[2025] JMSC Civ. 48

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2014 HCV03483

BETWEEN	**CALVERN GAVIN**	**CLAIMANT**
AND	**LARETTA GAVIN**	**DEFENDANT**
AND	**ROMEO RICHARDS**	**INTERESTED PARTY**

Mr Sean Kinghorn instructed by Kinghorn & Kinghorn for the claimant

Ms Natalya Heywood-Blake instructed by HeywoodBlake for the defendant and the interested party

Heard: July 3, 2023, July 4, 2023 and May 16, 2025

Matrimonial Property - Whether claimant is entitled to a 50% interest in the family home - Whether Equal Share Rule should be varied – Whether the parties had agreed on the ownership and division of the family home - Property (Rights of Spouses) Act sections 6, 7, 10 and 12

IN OPEN COURT

CORAM: JARRETT, J

Introduction

[1] Before the court is a claim brought by Calvern Gavin (the claimant), under the provisions of the Property (Rights of Spouses) Act (PROSA), for declarations that

property at Church Road, Bog Walk in the parish of St Catherine is the family home and that he is entitled to a 50% interest in it. Laretta Gavin (the defendant) is the claimant's former wife. She does not dispute the fact that the property at Church Road is the family home. Her issue with the application is that the claimant had agreed that she would give him her entire interest in a motor car which she had purchased in her own name, in exchange for his half interest in the property. By an order of Master Dickens (Ag), (as she then was), Romeo Richards (who is the defendant's son), was joined in these proceedings as an interested party on October 10, 2022. The defendant, together with Romeo Richards (the interested party), contend, that it would be unreasonable or unjust for the equal share rule to apply as they both made significant contributions to the property.

The claim

[2] The application was begun by fixed date claim form filed on July 18, 2014, and time was extended to bring it under PROSA by a consent order of Master Y. Brown (as she then was), made on February 17, 2016. By order of Henry- McKenzie J (Ag) (as she then was), made on October 25, 2018, the claim was treated as if begun by claim form, and particulars of claim was ordered to be filed. The claimant filed particulars of claim on January 22, 2019, after obtaining an extension of time within which to do so.

The claim form

[3] The following are the remedies sought by the claimant in the claim form: -

> "1. A Declaration that All That Parcel of land situated at Church Road, Bog Walk measuring 1 ½ square chains being All That Parcel of land contained in Deed of Conveyance dated the 24th August 1995 and Recorded at the Registrar's General Office (sic) at LNS 4822 Folio 213 is the family home of the [Claimant] and [Defendant] under and by virtue of the provisions of The Property (Rights of Spouses) Act.

2. A Declaration that the [Claimant] is entitled to a one half legal and equitable share of interest in All That Parcel of land situated at Church Road, Bog Walk measuring 1 ½ square chains being All That Parcel of land contained in Deed of Conveyance dated the 24th August 1995 and Recorded at the Registrar's General Office (sic) at LNS 4822 Folio 213.

3. That the said property be valued by Messrs. C.D. Alexander Realty and Company Limited or Messrs. D.C. Tavares Finson Realty Company Limited.

4. That the said property be sold by private treaty within 120 days. In default of the said property being sold by private treaty that the said property be sold by Public Auction.

5. That the net proceeds of the said sale be distributed equally between the [Claimant] and the [Defendant].

6. That Messrs. Kinghorn and Kinghorn, Attorney-at-law (sic) be authorised to have Carriage of Sale of the said sale.

7. An Order that the [Defendant] do execute all and any relevant documents for the sale and/or transferring of the said property as is needed to facilitate the said Sale of the said property.

8. An Order that should the [Defendant] fail to comply with the Order of the Court to execute the said documents relevant to the said Sale, the Registrar of the Supreme Court be empowered to sign all relevant documents necessary to effect the sale of the said property to the [Claimant] and the transferring of the said property to the [Claimant].

9. Liberty to apply.

10. Such further and/or other relief as this Honourable Court deems just be granted."

The particulars of claim

[4] It is pleaded in the particulars of claim that the claimant is a taxi operator. He and the defendant were husband and wife until they were divorced in February 2007. At all material times they were the owners of the property described as: "All That Parcel of land situated at Church Road, Bog Walk in the parish of St Catherine, measuring 1 ½ square chains being All That Parcel of land contained in Deed of Conveyance dated the 24th August 1995 and Recorded at the Registrar's General Office (sic) at LNS 4822 Folio 213." The property was acquired during the course of the marriage. Before the purchase, the claimant and the defendant resided in rented premises at Church Road, Bog Walk in St. Catherine. The claimant approached the vendor, Alma Haughton, after hearing that the property was being sold, and negotiated its purchase. He negotiated that the payment of half the purchase price be made first, and the other half at a later date. The purchase price was originally $100,000.00, but Alma Haughton discounted it by $10,000.00, making the final purchase price $90,000.00. In or about 1993, the claimant paid half the purchase price of $45,000.00, which came from the proceeds of a successful personal injury claim which the claimant received from his former employers.

[5] It is further pleaded that on the payment of the sum of $45,000.00, the claimant was given possession of the property on which there were 32 orange trees and 2 breadfruit trees. The claimant cleaned the property and prepared it for building. It was the intention of the claimant and the defendant to build their matrimonial home on the property and to reside there as husband and wife. In 1993, the claimant and the defendant began to build a board house on the property. They were served with a notice to quit their rented premises and therefore had to move quickly to construct their home to move into it. The claimant was then a taxi driver and also worked at Bryan's Funeral Home. The defendant was an office attendant at Teacher's Credit Union. They both pooled their income to build the board house which had 2 rooms, a kitchen and a verandah. A year or two later, they built a concrete bathroom and a concrete bedroom onto the existing structure. By then

they had two children. The defendant was mother to a third child who was not the claimant's biological child.

[6] The claimant and the defendant subsequently decided to build another house. They both approached the National Housing Trust (NHT) and secured a loan of $800,000.00 to construct the second house. The loan was inadequate, and so they used their joint incomes to supplement the construction cost. In 1995, they paid the balance of the purchase price for the property and were given the Deed of Conveyance. The construction of the second house took about one year. On completion, they moved into it as a family. This second house was a concrete house with 3 bedrooms. The board house was rented by the claimant and the defendant to tenants.

[7] Acrimony entered the marital relationship, and on October 7, 2006, the defendant locked the claimant out of the matrimonial home. The claimant came home to a note affixed to the grill at the entrance to the house, informing him that his belongings were downstairs under the garage and so he need not enter the house. On that same day, the claimant left the house and did not return there to live. The family home was the sole and principal place of abode of the claimant and the defendant. The claimant is aware that the NHT mortgage is still current.

