[2014] JMSC Civ. 110

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2011HCV00009

BETWEEN	**PANSY O'CONNOR REID**	**CLAIMANT**
A N D	**EVAN REID**	**DEFENDANT**

Miss Saverna Chambers for the Claimant.

Miss Deneve Barnett instructed by Brown & Shaw for the Defendant.

HEARD ON: 19th May 2014, 6th June 2014 and 17th July 2014

Matrimonial Property-Dissolution of Marriage-Property (Rights of Spouses) Act-2004 whether residence a "family home" – whether Claimant entitled to sixty percent share – whether contribution is enough to displace the equal share rule – whether shop appurtenant to family home and used wholly or mainly for purposes of household- Declaration as to share in other property.

CORAM: Dunbar-Green, J. (Ag.)

[1] By way of Fixed Date Claim Form filed 3rd January, 2011, the claimant, Pansy O'Connor-Reid, seeks against the defendant, her former husband, Evan Reid, the following declarations and orders, inter-alia:

I. sixty percent (60%) beneficial interest in the family home situated in Little London, in the parish of Westmoreland;

II. the family home be sold and the net proceeds of sale be divided in shares of 60%-40%, respectively between the claimant and the defendant;

III. the claimant's Attorney shall have carriage of sale of the family home;

IV. the defendant be restrained from in any way whatsoever preventing the claimant from having access to the family home for the purpose of carrying out the valuation or any act required for the sale of the said family home;

V. the claimant is entitled to fifty percent (50%) interest in the store situated in Little London, Westmoreland;

VI. the claimant is entitled to sixty percent (60%) of the profits earned from E&P Wholesale between 1998 and 2005;

VII. the defendant account for all the profits derived from the business "E & P Wholesale" since its commencement and pay to the claimant her share of the net profits;

VIII. all other proper and necessary accounts and enquiries;

IX. that valuations of the said family home and store be obtained from a reputable valuator to be mutually agreed and the cost of the valuations borne equally by the parties;

X. in the event of the defendant refusing to sign all documents of sale, transfer and any other related documents necessary to give effect to this order within 14 days of the relevant documents being presented to him, the Registrar of the Supreme Court shall be empowered to sign same;

XI. the claimant is entitled to US$21,000.00 which was deposited by her in account # 200507190000354 at the Sav-la-mar branch of the Bank of Nova Scotia;

XII. the claimant is entitled to all the furniture and furnishings in the family home which were purchased by her; and

XIII. the claimant is entitled to the pick-up van, or in the alternative, the defendant is to pay to the claimant the equivalent value of the said motor-van.

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These reliefs are sought under the provisions of the **Property (Rights of Spouses) Act**, 2004 (hereinafter referred to as **PROSA**).

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[2] The claimant has filed four affidavits dated 3rd January 2011, 28th September 2011, 10th October 2011 and 28th October 2013. In response, the defendant has filed

three affidavits dated 30th June 2011, 19th July 2012 and 4th May 2014. Each affiant was cross-examined at the trial.

Factual Background

[3] At the time the parties met, sometime in the 1980s, the defendant was married to one Willie Pearl from whom he was subsequently divorced in 1987. The parties lived together prior to the 1987 divorce but there is no agreement as to whether this began in 1983 or 1986. However, during the relationship, they had lived at 12130 South Justine, Chicago, United States of America (South Justine), a property which had been purchased in the names of the claimant and her brother, as joint tenants. Sometime in 1993, five years subsequent to the defendant's divorce in 1987), his name was substituted on the title for that of his brother-in-law.

[4] The defendant's explanation was that he had helped with the deposit by paying US$2000 or US$2500 on the property but by agreement with the claimant his name had been omitted from the title. This, he said, was done because at the time of purchase he was pursuing a divorce and did not want his then wife to know that he had interest in a second house, for fear that it would limit any settlement to be received from the then matrimonial home.

