



[2021] JMISC. Civ 72

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO 2018 HCV 04028

IN THE MATTER of an application under
Sections 10 & 23 of the Matrimonial
Causes Act;

AND

IN THE MATTER of an application under
the Maintenance Act;

AND

IN THE MATTER of an application under
the Property (Rights of Spouses) Act;

BETWEEN	ANDRIA MARIE BROWN	CLAIMANT
AND	KENT IGNATIUS BROWN	FIRST DEFENDANT
AND	KBA DEALERS JA. LIMITED	SECOND DEFENDANT

IN CHAMBERS

Ms. Marjorie Shaw instructed by Brown & Shaw for the Claimant

Mr. Gordon Steer and Ms. Sarah Elizabeth Dixon instructed by Chambers Bunny & Steer
for the Defendants

Heard: February 9, 2021 and April 30, 2021

**Property Rights of Spouses Act (PROSA) Sections 6, 12, 17 and 18 – Determination
of the net value of the Family Home – Whether the debts of the company are
attributable to both parties – Whether there was a joint venture between the parties-**

Factors to consider in the division of matrimonial property other than the family home - Whether the Court should grant relief where the Claimant has abandoned her claim -The Maintenance Act – Claim for maintenance made against a Company

Carr, J (Ag.)

Background

[1] Andria Marie Brown (the Claimant) and Kent Ignatius Brown (the First Defendant) were married on the 28th day of June 1986. The marriage produced three children who are now adults. Sometime in 2003 the couple purchased property located at Spring Valley Farm, Temple Hall Main road, in the Parish of Saint Andrew registered at Volume 1027 Folio 188 (**Temple Hall property**). The couple resided there with their children over the thirty plus years of their marriage. During that time they started and incorporated several business' which culminated in the merger of those companies which is now known as KBA Dealers Ltd. (the Second Defendant). The Second Defendant currently operates a Pro-shop and firing range on the grounds of the Temple Hall property. Several mortgages were taken out against the property in the joint names of the Claimant and the First Defendant. The relationship between the parties deteriorated and in 2018 the First Defendant filed a petition for dissolution of marriage. Subsequent to the commencement of these proceedings the divorce was finalized and Mr. Brown is now remarried.

[2] On the 13th of June 2019 J. Pusey, J, made the following interim orders:

“3. The Defendant shall pay the sum of Ninety Five Thousand Dollars (\$95,000.00) on the first day of each month, commencing on June 1, 2019 until further order, for the maintenance of the Claimant.

4. The Second Defendant is to make the monthly payments to liquidate the loan with Bank of Nova Scotia (BNS) loan account number 1735810 and shall take steps to liquidate the Bank of Nova Scotia Aero credit card account number 540671108003461. The Claimant shall provide the Second Defendant with the Credit card and loan account statements.”

The First Defendant has been inconsistent with the maintenance payments and is presently in arrears. He has also not yet fully complied with order number 4.

The Claim

[3] The Claimant sought the following orders from the court by way of a fixed date claim form which was filed on the 12th of October 2018:

1. An order that the First Defendant be restrained from taking any action with respect to the occupation of the Family Home and/or management of the household situated at Temple Hall, Kingston 9 in the Parish of Saint Andrew that poses a threat to the life or well-being of the Claimant and/or interferes with her quiet enjoyment of the Family home.
2. Further, and/or in the alternative, an Order that the Respondent be granted exclusive occupation of the Family Home situated at Temple Hall, Kingston 9 in the Parish of Saint Andrew pending the sale of the said home to either of the parties herein or on the open market.
3. An order that in the interim, the First and/or Second Defendant does pay to the Claimant, towards her maintenance, the monthly sum of Four Hundred Thousand Dollars (\$400,000.00).
4. An Order that the First and/or Second Defendant does, within Twenty One (21) days of the date herein, disclose and /or supply the Claimant with the following information: -
 - a) A detailed list of all jewelry, including, but not limited to, watches and rings, owned worn or utilized by the First Defendant as at June 2018;

- b) A list of the value of all jewelry owned by the First Defendant as at June 2018;
- c) Disclosure as to any, or all pieces of jewelry disposed of, whether by way of sale or by gift, between June 2016 and to date;
- d) Disclosure as to the amount, description, condition and value of all firearms, including, but not limited to, shotguns, rifles and handguns personally owned by the First Defendant;
- e) Disclosure as to the particulars, including, but not limited to, the make, model, year, current value and type, of all vehicles currently accessible for use by the First and/or Second Defendant, his servants and/or agents, whether owned by him, or not, between June 2014 and to date;
- f) Disclosure as to the names of all companies, or businesses registered under the Business Names Act in which The First Defendant is named as a shareholder, partner and/or Director; the number of shares held by the First Defendant, the number of shares held by other persons in each and every of the said companies and/or the nature of the partnership or extent of the interest in the business(es);
- g) A listing, and details, of all the bank accounts or, investment accounts, certificates of deposits, held by the First Defendant and/or Second Defendant, whether solely and/or jointly, with others, held locally or internationally, in any financial institution;
- h) A printout of all banking transactions made in respect of each and every account held by the First Defendant, solely and or jointly with others between June 2014 and October 31, 2018;

