[2014] JMSC Civ. 149

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

FAMILY DIVISION

CLAIM NO. M00497/2010

BETWEEN	**VALLEN DONOVAN HENDRICKS**	**PETITIONER/RESPONDENT**
AND	**PAULINE PAULA HENDRICKS**	**RESPONDENT/APPLICANT**.

Ms Danielle Chai instructed by Samuda and Johnson for Respondent/Applicant

Mrs Indira Persaud instructed by Norman Manley Law School Legal Aid Clinic for Petitioner/Respondent.

Application for maintenance of child of marriage – Maintenance Act – Principles – Application for extension of time – Principles – Property (Right of Spouses) Act – Application for entitlement to share in property – Family Home – Resulting in trust/Constructive Trust – Principle

IN CHAMBERS

Heard on: May 13, 2013 and 9th October, 2014

CORAM: MORRISON, J.

[1] The case at bar is one that is fact-sensitive. Whereas counsel was instrumental in filling the breach created by my misplaced notes of evidence, I regret that owing to

the press of myriad inconveniences the timely delivery of this judgment has been compromised. It is due in no small measure to the recent location of the said notes which, I remind, is the official record. As such I feel obliged to ask for the counsels' forbearance in the face of their understandable anxiety.

[2] On the 26th day of March 2005 the Petitioner/Respondent, a bachelor, was lawfully married to the Respondent/Applicant, a divorced person. (Hereafter referred to as "Respondent" and "Applicant", respectively).

[3] According to the Petition for Dissolution of Marriage, "The Petition", the married couple lived as man and wife in Jamaica at 96 Cumberland Way, Gregory Park in the parish of Saint Catherine. The property has now spawned and sparked a dispute as to each spouse's entitlement thereto. More on that later.

[4] The marriage, according to the Petition, has produced one relevant child, Xavier Hendricks who was born on the 23rd day of August 1991, some fourteen days adrift of the date of the marriage. This relevant child of the marriage is also the subject of an application for maintenance by the Applicant. According to the Petition the marriage has suffered irretrievable breakdown three years into its solemnization. A decree nisi, even up to the point of the filing of the Notice of Application for Court Orders, had not been granted.

[5] As to the latter it was filed on May 20, 2011 by the Applicant who has asked this Court to grant certain other orders. I now set out the sought-after orders.

[6] First, that the Petitioner be ordered to pay maintenance towards the education, welfare and upkeep of this child.

[7] Second, a declaration that the Respondent is entitled to a one half share in the family home at 961 Cumberland Way, Gregory Park, in the parish of Saint Catherine.

[8] Third, that the Applicant be given permission to apply for an order for division of matrimonial property under the Property (Right of Spouses) Act (PROSA).

[9] Fourth, that the family home at 961 Cumberland Way, be sold and the proceeds of sale distributed equally between the parties.

[10] Fifth, such further and other relief as the Court deems just.

[11] A number of bases were advanced in contemplation of the desired orders:

[12] Reliance on the assertion that the child of the marriage is enrolled in a tertiary institution at which he is undertaking a course of training and as such he requires reasonable maintenance; that the family home is in the sole name of the Petitioner despite the fact the Respondent made significant contributions thereto; that twelve months have elapsed since termination of cohabitation between the parties; and, that the Applicant and Respondent have ceased cohabitation and it is desirous that the property be divided between them.

BACKGROUND FACTS

[13] The Respondent and the Applicant were married on the 26th day of March 2005. Prior to their marriage the Applicant had been married to a Mr Pennicooke in the United States of America. He later died. During the currency of that marriage the Respondent was adulterously accommodated by the Applicant who had remarried a Mr Clarke.

[14] Notwithstanding that latter fact she continued her liaison with the intervenient Respondent. That last marriage also failed. During the course and duration of both marriages the Applicant categorically asserts that she sent monies to the Respondent which the latter denies. The matter of proof being in issue, I propose to enlarge on that aspect later. In actuality, avouches the irrepressible Applicant, she not only contributed to the deposit on the Cumberland house but also sent approximately US$40,000.00 to finance the expansion of the said house, that is to say, to buy steel, cement, tiles and other building materials. The above expenditures signalled and is referrable to the common intention of them both that the house was to be theirs and that the Applicant was to return to Jamaica to live with the Respondent in their joint acquisition.