[5] The claimant denied that the defendant contributed to the purchase of South Justine. She also said that between 1983 and 1986 the defendant had a poor credit rating, was not earning much money and did not contribute to the household expenses or carry out any repairs or maintenance to the property, except for painting.

[6] The claimant deposed that the defendant's name was added to the title because he had complained about not owning any property. Consequently, she refinanced the house, removed her brother's name, and added the defendant's.

[7] The claimant asserted that sometime between 1983 and 1986 she had provided start-up capital for a restaurant, which the defendant managed. She also purchased a Ford motor car for the defendant to use as a taxi.

[8] These claims were denied by the defendant. His evidence was that he had been a full-time air conditioning and heating serviceman and part-time taxi driver, during the period. He claimed to have owned the taxi (a Chevy motorcar), which he bought in 1986 from sums received in the settlement of matrimonial property from his previous marriage. He had also contributed to the household expenses at South Justine, pooled resources with the claimant to open the restaurant and loaned her US$10,000 to purchase other property, a sum which she never repaid. The defendant also claimed that he had made monthly mortgage payments. The claimant did not dispute that the defendant had made some of the mortgage payments but said this was on rare occasions.

[9] Sometime between 1996 and 1997 a house and shop were built on lands in Little London, Westmoreland. It was undisputed that the land had been left to the defendant under a Will. There was also no dispute that the house had been completed after the shop was built. However, there was disagreement as to the parties' involvement in the construction of the buildings.

[10] The Claimant's evidence was that both parties visited Jamaica and agreed to construct the buildings. She said that when the construction of the shop began, she had contributed an initial US$20,000. By the time of completion she had contributed a total of US$300,000 towards the construction.

[11] The claimant also said she had made contributions to stocking the shop, including sending barrels to Jamaica. This amounted to J$200,000 and in excess of US$60,000.

[12] In relation to the house, the claimant said she supplied all the monies to purchase windows, building materials and payment to workmen. She approximated this to be US$200,000. However, the parties jointly purchased doors, tiles, bathroom faucets, cupboards and other furnishings. The defendant also purchased furniture in the USA which he shipped to Jamaica.

[13] In 1998, the defendant moved permanently to Jamaica to live in the house and operate the shop. Prior to doing so, he had removed his name from the title for South Justine. The defendant's evidence was that he had intended by that action to give the claimant that house in exchange for full interest in the Little London property. The claimant denied this and averred that the defendant's name was removed from the title to avoid creditors as he had racked up credit card debts for furniture and shelving for the shop which had been constructed in Jamaica.

[14] Shortly after the defendant's relocation, the parties got married in September 1998, in Jamaica. The defendant remained in Jamaica and the claimant returned to continue working and residing at South Justine in the United States. However, it was her unchallenged evidence that she returned habitually, more than once per year, between 1998 and 2002.

[15] In 2002, the claimant suffered a stroke, sold South Justine and joined the defendant in Jamaica where they both resided at the Little London premises. She testified that most of the proceeds from the sale of South Justine had been given to the defendant. Also, she had extended the house in Little London, entirely at her expense. Further, the parties would, from time to time, travel together to Miami, USA and purchase stock for the shop.

[16] The claimant deposed further that in 2002 she had held a joint business account with the defendant at Jamaica National Building Society, from which he withdrew US$10,000 to purchase a Pick-up van. She also opened a number of bank accounts to

include a foreign exchange account with US$21,000 at the Bank of Nova Scotia, Sav-la-Mar branch. She claimed that the defendant converted those sums to his own benefit.

[17] The claimant also deposed that the defendant controlled the money spent and earned in the business and paid the utility and grocery bills for the house. She received no profits or salary from the store as they had agreed to save the profits toward purchasing a house elsewhere in Westmoreland.

[18] The defendant testified that the construction of both the house and shop was done from his resources and that he had received no help from the claimant. According to him he built the properties in 1997 without the knowledge of the claimant as they were not getting along at the time. He said he had earned US$1000 per week from his taxi business in the USA and had saved those earnings. He had wired monies to a Bank of Nova Scotia account in Jamaica, held jointly with the building contractor, from which the construction costs were debited. He also used his credit cards to purchase furniture and appliances for the house and started the store with US$50,000 which had been the proceeds of the sale of his taxi medallion in the USA.

