



**[2025] JMSC Civ. 47**

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

**CIVIL DIVISION**

**CLAIM NO. SU2020 CV04553**

<b>BETWEEN</b>	<b>BARRY MORRISON</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>BEVERLY ANGELA SAILSMAN MORRISON</b>	<b>1<sup>st</sup> DEFENDANT</b>
<b>AND</b>	<b>OWEN KARL SAILSMAN Jr.</b>	<b>2<sup>nd</sup> DEFENDANT</b>
<b>AND</b>	<b>DAMIAN ANDRE SAILSMAN</b>	<b>3<sup>rd</sup> DEFENDANT</b>
<b>AND</b>	<b>FABIA TAMARA AYANA SAILSMAN</b>	<b>4<sup>th</sup> DEFENDANT</b>

**CONSOLIDATED WITH**

**CLAIM NO. SU2020 CV04554**

<b>BETWEEN</b>	<b>BARRY MORRISON</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>BEVERLY ANGELA SAILSMAN MORRISON</b>	<b>DEFENDANT</b>

Mrs Nadine Guy and Mrs Jeneice Nelson-Brown instructed by Nelson Brown Guy and Francis for the claimant

Ms Carlene McFarlane and Ms Marjorie Shaw instructed by McNeil and McFarlane for the 1<sup>st</sup> defendant/defendant

**Heard: July 11, 2023 , July 12, 2023, October 18, 2023 and May 16, 2025**

**Property Law - Joint tenancy - Whether joint legal ownership is joint beneficial ownership - The burden of proof - Severance of the joint tenancy  
The effect of some defendants not participating in the claim - Partition Act sections 2(2) and 4**

## **IN CHAMBERS**

**CORAM: JARRETT, J**

### **Introduction**

[1] The claimant and the 1<sup>st</sup> defendant/defendant are husband and wife. They separated around 2012 and are currently going through a divorce. They are jointly registered as proprietors of three parcels of land, Lots 97 and 99 Jamaica Beach situated in the parish of St. Mary and Lot 201 Mango Walk Country Club, situated in the parish of St James. Lot 97 Jamaica Beach is also jointly owned by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants, who are the 1<sup>st</sup> defendant/defendant's adult children from a previous marriage. The claimant wishes the joint tenancy severed and brings the claim under the provisions of the Partition Act. The questions raised by the claim are; a) whether the claimant has 50% of the beneficial interest in Lot 97 Jamaica Beach , and therefore his beneficial interest is more than his legal interest, resulting in him owning this property equally with the 1<sup>st</sup> defendant/defendant, to the exclusion of her three children; and b) whether the claimant's legal and beneficial interests in Lot 201 Mango Walk Country Club and Lot 99 Jamaica Beach are equal.

[2] The 1<sup>st</sup> defendant/defendant denies that the claimant has any interest in the three properties and says his name appears on the respective certificates of title as a matter of convenience. The claim is brought by two fixed date claim forms which were consolidated by order of D. Palmer J on December 14, 2021. It is supported by two affidavits filed by the claimant. The 1<sup>st</sup> defendant's response to the claim is by way of two affidavits filed by her and an affidavit of Dennis Francis. All the documents exhibited to these affidavits were agreed by the parties. The 2<sup>nd</sup>, 3<sup>rd</sup>

and 4<sup>th</sup> defendants have neither acknowledged service nor filed affidavits in response to the claim and they were unrepresented at trial.

[3] It is helpful to outline the remedies sought by the claimant.

### **The claim**

[4] In his fixed date claim form filed on November 23, 2020, in Claim No SU2020CV04553, the claimant seeks the following remedies:

“1. A Declaration that the Claimant and the 1<sup>st</sup> Defendant are each entitled to a Fifty percent (50%) share of the legal and/or beneficial interest in the property located at SPRING VALLEY in the parish of Saint Mary and registered at Volume 933 Folio 19 of the Register Book of Titles [hereinafter referred to as ‘the property’].

2. A Declaration that the 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Defendants are not entitled to an equitable or any legal and/or beneficial interest in the property.

3. An Order that the Joint Tenancy to the property be severed.

4. An Order that a Valuation Report be obtained by a Licensed Valuator to establish the current market value of the property. The parties shall, within 14 days of this Order, agree a Valuator who shall prepare a Valuation Report in respect of the premises and in the event that the parties are not able to agree then the Registrar of the Supreme Court shall appoint a Valuator. The cost of the Valuation Report is to be shared equally by the parties.

5. An Order that the 1<sup>st</sup> Defendant be given the first option to purchase the Claimant’s interest in the property at the market value contained in the Valuation Report obtained pursuant to Order No.4. The Defendant is to exercise such option within 60 days of being in receipt of the said Valuation Report.

6. In the event of the failure of the 1<sup>st</sup> Defendant to exercise her option to purchase, the said property is to be sold on the open market at the best price obtainable in keeping with the attendant valuation report and the net proceeds of sale to be divided between the parties in equal shares.

7. An Order that the Claimant is entitled to a Fifty percent interest (50%) in all the contents of the dwelling house to include but not limited to all the items of furniture and appliances located in the said dwelling house.

8. An Order for an injunction barring and/or restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants, their servants and/or agents from entering upon the property and removing any of the contents of the dwelling house to include but not limited to any items of furniture and/or appliances from the dwelling house of the property unless so ordered by the Court or until the determination of the matter herein.

9. An Order that if, within fourteen days of being requested to do so, either party fails and/or refuses or is otherwise unable to sign any of the documents necessary to bring into effect a transfer of a party's interest and share in the said property, the Registrar of the Supreme Court be so empowered to sign for and on behalf of the defaulting party.

10. An Order that the Claimant's Attorneys-at-law, Nelson Brown Guy & Francis be appointed as the Attorneys having carriage of sale.

11. Each party to bear their own legal costs in respect of the adjudication of this claim.

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

13. Liberty to apply.”

**[5]** The following are the remedies claimed in the fixed date claim form filed on November 23, 2020, in Claim No SU2020CV04554: -

“1. A Declaration that the Claimant and the Defendant are each entitled to a Fifty percent (50%) share of the legal and/or beneficial interest in the property located at Lot 99 SPRING VALLEY ESTATE in the parish of Saint Mary and registered at Volume 964 Folio 92 of the Register Book of Titles [hereinafter referred to as ‘Property1’].

2. A Declaration that the Claimant and the Defendant are each entitled to a Fifty percent (50%) share of the legal and/or beneficial interest in the property located at Lot 201 MANGO WALK COUNTRY CLUB in the parish of Saint James and registered at Volume 1413 Folio 139 of the Register Book of Titles [hereinafter referred to as ‘Property 2’].

3. An Order that the Joint Tenancy for each property be severed.

4. An Order that a Valuation Report be obtained by a Licensed Valuator to establish the current market value of Property 1 and Property 2. The parties shall, within 14 days of this Order, agree a Valuator who shall prepare the Valuation Reports in respect of the premises and in the event that the parties are not able to agree then the Registrar of the Supreme Court shall appoint a Valuator. The cost of the Valuation Reports are (sic) to be shared equally by the parties.

5. An Order that the Defendant be given the first option to purchase the Claimant’s interest in both the properties at the market value contained in the Valuation Reports obtained pursuant to Order No.4. The Defendant is to exercise such option within 60 days of being in receipt of the said Valuation Reports.

6. In the event of the failure of the Defendant to exercise her option to purchase, both properties are to be sold on the open market at the best price obtainable in keeping with the attendant valuation reports and the net proceeds of sale to be divided between the parties in equal shares.

