



[2016] JMSC Civ. 216

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2014 HCV 02803

BETWEEN	CAROLINE MARIE PARKES	CLAIMANT/ 1ST ANCILLARY DEFENDANT
AND	RALPH MICHAEL PARKES	DEFENDANT/ ANCILLARY CLAIMANT
AND	JIMCAR LIMITED	2ND ANCILLARY DEFENDANT
AND	MARMIC MANOR LIMITED	3RD ANCILLARY DEFENDANT

IN CHAMBERS

Mr. Gordon Steer and Ms. Kaye-Ann Parke instructed by Chambers, Bunny and Steer for the Claimant/ Ancillary Defendant

Mrs. Michele Champagne and Vincent Henry for the Defendant/ Ancillary Claimant

Heard: April 25, 2016 and April 26, 2016

**MATRIMONIAL PROPERTY – THE PROPERTY (RIGHTS OF SPOUSES) ACT -
DIVISION OF MATRIMONIAL PROPERTY - FAMILY HOME - VARIATION OF THE
EQUAL SHARE RULE - PROPERTY OTHER THAN FAMILY HOME –
CONTRIBUTION – COMPANY PROPERTY – RESULTING TRUST.**

CRESENCIA BROWN BECKFORD, J

THE PARTIES

[1] The Claimant/ Ancillary Defendant and the Defendant/ Ancillary Claimant hereinafter referred to as Mrs. Parkes and Mr. Parkes respectively are currently

married although separated. Divorce proceedings have been instituted by Mr. Parkes although it has not been made final. There are two children of the marriage who are under the age of 18 years. Mr. and Mrs. Parkes are joint owners of property located at 12 Plymouth Avenue, Kingston 6 in the Parish of St. Andrew (hereinafter called 12 Plymouth) where the parties resided at the time of separation.

- [2] The 2nd Ancillary Defendant, JIMCAR Limited (hereinafter called Jimcar) was incorporated in 1993 with a share capital of \$1000 divided into 1000 shares of \$1 each; with Mr. and Mrs. Parkes owning one (1) shares each. In 1994, the title of Villa No.13, 76 Barbican Road, Kingston 6 in the parish of Saint Andrew registered at Volume 1255 Folio 658 of the Register Book of Titles (hereinafter called Villa No.13), was issued in the name of Jimcar. Additionally, in December, 1994 Mr. and Mrs. Parkes were issued with 499 additional shares each. Jimcar does no business other than owning said property.
- [3] The 3rd Ancillary Defendant, Marmic Manor Limited (hereinafter called Marmic) was incorporated in 1995 with a share capital of \$1000 divided into 1000 shares of \$1 each with Mr. and Mrs. Parkes owning 1 share each. In 1997, Townhouse No. 12 located at 13a Norbrook Road, Kingston 8 in the parish of Saint Andrew registered at Volume 1286 Folio 551 of the Register Book of Titles (hereinafter called Townhouse No.12) was transferred to Marmic. Additionally, in December, 1996 Mr. and Mrs. Parkes were each issued with 499 additional shares in the Company. Marmic does no other business than owning said property.
- [4] Both Companies were added as 2nd and 3rd Ancillary Defendant respectively in this matter by virtue of the Defendant's Application and order made on first hearing.

THE CLAIM

[5] The claim and ancillary claim are brought pursuant to Section 11 of the Property (Rights of Spouses) Act, 2004 (hereinafter referred to as PROSA). By way of Fixed Date Claim Form, Mrs. Parkes claims the the following relief *inter alia* against Mr. Parkes:

- (a) A Declaration that the property located at 12 Plymouth Avenue, Kingston 6, in the parish of Saint Andrew registered at Volume 1394 Folio 799 in the Register Book of Titles, is owned be them in equal shares; and
- (b) A Declaration that the she is entitled to one half share of the companies known as Jimcar Limited and Marmic Manor Limited;

[6] Mr. Parkes claims the following relief *inter alia* against Mrs. Parkes:

- (a) A Declaration that it would be unreasonable or unjust for the Claimant to be entitled to one half of the Family Home which is the property known as 12 Plymouth Avenue;
- (b) A Declaration that the Claimant is not entitled to any beneficial interest in the Family Home;
- (c) Alternatively, a declaration that the Claimant is entitled to a beneficial interest of 10% in the Family Home or in such other percentage as the Court deems fit;
- (d) An Order that an inventory to be taken of the contents removed from the Family Home and subsequent division of these items; failing which the Court should make an order; and
- (e) An Order that the Claimant transfers to the Defendant within 14 days of the order the title to the 1998 Toyota Tacoma Pick Up which bears Licence Number FL 1323 failing which the Motor Vehicle Registry is ordered to cancel the current title and to issue a new title to the Defendant.

[7] Mr. Parkes also claims against Mrs. Parkes, Jimcar and Marmic the following relief:

- (a) A Declaration that the Defendant is the sole beneficial owner of the Companies Jimcar Limited and Marmic Manor Limited;
- (b) Alternatively, a declaration that the Defendant is entitled to a beneficial interest of greater than 50% in both Jimcar Limited and Marmic Manor Limited;
- (c) If the Claimant is found to have a beneficial interest in both Jimcar Limited and Marmic Manor Limited, then the following :-
 - i. an order altering the Claimant's interest in the Companies as to negate or reduce it;
 - ii. an order rectifying the Shares Registers.

