



[2025] JMSC Civ 46

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2021CV01056

BETWEEN DOREEN SALMON CLAIMANT

AND ALTON GEORGE SALMON 1<sup>ST</sup> DEFENDANT

AND VERONICA MCFARLANE 2<sup>nd</sup> DEFENDANT  
(Administratrix ad Litem of the Estate of  
Veronica Salmon, otherwise called  
Theresa Veronica Salmon, deceased)

AND MARY VENICE SALMON 3<sup>RD</sup> DEFENDANT

In Chambers

Mr. Fitzroy Campbell instructed by Archer Cummings and Company for the claimant.

Mr. Andre Moulton instructed by Knight, Junor and Samuels for the defendant.

Heard: January 13, 14, and 15, 2025 and April 4, 2025.

*Division of Property - Legal Title to Property Registered in the names of the husband and two of his relatives- Whether the Property in question is the Family Home – Whether the Wife is Sole Contributor to the Purchase Price of the Property- Whether the entire beneficial interest is being held on trust for the wife*

*Whether the wife is entitled to an interest under section 14 (1)(b) of the Property Right of Spouses Act (PROSA).*

THOMAS: J

## INTRODUCTION

**[1]** This Claim concerns property registered at Volume 953 Folio 281 of the Register Book of Titles and located at the civic address, 67 Fairfax Drive, Kingston 19 in the parish of Saint Andrew. (Herein after referred to as the Fairfax Property) The Claimant, Doreen Elaine Scott Salmon, is the former spouse of the 1<sup>st</sup> Defendant, Alton George Salmon. The 2<sup>nd</sup> Defendant is Mr. Salmon's sister and also the Administrator of the Estate of the Mr. Salmon's mother, who is now deceased. The 3<sup>rd</sup> Defendant is the sister of Mr. Salmon. The legal title was registered in the names of the Defendants.

**[2]** In the Amended Fix Date Claim filed on the of 31<sup>st</sup> of March, 2022, the Claimant is contending that the purchase of the property was wholly funded by her. She also contends that the property was purchased during the marriage between herself and the 1<sup>st</sup> Defendant with the intention of it being their family home. She seeks the following remedies against the Defendants;

- A. A Declaration that all that parcel of land part of Havendale formerly part of Swallowfield Estate in the Parish of Saint Andrew being Lot numbered Four Hundred and Thirty -Three on the Plan of part of Havendale aforesaid and Registered at Volume 953 Folio 281 of the Register Book of Titles which bears the civic address, 67 Fairfax Drive, Kingston 19 in the parish of Saint Andrew (hereinafter referred to as "the said property") was the family home within the meaning of the provisions of the Property (Rights of Spouses) Act.
- B. A Declaration that the Claimant is equally entitled to a 50% interest or such interest as the Court deems fit in the said Property on the basis that the property under the Property (Rights of Spouses) Act.
- C. A Declaration that the 2<sup>nd</sup> & 3<sup>rd</sup> Defendants hold the said property on trust for the Claimant.

- D. Alternatively, that the Claimant is entitled to 50% interest or such interest as the Court deems fit in the said property by virtue of the principles of resulting or constructive trust.
- E. An order that the Defendants do account to the claimant for the rental proceeds earned from the said property for the past 6 years and pay her ½ of the net rental proceeds.
- F. An Order that a valuator be appointed to determine the current market value of the said property.
- G. An Order that the Defendant do pay to the Claimant 50% of the current market value of the said property, as determined by the valuator within 120 days of receipt of the valuation report.
- H. Alternatively, that the said property be sold on the open market and the net proceeds be divided between the parties with 50% to the claimant and 50% to the Defendants.
- I. If either party refuses or fails to sign the transfer herein, then the Registrar of the Supreme Court be empowered to sign the transfer on their behalf.
- J. Costs of the valuation and the cost of transfer of the property to be borne by both parties equally.
- K. An Order that the Claimant 's Attorney-at-Law to have carriage of sale for the transfer or sale of the said property.
- L. An Order that the Defendants, their heirs and successors, assignees and agents be restrained from taking any steps by way of sale, mortgage, transfer, assignment, or any other means, from dispensing with any right, title, or interest in the said property, pending the Determination of the matter by this Honourable Court.

## **ISSUES**

**[3]** The issues that arise for determination are as follows;

- i. Whether the property at 67 Fairfax Drive in the parish of St. Andrew is the family home?
- ii. If it is determined that the said property is not the family home; Whether the Claimant wholly contributed to the purchase price and as such whether the defendant holds the property on a resulting or a constructive trust for the claimant.
- iii. If it is determined that the claimant did not wholly provide the purchase price whether there is evidence of contribution by Claimant to the improvement of this property to entitle her to an interest under Section 14 of **PROSA** .

#### **The Evidence of the Claimant**

**[4]** The evidence of Mrs Salmon is that she and Mr Salmon got married on the 22<sup>nd</sup> of December, 1981 in Canada while he was staying there with her relatives. She further testifies that she flew back to Boston and left him in Canada with her family relations that he was staying with. She states that Mr. Salmon came to Boston and joined her, and thereafter, they lived together as man and wife with their 5 children, his three children and her two children from prior relationships. She states that she assisted in bringing two of the defendant's children from Jamaica to Boston.

**[5]** She says that she operated a restaurant in Boston where she supported the family. She also says that Mr. Salmon was deported to Jamaica, and that she would support him financially, sending money on a regular basis via Western Union and other money transfer agencies.

**[6]** She states that in 1988 she came to Jamaica with Mr. Salmon, they stayed at the Pegasus Hotel and that it was during this time that they began to look for properties to buy in Jamaica. She further states that in or about May 1988, she came to

Jamaica again as she did occasionally to spend months at a time, and at this time she saw a house in Patrick City which she liked and discussed with Mr. Salmon, and he said he did not like that house. She says she then told Mr. Salmon to find a house which he liked, and he did so, as he eventually told her about the property he found for sale at 67 Fairfax Avenue, Kingston 19 in the parish of Saint Andrew for the sum of \$450,000.00.

- [7]** Ms. Salmon asserts that at that time Mr. Salmon was not working, and so she sent all the moneys to Jamaica to him to pay for the purchase of the property and the cost of transfer. She further asserts that Mr. Salomon never worked after being deported, so she had to send the moneys for the deposit and the instalments to him, and he paid for the property.
- [8]** Ms. Salmon also says that sometimes Mr. Salmon's sister, Veronica, "would collect the money" from her when she came to the USA and bring it to Jamaica for them. She states that when Veronica visited her in Massachusetts, she and her "walked from bank-to-bank to collect \$100.00 bills" that she could take down to Jamaica to put towards the purchase of the property, which she did. She also states that Mary Salmon and her husband also visited her in the United States of America as well. She says further that her children would also bring down moneys when they travelled from the USA to Jamaica.
- [9]** Ms. Salmon asserts that she was in a financial position to purchase the property at 67 Fairfax Drive. She asserts that she also sent down barrels with clothes, food, household supplies, furniture, crystals, glass, microwave, blankets, sheets, draperies and other things for the house. She also asserts that she furnished the whole house and built the upstairs section.
- [10]** It is also her evidence that she took care of Mr. Salmon and the whole family and that she left US\$10,000.00 with Mr. Salmon's mother because when they were searching for a property to buy in Jamaica, they did not find any at first. She asserts that Mary Salmon did not have her own money to purchase the property at the

time, and that any money that Mr. Salmon and his family paid to Mr. Delroy Chuck was, or included, money that she sent to Mr. Salmon for the purchase of property.

- [11]** She later says that when the property was purchased she and Mr. Salmon were both in the United States of America and Mary Salmon was dealing with getting the paperwork done in Jamaica. She states that after they got the house, she would come down to Jamaica at least every six months and spend at least 4 weeks on each occasion and that she and Mr. Salmon would co-habited as man and wife.
- [12]** She further states that it was only when she returned to Jamaica after the property was bought that she realised that Mr. Salmon and his family did not put her name on the Certificate of Title for the property. She states that when she asked Mr. Salmon about the documents relating to the property, he told her that his mother and his sister, Mary Salmon did not put her name on the paper and he did not know why. She says further that he said that it would cost US\$25,000.00 to put in name on the Title but she should not worry.
- [13]** She testifies that she continued to send money down towards the house afterwards and that in or around April 2000, she sent US\$25,000.00 down to Mr. Salmon to correct the Title. She says that Mr. Salmon was deported from the United States of America twice. She asserts that he was at home in Jamaica for a time and hustling with Veronica McFarlane's husband, Oswald McFarlane, before he started working for her. She explains that her reference to the address for the property as 67Fair fax Avenue was a clerical error on the part of her Attorneys-at-law.
- [14]** She refers to photographs of a bedroom shared by herself and Mr. Salmon with her items on the dresser, her going to church, bathing her grandson, and her grandchildren going to school from the house. She asserts that too much time would not pass without she coming down to see and stay with Mr. Salmon at 67 Fairfax Drive.
- [15]** Ms. Salmon maintains that she was the one working and that she was travelling back and forth to help take care of things and to take care of Mr. Salmon. She says

that she sent down some of the grandchildren to live with Mr. Salmon at the house. She states further that Mr. Salmon's children, David Salmon and Nadine Salmon stayed with her in the United States of America from they were 4 years old and 6 years old until they were 18 years old and 19 years old respectively.