k) Disclosure as to whether any lease, rental agreement exists between the First Defendant and/or Second Defendant and any other regarding the occupation, use or enjoyment of the premises, or any part thereof, situated at Spring Valley Farm, Temple Hall main road, Golden Spring Kingston in the parish of Saint Andrew registered at Volume 1207 Folio 188 of the Register Book of Titles;

5. A Declaration that the First Defendant is entitled to one-half of the shares/interest held by the Claimant in the following companies/ is entitled to a one-half interest in the following companies and/or businesses, namely:

- a) KBA Dealers JA. Limited;
- b) KBTTC- Pro-Shop & Range
- c) KBEEZ

6. A Declaration that the Claimant is entitled to a one-half of the shares/interest held by the First Defendant in the following companies and/or businesses, namely:-

- a. KBA Dealers JA. Limited;
- b. KBTTC- Pro-Shop & Range
- c. KBEEZ

7. An Order that a certified forensic Auditor be agreed upon by the parties within 30 days from the date herein, failing which the said Forensic Auditor be appointed by the Registrar of this Honourable Court to determine the market value of all the shares held by the parties herein in respect of the businesses and/or shares in the companies / businesses outlined in paragraphs 7 and 8 herein.

8. An Order that the costs of the forensic Audit of the shares be borne by the Second Defendant

9. An Order that the Defendants, jointly and/or severally, and/or their servants and/or agents do provide the appointed Forensic Auditor with access to all records, documents, assessments, books and authorizations requested and/or necessary to perform the aforesaid forensic valuation Audit.

10. An Order that the First and Second Defendant do give an account and the Respondent be paid one half of the market rental value of such part of the Family Home and/or the lands appurtenant to, and/or forming a part of, the Family Home utilized or occupied by the Defendants, their servants and/or agents or the servants and/or agents of any company or business, between January, 2017 and until the sale of the said premises situated at Spring Valley Farm, Temple Hall Main road, in the Parish of Saint Andrew registered at Volume 1027 Folio 188 of the Register Book of Titles.

11. A Declaration that the premises situated at Spring Valley Farm, Temple Hall Main road, in the Parish of Saint Andrew registered at Volume 1027 Folio 188 of the Register Book of Titles is the Family home.

12. A Declaration that the Claimant and the First Defendant are each entitled to a one half interest in the Family home situate at Spring valley Farm, Temple Hall Main road, Golden Spring, Kingston in the Parish of Saint Andrew registered at Volume 1027 Folio 188 of the Register Book of Titles;

13. An Order that the family home and the rental value of the Family home and/or lands appurtenant to the Family Home be valued by D.C.TAVARES FINSON REALTY LIMITED or such other Valuator agreed upon by the parties, within fourteen (14) days from the date

herein and that the cost of the said valuation be borne by the parties in equal shares.

14. An Order that the said premises be sold on the open market and the net proceeds be shared equally between the Claimant and the Defendant.

15. An Order that the Defendant's Attorneys-at-Law, BROWN & SHAW, shall have conduct of the sale of the premises situated at Spring Valley Farm, Temple Hall Main road, Golden Spring, Kingston in the Parish of Saint Andrew registered at Volume 1027 Folio 188 of the Register Book of Titles.

16. An Order that the Claimant and the First Defendant are equally entitled to one half of the value of all motor vehicles registered in the names of the Claimant and the First Defendant, solely and/or jointly.

17. An Order that the Registrar of the Supreme Court is empowered to sign any and all documents to effect a registrable Transfer if either of the parties herein is unable or unwilling to do so.

18. Liberty to apply;

19. Any further relief, directions and/or Orders as this Honourable Court deems just in the circumstances.

The Issues

- [4] a) Whether the Temple Hall property is the family home?
- b) If the Temple Hall property is found to be the family home, how should the net value of the property be determined?
- c) Whether the Claimant is entitled to a share in any other property owned jointly or severally between the Claimant and the First Defendant?

d) Whether the Claimant is entitled to maintenance, if so in what amount, and can the Second Defendant be held responsible for the payments?

Submissions on behalf of the Claimant and the Defendant

Counsel on behalf of the Claimant and the Defendants filed written submissions. I will make reference only to the salient aspects of these submissions bearing in mind the issues stated above.