AGREED FACTUAL BACKGROUND

[8] The parties met in late 1988 and married in 1992 when Mrs. Parkes was 27 years old and Mr. Parkes 46 years old. The marriage subsisted for 21 years until 2012 when they separated. Both lived together for 17 years at 21 Queensway, Kingston 10 in the parish of Saint Andrew, in a house owned by a company controlled by Mr. Parkes and his children.

[9] In 1992, Mr. Parkes entered into agreements for the purchase of land situated at 74-76 Barbican Road and the construction of a house on the said land now known as Villa No. 13. The property was subsequently registered in the Register Book of Titles in the name of Jimcar on the instruction of Mr. Parkes. The purchase monies were furnished by Mr. Parkes from his own resources and from a mortgage which was paid off by way of salary deductions. Mrs. Parkes had a hand in the design and furnishing of the house for the prospective tenant.

- [10] In 1994, Mr. Parkes entered into negotiations for the purchase of Townhouse No. 12 in a development being undertaken by Mutual Security Group of which Mr. Parkes was a part. Marmic was formed as the company to take legal ownership of this property. Mr. Parkes contributed the total purchase price for this acquisition. Mrs. Parkes was involved with the interior design, furnishing and rental of the unit.
- [11] In December 2003, the Mr. Parkes commenced purchase of 12 Plymouth Avenue on which the Family Home was later constructed. In January 2006 this property was transferred in the names of Mr. and Mrs. Parkes as joint tenants. They lived together with their two children at the Family Home until their separation.
- [12] It is not disputed that before the separation, Mr. and Mrs. Parkes both supported and maintained of the children. It is also not disputed that the Defendant advanced all the capital required to purchase 12 Plymouth, Villa No. 13 and Townhouse No. 12.

DISPUTED FACTUAL BACKGROUND

A. Employment history of Mrs. Parkes

- [13] There is a dispute as to whether Mrs. Parkes was employed at the time of the marriage and where she was employed in 1992 and 1993. What is undisputed is that she was employed for some period in 1992 and 1993 up to 1994 when she stopped working. She did not return to work until the year 2004. For approximately 10 years of the marriage then, Mrs. Parkes did not work.

B. Financial contribution by Mrs. Parkes

- [14] This is relevant to the question of the Family Home since it is agreed that she made no financial contribution to the properties owned by Jimcar and Marmic. Mrs. Parkes contended that her salary was deposited to a joint account used to

defray household expresses. When pressed however, it was clear that such an account, if it existed, was not used in that way. She has made no mention as to how her salary earned from the year 2004 was utilized, save that she has indicated that she was responsible for at least a half of the children's school fees.

[15] This is an opportune time to mention the credibility of Mr. and Mrs. Parkes. While Mr. Parkes was given to minimizing the contributions made by Mrs. Parkes, she was prone to exaggerating it. Examples being:

- (a) her indication at first that she paid all the school fees without indicating the refund of one half;
- (b) the functions put on at her home which she initially said were for work purposes but later admitted those functions were held elsewhere and that Mr. Parkes' work associates were merely invitees to gatherings hosted by them;
- (c) her indication that she was central to locating the premises at Barbican on which Villa No.13 was constructed which she later admitted was in fact a part of a development by the company with which Mr. Parkes was associated; and
- (d) her indication that she was involved in the construction of Townhouse No.12 when at best she had a small supervisory role.

[16] To that extent Mr. Parkes' evidence is to be preferred. He was also more straight forward in giving answers while Mrs. Parkes was given to long-windedness without answering the questions on disputed issues e.g. when pressed about the joint account where her salary was deposited.

[17] Against that background, Mrs. Parkes' evidence that she provided approximately \$200,000.00 towards the land at 12 Plymouth Avenue is suspect, in particular as she indicated that these funds were put in a joint account. Nonetheless, by virtue

of the normal operations of married life, it is more likely than not that some of the income earned during her working years would have been used for the benefit of the family.

ISSUES

[18] The issues are:

- (a) Whether there are any section 7 factors that would allow the court to alter the equal share rule in respect of the Family Home in favour of Mr. Parkes;
- (b) How should the contents of the Family Home be divided;
- (c) Whether Mr. Parkes has any beneficial interest in the Toyota Tacoma Truck registered in the name of Mrs. Parkes;
- (d) What is the interest if any of Mr and Mrs. Parkes in the Villa No. 13 and Townhouse No. 12;
- (e) What is the respective interest of Mr. and Mrs. Parkes in the companies Jimcar and Marmic.

THE SUBMISSIONS

C. *Claimant's case*

[19] Mrs. Parkes avers that while Mr. Parkes provided the capital required to purchase the disputed properties, she has a statutory entitlement to 50% of the Family Home by virtue of the PROSA as this was not unreasonable or unjust. She further asserts that based on her non financial contribution, she was entitled to a beneficial interest in properties other than the Family Home namely, the properties owned by Jimcar and Marmic, 1998 Toyota Tacoma and contents of the Family Home.