7. An Order that if, within fourteen days of being requested to do so, either party fails and/or refuses or is otherwise unable to sign any of the documents necessary to bring into effect a transfer of a party's interest and share in the said property, the Registrar of the Supreme Court be so empowered to sign for and on behalf of the defaulting party.

8. An Order that the Claimant's Attorneys-at-law, Nelson Brown Guy & Francis be appointed as the Attorneys having carriage of sale.

9. Each party to bear their own legal costs in respect of the adjudication of this claim.

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

11. Liberty to apply."

### **The evidence in support of the claim**

#### *The claimant*

**[6]** In his affidavit filed on November 23, 2020, in support of his claim relating to Lot 97 Jamaica Beach, the claimant says that he lives in New York in the United States of America and is a retired entrepreneur. The 1<sup>st</sup> defendant/defendant is his wife; she is a registered nurse. He, the 1<sup>st</sup> defendant/defendant and her three adult children are the joint registered proprietors of Lot 97 Jamaica Beach, which is land registered at Volume 933 Folio 19 of the Registrar Book of Titles. He got married to the 1<sup>st</sup> defendant /defendant on June 28, 2002, and filed a Petition for the Dissolution of Marriage on May 11, 2020.

- [7] The 1<sup>st</sup> defendant/defendant owned Lot 97 Jamaica Beach, “the family home”, since December 1997 with her former spouse Dennis Francis, as joint tenants. Lot 97 Jamaica Beach was constructed as a two-family dwelling with downstairs rented and upstairs locked up. Sometime in 2006, he and the 1<sup>st</sup> defendant/defendant decided as a couple to buy out Dennis Francis’ interest and to: “fix up” the property as their family home. Based on legal advice they received in New York, the transaction was proceeded with as a transfer by way of gift instead of by sale, from Dennis Francis to the 1<sup>st</sup> defendant/defendant as a cost saving measure. He and the 1<sup>st</sup> defendant paid Dennis Francis for his interest, and in turn Dennis Francis executed a transfer by way of gift to him and the 1<sup>st</sup> defendant/defendant. In addition to adding his name to the title, the decision was made to add to the title, the names of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants, even though the purchase price and associated cost for the legal work were borne solely by him and the 1<sup>st</sup> defendant/defendant. The property has been exclusively occupied by the 1<sup>st</sup> defendant/defendant since 2012, even though its acquisition and renovation resulted from their joint resources as it was to be used as their family retirement home. He believes he is entitled to a 50% interest in it.
- [8] With respect to Lot 99 Jamaica Beach and Lot 201 Mango Walk Country Club, the claimant in his affidavit sworn on November 23, 2020, says he and the 1<sup>st</sup> defendant are joint registered proprietors of both properties. Lot 99 Jamaica Beach is registered at Volume 964 Folio 92 of the Register Book of Titles and Lot 201 Mango Walk Country Club is registered at Volume 1413 Folio 139 of the Register Book of Titles. He and the 1<sup>st</sup> defendant/defendant separated in 2012, and she moved back to Jamaica to live. In 2006, he and the 1<sup>st</sup> defendant/defendant purchased Lot 99 Jamaica Beach using cash from their joint savings account. The property is unimproved. He believes he is entitled to a 50% interest in it.
- [9] Lot 201 Mango Walk Country Club was also purchased by him and the 1<sup>st</sup> defendant/defendant using cash from their joint savings account and a mortgage in January 2008, from Jamaica National Building Society. This property is a townhouse and was acquired as an investment to generate rental income. Since

its purchase, the property has been rented and the rent deposited into an account from which the mortgage was serviced. This remained the case until 2014 when the existing tenant gave up possession. He then went to Jamaica and discovered that the 1<sup>st</sup> defendant/defendant had been to the property and removed fixtures from the kitchen and the bathrooms. He spent approximately USD \$10,000.00 to undo the damage done by the defendant to the property. After he did so, the 1<sup>st</sup> defendant/defendant rented the property and since then, he has had no access to the rental income. He believes she used the rent to service the mortgage which she completely discharged in 2018. He is of the view that he is entitled to a 50% interest in this property as well.

**[10]** In an affidavit filed on August 29, 2022, in response to the two affidavits of the 1<sup>st</sup> defendant/defendant and the affidavit of Dennis Francis, the claimant says he is aware that the 1<sup>st</sup> defendant/defendant and Dennis Francis signed a memorandum of understanding whereby Dennis Francis agreed to transfer his interest in Lot 97 Jamaica Beach to the 1<sup>st</sup> defendant/defendant at an agreed price. He is also aware that there was an agreed payment schedule, and that it was further agreed that the transfer document would not be lodged until the agreed sum was paid in full. The 1<sup>st</sup> defendant/defendant negotiated the purchase price and the severance of the joint tenancy, but they both agreed to pay the agreed price from their joint resources and sought legal advice both in New York and Jamaica. Dennis Francis transferred his interest in the property to them and to the 1<sup>st</sup> defendant/defendant's three adult children. He denies that Dennis Francis has no knowledge of him. The transfer documents were signed in Jamaica in 2006.

**[11]** The intention to use Lot 97 Jamaica Beach as the family home did not materialise as their relationship became strained around 2012. The intention was to reside in the house and to rent a part of it to generate income. It was agreed that they would return to Jamaica to live on their retirement, and that is why it was decided to renovate the house to become their family home. He exhibits photographs which he says shows renovations to the house being done in the latter part of 2011.



- [12] He is a businessman who operated a bar, restaurant and nightclub in the Bronx, New York, for over 14 years. His business operated in the name of GMB Group LLC which began operations in January 2003 and he filed the business taxes annually. He exhibits copies of tax returns filed from 2004 to 2012. He denies that he had poor credit and says that his credit was always good, and he had both a business and a personal credit card. The only reason he was included in the 1<sup>st</sup> defendant/defendant's group health insurance was because it was more cost effective than having an individual health policy. He was gainfully employed from the start of the marriage and he and the 1<sup>st</sup> defendant/defendant worked together and pooled their resources. They made investments that generated income and worked together with the common intention that they would build their wealth for enjoyment in their retirement. All three properties were purchased with direct contributions from each of them with the common intention that the properties would belong to both of them. The 1<sup>st</sup> defendant/defendant wishes to deny him his interest in these properties because she blames him for the losses they suffered on a major investment they had in two apartment buildings in New York.
- [13] In cross examination, the claimant said when he met the 1<sup>st</sup> defendant/defendant, he was operating MPM Insurance and Finance Services and Jamintel Communications and Video, which were two businesses in New Jersey. After their marriage, he filed tax returns from 2002 to around 2011 or 2012, jointly with the 1<sup>st</sup> defendant/defendant and these returns were prepared by him. He was also a partner in GMB Group LLC, and a chartered accountant prepared the partnership's tax returns. The business operated by the partnership was essentially a night club, while the restaurant operated during the day.
- [14] When asked if the partnership was successful, the claimant said it was very successful and although the tax returns show a loss for the years 2004 to 2012, the recommendation was to file the returns reflecting a loss for tax liability purposes. On paper there were no earnings for the partnership. The business was 90% cash, and he admitted to earning: "under the table". The business had more than one credit card, but he could not remember the limit. He filed his personal tax

returns and described himself as unemployed but that was just for the purpose of filing. He was not unemployed as he was operating a business. He operated the partnership.

