



[2018] JMSC Civ 98

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. 2014 HCV 05493**

<b>BETWEEN</b>	<b>SHERON VERONA VASSELL</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>WILLIAM COURTNEY VASSELL</b>	<b>DEFENDANT</b>

**IN CHAMBERS**

**Mr. Cedric A. Brown for the Claimant**

**Mr. Gordon Steer and Mrs. Kaye-Anne Parke instructed by Chambers, Bunny & Steer for the Defendant**

**Heard: April 17 and June 21, 2018**

**Property (Rights of Spouses) Act – Claimant’s entitlement to an interest in properties other than ‘family home’ – Claimant’s monetary and non-monetary contributions to the acquisition, conservation or improvement of the said properties – Section 14 of the Property (Rights of Spouses) Act**

**CORAM: A. NEMBHARD, J (AG.)**

**BACKGROUND**

- [1]** On 27 August 1994, the Claimant, Sheron Vassell, and the Defendant, William Vassell, got married.
- [2]** The marriage produced two (2) children, namely, William Stanley Vassell, born on 3 October 1999 and Aaja Aneise Vassell, born on 7 November 2002.

- [3] On 19 October 2011 William Vassell filed a Petition for the Dissolution of Marriage.
- [4] A Decree Absolute was granted by a Judge of the Supreme Court of Judicature of Jamaica on 27 August 2014.
- [5] By way of a Fixed Date Claim Form, filed on 11 November 2014, the Claimant, Sheron Vassell, seeks the following Orders of the Court:-

(1) A Declaration that the Claimant is entitled to a fifty percent (50%) interest in the properties set out below or the proceeds from the sale of the said properties, pursuant to section 14 (1) (b) of the Property (Rights of Spouses) Act:-

- (i) Lot No. 1, Negril Heights, being part of White Hall, in the parish of Westmoreland, and being the land comprised in Certificate of Title registered at Volume 1435 and Folio 373 of the Register Book of Titles;
- (ii) Lot No. 2, Negril Heights, being part of White Hall, in the parish of Westmoreland, and being the land comprised in Certificate of Title registered at Volume 1435 and Folio 374 of the Register Book of Titles;
- (iii) Lot No. 3, Negril Heights, being part of White Hall, in the parish of Westmoreland, and being the land comprised in Certificate of Title registered at Volume 1435 and Folio 375 of the Register Book of Titles;
- (iv) Lot No. 4, Negril Heights, being part of White Hall, in the parish of Westmoreland, and being the land comprised in Certificate of Title registered at Volume 1435 and Folio 376 of the Register Book of Titles;

- (v) Lot No. 5, Negril Heights, being part of White Hall, in the parish of Westmoreland, and being the land comprised in Certificate of Title registered at Volume 1435 and Folio 377 of the Register Book of Titles;
- (vi) Lot No. 6, Negril Heights, being part of White Hall, in the parish of Westmoreland, and being the land comprised in Certificate of Title registered at Volume 1435 and Folio 378 of the Register Book of Titles;
- (vii) Lot No. 9, Negril Heights, being part of White Hall, in the parish of Westmoreland, and being the land comprised in Certificate of Title registered at Volume 1435 and Folio 379 of the Register Book of Titles;
- (viii) Lot No. 10, Negril Heights, being part of White Hall, in the parish of Westmoreland, and being the land comprised in Certificate of Title registered at Volume 1435 and Folio 380 of the Register Book of Titles;
- (ix) Lot No. 11, Negril Heights, being part of White Hall, in the parish of Westmoreland, and being the land comprised in Certificate of Title registered at Volume 1435 and Folio 381 of the Register Book of Titles;
- (x) Lot No. 12, Negril Heights, being part of White Hall, in the parish of Westmoreland, and being the land comprised in Certificate of Title registered at Volume 1435 and Folio 382 of the Register Book of Titles;
- (xi) Lot No. 13, Negril Heights, being part of White Hall, in the parish of Westmoreland, and being the land comprised in Certificate of Title registered at Volume 1435 and Folio 383 of the Register Book of Titles;