**[16]** Ms Salmon describe the house and living arrangement at Fairfax as follows:

*"After Alton and I got together, we worked together to help his family and move them from a property on Windward Road that they were residing at to 67 Fairfax Drive. At that time Pauline Salmon, along with her daughter, Lavern Robinson, and her son, the twins Mary Salmon and Rosie Salmon, Theresa Veronica Salmon and Alton's father were living there. Veronica was not living there at that that time The side of the house that Alton and I were living on had 3 bedrooms. Veronica Salmon stayed in one bedroom, the niece Lavern Robinson stayed in one bedroom, and Alton and I shared one bedroom. There were two bathrooms on that side of the property, one in the hallway near to the mother's bedroom and one was in the room Alton, and I shared. I know that the other side of the property was rented to multiple persons. I did not go to that side often and I have not been there in a long time, so it is difficult to remember the layout very well. The layout of the property also changed from time to time. of the property."*

**[17]** Ms. Salmon indicates that in or around early 2011, she returned to the premises and with the assistance of the Police from the Constant Spring Police Station, removed some of the furniture she had purchased.

**[18]** In response to Mr. Salmon's affidavit, she says that she did not mention a property that was purchased in Drew's land because this case does not concern that property, which was not for Mr. Salmon and her.

**[19]** She admits that Mary Salmon Wallen was involved in doing the paperwork for the purchase of the property at 67 Fairfax Drive and that Mr. Salmon's family moved into the property after it was purchased but says that the property was still hers and Mr. Salmon's home. She states that Mary did not contribute any money to the property and maintains that she had left US\$10,000.00 with Theresa Salmon, who she was close with at that time to be used towards the purchase of the property.

- [20]** She states that she believes that the money that was in the account from which the property was purchased was the money she contributed for the purchase price for the house. She also states that she put forward all the moneys for the purchase of the property in Drewsland. She asserts that Mr. Salmon's imprisonment is relevant because it prevented him from providing for their family and from having the money that he would need to purchase and expand the property at 67 Fairfax Drive himself.
- [21]** She says that due to a series of unfortunate circumstances, she returned to Jamaica on August 26, 2010 and went to the house in Havendale when Mr. Salmon told her she could not go inside and threw her clothes and so many other things which she had brought with her over the fence.
- [22]** Ms. Salmon also says that she had given her Attorney-at-Law Mesdames Archer Cummings and Co a whole series of bills, receipts, invoices and western union documents showing all the expenditure she made on the said property but unfortunately their office was the subject of a flood that wet up all of these documents and made them illegible that they had to be thrown away as the information was not able to be salvaged.
- [23]** Ms. Salmon further maintains that she would come down to Jamaica at least every six months and spend at least 4 months on each occasion where she and Mr. Salmon co-habited as man and wife. She says that she visited Jamaica for two to three weeks when Mr. Salmon was not here, but stayed for months when he was in Jamaica.
- [24]** She also says that all the clothes she needed were at the property so when she came to Jamaica, she did not even have to bring clothes. She added that she spoke with Mr. Salmon directly and privately about her concerns with 67 Fairfax Drive and having her name put on the Certificate of Title. She says the expansion which she alone financed, added 2 more bedrooms, another bathroom, a larger kitchen, and an upstairs section of house was built with a bedroom, a bathroom, a



kitchen and a living room and that each section of the house has its own separate entrance to the building.

- [25] On cross examination Ms. Salmon testifies that while living in Boston she would come to Jamaica every six months because Mr. Salmon was deported a few times so she would be back and forth. She however admits that she did not come to Jamaica every year. She would come after six months and sometime after 9 months. She says sometimes she would stay for one month, sometimes three weeks, and sometimes two weeks.
- [26] She admits that she was in Boston when Fairfax was purchased but says it was Mr. Salmon's sister they asked to do the business of looking for the house because she had to return to the USA, and it was when she left they found the property.
- [27] She also says that she does not really recall the cost of the house, she just know "how much money they used to get and what they get cause they hide the paperwork"; "so I don't know". She agrees that she gave evidence that the cost of the property was \$450,000 but says that is what they told her.
- [28] When asked if she knows how much money she gave directly for the purchase of the property she responded; *"Yes, When I came down I gave 10,000 US to his mother and fly back to America and then his sister came, her name is Veronica Salmon I went to the bank and change out hundreds of thousands of dollars in hundred bills to give her to come back to Jamaica."* She was then asked if it was 30.000 US dollars, and he answered "Yes".
- [29] Ms Salmons says she does not know how much cash persons were allowed to carry to Jamaica in 1988 nor in 1989. She says that she was not aware that there was a limit on the amount of cash persons were allowed bring into the island. She admits that she said she was a frequent traveller. She also says that she does not know how much of a deposit was paid on the house.
- [30] She says after paying 10,000 US, plus four hundred and something thousand Jamaican dollars, then when she came to Jamaica she paid 25,000 US dollars to

put her name on the title She also says further, that she did not pay any instalments because she wasn't in Jamaica, every transaction was through Mr. Salmon's sister. She agrees that the Fairfax property was purchased in 1988.

- [31] Ms. Salmon then admits not sending any money to Mr. Salmon to buy the house but says that she sent him money to build upstairs for the kids. She agrees to purchasing another property in Drewsland Jamaica She says "Yes I have a little place in Water House" She admits that when the property in Drew's land (Water House) was purchased she signed an instrument of transfer but also agrees that in relation to the Fairfax property she did not sign an instrument of transfer.
- [32] She agrees that she never had any conversation with either Mary Salmon nor Theresa Veronica Salmon before she passed away about her ownership of the property. She qualifies this by saying that it is because the son was down here and he controlled everything while she was in America.

#### *The Evidence of Elisha Howell*

- [33] Ms. Howell, the daughter of Ms, Salmon gave the following testimony on this issue; Her mom and Mr. Salmon lived in that house (Fairfax) together since it was purchased. All her things were there, such as her clothing, jewellery, shoes, makeup, etc. ever since they both purchased the house. This was to the point that she hardly had to travel with a lot of items when she came to Jamaica because she had her things there. Her mother was sending money to Mr. Salmon's family for the house.
- [34] Ms. Howell further states that they were at the house all the time, at least 3 to 4 times a year or more during the late 80s, 90s, and 2000s. She says none of Mr. Salmon's sisters contributed though it was obvious at the time that some of Mr. Salmon's family were going to move in. She states that she remembers going to the family's one-room premises with everything outside such as the kitchen; that their living conditions were bad.

- [35] She asserts that Mr. Salmon cannot deny that her mom lived at Fairfax for long stretches of time with him from which they were sending their grandchildren to school. including her son.
- [36] On cross-examination Ms. Howell states that she was born in Brooklyn, New York and her primary place of residence between 1988 and 1996 was Boston. She also agrees that Boston was her mother's primary place of residence from 1988 to the time she was deported. She says, "Yes, we have been there for many years"
- [37] In response to the suggestion that Fairfax was not the primary place of residence, she states that Jamaica was always home; both were primary places of residence, but admits that she and her siblings went to school from Boston. She admits that it was not every year she or her siblings would come to Jamaica, as "it was kind a costly".
- [38] Ms. Howell states that her mother would come to Jamaica "two times per year and maybe three times if she got lucky". She further states that Ms. Salmon would stay "for the most part, at least two weeks, or four or more". As it relates to the names on the Title to Fairfax Ms. Howell states that it wouldn't make no sense for her mother not to be on it "as she was the breadwinner mostly, after they got married. This is a family house of their children and his mom, and my grandmother wanted ever wanted everyone to come here. *I probably could agree with grandma name being on there. Mr. Salmon, my mom's name*".
- [39] She states that a lot of people used to live at Fair fax, about 6 to 9 people were there all the time. She admits that these were Mr. Salmon's relatives. She specified that these were his sisters, his niece and his nephew. She also states that "most of the time they would fill it up".

### ***The Evidence of the Defendant Mr. Salmon***

- [40] The evidence Salmon is that, himself, his late mother and sister are named in the Certificate of Title for the property located on Fairfax Drive, Havendale as the registered proprietors, as they jointly purchased the said house for a sum of \$470,000 JMD in 1988. He states that he and Ms Salmon never lived in that house together and that she never contributed anything to the home.
- [41] He contends that it was never a family home for his marriage, his children, nor Ms. Salmon's child. He exhibits a copy of a receipt dated the 4<sup>th</sup> August 1988 for payment made in the sum of One Thousand Dollars (\$1000) by his sister, Theresa Salmon to their then attorney Delroy Chuck towards the purchasing of 67 Fairfax Drive.
- [42] He also exhibits a copy receipt dated the October 21<sup>st</sup> 1988 for payment made in the sum of Three Hundred and Thirty Thousand (\$330,000) by his sister, Theresa Salmon who he says, although her name does not appear on the title, supported the family effort and made the said payment on their behalf, to their then attorney, Delroy Chuck.
- [43] Mr. Salmon states that his sister Mary Salmon, who is named on the title, made a payment towards the Fairfax Property, in the amount of Seventy Thousand Dollars (\$70,000.00). He exhibits a copy of the receipt from the Jamaica Citizens Bank Ltd, dated July 6, 1988, for an amount of Seventy Thousand Five Hundred Dollars (\$70,500).
- [44] He further states that after the Fairfax property was purchased in 1988, his mother, father and other relatives, namely, his brothers Derrick Salmon and Steven Salmon, his sisters Mary Salmon, Denise Salmon and Pauline Salmon, his niece Lavern Robinson, his sister's son David Robinson moved in.
- [45] He asserts that when he and his relatives purchased that property, it had nothing to do with his marriage to Ms. Salmon. He indicates that Ms. Salmon was at that time, residing in the United States and had this property been purchased as their

matrimonial family home, it would have been very easy for him to send the agreement for sale and transfer document to her in America for her to sign and take part in the purchasing of the house.