[8] It is also alleged that in these proceedings the defendant disclosed that she has successfully obtained a registered title for the property in her sole name. Based on an order for disclosure made by the court on February 17, 2016, the claimant obtained the documents used by the defendant to obtain title and became aware of a document referred to as: "**Consent of Calvern Gavin**" which purports to be signed by the claimant. That document is a forgery, and the certificate of title was obtained by fraud. The particulars of fraud are: -

> "(i) Applying for and obtaining a registered Title for the said property in her sole name when she knew that the said property was jointly owned by the [claimant] and herself;

(ii) Causing the Registrar of Titles to issue a Certificate of Title for the said property in the sole name of the [defendant];

(iii) Forging the [claimant's] signature on the document entitled "Consent of Nominee".

(iv) Submitting a forged document to the Registrar of Titles;

(v) Representing to the Registrar of Titles that the [claimant] had signed the said "Consent to Nominee" when she knew that the[claimant] had not signed the said document.

(vi) Making fraudulent declarations to the Registrar of Titles in support of her Application to have the Certificate of Title issued in her sole name."

[9] The prayer for relief differs from the claim form in four significant respects. In addition to the 9 remedies being claimed, the particulars of claim includes the following four additional remedies, numbered 10, 11, 12 and 13, respectively: -

"10. An Order declaring that Certificate of Title registered at Volume1431 Folio 514 of the Register Book of Titles was fraudulently issued.

11. An Order cancelling Certificate of Title registered at Volume 1431 folio 514 of the Register Book of Titles.

12. Damages for Fraud.

13. Costs."

I will address this issue later in this judgment.

The defence

[10] In the defendant's defence filed on February 22, 2019, it is pleaded that the property is now registered under the Registration of Titles Act (ROTA) in Volume 1493 Folio 587 of the Register Book of Titles, in the sole name of the defendant. It is admitted that the marriage was dissolved by divorce in or around February 2007, but it is alleged that the claimant and the defendant lived separate and apart since 2002. Several other admissions are made in respect to the claimant's pleadings. It is admitted that:

a) the property was owned by the claimant and the defendant and that it was acquired during the course of the marriage as evidenced by the Deed of Conveyance;

b) both the claimant and the defendant learnt that the property was being sold while they occupied rented premises;

c) the purchase price for the property was $90,000.00, and it was the claimant who approached the vendor Alma Haughton, and negotiated with her to pay half of the purchase price of $45,000.00;

d) it was the claimant who paid the half purchase price from proceeds of a personal injury claim resolved in his favour;

e) the claimant cleared the land, the claimant and the defendant began to build in 1993 and it was their intention to build their matrimonial home there;

f) in 1995, the claimant and the defendant paid the balance owed to Alma Haughton and received the Deed of Conveyance;

g) the claimant and the defendant built a board house on the property with two rooms, a kitchen and a verandah;

h) the claimant was a taxi driver, and he also worked at Bryan's Funeral Home, while the defendant was an office attendant at Teacher's Credit

Union. They pooled their resources and built the board structure which became their first matrimonial home.

[11] It is not denied that the 2nd structure built on the property was the family home and the sole and principal place of abode for the claimant and the defendant. It is however not admitted, and the claimant is put to strict proof of the allegations made in the particulars of claim that : a) while the parties lived in the board house they decided to build another house and they both approached the NHT for a loan of $800,000.00; b) the loan was not sufficient to complete the house and the claimant and the defendant had to supplement the construction costs from their income. In further response to these allegations, the defendant pleads that: a) the board house had deteriorated and become uninhabitable; b) the claimant and the defendant had several discussions about building another house; c) construction of the 2nd house was started with the NHT loan of $800,000.00, and all the mortgage payments were made by the defendant; d) a similar loan was available to the claimant, but he refused to take it; e) there was no use of their joint income to supplement construction costs as the claimant's only contribution to the house until he left in 2006, was the cost of the electrical wiring , and the tiling of a room; f) the family occupied the house after two rooms were built and until 2002 when the claimant and the defendant began to live separate and apart .

[12] The structure was improved between 2009 and 2015, with loans that the defendant received from Jamaica Teachers' Co-op Credit Union and a further mortgage from NHT. During the marriage, the defendant used a loan to purchase a car in her name and gave it to the claimant to operate as a taxi. It was agreed that the claimant would maintain the taxi, repay the bank monthly, and contribute to the household expenses. Save for maintaining the car, the claimant reneged on the agreement, later changed his mind and agreed to keep the car in exchange for his share of the house.

[13] In 2008, Land Administration and Management Programme (LAMP), assisted the defendant with obtaining title for the property. The **Consent of Nominee** document

was prepared by LAMP, and it was signed by the claimant on December 31, 2008, in the presence of the defendant, the defendant's son, and Devon Oliver Carnegie, a Justice of the Peace. It is denied that the defendant committed any fraud. It is alleged that it would be unreasonable and unjust for the claimant to be awarded a 50% interest in the property given that the cost of improving the property was practically done at the defendant's expense and the major part of the construction was done after 2009.

The Reply

[14] The claimant denies that there was any agreement between himself and the defendant that he would keep the car in exchange for his interest in the house. It is pleaded that in 2014 the defendant caused him to be arrested and charged for forgery in respect of the car. It is denied that the **Consent of Nominee** document was signed by the claimant and save for admissions, he denies the allegations in the defence.

The evidence

The claimant

[15] The claimant gave evidence, and he also relied on the expert report of Beverley East. By order of Master Dickens (Ag), as she then was, made on October 10, 2022, Beverley East (Ms East) was appointed an expert for the purposes of the claim. Her report dated April 8, 2016, was ordered to stand as an expert report, and she was required to attend the trial for purposes of cross examination.

Beverley East

[16] Ms East is a forensic document examiner. After examining the signature on the **Consent of Nominee** document (described by her as the questioned signature), as well as several other documents with the known signature of the claimant, she made, among others, the following findings:

"a) The questioned signature is too controlled and perfectly written to be authentic.

b) the signature is of a higher skill level than that of Mr Calvern Gavin

c) Mr. Calvern's signature is of a lower skill level (disproportionate letter formations) evident in the Marriage Certificate…The time frame between signatures would not allow such a low skill level writer to suddenly appear so controlled so many years later. As one ages handwriting deteriorates it does not improve."

