plant for his money.

Mr Weir subsequently asked him if he wanted the plant to buy because he did not have the money to repay him.

In cross-examination the Defendant said that he paid cash for the welding plant; yet in his affidavit he said that he paid for it by instalments because he could not afford the lump sum.

The Defendant’s explanation for this inconsistency is that some mistake could have been made in the affidavit.

I find his evidence on this issue unreliable.

It is evident that he did have some means however as it is undisputed that in 1981 he purchased a jeep and the Sunnyfield property.

The Claimant testified that between 1981 – 1989 the Defendant made patio furniture, flower pot stands, space saver for bathrooms, water tanks and he also started construction.

She said that the Defendant trained her to measure up jobs and give estimates. She had no training in wrought iron work or any work he had at Marverley Avenue. She physically assisted the Defendant's wrought iron construction works when the business was Marverley Avenue by holding the welding torch to heat the steel so that the Defendant could make patterns and she also painted the grill work products and upholstered the grill work furniture.

Initially when the business was operated at 5 Marverley Avenue there were no employees working at the iron works business in the capacity of officer clerk's, although there were employees who were employed as welders to the iron works business.

She said that during the early phase of the business operations she contributed her labour by working in multiple roles as secretary, counter clerk, sales clerk, debt collector, filing clerk and handywoman. She painted the property and cleaned the floors. She also did the payroll and acted as a messenger.

Miss Crammer said that at no time was she paid a salary.

During this time she was also operating her flower and gift shop business and snack counter and she used to assist the Defendant with paying the household expenses.

When the business moved to 51 Red Hills Road, they both built a workshop and office with board zinc and a concrete floor and later constructed a concrete building consisting of two (2) offices, a bathroom, kitchen and a hardware store.

Later on they built a complex with six (6) shops on the property. The Claimant said that aside from operating a floral shop and snack counter at Red Hills Road, she worked side by side with the Defendant performing multiple roles and carrying out duties such as stock taking, ordering and purchasing of goods for the hardware, training the staff in the hardware store, writing receipts and estimates and supervising the staff to ensure that goods were not stolen.

Miss Crammer said that she looked after the Defendant and assisted him greatly in the business without compensation by saving him the expense of employing a manager.

She said her efforts in the business contributed to the growth of the business and its success today.

She said that whenever the Defendant travelled overseas he left her alone to run the business.

The Claimant said that when the business moved to 51 Red Hills Roads and the hardware branch was opened, the business employed a few

members of staff in the hardware store who was employed to assist her with selling goods but who was not employed to do any form of office management or accounting.

She said that the welding work had staff, but the office at 51 Red Hills Road did not acquire staff members until the business got larger which left her to do office duties to assist with the running of the business.

Miss Crammer told the court that she worked in the hardware business from its inception and trained the first members of staff Tasha about the type of building material sold and the nature of the business.

She was the one who made contacts with suppliers for the business and wrote and made the orders by telephone and on paper and signed order sheets. She collected rent and wrote receipts for the tenants.

Mr. Campbell admitted that Miss Crammer did work in all areas of the business operated at Red Hills Road if he was not there.

The examples he gave were – writing receipts concerning the hardware, his tenants and the iron work business and dealing with customers.

He said that she did so on several occasions and that she was no less educated than he. He also said that she wrote prettier than himself and was better than he at reading and writing.

He said that he gave her instruction to sign receipts and receive cash when he was not there; but she did not do book entries. She was helping him out when she wrote receipts and orders in relation to the hardware tenants and wrought iron business. He said she was of help.

Likewise he would help her out if she was not there and he was there and someone came to buy drinks and cheese – he would sell the persons and put down her money. She did not get a salary for the things she did. When the Claimant paid bills it was with his money.

The Defendant said that he did not employ her, they were living together and he was taking care of her. He gave her money to run the household, to buy clothes and various things and to go to doctor/dentist.

Selling in the hardware and writing receipts were not her responsibility; they were his because it was his businesses.

The Defendant stated that he changed staff regularly in the business as the Claimant could not get along with staff. In my opinion this demonstrates her involvement in the business.

The Defendant said that he did the books for the business he made the entries in the books. In cross-examination he said that what he meant was that he put papers on a piece of wire.

I find as a fact that the Claimant worked in the hardware business from its inception, on a day to day basis.

I accept her evidence as true that when she had to leave the premises she left all the receipts for the hardware at Red Hills Road.