<u>THE AFFADIVIT EVIDENCE</u>

[15] The Applicant's evidence is contained in three affidavits sworn to on May 10, 2011, December 27, 2012 and February 26, 2013 while those of the Respondent's were sworn to on March 28, 2012 and March 18, 2013.

[16] According to the Applicant, since the birth of the relevant child, Xavier Hendricks, on August 23, 1991, the Respondent has not contributed "a cent towards his education, upbringing, maintenance, medical care or otherwise and I have to foot the expenses". That being the case, she depones, "I had to work two jobs while he was going to school". She then itemises Xavier's living expenses which comprisehealth insurance, dental care, optical, clothing, lunch money, groceries and social life as costing approximately US$2,391.00 per month. Added to this is the fact that "Xavier is currently enrolled in Sheridan Vocational Technical School. I have to pay for all of his expenses

with no assistance from his father". As to the latter assertion, she exhibits from Sheridan Technical Center, a letter of Verification of Enrollment dated May 19, 2011.

[17] The ability of the Respondent to assist with Xavier's expenses is set out in general terms: "I know that the Petitioner receives a monthly pension, collects rent from two tenants and works as a furniture maker. He makes and sells bed heads at a cost of $70,000.00 per bed head".

[18] Moving on to her claim for a share in the matrimonial home, the Applicant depones that she "expended significant amounts of money assisting him to build the family home at 961 Cumberland Way, Gregory Park in the parish of Saint Catherine". She did so both before and during the marriage. In total, she avers, she sent the Respondent approximately US$40,000.00. The Respondent vicariously benefited from her largess due to the fact of her solely maintaining herself and Xavier "which allowed him to use his money to build the house".

[19] As proof of her significant contribution towards the construction of the upper floor of the house, the roof, doors and grilling, the Applicant tendered from Western Union, a money transfer establishment, a 'confirmation of money transfer'from that entity which shows at total of US$1,000.00 for two transactions in May and June 2005 as being sent to Vallen Hendricks; US$100.00 as being sent to Vallen Hendricks in July 2004; Bank of America December 2008 statement; Invoice Viewer dated March 2005; receipt from Negril Pharmacy date February 2007; and receipt from Constantine Wood Center for transaction dated December 2008.

[20] In deflection, the Respondent challenged the Applicant to prove her assertions. Without delving into thoroughgoing point counterpoint traverse the Respondent countermined that without the aid of any other he acquired his house in 1995 and that the mortgage was discharged over an 8 year period before his retirement. He categorically asserts that the Applicant: …"did not have to and did not provide any financial assistance. That she contributed a door worth J$700.00 but did not expend significant amounts of money in assisting me with the building of my home at 961 Cumberland Way, Gregory Park, in the parish of Saint Catherine before and during the marriage".

[21] In the point of fact, asserts the Respondent, concerning the assertion monetary contribution by the Applicant, "…I borrowed US$1,000.00 from the Applicant, after we got married in 2005. I offered to reimburse her and she told me to the keep the money. At the time the exchange rate was roughly US$1 to J$54".

[22] While agreeing that the Applicant sent monies to him through Western Union, the Respondent, departed from this assertion of the Applicant in maintaining that the monies that he received were for on-sending to the Applicant's niece and in respect of work which he did on the Applicant's property in Seaview Gardens, Saint Andrew.

[23] Yes, he agrees, that he did receive from the Applicant a stove and refrigerator that was intended for the Applicant's mother. However, he intimated his fears to the Applicant of their being damaged by other family members which caused her to disband her plans in favour of the Respondent keeping the new appliances and transmitting his used equivalent ones to the Applicant's mother. He is prepared to return the said items

to the Applicant. He is also prepared to return the living room suite, to her which she had bought and about which she depones.

[24] Save that two subsequent affidavits were sworn to and filed by the affiants nothing of probative evidential import was forthcoming.

THE SUBMISSIONS

[25] The Applicant submits that on the facts and relevant legislation she is entitled to a one half share of 961 Cumberland Way, Gregory Park, in the parish of Saint Catherine it being the family home of the parties. Alternatively, she asks that should the Court be not inclined to agree that the 'family home' as is defined in PROSA then the court may make a finding under the equitable principles of either a Resulting Trust or Constructive Trust.

