[2023] JMSC CIV 166

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2015HCV04794

BETWEEN	**ELAINE ROSE PRYCE**	**CLAIMANT**
AND	**LEVI WESLEY PRYCE**	**DEFENDANT**

Miss Nieoker Junor instructed by Knight Junor Samuels for the Claimant.

Mr Pierre Rogers and Miss Moneaque McLeod instructed by Rogers and Associates for the Defendant.

Heard: October 13, 2022, December 2, 2022, and September 29, 2023

Application under the Property (Rights of Spouses) Act (PROSA) - whether property is the family home – alternatively, whether property is property other than the family home – whether claimant is entitled to 50% interest in property under section 14 (2) of PROSA – whether the claimant is entitled to an interest in the property under a constructive trust if PROSA does not apply.

IN OPEN COURT

CORAM: JARRETT, J.

Introduction

[1] Elaine Pryce and Levi Pryce were twice married to each other and twice divorced from each other. Their second marriage, which began on October 19, 1994, ended

in divorce on January 30, 2013, the parties having separated in July 2008. This is the claim by Elaine Pryce ("the claimant") for a 50% interest in property situated at 60 Woodstock Housing Scheme, Buff Bay, in the Parish of Portland in Jamaica ("the property ") and owned by Levi Pryce ("the defendant"). The claimant claims this interest under the provisions of the Property (Rights of Spouses) Act, ("PROSA"), or alternatively, under a constructive trust. On June 12, 2020, Graham Allen J granted the claimant's application for an extension of time to bring her claim under PROSA. I will outline the claim, review the relevant provisions of PROSA, and consider the issues that arise.

The claim

[2] In her fixed date claim form, which was filed on September 7, 2020, the claimant seeks the following relief: -

"

a) A declaration that the property located at 60 Woodstock Housing Scheme, Buff Bay in the parish of Portland registered at Volume 1154 Folio 599 of the Register Book of Titles is the family home and the Applicant is entitled to a fifty per cent (50%) share therein.

b) Alternatively, a declaration that the property located at 60 Woodstock Housing Scheme is property other than the family home pursuant to section 14 of the Property (Rights of Spouses) Act and the Applicant is entitled to a fifty per cent (50%) share therein or such other interest as the Court may determine.

c) Alternatively, a declaration that the Applicant is entitled to a fifty per cent (50%) share or such other legal and equitable interest in the property located at 60 Woodstock Housing Scheme, Buff Bay in the parish of Portland on the basis of a constructive trust as determined by the Court.

d) That C.D. Alexander of 4a Marescaux Road, Kingston 5, is appointed the valuator to determine the current market value of the said property and the cost of the valuation is to be borne equally by the parties.

e) The Respondent is given the first option to purchase to be exercised within ninety (90) days of the date hereof, failing which, the property is to be sold on the open market and the net proceeds divided equally between the parties.

f) The Applicant's Attorney-at-law is to have carriage of sale.

g) That the Registrar of the Supreme Court be empowered to sign all such documents necessary for the completion of the sale of the property in the event of incapacity, neglect or wilful refusal of either the Applicant or the Respondent to sign any such documents within Twenty-One (21) days of being so requested.

h) Such further and other relief as this Honourable Court deems just. "

PROSA

[3] PROSA represents a dramatic paradigm shift in the law relating to the adjustment of property on the dissolution of marriage or the termination of cohabitation. The fundamental goal of the legislation is to achieve fairness between the parties[1]. Common law and equitable presumptions have been replaced with new concepts such as the "family home", "the equal share rule" and "property other than the family home". The "family home", is defined in section 2 as: -

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[1] See the decision of McDonald Bishop J (as she then was in) in **Donna Marie Graham v Hugh Anthony Graham**, **unreported decision delivered April 8, 2008).**

> "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 the donor who intended that spouse alone to benefit."

[4] Under section 6, each spouse is entitled to an equal share of the family home and under section 7, the court has a wide discretion to vary the equal share rule where it considers it unjust or unreasonable to apply it. The factors the court can consider in the exercise of its discretion under section 7 include, but are not limited to, whether the family home was inherited by one spouse; whether it was already owned by one spouse at the time of the marriage or the beginning of cohabitation and whether the marriage was of short duration.