In cross-examination Mr. Campbell in response to the question of whether he trusted Miss Crammer, initially stated 'no' because of several things she had allegedly due to him.

However when further questioned as to why he permitted her to collect cheques and why he gave her cheques to change for him, he admitted that "yes, I trusted her."

Importantly Mr. Campbell said that he considered her an asset and that it would be fair to say that because of that he continued to live with her for twenty-five (25) years.

The Claimant maintains that she was the one who did the payroll and the GCT returns up until 2005 when she left the business.

The Defendant refutes this, and explained that a certain state of affairs caused him to allow her to handle GCT payment. He had to stop her, as his son found out that the GCT figures kept by the Claimant did not match as they should have done; they did not match back with the yearly return. In cross-examination he said that he doesn't know anything GCT calculations.

Miss Crammer said that both of them were invited to participate in a seminar held by Berger Paints which sought to introduce a new paint on the market. She exhibited her certificate BC-6. Mr. Campbell's position is that he was the one invited to the paint seminar and took Miss Crammer along with him.

He however acknowledged that the certificate speaks to Beverley Campbell but he knows it is Beverley Crammer who received the certificate. Mr. Campbell testified that Miss Crammer attended the seminar because she needed to acquire skill for her own business. I reject

this. I find that she was invited to the seminar and that it was not a case of him taking her along. I find that her participation in the seminar from which she acquired a certificate would support the view that she was in fact seen as a partner contributing to the development of the business.

Both parties admit to operating a joint bank account. The Defendant said that he put her name on the account so that staff can see that she is somebody he knows well and is his common law wife. He also said that the sole purpose for putting her name on the account was that the bank could change a cheque without her having problems. She couldn't sign a cheque.

He said that she would change cheques for him. Anything she could do, she would do it, but there was no responsibility on her to do anything as he had persons employed to do it.

He would make phone calls to her to collect cheques for him and give her cheques to change for him – but that was not on a regular basis.

In respect of BNS account number 298417 the Claimant maintains that this was a joint business account, whereas the Defendant says he is unaware of this joint business account. He did not repay this loan neither was it applied to him or his business.

Scotia bank debit slip exhibit BC-7 clearly states customer's names as "Beverley Crammer and L Campbell/B. Crammer" indicating that the customers were Miss Crammer and Mr. Campbell thereby contradicting

Mr. Campbell's ascertain that the parties did not operate a joint account 2984-17 with Scotia Bank.

I find that this account was in fact a joint business account and not used for housekeeping purposes.

In support of the Claimant's contention that both herself and Mr. Campbell contributed to the business by taking loans. She exhibited loan Disclosure Statement which indicated that both herself and Mr. Campbell applied to New Era Finance Ltd to secure a loan of \$20,000 for the purpose of business financing.

Likewise the application to OBF/New Era Finance Limited for business counselling as to planning and cash flow management was also signed by both of them.

The Defendant's position on this loan disclosure statement is that he was not the person borrowing, he just signed a guarantee for her.

I reject this evidence as being untruthful; furthermore the document speaks for itself.

The Claimant also exhibited letter from OBF Finance Company which was addressed to both herself and Mr. Campbell advising that their account had been settled as 22nd May 2002.

In this case I find that there is clear evidence that Miss Crammer made a direct financial and indirect contributions to the development and operations of the business when the relationship started and the parties

worked at 5 Marverley Avenue and continuing when the business moved its operation to 51 Red Hills Road.

I find that she made a direct financial contribution in obtaining a loan from Mutual Security Bank secured by the promissory note in the sum of \$150,000 which went towards the construction of the house at Wicky Wacky Bull Bay, St. Andrew. This property was sold and the proceeds used to assist in the construction of the six (6) shops at Red Hills Road.

I also find that the parties took out loans from OBF Finance Company New Era Limited during the course of the relationship and the business operations.

I find that she made an indirect contribution as defined in Section 14(3) of the Act.

In that:-

- (1) During the common law relationship which lasted for approximately twenty-five (25) years, she raised the two children of the union and the Defendant's children born outside the union albeit for limited periods.
- (2) She managed the household and performed household duties without assistance and that the Defendant was free to devote his attention to his business interests.
- (3) The Claimant performed work and services as contemplated by Section 14(3) (9) of the Act in respect of the business without remuneration during the course of the twenty-five (25) year

relationship including the taking on of financial liability when she obtained basis to assist with the business.