Claimant

[5] Ms. Shaw outlined the issues of fact and law for determination as follows:

“The most substantial issue of fact for determination...is whether or not Mrs. AMB and Mr. KIB operated a joint enterprise and/or partnership with each other, during the course of their marriage. The issue of law for this Court’s determination is the relevance, impact, or influence, of partnership/contribution in determining fair distribution of assets acquired during the course of the marriage and on all other aspects of the claim, inclusive of maintenance.”

[6] It was contended that in respect of the Temple Hall property the focus of the court should be on the net value for distribution. It was argued that the present mortgage on the property was obtained purely for the purpose of providing working capital for the benefit of the Second Defendant. Based on the principle of fairness and equity, the Second Defendant should repay to the Claimant and the First Defendant such sums equal and due to NCB in respect of the outstanding NCB mortgage, which is secured against the family home. The sale of the family home should therefore be deferred until the Second Defendant has settled the outstanding debts to the Claimant and the First Defendant.

[7] It was further argued that the Claimant was entitled to rent or mesne profits from the Second Defendant since it had been operating out of the family home. The rent should be calculated at a value to be determined by an approved Appraiser from the date of the couples’ separation sometime in June 2017 until the sale of the Temple Hall property. In

the interim the Claimant should have the benefit of exclusive possession of the Temple Hall property until it is sold.

[8] At the start of her cross examination the Claimant indicated that she did not wish to pursue her claim for an interest in the Second Defendant. Ms. Shaw posited that the court still had a duty to examine the evidence and make a determination as to the division of the shares nonetheless. The fixed date claim form sought orders for a forensic audit to be conducted to determine the market value of the shares. The Defendants did not challenge this claim apart from asking the Claimant if she was also abandoning her request for such an audit to be conducted. Her answer was vague and as such the court should proceed to grant the order. In furtherance of that order the court should come to a conclusion as to the interest of the Claimant.

[9] Ms. Shaw also made submissions as to the Claimant's interest in motor vehicles owned by the First Defendant and the payment of maintenance, these will be further explored later in the analysis and discussion.

Defendant

[10] Mr. Steer conceded that the Temple Hall property is the family home. The area of contention was whether the Claimant was to receive her half share of the property prior to the deduction of mortgages that are attached thereto. Throughout the cross examination the Claimant made it plain that she did not believe she was responsible to pay the outstanding mortgage debts associated with the Temple Hall property since those debts were primarily accumulated as a result of the operations of the Second Defendant. She insisted that she had not benefitted in any way from the operations of the company and that as such she ought not to be saddled with the burden of repaying that debt. The submissions for the Defendants are diametrically opposed to this argument.

[11] The First Defendant contends that the business operated on the Temple Hall property was a joint business venture between the parties. Further any mortgages secured against the title of the property were done jointly by both himself and his former wife. The responsibility for the debt therefore could not solely be borne by the First

Defendant. It was also argued that the mortgage payments made solely by the First Defendant should be refunded to him out of the proceeds of sale as those payments can be considered an advance to the Claimant.

[12] The Claimant at the commencement of her cross examination made it abundantly clear that she was no longer seeking an interest in the shares of the company or an interest in the company. Mr. Steer submitted that in those circumstances she is not entitled to any interest in the company and should therefore relinquish the twenty per cent (20%) shares that she presently holds. With respect to the motor vehicles owned by both parties severally, Counsel submitted that these are the only motor vehicles for the court's consideration. A Nissan Tiida Motor vehicle is in the name of the Claimant only and there is no objection to her continued ownership. In respect of a Navarro motor truck registered in the name of the First Defendant, it was argued that he alone paid for and maintained the vehicle over the years and as such the status quo should remain.

[13] As it regards the issue of maintenance, Counsel submitted that the sum of Four Hundred Thousand Dollars (\$400,000.00) was exorbitant. The interim order of Ninety Five Thousand Dollars (\$95,000.00) per month should be made final for a period of a year or until the property is sold whichever is sooner.

Analysis and Discussion

[14] The Claimant and the First Defendant filed several Affidavits that stood as their evidence in chief. They were cross examined at length by counsel, and as such I do not propose to recount in detail their evidence. I observed their demeanour as they gave their responses and I found that both parties were evasive with regard to specific aspects of the case. Apart from a disparity as to the role of the Claimant in the business operations the parties were ad idem on several other matters for determination. I will consider the relevant sections of the testimony of the Claimant and the First Defendant as I examine the issues below.

Whether the Temple Hall property is the family home?

[15] The Property (Rights of Spouses) Act (**PROSA**) defines the family home, sets out the entitlement of each spouse and declares the date at which the value of the property is to be determined:

“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;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;”²

[16] There is no dispute that the Claimant and the First Defendant purchased the Temple Hall property together after they were married. They are registered as joint tenants on the title and the evidence is that the home has been the only place of residence for the family. The court therefore has no difficulty in finding that the Temple Hall property is in fact the family home as defined by PROSA. There is nothing which has been raised in the evidence that would cause the court to vary the equal share rule as set out in the statute. In the circumstances therefore the Claimant and the First Defendant are each entitled to a fifty per cent share in the Temple Hall property as per Section 6 (1) (a) of PROSA.