**[46]** He indicates further that Ms. Salmon was able to travel to and from Jamaica and could have come to sign the relevant documents if she wanted to or had an interest in the property. He asserts that the Fairfax property was acquired for the sole purpose for his mother and family. He says that at no time was this property ever the only or principal family residence, nor was it ever intended to be his and Ms. Salmon principal family residence. He points out that the property bears the civic address of 67 Fairfax Drive, not Fairfax Avenue. He says that this shows that Ms. Salmon, is not familiar with the correct name of the street because she was not a part of the acquisition of the property, nor an intended inhabitant.

**[47]** He states that he and Ms. Salmon had never looked to purchase this property together and that he and Ms. Salmon purchased a home in Drewsland, for which he has receipts in both their names. He indicates that Ms. Salmon has failed to mention this home, in which she actually has an interest in. He exhibits receipts for the purchasing of property located at Lot number 43 Drewsland.

**[48]** Mr. Salmon insists that Ms. Salmon's name is not on the title for the house on Fairfax Drive because she did not contribute anything to it, nor did she live there at all. He says her name is on the receipts for the purchase of the house in Drewsland, because she contributed to that house. He asserts that when they intended to do things jointly, they did it jointly and reiterate that there was no intention to purchase the house on Fairfax Drive with Ms. Salmon, and thus her name is not on the title.

**[49]** He contends that Ms. Salmon came to Jamaica because she was deported in around 2010. Outside of that she only visited once, many years before that, in 1996. On cross-examination, Mr. Salmon states that his mother was a housekeeper and his sister, whose name appears on the title she worked for the government. He states that a cheque from Citizens Bank in the amount of \$75,000, drawn from

an account jointly owned by him and his sister, was used to pay the realtor handling the transaction is documentary proof of the source of payment.

**[50]** When asked if any documentation exists to show the source of that \$75,000, he says that he worked in Jamaica alongside his sister. When asked if he and his wife did not buy anything at all during their marriage he responded by saying “Yes, we have ownership of a property. That property is in Waterhouse” He, however, says he does not remember the date when it was bought but knows that it was bought after the Fairfax property. He also said that Ms. Salmon’s brother is also registered as owner of the Waterhouse property.

**[51]** When questioned about whether he wanted to add Veronica McFarlane’s name to the title, he states that he did not intend to add her name. He confirms that one of his sisters suggested he put his wife’s name on the title, but he refused. When confronted about an earlier statement denying that any of his sisters made such a suggestion, he states that he did not remember. He refutes the claim that the \$330,000 used for the property purchase included funds from Mrs. Salmon. He further denies that Mrs. Salmon gave him \$25,000 USD in April 2000 for her name to be added to the title.

**[52]** Mr. Salmon testified that he was first deported in 1981. He agrees that he and Mrs. Salmon got married in Canada that same year. He states that he went to Canada one week after being deported in 1981. He further states that he and Mrs. Salmon got married approximately a week after he arrived in Canada and that they moved to Boston around two weeks after their marriage.

**[53]** He indicates that he remained in Boston for about eight years until his eventual deportation in 1989. He indicates that at the time of their marriage, Mrs. Salmon had four children but states that only two of those children, along with his two children, himself, and Mrs. Salmon, lived together as a family at the address at 17 Hayward Street. He confirms his knowledge of a restaurant named Tropics, which was located on Norfolk Street in Dorchester, Boston. He further acknowledges that the money earned from the restaurant helped to support the family.

- [54] He however states that he was the co-owner of the restaurant. He confirms that the restaurant was started in 1981 and, as a co-owner, asserts that it was not bringing in a lot of money. He disagrees that it was the main or major source of income for the household. He further states that between 1981 and 1989, he was taken into custody or imprisoned about three times, serving sentences of six months, thirty-seven months, and four years.
- [55] Mr. Salmon admits that up until the 1990s, he and Ms. Salmon were still treating each other as husband and wife and that the Fairfax property was bought in 1988. He states that the last time he went to Boston was 1999.
- [56] He maintains that the first time Mrs. Salmon came to the property was when his father passed away and that he was not in Jamaica at that time. He states that the next time MS. Salmon came to the property was in 1995. However, having been shown some photographs, he admits that some of them shows Ms Salmon and her grandson at the Fairfax property. He agrees that these were taken at Fairfax while they were on vacation in Jamaica. Mr. Salmon acknowledges throwing Mrs. Salmon's clothing outside the house, stating that he became angry upon learning that she had been married before he married her.

*The evidence of Veronica Mc Farlane*

- [57] The evidence of Ms, Mc Farlane is that although her name does not appear on the Certificate of Title for the property at 67 Fairfax Drive, she is aware of Delroy Chuck being the Attorney involved when her family was purchasing that property. She says her sisters Mary and Denise Salmon identified 67 Fairfax Drive, Kingston 19 for the amount of Four Hundred and Seventy Thousand Dollars (\$470,000.00).
- [58] She states that, in the year 1988, during a phone call with her brother Mr. Alton Salmon, he informed her of his intentions to purchase the house on Fairfax Drive along with her late mother and sister Mary. She sates that when the paperwork was being done for that house, Mr. Salmon wanted her name to go on the title as

well but she declined the offer because herself and her husband were looking for a property to buy for themselves.

- [59]** She says that she suggested to Mr. Salmon that he put his wife's name on the property instead, since they were married, but he immediately refused as he and his ex-wife Doreen had a very strained relationship.
- [60]** She also says that although she did not reside at the house on Fairfax Drive, she visited quite often to visit her mother while she was alive. That she would stop at the house some evenings after work to assist to take care of her mother as she aged in that house. She states that she never saw Doreen living there.
- [61]** She says that she is aware of Alton Salmon and Doreen Salmon staying at the Pegasus Hotel together at some time but is unaware of Alton ever discussing purchasing the property at 67 Fairfax Drive with Doreen. She adds that during Ms. Salmon's visits to Jamaica, she has never witnessed her making any requests for her name to be added to the title, nor for any transfers or any claims that she owned the property.
- [62]** She says that in the 1980's, she was the only sister of Mr. Salmon who had a visa to travel to the USA, and she is sure that Doreen has never given her any money for any reason. Ms. McFarlane says that Ms. Salmon has incorrectly described the layout of the house at 67 Fairfax Drive because she was never an intended owner, and she never lived in it. She says that originally, the house consisted of three (3) bedrooms and two (2) bathrooms as well as a kitchen on the large side. On the small side, there were two (2) bedrooms, a bathroom and a kitchen.
- [63]** This expansion she says was done and completed without any input from Ms. Salmon. She says further that each time the Claimant visited Jamaica, she knew of her staying in Jamaica for no longer than two (2) weeks. She also says that her mother Theresa Salmon, was not employed but her children supported her and that from the moneys they all contributed she would participate in and benefit from partner draws. She states that Mary who worked as a secretary at the time,



contributed financially to the purchase of the property and that Mr. Salmon's contributions to the property were great, as he sent monies from the US to Jamaica towards the purchase.

**[64]** . She asserts that she knows that Ms. Salmon never ever lived in the Fairfax house. She states that to her knowledge, Ms. Salmon resided overseas for many years until she was deported and has no ownership in the Fairfax house.

**[65]** On cross-examination, Ms. McFarlane was asked whether her brother Mr. Salmon instructed her to include Mrs. Salmon's name on the title for 67 Fairfax Drive. She recounts a conversation in which he expressed a desire to include their mother's name along with hers on the title, but she declined. She then recalls mentioning to him that he could include his wife's name, but he refused. She states that she visited the Claimant's home in the USA twice, once in 1985 when she was in New York and travelled to Boston for a holiday weekend, and again in 1989. She denies Mrs. Salmon giving her \$30,000 USD to bring back during her visit in 1989 to the USA.

**[66]** She recalls Mr. Salmon being in custody in the United States being imprisoned on three occasions between 1989 and 1991, serving sentences of six months, thirty-seven months, and four years. When it was put to Ms. McFarlane that Mrs. Salmon visited Jamaica two or three times per year, she states that she may have come once or twice, but not regularly. She agrees that Ms. Salmon was the one who brought Mr. Salmon's children David and Nadine to the USA. She however says that on her visits to Ms. Salmon in the USA she did not see the children living with her.

Mary Wallen

- [67] Ms. Wallen indicates that her name was Mary Salmon before she got married. She states that she was heavily involved in the process of purchasing the property located at 67 Fairfax Drive, Havendale, jointly purchased by her brother Alton, her late mother and herself. She states that after they purchased the property, they moved in as a family with their mother, father, siblings, niece and nephew.
- [68] She explains that in 1988, when her brother, Mr. Alton Salmon, decided that they as a family should purchase the property in Havendale, and that he explained that it was for his mother, father and siblings. At that same time their father, Cecil Salmon was ailing from cancer who passed away June 2, 1989.
- [69] She states that in the 1980's her brother, Alton Salmon, was living in the United States. and that, he instructed her and her twin sister Denise to search for a suitable property, preferably in the St. Andrew area, namely Meadowbrook or Havendale, where they all could live and be safe.
- [70] She explains that after searching for approximately one (1) month, they finally found the house at, 67 Fairfax Drive, Havendale, for the family. The house was listed by New World Realtors. She states that in order to secure the purchase of the property, they paid 15% of the purchase price in the sum of Seventy Thousand Five Hundred Dollars (\$70,500.00). She exhibits a copy of the said Manager's cheque from the Jamaica Citizens Bank Ltd for an amount of \$70,5000.00. She states that when the family decided to make the purchase, she was instructed by her brother to do that withdrawal.
- [71] She asserts that Doreen Salmon was never involved nor made aware of the purchase of property at 67 Fairfax Drive. She adds that she has all knowledge of all monies dealing with the purchase of the property at Fairfax Drive. She insists that Doreen Salmon neither paid nor contributed any money towards the purchase of the property and there was never an agreement to add or transfer her name to the Title, as she claims.