- (4) The Claimant in performing services and work for the business was never remunerated or compensated for these services – as it is clear that the parties intended the business to be a family operation to benefit both of them in the future.

I find that the Claimant has a beneficial share in the business.

The dictum of Lord Denning MR in **Nixon v Nixon (1969) 3 AllER 1133** is

instructive: In that case his Lordship stated:-

“...the case raises the point of principle. What is the position of a wife who helps in the business? Up and down the country, a man’s wife helps her husband in the business. She serves in the shop. He does the travelling around. If the shop and business belonged to him before they married, no doubt it will remain his after they marry. But she by her work afterwards should get some interest in it. Not perhaps an equal share but some share.”

In the absence of any definitive contribution that the Claimant made to the acquisition of the business, I find that her active involvement in the operation, growth and viability of the business may be construed as the activity of a functioning partner in the business.

On the evidence I do not find that the Defendant has made a special contribution to the business nor that any exceptional circumstances exist which would operate to displace the application of the equality of division formula adopted by courts in several jurisdiction including

Jamaica see White v White (2000) 3WLR 1571 and Lambert v Lambert (2003) 2 WLR 631.

I find that it is equitable and just that she be entitled to 50% interest in the net value of the business at a going concern.

Guesthouse constructed on land at Bluefield's - Westmoreland

The Claimant claims a 50% share in this property. The Defendant's evidence is that his father died and had said he was to get the land at Bluefields.

The land was left for himself and his siblings and he enclosed the portion allotted to him.

He said there is no house on the land and his name is not on the title.

Mr. Campbell said that he has cut a little road on the land and has it in mind to build a house there. The road was slipping away and he had to build two stone walls to keep it up.

The Claimant testified that the guest house was not a figment of her imagination, that she physically accompanied the Defendant to the property on a date unknown where she saw the foundation being laid for the construction of a building as well as building materials to the side of the property.

Further that the Defendant repeatedly told her and her children that it was going to be a guesthouse on land he inherited from his family.

According to Miss Crammer, the Defendant took a loan from JNBS to renovate the family house using the latter as security, but based on his

representations to her the real purpose was to purchase an Isuzu truck and to construct or begin to construct the guesthouse in Bluefields, Westmoreland.

The Claimant is not alleging that she is paying back this loan. Her claim also seemed to be based on her evidence that on occasion she had to pay two months mortgage on the family home because the Defendant requested her assistance as he indicated that the guesthouse business had taken a lot of his money from the business at the Red Hills complex.

The Defendant does not specifically address this in his affidavit of response dated 14th February 2008 save to say that there was no guest house belonging to him at Bluefields.

I find that the making of two mortgage payments by the Claimant if accepted as true would not necessarily demonstrate any assistance to the construction of any house which is not proven on the evidence to exist. In addition this loan is not endorsed on the title. Her claim for any entitlement fails.

Isuzu Motor Vehicle

The Claimant's case is that the family home was used as security to enable the Defendant to borrow \$2million from JNBS which he used to buy an Isuzu truck for \$800,000 and the balance used to construct a guesthouse in Bluefields.

The Defendant denies this and says that the loan was being disbursed slowly, the holiday season was approaching and they wanted to

complete the work on time which would not have happened if they awaited the loan instalment. Consequently he used money he had saved to purchase the truck for the house; when he got the loan he reimbursed himself.

The Defendant said that the Claimant told the loan officer that he had used the money for the truck. This caused the officer to divide the loan into two and charge an increased interest rate on the portion used for the truck. This increase he considered unjust as it was a reimbursement of the funds and not a misappropriation. He had explained what he was doing to the Claimant and was shocked at her reporting the matter in the way she did.

The cross-examination to the contrary, disclosed that the officer was dissatisfied with the progress of the work on inspection when according to Mr. Campbell's affidavit the work was completed. When the loan's officer visited, he should have seen a completed job, this he obviously did not see and was displeased with what he saw.

I reject Mr. Campbell's evidence under cross-examination that it was Miss Crammer who did not show the officer the new ceiling bed and the new bath and toilet.

Miss Crammer also states that the \$2 million was not used or very little of it was used to renovate the family house.

I am of the that if the house was used as security for that loan to purchase the truck it would have been endorsed on the title. There is no evidence

of that. He probably did use his savings as he says. The Defendant maintained that the truck was brought from his savings and that no loan was taken on the house.