- [15] He had two bank accounts when he got married to the 1<sup>st</sup> defendant/defendant. After marriage, he did not put the 1<sup>st</sup> defendant/defendant on any of those accounts. These were the accounts to which he lodged the partnership's: "under the table" earnings. He owned a home in New Jersey prior to meeting the 1<sup>st</sup> defendant/defendant, and after they got married, he moved into her New York home in around 2003 and he sold his New Jersey home. He denied that the 1<sup>st</sup> defendant/defendant put any money in the partnership or its operations.
- [16] He is aware that in 2006 there was a balance owing to Dennis Francis on Lot 97 Jamaica Beach relating to a prior payment arrangement the 1<sup>st</sup> defendant /defendant had with Dennis Francis. He is not sure what the balance was, but it had to be paid to get the ownership of the property transferred. He is unaware of a final cheque paid to Dennis Francis, but said the balance owed was paid from their joint account. He did not know when the money was taken from the account, nor how much was taken, but it was taken by the 1<sup>st</sup> defendant/defendant, and he was the one who told her to pay off the balance. The joint account was a Chase Bank account in which he made deposits: "over a period of time". He was not aware of a memorandum of understanding between the 1<sup>st</sup> defendant/defendant and Dennis Francis in 2001, but based on what he was told by the 1<sup>st</sup> defendant/defendant there was one between her and Dennis Francis, but he had never seen that document. His understanding is that Dennis Francis was paid in 2006. He admitted that he could not say whether Dennis Francis was paid in 2001 and 2003, and not in 2006.
- [17] The transfer for Lot 97 Jamaica Beach was not signed by the 1<sup>st</sup> defendant/defendant, her three children and Dennis Francis prior to his marriage to her. He did not know what the agreed price for the property was, and so when he referred in his affidavit filed on August 29, 2022, to an agreed price for the

property, he was referring to the balance owed to Dennis Francis and not the agreed price payable to him. He was not privy to the schedule of payments, because he had not met the 1<sup>st</sup> defendant/defendant when it was made, and he was not aware of payments she made prior to that. He admitted to neither meeting or speaking to Dennis Francis.

**[18]** Repairs were started on the property around 2011 and were funded initially from an account the 1<sup>st</sup> defendant/defendant had at Jamaica National Building Society, to which she added him when they met. They deposited money to that account and used those funds to do the repairs. He was not keeping score, so he cannot say how much he deposited into that account. His deposits came from earnings, and these earnings came from money he had accumulated in the bank. He had Chase Bank accounts, both business and personal and it was his Chase GMB Group LLC account that he used. He has no record of those deposits.

**[19]** He and the 1<sup>st</sup> defendant/defendant bought properties for investment, and he made direct financial contributions to these purchases. His earnings came from his business which was a cash business, and he has no record of the cash he collected as the book that was used was disposed of when the business was closed. He admitted that the 1<sup>st</sup> defendant/defendant had invested in a property with two apartment buildings in New York, which was obtained by way of a mortgage. He managed the operation of that property on both their behalf. He had no concerns about the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants having similar interests as his in Lot 97 Jamaica Beach, because: "they knew if God forbid anything happen to us, that it belongs to them". He denied having any discussion with the 1<sup>st</sup> defendant/defendant about him being joined on the title to look out for her children and to guide them in case of her demise.

**[20]** In relation to Lot 99 Jamaica Beach, it was purchased cash for approximately USD\$50,000.00. Since the purchase he cleared the lot and paid taxes. He and the 1<sup>st</sup> defendant/defendant paid taxes in relation to all three properties, and he

became aware that she had paid off the mortgage for Lot 201 Mango Walk Country Club when he did a title search.

### **Evidence in response to the claim**

*Dennis Francis*

- [21] Dennis Francis in his affidavit filed on January 31, 2022, says he currently lives in New York and is a businessman. He has neither met nor spoken with the claimant and has not had any dealings with him. He is the ex-partner of the 1<sup>st</sup> defendant/defendant, and they were both registered as joint tenants of Lot 97 Jamaica Beach. On their separation, they came to an agreement that the 1<sup>st</sup> defendant/defendant would pay him: "a specific sum of money", to have his name removed from the title. They executed a memorandum of understanding on January 4, 2001, in the offices of an attorney-at-law in New York, which reflected their agreement. The legal fees were paid by the 1<sup>st</sup> defendant/defendant. They agreed a payment schedule and that the transfer document would not be lodged until he had received the final payment.
- [22] He did not live at the property with the 1<sup>st</sup> defendant/defendant as man and wife. The 1<sup>st</sup> defendant/defendant resides between Jamaica and the United States of America, and when they were together, she constantly worked and acquired property for purposes of investment. Because of her long working hours, they did not fully develop their investment plans and so the property remained largely unoccupied, except for occasional short-term tenants. Sometime after 2001, the 1<sup>st</sup> defendant/defendant told him that she intended to add her three children to the title, in the event something was to happen to her. He was therefore surprised to learn that she had added the claimant as a joint tenant. It is therefore not true that the claimant spoke to or negotiated with him to purchase any interest in the property.
- [23] On cross examination, he said he purchased the property with the 1<sup>st</sup> defendant/defendant and in doing so, had contributed financially. Their interest in

the property was equal, he was the person living on the premises and he contributed to paying the mortgage. The sum which he and the 1<sup>st</sup> defendant/defendant agreed she would pay for his interest in the property was USD \$32,000.00, and he received the last payment on the schedule of payments in 2003. He could not recall when he signed the transfer, but said it was after he received the last payment. He could not recall whether he signed the transfer document closer to 2006 .

*The 1<sup>st</sup> defendant/defendant*

- [24]** In her affidavit filed on October 12, 2021, the 1<sup>st</sup> defendant/defendant says she resides in the United States of America and is a retired registered nurse. She met the claimant in late 2001 and they married in 2002. When she married the claimant, she was a divorcee and the mother of three adult children. One of her sons is in the United States Navy. In relation to Lot 97 Jamaica Beach, she owned this property for several years with her then spouse Dennis Francis and in about late 2000, they agreed to have the property transferred to her and to remove him as a joint tenant. She did not know the claimant when these discussions were being had. She and Dennis Francis visited a lawyer in New York and signed a memorandum of understanding to the effect that the joint tenancy would be severed, and Dennis Francis would transfer his interest to her for an agreed price.
- [25]** Dennis Francis entered into the memorandum of understanding because he made no financial contribution towards the acquisition of the property as he could not afford it. The payment to Dennis Francis was not because he had any interest in the property but was made because of her appreciation for the fact that he had introduced her to the property. The memorandum of understanding was signed on January 4, 2001, and contained a payment schedule. It was agreed that the transfer document would not be registered until the agreed sum was paid and it was agreed how the legal costs would be paid.

- [26] She denies that Lot 97 Jamaica Beach was the family home and denies that it was ever constructed with such an intention. When the property was purchased, it was mainly her money that was used. Initially the property was not rented, and she and Dennis Francis visited it when they were in Jamaica. There was no intention to live in Jamaica. The transfer was signed by the claimant before a lawyer when her son, who was in the Navy, was able to travel to New York to do so. She and Dennis Francis had earlier signed the transfer in 2001, but it was agreed that the lawyer would hold onto it until Dennis Francis was fully paid by her. She decided to add her three children to the title even before she met the claimant. The claimant has no knowledge of the discussions or the agreement she had with Dennis Francis and did not pay for Dennis Francis' interest. Neither did he pay any of the legal expenses for the transfer as those were dealt with in 2001.
- [27] She denies that any renovations to the property were from joint resources. The claimant had no reportable income between 1995 and 2015, and this is confirmed from his Social Security Statement for 2016. She added the claimant to her Chase Credit Card due to pressure from him to do so. She also added him to a Chase Bank account to facilitate him dealing with certain transactions which she could not handle due to her heavy workload. He did not put one cent into any of her accounts. She placed the claimant and her children's name on the transfer for Lot 97 Jamaica Beach for the sake of convenience and to: "address possible legal issues that could arise in the event something should happen to [her]". She is shocked the claimant is claiming a 50% interest in the property as his lawyers had written a letter dated August 20, 2019, contending that he was entitled to a 1/5<sup>th</sup> share. Prior to the date of that letter, the claimant had said he had no interest in the property and had instructed her to prepare papers to that effect. He, however, claimed to have sweat equity in the other two properties.
- [28] At the time of their marriage, the claimant advised her that he had a business degree and he could assist her with managing her affairs. This was one of the reasons she added his name to one of her accounts. The claimant, however, consistently failed at entrepreneurship, but she had little time to attend to her

business due to her long work hours. The claimant conned her into paying for his 2/3<sup>rd</sup> share in the partnership after her initial financing of the business. She however suffered great financial loss as he had no business acumen and was untruthful.