[19] The defendant accepted that the claimant had contributed on two or three occasions to stocking the shop but this was only in an amount not exceeding US$5,000 and was unsolicited. He had told her not to send further stock because he could acquire cheaper wholesale goods in Jamaica.

[20] The defendant therefore claimed that he was entitled to 100% of the beneficial interest in the house, shop, profits and the Pick-up. The claimant, he said was entitled to only US$12,000 from the Scotia Bank account which held the US$21,000 and furniture and furnishings which she had purchased for the house. He also denied getting any of the proceeds from the sale of South Justine.

[21] The parties separated in 2005 and were divorced on 4th January 2010.

Analysis

[22] Section 2(1) of **PROSA** defines a spouse as including:

> (a) a single woman who has cohabited with a single man as if she were in law his wife for a period of not less than five years;
>
> (b) a single man who has cohabited with a single woman as if he were in law her husband for a period of not less than five years…

In Section 2(2) the terms “single woman” and “single man” include a divorcee.

[23] The undisputed evidence is that the parties met in the 1980s but the defendant did not qualify as a ‘single man’ until 1987 when he was divorced from his former wife, Willie Pearle.

[24] Between 1987 and 1996, the parties lived together in a common law union at South Justine. The parties do not agree on many areas of the evidence concerning this period or any period for that matter, but the Court accepts that they undertook joint-ventures and shared expenses and assets.

[25] On the evidence of both parties, between 1996 and 1998 there were some challenges in the union. However, I have not found that there was any break in the relationship as a consequence of those challenges.

[26] According to the claimant she and the defendant visited Jamaica during those years and they discussed resettling in Little London. Although the defendant challenged that evidence, under cross-examination he admitted that the parties had been together “since 1986 and separated in 2005”.

[27] I therefore find that for the period 1987 to 1996 they were spouses in accordance with the provisions of **PROSA** and continued as such up to 1998 when they solemnized

the union in Jamaica. I also find that at the time the house and shop were under construction, the parties were spouses.

Is the home in Little London the "family home"?

[28] Section 2 of **PROSA**, in reference to "family home", states:

> "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 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 a donor who intended that spouse alone to benefit".

[29] A pre-condition for any dwelling house to satisfy the requirements of this definition is that it must be "wholly owned by either or both of the spouses". There is evidence, which I accept, that the land on which the house and shop were built was a gift to the defendant. But there is no evidence that the giver intended it for the sole use of the defendant.

[30] There is disagreement as to whether the defendant has a registered title for the property. However, the unchallenged evidence is that he got the land under his uncle's Will. There is no evidence whether the Will has been probated but this is not fatal for reason that there is proven occupation and possession of the land in excess of twelve years. At the time of the hearing of this matter, the defendant had still been in occupation of the land and there was no evidence of any challenge to ownership. Also, the claimant's unchallenged evidence is that since the 1980s the defendant told her that he had been given this land by his uncle and had planted coconut trees on it over the years.

[31] Since there is no evidence of a challenge to ownership, and there is proven undisturbed occupation of the land for in excess of twelve (12) years, I find sufficient evidence of a possessory title to the land being vested in the defendant as sole proprietor (See **Powell v Powell [2014] JMCA Civ 11**, paragraph 19 per Brooks JA).

[32] I also find that the house and the shop, having been built on the land, have become a part of the land, that is, attached to the land, immovable **(Minshall v Lloyd (1837) 2 M & W 450** at page **459; Powell v Powell [2014] JMCA Civ 11**, paragraph 3].