Both parties speak to the existence of this loan, it is not endorsed on the title exhibited and there is no evidence before the court that the Claimant contributed to its repayment. The Claimant's application for a declaration that she is entitled to 50% interest in the motor vehicle is denied.

The Claim for Maintenance

Initially Miss Crammer claimed a monthly sum of \$80,000 which was later changed to an alternative order in her Amended Fixed Date Claim Form that Mr. Campbell pay her a lump sum of \$6,000,000 in settlement of her claim for maintenance such sums to be deducted from his half share of the sale of the business.

The obligations of spouses to maintain each other are set out in section 4 of the Maintenance Act 2005

"4 Each spouse has an obligation, so far as he or she is capable, to maintain the other spouse to the extent that such maintenance is necessary to meet the reasonable needs of the other spouse, where the other spouse cannot practically meet the whole or any part of these needs having regards to-

- (a) the circumstances which, in the opinion of the court, the justice of the case requires to be taken into account.

Section 5 (2) states the matters to be taken into account in determining the amount and duration of support to be given to a spouse in respect of a maintenance order and in addition the court shall have regard to matters mentioned in section 14(4) of this Act.

Section 5(2) of the Maintenance Act provides a list of the matters to be taken into account by the court.

- (a) the length of the marriage or cohabitation
- (b) the spouses contribution to the relationship for the spouse;
- (c) the effect of the responsibilities assumed during the marriage or cohabitation on the spouse's earning capacity;
- (d) the spouse's needs, having regard to the accustomed standard of living during the marriage or cohabitation;
- (e)
- (f) Any house keeping, child care or other domestic service performed by the spouse for the family, as if the spouse were devoting the time spent in performing that service in remunerative employment and were contributing the earnings to the family's support;
- (g) The effect of the spouse's child care responsibilities or the spouse's earnings and career development;
- (h) The terms of any order made or proposed to be made under the Property (Rights of Spouse) Act in relation to the property of the parties;
- (i)

The list of matters to be taken into account by the court under section 14(4) of the Act are as follows:

- (a) the respondent's and dependant's assets and means;
- (b) the assets and means that the dependant and the respondent are likely to have in the future;
- (c) the dependant's capacity to contribute to the dependant's own support;
- (d) The capacity of the respondent to provide support.
- (e) The mental and physical health and age of the dependant and the respondent and the capacity of each of them for appropriate gainful employment.
- (f) The measures available for the dependant to become able to provide for the dependant's own support and the length of time and cost involved to enable the dependant to take those measures;
- (g) Any legal obligation of the respondent or the dependant to provide support for another person;
- (h) The desirability of the dependant or respondent staying at home to care for a child;
- (i) Any contribution made by the dependant to the realization of the respondent's career potential;
- (j) Any legal right of the dependent to support other than out of public funds;

- (k) The extent to which the payment of maintenance to the dependant would increase the dependant's earning capacity by enabling the dependant to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income;
- (l) The quality of the relationship between the dependant and the respondent;
- (m) Any fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account.

The question of whether an applicant for spousal maintenance can support herself adequately is to be determined having regard to the matters referred to in section 5 and 14 of the Maintenance Act.

Section 15 of the Act allows the court to make interim and final orders requiring either periodic payments for a limited or indefinite period, lump sum payments to be paid or held in trust, the transfer of property to be held in trust and such other orders necessary to assist the dependant as the case may be.

The Claimant's case is that the economic consequences of the relationship for her are that she is now over 50 years of age, suffering from diabetes and hypertension she has no skills or training to commence working in any new endeavour. She presently operates a small shop from home selling bulk items which does not generate a sufficient income and she has no other source of income. The small income being

approximately \$6,000 per week from the sale of the bulk goods. She said that the operation of the shop at the house is illegal and cannot be sustained for much longer or she may be in trouble with the relevant authorities.

She receives no pension; and owns no real estate, investments or other assets.

She has little education or training which would enable her to seek employment at this stage of her life and it is now too later and too costly for her to attempt to obtain an education at this time. For the reasons stated above Miss Crammer states that her capacity to contribute to her own support is limited given her age and lack of qualifications.

Counsel for the Claimant submitted that another economic consequence has been the effect of the responsibilities which she assumed during the relationship on her earning capacity in that she is now virtually unemployable having given the best years of her life to raising the family and working in the business.