How should the net value of the Temple Hall property be determined?

¹ Section 2 (1) PROSA

² Section 6 (1) (a) PROSA

[17] PROSA provides that the value of the property should be calculated on the date an order of the court is made.

“Subject to sections 10 and 17 (2), the value of property to which an application under this Act relates shall be its value at the date the Order is made, unless the Court otherwise decides.”³

The evidence of the First Defendant in cross examination is that there is presently a mortgage on the family home which was for the purpose of securing working capital on behalf of the Second Defendant. In determining the net value of the property, Counsel for the Claimant has submitted that it would be inequitable for the Claimant to absorb the mortgages incurred on behalf of the company in circumstances where she has been involuntarily separated from its' operations. The First Defendant's evidence was that the Claimant's role in the business was negligible, the mortgage he said was also paid for by the Second Defendant. It is against this background that Counsel for the Claimant argued that it is the responsibility of the Second Defendant to discharge the mortgage as it is in fact a corporate debt. In fairness and in keeping with the principles of equity the mortgage debt should be discharged by the company prior to the sale of the Temple Hall property.

[18] I cannot agree with Counsel in this regard. Section 4 of PROSA precludes the court from venturing down a path of equitable or common law considerations as the Act is specific as to how property between spouses is to be treated.

“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.”

[19] The Second Defendant is a company and a separate legal entity. Although the company benefitted from the proceeds of the mortgage, the agreement with the bank was

³ Section 12 (1) PROSA

signed by both the Claimant and the First Defendant in their personal capacity. It is they who have incurred the debt and by extension are responsible in law for its repayment. The submission of Counsel that the court makes an order for the Second Defendant to sell property it owns (located at Derrymore Road) to repay the Claimant and the First Defendant cannot be sustained, given the separate legal personality of a company and the fact that property owned by a company cannot be considered to be the property of any shareholder.

[20] The court must therefore be guided by the provisions of the Act in determining the distribution of the matrimonial property. Section 17 (2), (3) and (4) of PROSA are relevant to this issue.

“The value of property that may be divided between the spouses shall be ascertained by deducting from the value of property owned by each spouse (a) any secured or unsecured debts (other than personal debts or debts secured wholly by property) owed by one spouse; and

(b) the unsecured personal debts owed by one spouse to the extent that such debts exceed the value of any property of that spouse.

(3) Where any secured or unsecured personal debt of one spouse is paid out of property owned by both spouses the Court may, on a division of that property, order that-

(a) the share of the other spouse in that property be increased proportionately; or

(b) the first mentioned spouse pay compensation to the other spouse.

(4) In subsections (2) and (3) "personal debt" means a debt incurred by either spouse other than a debt incurred- (a) by both spouses jointly; or (b) in the course of a joint venture carried on by both spouses whether or not with any other person; or (c) for the purpose of effecting improvements to the family home or acquiring, repairing

or effecting improvements to the family chattels; or (d) for the benefit of both spouses or any relevant child in the course of managing the affairs of the household or for caring for the relevant child, as the case may be.”

[21] The evidence before the court is that the Temple Hall property is encumbered with a mortgage in the sum of Twenty Two Million Dollars (\$22,000,000.00). Counsel for the Defendant exhibited a title in his submissions which he said was the true nature of the financial state of affairs in respect of the property. This “updated” title was however never part of the evidence before this court. Although Counsel has asked the court to take notice of the document I cannot accede to that request. Counsel for the Claimant would not have had the opportunity to see the document nor to ask questions relating to it. The undisputed evidence therefore is that the mortgage sum is that as previously stated.

[22] The Claimant in cross examination was adamant that although the mortgage documents reflect her name and that of the First Defendant as borrowers, the money was obtained solely for the benefit of the company. Throughout cross examination she indicated that she did not believe that it was fair for her to have to repay that money since she did not benefit from it. The Claimant at the start of cross examination abandoned her claim for an interest in the company. It was argued by counsel for the Defendants that her true intention in doing so was to avoid the payment of the mortgage debt. I tend to agree. I find that the Claimant’s last minute change of heart as to her interest in the company was a purely tactical move in order to convince the court that she should not bear the burden of the mortgage payments. That her Counsel is prepared to argue that the court should still consider her claim despite this verbal decision, is indicative of the fact that she too was caught off guard by this about turn.

[23] Mr. Steer in asking the court to reject her evidence cited the New Zealand case of **Quaid v. Quaid**⁴. Although the decision is not binding on our courts, several judgments interpreting various sections of PROSA within our jurisdiction have referred to the

⁴ [1979] NZMPC67; (1979) 2 MPC 156 (12 September 1979)

Property (Relationship) Act of New Zealand as it has been considered to have similar provisions to PROSA. The dicta in decided cases therefore have been used previously to guide our courts.