[17] She offered the following opinion and conclusion:

"(i) The signature on the Consent of Nominee form is not consistent with the known signature of Calvern Gavin

(ii) It is also my opinion that Mr Calvern Gavin <u>is not</u> the signor of the Consent of Nominee form

(iii) The signature on the Consent of Nominee Form dated 2008 <u>does not</u> hold an authentic signature of Mr Calvern Gavin.

Handwriting is a subconscious behaviour. Each individual creates a master pattern within their signature. There are no characteristics or pattern constructions that match the known signatures of Mr Calvern Gavin when compared to the questioned signature…"

[18] In cross examination, when asked whether there is a difference between a signature and writing out one's name in full, Ms East said absolutely there is a difference. She agreed that on the questioned document the name Calvern Gavin is written out in full. She said that when a signature is authentic, it is carelessly written, what is on the questioned document is not a signature, it is a name carefully drawn out. When asked if it is more deliberate when writing out a name in full, she said that it is not a more deliberate act, because it is your name, you

know it, you have been writing it since school and so you do not have to be deliberate with your own name, whether you are signing or writing it out. When it is yours, you know how to write it.

[19] According to Ms East, when she is examining a questioned signature, the first thing that is a red flag is if it lacks speed. This is not something an untrained eye can see, but for an examiner, a questioned signature is slowly, carefully drawn and so it lacks speed, it sits carefully on the line. She said that in her report, she states that the questioned signature is too controlled and perfectly written. When examining and comparing several signatures of an individual, she is identifying habitual writing patterns within the known signature. Within the twenty-year period of the known signatures presented to her in this case, the claimant's habitual writing pattern characteristics were evident.

[20] A signature is never identical, and will have some natural variation, however, it is the habitual writing patterns, regardless of timing that an examiner will be able to identify. A signature can change over time and that is called natural variation. She agreed that she only got one document to compare for 2008, but said it was sufficient as she was examining ten signatures over a period of time. She knew that only one known signature from 2008 was available, but when she compared it with other signatures, the same habitual pattern was found. When asked about her findings in relation to the questioned signature, she said that signature was of a higher skill level than the writing of the claimant which is disproportionate and almost childlike. She found no disproportionate letters in the questioned signature but found them in the known signatures.

Calvern Gavin – The claimant

[21] The claimant's witness statement stood as his evidence in chief. It is essentially a replica of the particulars of claim. For the most part, all the claimant has done in transforming the particulars of claim into his witness statement, is to substitute the

first person singular subject pronoun “I”, for the noun “claimant”. It is therefore unnecessary to repeat it here.

[22] In cross examination, the claimant said he was operating a taxi before he got married to the defendant and agreed that operating a taxi has allowed him to earn a relatively stable income. He said it is the operation of a taxi that allowed him to live and look after his family. His marriage to the defendant began to deteriorate before 2000 and frequent quarrels had with her related mostly to his contribution to the household. His main responsibilities were taking care of the family, which included paying bills, buying food, and general household expenses. He admitted that the defendant constantly tried to improve their standard of living and said they both built the board structure and improved their living condition. According to him, he contributed his 100% to the household.

[23] The NHT mortgage was solely in the defendant’s name, but it was a loan taken out by both of them, and he gave the defendant money monthly, to repay it. He denied that he refused to take a loan that was available to him from the NHT. He was aware that over the years the defendant took out several loans to improve the property. When he was living in the house, he told the defendant to rent the first house in order to pay the property taxes and the mortgage. He said that they separated , he left the property in 2006, and they divorced in 2007. He admitted he remarried, but denied it was in 2008. When he left the property in 2006, one of the houses on the property was finished and one was still partly board and partly concrete. The second concrete structure was finished, and it is the same as he left it in 2006. The last time he saw the board structure; it was fully concrete. He admitted that he did not indicate to the defendant, after he left the property, that he wanted a share in it, but said he continued to maintain his family.

[24] On further cross examination, the claimant said that sometime in 2001, during the marriage, he and the defendant acquired a motor vehicle, and this was used by him as a taxi. It was acquired by loan, which was taken out in the name of the defendant, but they both owned the vehicle. The responsibility to repay the loan

was the defendant's, but he shared the income from the taxi with her as he had to take money to her every weekend. He did this until his daughter turned 18 years of age. This is not the same motor vehicle he operated as a taxi after the separation in 2006, as that one was taken from him by the police in 2014. He denied that he told the defendant he would pay her for her share in the motor vehicle that was bought in her name but agreed that she was entitled to a share in it. That motor vehicle was eventually sold for $250,000.00. He denied having any discussion with the defendant before selling the car, that he would keep it, and she would keep the house. He also denied signing the **Consent of Nominee** document.

The defendant

Lauretta Gavin - The defendant

[25] The defendant is an office attendant. Her witness statement also stood as her evidence in chief. Her witness statement closely mirrored her defence, but was generally, not a replica of it. She says she got married to the defendant on March 24, 1984, and in 1994, they moved to Church Road, Bog Walk in the parish of St. Catherine, where they lived in a two-bedroom board structure. In 1994, she heard of land that was being sold on the same road where they were living, and she went and spoke with Alma Haughton who was the person in charge of the land. She was told the purchase price, and she discussed it with the claimant. Both of them returned to Alma Haughton and negotiated the price. The claimant contributed the initial payment of $45,000.00 and they took possession shortly after that. It was agreed that the balance would be paid overtime. In 1995 they received the Deed of Conveyance.

[26] According to the defendant, when they went to reside on the property, they built a wooden structure consisting of two small bedrooms and a kitchen. This board structure deteriorated, and she and the claimant discussed building another house on the property. They pooled their resources and transformed one of the bedrooms into a concrete structure. They could not afford to transform the entire wooden structure into concrete from their own resources. Sometime in 1998, she applied

for a NHT loan and qualified for $800,000.00. The claimant refused to take a loan which was also available to him. In 1999, she took out another loan from the NHT, this time in the amount of $315,000.00 to: “continue building on the new structure”. The structure: “now” had 3 bedrooms, and the family moved in and occupied the unfinished house until about 2002 when the marriage broke down and she and the defendant started living separate lives, until he left the home in about 2006.

[27] The only contribution the defendant says she is aware of, that the claimant made towards the building of: “this two-bedroom structure” was the cost of the electrical wiring and tiling of a room. She and the claimant did not use their joint income to supplement the construction costs. According to her, she serviced the NHT loans solely, and due to the absence of any contribution from the claimant as well as extra marital affairs, the marriage eventually broke down. After the claimant left the family home in 2006, from 2009 to 2015, the house was improved considerably from various loans obtained by her. During construction, she also used funds from partner draws and income from operating a taxi. Her son, Romeo Richards, made substantial contributions to the building of the second house and the improvement of the first house, transforming it into a complete concrete structure.