I find that Miss Crammer who commenced a relationship with Mr. Campbell in her youth and devoted the best years of her life to raising his children and assisting and working in the business has consequently lost an opportunity which may have been presented to her during the course of the relationship to pursue further education or generally to advance herself in a career which would have made her self sufficient.

Her evidence is that her monthly living expenses are \$40,000 plus another \$40,000 to enable her to resume monthly payments on two (2) mortgage loans owed to JNBS.

Miss Crammer posits that the payment by the Defendant of \$80,000 per month would permit her to live comfortably in a lifestyle to which she has been accustomed during the course of the relationship.

I find that the Claimant's monthly living expenses are not exorbitant.

Having regard to the terms of the orders made under the Property (Rights of Spouse) Act, the Claimant should no longer be burdened with this additional payment of \$80,000 per month in the long run.

She has undertaken the care of both children of the union, one of who is still a minor and has assisted raising the Defendant's other children.

Miss Crammer is of the opinion that Mr. Campbell has the capability and the means both presently and in the future to contribute to her maintenance.

She states that contrary to the Defendant's evidence the businesses earned in excess of \$15,000 to \$20,000 per month.

She also alluded to the fact that the Defendant issued instructions to RBTT Bank as to his net worth in the amount of \$15,000 in support of his son's application to study overseas.

The Claimant's Attorney submitted that the Defendant's attempt in his affidavit to explain that the Bank was simply "helping him out" and that

that figure does not represent cash his hands is irrelevant, because that is what he is worth.

The Defendant's response is that the larger hardware stores have attracted his clients and that he is no longer actively employed his welding and construction business. If an old client requires his services he will oblige; but new work tends to go to the big companies.

He said that from time to time he has done welding jobs that earned more than \$100,000 but this was not on a regular basis.

He worked with Paul Johnson Construction Company at the Baptist Church and earned \$1,300,000 in 2006 - but he has not had a job for which he charged a million since then. The job prior to that was in September 2004 for which he was paid \$60,000. The Defendant said that he is seriously in debt and trying to pay off his indebtedness in instalments. He exhibited the letters from RBTT Jamaica Ltd, D & M Enterprise and Tradesman Department - exhibit LC 2AC of his affidavit dated 2nd May 2007.

Mr. Campbell said that he is actually proposing the closure of the hardware shop, which is not making a profit and has not been doing so for sometime now.

He explained that the bank letter stating he is worth \$65,000,000 does not state that he has this liquid cash available. In respect to the value of his house which is now for the Claimant and his business place Mr. Campbell itemized some of his expenses in the sum \$18,800 per week. He omitted to

quantify the following; school fees, medical bills for Dwayne and Chantelle, meals for Chantelle during school time and clothes.

His rental is given as \$25,000 per month and utility bills at \$32,000 per month.

He indicated that he earns \$116,000 per month from the rental of his small shops on the premises. Both parties agree that he has a United States currency account at Bank of Nova Scotia. I find that Mr. Campbell has not made full disclosure of all his income, savings and/or investments to the court.

The quality of the relationship between the parties:-

During the 25 years of the relationship, the parties had their ups and down. The Defendant asserts at paragraph 42 of his affidavit dated 14th February 2008 that during the 1980's they were separated for three (3) years.

In cross-examination it was suggested to the Claimant that the Defendant was away from the house for 2 years continuously. She denied this and said that it was not 2 years, it was from September 1990 to August 1991, and during that time they were still in an intimate relationship and working together. She cooked and washed for him during that time and he used to sleep sometimes he "comes and goes" his presence was still around the house".

I accept the Claimant's evidence as being truthful.

In cross examination it was suggested to the Claimant that she left the house for 3 -4 months at a time when the Defendant suffered a broken leg

and lost a toe. She denied this and said that she stayed and nursed the Defendant back to health including bathing him.

I accept the Claimant's evidence as being truthful in this regard.

The Claimant said that she loved the Defendant and showed him love at all times and apart from altercations regarding his girlfriends and his refusal to acknowledge her interest in the business, she did not appear to be estranged or argumentative neither was she hostile towards the Defendant.

She alluded to the fact that he has been hostile to her from time to time and has hit her, broken her ribs, burst her head and face, and these incidents were reported at the Spanish Town and Half Way Tree police stations.

The Defendant denies beating the Claimant and states that he is unaware of the injuries to which she refers.

I find that the care Miss Crammer gave the Defendant's children and the regard they had for her has been acknowledged by the letter and school report from Joan, mother's day cards from Miguel and Venris two Christmas cards from Venris exhibit BC1 to the Claimant affidavit dated 29th May 2007.