[33] It is apparent that at the time the house was constructed the parties were in a common law relationship and shortly thereafter, they were married. The evidence reveals that at the time of the marriage in 1998, only the defendant was permanently residing in Jamaica. However, that does not preclude a determination that the family home was now the property in Little London. It is unchallenged evidence that the claimant travelled back and forth between Jamaica and the USA more than once per year between 1998 and 2002. She also helped to furnish the house and eventually lived in it permanently between 2002 and 2005 when the parties separated.

[34] The foregoing evidence establishes to my mind, as Phillips JA found in **Dalfel Weir v Beverley Tree [2014]JMCA Civ 12** at paragraph 42, that the parties "had so arranged their lives so that the [claimant] would habitually and from time to time return to Jamaica and spend weeks there." I find that the house in Little London was "used habitually" by the spouses as "the only or principal" family residence between 1998 and 2005. I also find, as a symbol of this intention, that the claimant eventually sold South Justine and shipped her furniture to Jamaica.

[35] I adopt the dictum of Sykes, J in **Peaches Stewart v Rupert Stewart, Claim No HCV 0327/2007** delivered 6th November 2007, at paragraph 23:

> It should be noted that the adjective *only* and *principal* are ordinary English words and there is nothing in the entire statute that

> suggest that they have some meaning other than the ones commonly attributed to them. *Only* means sole or one. *Principal* means main, most important or foremost. These adjectives modify or in this case, restrict the width of the expression family residence. Indeed even the noun *residence* is qualified by the noun *family* which is functioning as an adjective in the expression *family residence*. Thus it is not any kind of residence but the property must be the *family residence*. The noun *residence* means ones permanent or usual abode. Thus *family residence* means the family's permanent or usual abode. Therefore the statutory definition of family home means the permanent or usual abode of the spouses".

[36] I also find, from the defendant's own words, that the Little London house was built in contemplation of marriage or a long lasting union. He said, on being crossed examined, "I expected myself and Miss O'Connor to live together after marriage".

[37] Accordingly, I cannot accept Miss Barnett's submission on the defendant's behalf, that the Little London house is not the *dwelling house* of the parties and ought not to be dealt with in accordance with section 6 of **PROSA**.

[38] This means that the house falls to be considered in accordance with the equal share rule established in section 6 of **PROSA**. Under that rule, each spouse is entitled to one-half, inter-alia, "on the grant of a decree of dissolution of marriage or the termination of cohabitation".

[39] The equal share rule applies unless the claimant can establish that it would be "unreasonable or unjust" for each of the spouses to be entitled to one half of the family home. The relevant portion of section 7 of **PROSA** provides:

> "7. – (i) 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 the family home, the Court may, upon 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 home was already owned by one spouse at the time of the marriage or beginning of cohabitation;
> (c).that the marriage is of short duration;

Should the Equal Share Rule be Dispensed With?

[40] The claimant has asked the Court to vary the equal share rule and award her sixty percent interest in the family home on the basis of her contribution and the conduct of the parties. On the contrary, the defendant says that he is entitled to one hundred percent beneficial interest in the family residence. Both parties are therefore asking the Court to invoke it's discretionary powers under section 7 of **PROSA**.

[41] It falls to be decided whether any of the section 7 factors would avail either party. I have already decided that the family home has not been inherited by the defendant. I have also found that the family home was not already owned by the defendant at the time of marriage or at the beginning of cohabitation. The marriage between the parties lasted for seven years and prior to that they were involved in a common law union for at least ten years. This could not be considered a marriage of short duration by any measure.

[42] The claimant has relied on her alleged contributions to the construction and furnishing of the family home as well as the common intention of the parties to make Little London house their family home. The defendant also relies on his contributions to the family home and the alleged divestment of his interest in South Justine. Coupled

with this, he argues, was the sale of South Justine for US$105,000 which he alleged the claimant did not share with him.