- (xii) Lot No. 14, Negril Heights, being part of White Hall, in the parish of Westmoreland, and being the land comprised in Certificate of Title registered at Volume 1435 and Folio 384 of the Register Book of Titles;
  - (xiii) Lot No. 15, Negril Heights, being part of White Hall, in the parish of Westmoreland, and being the land comprised in Certificate of Title registered at Volume 1435 and Folio 385 of the Register Book of Titles;
  - (xiv) Lot No. 1320, Negril Heights, being part of White Hall, in the parish of Westmoreland, and being the land comprised in Certificate of Title registered at Volume 1381 and Folio 819 of the Register Book of Titles;
- (2) An Order that the Defendant discloses in full, all real properties, the legal or beneficial interest of which are vested in the said Defendant, William Courtney Vassell, whatsoever and wheresoever situate, acquired between August 27, 1994, when the parties got married and October 19, 2011, when the Defendant applied to the Court for the Dissolution of Marriage;
  - (3) An Order that the Defendant account to the Court for all proceeds from the sale of the properties acquired between August 27, 1994, when the parties got married and October 19, 2011, when the Defendant applied to the Court for the Dissolution of Marriage;
  - (4) An Order that the Claimant be paid interest on any sum of money out of which she has been kept arising from the sale of any property in which she acquires [a] vested interest by Order of the Court;
  - (5) A Declaration that the Claimant is entitled to a fifty percent (50%) interest in the six bedroom house at Lots 7 and 8, Negril Heights, being part of White Hall, in the parish of Westmoreland, which was specifically

constructed for the purpose of the intended family home, pursuant to section 14 (1) (a) or (b) of the Property (Rights of Spouses) Act;

- (6) An Order that the mortgage currently secured by Lot 259 Llandilo Pen, Phase 3, Savanna-La-Mar, in the parish of Westmoreland, and registered at Volume 1273 and Folio 593 of the Register Book of Titles, be fully paid by the Defendant and that the parties, within such time as the Court may deem reasonable, file with the Titles Office of Jamaica, all the relevant documents necessary to vest full legal and beneficial interest in the said property in the name of the Claimant;
- (7) An Order that the Registrar of the Court be empowered to sign all documents necessary to effectuate the Court's Order herein in the event that the relevant party refuses or neglects to do so within the time ordered by the Court;
- (8) Costs;
- (9) Such further and other relief as this Honourable Court deems just.

## **ISSUES**

**[6]** The issues to be determined in the instant case are as follows:-

- (i) Is the Claimant entitled to a one hundred percent (100%) interest, both legal and beneficial, in the property situate at Lot 259 Llandilo Pen, Phase 3, Savanna-La-Mar, in the parish of Westmoreland, (the Llandilo property)?
- (ii) Should the Defendant be made to pay fully the mortgage currently secured by the Llandilo property?
- (iii) Is the Claimant entitled to a fifty percent (50%) interest in Lots 1-6 and Lots 9-15 Negril Heights, White Hall, in the parish of Westmoreland and

Lot 1320, Negril Heights, White Hall, in the parish of Westmoreland, (the Lots at White Hall)?

- (iv) What is the percentage share, if any, in the said properties, to which the Claimant is entitled?
- (v) Did the Claimant make monetary and/or non-monetary contributions to the acquisition, conservation or improvement of the properties in which she claims an interest?

## **THE LAW**

- [7] It would be appropriate to commence this analysis with an examination of the relevant provisions of the Property (Rights of Spouses) Act, (hereinafter referred to as 'the Act'). It may first be stated that the Act utilizes what Morrison JA, as he then was, in **Annette Brown v Orphiel Brown** [2010] JMCA Civ 12, (at paragraph [34] of the Judgment), termed a 'composite approach' to matrimonial property. In this approach, the 'family home' is treated differently from other property owned by either or both of the spouses. Unlike its treatment of other property owned by either or both of the spouses, the Act creates a statutory rule of equal entitlement to the beneficial interest in the 'family home'.
- [8] The 'composite approach' is in contrast with the equivalent English legislation, the Matrimonial Causes Act, 1973, where there is no statutory equal share rule in respect of matrimonial property. The Courts are given a wide discretion, largely unrestricted by statutory provisions.
- [9] Although the 'composite approach' is not unique to Jamaica, the position taken by the Act is not as detailed as the equivalent legislations in some other jurisdictions that have adopted that approach. The equivalent legislation in New Zealand, the Matrimonial Property Act, 1976 (which was amended and renamed The Property (Relationships) Act, 1976), also utilizes the 'composite approach'. This legislation specifically addresses the matter of contribution in respect of the