[5] The legislature also gave the court wide discretionary powers in respect of property "other than the family home". The court can adjust the ownership of property falling within this category, pursuant to section 14(1) and (2). These provisions provide as follows: -

> 14. (l) Where under section 13 a spouse applies to the Court for a division of property the Court may-
>
> (a) make an order for the division of the family home in accordance with section 6 or 7, as the case may require; or
>
> (b) subject to section 17 (2), divide such property, other than the family home, as it thinks fit, taking into account the factors specified in subsection (2), or,
>
> where the circumstances so warrant, take action under both paragraphs (a) and (b).

(2) The factors referred to in subsection (1) are -

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

(b) that there is no family home;

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

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

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

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".

The issues

[6] In this case, the following three issues arise for determination: -

a) Whether the property is the family home within the meaning of PROSA.
b) If the property is not the family home, whether it is property other than the family home to which the claimant is entitled to a 50% interest.
c) If PROSA does not apply, does the defendant hold a 50% interest or any other percentage interest in the property on a constructive trust for the claimant.

The evidence

[7] The claimant filed an affidavit in support of the fixed date claim form, a supplemental affidavit and three further affidavits in response to the defendant's affidavit and the affidavits of his witnesses. The claimant's witnesses, Horace Chamberlain and Annetta Brown also filed affidavits in support of the claimant's claim. In response to the claim, the defendant filed two affidavits and he relied on the affidavits of his witnesses, Sophia Pryce, and William Lincoln Pryce. Save for the defendant's second affidavit, which I will comment on presently, all the exhibits to the affidavits were agreed documents and all affiants attended the trial and were cross examined.

[8] Counsel Miss Junor for the claimant, objected to the defendant's second affidavit filed on October 6, 2022, being admitted into evidence on the basis that it did not comply with the CPR. It contained the defendant's signature and a marksman clause, but the latter did not indicate who read the affidavit over to the defendant. After hearing arguments on the admissibility of the affidavit, I ruled that it would not be admitted into evidence. The reasons for my ruling are as follows. The defendant's oral evidence was that he has had difficulties with his eyesight since cataract surgery on one eye, and since developing an infection in the other eye. He said that he "scrambled "through the affidavit but it was a Justice of the Peace who read the document, and he thereafter signed to it. The defendant did not say that the Justice of the Peace read over the affidavit to him. More importantly, the Justice of the Peace before whom the affidavit was sworn, did not certify that he read the affidavit to the defendant in his presence, that the defendant appeared to understand what was read, and that he signed the affidavit in his presence. These are mandatory requirements of CPR 30.4(4). I however allowed the defendant to give direct oral evidence, limited to the contents of the affidavit.

[9] The evidence in this matter is plentiful. I have considered all of it but will refer in this judgment only to those aspects relevant to my findings and conclusions.

The claimant

[10] The claimant in her affidavit in support of the fixed date claim form filed on September 7, 2020, said she met the defendant in the 1970's. When they met, the defendant owned the property. They got married in 1979, and the property was their principal place of residence. At the time of the marriage, the property consisted of two bedrooms, one bathroom, a living room, a kitchen, and a small porch. In December 1984, she left Jamaica to settle in the United States of America (USA). The intention was for the defendant to join her when she obtained her "stay". The objective for settling in the USA was to achieve financial independence. In 1985, the defendant joined her for six months. The following year, he returned, and thereafter they both resided in the USA until 2002.

[11] In about 1990 or 1991, with mortgage financing and their savings, they purchased a house at 7712 Dilido Boulevard, Miramar, Florida, ("the Dilido Boulevard house"). They lived together in that house and got married a second time on the 19th day of October 1994. In 1995, it was agreed that they would renovate the property and they opened an account at Mutual Security Bank ("MSB") , the predecessor bank to National Commercial Bank ("NCB"). A statement of account from NCB dated February 15, 2022, along with email correspondence from that bank were exhibited by her. They decided to sell the Dilido Boulevard house in 2000 and after the sale, they discussed the possibility of returning to Jamaica to live permanently. They commenced the renovation of the property with this possibility in mind, after shipping their furniture and fittings to Jamaica. The renovation began between 2000 and 2001 and was completed in or about 2002

[12] According to the claimant, there was a time when she and the defendant were both unemployed, but she denied that she was unemployed during the renovation. Two joint bank accounts held by them, funded the renovation. The renovation involved expanding the bedrooms and kitchen, adding an extra bathroom with a jacuzzi tub and a closet. A carport was also built along with a washroom and a perimeter fence around the property. The intention was for the property to be their retirement home.