[28] During the marriage, she took out a loan, bought a car, registered it in her name and gave it to the claimant to operate a taxi. The agreement they had was that the claimant would pay the loan, maintain the car and contribute to the household expenses. Except to maintain the car, the claimant did not honour the agreement. After the separation, the claimant kept the car, and agreed in 2006 that he would pay her for half its value. He later changed his mind and agreed that he would keep the car in exchange for his share of:” the house”. As she pleads in her defence, she repeats that sometime in 2008, LAMP was working in the area, and she asked them to help her to get a certificate of title for the land. She explained the agreement she had with the claimant to the officer from LAMP, the **Consent of Nominee** document was prepared, and she was instructed to have the claimant sign it, which he did in her presence, in the presence of Devon Carnegie, Justice of the Peace and her son Romeo Richards. According to her, she had no reason

to and would not think to forge the claimant's signature. After the claimant left the property, he was not interested in it, and so he signed the **Consent of Nominee** document. For the reasons she pleads in her defence, she says it would be unjust and unreasonable for the claimant to be entitled to a half share in the property.

[29] She said since first registration, the volume and folio numbers for the property have been updated and are now Volume 1493 Folio 587.

[30] On cross examination, when asked whether there is a reason, she did not disclose the Deed of Conveyance to the Registrar of Titles, the defendant said she brought it to LAMP and was advised that unless the claimant has no interest in the property, then both their names would have to be on the certificate of title. She said she took the Deed of Conveyance to the: 'titles office' and when asked by a gentleman whose name is to be on the title, she advised it would be hers, since the claimant has no interest in the property. She was then told that this would have to be in writing. It was the LAMP representative who gave her the **Consent of Nominee** document for the claimant to sign.

[31] When asked what the value of the property in 2008 was, the defendant said she was not sure. When her application before the Registrar of Titles for a certificate of title was shown to her, she said that the value of the property on the application was placed there by LAMP as they were working on her behalf. In 2008, there was only one concrete structure on the property. There were two structures on the property in 2008, but both were not concrete structures. It was around 2005/2006, that she and the claimant stopped cohabiting as husband and wife on the property. When it was shown to her that in her application for title, she said that she has been in sole and undisturbed possession of the property since 1994, she said that was correct. But on further cross-examination, she said that she meant that it was the claimant and herself, and that both of them were put in possession by Alma Haughton.

[32] The defendant admitted that aspects of her application were true, while others were not true. She said she had seen the declaration in support of her application before signing it, and when asked why she did not correct what was not true, she said she was: “not subconscious” and was not paying attention to the document in detail. She said she was aware of what she was signing but claimed she did not read the contents before doing so. On further questioning from cross examining counsel, she said she read the documents but did not really understand aspects of them.

[33] The defendant did not agree that the claimant did not sign the **Consent of Nominee** document. She agreed the property was the family home and the principal place she and the claimant cohabited as husband and wife. She also agreed that the family home was acquired at a time when her marriage to the defendant was in a good state, and that it was her intention and that of her husband that it was owned by both of them. But she said he should not have a share in it because they had an agreement that he would give up his share in the property for her interest in the motor car. The agreement was not in writing, she did not get independent legal advice, and she does not know if the claimant received any such advice. When asked if after the agreement she transferred the car to the claimant, she said she did not. She admitted to causing the police to arrest the claimant because she thought the title for the car was in his name when it ought not to be. According to her, since he changed his mind about not having any interest in the house, then she should have an interest in the car.

George Gavin

[34] George Gavin is the son of both the claimant and the defendant. After aspects of his witness statement were struck out on the basis of hearsay, it stood as his evidence in chief. He says that he and his mother, father and brother moved into the property when he was approximately 10 years old. He observed very early on that his mother bore most of the expenses pertaining to the property. His father worked as a taxi driver and it was his mother, by way of a loan, who purchased the

car that his father operated. His father owned nothing on the property except his clothing, but he did contribute to his schooling and took care of the day-to-day school expenses including transportation and lunch money. He paid school fees occasionally and contributed money towards the grocery shopping. During the latter part of his residence on the property, the day-to-day responsibilities of the household fell on him and his brother Romeo Richards as the claimant had stopped contributing. His mother was at that time away, but still paid the bills from her salary.

The interested party

Romeo Richards

[35] Romeo Richards is the son of the defendant. The claimant is his stepfather. In his witness statement which stood as his evidence in chief, he says that as long as he can remember, he lived with the claimant and the defendant at various places in Bog Walk, in the parish of St. Catherine. He says that in or about 1995, his mother and the claimant bought the property, and he, his brother, mother and the claimant went to live there in a two-bedroom wooden structure. Between 1998 and 2002 he was a teacher, and he used the bulk of his earnings to assist his mother in building the house. He estimates his contribution to the building of the house to be no less than $1,000,000.00 which was used for constructing walls, tiling, installing plumbing and paying workmen.

[36] In 2008, he gained employment as a clerk at the Bank of Nova Scotia, Linstead branch, and obtained a loan from that bank of $300,000.00, and further loans amounting to $665,014.00 in 2014, 2015 and 2017, to complete the house. In 2010, his mother received a loan from Jamaica Teachers' Co-operative Credit Union which was used to construct a concrete perimeter wall; pave the driveway; construct a retaining wall to the front of the property; finish the walls, construct a walkway, provide doors for the bedrooms and install security grilles. He was at the house on December 31, 2008, when the claimant came there, and he heard his mother speaking to him about the **Consent of Nominee** document. He saw when

the Justice of the Peace came to the house, and he saw him hand the document to the claimant who wrote on it and gave it to his mother. According to him, he has obtained an interest in the property due to his investment in it.

[37] On cross examination, Romeo Richards said that on December 31, 2008, when the Justice of the Peace came to the house, he was about 18 years old. He assisted his mother with the house, and it is only fair that he should get something back. He invested in the property thinking that it was going to be his home going forward. He left the house: "not too long ago" and is currently 43 years of age. In his answers to questions from the court, he said his date of birth is May 31, 1980, and he believes that based on his investments in the property he is entitled to "possibly a one-third" interest in it. In answer to a follow-on question from Mr Kinghorn, he said the other two - thirds should be shared between his mother and the claimant.