[24] In the case of **Quaid** both the husband and wife had signed mortgage documents in respect of their home. There was no dispute that the money was to be used to obtain capital for the husband's business. The wife alleged that she was unduly influenced to sign the documents and that at the time she was not a part of the business. In the judgment, which was delivered by Ongley, J it was said:

“I am not satisfied that any departure from the statutory provisions governing the deductibility of debts is warranted by the circumstances of this case. The wife says now that she regards the husband's interest in the publishing company as his separate property but she cannot make it separate property merely by saying so. The shares in the company were acquired after marriage and prima facie constitute matrimonial property. The abandonment of her claim to share in them in no way affects their status.”

[25] The Claimant's evidence as set out in her Affidavit filed on the 12th of October 2018 is that she and her ex-husband agreed to form the Second Defendant in 2010. They borrowed money jointly to stock the store and she played an active part in the management and operations of the company. At paragraph 43 she states, *“it was always our expressed agreement during the course of our marriage that our business was equally owned.”* The mortgage was negotiated and signed in 2012. She was asked in cross-examination if at that time she was still an active part of the business and her answer was yes. At the time the mortgage was negotiated the couple was still together and she indicated that they had equally invested in the business. I accepted her evidence that she was a joint partner in the Second Defendant up until 2018 when the couple separated. I did not find that the First Defendant was being truthful about the role of the Claimant in the company. I found that he downplayed her role in an attempt to minimize her contribution to the business.

[26] PROSA provides for a deduction or repayment of sums if there is a personal debt incurred by either spouse. In this case there can be no doubt that the debt incurred was as a result of a joint venture for which both the Claimant and the Defendant entered into willingly. It was the evidence of the Claimant that the household bills and personal expenses were all paid for by the Second Defendant. The mortgage was entered into in the course of a joint venture between both parties and was for their mutual benefit. Both the Claimant and the Defendant are therefore liable to repay the mortgage out of the proceeds of the sale of the Temple Hall property. The net value of the property therefore will be the market value less the mortgage debt.

[27] Counsel for the Claimant also submitted that the Company should pay her a sum in rental for the occupation and use of the property from the date of separation to the date of sale. She relied on the Court of Appeal decision of **Miller v. Miller**⁵. Conversely, Counsel for the Defendant submitted that the mortgage payments made by the First Defendant after the separation was a loan to the Claimant which ought to be repaid out of the proceeds of sale of the Temple Hall property, he relied on **Forrest v. Forrest**⁶.

[28] The facts of **Miller v. Miller** can be distinguished from the present case. The property in dispute in the cited case was purchased in the joint names of the parties who were married at the time of purchase. Both parties contributed to the construction of a building on the land. The building was used as a hotel for several months. The parties entered into a separation agreement as a part of their divorce proceedings and included a stipulation which was signed in November 2007. Mrs. Miller sought from the court among other orders an account for Mr. Miller's sole use of the property. The Court of Appeal made an order that the first respondent was to compensate the first appellant, in respect of her interest, for the use and occupation of the property from 7 November 2007 (the date of their stipulation in the Connecticut Court) to the date of sale.

⁵ SCCA No. 23 /2012

⁶ SCCA No. 78/93

[29] In a review of the facts of the case the Court of Appeal found as one of the factors in Mrs. Miller's favour that:

“In the stipulation signed by the parties and their respective attorneys-at-law in November 2007, after their separation, it was stated that Mr. Miller would be entitled to use the income from the hotel to meet his expenses and that of the hotel but that he would provide Mrs. Miller with a full accounting of that income.”⁷

It was also the finding of the Court of Appeal that, **“Mr. Miller, at his sole cost, constructed a house on the land on which the hotel is built. It appears, however that this was done after the separation agreement was executed.”⁸**

[30] It was in the context of discussing the entitlement to each party of an equal share in the property that Brooks, J as he then was made the statement at paragraph 60 of the judgment that **“the operator of the hotel must pay the owners for its use and occupation of the property.”** In this case the hotel was also a party to the claim and was the Second Respondent. The order of the Court of Appeal was that it was the First Respondent who should compensate Mrs. Miller for the use and occupation of the property. From the findings of the Court of Appeal it is difficult for this court to accept that a general principle was set out that a company should compensate an owner of a property for its use and occupation.

[31] There was no separation agreement in this case which included any stipulation as to how the property was to be utilized. It could also not be argued that the operations of the Second Defendant were for the sole benefit of the First Defendant, as it has already been established that all the household expenses were settled through the Second Defendant. Having regard to the specific circumstances of this case, I cannot agree with Counsel for the Claimant that this is a case in which the court can make such an order.