[13] The defendant's cousin William Lincoln Pryce oversaw the renovation, and his name was added to their NCB account to facilitate him having access to funds. The claimant said she directly contributed to the renovation by way of a loan of $30,000.00 from her father and through their joint account to which she deposited money from her savings, salary and "partner draws". In addition to that, she purchased an awning for the property, and in 1999 she purchased and shipped tiles to the property. She denied demanding and receiving a refund of US $1,000.00 spent on the awning and denied making any statement in relation thereto.

[14] They returned to Jamaica in 2002, and the property became their primary place of residence. The defendant was more desirous of returning to Jamaica than she was, but, as the "dutiful wife", she followed him, even though she wanted to continue working in the USA to secure a better retirement. They lived at the property for about one year, before she made the difficult decision to return to the USA in 2003. On their return to Jamaica, she was in her mid-fifties, unemployed and had health concerns. This led her to decide to return to the USA. The decision however was made after discussions with the defendant, and it was the defendant who gave her the money to buy her plane ticket.

[15] When they left the USA for Jamaica in 2002, it was from her daughter's home, and they took all their belongings with them. She returned to Jamaica: "once or twice between the years 2005 to 2008" and would stay at the property for the duration of her visits as it was her home and permanent place of abode. On her last visit in 2008, she said she noticed that the defendant was withdrawn, and it was on this visit that the breakdown of the marriage began. They divorced on January 30, 2013.

[16] In her affidavit filed on February 28, 2022, in response to the defendant's affidavit, the claimant said that she first divorced the defendant in 1985, with his "consent". After this divorce, the defendant married twice in the USA, and on each occasion, it was "a marriage of convenience" to get his "stay". The defendant did not reside with either of these two wives. During these two marriages, he lived with her. She also got married for convenience, and subsequently divorced that husband, a fact the defendant was aware of.

[17] On cross examination, the claimant was shown her affidavit sworn on February 13, 2012, in support of her application to dispense with the hearing of her Petition for Dissolution of Marriage, in relation to her second divorce proceedings against the defendant. In that affidavit she did not include the property among the places she and the defendant cohabited during their marriage. When questioned about this

omission, the claimant initially said that she could not recall being: “asked such a question”. When pressed, she said she was only “asked” where in the USA she and the defendant resided during the marriage. On re-examination she said that she did not include the property in the affidavit as she did not “cohabit” there with the defendant as he had prostate problems and was impotent.

[18] The claimant admitted that on each entry to Jamaica between 2002 and 2008, the immigration officials only gave her a three month stay on the island. She however said that she did not give any consideration to this three month stay, as she is Jamaican and could stay in the country as long as she wanted. She admitted that on none of her trips to the island did she inform immigration or customs officials that she was a returning resident. On further cross examination, she also conceded that based on the dates of entry in her USA passport, she did not spend one year in Jamaica when she and the defendant arrived in August 2002. She also admitted that between August 2002 and December 2006, she spent more time in the USA than she did in Jamaica.

Horace Chamberlain

[19] Horace Chamberlain is the claimant’s brother. In his affidavit filed on June 24, 2022, he said he migrated to the USA in 1984 and the claimant followed a few days later. He knew that the claimant and the defendant were married to other persons while they both lived together in the USA. The claimant and the defendant returned to Jamaica in 2002 and the claimant lived on the island from 2002 until 2004 when she returned to the USA to work. She travelled back to Jamaica at least two times per year and when in Jamaica, she lived at the property with the defendant.

[20] On cross examination he was unsure of the dates when the claimant lived in Jamaica after her migration to the USA. When asked if he was sure where the claimant lived on her return to the island, he said he was not in Jamaica during that time and so would not know. Asked where the claimant lived in 2003, he said

Long Acre Drive, Miramar, Florida. His father was ill in 2003 and he agreed that the claimant and the defendant came to Jamaica in 2003 but did not know if the purpose of the claimant's visit was on account of his father's ill health. He did not know how often the claimant travelled to Jamaica after 2003, but said he believed she spent longer than five months when she came in 2003.