matrimonial home in certain circumstances and applies the equal share rule not only to the matrimonial home but also to certain other family assets.

**[10]** The relevant parts of section 2 of the Act state as follows:-

*“2-(1) In this Act –*

*...‘family home’ means the dwelling house that is wholly owned by either or both of the spouses and used habitually or from time to time by the spouses as the only or principal family residence together with any land, 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...”*

**[11]** Section 2 (1) of the Act provides also that ‘property’ means any real or personal property, any estate or interest in real or personal property, any money, any negotiable instrument, debt or other chose in action, or any other right or interest whether in possession or not to which the spouses or either of them is entitled.

**[12]** Sections 6 and 7 of the Act state as follows:-

*“6 – (1) Subject to subsection (2) of this section and sections 7 and 10, each spouse shall be entitled to one-half share of the family home –*

*(a) on 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 surviving spouse shall be entitled to one-half share of the family home.*

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

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

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

*(c) That the marriage is of short duration.*

*(2) In sub section (1) "interested party" means –*

*(a) a spouse;*

*(b) a relevant child; or*

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

**[13]** Under section 6 of the Act contribution is not a factor once the property is found to be the 'family home', as contemplated by section 2 of the Act.

**[14]** The effect of this was expressed by Morrison JA, as he then was, in the **Brown v Brown** authority (supra), as follows:-

*"...it introduces for the first time the concept of the 'family home', in respect of which the general rule is that, upon the breakup of the marriage, each spouse is entitled to an equal share."*

**[15]** Section 13 of the Act provides that a spouse shall be entitled to apply to the Court for a division of property on the grant of a decree of dissolution of a marriage or termination of cohabitation or on the grant of a decree of nullity of marriage or where a husband and wife have separated and there is no reasonable likelihood of reconciliation or where one spouse is endangering the property or is seriously diminishing its value, by gross mismanagement or by wilful or reckless dissipation of property earnings.

**[16]** Any application made under section 13 (1) (a), (b) or (c) of the Act, shall be made within twelve (12) months of the dissolution of a marriage, termination of cohabitation, annulment of marriage or separation or such longer period as the Court may allow after hearing the Applicant.



**[17]** For the purposes of sections 13 (1) (a) and (b) and 14 of the Act the definition of 'spouse' shall include a former spouse.

**[18]** Section 14 of the Act reads as follows:-

*(1) Where under section 13 a spouse applies to the Court for a division of property the Court may –*

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

*(b) Subject to section (17) (2), divide such property, other than the family home, as it thinks fit, taking into account the factors specified in subsection (2),*

*Or, where the circumstances so warrant, take action under both paragraphs (a) and (b).*

*(2) The factors referred to in subsection (1) are –*

*(a) The contribution, financial or otherwise, directly or indirectly made by or on behalf of a spouse to the acquisition, conservation or improvement of any property, whether or not such property has, since the making of the financial contribution, ceased to be property of the spouses or either of them;*

*(b) That there is no family home;*

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

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

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

*(3) In subsection (2) (a), a 'contribution' means –*

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

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

- (c) *The giving up of a higher standard of living than would otherwise have been available;*
  - (d) *The giving of assistance or support by one spouse to the other, whether or not of a material kind, including the giving of assistance or support which –*
    - (i) *Enables the other spouse to acquire qualifications; or*
    - (ii) *Aids the other spouse in the carrying on of that spouse's occupation or business;*
  - (e) *The management of the household and the performance of household duties;*
  - (f) *The payment of money to maintain or increase the value of the property or any part thereof;*
  - (g) *The performance of work or services in respect of the property or part thereof;*
  - (h) *The provision of money, including the earning of income for the purposes of the marriage or cohabitation;*
  - (i) *The effect of any proposed order upon the earning capacity of either spouse.*
- (4) *For the avoidance of doubt, there shall be no presumption that a monetary contribution is of greater value than a non-monetary contribution.”*