- [72] She states that when the property was first purchased in 1988, she lived in it for about 4-5 years. She states that while living there, she never saw Doreen living there and that she as others of the Salmon family, lived there. She also says that when she got married on March 12, 1994, she resided in the house at 67 Fairfax Drive during the week for work as a temporary worker with Eclipse Personnel, she would be sent on assignments. She further states that on the weekends, she would stay in Denbeigh, Clarendon with her husband.
- [73] Ms. Wallen says that upon his return to Jamaica for good, her brother Alton Salmon worked and still works as a Technician at Island Air Conditioning, a company owned by his brother-in-Law and sister, Oswald McFarlane and Veronica McFarlane, respectively. She says further that the house originally had three bedrooms and two bathrooms, on one side and on the other side there was one (1) bedroom and one (1) bathroom and not four (4) bedrooms on one side and three (3) bedrooms on the other side as claimed by Doreen Salmon.
- [74] As such she says Ms. Salmon has thus far provided this court with an incorrect civic address and an incorrect description for the property, and that if she had any right to the house, she would have had several opportunities to ensure that her name was added to the title but she took no such steps because it was never her house.
- [75] Ms. Wallen is adamant that when Ms. Salmon visited Jamaica, she spent no more than a week or two and barely stayed at the home on Fairfax Drive. She says that Doreen was never made aware of any tenants or their rent because she had nothing to do with the property. On cross-examination She confirms that she saw the Claimant Ms. Salmon at her father's funeral and estimates that she may have been to the house in Fairfax two or three times in total. She admits that David and Nadine Mr. Salmon's children lived with Mr. and Ms Salmon but says she can't say what the living arrangement was when Mr. Salmon was incarcerated.

**Whether the property at 67 Fairfax Drive in the parish of St. Andrew is the family home?**

**THE LAW**

[76] Under **section 6(1) and (2) of PROSA**, a spouse is entitled to an equal share of the family home, provided they satisfy the criteria outlined in these provisions.

[77] Section 6 (1) provides:

*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 a marriage or the termination of cohabitation;*

*(b) on the grant of a decree of nullity of marriage;*

*(c) where a husband and wife have separated and there is no likelihood of reconciliation.*

*(2) Except where the family home is held by the spouses as joint tenants, on the termination of marriage or cohabitation caused by death, the*

**SUBMISSIONS**

**On Behalf the Claimant**

[78] Counsel, Mr. Campbell, on behalf of the Claimant, acknowledges that the property at Fairfax must first qualify as the ‘family home’, before the presumption of equal entitlement will apply. He relies on the authorities of ***Dalfel Weir v Beverly Tree***, [2014] JMCA Civ 12; ***Peaches Stewart v Rupert Stewart***, Claim No. HCV0327/2007.

- [79] He, however, submits that the court should accept the evidence of Ms. Scott Salmon that she worked to provide the money to purchase, expand and furnish the property and that the property was intended to be the family home. He also submits that the court should accept her evidence that she would live at the premises for significant portions of time with the 1<sup>st</sup> defendant as husband and wife. That she trusted the 1<sup>st</sup> defendant and her in laws to have the property registered in her name and the 1<sup>st</sup> defendant's name.
- [80] He high lights the evidence of Ms. Howell who states that her mother would send furniture to Jamaica that she purchased from a furniture store in Boston and supports her mother's evidence that moneys were sent to Jamaica by her mother for the purchase of the said property.
- [81] Mr. Campbell further submits that Ms. Cummings, attorney-at-law, has confirmed that the claimant brought documentary evidence to support her claim that she expended money on the property, however, these items were destroyed following a flood on the 6<sup>th</sup> and 7<sup>th</sup> of May 2018.
- [82] He argues that, given the parties' occupations at the time and Mr. Salmon's legal trouble, it is more likely than not that it was Ms. Scott Salmon's earning that were used to purchase the property and that contributed to the improvement of it.
- [83] Mr. Campbell submits that the claimant's evidence indicates that the property was intended to be the family home. He also submits that a trust may be established by the conduct of the parties, which demonstrates their common intention for Ms. Salmon to have a legal and beneficial interest in the property. He further submits that it is clear that Ms. Salmon financed the purchase and improvement of the property. As such, he posits that in reliance on the same, she acted to her detriment.
- [84] Mr. Campbell urges the court to consider the property as other property if constrained, pursuant to section 14(b) of PROSA. He also submits that the court should consider that the claimant made significant contribution to the acquisition

and improvement of the property, her care of the 1<sup>st</sup> defendant's children, the absence of a family home, the marriage of Ms. Scott Salmon and Mr. Alton Salmon which lasted for 39 years their cohabitation and other facts weigh towards her being entitled to a significant interest in the home.

### **On Behalf of the Defendant**

**[85]** Mr. Moulton made the following submissions;

1. The issues for the Court to determine are largely issues of fact and therefore the credibility of the Claimant and the Defendants will be of great importance. The Court should prefer and accept the evidence of the Defendants to the evidence of the Claimant. The Court should find that the Claimant and the 1st Defendant lived primarily together in Boston, in the United States. The Claimant herself, said she primarily lived in Boston with her kids and the 1st Defendant's. The Claimant's children and the 1st Defendant's children went to school in Boston; The Claimant's business that she operated was in Boston; the 1st Defendant when he returned to the United States; he stayed in Boston.
2. The Claimant and her daughter, Elisha Howell, admitted that they visited Jamaica from Boston, United States. The Court should find that during cross examination neither the Claimant nor Elisha were consistent with their evidence as to the frequency of their visits to the property. The Court should find that the visits were sporadic and infrequent.
3. The residence test is only one component for the finding of a family home; the other criterion is the 'ownership' test: Under PROSA, the family home must be wholly owned by the 1st Defendant or the Claimant or both. In this case, the evidence is clear, the property was never wholly owned by the 1st Defendant. It was owned jointly by the Defendants. (He relies on the cases of **Lambie v Lambie** [2014] JMCA Civ 45; **Madge Robinson v Carol St Aubyn Robinson** [2023] JMSC Civ)
4. The evidence of the Defendants is consistent in this regard, that the property was bought for the Salmon family. The Claimant cannot claim an interest in it through PROSA because she fails both the residence and ownership test.
5. The Court should find and conclude that this property never became the family home, nor was it ever the primary residence of the 1st Defendant and the Claimant.

## DISCUSSION

[86] Having considered all the cases and the legal arguments by both counsel for which I am grateful, I must commence this discussion with the clear statement of the law that, despite the contention between the parties as to who provided the funds for the purchase of the Fairfax property, in the event that it is determined that this property was the family home, of Mr. and Ms Salmon, contribution or lack thereof by either party is not a factor affecting their equal share entitlement under **section 2 of PROSA**.

[87] This was clearly expressed by Morrison JA (as he then was) in the case of **Annette Brown v Orphiel Brown** [2010] JMCA Civ 12. Additionally, this Court is also aware that there is provision for departure from the equal share rule under section 7 of **PROSA**. However, this issue does not arise here for consideration.

[88] In deciding whether a property is the family home the court has to first examine the conceptualization of this term as contained in the legislation. **Section 2 of PROSA** defines the 'family home' as:

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

[89] Additionally, in the case of **Lambie v Lambie** [2014] JMCA Civ 45, the Court made the observation that the court below, while applying the residency test, had failed to take into consideration the question of ownership. The court said:

*“It does appear, as advanced on behalf of Mrs Lambie, that the learned judge only applied the ‘residence test’ in determining whether the property was the family home and had failed to take into account the ‘ownership’ component of the definition up to the point he declared it to be so. For Farringdon to qualify as the family home, it must satisfy all the elements of the statutory definition and one of those elements is that it must be ‘wholly owned by either or both of the spouses’...”*

[90] Phillips J.A., in the case of **Dalfel Weir v Beverly Tree**, [2014] JMCA Civ 12, in commenting on the decision of Sykes J as he then was in the case of **Peaches Stewart v Rupert Stewart**, Claim No. HCV 0327/2007, delivered 6 November 2007, at paragraph 39 stated:

*“Sykes J in delivering the judgment dealing with sections 2 and 13 of PROSA analysed excellently, the definition of “family home” and the interpretation to be given to it. I endorse his comments in the main and have set out below most of his discussion in relation thereto, with which I agree. He stated the following in paragraphs 22, 23 and 24:*

*“22. It is well known that when words are used in a statute and those words are ordinary words used in everyday discourse then unless the context indicates otherwise, it is taken that the words bear the meaning they ordinarily have. It only becomes necessary to look for a secondary meaning if the ordinary meaning would be absurd or produces a result that could not have been intended...”*

*“23. It should be noted that the adjectives only and principal are ordinary English words and there is nothing in the entire statute that suggests 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 one’s 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.”*