Analysis and discussion

The relevant provisions of PROSA

[38] PROSA represents a modern approach to the adjustment of property between spouses on the termination of cohabitation or the dissolution of marriage. It created the concept of the "family home" and the presumption in section 6, that each spouse is entitled to an equal share in it. The section provides as follows: -

> "6 – (1). Subject to subsection (2) of this section and sections 7 and 10, each spouse shall be entitled to one-half share of the family home-
>
> a) on grant of a decree of dissolution of a marriage or the termination of cohabitation;
> b) on the grant of a decree of nullity of marriage;
> c) where a husband and wife have separated and there is no likelihood of reconciliation.

(2). Except where the family home is held by the spouses as joint tenants, on the termination of marriage or cohabitation caused by death, the surviving spouse shall be entitled to one-half share of the family home".

[39] By virtue of section 7, the court may vary the equal share rule where it considers that it is unreasonable or unjust for each spouse to be entitled to one-half of the family home. The factors the court considers include those in section 7(1) (a) to (c), which are:-

(a) that the family home was inherited by one spouse;

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

(c) that the marriage is of short duration

[40] The family home is defined in section 2 as:

"the dwelling house that is wholly owned by either or both of the spouses and used habitually or from time to time by the spouses as the only or principal family residence together with any land, buildings or improvements appurtenant to such dwelling - house and used wholly or mainly for the purposes of the household , but shall not include such a dwelling - house which is a gift to one spouse by the donor who intended that spouse alone to benefit."

[41] The legislature made provision in section 10, for spouses to make agreement between themself, either before marriage or cohabitation, or afterwards, for the ownership and division of property. Section 12 provides that the date for determining a spouse's share in property (which includes the family home) is the date the parties ceased living together as man and wife, or to cohabit, or if they have not so ceased, the date of the application to the court. Section 13 is the provision allowing applications to the court, and it provides that a spouse may

apply for a division of property where, among other things, there has been termination of cohabitation or the dissolution of a marriage. The authorities have established that it is not fatal to an application under section 13, if it lacks the requisite form, once it is clear to the other side what is the relief being sought. (See **Carol Stewart v Lauriston Stewart [2013] JMCA Civ 47** and **Deidrick v Deidrick SCCA No 4/2008, delivered July 14, 2008**).

[42] Section 14 makes the distinction between the family home and other property quite clear. It reads 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).
>
> (2) The factors referred to in subsection (1) are -
>
> (a) the contribution, financial or otherwise, directly or indirectly made by or on behalf of a spouse to the acquisition, conservation or improvement of any property, whether or not such property has, since the making of the financial contribution, ceased to be property of the spouses or either of them;
>
> (b) that there is no family home;
>
> (c) the duration of the marriage or the period of cohabitation;

(d) that there is an agreement with respect to the ownership and division of property;

(e) such other fact or circumstance which, in the opinion of the Court, the justice of the case requires to be taken into account".

(3) In subsection (2) (a), "contribution" means-

(a) the acquisition or creation of property including the payment of money for that purpose;

(b) the care of any relevant child or any aged or infirm relative or dependant of a spouse;

(c) the giving up of a higher standard of living than would otherwise have been available;

(d) the giving of assistance or support by one spouse to the other, whether or not of a material kind, including the giving of assistance or support which- (i) enables the other spouse to acquire qualifications; or (ii) aids the other spouse in the carrying on of that spouse's occupation or business;

(e) the management of the household and the performance of household duties;

(f) the payment of money to maintain or increase the value of the property or any part thereof;

(g) the performance of work or services in respect of the property or part thereof;

(h) the provision of money, including the earning of income for the purposes of the marriage or cohabitation;

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

The issue

[43] As demonstrated by her defence and by her evidence, the defendant does not deny that the property was the family home. Her primary argument is that the claimant ought not to succeed in his claim for a 50% interest in the property, because they had an agreement whereby, he would exchange his interest in the family home, for the motor car she purchased , which he used during the marriage, to operate a taxi. Counsel for the defendant, Ms Heywood - Blake's submissions are that the claimant gave up his interest in the property as evidenced by the **Consent of Nominee** document which he signed by: "writing out his full name". She also argues that if the court finds that the claimant did not give up his interest in the property: "in the circumstances", it would be unjust for him to have a 50% interest in it, and therefore the equal share rule must be varied.

[44] It therefore seems to me, that the issue to be determined in this case is whether the equal share rule should apply or whether it has been displaced by agreement or otherwise.

Should the equal share rule apply, or has it been displaced?

[45] In **Carol Stewart v Lauriston Stewart**, Brooks JA (as he then was), expressed the view that on a true construction of section 14, subsections (2) and (3), are excluded from consideration in claims brought in respect of the family home. This means that contributions (financial or otherwise), made to the acquisition or improvement of the family home, are not section 7 factors. Brooks JA at paragraph 40 of his judgment, expressed the reason for this as the legislature not wishing the family home to be: -

> "… embroiled in arguments involving those issues, or to be ordinarily subject to the "value judgments on which judges might differ" (see **Piglowska v Piglowski** [1999] 3 All ER 632)"

[46] Section 7 factors in PROSA are not limited to those expressly listed by the legislature. I believe this was the view expressed by Brooks JA in **Carol Stewart v Lauriston Stewart,** although the majority of the court of appeal in **Llewelyn Bailey v Sharon Colquhoun Bailey** [2024] JMCA Civ 44, seem to share the view that he only saw the four factors listed in section 7(1) as section 7 factors. Any doubts as to his lordship's views in relation to section 7, are resolved, in my view, by what he said at paragraph 41 of his judgment, which I cite below. McDonald Bishop JA (as she then was), said at paragraph 5 of her judgment in **Llewelyn Bailey v Sharon Colquhoun Bailey,** that the absence of all or any of the factors listed in section 7 should not prevent, the varying of the equal share rule based on: " any other pertinent factor if it is considered just or reasonable to do so". But it does not appear, in my respectful view, that consideration was given to section 14(1)(a) and (b), by which the legislature excluded factors such as contributions, when determining applications for the division of the family home. The majority in **Llewelyn Bailey v Sharon Colquhoun Bailey**, have therefore determined, that Brooks JA, was wrong to hold that matters such as the parties' respective contributions may only be considered if a section 7 "gateway is opened"**.** I am, of course, bound by that decision.