**[29]** The claimant had no money in their joint account but withdrew from it and used her credit card to finance his ventures. When she met him, she owned a house in New York, at 227 Sherdian Avenue, Mount Vernon, and she used this house as collateral to purchase 24 apartments contained in two buildings in the Bronx. The rental from these apartments paid the mortgage for the buildings as well as her home. Her intention was for her real estate to take care of her pension and retirement. Because of the claimant's assurance that he had a business degree, she allowed him to assist her with managing the apartments, but she eventually ended up losing both her home and the apartments. The claimant was diverting money from the rental income to his own business. In 2013, she sought legal advice, the claimant agreed to a divorce and that he had no interest in her properties in Jamaica. Legal documents to that effect were prepared but he later refused to sign them.

**[30]** The placing of the claimant's name on Lot 99 Jamaica Beach and Lot 201 Mango Walk Country Club was done out of convenience and not intended to be a gift to him. She was married to him, she was not in Jamaica, and he had more time to travel. Both Lot 99 Jamaica Beach and Lot 201 Mango Walk Country Club were purchased using solely her resources without any contribution from the claimant. Until to 2017, it was the claimant who rented out these properties. She rented Lot 201 Mango Walk Club after 2017 periodically. She obtained a mortgage on her own, without any contribution from the claimant who had no income and filed returns which said so. In 2012, the claimant rented the property at Lot 201 Mango Walk Country Club without initially informing her. He collected rent of over USD\$22,000.00 from this property which he did not share with her. He did not contribute to either the mortgage or the maintenance in relation to this property. The rent he received went to his Bank of Nova Scotia account. The claimant has

no interest in any of her furniture at Lot 97 Jamaica Beach as they were purchased by her and by Dennis Francis in 1997.

- [31] In her affidavit filed on October 11, 2022, she says the payments to Dennis Francis were made solely by her and came solely from her funds and could not have been paid from any joint account with the claimant as she had not yet met him. She exhibits copies of three cheques which she says represents payments she made to Dennis Francis. She denies that she and the claimant bought out Dennis Francis in 2006 and says he was paid his interest between 2001 and 2003.
- [32] In 2003, the claimant started to do tax returns for her and for the partnership and described himself as unemployed. He was always on her tax returns as a dependent. She exhibits what she describes as his tax returns. She invested in the partnership and was the silent partner, but her investment was not in her name, but in that of the claimant. She did this because she wanted the claimant to: "improve his financial position and his manhood and his self-esteem". According to her, the claimant had poor credit and was tantamount to being a bankrupt. Most of the money used to pay out the mortgages and to invest were held in Jamaica National Building Society accounts. Although the claimant has no interest in any of her properties, except for "Spring Valley Estates", she is prepared to give him a percentage interest in one of them.
- [33] On cross examination, when asked if she had noticed that the certificate of title for Lot 97 Jamaica Beach shows her, the claimant and her three children as joint tenants, she said she had noticed it, but it is incorrect. She understood joint tenancy to mean that on the death of one joint tenant, the surviving joint tenants will benefit. In her marriage she had expected the claimant to help her manage her New York property but not the properties in Jamaica. With the claimant as a joint tenant, her thought was that he would oversee the Jamaican properties in case of her demise and: "do the right thing for her children". She admitted to adding the claimant to her credit cards, health insurance, Chase bank account and her



properties for convenience. When she was asked what the convenience was, she said: -

“I was doing multiple jobs. I am a registered nurse, from job to job, to job. He was not working. He had all the time to take care of certain issues. He was living rent free in my house. I am paying all the bills. That’s the least he could do. He was able because he was not in a regular job. He was there to do odd jobs and take care of issues. He had the time. That was in lieu of keeping him. So to speak. In lieu of any monetary contribution he would do all the clerical work. He was living rent free. He moved in.”

- [34] Prior to the partnership in which she invested so that the claimant could be a part of it, he was not earning and had no income. Pressed by cross examining counsel, she admitted that what was said in her affidavit about the claimant being unemployed is false. She, however, denied that she and the claimant were working together as a couple for their joint advancement. They were not building wealth as a couple as the claimant did not contribute monetarily.
- [35] She denied that the situation with the claimant was the same as with Dennis Francis. According to her she had a plan with Dennis Francis, but had none with the claimant. She admitted however that she was just as busy with work when she was with Dennis Francis, as she was with the claimant. She also admitted that the statement in her affidavit that Dennis Francis made no contribution to the acquisition of Lot 97 Jamaica Beach, was not true, as he made a financial contribution of about US \$5,000.00. She also said that he made some of the mortgage payments: ‘in lieu of living in the house rent free” and that the mortgage payments he made were from rental income he received from the property.
- [36] The last payment made to Dennis Francis was in March 2003 and not in early 2002 as she alleges in her affidavit, which was an error and an oversight. She admitted that when the final payment was made, she was married to the claimant. She said

in 2005 and 2006, the marriage was working well emotionally, but not financially. The decision they made together was that since the claimant could not afford it financially, as her husband, he would take care of the properties and guide her children in the case of her demise as she has many medical issues. He would be there to help them with the laws of Jamaica and be like a custodian for them. She denied, however, that she and the claimant were working together as a couple. She said he was involved in business which was not making any money. When it was suggested to her that the claimant made both direct and indirect financial contribution, she said he made only indirect financial contribution.

### **Analysis and discussion**

**[37]** Despite the claimant making several references to Lot 97 Jamaica Beach being the family home, he did not bring his claim under the provisions of the Property (Rights of Spouses) Act, (PROSA). His counsel Mrs Nadine Guy, said explicitly in her oral closing submissions that: “the claimant is not saying that this is a family home, therefore PROSA does not apply”. It is the case then, that the relevant law is the common law and applicable equitable presumptions. All three properties in issue are held by the claimant and the 1<sup>st</sup> defendant/defendant as joint tenants, with the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants joining them also as joint tenants in respect to Lot 97 Jamaica Beach. A most apt starting point in the analysis, therefore, is the following dicta of Baroness Hale (as she then was) at paragraph 56 of *Stack v Dowden* [2007] UKHL17:-

“[56] Just as the starting point where there is sole legal ownership is sole beneficial ownership, the starting point where there is joint legal ownership is joint beneficial ownership. The onus is upon the person seeking to show that the beneficial ownership is different from the legal ownership. So in sole ownership cases it is upon the non-owner to show that he has any interest at all. In joint ownership cases, it is upon the joint owner who claims to have other than a joint beneficial interest”.