I accept the Claimant's evidence that during the years that her step children lived in the family home for various periods, she was the one who ensured that they went to school on time, helped them to get to and from school on a daily basis – checked on their progress at school, attended

school functions and prepared dinner and breakfast for the entire family cleaned the house and did the ironing and planted in the garden.

I reject Mr. Campbell's evidence that Miss Crammer did not like his children and treated them badly; and that her treatment to he and his children was unfeeling and harsh.

I reject his evidence that the Claimant made no significant contribution to their life together.

I find that Mr. Campbell repeatedly promised to marry the Claimant and that it was not 1 or 2 times as he intimates.

In cross examination he said that immediately when he met her he did not regard her as an asset. He did not regard her as asset "at no time at all," but he regarded her as someone he could work with. He regarded her as an asset later on in life.

He said it would be fair to say that it was because he regarded her as an asset why he continued to live with her for 25 years.

The Defendant in his affidavit dated 15th May 2007 said "that the man my children say they see on the bed should assist with Claimant's support.

In his affidavit dated 10th September 2007 he stated inter alia "the Claimant's man friend should provide any additional maintenance Claimant may need."

In his affidavit dated 3rd May 2007 Mr. Campbell said "that having been informed by my children and I believe that the Claimant has a man friend who more or less resides at the house, I do not think that in all good

conscience I should have to borrow funds to pay off arrears on the house to benefit Claimant and a man.”

An affidavit of Venris Bryan (nee Campbell) daughter of Mr. Campbell was also filed in support of such an allegation. However the child of the union Dwayne Campbell filed an affidavit on behalf of his mother denying this allegation.

Counsel for the Claimant submitted that the failure to cross-examine the Claimant on that suggestion remains on the affidavits an assertion and a denial. Further that the failure to cross-examine a witness on a material part of the case amounts to an acceptance of the truth of the witness’s version.

Support for this legal proposition is found in the 3rd edition of Keane on the Modern Law of Evidence at page 132.

It reads:-

“A party’s failure to cross-examine, however has important consequences. It amounts to a tacit acceptance of the witness’s evidence-in-chief. A party who has failed to cross-examine a witness upon a particular matter in respect of which it is proposed to contradict his evidence-in-chief or impeach his credit by calling other witnesses, will not be permitted to invite the jury or tribunal of fact to disbelieve the witness’s evidence on that matter.”

I therefore accept Miss Crammer’s evidence that on this issue and reject that of Venris Bryan.

Chin v Chin Privy Council Appeal No. 61 of 1999 is also instructive on the point. The Judicial Committee decided that where conflicting

positions are taken in affidavits, there being no cross-examination, a tribunal of fact would not be in a position to determine the credibility of the conflicting positions.

Taking all the facts into account as specified in the relevant sections of the maintenance Act, I am of the view that the Defendant would be able to pay a lump sum payment of \$4.5 million in respect of settlement of the Claimant maintenance; and I so order

The Final Order

I make the following Declaration and Orders:-

1. A declaration that the Claimant and Defendant are each entitled to a fifty percent interest in the property known as 1032 Patricia Parkway, Willowdene, Spanish Town in the parish of Saint Catherine registered at Volume 1117 Folio 248 of the Register Book of Titles.
2. A report on and valuation of the said property is to be taken by a valuator agreed on by the parties within 21 days from the date of this order. If no agreement is reached within that time, the Registrar of the Supreme Court is hereby empowered to appoint same.
3. The valuation to be carried out and a report prepared within 30 days of the date of the appointment and the costs of such valuation to be borne by the parties in equal shares.
4. The Claimant be given first option to purchase the Defendant's half share in the said property, such value of the Defendant's share to be ascertained by deducting the payments the Claimant has made up to the date of this order as a consequence of the failure of the Defendant to comply with the order of the court made on 1st June 2007 and as well as half the balance remaining under the second mortgage on the said property in favour of the Jamaica National Building Society.
5. The Claimant to exercise such option within 60 days of her receipt of the said valuation. Failing which the Defendant is given the option to purchase the Claimant's half share such value of the Claimant's share to be ascertained by deducting the amount found due to the Defendant pursuant to order four from the amount stated in the valuation report.