*24. It is important to note that in this definition of family home it is vital that the property must be used habitually or from time to time by the spouses, as the only or principal family residence. The adverbs habitually and from time to time tell how the property must be used. The definition goes on to say that such a property must be used wholly or mainly for the purposes of the household. Thus using the property in the manner indicated by the adverbs is crucial. The legislature, in my view, was trying to communicate as best it could that the courts when applying this definition should look at the facts in a common sense*



*way and ask itself this question, 'Is this the dwelling house where the parties lived?' In answering this question, which is clearly a fact sensitive one, the court looks at things such as (a) sleeping and eating arrangements; (b) location of clothes and other personal items; (c) if there are children, where [do] they eat, sleep and get dressed for school and (d) receiving correspondence. There are other factors that could be included but these are some of the considerations that a court ought to have in mind. It is not a question of totting up the list and then concluding that a majority points to one house over another. It is a qualitative assessment involving the weighing of factors. Some factors will always be significant, for example, the location of clothes and personal items."*

[91] Similarly, Thompson James J in the case of **Froome v Froome** [2018] JMSC Civ 110, in commenting on this issue, stated that,

"The 'family home' must be the dwelling house that is the 'principal residence' used by the spouses habitually or from time to time, mainly for the purposes of the household. That there can be only one dwelling house regarded as such is evident from the definition, and the fact that the definition is stated in the present tense (using 'is'), to me suggests that the premises ought to be the current dwelling house that is the main place of residence at the time of separation. The intention of the parties is important."

[92] In the case of **Hyacinth Gordon v Sidney Gordon** [2015] JMCA Civ 39, the property which was the subject of the Claim was unregistered land belonging to the wife's great-great grandparents. The house was built on the land from the finances of Mrs Gordon's family, without any financial contribution from either Mrs Gordon or Mr Gordon. Although it was the parties' matrimonial home, Brook JA as he then was found that it could not be treated as the family home pursuant to **PROSA**, "as it was not owned solely by one or both of the parties". (See paragraph 15)

[93] In the case of **Hugh Sam v Hugh Sam** [2018] JMCA Civ 15, Edwards JA found that the subject property was not the family home as it was not wholly owned by the husband, being registered under the Registration of Titles Act in his and his father's name.

[94] In the instant case it has been acknowledged by counsel Mr. Campbell that in accordance with the provisions of **PROSA** and the decided cases, the presumption

of equal entitlements is applicable only in circumstances where the property in question satisfies the statutory definition of a family home. Consequently, in order to establish her claim to equal entitlement to the property at Fairfax, Ms. Salmon must first prove on a balance of probabilities that the property at Fairfax was the family home of herself and Mr. Salmon.

- [95] She must discharge this burden by proving on a balance of probabilities two essential elements in relation to this property. She must prove, that the property was wholly owned by either herself or the Defendant or wholly owned by both. She must also prove that during the marriage, this property was occupied habitually or from time to time as hers and Mr. Salmon's shared residence, and that it served as their only or principal family residence during the marriage. If the evidence does not support these, the property cannot be deemed the family home, and the claimant would not be entitled to an automatic equal share.
- [96] Counsel for the Claimant urges the court to find that the property was purchased entirely by the funds furnished by the Claimant and as such is wholly owned by her. On the contrary Counsel for the Defendants submits that in this case, the evidence is clear, that the property was never wholly owned by the Claimant and or the 1<sup>st</sup> Defendant but was jointly owned by the Defendants. He submits that the evidence of the Claimant and her daughter Ms Howell, that she alone financed the purchase of the Fairfax property is inconsistent and not credible.
- [97] However, it is the undisputed evidence that upon the purchase of the Fairfax property, the title was registered in the names of the Defendant Mr. Salmon, his sister, Mary Salmon, and his mother, Theresa Salmon. Under the **Registration of Titles Act (RTA), Section 68** provides that a registered title is conclusive proof of ownership, while **Section 70** affirms the primacy of the title holder's interest, except in the case of fraud. Consequently, as it relates to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant, the legal presumption of ownership under the **Registration of Titles Act** remains relevant.

[98] Additionally, despite Ms. Salmon's evidence that she advanced all the moneys for the purchase of the property, thereby asserting that it is wholly hers, her evidence that any moneys paid to Delroy Chuck for the property was or "included the money" she sent is of great significance. This evidence points to ambivalence on her part as to whether Mr. Samon and or the other defendants made contributions to the purchase price of the property. This, in essence indicates that. Ms. Salmon herself is not convinced that the other Defendants were not contributors to the purchase price and, as such joint legal and beneficial owners of the property.

[99] Furthermore, the undisputed evidence establishes that Mr. Salmon shared occupation of the property with his parents' siblings and other relatives. Ms. Salmon's evidence also indicates that she was aware of this. However, nowhere in her evidence did she indicate that she registered any objection to this living arrangement. Moreover, Ms. Salmon indicates that she had private discussions with Mr. Salmon about adding her name to the title, but nowhere in her evidence did she say that she asked or demanded of him that the second and third defendants' names, be removed from the title.

[100] Given that, not only was the title to 67 Fairfax Drive shared among the defendant, his sister, and his mother but occupancy, to the knowledge of the Claimant was also shared by the Defendants without any evidence of Ms. Salmon asserting any right of ownership to and over them, I find Ms. Salmon's evidence regarding ownership lacking in credibility.

[101] Accordingly, it is clearly demonstrable on the evidence that, despite Ms. Salmon's assertions to the contrary, the property was not exclusively owned by Mr. Salmon nor Ms. Salmon nor both, but it was owned by the Defendants jointly.

[102] Consequently, Ms. Salmon has failed to establish one of the criteria of the particular type of ownership required by section 2 of **PROSA**. This in essence, disqualifies this property from being recognized as the family home. However, for completeness, I will go on to examine the evidence as it relates to the second criterion, that is the residency test.

[103] Ms. Salmon has affirmed that prior to Mr. Salmon's deportation they along with their children did live at a house in Boston as a family. It is also evident from her own evidence that when the property was purchased she and Mr. Salmon were both living in the United States of America. In my view, a proper construction of **PROSA** indicates that the mere fact that the parties have more than one residence, does not disqualify any one from being the family home. It is pellucid however that only one of these residence could possibly be determined to be the family home.

[104] . As it relates to the residency test it must be determined to be the principal or main residence. This view was captured in the reasoning of Sykes J as he then was, in the case of ***Peaches Stewart v Rupert Stewart***, where he stated that the family home should be the parties **permanent or usual place of residence**.

[105] It is the evidence of Ms. Salmon that she visited the Fairfax property every six months and spent between 4 to six weeks on each visit. She also claims that when Mr. Salmon was here in Jamaica, she would stay for months at a time. However, this is inconsistent with her own evidence that she would spend three to 4 weeks. She also admits on cross examination that she did not visit Jamaica every Christmas, that she would visit sometimes after 6 months and sometimes after 9 months.

[106] Her daughter, Ms Howell, despite asserting that her mother would spend long stretches of time with Mr. Salmon at Fairfax, testifies that her mother would visit the property two to three times per year. As such, the evidence demonstrates that Ms. Salmon's visits to the Fairfax property were infrequent and short. Moreover, her admission that she did not go to the rented side often and that it is difficult for her to remember the layout indicates to me a lack of familiarity with the property. This is consistent with the infrequency of her visits.

[107] Additionally, the evidence of her daughter would suggest that sometimes Ms. Salmon would send her and other children to Jamaica during the Christmas Holidays without travelling with them. Ms. Salmon confirms that in 1988, all of her children were living in Boston and attending school there.

**[108]** It is also noted that her daughter, Ms. Howell, initially acknowledges that Boston was her mother's primary residence. Ms. Howell testifies that she and her mother lived in Boston but spent significant time in Jamaica during school breaks. However, she recalls staying at the Fairfax property for varying lengths of time, sometimes a month, three weeks, or two weeks during visits. So, on Ms. Howell's evidence, their stay at the property did not exceed one month on any given occasion.

**[109]** Conversely, it is the evidence of the 1<sup>st</sup> defendant that he and the claimant never lived together as a family at the subject property. He further denies that after the purchase of the property Mrs. Salmon would come to Jamaica along with her children three times per year. He eventually acknowledges that she did stay at the property sometimes.

**[110]** Mr. Salmon, however, denies that Ms. Salmon spent any significant time at Fairfax for it to qualify as her primary home. He contends that she only visited the property twice. These times he says, were when his father died, and then next in 1995. He contends that 17 Hayward Street in Boston is where he and the claimant resided with the children as a family.

**[111]** According to the evidence of the third Defendant, Mary Salmon-Wallen, Mrs. Salmon may have been to the Fairfax property two or three times in total. However, considering the evidence that, between 1988 and 2006 Mr and Ms. Salmon were not estranged, and Mr. Salmon's admission that photographs exhibited, depicted Ms. Salmon's presence in the Fairfax property, in comfortable circumstances such as bathing her grandson, I consider the evidence of the Defendants that she only visited the property two to three times in total to be somewhat incredulous.

**[112]** I have no doubt that Ms. Salmon visited and stayed at the property on different occasions. I equally have no doubt that she would have had personal items of clothing as also furniture at the property. Her evidence that she with the assistance of the police removed furniture from the property was not discredited. Additionally,

Mr. Salmon admitted that he threw out her clothes from the property. However, in my view, this without more does not point to the property being the main or primary place of habitation for the spouses so as to qualify it as the family home.