[43] The factors set out in section 7 are not exhaustive and to that extent the Court can consider contributions made and conduct of the parties. However, contribution by itself, will not qualify as a factor for consideration and the Court should be reluctant to depart from the equal sharing of the family home (**Carol Stewart v Lauriston Stewart [2013]JMCA Civ 47).**

[44] In **Carol Stewart v Lauriston Stewart (supra) ,** the Court of appeal awarded Mrs. Stewart a fifty percent beneficial interest in the family home. It was considered immaterial that Mr. Stewart had made substantially larger contributions. I also find persuasive, the dictum of McDonald-Bishop J, at paragraph 15 in **Graham v Graham Claim No. 2006 HCV 03158** (delivered 8th April 2008) she states:

> By virtue of the statutory rule, the claimant [applying under Section 13 of the Act] would, without more, be entitled to [a] 50% share in the family home…and this is regardless of the fact that the defendant is [the] sole legal and beneficial owner. It is recognized that the legal 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 the 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 McFarlane [2006] 2 A C 618, 633.**

This is consistent with Brooks JA's observation that "…the contribution [that] a spouse makes to the marriage entitles that spouse to an equal interest in the family home." (**Carol Stewart**, paragraph 20)

[45] The instant case suffers from a paucity of documentary or other supporting evidence, other than a few bank records of financial transactions in 1998 and beyond. However, it is patently clear that the parties supported each other in bringing the family home to fruition.

[46] Brooks, JA in **Carol Stewart, para. 20 (supra),** was skeptical of the "tally sheet" approach in respect of spouses' contribution to the family home. He cited with approval, Lord Nicholls of **Birkenhead in Jones v Kermott, para. 19-22. At paragraph 22** Lord Nicholls said:

> The notion that in a trusting relationship the parties do not hold each other to account financially is underpinned by the practical difficulty, in many cases, of taking any such account perhaps after 20 years or more of the ups and downs of living together as an unmarried couple. That is the second reason for caution before going to law in order to displace the presumption of beneficial joint tenancy…

[47] In the instant case, even were the Court so inclined, it could not apply a "tally sheet" approach. The claimant, in particular, did not account for any source of the vast sums of money which she claimed had been given to the defendant. The parties were also wide apart on the cost of construction, and in the absence of any documentary proof, both claims of contribution are unreliable. Moreover, neither party has provided any cogent evidence which satisfies section 7 of **PROSA** and would compel me to exercise the discretion to depart from the 50/50 rule. Accordingly, I find that they are each entitled each to a beneficial interest of 50% in the dwelling house.

[48] I turn now to whether the shop is appurtenant to the dwelling house and used wholly or mainly for the purposes of the household, such that the 50/50 rule would also apply

Is the 50/50 rule applicable to the shop?

[49] The shop must not only be "appurtenant" to the dwelling house but must be used "wholly or mainly for the purposes of the household." The definition of appurtenant which I will apply is articulated by Speight J, **in Jorna v Jorna (1979) 2 M PC 104, 107**:

> "Appurtenant" does not seem to lend itself to rigid definition but instead seems to involve a value judgment based on a number of factors. These factors include the extent to which there is an absence of any physical division such as a fence or wall between the dwelling house and the extras in question, whether the dwelling house and the extras were acquired at the same time and for the same general purpose, whether they are physically contiguous or at least in close proximity to each other, whether they are laid out in a manner suggesting a physical relationship with each other, the previous history of the two properties as separate or combined, the general attitude of the parties to the two properties as separate or combined, whether the extras have had any use or are likely to have any use for any purposes other than that of the household, and whether the extras are on the same certificate of title.

[50] The shop is located on the same land as the residence. However, there is no evidence as to their physical location in relation to each other. What is clear is that the purpose of the shop was to stock goods for sale and it was used accordingly. It could therefore be said to have provided some benefit to the household but could not, in my view, be regarded as "used wholly or mainly for the household." Here, I make a distinction between the use and purpose of the shop vis-à-vis the use of its proceeds.

. [51] In **Jack v Jack [1987] 1 N 2 L R 205**, a two-storey building was the property concerned. The parties had lived in a flat on the upper floor and the other, a self-contained flat on the ground floor, was tenanted. It was held that the upper floor was the family residence/dwelling house and the tenanted flat could not have been said to be used for the purposes of the household merely because the rental from it was used to supplement the family income.