- [20] Mrs. Parkes also relied on the presumption of advancement in matrimonial matters due to Mr. Parkes' assertion that the properties in the name of the Ancillary Defendants were held on trust for him.
- [21] It was submitted that both Jimcar and Marmic are legal persons and where Mr. Parkes asserts ownership over these companies' assets, he must prove a resulting trust and rebut the presumption of advancement to Mrs. Parkes. It was further submitted that there was no evidence upon which a resulting trust in favour of Mr. Parkes could be found; there being no indication that the funds advanced by him were as a loan to the companies. Further, Mr. Parkes by taking no action on behalf of the companies defeated their ability to mount a defence to rebut the presumption of a resulting trust in his favour. In any event, the presumption of advancement arising from Mrs. Parkes' name being added as a shareholder in the companies rebuts the presumption of resulting trust.
- [22] Mrs. Parkes further argues that even if a resulting trust was to be established by Mr. Parkes, her contribution towards these investments, whilst non-financial, are of the same weight as his financial contribution and would entitle her to a beneficial interest in the properties in issue.
- [23] In addressing these concepts, the following authorities were relied on:
- (a) *Clover Robinson v NCB and Others* [2015] JMCA Civ 3;
 - (b) *Abbot and Abott* (2007) UKPC 53;
 - (c) *Greenland v Greenland* CI no. 2007 HCV 02805;
 - (d) *Douglas v Douglas* [2014] JMCA Civ 6; and
 - (e) *Calverly v Green* (1984) HCA 81

D. *Defendant's case*

- [24] Mr. Parkes on other hand states that Mrs. Parkes has no interest in the Family Home and it would be unreasonable for her to be entitled to 50% interest as she did not contribute in anyway to its purchase. Further, a portion of the purchase monies was by way of an inheritance received after the death of his son. In addition, she has resided elsewhere for much of the duration of the marriage; residing at the Family Home only for approximately three years.
- [25] It is not disputed that both Mr. and Mrs. Parkes are equal shareholder in Jimcar and Marmic but Mr. Parkes avers that he was the one who solely contributed to the incorporation of the companies and allotment of shares and improvement and the acquisitions of the properties in these companies' name.
- [26] He further asserts that the only reason Mrs. Parkes was made a shareholder in the companies was because statute (at the time) required two shareholders to form a company and he trusted her. Additionally, the properties were in these companies' name as a means of securing a tax advantage to him and was advised to him as a prudent business practice. Mr. Parkes, in his affidavit, pointed out that it was through several means to include pension, savings, proceeds from his son's death and other means that he was able to finance the purchases of these properties.
- [27] Based on the fact that proceeds from the death of his son was used in part to acquire the Family Home, the Court is being asked to deduct this before any appropriation is made relating to the interest held by each of them in the Family Home.
- [28] Mr. Parkes argues that both Jimcar and Marmic hold the properties owned by them on a purchase money resulting trust in his favour. As such, the claim is against the companies who are separate legal entities and not against Mrs. Parkes. He further submits that even where there is a presumption of advancement arising from family relations this is rebuttable where investments are concerned; a factor applicable to the instant case. Mr. Parkes further states

that based on the conduct of Mrs. Parkes over the years of not asserting any ownership in the companies, she should now be estopped from doing so.

[29] In so far as the motor vehicle is concerned, Mr. Parkes has asked that the total interest be transferred in his name as he provided the total purchase price of the vehicle.

[30] The following authorities were relied on by counsel for Mr. Parkes:

- (a) Margureta Abraham v Stephen Abraham Civ App No. 10 of 2002;
- (b) P v P (inherited Property) [2004] EWHC 1364;
- (c) Macline v Gatty [1921] 1 AC 376
- (d) Carole Stewart v Lauriston Stewart [2013] JMCA Civ 47;
- (e) Marlene McMahon Asselin v Robert Charles Hateway Roy [2013] BCSC 1681;
- (f) Donna Graham v Hugh Graham Cl. No. 2006 HCV 03158;
- (g) Don Willis Wilson v Anne- Marie Meiforth Wilson (unreported) Barbados Court of Appeal Civ App No 5 of 2003;
- (h) Haycock v Haycock [1974] 1 NZLR 409;
- (i) Harold Proverbs v Christine Proverbs Civ App No 7 of 2001
- (j) Dyer v Dyer [1788] EWHC Ech. J8.
- (k) Laskar v Laskar [2008] EWCA Civ 347

THE APPLICABLE LAW

[31] The relevant law here is The Property (Rights of Spouses) Act “PROSA,” which is “An Act to make provision for the division of property belonging to spouses and

to provide for matters incidental thereto or connected therewith". The act replaces all previous rules relating to the division of matrimonial property.

[32] Section 4 says:

"The provisions of this Act shall have effect in place of the rules and presumption of the common law and of equity to the extent that they apply to transactions between spouses and each of them ..."

The only exception recognised by PROSA as per Section 3(1), is "... after death of either spouse ...", in which event, "every enactment and rule of law or equity shall continue to operate and apply in such case as if this Act had not been enacted."

[33] PROSA defines the expressions of "Family Home and "property" which are of importance in this claim:

Section 2

In this Act...

'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, building or improvements appurtenant to such dwelling-house and use wholly or mainly for the purposes of 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...

... 'Property' means any real or personal property, any estate or interest in real or personal property, any money, any negotiable instrument, debt or other chose in action, or any other right or interest whether in possession or not to which the spouses or either of them is entitled...