[113] I do not share the view of Counsel Mr. Campbell that Ms. Salmon's evidence shows that she would have lived at the premises for significant portions of time with the 1<sup>st</sup> defendant as husband and wife. This is in view of Ms Salmon's own evidence and that of her daughter, that her visits to the property were limited to two and at most three times per year. The duration of her stay, though conflicting on her case, I find, did not amount to more than 4 weeks. Moreover, she and her daughter Ms. Howell have confirmed that she did not visit every year. This is viewed against the background of her evidence that for the rest of all the other times she continued to reside at the premises in Boston where she, Mr. Salmon and their children had lived as a family during the marriage and prior to his deportation.

[114] Consequently, considering the infrequency of Ms Salmon's visits and the short duration of her stay, I am constrained to conclude that Fairfax was not the shared habitual residence or usual residence of Mr and Ms. Salmon. I find that the evidence establishes that, prior to Mr. Salmon's eventual deportation, their usual and principal place of residence was at the house in Boston USA.

[115] While in order to qualify as the family home, it is not necessary for the spouses be in residency at the property at all times, as the provision of **PROSA** indicates that the residency can be from time to time, there must be some degree of permanency so as to qualify it, as the spouses' primary residence, that is the main residence. On my assessment of the evidence, I conclude that, during the marriage, the primary residence of the spouses was in Boston. After Mr. Salmon's final deportation to Jamaica Fair Fax became his permanent residence while Boston remained Ms. Salmon's permanent and primary residence.

[116] Consequently, I share the view of Counsel for the Defendant that, in light of her own evidence, Ms. Salmon's visits to the Fairfax property were sporadic, just for vacation purposes. I share his view that 67 Fairfax Drive was not the principal

residence of Mrs. Salmon. While it is clear that she and her family had an emotional connection to the property and visited periodically, her primary residence, financial commitments and daily life was in Boston. As such, 67 Fairfax Drive does not meet the legal definition of a family home.

- [117] Therefore, the Claimant having failed both the residence and ownership tests under **PROSA** has failed to prove that the Fairfax Property is the family home. As such she has failed in her bid for 50% share of this property.

### **Whether the Claimant owns the Entire Beneficial Interest in the Fairfax Property**

#### **The Law**

- [118] the case of **Gissing v Gissing** [1971] AC 886, Lord Diplock, in expounding on the principles applicable to a claim in trust against a legal title holder for a beneficial interest in land, noted at pages 904-905 that:

*“Any claim to a beneficial interest in land by a person, whether spouse or stranger, in whom the legal estate in the land is not vested must be based upon the proposition that the person in whom the legal estate is vested holds it as trustee upon trust to give effect to the beneficial interest of the claimant as cestui que trust. The legal principles applicable to the claim are those of the English law of trusts and in particular, in the kind of dispute between spouses that comes before the courts, the law relating to the creation and operation of ‘resulting, implied or constructive trusts.’...*

*A resulting, implied or constructive trusts – and it is unnecessary for present purposes to distinguish between these three classes of trust – is created by a transaction between the trustee and cestui que trust in connection with the acquisition by the trustee of a legal estate in land, whenever the trustee has so conducted himself that it would be inequitable to allow him to deny to the cestui que trust a beneficial interest in the land acquired. And he will be held so to have conducted himself if by his words or conduct he has induced the cestui que trust to act to his own detriment in the reasonable belief that by so acting he was acquiring a beneficial interest in the land.”*

- [119] **Thomas and Hudson’s The Law of Trusts**, at para 1.01 defines a trust as follows

—

*“The essence of a trust is the imposition of an equitable obligation on a person who is the legal owner of property (a trustee) which requires that person to act in good conscience when dealing with that property in favour of any person (the beneficiary) who has a beneficial interest recognised by equity in the property. The trustee is said to hold the property on trust for the beneficiary. There are four significant elements of the trust: that it is equitable, that it provides the beneficiary with rights in the property, that it also imposes obligations on the trustee and that those obligations are fiduciary in nature. “*

*“A trust comes into existence either by virtue of having been established expressly by a person (the settlor) who was the absolute owner of property before the creation of the trust ( an express trust); or by virtue of some action of the settlor which the court interprets to have been sufficient to create a trust but which the settlor himself did not know was a trust ( an implied trust), or by operation of law either to resolve some dispute as to ownership of property where the creation of an express trust failed ( an automatic resulting trust) or to recognise the proprietary rights of one who has contributed to the purchase price of property ( a purchase price resulting trust ); or by operation of law to prevent the legal owner of property from seeking unconscionably to - 18 - deny the rights of those who have equitable interest in that property ( a constructive trust)”*

**[120]** In the case of **Eric McCalla and Ors v Grace McCalla** [2012] JMCA Civ 31 McIntosh JA at paragraph 16 stated that:

*“It is settled law, approved and applied in this jurisdiction in cases such as Azan v Azan (1985) 25 JLR 301, that where the legal estate in property is vested in the name of one person (the legal owner) and a beneficial interest in that property is claimed by another (the claimant), the claim can only succeed if the claimant is able to establish a constructive trust by evidence of a common intention that each was to have a beneficial interest in the property and by establishing that, in reliance on that common intention, the claimant acted to his or her detriment. The authorities show that in the absence of express words evidencing the requisite common intention, it may be inferred from the conduct of the parties.”*

**[121]** In the case of **Grant v Edwards** (1986) 2 All ER 426, Sir Nicholas Browne-Wilkinson, in considering the issue of common intention, made reference Lord Diplock's judgment in the case of **Gissing v Gissing**. He highlighted the following key aspects of the judgment;

*“The proof of the common intention:*



(a) *Direct evidence (905H):*

*It is clear that mere agreement between the parties that both are to have beneficial interests is sufficient to prove the necessary common intention. Other passages in the speech point to the admissibility and relevance of other possible forms of direct evidence of such intention:*

*see at page 907C and page 908C;*

(b) *Inferred common intention (906A-908D):*

*Lord Diplock points out that, even where parties have not used express words to communicate their intention (and therefore there is no direct evidence), the court can infer from their actions an intention that they shall both have an interest in the house. This part of his speech concentrates on the types of evidence from which the courts*

*are most often asked to infer such intention viz. contributions (direct and indirect) to the deposit, the mortgage instalments or general housekeeping expenses. In this section of the speech, he analyses what types of expenditure are capable of constituting evidence of such common intention: he does not say that if the intention is proved in some other way such contributions are essential to establish the trust."*

[122] Counsel for the Claimant, relying on the case of **Newman Francis v Keneisha Leneisha Ann-Marie Francis** [2023] JMSC Civ 22 submits that when property is purchased either in the name of another or jointly, based on the presumption that the purchaser intended to create a trust, the presumption is that the property will result to the person who paid the purchase price. He also relies on the case of **Dyer v Dyer**, where it was emphasized that the trust results to the person who advances the purchase money.

[123] However, on this same issue counsel for the defendant argues that in law beneficial ownership follows legal ownership, as noted in **Jermaine McLean v Rosa Lawrence** [2022] JMSC Civ 166. This presumption he submits, can only be rebutted with evidence of a constructive trust, which requires proof of common intention at the time of the transaction. He argues that the claimant must provide evidence of the parties' conduct at the time of purchase or subsequent conduct that indicates a shared intention to alter their beneficial interests. He further cites

the case of **Hillierie Davis v Walsworth George Thomas** [2016] JMSC Civ 174, to emphasized the point that common intention must be proven through direct evidence or inferred from conduct directly related to the acquisition of the property.

[124] He argues further that the Court should disregard the Claimant's evidence that she paid any funds toward the purchase of the Fairfax property. as on cross examination, she admitted to not knowing the price for the property; nor the deposit yet, she indicated that she left US\$10,000.00 with the 1st Defendant's mother and US\$30,000.00 with the 2nd Defendant, Veronica McFarlane.

[125] Counsel submits that the claimant has failed to provide documentary evidence proving her financial contribution to the purchase of the property nor any common intention for her to have a beneficial interest in it.

[126] He also submits that she has provided no proof of the deposit. He points out that despite her claim that she sent \$30,000 with Veronica to Jamaica in cash the claimant was unaware that there was a limit to the amount of cash that one could travel with to Jamaica. This evidence, he submits, lacks credibility. As such the Court cannot find in her favour.

[127] He argues that the Claimant's failure to act for 15 years, even after being shut out in 2006 and deported in 2010, undermines her claim. He submits that the Court should find that no trust was established at the time of purchase nor afterward, as the claimant has not provided sufficient evidence of a common intention to create a trust in her favour.

## **Discussion**

[128] In light of the settled law as expressed in the aforementioned cases, in order to successfully claim a beneficial interest in the Fairfax Property as against the Defendants, the Claimant must prove, on a balance of probabilities, that an agreement or a common intention existed between the parties for her to derive a

beneficial interest in the property, and that she in reliance on this agreement or common intention acted to her detriment.

[129] As such, the court is tasked with determining whether there was an expressed agreement or, based on the conduct of the parties, an inference can be drawn that there was a common intention that the subject property would be shared beneficially, and that the Claimant relying on this acting to her detriment.