[47] However, in opining on what could be considered a section 7 factor other than those listed in the legislation, Brooks JA posed the following question in **Carol Stewart v Lauriston Stewart** at paragraph 41**: -**

> "[41] Since section 7 does not allow for contribution and "other fact[s] and circumstances" [referred to in section 14(2)] to entitle the court to consider a departure from the equal share rule, what else, since

> the section uses the word "include" may be considered as factors that may lead to such a departure? Perhaps only time and experience will bring about an answer to that question."

His lordship then went on to offer the following possible answer: -

> "One possible scenario, however, could be where spouses, on deciding to separate, agree that a house, in which the legal interest is vested solely in spouse A, be transferred to spouse B, who is leaving the family home, in order for it to be a residence for spouse B. If the entire legal interest in the family home were vested in A, certainly, in those circumstances, it would be open to the court to consider whether it would be unreasonable or unjust to apportion equal interests in the family home. That is just an example, but it will be sufficient to observe at this time, that the list of factors contemplated by section 7 is not closed."

[48] It is important to understand and appreciate the philosophy behind the concept of the family home in PROSA. Brooks JA described it in **Carol Stewart v Lauriston Stewart** at paragraph 20, as entitling a spouse to an equal interest in the family home based on that spouse's contribution to the marriage. In **Donna Marie Graham v Hugh Anthony Graham Claim No 2006 HCV03158, delivered April 8, 2008,** McDonald Bishop J (Ag), (as she then was), explained this philosophy , at paragraphs 15 to 16 of her judgment, in reference to the application before her by the claimant wife, for a declaration that she was entitled to a 50% interest in the family home: -

> "15. By virtue of the statutory rule, the claimant would, without more, be entitled to her 50% share in the family home as claimed and this is regardless of the fact that the defendant is sole legal and beneficial owner. It is recognised that the equal share rule (or the 50/50 rule) is derived from the now well-established view that marriage is a partnership of equals (see

R v R [1992] 1 A.C. 599, 617 per Lord Keith of Kinkel). So it has been said that because marriage is a partnership of equals with the parties committing themselves to sharing their lives and living and working together for benefit of the union, when the partnership ends, each is entitled to an equal share of the assets unless there is good reason to the contrary; fairness requires no less: per Lord Nicholls of Birkenhead in **Miller v Miller; McFarlane v Mc Farlane [2006] 2 A.C.618, 633**.

16. The object of the Act is clearly to attain fairness in property adjustments between spouses upon dissolution of the union or termination of cohabitation. It is this notion of fairness that underpins the provisions of sections 6 and 7 of the Act …"

[49] Mr. Kinghorn, counsel for the claimant, argues, that neither the defendant nor the interested party has provided any evidence to displace the equal share rule. To support this submission, he relies on the decision in **Carol Stewart v Lauriston Stewart.** In that case, the point was made that courts ought to be reluctant to depart from the equal share rule even when the evidence establishes the existence of a section 7 factor. This is because of the philosophical backcloth to the concept of the family home, referred to earlier. Indeed, it is accepted, that to rebut the presumption of equality, the evidence required must be cogent, credible and convincing.

[50] As was the case in Brooks JA's hypothetical scenario in **Carol Stewart v Lauriston Stewart**, if the agreement which the defendant alleges in fact existed, it could be a section 7 factor and thereby displace the equal share rule, as in those circumstances, it would be unreasonable and unjust for the rule to apply. The question then, is whether there was an agreement between the claimant and the defendant for the claimant to exchange his interest in the family home, for the claimant's interest in the motor car. The answer is in a careful analysis of the evidence. The claimant denies that he entered into any such agreement with the defendant, while the defendant relies heavily on it, in her defence to the claim.

[51] I find the police report the defendant made concerning the motor car to be very helpful in determining whether her evidence of the alleged agreement is credible. This report is an agreed document and was tendered and admitted into evidence. It is dated February 5, 2014, and is signed by the defendant as being true and correct and with the knowledge that she shall be liable for prosecution if anything in it is false, or she does not believe to be true. She states that sometime in the:"2000's", she and the defendant together purchased a 1997 Toyota Corolla motor car with a loan they both obtained. The title was issued in her name, and she gave the motor vehicle to the claimant to operate a taxi. She states that: "We had an agreement that he should work the car and pay me $6,000.00 a month. Sometime between 2005 and 2006, my ex-husband and I started to have disagreement in our relationship and thinking of getting a divorce which we later did. Sometime in 2005, my ex-husband and I had an agreement that he was going to have the said motor car mentioned above valued, and he would pay me 50% of the value".

[52] No where in the statement to the police does the defendant say that the agreement involved the claimant giving up his half interest in the family home for the claimant's interest in the motor car. This is a statement she made knowing that she faced prosecution if anything she said in it was false, yet approximately five years later in her defence, she alleges a completely different agreement.

[53] It is also notable, that in the **Consent of Nominee** document dated December 31, 2008, which the defendant contends is evidence of the alleged agreement, there is not even a hint of the existence of the agreement. Moreover, what is startling about this document is that it states that even though the claimant's name appears on the Agreement for Sale and the purchase receipts, he has no interest in the property. It makes no mention of the Deed of Conveyance which shows that both the claimant and the defendant purchased the property from Alma Haughton in 1995. The document also oddly states (in December 2008) that the claimant is well acquainted with the property for only 10 years, when in fact, the evidence of both

the claimant and the defendant is that they started building on the property in 1993 after the claimant paid half of the purchase price to Alma Haughton.

[54] The defendant's own declaration, which formed a part of her application to the Registrar of Titles and is an agreed document which was tendered and admitted into evidence, is also telling. Her evidence on cross examination in relation to it, is equally telling. The defendant's application was one for first registration of title and in her declaration in support of that application she again, makes no mention of any alleged agreement she had with the claimant. In fact, her declaration is glaringly inconsistent with the alleged agreement because in it, she says she alone, has been in sole and undisturbed possession of the property since 1993. When faced with her own declaration on cross examination, the defendant admitted that what she stated in it, about being in sole possession since 1993, was not true.

[55] The **Consent of Nominee** document is part of the defendant's application for first registration of title. The claimant says he did not sign it and that his signature was forged by the defendant. Ms Heywood -Blake in her submissions urges me to reject the expert report of Ms East. She poses the question: "Has the expert made a definitive conclusion [that] the signature or name written in full is a forgery done by the Defendant?" She argues that the claimant wrote out his full name on the **Consent of Nominee** document, but the expert report does not address this. Learned counsel invites the court to rely on the following statement by Wright J.A. in **Clarke v Beckford et al JM 1993 CA 33,** in which his lordship addressed the approach of a trial judge to expert evidence: -

> "The peril facing expert evidence is that, like any other evidence tendered, it may for good reason, be rejected. The [trial] judge had the benefit of listening to and observing this witness testify as he compared the disputed signature with the accredited signatures of the testatrix. Further, he had the benefit of addresses from counsel for both parties who examined his evidence in great detail and then

> he demonstrated in his judgment his assessment of the evidence before concluding that he preferred the real evidence to the comparison evidence."