⁷ Supra. 5 para. 49 (b)

⁸ Ibid. 5 para. 50 (d)

[32] The case of **Miller v. Miller** also made reference to the **Forrest v. Forrest** case and affirmed the following:

“The analysis above, stressed that Mr. Miller constructed a dwelling house on the property after the parties had separated. He did so at his own cost. His expenditure would inure to the benefit of the property as a whole. Fairness would normally require, that if they are declared to be equally interested in the property as a whole, that Mrs. Miller should compensate him for his expenditure by paying to him one half of the value of that structure. That approach would be consistent with that used in Forrest v. Forrest, where payments made by one joint tenant to clear the mortgage debt owed on jointly owned property was deemed to be an advance, as to one half thereof, to the other joint tenant, who is liable to repay that sum.”⁹

The evidence from the First Defendant is that the Second Defendant has been paying the mortgage and that this is so because the Second Defendant generates the revenue to do it. As a shareholder in the Second Defendant the Claimant is also contributing to the mortgage payments. In the circumstances I cannot therefore agree with Counsel for the Defendants that the mortgage should be repaid to the First Defendant.

Whether the Claimant is entitled to a share in other property owned jointly or severally between the Claimant and the First Defendant?

[33] The Claimant sought orders for the court to determine her interest in the shares of the Second Defendant as well as motor vehicles owned by the First Defendant. Section 14 of PROSA outlines the approach a court must take in determining the division of any other type of property owned jointly or severally by the spouses.

“(l) Where under section 13 a spouse applies to the Court for a division of property the Court may-

⁹ Supra. 5 para. 62 and 63

(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) "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.”

The shares

[34] At the commencement of her cross examination the Claimant gave evidence that she was no longer claiming an interest in the Second Defendant. Several questions were asked of her relative to her interest and shares in the company. She insisted that she was abandoning that claim. She went further to say that she was only pursuing her claim for the property at Temple Hall. Counsel made an attempt to re-examine on this area however given the nature of the Claimant's response this was not permitted. Her answer was clear and unequivocal.

[35] Counsel for the Defendant argued that since the Claimant abandoned her claim for the share and declared that she did not have any claim against the company that she should also relinquish her twenty percent of the shares that she currently holds. Counsel for the Claimant asked the court to find despite the Claimant's statement, that it can still make a determination as to her interest in the shares as her pronouncement was not the end of the matter. I cannot agree with either position. The fact of the Claimant's intention not to pursue a claim against the company does not preclude her from maintaining her interest in the twenty percent of the shares in the company that she presently holds. At

the time of the claim she was seeking an order for a fifty percent share in the company. This claim she has now abandoned.

[36] Although the matter is indeed before the court for adjudication the fact that the Claimant has sought to abandon that claim cannot be ignored. There was no hesitation in her answers to the questions. I observed her demeanour throughout her testimony and I found her to be an intelligent woman who was capable of understanding the questions posed to her. There is no doubt as to her intention. In the circumstances therefore her claim for an interest in the company and by extension a share in the company has been withdrawn. For completeness the Claimant retains her twenty percent shareholding in the Second Defendant.

Motor Vehicles

[37] There are only two motor vehicles relevant to these proceedings, a Nissan Tiida motor car and a Navarro motor truck. The Claimant also sought interest in a motor vehicle that was the property of the company which was subsequently stolen. The Nissan Tiida is registered in the name of the Claimant and the Navarro is registered in the name of the Defendant. It was submitted on behalf of the Defendant that the status quo should remain. Counsel for the Claimant argued that the value of the Navarro is greater than that of the Tiida and the rules of equity should be applied so that the Claimant is entitled to a fifty per cent share of the Navarro.

[38] As the property belongs to either one of the spouses it falls squarely under Section 14 of PROSA. The fact of a financial contribution cannot be the only factor for consideration in determining the share to be apportioned to each spouse. In this case the parties were married for over thirty years. The Claimant for her part stated that she was involved in the operations of the home as well as the business. They carried on a joint enterprise in the form of the Second Defendant which afforded the couple the opportunity to purchase the two vehicles. There is no reason that the property ought not to be divided equally between the parties. I therefore find and accept that the Claimant and the First

Defendant are each entitled to one half share in the Nissan Tiida motor car and the Navarro motor truck.

Is the Claimant entitled to maintenance and if so in what amount?

[39] Section 4 of The Maintenance Act provides as follows:

“Each spouse has an obligation, so far as he or she is capable, to maintain the other spouse to the extent that such maintenance is necessary to meet the reasonable needs of the other spouse, where the other spouse cannot practicably meet the whole or any part of those needs having regard to

(a) the circumstances specified in section 14 (4); and

(b) any other circumstances which, in the opinion of the Court, the justice of the case requires to be taken into account.”