[130] This statement of the law was aptly expressed by McIntosh JA in the case of **In the Eric McCalla and Ors v Grace McCalla** [2012] JMCA Civ 31. At paragraph 16 she stated that:

*“It is settled law, approved and applied in this jurisdiction in cases such as Azan v Azan (1985) 25 JLR 301, that where the legal estate in property is vested in the name of one person (the legal owner) and a beneficial interest in that property is claimed by another (the claimant), the claim can only succeed if the claimant is able to establish a constructive trust by evidence of a common intention that each was to have a beneficial interest in the property and by establishing that, in reliance on that common intention, the claimant acted to his or her detriment. The authorities show that in the absence of express words evidencing the requisite common intention, it may be inferred from the conduct of the parties.”*

[131] The law also recognizes the right to the beneficial interest in property on the part of the person who provided or contributed to the purchase price based on the principle of resulting trust. This principle was laid down in the case of **Dyer v Dyer** [1788] EWHC Exch J8, 2 Cox Eq Cas 92 where the English Courts decided that where property is purchased by one person in the name of another there is the presumption of a resulting trust.

[132] It is the evidence of the claimant that she and Mr. Salmon had an agreement to purchase this property together as their home in Jamaica. It is also her evidence that acting on this agreement she sent moneys to Mr. Salmon, left moneys with his mother and sent moneys through his sister Veronica towards the purchase of the property. It is her contention that she alone provided the purchase price of \$450,000 for this property. She also contends that she later provided an additional sum of \$25,000 for her name to be added to the title.

[133] However, Mr. Salmon denies the existence of such an agreement, asserting that the initial funds used to purchase the property came from a joint account shared between himself and his sister, Mary Salmon-Wallen and that the purchase of the property was a joint venture between himself and his siblings. Ms Veronica Salmon denies ever receiving any moneys from the Claimant towards the purchase or improvement on this property.

[134] The Defendants, Mr. Salmon and Ms McFarlane have also indicated that the purchase price was \$470,000 dollars, while the Claimant and the 3<sup>rd</sup> Defendant Ms. Allen have indicated that it was \$450,000.

[135] In my view, whereas there is some amount of inconsistency on the evidence presented by the Defendants, when weighed against the evidence of Ms. Salmon, who bears the burden of proof, Ms. Salmon's case is so bereft of consistency to the point of being incredulous. Initially, in her evidence in chief she asserts that she sent the purchase price of the property at Fairfax to Mr. Salmon. Her evidence in this regard is that *"At that time Alton was not working and I sent all the money to Jamaica to him to pay for the purchase of the property and cost of transfer. Alton was not working and never worked after being deported so I sent the money for the deposit and the instalments to Alton and he paid for the land. These payments were sent to Jamaica by Western Union or other types of money couriers"*

[136] Yet despite these assertions that she sent all the moneys to Mr. Salmon, at a later stage in her evidence Ms. Salmon states that Mr. Salmon was not in Jamaica at the time that Fairfax was purchased and that she sent moneys towards the purchase price with his sisters. Her evidence in this regard is as follows

*"Alton was not in Jamaica when the property was purchased. When Veronica visited me in Massachusetts, she and I walked from bank-to-bank to collect \$100.00 bills that she could take down to Jamaica to put towards the purchase of the property, which she did"*

[137] Ms. Salmon also states that she sent money with her children, and to further exacerbate these obvious inconsistencies, she further states that she had left

10,000 US dollars with Mr. Salmon's mother for the purchase of the property. As such on Ms. Salmon's own evidence it is not clear to whom she gave the moneys she alleged that she contributed towards the purchase price. On one hand she says she sent all to Mr. Salmon, on the other hands she says she left a portion with his mother that is \$10,000 and sent some with her children and \$30,000 with Veronica Salmon.

**[138]** Her evidence is rendered even more dubious in that, having said that she sent 30,000 US dollars in 100-dollar bills with Veronica she appears oblivious to the fact that it was not permissible by law for anyone to travel to Jamaica with over 10,000 us dollars in Cash.

**[139]** Additionally, she had said initially in her evidence that she sent the money to pay for the property and the transfer to Mr. Salmon, then later on and under cross-examination, she retracted this and said that the money she sent to him was to build the upstairs. During cross-examination she is unable to provide clarity regarding the purchase price, stating that the price of \$450,000 was information provided to her by the defendants. She was unable to say what sums were paid for instalments, what portion was paid for deposit.

**[140]** The evidence of her daughter Ms Howell does not assist Ms. Salmon on this issue. Firstly, Ms Howell keeps reiterating that she was a child at the time. Secondly she lacks credibility. She claims to have witnessed moneys being given to Veronica Salmon and herself taking moneys down to Mr. Salmon. She speaks about Veronica coming to the House in Boston all the time and they as children carrying down moneys to Mr. Salmon. Yet her evidence lacks convincing details as to the sum she took to Mr. Salmon during the periods of her travel.

**[141]** As regards financial capacity to finance the purchase and improvement of the property, I take into consideration the evidence of the Claimant and Ms. Howell and the admission of Mr. Salmon that there were periods when he was incarcerated, which would restrict his ability to make an earning during these periods.

- [142] As such Ms. Salmon's earnings seem to have been more consistent up to the time of her Deportation. However, the fact that her earning capacity appears to have been greater and more consistent than that of Mr. Salmon does not automatically translate into a finding of her actually contributing to the purchase of the property
- [143] I am also mindful of Ms. Salmon's eventually admission that while in Jamaica Mr. Salmon worked at his sister Veronica's air condition company. despite her earlier assertion that when he was deported he was not working.
- [144] Additionally, his evidence that he ran the restaurant in the USA with her when he was not incarcerated has not been discredited. In this regard Mr. Salmon would have demonstrated that during these periods he was earning an income. However, I also take note of the evidence of the Defendants that the purchase of the Fairfax was a joint venture between them.
- [145] In any event the lack of the defendants' financial capacity is only one factor to be taken into account as regards the issue under consideration. In essence a decision in favour of the Claimant on this issue cannot be made on the weakness of the evidence of the Defendants regarding their personal financial capacity That is, in the circumstances of the case it is not for Mr. Salmon and his co-defendants to prove all the sources from which they acquired the funds to finance the property. It is for Ms. Salmon to prove that she provided these funds.
- [146] That is, even if I am not convinced that the funds came from Mr. Salmon's employment as an air condition technician and his co-ownership of the restaurant as well as contributions from his siblings, I cannot, without credible evidence from Ms. Salmon who bears the burden of proof conclude that these funds came from her.
- [147] Essentially, the Claimant's burden on this issue, is not proof that the Defendant could not personally finance the purchase and or improvement of the property. Additionally, there is no burden on the Defendants to disclose or prove the various sources, whether from their personal finances or finances extraneous to their

personal income for the financing the purchase of the property. In the circumstances of this case and the applicable law, the essential proof that the court must look for is the proof that it was the finances of the Claimant acting on agreement or common intention of the parties that was used to fund the purchase and or improvement of the property. That is, it is the burden of Ms. Salmon to produce sufficient evidence to support her claim that she financed the purchase of the property.

**[148]** The evidence of the deposit on the land in the sum of \$78,500, drawn on Citizens Bank payable to New World Realtors, was in the name of the third Defendant. This is prima facie evidence of this source of funds belonging to Ms. Mary Salmon Wallen. Ms. Doreen Salmon, in light of the inconsistencies in her evidence, has not displaced the presumption that the moneys for the deposits came from the Joint account of Ms. Salmon- Wallen and Mr. Salmon.

**[149]** Additionally, it is of significance that Ms. Salmon admits to the assertion of Mr. Salmon that she did send money to him for the purchase of a property in Drewsland which he did purchase. This property, they both admit, is registered in both their names and that of Ms. Salmon's brother. It is the evidence of Ms. Salmon that she did not mention the purchase of this property because it is not relevant.

**[150]** However, this posture of Ms. Salmon in my view makes her case rather incredible. She alleges that this property was purchased during the year of Gilbert (I take this to mean hurricane Gilbert). This would suggest on her case that this property was also purchased during the same period that the Fairfax property was purchased.

**[151]** On Mr. Salmon's evidence, this property was purchased after the Fairfax Property. That is after 1988. The receipts for this property, are in the names of Alton and Doreen Salmon and are dated July 31<sup>st</sup>, 2002, August 28, 2002 and the 21<sup>st</sup> of January 2003. This then would accord with the evidence of Mr. Salmon that this property was purchased after the Fairfax property.

**[152]** Considering the evidence of Mr. Salmon that the moneys that he received from Ms. Salmon were for the purchase of a property other than Fairfax, if Ms. Salmon did in fact send separate sums for the purchase of each of these properties it is her responsibility to clearly distinguish between the sums sent for the Fair fax property from those sent for the Drewland property. This she has failed to do. She has provided no details as to sums sent for this property, the period and or method by which they were sent so as to distinguish the sums sent for the purchase of this property from the sums allegedly sent for the purchase of the Fair Fax property.

**[153]** Additionally, the evidence of Ms Cummings does not assist Ms. Salmon in this regard. Ms. Cummings evidence is that the documents that she says were related to the purchase of the Fairfax property were handed to her in 2016. However, despite saying they relate to the property at Fairfax she has not indicated how she arrived at that conclusion. That is whether the documents so referred, or the connection she made with these documents and the Fair fax property was based on information provided by the Claimant. Ms. Cummings makes reference to Western Union receipts but does not say who was the recipient on these receipts nor could she indicate the dates or period reflected on them.