26] As to maintenance for Xavier, the Applicant submits that in spite of the fact that Xavier is no longer a minor, "it would be unconscionable for the Court not to make an order for maintenance in light of "… certain compelling facts, namely that:

a) The Respondent/Applicant was maintained Xavier on her own for his entire life;
b) Xavier is currently enrolled in a course of education or training;
c) Xavier is still financially dependent on the Respondent;
d) The Petitioner is in a position to assist his son though he is a Pensioner works as a Cabinet Maker and also collects rent from several tenants. He can afford to pay the paltry sum of UD$100.00 per month".

[27] The list of authorities being relied on by the Applicant include the following first instance cases:

1. Claim No. 2009 HCV 03221 **Mesquita v Allen**
2. Claim No. 2007 HCV 0327 **Stewart v Stewart**
3. Claim No. 2007 HCV 3700 **Murray v Murray**
4. Claim No. 2006 HCV 0864 **Plummer v Plummer**
5. Claim No. 2004 HCV 723 **Findlay v Findlay**

[28] It will suffice to say here and now that the Respondent's submissions are to the contrary comprising asthey do a wholesale repudiation of the Claimant's submissions and arguments. He has recruited the undermentioned authorities in deflection of the Claimant's Claim:

a) Claim No. M03G53/2007 **Brooks v Brooks**
b) Claim No. 2004 HCV 723 **Findlay v Findlay**
c) **Gissing v Gissing** (1970) 2 ALLER 780;
d) **Grant v Edwards** (1986) 2 ALLER 426;
e) **Azan v Azan**
f) Claim No. 2006 HCV 03158 **Graham v graham**
g) SCCA 12/2009 **Brown v Brown**

THE EVIDENCE

[29] For ease of understanding I wish to set down the undisputed facts here and now.

It is only the Respondent's name that appears on the title to the Cumberland property. It was the Respondent who had obtained the mortgage from the National Housing Trust to finance the balance of the purchase price.

[30] As is the wont and custom of these types of cases what is offered to the Court by way of proof is oftentimes only scantling documentary evidence,or none at all.

[31] The current case is no exception. However, the Applicant, in her first affidavit, stated that she sent and spent approximately US$40,000.00 to the Respondent inordertoextend the house at Cumberland Way. In her evidence-in-chief she changed this figure to US$70,000.00. Of note is the fact that one of the annexures to her affidavit is a statement from Western Union which shows that the Applicant sent to the Respondent two separate US$500.00 sums on the 27/5/2005 and on 6/7/2005. Other sums of monies were so sent by the Applicant to the Respondent. However, the Applicant's proof was not forthcoming due to the fact that the policy and practice of Western Union does not allow for the carrying out of any search into a transaction beyond a five year period after its occurrence; those transactional receipts were kept in a bag which was left at the Cumberland property but due to the Respondent's untoward actions she was prevented from retrieving them. Other sums of monies were sent to the Respondent through less than approved legal channels.

[32] The Respondent's answers to all of the above was a total repudiation.

ANALYSIS OF EVIDENCE

[33] I am to say at the very outset that where any conflict on the evidence occurs between the rival claims I prefer and accept the evidence of the Applicant's to that of the

Respondent's. I found the evidence of the Applicant to be much more reliable trustworthy and straightforward when compared to that of the Respondent's. The Respondent was less than veracious in stating that he singlehandedly was able to undertake a costly economic venture having regard to his realistic financial status. No mathematical calculus has as yet been invented to make the addition of the number 2 added to itself not yield a total of four. He was as equally unforthcoming as he was unforthright.

[34] The Applicant's evidence that she gave the Respondent $900.00 towards the deposit and $70,000.00 towards the acquisition of the property though lacking in documentary proof, is believed on the score of credibility vis-à-vis that of the Respondent's. She was involved in the process of purchasing the questionedlot from the outset. She intended to and was led by the Respondent to believe that she was to have a share in it. It will be particularly remembered that the parties began their liaison in 1989 after which the Applicant migrated to the United States of America in 1991 and then got married there to Mr Clarke in 1997. That marriage lasted for 11/2 years during which time the liaison between the Applicant and the Respondent continued. It appears that though while separated from Mr Clarke she returned in 1998 and subsequently divorced Mr Clarke in 2005. Haste itself seamed slow so with promptitude she got married to the Respondent seemingly on the demise of the Clarke-marriage. However, in "speaking prose without realising it" it will become of crucial importance what the Applicant had to say in cross-examination. "During the marriage to the Respondent I visited Jamaica (2) times per year for (2) to (3) weeks stays". This I accept to be the

case. To digress somewhat, the flaming question is, is that sufficient so as to constitute the questioned lot as the family home? More on that later.