[38] This statement of the law was recently applied by the court of appeal in **Jeniffer Johnson v Horace Boswell [2022] JMCA Civ 31**. At paragraph 86 of that judgment, G Fraser JA (Ag) said this:

“[86] Where the legal title is in the joint names of the parties, it means that there is a presumption that both parties are beneficially entitled, unless the contrary is shown. In **Stack v Dowden**, Baroness Hale observed at para.68 that:

“**The burden will therefore be on the person seeking to show that the parties did intend their beneficial interests to be different from their legal interests, and in what way.** This is not a task to be lightly embarked upon. In family disputes, strong feelings are aroused when couples split up. These often lead the parties , honestly but mistakenly to reinterpret the past in self -exculpatory or vengeful terms...” (Emphasis supplied)”

[39] The general view is that the presumption is based on the maxim that equity follows the law, however Lord Walker and Lady Hale in **Jones v Kernock [2011] UKSC 533** said there were many more substantial reasons why any challenge to the presumption ought not to be lightly undertaken. One of the reasons they give is premised on the very the nature of the intimate relationship between a couple. According to them, when such a couple makes the decision to purchase a home in which to live, (and I would add, or any other property in which to invest and build their joint wealth, where there is no express declaration that the legal and the beneficial interests are different) invariably with the help of a mortgage to which they are both jointly and severally liable, this is a strong signal of an emotional and economic commitment to a joint venture. Another reason is that in a personal intimate relationship where there is mutual trust, the parties do not hold each other to account financially, due to the obvious practical difficulties in doing so in many cases.

[40] In the present case then, where there is joint legal ownership without any express declaration of a different beneficial ownership, the presumption is that the beneficial interest (or the ultimate rights to all three properties), is the same as the legal interest. In other words, in relation to Lot 97 Jamaica Beach, the presumption is that the claimant, and all four defendants each have the same legal and beneficial interest of 20%, and in relation to Lot 99 Jamaica Beach and Lot 201 Mango Walk Country Club, the claimant and the 1<sup>st</sup> defendant/defendant each have the same legal and beneficial interest of 50%. The burden is then on the claimant to show that his beneficial interest in Lot 97 Jamaica Beach is 50% and not 20%; and it is the 1<sup>st</sup> defendant/defendant's burden to show that the claimant's beneficial interest in Lot 99 Jamaica Beach and Lot 201 Mango Walk Country Club respectively, is not 50%.

[41] How, however, is the presumption to be rebutted? I believe it is safe to say that it is now accepted, that the court is to consider the parties whole course of conduct in relation to the property, in determining their shared intention in relation to its ownership. (See **Abbott v Abbott [2007] UKPC 53**, **Stack v Dowden** and **Raymond Johnson v Angella Johnson [2023] JMCA Civ 10**) . Turning once again to Baroness Hale (as she then was), this is how she put it at paragraph 60 of the judgment in **Stack v Dowden**:

“These days, the importance to be attached to who paid for what in a domestic context may be very different from its importance in other contexts or long ago. As K Gray and S F Gray, in *Elements of Land Law* , 4<sup>th</sup> edition 2005, point out at p 864 para 10.21:

‘In recent decades a new pragmatism has become apparent in the law of trusts. English courts have eventually conceded that the classical theory of resulting trusts, with its fixation on intentions presumed to have been formulated contemporaneously with the acquisition of title, has substantially broken down...Simultaneously the balance of

emphasis in the law of trusts has transferred from crude factors of money contribution ( which are pre-eminent in the resulting trust) towards more subtle factors of intentional bargain( which are the foundational premise of the constructive trust)... But the undoubted consequence is that the doctrine of resulting trust has conceded much of its field of application to the constructive trust, which is nowadays fast becoming the primary phenomenon in the area of implied trusts.”

...The law has indeed moved on in response to changing social and economic conditions. The search is to ascertain the parties’ shared intentions, actual, inferred or imputed with respect to the property in light of their whole course of conduct in relation to it.”

Of course, she later reminded us in **Abbott v Abbott**, at paragraph 2, that it must always be recognised that:

“...the inference to be drawn from the conduct of husband and wife may be different from those to be drawn from the conduct of parties to more commercial transactions”.

[42] In **Jones v Kernott**, Lady Hale joined Lord Walker in expanding the court’s approach a little further by adding at paragraph 31, the following two exceptions to the search for the parties actual shared intentions, whether expressed or inferred: a) the classic presumption of a resulting trust applies , which is rare in a domestic context, but might arise where domestic partners are also business partners; and b) where it is clear that the beneficial interests are to be shared but it is not possible to determine a common intention as to the proportions in which they are to be shared . An example of the former exception is where the parties make unequal financial contributions to the acquisition of property acquired in their

joint names, and, given the resulting trust presumption, their respective beneficial interests correspond with their financial contribution.

- [43] With these principles firmly in mind, I will consider whether the claimant has discharged the burden which he bears to rebut the presumption in relation to Lot 97 Jamaica Beach; and whether the 1<sup>st</sup> defendant/defendant has discharged the burden on her to rebut the presumption in relation to Lot 99 Jamaica Beach and Lot 201 Mango Walk Country Club. After determining the parties' respective beneficial interests, I will turn my attention to the relevant provisions of the Partition Act.

*Lot 97 Jamaica Beach*

- [44] It is apparent from the claimant's evidence, that his contentions are that he made direct financial contributions to purchasing Dennis Francis' interest in Lot 97 Jamaica Beach and in renovating it; the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants made no contributions whatsoever, and therefore he ought to have a 50% beneficial interest in it. As has been seen, he says in his affidavit evidence that he and the 1<sup>st</sup> defendant/defendant paid Dennis Francis the agreed price for the latter's interest in the property, from their joint resources, but on cross examination he resiled from this and said that what they jointly paid was the balance owed. His evidence that he was involved in paying the agreed price was clearly not supported by the copies of cheques exhibited by the 1<sup>st</sup> defendant/defendant, as well as by his own evidence on cross examination.
- [45] The three copy cheques were each in the amount of US\$ 8,000.00 and payable to Dennis Francis. They bear the dates July 19, 2001, November 9, 2001, and March 7, 2002, respectively. The fourth and final cheque was not exhibited, but Dennis Francis' evidence is that it was paid in 2003. The 1<sup>st</sup> defendant/defendant's evidence that she met the claimant in late 2001, and that the memorandum of understanding with Dennis Francis was signed on January 4, 2001, was not contradicted by him. In fact, as observed earlier, on cross examination the claimant

admitted that when the payment schedule was made, he had not yet met the 1<sup>st</sup> defendant/defendant, he met her in 2001 but was unaware of the payments she made prior to meeting him. He did not know the agreed price, ( despite saying in his affidavit that he and the 1<sup>st</sup> defendant/defendant paid it); he had never seen the memorandum of understanding; does not believe that he met the 1<sup>st</sup> defendant/defendant when the payment schedule was made; did not know the account from which the payments were made ( despite saying he told the 1<sup>st</sup> defendant/defendant to pay off the balance owed); did not know when the money was paid or how much was paid; and his understanding is that Dennis Francis was paid in 2006.

**[46]** The claimant's marriage to the 1<sup>st</sup> defendant/defendant was on June 28, 2002. In his affidavit filed on August 29, 2022, his evidence suggests that the pooling of resources started after the marriage, and he was gainfully employed at the start of the marriage. The first three payments to Dennis Francis, as evidenced by the copy cheques exhibited by the 1<sup>st</sup> defendant/defendant were all made prior to the marriage. It was only the final and fourth payment, which was made in 2003, after the marriage, and if he was involved in making any of the payments it would have been this one. But not even this 4<sup>th</sup> payment, he seemed to know anything about. He first said it was paid in 2006, but on cross examination it became very clear that he could not say when it was made. It cannot be overlooked that the claimant's affidavit evidence is that the agreed price paid to Dennis Francis was from pooled resources in a joint bank account, but the copies of the three cheques exhibited by the 1<sup>st</sup> defendant/defendant representing the first three payments, were all drawn on a Chase Bank account solely in the name of the 1<sup>st</sup> defendant/defendant. The authenticity of these copies was never challenged. Given the state of the evidence, I am not satisfied that the claimant made any financial contribution to paying out Dennis for his interest in Lot 97 Jamaica Beach. His evidence on cross examination revealed his obvious lack of knowledge about the payments made to Dennis Francis, despite asserting otherwise in his affidavits. I do not find his

evidence on this issue reliable. Accordingly, on a balance of probabilities, I find that he did not make any such contribution.