[34] Section 14 (1) (a) provides that:

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...

This sets the foundation for the treatment of various property acquired by spouses during the marriage before separation.

[35] Section 6 of PROSA deals with the entitlement to the family home and provides in part that:

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 the grant of a decree of dissolution of 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.

[36] Section 6 thus requires the court to make a determination firstly, whether the property in question was indeed the family home. Upon that question being answered in the affirmative, each spouse, subject to the named sections, would be entitled, by virtue of this section, to a half share of the beneficial interest in the family home except where an application is made under section (7) to vary what has become known as the equal share rule. Where there is such an application, the burden of proof rests on the party so claiming to prove on a balance of probabilities that it would be unjust or unreasonable to apply the equal share rule.

[37] Section 7 sets out the factors for the court's consideration when determining whether to vary the equal share rule. It provides as follows:

7.-(1) 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 the beginning of cohabitation;

(c) That the marriage is of short duration;

(2) In subsection (1) "interested party" means-

(a) a spouse;

(b) a relevant child; or

(c) any other person within whom the court is satisfied has sufficient interest in the matter.

[38] The statutory basis for the equal share rule as stated by McDonald- Bishop J. (Ag) as she then was in **Graham v. Graham** Cl. No. 2006 HCV03158 delivered the 8th April 2008 was endorsed by Brooks JA in **Carole Stewart v Lauriston Stewart** [2013] JMCA Civ 47 in which he stated:

(19) ...“She assessed the statutory basis for the equal share rule at paragraphs 15-16 of that case, thus:

“15. 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 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 AC 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 AC 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....”

[39] After reviewing a number of authorities Brooks JA identified the philosophy behind the statutory concept of the family home stating

“The philosophy is that the contribution that a spouse makes to the marriage entitles that spouse to an equal interest in the family home”

[40] Brooks JA in **Stewart** identified three factors applicable to the operation of section 7 which empowers a court to vary the equal share rule and he states,

(27) “At least three things are apparent from section 7(1):

a. The section requires the party who disputes the application of the statutory rule, to apply for its displacement.

b. The use of the word "including", implies that the court is entitled to consider factors other than those listed in section 7(1).

c. The equal share rule has to be shown to be unreasonable or unjust; equality is the norm."

[41] With respect to property other than the Family Home, Section 14 (1)(b) provides that the court may:

14)--(1) (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 in- directly 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 co-habitation;

(d) that there is an agreement with respect to the owner- ship 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.

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

ANALYSIS

A. FAMILY HOME

[42] It is undisputed that property at 12 Plymouth is jointly owned by Mr. and Mrs. Parkes as reflected on the Duplicate Certificate of Title. It is also undisputed that 12 Plymouth was the only place of residence immediately preceding their separation. There is no evidence to suggest that this property was a gift to one spouse to the exclusion of the other. It therefore satisfies the definition of a Family Home pursuant to Section 2 of PROSA. This has been conceded by Mr. and Mrs. Parkes.

[43] Having established that the property at 12 Plymouth is the Family Home, the equal share rule therefore applies unless it would be "unreasonable or unjust" for each spouse to be entitled to one half of the Family Home. Upon an application by a spouse, the Court may make an order varying the equal share rule in keeping with section 7 of PROSA.

[44] In the instant case, Mr. Parkes has made an application by way of notice of application for court orders asking the court to find that Mrs. Parkes is not entitled

to any portion of the Family Home or in the alternative to not more than 10% in interest .

- [45] To determine if the court should invoke its discretionary powers it must determine whether any of the provisions of section 7 apply and whether there exist any other relevant factors which the Court could consider in Mr. Parkes' favour. The question of contribution financial and otherwise of the Mrs. Parkes fall to be considered here.
- [46] Based on the evidence adduced, the land at 12 Plymouth was purchased in 2003 and title issued in the joint names of Mr. and Mrs. Parkes as joint tenants in 2006. Construction of the Family Home was completed in about 2010. The purchase and construction was financed by Mr. Parkes. This included a part of funds paid to Mr. Parkes after the death of his son. This latter sum Mr. Parkes claimed to be an inheritance. It could not be said however to be an inheritance; which is defined as something given by someone when they die. In Blacks Law Dictionary it is defined as "*property that a person receives by bequest or devise.*" This sum was therefore no more than an unexpected and no doubt unwelcomed cash windfall which he chose to utilize as he did his other assets in the acquisition and construction of the Family Home.
- [47] The property conveyed in the joint names of the parties, to my mind, is a clear indication of Mr. Parkes' intention despite his greater financial contribution for Mrs. Parkes to have an equal beneficial interest in the Family Home. This, as will be seen later, is as opposed to other properties which were intended as an investment.
- [48] Another relevant consideration is the fact that the parties have been married for a period of approximately 21 years. The period of marriage cannot be said to be of a short duration. According to the case of **Abraham v Abraham** (Unreported) Civ App No. 10 of 2002) studies in local matrimonial courts consider medium length marriages to be that of seven (7) years. The case itself involved a marriage of ten

(10) years which was considered by the Court of Appeal of Trinidad as not being short. In fact, Mr. and Mrs. Parkes were married for 14 years when the property was purchased.