[35] Returning to the Respondent's evidence, it was as such that he spoke of "…we paid the closing cost and the mortgage". As if caught in a web of his own weaving, in another breath he says, "I purchased the Cumberland property in October 1990". "It was I alone who paid the closing cost of $620.00". The Freudian slip "we" which had now changed into "I" rather betrays any tendentious claim on his part of being the lone financier of the adventure. Further, the Respondent's characterisation of the Western Union transactions as being loans to him from the Applicant is patently and palpably a failed attempt to obscure the true nature of those transactions. Furthermore, the evidence of the Applicant's witnesses, Mr Richard Hodelin and Mr Michael Bernard, which this court accepts to be truthful, unmasks and sets at nought the Respondent's assertion that the monies he received at the hands of the Applicant were for transmission to the Applicant's niece.

I am to say here that no multiplication of the instances where the Respondent was caught out being unveracious, and thus shown to be incapable of belief, will serve any further useful purpose. The balance of credibility favours the Applicant, preponderantly.

[36] Having determined that the Respondent is an unveracious witness it has to be said that the Applicant's vacillation between US$40,000.00 and US$70,000.00 as being monies remitted to the Respondent and the surreptitious means of transmission of other sums of money to the Respondent by the Applicant, invites uncertainty as to the actual sums of monies that were sent to the Respondent. Nevertheless, I am aware that the

court must do its best in balancing the justice of the case, which I shall now attempt to do.

THE ISSUES

[37] The issues as I see them are –

a) Whether an extension of time should be granted to the Applicant under "**PROSA**";
b) Whether the Applicant is entitled to a one half share in the Cumberland Way house under "**PROSA**";
c) If the answers to "a" and "b" above are no, whether recourse should be had to the equitable principles of resulting trust or constructive trust; and
d) Whether the Respondent should be ordered to pay maintenance for Xavier Hendricks.

THE LAW

[38] Let me now mount the facts against the dictates of the law. Before I do so I shall here say that the absence of any sufficient documentary proof will warrant that I employ the best evidence of which the case permits. That I do.

The Property (Rights of Spouses) Act, "**PROSA**" is the relevant law as to issues a), b) and c). It is a piece of social legislation designed to address spousal inequalities that arise when couples separate after 5 years of cohabitation. It promulgates how spouses' material acquisitions are to be shared at separation.

[39] According to Section 6(i) of **PROSA,** subject to sub section (2) of the said section, each spouse shall be entitled to a one half share of the family home on the occurrence of certain events. They are:-

a) On the grant of a decree of dissolution of a marriage on the termination cohabitation;
b) On the grant of a decree of nullity of marriage;
c) Where the husband and wife have separated and there is no likelihood of reconciliation.

[40] However, says Section 6(2), except where the family home is held by both 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.

[41] Notwithstanding the above, where in the circumstances of any particular case the Court is of the opinion that it would be unreasonable or unjust for each spouse to be entitled to one-half share the family home, the Court may, upon an application by an interested party, make such order as it thinks reasonable taking into consideration such factors as the Court thinks relevant including the following –

a) That the family home was inherited by one spouse
b) That the family 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.

[42] For the purposes of the statue the words “interested party” has assigned to it, inter alia, a spouse. Also, “family home” means 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.

[43] As to the division of property, I now turn to Section 13 for its full weight and purport. It speaks to the time when an application may be made to the Court for division of property.

[44] The circumstances which serve to guide this process are:

a) On the grant of a decree of dissolution of a marriage or termination of cohabitation;
b) On the grant of a decree of nullity of marriage; or
c) Where a husband and wife have separated and there is no reasonable likelihood for reconciliation; or
d) Where one spouse is endangering the property or seriously diminishing its value, by gross mismanagement or by wilful or reckless dissipation of property or earnings.

[45] In the event that an applicant seeks to invoke the provisions of Section 13(i)(a),(b) or (c), such an application "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 application".

[46] In giving effect to Section 13, Section 14 empowers a court to make an order in the terms of Section 6 or Section 7, or, alternatively, subject to Section 17(2) which

speaks to the value of the property being ascertained by deducting from the value of property owned by each spouse.