**[19]** Section 15 of the Act states as follows:-

- (1) *In any proceedings in respect of the property of the spouses or of either spouse (other than the family home), the Court may make such order as it thinks fit altering the interest of either spouse in the property including –*
  - (a) *An Order for a settlement of the property in substitution for any interest in the property;*
  - (b) *An Order requiring either or both spouses to make, for the benefit of either or both spouses, such settlement or transfer of property as the Court determines; or*
  - (c) *...*
- (2) *The Court shall not make an Order under subsection (1) unless it is satisfied that it is just and equitable to do so.*

(3) ...”

**[20]** Applications like the one in the instant case become necessary when the legal interest does not reflect the beneficial interest to which the Applicant/Claimant is claiming to be entitled. Between spouses, these issues must be settled or determined based on the provisions of the Act when an Application is made under and by virtue of it.

**[21]** In discussing the Law prior to the Act, which he later termed the ‘old regime’, Morrison JA, as he then was, in **Brown v Brown** (supra), at paragraph [21] of the Judgment, summarized it based on the decision of **Gissing v Gissing** [1970] 2 All ER 780. He stated as follows:-

*“...this case decided that the mechanism for the resolution of disputes between husband and wife as to the beneficial ownership of property vested in the name of one or the other of them was to be found in the law of trust, in particular in the principles governing resulting, implied or constructive trusts...”*

**[22]** Section 4 of the Act makes the position subsequent to its coming into effect quite clear. Section 4 of the Act provides as follows:-

*“The provisions of this Act shall have effect in place of the rules and presumptions of the common law and of equity to the extent that they apply to transactions between spouses in respect of property and, in cases for which provisions are made by this Act, between spouses and each of them, and third parties.”*

**[23]** Section 4 of the Act therefore directs that there is to be an entirely new and different approach in deciding issues of property rights between spouses. Section 4 of the Act directs the Courts as to what that approach should be.

**[24]** Since the passing and implementation of the Act, the ‘presumptions of common law and equity’ are no longer applicable when deciding issues of property rights between spouses and between spouses and third parties. All claims to an entitlement to a share in property other than the ‘family home’, must satisfy the factors set out in section 14 of the Act.

- [25] The Privy Council, in **Miller and another v Miller and another** [2017] UKPC 21, made the comment that the Act is a robust enactment which stood on its own two feet and there would rarely be occasion to resort to English authorities under the Married Woman's Property Act. However, the Board cautioned that the issue of the intention of the parties should not be disregarded, as it was an issue that could be considered as a question of fact as a starting point, without regard to the rules or presumptions of common law and equity.
- [26] In **Suzette Ann Marie Hugh Sam v Quentin Ching Chong Hugh Sam** [2018] JMCA Civ 15, the evidence as to the contribution of the Appellant was that she and the Respondent had commenced a business called Xtra-Wholesale, which, according to her, later became Xtra-Supercentre. The Appellant contended that she left her studies to join the Respondent in the running of the business in which she worked tirelessly without pay from 8:00 a.m. to 5:00 p.m., six days per week.
- [27] However, the incorporation documents for Xtra-Wholesale showed that the business began in 1993, prior to the parties having met. The evidence was that Xtra-Supercentre is a different company from Xtra-Wholesale. Xtra-Supercentre was incorporated much later. Xtra-Wholesale ceased operations in 2000. The learned trial Judge accepted that the Appellant had worked at Xtra-Wholesale from 1997-1998.
- [28] The clearest evidence of the Appellant's contribution to Xtra-Supercentre was that she visited the stores to arrange shelves to allow it to sell groceries and chemicals without contamination.
- [29] At paragraph [146] of the judgment, Edwards JA stated that the evidence was that the Appellant basically took charge of the operations of Clean Chem Limited, to the extent that she undertook training in the subject of mixing chemicals. The evidence was also that the Respondent focussed mainly on expanding the wholesale business through the expansion of Xtra-Supercentre and others. Clean Chem Limited seemed to have operated as a central sorting office for the other companies.