**[47]** Nevertheless, it is apparent from Dennis Francis' evidence, and that of the 1<sup>st</sup> defendant/defendant, that it was the 1<sup>st</sup> defendant/defendant's intention to add the claimant and her three adult children to the title for the property, and for all of them to be registered as joint tenants. The evidence is plain that all of them signed the transfer document. In my view, it is reasonable in the circumstances, to draw the inference that the common intention among them was for them to be joint tenants of the property, each holding a 20% interest in it. I find it difficult to accept the 1<sup>st</sup> defendant/defendant's evidence that the claimant was added to the title to address possible legal issues that may arise if something were to happen to her. It is unclear to me, what possible legal issues those could be, and how they would be addressed by the claimant. As joint tenants, the right of survivorship will result in the 1<sup>st</sup> defendant/defendant's interest passing on her death to the remaining joint tenants, that is, the claimant and her three adult children. The 1<sup>st</sup> defendant /defendant had lawyers in both Jamaica and the United States of America, who surely would have advised her of the legal consequences of a joint tenancy. She showed on cross examination that she understood the concept. Moreover, she had earlier been registered as a joint tenant with Dennis Francis and agreed to pay him for his interest when that relationship ended. I therefore reject the reasons she has given for the claimant being joined on the title as a joint tenant and find that she intended him to be joined as a joint tenant and to have an interest in the property equal to hers and that of her children.

**[48]** In terms of the renovation of the property, it has been seen that the claimant's evidence that this was financed from his and the 1<sup>st</sup> defendant/defendant's joint resources in late 2011, is denied by the 1<sup>st</sup> defendant/defendant. To support her denial, she says he had no reportable income between 1995 and 2015. She does not, however, deny that he was operating the partnership's bar and nightclub (although claiming there was no restaurant), and that when he met her, he operated two businesses in New Jersey. She also admitted in cross examination



that it is not true that he was unemployed during the operation of the bar and night club as he in fact oversaw its operations. She did not refute the claimant's evidence that when they got married, he had two bank accounts into which he lodged the partnership's "under the table" earnings. It is common ground that the partnership operated from 2004 to 2012. It is likely that he had some earnings from it, regardless of its size compared to those of the 1<sup>st</sup> defendant /defendant. During the operation of the partnership, it is evident that the claimant and the 1<sup>st</sup> defendant/defendant operated as a team to build wealth. Two other properties were purchased with both of them being registered as the only joint tenants. The 1<sup>st</sup> defendant/defendant's 24-apartment venture in the Bronx, was managed by the claimant. The 1<sup>st</sup> defendant/defendant has not denied that the Mango Walk Country Club property was rented to tenants by the claimant until 2017 and the rent used to service the mortgage. In the result, I find that it is more probable than not, that the claimant had some financial input in the renovation of Lot 97 Jamaica Beach, which started in late 2011.

- [49]** The claimant has, however, not given any evidence to show that his contribution to the renovation would rebut the presumption that his beneficial interest in the property is more than his legal interest. There is no evidence for example, of the amount of his own contribution to the renovation, or for that matter what was involved in the renovation. Simply exhibiting copies of photographs showing what appears to be construction work taking place, without any evidence explaining what was being constructed, the costs of the construction and whether the value of the house was improved as a result; is not sufficient to discharge the burden which is his. In other words, there is nothing in his evidence to persuade me that because of his financial input in the renovation of the house, the initial intention of the parties at the time of the transfer, has since changed such that his beneficial interest in the property is more than his legal interest of 20%, thereby disentitling the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants to a beneficial interest. In the circumstances I find that the beneficial interest and the legal interest in Lot 97 Jamaica Beach have not changed.

**[50]** It is ironic that in cross examination, the claimant said he had no concerns about the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants having the same interest in the lot as he does. Yet, the premise of his claim for a 50% interest in the property is that these defendants made no contribution to the purchase of the property, but he did. Counsel, Mrs Guy argues that because it is common ground that the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendant made no contribution to the acquisition of the property, I ought to find that they have no beneficial interest in it, and therefore the claimant and the 1<sup>st</sup> defendant/defendant are equally entitled to both the legal and the beneficial interest. She rightly acknowledges that there can be no default judgment against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants since the claim was brought by fixed date claim form. But these defendants' failure to participate in the proceedings, does not lead inexorably to a finding that they have no interest in the property. I have found that the 1<sup>st</sup> defendant /defendant intended to give them and the claimant, an interest in the property. The claimant had a duty to discharge the burden on him to show that the equitable and the legal interests in the property are different. I find that he has failed to do so.

*Lot 99 Jamaica Beach and Lot 210 Mango Walk Club*

**[51]** Both the claimant and the 1<sup>st</sup> defendant/defendant are the joint tenants of Lot 99 Jamaica Beach and Lot 201 Mango Walk Country Club. I made the point earlier that since the claimant wishes the court to declare that they each have the same legal and beneficial interests in these properties, the burden is on the 1<sup>st</sup> defendant/defendant to show that the beneficial interest and the legal interest are not equal. Based on her evidence, the 1<sup>st</sup> defendant/defendant seems to contend that the claimant has no beneficial interest whatsoever in any of these two lots, although she says she is prepared to give him a percentage interest in one of the properties, except for "Spring Valley Estates". It is unclear which property she is referring to, since both Lot 97 Jamaica Beach and Lot 99 Jamaica Beach, are part of Spring Valley Estate.

**[52]** The 1<sup>st</sup> defendant/defendant's position is that she purchased both Lot 99 Jamaica Beach and Lot 201 Mango Walk Country Club from her own resources without any input from the claimant. In terms of the latter lot, she says she obtained the mortgage on her own. In support of this argument, she again says the claimant was without any source of funds and was tantamount to a bankrupt. I have already demonstrated why I do not accept that during the period 2004 to 2012, the claimant was without means. As is her posture in relation to Lot 97 Jamaica Beach, the 1<sup>st</sup> defendant/defendant argues in respect of these two lots that she added the claimant's name to the respective certificates of title as a matter of convenience. As I understand her evidence, she found it convenient to add the claimant to the titles because she was busy working and earning to build her wealth. She married the claimant who had more time to travel to Jamaica to do all the things necessary in relation to these properties, which she could not do, due to the obligations of her myriad jobs. But it seems to me, that if she intended the claimant merely to act for her in relation to these properties because she was busy working and did not have the time, why not give him a power of attorney, for example, to authorise him to do so, rather than add him to the titles as a joint tenant?

**[53]** The 1<sup>st</sup> defendant/defendant also says she added the claimant to the title for these properties so that he could guide her adult children and do right by them. But the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants are not joint tenants of any of these two properties, and so, this evidence begs the question: what guidance was the claimant to give to them by being a joint tenant with the 1<sup>st</sup> defendant/defendant? She could, for example, have gifted these properties to her children in a Will, and appoint the claimant as her executor, in which role he perhaps could provide the guidance of which she speaks. But she did not do that. It is obvious from the evidence that she had access to lawyers. They surely could have given her all the legal advice she needed. In the final analysis, I believe, given all the circumstances of this case and the manner in which the 1<sup>st</sup> defendant /defendant and the claimant conducted their affairs in relation to these properties, that in their acquisition , the 1<sup>st</sup>

defendant/defendant intended the claimant to share the legal and the beneficial interests equally with her, and he shared that same intention.