[52] Having found that the shop was not used "wholly or mainly for the purposes of the household" it is irrelevant whether it is appurtenant to the residence since the conjunctive "and" is used in the definition of "family home" as it pertains to 'appurtenance' on the one hand and 'use' on the other. In the circumstances, I have determined that the equal share rule (50/50) does not apply to the shop.

Division of Matrimonial Property other than Family Home

[53] As the shop is considered matrimonial property, it has to be considered along with any other matrimonial property, in accordance with section 14 of **PROSA** which deals with division of matrimonial property other than the family home.

[54] Section 14, states:

> (1) Where under section 13 a spouse applies to the court for 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 an 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 dependent 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 which –

(i) enables the other spouse to acquire qualifications; or

(ii) aids the other spouse in the carrying onof 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 affect of any proposed order upon the earning capacity of either spouse.

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

[55] The claimant's evidence is that she contributed a total of US$300,000 to the construction of the shop, worked in the business and purchased stock from her own resources. She said it was agreed between herself and the defendant that they would operate the shop. She did not support her oral evidence with any documents and the defendant refuted her claim of any contribution, save for "expensive stock" estimated at a value of US$5000.

[56] Should the Court believe that the claimant contributed US$300,000 to construct the shop? Apart from the Court's reservation whether the construction did cost as much, there was no indication of the source of her funds, the frequency with which she contributed, the manner in which payments were made or any notion that she had in mind some target sum based on estimates of expenditure. In the circumstances, the Court finds it difficult to accept that she made the contribution as alleged.

[57] In her Affidavit of 3rd January, 2011 at paragraphs 30-32 she avers that she did not receive any share of the profit from the store. This could not be true, as there is

evidence from both parties that the expenses of the home were paid from the proceeds of the shop, to include utility and grocery bills. Those payments will have to be treated as a benefit to the claimant (see **Boswell v Boswell Claim No. 206/HCV 02453** delivered 31st July 2008).

[58] The claimant also gave evidence that the defendant had been given most of the proceeds of the sale of South Justine. This was denied by the defendant and there is no proof of how or when the alleged hand over of funds occurred. It was also not said when, how much and for what purpose the alleged hand-over took place. The Court cannot therefore take this into consideration as a contribution to the shop. .

[59] The defendant said the construction cost was approximately US$60,000 and this was borne entirely by him. He did identify source of funding as the sale of his medallion, savings from his taxi earnings and credit card loans. However, he provided no supportive evidence of such a payment.

[60] There is evidence of non-monetary contribution in this case. The defendant had interest in the land on which the shop was constructed and this interest existed prior to their union. This interest will have to be taken into consideration in determining the defendant's contribution. It also has to be considered that between 1998 and 2005, the defendant worked in the shop. The claimant also said that she worked in the shop as cashier between 2002 and 2005. Although this was disputed by the defendant, the Court takes note that it had been suggested to the claimant, on cross examination, that the defendant had done more work in the shop than she did. The implication of that suggestion is an acknowledgement that the claimant had in fact also done work in the shop.

[61] I also take into consideration the fact that the union lasted for at least 18 years. This is a considerable period of time and it must have a significant bearing on my determination of the parties' intent to share assets, albeit the parties agreed on very little and were obfuscatory.

[62] There is a lack of any reliable evidence to support each party's direct contribution to the cost of constructing the shop. However, I do not accept the defendant's position that the claimant made little or no contribution. The claimant's history of behaviour must be considered. She is someone who had been involved in business with the defendant when they resided in the USA and after his return to Jamaica she remained very active in their financial affairs, evidenced by the joint bank accounts she opened in their names. Her previous joint involvement in business with the defendant and involvement in their financial affairs lead me to conclude, on a balance of probabilities, that she was more likely than not to have made some contribution to the construction of the shop.