- [49] The evidence adduced suggests that Mrs. Parkes did provide non-financial contribution in the form of providing care to the children of the marriage, and management of the household and the performance of household duties. As accepted by Mr. Parkes in cross-examination Mrs. Parkes "*did what she could.*" Mr. Parkes greater financial input is undisputed. He was the senior manager at a financial institution and established in his career at the time of the marriage. At 27 years of age, Mrs. Parkes was just starting out. She was employed for a very short period into the marriage and as indicated, in the early years she primarily took care of the home and family. It was clear he was the main financial provider for the family and was happy to do so. Mrs. Parkes evidence, which I accept, was that as a "*submissive wife*" she did not go out and take a job.
- [50] Mr. Parkes has relied on his contribution towards the acquisition of the land at 12 Plymouth and the construction of the Family Home. Though Mrs. Parkes made no direct financial contribution towards the acquisition, improvement, expansion or maintenance of the Family Home, PROSA equates non-financial contributions with financial contributions. As seen in the case of ***Graham v Graham*** [2006] HCV 03158, the husband's greater financial contribution did not result in a variation of the equal share rules and the wife's contribution towards the care of the children was endorsed.
- [51] The later case of ***Carol Stewart v Lauriston Stewart*** [2013] JMCA Civ 47 is also another prime example of the Court's reluctance to depart from the equal share rule based on one party providing a substantially greater financial contribution. While the first instance Court in this case gave weight to the greater financial contribution and thus awarded Mr. Stewart with 75% of this family home, the Court of Appeal held that the trial Judge erred in varying the equal share

rules due to ones greater contribution, hence, the equal share rule was reinstated.

- [52] In ***Miller v Miller and McFarlane v McFarlane*** [2006] 2 A.C. 618 it was stated by _____ that:

"parties should not seek to promote a case of 'special contribution' unless the contribution is so marked that to disregard it would be inequitable. A good reason for departing from equality is not to be found in the minutiae of married life".

Consequently, the financial contributions made by Mr. Parkes have no greater weight than the non-financial contribution made by Mrs. Parkes.

- [53] Another reason advanced by Mr. Parkes why it would be just to depart from the equal share rule is that they resided at 12 Plymouth together for only 3 years hence it was the family home for only 3 years. The law, however, speaks to a marriage of short duration as opposed to the length of time for which any particular premises was the family home. The court was also asked to consider the relevant age and life stage of the Parkes. Mr. Parkes has retired though he continues to earn an income from pension payments, employment as a minister of religion and from his investments. He is by no means likely to become impecunious. Mrs. Parkes, on the other hand, still has a number of working years before retirement. She however, has no other source of income save contributions made by Mr. Parkes to the maintenance of the children. It is not far fetched however, that she could acquire other properties in her working life.

- [54] There is one other factor that the court deems relevant which is the education and enhancement of Mrs. Parkes leading to her present employment. This training, to the level of a Masters Degree, was facilitated and at least in part financed by Mr. Parkes. This is a benefit that would be expected to inure to the family. That is not now to be the case. This latter point constrains the court to consider whether there should be some adjustment in the equal share rule on this basis. In other words, whether it is fair that Mrs. Parkes should be sole beneficiary of an investment by the family. The significant change that this

training has caused in her circumstances leads me to view that it should be taken into account in determining whether to vary the equal share rule. To reiterate the basis of the equal share rule, Mr. and Mrs. Parkes committed to working together for the benefit of the union.

- [55] Mr. Parkes has satisfied that court on a balance of probabilities that it would be unreasonable not to vary the statutory entitlement of 50% interest in the Family Home. In all the circumstances, it is reasonable that Mrs. Parkes receive a 40% share and Mr. Parkes a 60% share of the Family Home.

B. *PROPERTY OTHER THAN FAMILY HOME*

- [56] It was agreed that Mr. Parkes provided all the finances required to purchase Townhouse No.12 and Villa No. 13. To this end, the principle emanating from the case of ***Re Vandervell Trustees Ltd (No 2)*** [1974] EWCA Civ 7 is ‘a propo.’ The principle is that a resulting trust is formed in circumstances where the legal interest vests in one party but an equitable/beneficial interest is created for another by operation of law or in circumstances where it would be just to do so. Where the property is purchased and conveyed into the name of someone other than the purchaser, then a trust of the legal estate results to the person who advanced the purchase money. This resulting trust is based on the presumed intention of the purchaser but does not arise where such a relationship exists between the true and nominal purchaser such as to raise a presumption that a gift was intended. In that event there is a presumption of advancement to the nominal purchaser.

- [57] Though the resulting trust principles do not rest heavily on the idea of intention, it is important. Indeed, Gibson LJ’s remark in relation to the resulting trust in the case of ***Drake v Whipp*** [1996] 1 FLR 826, 827 is helpful. He said that it “operate[s] as a presumed intention of the contributing party in the absence of rebutting evidence of actual intention.” Therefore, though reliance cannot be

placed on Mr. Parkes' intention as he now expresses it, some amount of consideration must be given to his actions and how they conveyed his intentions.