<u>ISSUE "A" and "B"</u>

[47] In attempting to resolve this issue I shall rely on case law authorities to do so

[48] In **Delkie Allen v Trevor Mesquita** (2011) JMCA36 delivered on 7th October 2011, Harris JA in addressing Section 13(2) of **PROSA** treated with the issue thus: "The learned judge failed to take into account that before a grant of an extension of time can be made leave must be granted. No application was made for leave. Before making the order the learned judge was under an obligation to satisfy herself that she was clothed with jurisdiction to hear and determine the application. There being no evidentiary material before her outlining the reason for the respondent's failure to have made applicationwithin the statutory period, she erred in treating the application as being one for an extension of time to file the claim and ordering that the fixed date claim form should stand".

[49] In **Brown v Brown** (2010) JMCA CIV. 12, Morrison, JA listed, some of the factors to be considered under a Section 13(2) consideration of whether leave should be granted-

a) fairness to the applicant and fairness to the Respondent
b) on a prima facie basis, the merits of the case
c) delay and any prejudice resulting therefrom;and
d) the overriding objectives

[50] Indeed, in the **Allen's** case *supra*, Harris, JA said that "the absence of good reason is not in itself sufficient to justify a refusal of an application to extend time, however, some reason must be advanced". The reasons for a tardy application according to Harris, JA, are fundamental in determining whether an applicant had explained the delay in not acting timeously.

[51] In the instant case the Respondent's Notice of Application for Court Orders sought among other orders, "That the Applicant be given permission to apply for an order be given permission to apply for an order for division of matrimonial property …", under **PROSA.**

[52] According to the affidavit of the Applicant, filed in support of the Application, she did not apply for division of the family twelve months following the termination of cohabitation because she "… thought the matter could be resolved amicably but I know that that is not a possibility".

[53] Here the Applicant has sought the leave of the Court to apply for an order for division of property to the extent that it is supported by an affidavit. However, the Application seeking of the leave of the Court and the substantive determination for, "A declaration that the Respondent is entitled to one-half share in the family home…" have been merged.

[54] In consolidated appeals of **Angela Bryan-Saddler v Samuel Oliver_SADDLER**, SCCA No. 57/2009 and **Fitzgerald Hoilette v Valda Hoilette and_Davian hoilette**, SCCA No. 137/2011, Phillips, JA with whom Harris, P (AG) and Brooks, JA agreed concerned actions filed in the Supreme Court wherein the Applicant's claimed an

entitlement to pursue their claims under ("**PROSA**") in order to obtain benefits thereunder as well as to secure declarations of their legal and beneficial interests in the division of the family home and other property. Both applications were refused by the court. However, I shall here, in the main confine my attention to the **Hoilette** case.

[55] There, upon a preliminary objection being taken in the court of first instance, when the Fixed Date Claim Form came on for hearing, the judge opined that he had no jurisdiction to hear the claim. The rationale offered for declining to do so was that the Claim Form, which purported to include a claim under "**PROSA**", had been amended out of time without the Court's permission or, indeed the granting by the court of an extension of time within which to do so. Accordingly, the judge ruled that the Fixed Date Claim Form was invalid and as such could not be corrected by a subsequent order. Notwithstanding, he intimated that the Claimant could, at that stage, elect to make an application for leave to extend time and for the grant of an extension of time to file the claim under **PROSA**.

[56] In bringing to bear on the outcome of both appeals Phillips, JA, asked herself the following:

a) Does **PROSA** have retrospective effect?
b) Is a claim form valid if (i) filed outside the twelve (12) month period stated in Section 13(2) of **PROSA** or (ii) filed under a repealed statute.
c) Is leave/permission, together with an extension of time, required prior to the filing of a claim for relief under **PROSA**?

d) Is a claim made under **PROSA** without leave/permission or extension of time irregular and curable by a subsequent application filed pursuant to Section 13(2) of **PROSA**?

e) What, if any, is the effect of the orders made in action prior to the filing of the Application under Section 13(2) of **PROSA**?

In reference to the posited issues Phillips, JA considered it appropriate to look at the true and proper construction of Sections 2,3,4,6,7,14 and 24 of PROSA and, (3). That consideration is of course relevant to the issues raised in the instant case.

For purposes I shall here confine my focus on (b)(i), (c) and (d).

Phillips, JA after an examination of the relevant Act and case law authorities from our own jurisdiction and others, distilled certain principles of law –

"1. Section 13 of PROSA does not go to jurisdiction but is a procedural section setting out the process to access the Court and the remedies available. Jurisdiction is conferred by Sections 6, 7 and 14.