**[30]** The Appellant's evidence was that she concentrated on the business of Clean Chem Limited and later employed managers so that she could spend time with the children. She later spent more time at home doing payroll, billing and other related activities. After the children got older she went to Clean Chem three days per week in the mornings, which allowed her more time to dedicate to the children and supervise the extracurricular activities of the children. She worked from home up until 2012 when she stopped working.

**[31]** At paragraph [150] of the judgment, Edwards JA stated as follows:-

*"It seems to me that if the parties order their affairs in such a way that one party concentrates on one business and the other concentrates on another business and these businesses co-mingle in the way described in the evidence, it would suggest that the spouses were working for the benefit of the family as a unit. The Court should be slow to say that the spouse who has not concentrated on working in one of the family businesses but worked in another, should be shut out of sharing in that business simply because that spouse did not contribute financially to its acquisition and/or expansion."*

**[32]** The Appellant was a wife and a mother and for much of the relevant period she was a working wife and mother. Not only did she manage the household but she managed the affairs of the children as well, all the while contributing to the development and expansion of one of the family companies, in circumstances where that company was contributing to the expansion of the other businesses by providing products free to them for resale. There was no evidence that the Respondent helped with the household or the children. He played golf. He travelled frequently. Both he and Xtra-Supercentre benefitted from the Appellant's work as a wife and her work in Clean Chem Limited.

**[33]** Section 14 (2) (a) of the Act speaks to contribution that may be financial or otherwise and subsection (3) defines 'contribution' as including the care of any relevant child, the giving of assistance or support to one spouse to carry on his occupation or business, the management of the household and the performance of household duties.

- [34] Section 14 (4) of the Act states categorically that, for the avoidance of doubt, there shall be no presumption that a monetary contribution is more valuable than a non-monetary contribution.
- [35] The Court of Appeal held in the authority of **Hugh Sam** (supra), that the Court below ought to have found that the Appellant had made a valuable non-monetary contribution to the conservation and improvement of Xtra-Supercentre and that she was entitled to a one-half share of the Respondent's shares in that business and a thirty three and one-third percent (33 1/3%) interest in the business known as Super Save Wholesale Limited.

### **ANALYSIS AND APPLICATION OF THE LAW TO THE EVIDENCE**

- [36] The legal burden of proof is the obligation of a party to meet the requirement of a rule of law that a fact in issue be proved (or disproved) by a preponderance of the evidence.
- [37] What is the degree of the burden borne by Sheron Vassell in a civil proceeding such as this?
- [38] In **Miller v Minister of Pensions** [1947] 2 All ER 372 at 373-374, Denning J, speaking of the degree of cogency which evidence must reach in order that it may discharge the legal burden in a civil case, said:-

*"That degree is well settled. It must carry a reasonable degree of probability but not so high as is required in a criminal case. If the evidence is such that the tribunal can say 'we think it more probable than not', the burden is discharged but if the probabilities are equal it is not."*

### **THE LLANDILO PROPERTY**

- [39] This is a matter in which Sheron Vassell seeks a Declaration of the Court that she is entitled to an interest in properties other than the 'family home', pursuant to section 14 of the Act, and claims a one hundred percent (100%) interest in the Llandilo property.