- [58] The law relating to resulting trust was revisited in ***Prest v Petrodel Resources Ltd et al*** [2013] UKSC 34. Here, the court used trust law to determine the beneficial interest which a husband had in properties bought in the name of his companies in order to give effect to orders made against him in relation to the division of property in matrimonial proceedings. There are two important aspects of this case.
- [59] Firstly, the court used the doctrine of resulting trust principles to find that property held by the husband's company was actually beneficially owned by him. This created a window for his wife to claim an interest in the properties as they became matrimonial property. Without the principles of resulting trust, the wife in ***Prest*** would have been unable to lay claim to property, which would have been unfairly put out of her reach, based on the operations of company law. As will be seen later, this holding will become very relevant to the case at hand. Notably, in reference to ***Prest***, the court in ***Eutetra Bromfield v Vincent Bromfield*** [2015] UKPC 19, made it clear that company property is not owned by its shareholders. Therefore there is no corresponding half interest for Mrs. Parkes in the properties owned by Jimcar and Marmic. To be clear, granting her half of the shares did not bestow upon her half interest in Townhouse No.12 and Villa No. 13 owned legally by the companies.
- [60] Secondly, Lord Sumption made it clear that the issue of whether the assets legally vested in the companies were beneficially owned by someone else is one which is '*highly fact specific*' and will essentially be determined on a case by case basis. As such, I must consider the facts present in this case as they will determine whether or not Mr. Parkes has a beneficial interest in the properties. In so doing I have given consideration to:

- (a) The pattern of holding property through companies which predated his marriage to Mrs. Parkes;
- (b) The companies did no business other than owning the properties in question;
- (c) The use of the income from the companies to fund the home;
- (d) The income from the properties being used and controlled exclusively by Mr. Parkes; and
- (e) Mr. Parkes' relationships outside of marriage e.g. children from previous marriages and grandchildren

[61] It is evident that Mr. Parkes was the controller of the companies as he was in charge of their day to day operations and finances. He claims that it was not intended that the companies should own Townhouse No. 12 or Villa No. 13 as these properties were an investment for his benefit. It was the clear purpose of Mr. Parkes to provide himself with additional income.

[62] I find this to be so based on the manner in which the purchase of both properties took place and the fact that the companies did no other business than owning the properties. It is clear that he intended to be the beneficial owner. I also accept Mr. Parkes evidence when he said there was no discussion or agreement with Mrs. Parkes with respect to her obtaining any interest in the properties by virtue of her shareholding in Jimcar and Marmic. With these propositions in mind, I find that there was indeed a resulting trust in his favour. Thus, Jimcar and Marmic hold Villa No. 13 and Townhouse No. 12 respectively on trust for Mr. Parkes as beneficial owner.

[63] In circumstances there is no need to further consider Mr. and Mrs. Parkes respective shares in the companies

C. THE DISTRIBUTION OF PROPERTY OTHER THAN FAMILY HOME

[64] Subject to Section 14, PROSA does not only provide for the determination of interest in the Family Home but also the division of property belonging to the spouses.

[65] Though not directly concerned with the division of property under PROSA, the Privy council in **Bromfield** said that the effect of PROSA is that,

"It confers on the court following divorce limited redistributive powers in relation to the family home and wider powers in relation to other properties; section 13 - 15. It requires the court in any redistribution of other property to take into account not only the financial contribution, direct and indirect which would have been relevant to the true creation of an equitable interest in property but other contribution and indeed all other circumstances which the justice of the case required to be taken into account. "

[66] Property in keeping with Section 2 includes both realty and personalty. Section 14 (2) of the Act provides factors which the Court may consider in determining how to divide such property, other than the Family Home. These factors include contribution, financial and otherwise, directly or indirectly made by or on behalf of a spouse to the acquisition, conservation or improvement of any property, that there is no Family Home and the duration of the marriage.

[67] Section 14 (3) sets out the definition of "contribution" which includes consideration being given to management of the household, the performance of household duties and the care of the relevant children.

[68] Evidence of the parties' contribution are summarised below:

(a) *Claimant*

[69] Mrs. Parkes in her affidavits purports that she contributed non-financially as follows:

Villa No. 13

(a) Acquisition of Villa no. 13 by way of identification and selection of the property;

- (b) Furnishing of Villa no 13;
- (c) Assisted in securing tenants;
- (d) Prepared lease for a tenant and saw to specifications requested by new tenants;
- (e) Co-ordinated workmen and gave instructions regarding World Bank requirements;

Townhouse No. 12

- (f) Monitored the construction site of the Townhouse No 12. and kept the Defendant up to date with what was taking place;
- (g) Gave oversight supervision and made decisions regarding 18 variations to the original plans of the Townhouse;
- (h) Facilitated paperwork for both companies and ensured that bills were paid;
- (i) Kept detailed accounts and records;
- (j) Assisted Mr. Parkes with his studies that he pursued after retirement; and
- (k) Assisted Mr. Parkes when he fell and snapped a tendon in his right shoulder in 2001.

[70] As was shown before, Mrs. Parkes has exaggerated her contribution to these properties.

(b) *Defendant*

[71] Mr. Parkes provided all of the money required to:

- (a) form the companies Jimcar and Marmic;
- (b) purchase Villa No. 13 and Townhouse No. 12; and

(c) pay the bills of the companies and employ a Company Secretary.

[72] Mr. Parkes also asserts that he provided the following contributions:

(a) financed Mrs. Parkes' education during the period 1994-2004;

(b) provided for the family's day to day expenses from his salary (employing helpers and a gardener);

[73] The respective contributions as found with respect to the Family Home are also relevant here.