**[154]** This becomes relevant in the face of Mr. Salmon's assertions that Western Union was not yet operating in Jamaica in 1988. As such, this poses a challenge to Ms. Salmon's credibility that she sent moneys to him via this medium to purchase the Fair Fax property in 1988. It also raises the question that if there were in fact Western Union receipts, they could not relate to the property bought in 1988 but to the property bought between 2002 and 2003. Nonetheless, in my view Ms. Salmon deliberately did not mention this Drewsland property, until it was raised by Mr. Salmon in an attempt to disguise the truth'

**[155]** Moreover, while throughout her evidence Ms Salmon indicates that she asked Mr. Salmon to add her name to the title of the Fairfax Property, nowhere in her evidence has she indicated that she ever confronted his sister or mother (the other



Defendants) demanding that they remove their names. This in my view is an indication of deference to their interest.

**[156]** I make this observation against the background of Ms. Salmon's evidence that the initial sum of 10,000 US dollars was given to Mr Salmon's mother. Yet she never confronted the Defendant's mother about this \$10,000 US dollar she allegedly gave to her towards the purchase price. Additionally, she never confronted Mary or Veronica Salmon about the money she allegedly gave to them towards the purchase price. This is in light of her evidence that Mr. Salmon was not present on the occasions she allegedly gave moneys to these persons and the fact that at least two of these persons were actually living in the house that she claimed to visit three times per year.

**[157]** Consequently, having balanced, the evidence as I am required to do, on a balance of probabilities, I am not convinced on the evidence of Ms. Salmon that she financed the purchase of the Fairfax property. I find the evidence of the defendants more convincing on this issue. I accept the evidence of Mr. Salmon that he did not receive any moneys from Ms. Salmon whether directly or through his sisters or mother for the purchase of the property of Fairfax. I am convinced that the reason he refused to add Ms. Salmon's name to the title of this property when suggested by his sister Veronica was because Ms. Salmon did not contribute to the purchase price.

**[158]** I accept the evidence of Ms. Veronica Salmon and that she did not receive 30,000 us dollars or any moneys at all from Ms. Salmon for the purchase of Fairfax. I accept her evidence that she told Mr. Salmon to add Ms. Salmon's name to this property just because she was his wife. I accept the evidence of Mary Salmon that Ms Doreen Salmon gave her no money and did not contribute towards the purchase of Fairfax. As such I find that the Claimant has failed to prove any agreement or common intention between herself and the defendant regarding the purchase of the Fairfax Property. I find that she has failed to prove that she

contributed in anyway to the purchase of this property. As such I find that she has failed to prove that she is the beneficial owner of the said property.

**.As it relates to the interest of the First Defendant Whether there is any contribution falling under section 14 of PROSA?**

[159] Despite my findings that The Claimant did not contribute to the purchase of the Fairfax Property, the fact that the property was partially owned by the Claimant's spouse and was so owned during the existence of the marriage, Ms Salmon's entitlement if any falls to be considered under **Section 14 of PROSA**.

[160] **Section 14(1) of PROSA** provides;

*"where under section 13 a spouse applies to the court for a division of property the court may:*

*(a) Make an order for the division of the family home in accordance with section 6 or 7, as the case may require; or*

*(b) Subject to section 17 (2) divide such property, other than the family home, as it thinks fit, taking into account the factors specified in subsection (2) or where the circumstances so warrant, take action under both paragraphs (a) and (b)"*

[161] Section 14 (2) states:

*"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 house*

*(c) The duration of the marriage or the period of cohabitation*

*(d) That there is an agreement with respect to the ownership and division of property (e) Such other fact or circumstance which, in the opinion of the Court, the justice of the case requires to be taken into Account.*

*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 or support which –*

*enables the other spouse to acquire qualifications; or*

*aids the other spouse in the carrying on of that spouses’ 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 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.*

**[162] Section 14 of PROSA** explicitly allows a spouse to claim an interest in property owned by a spouse (partially or wholly) based on their financial or non-financial contributions to its acquisition, conservation, or improvement. Consequently, I must now determine whether Ms. Salmon made any financial or non-financial contribution to the improvement or conservation of this property during the marriage.

- [163] Counsel for the Claimant submits that Mr. Salmon acknowledges that Mrs. Salmon operated the restaurant Tropics, earning money that contributed to the support of the family, despite initially downplaying its financial significance.
- [164] He points out that **Section 14(2) of PROSA** recognizes domestic contributions like childcare and homemaking, and points to Ms. Salmon's care of Mr. Salmon's children as contribution on her part. He submits that her involvement in furnishing and expanding, the property entitles her to an interest in the property.
- [165] Regarding the evidence of Ms. Cummings, he points out that while she confirms that she had seen various documents receipts, invoices, and receipts from a hardware store, specifically recalling those from Phil's Hardware. she does not remember the dates on the receipts.
- [166] Counsel for the Defendant submits that. while Ms. Salmon claims to have contributed towards the improvement of the building, that is, the upstairs she has provided no convincing evidence of these contributions. He highlights the point that she failed to acknowledge that there was a limit on the amount of cash that could be brought into Jamaica at the time, despite being a frequent traveller.
- [167] He admits that under **Section 14 of PROSA** the court must ultimately decide whether the justice of the case requires recognizing her having an interest in the property but submits that on the evidence Ms. Salmon's claim remains unsubstantiated. He further submits that Ms. Howell's evidence contains contradictions regarding her mother's contributions, in that she asserts that her mother played a key role in acquiring and financing the property but also admits to being a child at the time, lacking definitive knowledge of financial transactions.
- [168] He further submits that her claim that money was sent via Western Union before its operations in Jamaica weakens the credibility of her testimony. These inconsistencies he submits ultimately affect the strength of the claim. He therefore urges the court not to consider her placing furniture in the property as proof of a

contribution, as she has provided no specifics regarding when or how the furniture was acquired

[169] However, having examined the evidence on this issue I am cognizant of the assertions of Ms. Salmon and her daughter Ms. Howell that Ms. Salmon sent moneys for the expansion of Fairfax. Ms. Salmon's evidence is that she alone built the upstairs. However, I unable to accept her evidence of financial contribution towards the improvement of Fairfax. This is as a result of the inconsistencies, and the absence of credible details that permeates hers and her daughters' evidence regarding how, when, to whom and through whom these funds were sent. This was dealt with extensively in the preceding sections so in the interest of time I will not reiterate what has already been discussed but just to say the same considerations are applicable regarding Ms. Salmon's alleged financial contribution to the improvement of this property. Suffice it to say I do not find her evidence credible. As such I find that Ms. Salmon has failed to prove that she made any financial contribution towards the improvement of the Fairfax property,

[170] I will now proceed to examine the evidence regarding any nonfinancial contribution of Ms. Salmon towards the acquisition, conservation or improvement of this property. Ms. Salmon's evidence is that after the marriage Mr. Salmon joined her in Boston where she *"continued to operate the restaurant in Boston where (she) supported the family which consisted of 5 children from other relations prior to meeting Alton, Alton had three children of his own from prior relationships and (she) assisted him to bring two of them to come to Boston to live with (them)"*

[171] Ms. Howell, in support of her mother's claim, asserts that her mother was financially responsible for the household , stating, *"My mother was the breadwinner* ".However, I accept the evidence of Mr. Salmon which ultimately was not denied by Ms. Salmon that when he was not incarcerated he also worked at the restaurant, Tropix, in Boston, and at the Air Conditioned Company operated by his sister in Jamaica. This in essence contradicts the evidence of Ms. Howell that her mother was the bread winner and that of Ms Salmon that when Mr Salmon was in Jamaica

he was not working so she had to support him by sending moneys and other items for him.

**[172]** Additionally, in light of the aforementioned observation, the evidence does not support her solely bearing the responsibility of taking care of Mr. Salmon's two children. In light of her own evidence there were 5 children in the household and only two of those were Mr. Salmons children. This is in circumstancing where both parties would have been working at the restaurant. In any event the evidence is unclear as to the extent of care that she rendered to Mr. Salmon's children over and above their joint contribution to the taking care of the five children at the household in Boston. Ms. Salmon has also failed to demonstrate how this amounts to contribution to the household in Fairfax.

**[173]** I take into consideration Ms. Salmon' evidence that Mr. Salmon's two children stayed with her from age 4 and 6 to 18 and 19, respectively. However, she has provided no further details regarding their living arrangements in between Mr. Salmon's incarceration and his deportation. That is the type and or nature of care she provided for these children while Mr. Salmon was absent from the Boston household.

**[174]** Her evidence is lacking regarding the arrangement and extent of her contribution towards their care such as their physical home care, their education, preparation of their meals, clothing and transportation. This is against the background that Mr. Salmon has denied that these children remained in the care of Ms. Salmon until adulthood. Additionally, in light of the fact that the Drewsland Property was jointly owned by the parties and also the fact that the Boston Property was a property that was owned by her during the marriage, there is no clear evidence from the Claimant as to why her taking care of the children should attach as an interest to the Fairfax property separate and apart from the interest attached to the Drewsland Property.

**[175]** Additionally, regarding any nonfinancial contribution, to the Fairfax Property. the Claimant's prolonged absence from Jamaica would have seriously limited any non-financial contribution to the household.

## **CONCLUSION**

**[176]** In light of, the foregoing assessment of the evidence, I find that the claimant has failed to prove that the subject property was the family home. She has also failed to prove that she made any contribution to the acquisition, improvement, or conservation of the subject property. As such, I make the following orders.

## **[177] ORDERS**

1. Judgment for the Defendants
2. Cost to the Defendants to be agreed or taxed

.....  
**Andrea Thomas**  
**Puisne Judge**