6. The Defendant to exercise such option within 60 days of the date of the Claimant failing to exercise her option to purchase.
7. On the Defendant failing to exercise the option to purchase the Claimant's half share, the said property be sold on the open market and the net proceeds of sale be divided in accordance with order one (1) with a deduction from the Defendant's share of any payments made by the Claimant pursuant to order four (4).
8. That the costs attendant on the transfer of the said property to a third party upon the sale be borne by the parties in equal shares.
9. An order that the Registrar of the Supreme Court be empowered to sign all documents necessary to effect a transfer of the parties interest and share in the property known as 1032 Patricia Parkway Willowdene in the parish of Saint Catherine registered at Volume 1117 Folio 248 of the Register Book of Titles. In the event that either party refuses or is unable to do so.
10. The Claimant's Attorneys, Messrs Livingston, Alexander & Levy shall have carriage of sale.
11. The Claimant's claim to a fifty/fifty share in the land situated at 51 Red Hills Road and registered at Volume 1071 Folio 415 of the Register Book of Titles is denied; the Defendant is entitled to the entire interest in the subject property.
12. A declaration that the Claimant is entitled to 10% of the current value of the 6 shops building exclusive of the land situate at 51 Red Hills Road, Kingston 10 in the parish of Saint Andrew and comprised in Certificate of Title registered at Volume 1071 Folio 415 of the Register Book of Titles.
13. An order that a valuation of the 6 shops buildings referred to in order 12 be undertaken by a valuator to be agreed by the parties within 30 days of this order, and if the parties fail to agree, the Registrar of the Supreme Court is hereby empowered to appoint same. ie the costs of such valuation to be borne by the parties in equal shares.
14. Once the valuation is served on the parties, the Defendant shall within three (3) months pay to the Claimant a sum representing 10% of the stated value of the 6 shops buildings.
15. The Claimant is entitled to an account of sums received and expenditure incurred by the Defendant and or his servants and/or agents in respect of the leasing and or rental of the said shops at 51 Red Hills

Road, Kingston 10 in the parish of St. Andrew from the time of commencement of the respective leasing and or rental of the said shops to the date hereof. Such sums as are found due to the Claimant are to be paid by the Defendant within 60 days of receipt of the said account.

16. This account is to be undertaken by a reputable accountant agreed on by the parties within 21 days from the date hereof. If no agreement is reached within that time, the Registrar of the Supreme Court is hereby empowered to appoint same.

17. The account to be carried out and a report prepared within 30 days of the date of the appointment and the costs of such valuation to be borne equally by the parties.

18. A declaration that the Defendant and the Claimant are equally entitled to an interest in the businesses operated by Linford Campbell trading as "Campbell's General Iron Works" and "Campbell's Hardware" both operated at 51 Red Hills Road, Kingston 10, in the parish of St. Andrew.

19. The Defendant render an account of all profits earned by him in respect of the said businesses from November 1981 to the date of this order.

20. This account is to be undertaken by a reputable accountant agreed by the parties within 21 days from the date of this order. If no agreement is reached within that time, the Registrar of the Supreme Court is hereby empowered to appoint same.

21. The account to be carried out and a report prepared within 30 days of the date of appointment and the costs of such account to be borne equally by the parties.

22. That the businesses "Campbell's General Iron Works" and "Campbell Hardware" and its assets be valued by a valuator agreed by the parties within 120 days of the date hereof. If the parties fail to agree, the Registrar of the Supreme Court be empowered to appoint same.

23. After the account is taken, the net value of the business be shared equally by the parties and the Claimants half share be deducted from the Defendant's half share of the said business and added to the Claimants half share of the said business.

24. That the costs of the valuation be borne equally by the parties.

25. That the Defendant be given first option to purchase the Claimants half share in the value of the business, after the value of same has been ascertained, such option to be exercised within 90 days of receipt of the valuation report.

26. That should the Defendant decline to exercise the option to purchase the said business the said business be sold on the open market and that the net proceeds of sale be divided in accordance with the respective shares of the parties.

27. That the costs attendant on the sale of the said businesses to a third party be borne equally the parties.

28. The Claimants claim in respect of a guest house situate on lands at Bluefields Westmoreland is denied.

29. The Claimants claim in respect of an Isuzu motor vehicle purchased by the Defendant is also denied.

30. An order that the Defendant make a lump sum payment to the Claimant in the sum of \$4.5 million in settlement of her maintenance. Such payment to be made within 3 months of the date hereof.

31. Each party to bear his or her own costs.

32. Liberty to apply.