[74] While the financial contribution of Mr. Parkes is recognised, in keeping with section 14 (4) of PROSA, it is not presumed to have greater weight than the non-financial contribution made by Mrs. Parkes. According to Lucky JA in the case of **Abraham** (supra)

"In principle it matters not which of [the parties] earns the money and build up assets, there should be no bias in favour of the money earned against the home maker and child carer."

[75] While Mr. Parkes avers that the contribution of Mrs. Parkes was overstated and does not amount to a standard which would entitle her to an interest, logic dictates that it is likely that a marriage of such longevity (21 years) would have entailed valuable contributions by both parties resulting in "*financial fruits of the marriage*".

[76] In facilitating a balancing act, the ages of the parties are observed and while Mr. Parkes states that Villa No. 13 and Townhouse No. 12 were to provide for him in his latter years, consideration must be given to the fact that he owns other property. However, Mrs. Parkes although still at an age of earning capacity has spent some of her years contributing toward the family. She has also had the benefit of the family investing in her education; the benefit of which she will continue to reap solely for years to come.

[77] Mr. Parkes has asked that consideration be given to the case of **Haycock v Haycock** [1974] 1 NZLR, where the New Zealand Court of Appeal in examination of division of Family Home as their jurisdiction had no equal share rules paid keen attention to the parties "contribution". Although, this Court appreciates the principle enunciating from **Haycock** that is; contribution is of grave importance in division of spousal property and the Court "*may not take it upon itself to add more for contribution*", the Court is of the view that the instant case is distinguishable; as there exist in this instance, more equivocal acts relating to the improvement and conservation of the properties in question in comparison to that in **Haycock**. In **Haycock**, the husband relied heavily on the general service of a wife and the fact that she assisted somewhat on the farm to ground her interest in the proceeds from the sale of the Matrimonial Home. Contributions which the New Zealand Court of Appeal ascribed moderate weight to.

[78] The court will also consider whether the act of issuing equal shares to Mrs. Parkes was a gift of half interest in the properties to her. I find that this was done as a matter of convenience only and was not intended as a gift as Mr. Parkes continued to treat and use the income generated as his own notwithstanding that some was used in the running of the family home and for the family's benefit. Mrs. Parkes however by virtue of the *mutinae* of married life, enhanced the value of the properties to Mr. Parkes and accordingly is entitled to a share of the assets. I find however that her in kind contribution matched against Mr. Parkes' contribution is significantly different which the justice of the case demands be treated differently in particular as there was a Family Home.

[79] In all the circumstances, I find that it is just that she be given a 10% share in Villa No. 13 to all intents and purposes acquired before the marriage though legally transferred after, and a 25% share in Townhouse No. 12.

Toyota Tacoma

- [80] In keeping with evidence adduced, Mrs. Parkes being the registered owner of the vehicle would have de facto interest in it. Mr. Parkes however asserts that he provided the purchase money, a fact that is not disputed by Mrs. Parkes. She admits that the vehicle was purchased for family usage. A usage that appears to be primarily that of Mrs. Parkes whose name the vehicle is registered in and who currently has custody of the property.
- [81] Having regard to the purpose for which the vehicle was acquired and taking into consideration that Mrs. Parkes has to attend to the maintenance and care of two children who are still minors, based on Section 14 (2) which allows the court to assess "*such other facts or circumstances which... the justice of the case requires*", the vehicle should remain with Mrs. Parkes who has the day to day care and control of the children.

Contents of the Family Home

- [82] I have seen no basis to vary the equal share rule in relation to the contents of the family home. There is no indication of heirlooms, items passed on from families or any specific attachment to any article. Both Mr. and Mrs. Parkes have an equal entitlement to the contents of family home and consequently an inventory of all the furniture and appliances in the possession of Mrs. Parkes and remaining at the Family Home must be done and divided equally between them. Those furniture for the immediate use of the children to be excluded.
- [83] I close with a word on the failure of Mrs. Parkes to honour completely her obligation to disclose. I find this was done in bad faith and as such custody of all relevant documents should be with Mr. Parkes.

CONCLUSION

- [84] In keeping with the Property (Rights of Spouses) Act, there is a statutory entitlement that each spouse has a 50% interest in the Family Home. This entitlement established by Section 6 of the Act can be displaced where factors of

Section 7 are present that is, the family home was inherited by one spouse, the family home was already owned by one spouse at the time of the marriage or the beginning of cohabitation; the marriage is of short duration or any other consideration the Court's deems fit.

[85] Mr. Parkes had an onus, on a balance of probabilities, to show that the equal share rule does not apply. In the instant case, the court is satisfied that it is reasonable and just to vary the equal share rule.

[86] Unlike the Family Home where there is a presumption of beneficial interest by spouses, other properties are divided pursuant to Section 14 of the Act. In assessing entitlement of the respective parties, the factors of contribution towards the acquisition, conservation or improvement of the property and the purpose of the acquisition were circumstances justifying granting Mr. Parkes a greater share.