[40] In considering an award for maintenance I am guided by the principles set out by Brown, J in **Suzette Hugh Sam v. Quentin Hugh Sam**¹⁰:

“It must be demonstrated by evidence, firstly that the spouse who is tasked with the responsibility of spousal maintenance has the capability to fulfil that role. Secondly, the claimed maintenance must be demonstrably necessary. Thirdly, the needs being considered must meet the bar of reasonableness. Finally, the evidence must show that it is impracticable for the spouse to wholly or partially satisfy those needs.”

[41] The starting point is whether the Claimant can meet part of or all of her needs as set out in her claim. The Claimant set out her monthly expenses totaling One Million Three Hundred and Fifty Seven Thousand Three Hundred and Thirty Dollars (1,357,330.00) and sought an interim order for maintenance in the sum of Four Hundred Thousand Dollars (\$400,000.00) pending the sale of the family home. An interim order was made by J.

¹⁰ [2015] JMMD FD1 para. 52.

Pusey, J for the First Defendant to pay to the Claimant Ninety Five Thousand Dollars (\$95,000.00) monthly. The Claimant's attorney has asked the court to make an order that the outstanding sums be paid to the Claimant prior to the sale of the Temple Hall property. The Defendant's attorney has submitted that the sum of Ninety Five Thousand Dollars is reasonable given the overly inflated monthly expenses provided by the Claimant.

[42] In cross examination the Claimant stated that all the expenses of the household were paid for by the Second Defendant. She was employed to the Second Defendant up until the separation. Since then she has been unable to meet her needs as set out. I take into account the fact that the Claimant will have to start her life over at a time when she may not be able to secure a job due to her age and the number of years she has been outside of formal employment. I find and accept that the First Defendant whether on his own or with the assistance of the Second Defendant took care of the Claimant and all her attendant expenses during the marriage and as such it is impractical for her to meet her immediate needs at this time.

[43] Is the amount requested reasonable? In her cross examination the Claimant admitted that at the time of filing her claim five persons lived at the Temple Hall property. She also accepted that some of the expenses listed were not actually paid by her but by the company. These included the sums listed for the following:

- a) Orthodontist - \$28,000.00
- b) Mortgage - \$239,201.00
- c) Vehicle Insurance - \$11,629.00
- d) Car loan - \$50,000.00
- e) Aero Card debt - \$400,000.00
- f) Loan repayment - \$50,000.00
- g) Food for dogs /their grooming - \$15,000.00

h) Servicing of vehicles - \$120,000.00

i) Life insurance to support loans and mortgages - \$8,000.00

[44] The evidence of the Claimant is that the electricity and water bill included that which was consumed on behalf of the pro shop and the range. She also admitted that these expenses were being paid by the company up until October of 2018. She accepted that she did not pay the mortgage for the family home even though she listed it as a monthly expense. She agreed that she did not pay a car loan, and that she has no responsibility for the loan of fifty thousand which was mentioned in her affidavit. The dogs have died and so that is no longer an expense. The household helper has been dismissed and she no longer has that expense. It is clear from the cross examination that most of the expenses listed by the Claimant are not expenses that she personally had responsibility for and quite a few of them are no longer relevant. However the court must also consider the standard to which the Claimant had become accustomed to while she was married and an order for maintenance must take into account her future needs.

[45] I am also bound to consider the First Defendant's capacity to pay. The evidence of the First Defendant is that he earns the sum of One Hundred and Thirty Thousand Dollars (\$130,000.00) per month. He exhibited his salary slips for the year 2019 which showed a net salary of Sixty Thousand Three Hundred and Fifty Four Dollars. It was his evidence that he bought his own groceries and that his present wife also bought her own items. They shared a vehicle to work so his transportation expenses were minimal.

[46] He gave the impression that he was a frugal man with limited financial resources. I did not accept his evidence in that regard and I found him to be evasive and untruthful. He admitted to owning a large collection of jewelry and firearms. Subsequent to the interim order of the court he went on a business trip to Las Vegas with his present wife. There is also a Mercedes Benz which he benefits from which is owned by the company.

[47] I find and accept that the lifestyle of the First Defendant could not be sustained on the salary he has placed before the court. In the circumstances I find that he is more than

capable of paying a reasonable sum in maintenance to the Claimant until the property is sold.

[48] I find that the interim order made by J. Pusey, J is not an unreasonable sum given the reduced expenses based on the Claimant's own admissions. I am also mindful of the fact that a sum for maintenance ought not to be indefinite and should give the parties an opportunity for a clean break. Additionally, once the family home has been sold the Claimant will be in a better financial position and will therefore be able to settle some of her immediate expenses on her own. In consideration of all these factors, I find that the First Defendant is able to afford to pay the sum of One Hundred Thousand Dollars (\$100,000.00) per month for the maintenance of the Claimant.