2. As the provision of Section 13 is procedural any irregularity can be remedied by a subsequent order, that is, *nune pro tunc*, in the interests of justice, particularly as the grant of the order is under the court's control through the exercise of its discretion.

3. The Claims could be considered to the irregular or, at worst, in a state of suspended validity, until, until the application for extension of time was granted.

4. The specific words of the statute are important and must be perused with care. The legislature must be clear in its intent and, must state specifically if leave is required; if leave is a condition precedent; and, what, if any, is the consequence of the failure to obtain it if so required.

5. There are no express words used in PROSA requiring that leave be obtained.

6. The cases support the principle that even if leave was specifically required before an action is brought, if the leave has not been obtained the omission is not a fundamental irregularity and can be cured nunc pro tunc.

7. Section 13 of PROSA focusses on an extension of time as the court may allow, and not on leave.

8. Section 13 of PROSA was not promulgated to create a limitation bar.

9. If the claim is filed outside the twelve (12) month period set out in the statute, extension of time must be obtained from the court for the matter to proceed, but no leave is required and so no application for leave and extension is required.

10. There are no words in the statute indicating that the application for extension of time is filed, if the claim form is filed outside the time limited by **PROSA**. There is no indication that the application for extension cannot be filed after the claim is filed, and the order granted *nune pro tunc.*”

[57] In keeping with the **Saddler** and **Hoilette** judgments I now turn to Part 76 of the CPR entitled Matrimonial Proceedings. In the definition section of Rule 76.2, matrimonial proceedings means, inter alia, proceedings for custody, maintenance, education of and access to children as well as proceedings for division of property. Accordingly, Rule 76.4 (5) recognises that, "A petition for a decree of dissolution of marriage… may include a claim for maintenance, custody, education of or access to children, division of property and any other relief relating to matters concerning the marriage…".

[58] It seems then that though, in the current case, the Application for extension of time was filed late, though the Applicant has asked for the Application to be treated as coterminous with the Application for division of property, I too shall say, given that I find favour with the explanation for the delay in applying for an extension of time, and on the basis of the law as is laid down in SADDLER and HOILETTE, nunc pro tunc. In that regard I am to be taken as relying on that part of the Judgment which reads: "The claims could be considered to be irregular or, at worst, in a state of suspended validity, until the application for extension of time was granted".

[59] Having said so, I can find no evidence to upset the presumptive one-half share that Section 6 of **PROSA** sanctions. As to Section 7, I am not of the opinion that it would be unreasonable or unjust for each spouse to be entitled to one- half of the family home.

ISSUE ''C''

[60] Assuming that I am wrong on the basis of my interpretation of the law,I think that my finding of fact that there was an intention on the part of the Respondent for the Applicant to have a share in the property is enough to warrant a consideration of constructive trust principles to see if the Applicant qualifies thereunder.

[61] In **Stack v Dowden** [2007] UKHL 17, it was suggested that where the legal title to the family home was conveyed into joint names, it would be difficult to displace the presumption of a beneficial joint tenancy. However, there was nothing in their Lordships' opinions to suggest that it would be equally difficult to show that an individual has established an interest in a home solely owned by the other.

[62] In determining the beneficial interest in the property, there are two stages that are to be considered. First, the Claimant must establish an interest in the property. Second, the court must ascertain the extent of that interest. Accordingly, where one of the parties is the sole legal owner the Claimant will be required to show that it was the common intention of the parties that each should have a beneficial interest in the property, and that the Claimant has relied upon that common intention to his or her detriment.

[63] The first question to be resolved is, whether there have been, "at any time prior to the acquisition of the disputed property, or exceptionally at some later date … discussions between the parties leading to any agreement or understanding reached between them that the property is to be shared beneficially". – Per Lord Bridge in **Lloyds Bank plc v Rosset** [1991] AC 107 132. What the above statement of law

suggests is the fact that the common intention means a shared intention. Also, it must be an understanding that relates to the ownership of the property.

[64] However, a common intention by itself is not enough as equity will not assist a volunteer. It must be shown that the Claimant acted to her detriment or, in some other way, significantly altered her position in reliance on the common intention. In cases where the Claimant is relying on an expressed common intention the detrimental reliance must be established as a separate element.