[63] Therefore, taking also into consideration that the land was contributed by the defendant, that one or both parties contributed to the construction cost, the defendant's undisputed contribution by his work in the shop during the marriage and the length of the marriage, I find the claimant's entitlement to be 25% interest in the shop.

[64] I find that the defendant equivocated on the issue of stocks for the store. In his Affidavit of 30th June 2011 he stated in paragraph 28 "I alone built and stocked the store." In a subsequent Affidavit of 19th July 2012 he admitted that the claimant made contributions to the stock, albeit only in the amount of US$5000 on two or three occasions. However, the claimant alleged that she had paid for and shipped stock over the years, including when they were both shopping overseas. This she valued at some US$60,000. Irrespective of the divergence of the accounts, I find the claimant to be more believable, albeit she provided no proof of the amount she claimed to have expended. Her contribution will, however, be discounted for the benefit derived from proceeds of the shop, as a member of the household. In considering the respective shares of the parties, the Court also places great weight on the fact that the defendant worked consistently and was in charge of the business between 1998 and 2005. There is also unchallenged evidence that he had sourced stock for the shop.

[65] In relation to profits generated by the store, the defendant said the following: “I haven’t made much profit from the business. I made not much; sometimes lost. I put the profit made back into the store. I do not take a salary but it pays the bills – light, water, bought food sometimes – things like that. I have kept some of the receipts for stocks purchased over the years. I take allowances for myself from the shop every month. I didn’t take any money for my personal use. I understood ‘allowance’ to mean that if you are going to Florida to purchase stock etc. and use the savings…when I go abroad to shop I would take US$1,500 or so…I stayed with friends; sometimes a little time spent in hotels; my own personal money for the hotel costs; money for custom duties from my savings from the store.”

[66] Although the defendant’s evidence has been equivocal and contradictory, I find, based on the foregoing, that profits were made. Having considered that the defendant had been the one doing most of the work in the shop and that the claimant benefited from the proceeds which were used in the household, I find on a balance of probabilities that the claimant is entitled to 25% of the net profits earned from the shop between 1998 and 2005.

[67] However, the decision as to whether net profits were made and in what quantum, must be determined by an accounting process. In that regard, the Court will require the defendant to account.

[68] The Claimant deposed that she is entitled to the sum of US$21,000.00 being sums deposited in a joint account numbered 200507190000354, at the Bank of Nova Scotia, Sav-la-mar branch. In his Affidavit evidence, the defendant did not deny that there was a bank account with that amount of money but said the claimant was entitled to only US$12,000. This evidence was contradicted by his viva voce evidence when he vacillated on whether it was US$17,000 or US$12,000 that she had deposited into the account. The defendant could not say when the account was opened, at which branch, how much money was used to open it and when or how he came to be on the account.

However, he admitted to closing the account and transferring the proceeds to an NCB account in the names of himself and his brother, after this case had begun.

[69] The fact that he vacillated on the issue of what is owed to the claimant, the lack of details about the account itself and his conduct in closing the account and transferring the proceeds to himself and his brother without the claimant's knowledge, diminishes his credibility and undermines the reliability of his evidence. In the circumstances, I accept Miss Chambers' submission that the claimant is entitled to the US$21,000. She is also entitled to interest accrued from the date of the deposit to the date of payment.

[70] In relation to the Pick-up van, the claimant gave two different versions of how the money for its purchase had been obtained by the defendant. In one account she claimed that it was bought by the defendant from monies she had deposited in an account for the business. In the other account, she had sent the money to him. The defendant agrees that she had sent him the money. However, he said that the claimant had sold his van in Chicago but did turn over the proceeds to him. So, at the time she sent him the money for this van, he considered it a gift. The claimant agrees that the defendant's van had been sold, albeit not by her, but said she had sent him the proceeds of the sale.