**[54]** It is very evident that the 1<sup>st</sup> defendant/defendant had more than a passing interest in investing in real estate. She had a house in New York in which she lived, a 24-apartment complex rented to tenants also in New York which the claimant managed (she said this was through the partnership), and three properties in Jamaica. She worked multiple jobs as a registered nurse and had very little time, to focus on investing. Her evidence is that prior to the marriage, she was aware that the claimant was a businessman with a business degree, and she believed that he could assist with her investment endeavours, while in the process, improve his financial status and wealth. It seems to me that the 1<sup>st</sup> defendant/defendant saw the claimant's role as her husband as including taking care of and handling their real estate, travelling to Jamaica to do so when necessary, doing the paperwork in relation to them; and preparing and filing their tax returns. She said the marriage was emotionally fine in 2006, and so evidently the claimant was also providing emotional support. According to her, she had invested in the partnership so that he could be involved in it and so build his self-esteem, his manhood and financial status. So clearly, she was interested in her husband's growth, both financially and otherwise. But in my view, the evidence does not equate to them being business partners in the sense that the classic resulting trust presumption ought to apply. The 1<sup>st</sup> defendant/defendant added the claimant to her bank account and her credit card, as well as her health insurance. Although he did not add her to his bank account when they got married, there is, in my view, sufficient evidence that to a very large extent, as a married couple, they pooled both their time, energies and resources into achieving their shared investment goals.

**[55]** Lot 99 Jamaica Beach was purchased by cash, in their joint names in 2006. This was a time when on the 1<sup>st</sup> defendant/defendant's evidence their marriage was in a good place emotionally, albeit not financially. Lot 201 Mango Walk Country Club was purchased only two years later in 2008, also in their joint names with the aid of a mortgage from Jamacia National Building Society. The 1<sup>st</sup>

defendant/defendant insists that the claimant made no direct financial contribution, but she acknowledged on cross examination that he made indirect financial contribution. She also admitted in cross examination that he was not in fact unemployed. She has not, in my view, effectively challenged the claimant's evidence that the partnership's night club and bar was a cash business operated under the table, and that it was on the accountant's recommendation that its tax returns showed that it was operating at a loss. She said she loaned him money, how then did she expect to be repaid if he had no earnings?

**[56]** For these reasons and those I have expressed above in relation to my finding that the claimant contributed to the renovation of Lot 97 Jamaica Beach, I believe that he made both direct and indirect financial contributions to the acquisition of Lot 99 Jamaica Beach and Lot 201 Mango Walk Country Club. There was a mortgage from Jamaica National Building Society which was used to assist with the purchase of Lot 201, Mango Walk Country Club. The 1<sup>st</sup> defendant/defendant claims that she was the sole mortgagor, but she has not exhibited any documentation to support this assertion. This was a legal mortgage registered on the certificate of title. It is therefore highly likely, that the mortgage was granted in both their names, making them jointly and severally liable to repay it. The claimant's evidence is that after the separation, he was paying the mortgage from the rental income he received from the property, but it was the 1<sup>st</sup> defendant/defendant who ultimately paid it off and had it discharged. The 1<sup>st</sup> defendant/defendant claims that the claimant did not contribute to any of the mortgage payments and that the rent he collected was not shared with her. However, the claimant's evidence that since 2008 when Lot 201 Mango Walk Country Club was purchased it was rented and the rental income placed in an account to pay the mortgage, was not seriously challenged by the 1<sup>st</sup> defendant/defendant. Her evidence actually confirms that this property was rented, although she says it was the claimant who rented it out until 2017. Getting tenants, collecting rental income and using that income to pay the mortgage, is part and parcel of the process of building wealth and equity . The claimant was clearly involved in this process.

[57] As counsel Mrs Guy observed in her written submissions, even after the parties separated there was nothing done by either of them which was indicative of a change in their common intention in relation to the ownership of these two properties, until the current claims were initiated by the claimant. I find in the circumstances that the 1<sup>st</sup> defendant/defendant has not discharged the burden on her to show that the claimant's equitable interest in both these properties is not the same as his legal interest.

### **The Partition Act and the severance of the joint tenancy**

[58] The Partition Act (the Act) provides the mechanism for the division and sale of land held jointly by co-tenants. It allows a co-tenant, to apply to the court to have a joint tenancy severed, thereby allowing each co-tenant to receive his divided share of the land. On an application under the Act, the court is also empowered to order a sale of the land and the distribution of the sale proceeds between or among the co-tenants.

[59] Sections 2(2) and 4 of the Act are relevant to the application before me, and therefore I will set out their provisions in full. Section 2(2) provides as follows: -

“2(2). For the purposes of this Act, an action for partition shall include an action for sale and distribution of the proceeds; and in an action for partition, it shall be sufficient to claim a sale and distribution of the proceeds, and it shall not be necessary to claim a partition.”

Section 4 on the other hand provides as under:

“4. In a suit for partition , where, if this Act had not been passed , a decree for partition might have been made, then if the party or parties interested, individually or collectively, to the extent of one moiety or upwards in the property to which the suit relates request the Court to direct a sale of the property and a distribution of the proceeds instead of a division of the

property between or among the parties interested, the Court shall, unless it sees good reason to the contrary, direct a sale of the property accordingly and give all necessary or proper consequential directions.”

**[60]** These two provisions are clear and unambiguous. In short, once an application is made under the Act by a co-tenant, for a sale of the property jointly held, unless the court determines that there is a good reason to refuse the application, it must direct a sale and give the necessary consequential directions to effect it. (See for example, **Polyseenia Lewis v Marlon Campbell [2013] JMSC Civ. 29**) In **Cynthia Stephens v Clemenston Stephens [2012] JMSC Civ 134**, in referring to this section of the Act, describes the imperative this way at paragraph 6:-

“This section is regarded as making it imperative on the Court, to order a sale unless it sees good reason to the contrary. The party interested in sale is entitled to such sale as of right unless there is some good reason to the contrary shown the onus then is on the party opposing to show what the Court will consider good reason.”

**[61]** The claimant and the 1<sup>st</sup> defendant/defendant's marriage is in the process of being dissolved by the court in separate proceedings. The vitriol which oftentimes accompanies divorce was clearly evident in both the oral and affidavit evidence of both of them. No objection has been raised by the 1<sup>st</sup> defendant/defendant to the application for a sale of the property. I have determined that in respect of all three properties, the legal interests and the beneficial interests of the parties are the same. In the circumstances, I see no good reason why the application for a sale should not be granted.

#### **A word on the orders 7 and 8 sought in claim No SU2020 CV04553**

**[62]** No submissions were made by the claimant in relation to orders 7 and 8 of the claim form in claim No SU2020 CV04553, referred to earlier in this judgment. Order 7 requested a 50% interest in the contents of the dwelling house at Lot 97 Jamaica Beach and Order 8 is an injunction preventing the defendants from entering on the

property and removing its contents. Beyond the fact that no submissions were made in relation to any of these orders, the claimant gave no evidence challenging the evidence of the 1<sup>st</sup> defendant/defendant, that the contents of the dwelling house at Lot 97 Jamaica Beach were purchased by her and Dennis Francis. I will therefore not grant the claimant an order that he is entitled to a 50% interest in the contents of that dwelling house.