[65] In the instant case the evidence of the Applicant, which I accept as being truthful, reliable and credible, establishes that she had to work two to three jobs and refinance her house in the United States of America twice so as to be able to send the money to the Respondent in Jamaica towards the Cumberland Way house. Also, on the evidence, the Respondent promised the Applicant that he was creating their "dream house" and thereby needed money from her in order to expand the said house. Further, there is credible evidence that the parties' intention was that the Applicant would return to Jamaica to live when the house was completed. These and other acts on the part of the Applicant compels the view that she would not have put her shoulders to the wheel of expenditure and sacrifice but for the expectation of an interest in the property.

[66] Applying the principles of equity to the facts adumbrated above I am to say that by way of constructive trust principles the Applicant is entitled to a share in the disputed property.

HOW SHOULD THE APPLICANT'S INTEREST BE QUANTIFIED?

[67] In **Oxley v Hiscock** [2004] 3WLR715, Chadwick, LJ opined that such a person's entitlement to a share in the property is what the court considers fair having regard to the whole course of dealing between them in relation to the property. Elsewhere, it has been said that the task of the court is to undertake a survey of the whole course of dealing between the parties and in so doing to take an account of all conduct which throws light on the question of what shares were intended: See Waite LJ in **Midland Bank v Cooke** [1995] 2 F.L.R. 915 at 926.

[68] Again in applying the immediate principles of equity sketched above, I am to say that the applicant's active, vigorous and instrumental support in relation to the acquisition and improvement of the property throughout the whole course of dealings with same, entitles her to a share thereof. Her conduct throughout the entire dealings with the property, "from pillar to post", throws its recumbent light of what shares were intended b the parties. I think that based on the applicant's undoubted financial contributions and other act which are referable to the property, on a balance of probabilities, she is eminently entitled to a none-half share in the property and I so rule.

ISSUE D

[69] Plainly, Xavier Hendricks, who was born on the 23rd day of August 1991 would no longer have been a minor at the time of the making of this application for maintenance, that is May 20, 2011. The Maintenance Act, in particular, Section 8(1) mandates that., "every parent has an obligation to maintain the parent's unmarried child who –

a) is a minor; or

b) is in need f such maintenance by reason of physical or mental infirmity or disability ...”

[70] From the evidence, it appears that though the Respondent was delinquent in his maintenance of Zavier, to the extent where he was characterised by the Applicant as “a deadbeat” parent, that is not enough ground and support the application for maintenance. Certainly, no evidence was led to suggest that Zavier was in need of such maintenance by reason of physical or mental infirmity or disability.

[71] Accordingly, I am bound to say that the application for maintenance fails.

[72] In the upshot, I grant the following declarations as per the Notice of Application for Court Orders, that is to say, paragraphs 2,3 and 4. The declaration sought as to paragraph 1, as already mentioned, is denied

[73] It is Hereby Ordered And Declared That: -

1. The Applicant’s Application for maintenance of Xavier Hendricks is denied.

2. The Applicant is granted an extension of time to apply for an order for division of matrimonial property under the Property (Rights of Spouses) Act.

3. The Applicant Pauline Hendricks is entitled to a one-half share in the family home at 961 Cumberland Way, Gregory Park in the parish of St. Catherine registered at Volume 1214 Folio 100.

4. A valuation of the property at 961 Cumberland Way, Gregory Park in the parish of St. Catherine registered at Volume 1214 Folio 100 is to be done by a valuator to be agreed between the parties with the cost of the valuation to be bourne equally by the parties. If the parties fail to agree to a valuator within two (2) weeks of the date hereof, the Registrar of the Supreme Court is empowered to appoint one.

5. The Respondent Vallen Donovan Hendricks is given the first option to purchase the Applicant's share of the property; such right to be exercised within ninety (90) days of the receipt of the valuation report by other parties.

6. If the respondent exercises his option to purchase, the costs of the transfer/sale including stamp duty, registration fees and Attorney's fees shall be bourne equally by both parties. Transfer tax on the transaction is hereby waived by virtue of section 9 of the property (right of Spouses) Act.

7. Should the Respondent not exercise his option to purchase within the time allotted, the property shall be placed on the open market for sale by private treaty or public auction and the net proceeds of sale be divided equally between the parties.

8. The Registrar of the Supreme Court is empowered to sign any or all documents to give effect to any or all of the order made herein if either of

the parties is unwilling or unable to do so within fourteen (14) days of being requested to do so by the relevant Attorney-at-Law.