- [40]** Consequently, the Court must determine whether Sheron Vassell contributed, whether monetarily or otherwise, directly or indirectly, to the acquisition, conservation or improvement of the Llandilo property?
- [41]** The undisputed evidence before the Court is that Sheron Vassell's name appears on the Certificate of Title to the said property, as a joint tenant, which was acquired using her National Housing Trust (NHT) contributions. William Vassell made the down payment on the said property, enlarged the structure on it and has solely made the monthly mortgage payments.
- [42]** In support of her claim, Sheron Vassell gave evidence that the care and supervision of the children and of the family home in general predominantly became her responsibility. This, she contends, provided William Vassell the freedom to work long hours, content in the knowledge that his children were well cared for and were being properly supervised.
- [43]** Sheron Vassell further contends that, by virtue of this, William Vassell was able to keep his boss happy with his (William's) performance, enabling him (William) to enjoy job security and to earn an income that was approximately six times that which she earned.
- [44]** William Vassell's capacity to acquire certain assets and to make certain investments, she contended finally, was made possible by the extent to which she contributed.
- [45]** It is also her evidence that she had to forego a better standard of living in the United States of America when she moved to Jamaica to live.
- [46]** In cross examination, Sheron Vassell testified that she is not certain where in the United States of America she was working.
- [47]** Conversely, William Vassell gave evidence that Sheron Vassell worked as a cashier at Lowes and Walmart, working minimum wage. He testified that Sheron Vassell was not doing well in the United States of America and indeed lived with

her brother and sister during the time that she resided there. William Vassell's evidence was that his former wife did not enjoy a better standard of living whilst she lived in the United States of America and that he sent her money on a regular basis whilst she was living there. Sheron Vassell gained employment at the Coco La Palm hotel in January 2002 as a Gift shop Manager.

- [48]** William Vassell denies that his former wife was the primary caregiver for their children, stating that he took the children to and from school and is currently maintaining his son, who is attending University abroad.
- [49]** It is clear to the Court that during the tenure of their marriage the parties enjoyed certain luxuries by virtue of William Vassell's employment. The parties lived on site at the Coco La Palm hotel free of cost, with the household expenses being met by the finances provided by William Vassell's remuneration package. This would have been since 2002 until the parties separated in 2007, according to William Vassell, or between 2007 and 2009, according to Sheron Vassell.
- [50]** The Court finds that Sheron Vassell enjoyed no better standard of living while she resided in the United States of America and that certainly her standard of living here in Jamaica was better than that which she enjoyed whilst living abroad.
- [51]** It was submitted by Learned Counsel Mr. Gordon Steer and Mrs. Kaye-Anne Parke, for and on behalf of the Defendant William Vassell, that the claim for a one hundred percent (100%) interest in the Llandilo property ought properly to be refused on the basis that Sheron Vassell has not provided the Court with a legal or an evidential basis on which to do so.
- [52]** It was submitted further, that, at best, Sheron Vassell would have a fifty percent (50%) interest in the Llandilo property, and that she should be made to reimburse William Vassell in a sum representing fifty percent (50%) of the total sum that he has paid towards the mortgage.



[53] In **Patten v Edwards** (1996) 33 JLR 475, the Court of Appeal ruled that expenditure on property, by one of two or more co-owners of that property, does not adjust the proportions in which the interests are held.

[54] Patterson JA explained the principle at page 478D-F of the judgment as follows:-

*“...Any amount expended by [one co-owner] to improve the property must be regarded as an accretion to the value of the property as a whole. It cannot be regarded as an accretion to [that co-owner’s] undivided share alone with the resultant diminution in that of the [other co-owner]. If that was the position, then one tenant in common could effectively acquire the entire interest in the property by making improvements without the consent of the other tenant in common.*

*The true position is this: The value of the undivided share of each tenant in common will increase but the proportion in which they hold their respective share remains constant...”*

[55] In the authority of **Carol Stewart v Lauriston Stewart** [2013] JMCA Civ 47, Brooks JA stated that this principle would become relevant to joint tenants upon claims for partition or for the determination of the respective interests of spouses.

[56] There is a practical method of compensating the party who has borne a property-related expense alone. In **Forrest v Forrest** (1995) 32 JLR 128, the Court of Appeal ruled that, in the event of one party incurring all the expense which ought to have been borne by both, the party who has met the expense is entitled to be refunded by the other party, one-half of the expense incurred.