**[63]** As to the order seeking injunctive relief, no submissions were made in relation to it by the claimant, and no evidence was led to support it. Besides, having decided not to grant the order seeking a 50% interest in the very contents the subject of the injunction, any such injunctive relief would be unnecessary.

### **Summary of findings and conclusion**

**[64]** I find that the legal and the beneficial interests in Lot 97 Jamaica Beach are the same as the claimant has failed to discharge the burden on him to show that they are different.

**[65]** In relation to Lot 99 Jamaica Beach and Lot 201 Mango Walk Country Club, I also find that the legal and the beneficial interests are the same and that the 1<sup>st</sup> defendant/defendant has failed to discharge the burden on her to show that they are different.

### **Orders**

**[66]** In the result, I make the following orders and declarations: -

- a) A declaration that the claimant and the 1<sup>st</sup> defendant are each entitled to a 50% share of the legal and/or beneficial interest in Lot 97 Jamaica Beach located at Spring Valley in the parish of Saint Mary and registered at Volume 933 Folio 19 of the Register Book of Titles is refused.



- b) A declaration that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants are not entitled to an equitable or any legal and/or beneficial interest in Lot 97 Jamaica Beach located at Spring Valley in the parish of Saint Mary and registered at Volume 933 Folio 19 of the Register Book of Titles is refused.
- c) The joint tenancy in relation to Lot 97 Jamaica Beach located at Spring Valley in the parish of Saint Mary and registered at Volume 933 Folio 19 of the Register Book of Titles is severed and the parties are to be endorsed on the certificate of title as tenants in common with a 20% interest each.
- d) A valuation report is to be obtained by a valuer to establish the current market value of Lot 97 Jamaica Beach located at Spring Valley in the parish of Saint Mary and registered at Volume 933 Folio 19 of the Register Book of Titles. The parties shall, within 14 days of this Order, agree a valuer who shall prepare a valuation report in respect of the premises and in the event that the parties are not able to agree a valuer, the Registrar of the Supreme Court shall appoint a valuer. The cost of the valuation report is to be shared equally by the parties.
- e) The 1<sup>st</sup> defendant/defendant is to be given the first option to purchase the claimant's 20% interest in Lot 97 Jamaica Beach located at Spring Valley in the parish of Saint Mary and registered at Volume 933 Folio 19 of the Register Book of Titles at the market value contained in the valuation report obtained pursuant to Order (d). The 1<sup>st</sup> defendant/defendant is to exercise such option within 60 days of being in receipt of the said valuation report.

- f) In the event of the failure of the 1<sup>st</sup> defendant/defendant to exercise her option to purchase the claimant's interest, Lot 97 Jamaica Beach located at Spring Valley in the parish of Saint Mary and registered at Volume 933 Folio 19 of the Register Book of Titles is to be sold on the open market at the best price obtainable in keeping with the attendant valuation report and the net proceeds of sale to be divided among the parties in equal shares.
- g) An Order that the claimant is entitled to a 50% interest in all the contents of the dwelling house situated on Lot 97 Jamaica Beach located at Spring Valley in the parish of Saint Mary and registered at Volume 933 Folio 19 of the Register Book of Titles to include but not limited to all the items of furniture and appliances located in the said dwelling house is refused.
- h) An injunction barring and/or restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants, their servants and/or agents from entering upon the property and removing any of the contents of the dwelling house situated on Lot 97 Jamaica Beach located at Spring Valley in the parish of Saint Mary and registered at Volume 933 Folio 19 of the Register Book of Titles to include but not limited to any items of furniture and/or appliances from the dwelling house of the property unless so ordered by the court or until the determination of the matter herein is refused.
- i) It is declared that the claimant and the 1<sup>st</sup> defendant/defendant are each entitled to a 50% share of the legal and the beneficial interest in the property located at Lot 99 Jamaica Beach located at Spring Valley in the parish of Saint Mary and registered at Volume 964 Folio 92 of the Register Book of Titles.

- j) It is declared that the claimant and the 1<sup>st</sup> defendant/defendant are each entitled to a 50% share of the legal and the beneficial interest in the property located at Lot 201 Mango Walk Country Club in the parish of Saint James and registered at Volume 1413 Folio 139 of the Register Book of Titles.
- k) The joint tenancy for the property located at Lot 99 Jamaica Beach located at Spring Valley Estate in the parish of Saint Mary and registered at Volume 964 Folio 92 of the Register Book of Titles is severed and the parties are to be endorsed on the certificate of title as tenants in common with a 50% interest each.
- l) The joint tenancy for the property located at Lot 201 Mango Walk Country Club in the parish of Saint James and registered at Volume 1413 Folio 139 of the Register Book of Titles is severed and the parties are to be endorsed on the certificate of title as tenants in common with a 50% interest each.
- m) Lot 99 Jamaica Beach located at Spring Valley Estate in the parish of Saint Mary and registered at Volume 964 Folio 92 of the Register Book of Titles is to be sold and the proceeds of sale divided equally between the parties.
- n) Lot 201 Mango Walk Country Club in the parish of Saint James and registered at Volume 1413 Folio 139 of the Register Book of Titles is to be sold and the proceeds of sale divided equally between the parties.
- o) A valuation report is to be obtained by a valuer to establish the current market value of Lot 99 Jamaica Beach located at

Spring Valley in the parish of Saint Mary and registered at Volume 964 Folio 92 of the Register Book of Titles and Lot 201 Mango Walk Country Club in the parish of Saint James and registered at Volume 1413 Folio 139 of the Register Book of Titles. The parties shall, within 14 days of this Order, agree a valuer who shall prepare valuation reports in respect of the said premises and in the event that the parties are not able to agree then the Registrar of the Supreme Court shall appoint a Valuer. The cost of the valuation reports is to be shared equally by the parties.

- p) The 1<sup>st</sup> defendant/defendant is to be given the first option to purchase the Claimant's interest in Lot 99 Jamaica Beach located at Spring Valley Estate in the parish of Saint Mary and registered at Volume 964 Folio 92 of the Register Book of Titles and Lot 201 Mango Walk Country Club in the parish of Saint James and registered at Volume 1413 Folio 139 of the Register Book of Titles, at the market value contained in the valuation reports obtained pursuant to Order (o). The 1<sup>st</sup> defendant/defendant is to exercise such option within 60 days of being in receipt of the said valuation reports.
- q) In the event of the failure of the 1<sup>st</sup> defendant/defendant to exercise her option to purchase, Lot 99 Jamaica Beach located at Spring Valley in the parish of Saint Mary and registered at Volume 964 Folio 92 of the Register Book of Titles and Lot 201 Mango Walk Country Club in the parish of Saint James and registered at Volume 1413 Folio 139 of the Register Book of Titles are to be sold on the open market at the best price obtainable in keeping with the attendant valuation reports and the net proceeds of sale to be divided between the parties in equal shares.

- r) If within 14 days of being requested to do so, either party fails and/or refuses or is otherwise unable to sign any of the documents necessary to bring into effect a transfer of a party's interest and share in the aforesaid properties, the Registrar of the Supreme Court be so empowered to sign for and on behalf of the defaulting party.
- s) The claimant's Attorneys-at-law, Nelson Brown Guy & Francis be appointed as the Attorneys-at-law having carriage of sale.
- t) Each party to bear his/her own costs in respect of the adjudication of this claim.
- u) Liberty to apply.
- v) A stay of execution for 21 days is granted to the 1<sup>st</sup> defendant/defendant pending the filing of a Notice and Grounds of Appeal.

**A Jarrett**

**Puisne Judge**