[71] I accept Miss Barnett's submission that the claimant has failed to provide the Court with any basis on which to find that she is entitled to the van. She has contradicted herself and in the version where she claimed to have sent the money, in the absence of any explanation of why she had done so, it is not unreasonable to conclude that it was either a gift or as the defendant surmised, a form of reimbursement for sums she had not paid over from the sale of his van in Chicago. That being the case, I find that the claimant is not entitled to the van or the value thereof.

[72] As it relates to furniture and furnishings, the claimant gave evidence that she visited the family home on 14th July 2011 accompanied by her nephew, his wife and a

family friend. She said “Evan gave me 4 barrels which contained mostly old sheets and towels. The furniture, equipment and household items were damaged and in a deplorable state. I complained to him and he said they were stored on the back verandah and in an open cellar. The tarpaulin attached to sections of the grill of the back verandah was insufficient security. I did not receive my jewellery and personal documents. Evan said that the helper stole most of my clothes and he gave away some to Haiti…I have not been able to use any of the items that I took from the family home in July…the items are in storage at 66 Rodney Avenue…I took photographs as well as videotaped the items.” (paragraphs 23-25 of Affidavit dated 28th September 2011). The claimant estimates the loss as US$100,000.

[73] In response, the defendant testified as follows: “When I got the Court order, I allowed her to take the things; came with one truck. The furniture wasn’t damaged; good furniture. She got clothes. I don’t know what’s good or bad. They were stored in barrels and boxes. There was no stripe sofa, it was white…from hand-rest to back not torn when it left my home. She wouldn’t take it. All her furniture was not stored on back verandah for over 7 years…they were stored in the extra room put on. The washer etc. were on the back verandah, also the electric dryer, bed springs and chairs, plastic chairs etc.”

[74] There was no cogent evidence of the state in which the items were left at the premises relative to the condition in which they were returned. There was also no evidence of the type and value of the jewellery which were allegedly not returned, nor the brand, age and state of the items, and the price at which they were bought.

[75] There was evidence that the items were photographed and video-taped and that there were eye witnesses when the items were collected but no such evidence was produced at the trial. At the very least, the Court would have expected a valuation of the alleged damage.

[76] In the circumstances, the evidence has provided no reliable basis on which the Court can make a finding for compensation in relation to furniture and furnishings.

THE FINAL ORDER

[77] Accordingly, I make the following declarations and orders:

1. The claimant is declared to be entitled to:

(i) a 50% share in the family home situate at Little London in the parish of Westmoreland;
(ii) a 25% interest in the shop (the building) situated at Little London in the parish of Westmoreland;
(iii) 25% of net profits earned from the shop between 1998 and 2005; and
(iv) the sum of US$21,000.00 which was deposited in account numbered 200507190000354 at the Bank of Nova Scotia, Sav-la-Mar branch.

2. The defendant is to account for all the profits derived from the business “E & P Wholesale” between 1998 and 2005 and pay over to the claimant her share of 25% of the net profits, within 90 days of this order

3. The family home is to be sold and the net proceeds of sale be divided in shares of 50%-50% respectively between the claimant and the defendant.

4. The shop is to be sold and the net proceeds of sale be divided in shares of 25%-75% between the claimant and the defendant, respectively.

5. The claimant’s Attorney-at-Law is to have Carriage of Sale of the family home and the shop.

6. The defendant be restrained from preventing the claimant access to the family home and the shop for the purpose of carrying out the valuation or other act required for the sale of the family home and shop.

7. Valuations of the family home and shop are to be obtained from a reputable valuator to be mutually agreed and the costs of the valuations are to be borne equally by the parties.

8. In the event of the defendant refusing to sign all documents of sale, transfer and any other related documents necessary to give effect to this order within 14 days of the relevant documents being presented to him, the Registrar of the Supreme Court shall be empowered to sign same.

9. The defendant is at liberty to elect to purchase the claimant's interest in the family home and the shop situated at Little London, Westmoreland and must indicate his election within 90 days of his receipt of the valuation.

10. Immediately on these Orders being made the defendant is to take such steps as are necessary to put himself in a position to give effect to the Orders herein.

11. Liberty to apply.