[57] Carey JA stated the relevant principle at page 136G-H of the judgment as follows:-

*“In the redemption of the mortgage the respondent must be regarded as having made a loan to the appellant to the extent of the proportion of his interest in the property. That amount is a debt recoverable on the order for accounts to be taken, made by the judge.”*

- [58] Brooks JA, in **Stewart v Stewart** (supra), stated that this principle may be adapted to the application of the provisions of the Act.
- [59] Consequently, applying the Law to the evidence before it in the instant case, the Court finds that Sheron Vassell has failed to demonstrate that she is entitled to a one hundred percent (100%) interest in the Llandilo property. The Court, however, has had regard to her contribution to the acquisition of the Llandilo property, by the use of her NHT contributions. The Court has also had regard to her non-monetary contributions in terms of the care of the children, the management of the household, the performance of household duties, and the length of the marriage.
- [60] The Court finds that Sheron Vassell is entitled to a fifty percent (50%) interest in the Llandilo property and that, applying the principles stated in **Forrest v Forrest** (supra), she ought to refund William Vassell one-half of the total mortgage payments that he has made in respect of the said property.
- [61] The Court has had regard to section 14 (4) of the Act which states categorically that there shall be no presumption that a monetary contribution is more valuable than a non-monetary contribution, and has treated with the evidence as to Sheron Vassell's contributions, monetary and non-monetary, to the acquisition of the Llandilo property, accordingly.

### **THE LOTS AT WHITE HALL**

- [62] In considering whether Sheron Vassell is entitled to an interest in the Lots at White Hall, it is important to have regard to the date of the separation of the parties.
- [63] Section 12 (2) of the Act provides that a spouse's share in property shall, subject to section 9, be determined as at the date on which the spouses ceased to live together as man and wife or to cohabit or if they have not so ceased, at the date of the application to the Court.

- [64] Section 9 of the Act, to which section 12 of the Act refers, deals with an exemption from transfer tax in the case of transfers between spouses, and is not relevant for the purposes of the present analysis.
- [65] If, therefore, there was no entitlement to property at the time of separation, there is no post-separation event, barring an agreement between the parties, which could adjust that entitlement.
- [66] William Vassell's evidence is that the parties separated in 2007 but continued to live under the same roof. The parties ceased living under the same roof in 2010.
- [67] Sheron Vassell, in her evidence could not recall the date of the separation between herself and William Vassell but stated that it could have been in 2007 or 2009.
- [68] The Court accepts the evidence of William Vassell that the parties separated in 2007 and that the process that led to his acquisition of these said Lots began in 2007, at a time when the parties had already separated. The Certificates of Title in respect of the Lots at White Hall indicate that William Vassell became the registered owner of these Lots on 10 November 2009. This was some two (2) years after the parties had separated.
- [69] William Vassell's evidence, in respect of the Lots at White Hall, as contained in his Affidavit filed on 24 June 2015, which was permitted to stand as part of his evidence in chief, is as follows:-

*"The titles were registered in my name on the 3<sup>rd</sup> day of April 2007...I mortgaged one Lot on the 22<sup>nd</sup> day of May 2008 and received \$2,100,000.00 which I put towards the subdivision. The total cost of the subdivision was in the region of \$20,000,000.00 and out of the two original lots I got thirteen (13) Lots by way of subdivision. Two (2) Lots were reserved for common areas (space) as it was originally fifteen (15) Lots. The Claimant knows nothing about any of these Lots and she made no contribution of whatever nature to the acquisition, improvement or conservation...I received individual titles in my name in November 2009. The difference between what I had borrowed on the title and the cost of the subdivision came from a loan I had received from Mr. Vosika. I wanted to build my*

*home on this property and reserved Lots 5 and 6 for myself and decided to sell the remainder to pay off the money that I had borrowed to do the subdivision...I still owe Mr. Vosika JA\$8,000,000.00."*

- [70] The Court has noted that Sheron Vassell has not responded to William Vassell's Affidavit detailing the circumstances in which he acquired the Lots at White Hall. She has filed no Affidavit in response.
- [71] In cross examination Sheron Vassell gave evidence that she made no form of monetary contribution towards the Lots at White Hall. She testified that she did not know how much money had been borrowed by William Vassell in order to acquire these Lots. She did not know whether William Vassell was repaying that loan. She did not know what his salary was. She did not dispute that the construction of the house on Lots 5 and 6 commenced in 2010 but maintained that the construction commenced prior to the parties' divorce.
- [72] The Court finds that Sheron Vassell has failed to establish that she made any contributions towards the acquisition, conservation or improvement of the Lots at White Hall, whether monetary or non-monetary, directly or indirectly, as contemplated by the Act, and her claim in respect of these Lots fails.