[56] In that case**,** the court of appeal had to consider whether the trial judge erred in declaring that the grant of Letters of Administration in the estate of a testatrix was null and void on the basis that she had in fact signed a will and had knowledge of its contents. The defendants in that case relied on the expert evidence of a handwriting examiner to contend that the will was a forgery. At trial, a document shown to the testatrix's niece was acknowledged by her as bearing the signature of the testatrix. On cross examination of the expert, he was shown the same document but could not say whether it was the signature of the testatrix. Evidence that the testatrix (who was illiterate), had at times received assistance in signing documents , coupled with the expert's evidence that age, state of health and posture in writing can affect one's signature, led the trial judge to find that there was no developed consistency to the deceased handwriting and expressed a preference for the real evidence to the comparison evidence. It was therefore in this context, that Wright JA, made the statement on which counsel Ms Heywood-Blake relies, and dismissed the appeal in so far as it related to the revocation of the grant of Letters of Administration, and ordered that the will be admitted to probate.

[57] In the present case, the expert Ms East says in her report that from her examination of the signatures of the claimant, she found that his habitual writing pattern is to sign with only the initial **C,** and complete with his surname **Gavin**. As earlier observed, she says that only the marriage certificate bears his name written in full. She also says that the claimant's signature is of a lower skill level (disproportionate letter formations), evident in the marriage certificate and that the: "time frame between signatures would not allow such a low-level writer to suddenly appear so controlled so many years later". She goes on to say that as one ages handwriting deteriorates, it does not improve and went on to identify several elements of the claimant's writing pattern, both in her report as well as at trial. Additionally, she

pointed out various points of departure between the writing pattern of the claimant and the questioned signature. Mrs Heywood-Blake is right to argue that the expert did not conclude that the defendant forged the signature of the claimant on the **Consent of Nominee** document. But in fairness to Ms East, this was not what she was tasked to do. Her instructions, as stated in her report, were to examined documents with the known signature of the claimant and to compare them with the signature on the **Consent of Nominee** document.

[58] I was impressed by the confidence Ms East effortlessly displayed in her expertise and her knowledge, while explaining her findings, opinion and conclusion, at trial. Her findings, opinion and conclusion were not effectively challenged on cross examination. I have scrutinized her report and seen, albeit through untrained eyes, the points of difference identified by her. She identified the characteristics of the claimant's writing pattern while she was in the witness box, and I accept them. I accept her conclusion that in comparing the signature on the **Consent of Nominee** document and the known signatures of the claimant, there were no characteristics or pattern constructions that match. I accordingly find, that the **Consent of Nominee** document was not signed by the claimant.

[59] Given the, a) absence of any reference to the alleged agreement in the defendant's statement made to the police and in the **Consent of Nominee** document (which she alleges evidences the agreement); b) the inconsistencies in the **Consent of Nominee** document and the defendant's own evidence which clearly refutes her declaration for first registration of title which suggests that in 2008 the claimant was well acquainted with the land for only 10 years; c) the inconsistencies between the defendant's said declaration and the alleged agreement; and d) her own admission that aspects of her declaration are not true, I unquestionably find that the defendant is not a credible witness. On a balance of probabilities therefore, I find that there was no agreement between the claimant and the defendant that the claimant would give up his 50% interest in the family home for the defendant's interest in the motor car. I must make the point before leaving this issue, that although aspects of the claimant's evidence in relation to the motor car are

contradictory and difficult to understand, the challenges I have just identified with the defendant's evidence, are, in my view, far more significant than those contradictions.

[60] Counsel Ms Heywood-Blake argues that even if I find that there was no agreement between the claimant and the defendant: "in the circumstances" it would be unjust for the claimant to be entitled to a 50% share of the property. Learned counsel did not say what these circumstances to which she refers are, and I assume that she is contending that pursuant to section 7 of PROSA, I should vary the equal share rule. If I correctly understand the majority decision in **Llewelyn Bailey v Sharon Colquhoun Bailey**, contributions, including financial contributions, and "any other pertinent factor", are section 7 factors.

[61] The defendant and the interested party claim that both their contributions to the construction of and the improvements to the family home, particularly after the claimant left, ought to disentitle the claimant to an equal share in the family home. As seen from the interested party's evidence, he alleges that between 1998 and 2002, he used most of his earnings as a teacher to help the defendant build the family home and did so thinking it would be his at some point, and it is only fair that he should get: "something back". On cross examination, he said that in December 2008 (when he claims the claimant signed the **Consent of Nominee** document), he was 18 years of age. This would mean that he was born in 1990, and in 1998 would have been only 8 years of age. At 8, he could hardly have been working as a teacher and earning to contribute to building the family home. There is no evidence before me, that he was a genius or child prodigy. Furthermore, his evidence contradicts the defendant's own evidence that at the time the family home was acquired, it was her intention and that of the claimant that it was owned by both of them. At trial his evidence was contradictory. He said he was born on May 31, 1980, and is 43 years old. This would mean that in December 2008, he would have been 28 years old and not a child or 18 years old as he alleged.

[62] Not only does the interested party give conflicting evidence concerning his age, he claims to have contributed approximately $1,000,000.00 to the construction of the family home but has provided no documentary evidence to support this assertion. I do not find his evidence credible at all, and on a balance of probabilities find that he did not make the contributions which he claims to have made.

[63] The defendant claims that the claimant's only contribution to the family home was the electrical wiring and the tiling of a room. She says that she alone took out the NHT loan and serviced it without any help from the claimant. The claimant denies this and says that he contributed to the NHT mortgage payments. It is noteworthy that the defendant gives no evidence of her earnings as an office attendant. In contrast, the claimant's evidence is that his earnings as a taxi driver were stable and allowed him to look after his family. The defendant also claims that during construction, in addition to partner draws, she received income from operating a taxi. It appears that this is the same taxi the claimant operated, but the defendant testified that she purchased that car, gave it to the claimant to operate as a taxi and to contribute to the household, but he did not make any such contribution. The claimant refutes this, and says that on a weekly basis, he gave the defendant money from the operation of the taxi. In her statement to the police in 2014, the defendant said that there was an agreement she had with the claimant for him to pay her $6000.00 monthly from operating the taxi. She did not say in that statement, that the claimant made none of those payments. I find it hard to believe her, when she says that she received nothing from his operation of the taxi. If this were the case, I would have expected her to include it in her report to the police.