[49] Before leaving this issue I wish to touch on the submission of counsel for the Claimant that the Second Defendant is to pay the sums of maintenance to the Claimant through the sale of property owned by the company. Ms. Shaw in making reference to the order of J. Pusey, J argued that the Defendants never challenged the court's order. It was her submission that the First Defendant acknowledged the outstanding amount and indicated that he was making efforts to have the order complied with. Ms. Shaw asked the court to find that the debt has remained outstanding and continues to have a negative impact on the credit rating of the Claimant.

[50] A Notice of Application was filed on December 2, 2020 for the sale of property belonging to the Second Defendant located at Derrymore Road in satisfaction of the outstanding debts. It was argued that the court had the jurisdiction to make such an order based on Section 28A of the Judicature (Supreme Court) Act. It was also submitted that the court should defer the sale of the family home until at least six months after the outstanding debts have been satisfied by the First Defendant in order to give the Claimant an opportunity to restore her credit rating.

[51] I accept that there are outstanding maintenance sums due to the Claimant however the status of a company is sacrosanct. The corporate veil can only be lifted in circumstances where it can be shown that a party is attempting to use the company to

hide from their responsibilities. In this case I cannot so find. The maintenance act is restricted to spouses and cannot be extended to a company. The maintenance arrears owed by the First Defendant are an obligation for him and not the company. I cannot therefore make such an order. The sums which are presently outstanding in breach of the court's order are to be deducted from the First Defendant's share of the proceeds of sale if they are not settled sooner. The sums outstanding for the credit card inclusive of any interest imposed are also to be deducted from the share of the proceeds of sale of the Temple Hall property if not settled sooner.

Disposition

[52] Having regard to the analysis of the evidence, the submissions of Counsel and the cases cited, I find and accept that the Temple Hall property is the family home. The Claimant and First Defendant are each entitled to a fifty per cent share in the Temple Hall property as well as the motor vehicles owned by them. The net value of the family home is to be determined after the deduction of the mortgage payments due to the named financial institution.

[53] The Temple Hall property is to be partitioned and sold and the Claimant is to have the first option to purchase. The motor vehicles are to be sold on the open market and the proceeds of sale are to be shared equally between the parties.

[54] The First Defendant is to pay the sum of One Hundred Thousand (\$100,000.00) monthly for maintenance to the Claimant on the first day of each month until the Temple Hall property is sold.

Order:

1. The premises situated at Spring Valley Farm, Temple Hall Main Road, in the parish of St. Andrew registered at Volume 1207 Folio 188 of the Register Book of Titles is the family home.

2. The Claimant and the First Defendant are equally entitled to a one half interest in the family home situate at Spring Valley Farm, Temple Hall Main Road, in the parish of St. Andrew registered at Volume 1207 Folio 188 of the Register Book of Titles.
3. The Claimant and the First Defendant shall secure a valuation of the family home within 30 days of the date hereof. In the event that they shall fail to agree on a valuator, the Registrar of the Supreme Court shall be empowered to appoint a valuator. The cost of the valuation shall be paid by the parties in equal shares, but the payment shall be advanced by the First Defendant.
4. The family home shall be sold and the net proceeds of sale divided equally between the Claimant and the First Defendant. The Claimant shall have the first option to purchase the First Defendant's interest within 120 days of the date hereof. The purchase price shall be one half of the net value of the family home after the discharge of mortgages endorsed on the title registered at Volume 1207 Folio 188 of the Register Book of Titles.
5. Should the Claimant fail to enter into a binding agreement to purchase the First Defendant's interest in the property within the time stipulated at order number 4, the First Defendant shall be entitled within 60 days thereafter to enter into an agreement to purchase the Claimant's interest in the family home. Should he fail to enter into a binding agreement within that time the property shall be sold on the open market by public auction or by private treaty.
6. The Claimant and the First Defendant are equally entitled to a one half interest in the value of the Navarro and Nissan Tiida motor vehicles registered in their names.

7. The Claimant and the First Defendant shall secure a valuation of the Navarro and Nissan Tiida motor vehicles within 30 days of the date hereof. In the event that they shall fail to agree on a valuator, the Registrar of the Supreme Court shall be empowered to appoint a valuator. The cost of the valuation shall be paid by the parties in equal shares, but the payment shall be advanced by the First Defendant.
8. The Navarro and Nissan Tiida motor vehicles shall be sold on the open market by public auction or by private treaty and the proceeds of sale are to be divided equally between the Claimant and the Defendant.
9. The First Defendant is to pay the sum of One Hundred Thousand Dollars (\$100,000.00) on the first day of each month to the Claimant commencing the 1st of May 2021 until the completion of the sale of the family home.
10. The Claimant is granted exclusive occupation of the family home except for the building and lands which are used for the operation of the Second Defendant until the sale of the family home is completed.
11. The Claimant's attorney-at-law is to have the carriage of sale.
12. Each party is to bear their own costs.