## **CONCLUSION**

- [73] In concluding, the Court accepts that Sheron Vassell made a financial contribution towards the acquisition of the Llandilo property in the form of her NHT contributions. The Court also accepts that she made non-monetary contributions as contemplated by the Act.
- [74] The Court accepts that William Vassell paid the deposit in respect of the acquisition of the Llandilo property and that he alone has made the monthly mortgage payments in respect thereof.
- [75] Consequently, the Court finds that Sheron Vassell has made monetary and non-monetary contributions towards the acquisition of the Llandilo property, which was acquired during the tenure of the marriage between the parties and finds

that she is entitled to a fifty percent (50%) interest in the said property. Sheron Vassell is to refund to William Vassell one-half of the total mortgage payments made in respect of the said property.

- [76] In respect of the Lots at White Hall, the Court finds that Sheron Vassell has failed to establish, on a balance of probabilities that she contributed whether monetarily or non-monetarily, directly or indirectly to the acquisition, conservation or improvement of the said Lots.

### **DISPOSITION**

- [77] It is hereby declared that:-

- (1) The joint tenancy held by Sheron Verona Vassell and William Courtney Vassell in respect of ALL THAT PARCEL OF LAND situate at Lot 259 Llandilo Pen, Phase 3, Savanna-La-Mar, in the parish of Westmoreland, being the land comprised in Certificate of Title registered at Volume 1273 and Folio 593 of the Register Book of Titles is to be severed;
- (2) Sheron Verona Vassell and William Courtney Vassell are equally entitled to the legal and beneficial interest in ALL THAT PARCEL OF LAND situate at Lot 259 Llandilo Pen, Phase 3, Savanna-La-Mar, in the parish of Westmoreland, being the land comprised in Certificate of Title registered at Volume 1273 and Folio 593 of the Register Book of Titles;
- (3) Sheron Verona Vassell is to refund to William Courtney Vassell one-half of the total mortgage payments made in respect of ALL THAT PARCEL OF LAND situate at Lot 259 Llandilo Pen, Phase 3, Savanna-La-Mar, in the parish of Westmoreland, being the land comprised in Certificate of Title registered at Volume 1273 and Folio 593 of the Register Book of Titles;
- (4) The property identified at paragraph 2 above is to be valued by a valuator agreed on by Sheron Verona Vassell and William Courtney Vassell. The cost of the said valuation is to be borne equally by them;

- (5) If the parties are unable to agree on a valuator within twenty one (21) days of the date of this judgment, then the Registrar of the Supreme Court shall appoint a valuator;
- (6) The property identified at paragraph 2 above is to be sold on the open market, by public auction or by private treaty and the proceeds of the sale are to be shared equally between the parties;
- (7) Sheron Verona Vassell has no beneficial interest in Lots 1-6 and 9-15, respectively, each situate at Negril Heights being part of White Hall in the parish of Westmoreland and each being the land comprised in Certificate of Title registered at Volume 1435 Folio 373 to 385, respectively;
- (8) Sheron Verona Vassell has no beneficial interest in Lot 1320 situate at Negril Heights being part of White Hall in the parish of Westmoreland and being the land comprised in Certificate of Title registered at Volume 1381 Folio 819;
- (9) The Registrar of the Supreme Court is empowered to sign any and all documents required to give effect to the Orders herein should either party refuse or neglect to do so;
- (10) No Order as to costs;
- (11) Liberty to apply;
- (12) The Claimant's Attorney-at-Law to prepare, file and serve the Orders herein.