[64] Notwithstanding the quarrels they had over the claimant's contributions, I do not believe that the claimant did not make any contribution to the construction of the family home, other than the electrical wiring and the tiling of a room. On this issue, I prefer his evidence to the defendant's. I have found that the interested party did not make the contributions to the family home which he alleges he made, and find, on a balance of probabilities, that the claimant and the defendant both contributed to the construction of the family home. After all, it was the claimant who paid one

half of the purchase price for the land in 1993 and together, they constructed the board house, which was their first home, and then, both agreed to build a second home on the same parcel of land. Of importance too, is the evidence of their son George, who said that the claimant contributed to his schooling, took care of the day-to-day school expenses, including transportation, lunch money and occasionally he paid school fees. He also said that the claimant contributed to the grocery shopping. On the evidence, it is impossible to find that the defendant's own contributions ought to tip the scale, in her favour, such that it would be unreasonable or unjust for the equal share rule to apply.

[65] In the result, I find that the equal share rule has not been displaced by either the claimant or the interested party and therefore the claimant is entitled to a 50% interest in the family home.

Section 12 of PROSA and the claimant's share of the family home

[66] As mentioned earlier, section 12 of PROSA provides that the date for determining a spouse's share in property (including the family home) is the date the parties ceased living together as man and wife or ceased cohabiting. The claimant's evidence is that he left the family home on October 7, 2006. It is common ground that the marriage began to fall apart in the 2000's. However, while the defendant says that they began to live separate and apart in 2002, this is denied by the claimant who says that they separated in 2006 after the defendant's note to him that his belongings are in the garage and so he need not enter the house. He says he left, upon getting that note and has not returned there to live. I am prepared to accept the claimant's evidence that the separation was on October 7, 2006, when he left the family home. Not only was it not put to him in cross examination that the separation was in 2002 and not 2006, in the defendant's statement to the police she said that between 2005 and 2008, she and the claimant started to have disagreement which led to their divorce and that in 2005, they had agreed that the claimant would value the motor car and pay her 50% of its value. I therefore find

that it is more probable than not, that the separation was in fact 2006 as contended by the claimant.

[67] In 2006, the family home, clearly had a garage, as the defendant's note directed the claimant there for his belongings. It is of note, that the defendant does not give any evidence of the nature of the improvements which she made after the parties separated, but the interested party does. He says these improvements were: the construction of a perimeter wall, the paving of the driveway, a retaining wall in the front, finishing the walls providing doors for the bedroom and constructing a walkway. The claimant's evidence is that when he left on October 7, 2006, the construction of the family home, which was a concrete structure, was completed. This was a three-bedroom house. The defendant claims that the home was unfinished and only had two bedrooms, but the improvements alleged by the interested party do not include an additional bedroom. In the final analysis, therefore, I prefer the evidence of the claimant as to the status of the family home on October 7,2006 but am prepared to find that it did not include the improvements referred to by the interested party, as the documents exhibited by the defendant show that she obtained loans for home improvement after the defendant left in October 2006. I therefore find, that on October 7, 2006, the family home was a three-bedroom concrete dwelling house with a garage but without a perimeter wall, a paved driveway, a retaining wall in the front, finished walls, doors for the bedrooms and a walkway.

The pleadings in relation to fraud

[68] To properly seek the remedies pleaded in the particulars of claim which relate to the allegation of fraud, the claimant ought to have pleaded them in the claim form. This was not done. The course open to the claimant was an application to amend the claim form to reflect these additional remedies, when it became apparent that the defendant had obtained a certificate of title for the property. I, therefore, will not have any regard to those allegations in the particulars of claim or the evidence in relation to them. Although there was no prayer seeking costs in the claim form, the

claimant is the successful party in these proceedings and therefore, based on the general rule that the successful party should have his costs, the claimant will have his costs.

[69] Having found however that: a) there was no agreement for the claimant to give up his interest in the family home as alleged by the defendant ; b) the information in the defendant's declaration for first certificate of title about her being solely in possession of the property was not true, and that; c) the Consent of Nominee document to support that application was not signed by the claimant; it follows, and I therefore find, that the Certificate of Title for the property issued in the sole name of the defendant ought to be cancelled and a new certificate of title issued in the joint names of the clamant and the defendant.

Orders

[70] In the result, I make the following declarations and orders:

a) It is declared that All That Parcel of land situated at Church Road, Bog Walk , currently contained in Certificate of Title registered at Volume 1493 Folio 587 of the Register Book of Titles, formerly contained in Deed of Conveyance dated the 24th August 1995 and Recorded at the Registrar General's Department at LNS 4822 Folio 213 is the family home of the claimant and the defendant.

b) It is declared that the claimant is entitled to 50% interest in All That Parcel of land situated at Church Road, Bog Walk, currently contained in Certificate of Title registered at Volume 1493 Folio 587 of the Register Book of Titles, formerly contained in Deed of Conveyance dated the 24th August 1995 and Recorded at the Registrar General's Department at LNS 4822 Folio 213.

c) The Registrar of Titles is to cancel Certificate of Title registered at Volume 1493 Folio 587 of the Register Book of Titles and issue a certificate of title in the joint names of the claimant and the defendant.

d) The property is to be valued by Messrs. C.D. Alexander Realty Company Limited or Messrs. D.C. Tavares Finson Realty Company Limited. The claimant's 50 % interest is to be valued as of October 7, 2006, on the basis of the family home being a three-bedroom concrete dwelling house with a garage but without a perimeter wall, a paved driveway , a retaining wall in the front, finished walls , doors for the bedroom and a walkway .

e) The property is to be sold by private treaty within 120 days of this order, with the defendant having the first right of option to purchase the claimant's interest in it. In default of the said property being sold by private treaty, it is to be sold by public auction.

f) Messrs. Kinghorn and Kinghorn, Attorneys-at-law are authorised to have carriage of sale of the said sale.

g) The defendant is to execute all and any relevant documents for the sale and/or transferring of the said property as is needed to facilitate effect being given to this order.

h) Should either the claimant or the defendant fail to comply with the order of this court to execute any document necessary to give effect to this order, the Registrar of the Supreme Court is empowered to sign all such documents.

i) Costs to the claimant to be agreed or taxed.

j) Liberty to apply.

A Jarrett

Puisne Judge