[87] As it relates to the contents of the Family Home there is no basis to vary the equal share rule. Giving consideration to Mrs. Parkes responsibility regarding the children of the marriage, it is reasonable that she retain sole ownership of the 1998 Toyota Tacoma Pick up

ORDERS

[88] Accordingly, the following declarations and orders are made:

(a) In relation to the Family Home located at 12 Plymouth Avenue, Kingston 6 in the parish of Saint Andrew registered at Volume 1394 Folio 799 of the Register Book of Titles it ordered that:

- i. The Claimant, Mrs. Parkes is entitled to 40% interest and the Defendant, Mr. Parkes to 60% interest in the Family Home;
- ii. The Defendant is at liberty to purchase the Claimant's interest in the Family Home at the proportionate market value thereof. The

Defendant shall exercise his option by notice in writing from his Attorney-at-Law to the Claimant's Attorney-at-Law within thirty (30) days following the valuation of the property;

- iii. A reputable valuator to be agreed and a valuation of the Family Home be done;
 - iv. The cost of the valuation of the Family Home to be borne equally by the Claimant and the Defendant;
 - v. If the Defendant should choose not to exercise the option to purchase the Claimant's interest in the Family Home, then same may be sold on the open market and proceeds divided in keeping with the parties' interest in the property;
 - vi. All taxes and cost associated with sale and transfer of the Family Home shall be shared equally by the Claimant and the Defendant; and
 - vii. The Claimant's Attorney-at-Law is to have Carriage of Sale of the Family Home.
- (b) It is declared that Marmic Manor Limited hold Townhouse No. 12 located at 13a Norbrook Road, Kingston 8 in the parish of Saint Andrew registered at Volume 1286 Folio 551 of the Register Book of Titles on trust for the Defendant as beneficial owner;
- (c) It is declared that Jimcar Limited hold Villa No. 13 located at 76 Barbican Road, Kingston 6 in the parish of Saint Andrew registered at Volume 1255 Folio 658 of the Register Book of Titles on trust for the Defendant as a beneficial owner;

(d) Marmic Manor Limited and Jimcar Limited are to transfer all their interest in Townhouse No. 12 located at 13a Norbrook Road, Kingston 8 and Villa No. 13 located at 76 Barbican Road, Kingston 6 to the Defendant;

(e) In relation to Villa No. 13 located at 76 Barbican Road, Kingston 6 in the parish of Saint Andrew registered at Volume 1255 Folio 658 of the Register Book of Titles, it is ordered that:

- i. The Claimant is entitled to 10% interest and the Defendant 90% interest in Villa No. 13;
- ii. The Claimant is at liberty to purchase the Defendant's interest in Villa No. 13 at the proportionate market value thereof. The Claimant shall exercise her option by notice in writing from her Attorney-at-Law to the Defendant's Attorney-at-Law within thirty (30) days following the valuation of the property;
- iii. A reputable valuator to be agreed and a valuation of Villa No. 13 be done;
- iv. The cost of the valuation of Villa No. 13 to be borne equally by the Claimant and the Defendant;
- v. If the Claimant should choose not to exercise the option to purchase the Defendant's interest in Villa No. 13, then same may be sold on the open market and proceeds divided in keeping with the parties' interest in the property;
- vi. All taxes and cost associated with sale and transfer of Villa No. 13 shall be shared equally by the Claimant and the Defendant; and
- vii. The Defendant's Attorney-at-Law is to have Carriage of Sale of Villa No. 13.

(f) In relation to Townhouse No. 12 located at 13a Norbrook Road, Kingston 8 in the parish of Saint Andrew registered at Volume 1286 Folio 551 of the Register Book of Titles, it is hereby ordered that:

- i. The Claimant is entitled to 25% interest and the Defendant 75% interest in Townhouse No. 12;
- ii. The Defendant is at liberty to purchase the Claimant's interest in Townhouse No. 12 at the proportionate market value thereof. The Defendant shall exercise his option by notice in writing from his Attorney-at-Law to the Claimant's Attorney-at-Law within thirty (30) days following the valuation of the property;
- iii. A reputable valuator to be agreed and a valuation of Townhouse No. 12 be done;
- iv. The cost of the valuation of Townhouse No. 12 to be borne equally by the Claimant and the Defendant;
- v. If the Defendant should choose not to exercise the option to purchase the Claimant's interest in Townhouse No. 12, then same may be sold on the open market and proceeds divided in keeping with the parties' interest in the property;
- vi. All taxes and cost associated with sale and transfer of Townhouse No. 12 shall be shared equally by the Claimant and the Defendant; and
- vii. The Claimant's Attorney-at-Law is to have Carriage of Sale of Townhouse No. 12.

(g) The Claimant is solely entitled to the 1998 Toyota Tacoma Pick Up which bears Licence Number FL 1323;

- (h) An inventory to be taken of all the contents removed from the Family Home by the Claimant and those remaining at Family Home and subsequent division of these items equally, excluding those furniture for the personal and immediate use of the children within sixty (60) days of this Order. Failing which each party will remain with those items in their possession, care and custody;
- (i) The Claimant shall return any documents in her possession relating to the properties and those solely pertaining to the Defendant. Where documents are relating to the parties' joint affairs a copy must be made and the original returned to the Defendant within thirty (30) days of this Order.
- (j) The Registrar of the Supreme Court is empowered to sign any and all documents necessary to bring into effect the orders of the Honourable Court if either party is unable or unwilling to do so;
- (k) Both parties shall have liberty to apply; and
- (l) Each party to bear their own costs.