Annetta Brown

[21] Annetta Brown's affidavit was filed on July 14, 2022. She lives next door to the property. She has known the claimant for 30 years and knows the defendant "very well". According to her when the claimant and the defendant were overseas, they left the keys to the property with her. When the renovation of the property began, she was still in possession of the keys and facilitated the workmen having access to the property. Both the claimant and the defendant returned to Jamaica "for good", and resumed living at the property, but she could not recall the year that happened. There was, she said, "a long time" when the claimant stayed at the property with the defendant. The claimant left and went back to the USA but would come back to the property for several months at a time. When cross examined about how long the claimant was living on the property, Miss Brown said, the claimant was there for about a year, and she saw her every day during that year. She could not recall when that year started nor when after that year, the claimant returned to the property.

The defendant

[22] The defendant in his affidavit filed on February 4, 2022, admits to twice marrying the claimant and being twice divorced from her. He said he acquired the property from his own resources in 1968, before their first marriage. The renovation on the property was financed solely by him from his own savings and without any contribution from the claimant. He admitted that during their first marriage the property was the matrimonial home. The claimant left for the USA in 1983 without any discussion with him about her settling there. As far as he knew, her trip was for vacation. In 1983 he was a sergeant in the Jamaica Fire Brigade and was in

good financial standing. The claimant divorced him in the USA without his knowledge in June 1985 and sent him the divorce papers. That same year he visited a friend in the USA and met a young woman whom he married the following year.

[23] In 1987 he resigned from the Jamaica Fire Brigade, established a home with his new wife, and got a job at Columbia Pictures in Miami. He denied that it was the claimant with whom he lived the entire time he was in the USA. His marriage to his new wife ended in divorce and he got married to another woman in the USA on September 30, 1988. This latter marriage ended in divorce in 1991. While in the USA, he was also employed to Truly Nolen, a pest control company.

[24] By 1993, he reunited with the claimant after her own marriage ended in divorce and together, they purchased the Dilido Boulevard house. This house later became their matrimonial home. It was purchased with funds from a joint savings account they had as well as from a mortgage they obtained. After this purchase, they moved in together into that house. Sometime after, he sent money from his earnings to his cousin Wiliam Lincoln Pryce in Jamaica, to renovate the property. This money was added to earnings he had already saved from his time at the Jamaica Fire Brigade. His cousin spent a total of JD$ 2,000,000.00 on the renovation, which was concluded in 2000 and included expanding the veranda and kitchen and adding a bathroom to one bedroom.

[25] He denied that the claimant was a signatory to the bank account used by William Lincoln Pryce for the renovation and he denied that the renovation was done with any expressed understanding that the property would be the retirement home for him and the claimant. The only money spent by the claimant on the property was the purchase of an awning for US $1,000.00, which he refunded to her when she demanded it. He wanted to return to Jamaica, but the claimant wished to remain in the USA. She told him that he could return to Jamaica if he wanted to. Using his

own money, he purchased appliances and shipped them to Jamaica in anticipation of his return.

[26] In 2003, he returned to Jamaica to live, and the claimant came with him, but only to visit. They both stayed at the property. Her visit was for five months. During their second marriage the claimant did not live at the property she only visited. She maintained her room at her daughter's house in Florida and did not take steps to establish a home at the property. The claimant visited him at the property in 2003 and in 2005 or 2006 when her father died. In 2008, she visited to demand money from a joint RBTT bank account they had. During the period of their second marriage, they did not cohabit at the property.

[27] On cross examination the defendant said the account at MSB was opened by him in 1964 and the only name he added to it was that of his cousin William Lincoln Pryce. He denied that the claimant contributed to the renovation and that she lived at the property for one year between 2002 and 2003. She spent six weeks to two months at the property in 2005, but the purpose of her visit was to see her father. The longest time she spent there was five months. He could not remember if she came in 2006 but knows she did not visit the property in 2007.

William Lincoln Pryce

[28] William Lincoln Pryce is the defendant's cousin. In his affidavit sworn on February 4, 2022, he said that he lives in Buff Bay, in the Parish of Portland. According to him, during the defendant's second marriage to the claimant she returned to the property only about 4 times. After the claimant left Jamaica in 1983, the next time he saw her was in 2001 at her mother's funeral. When she returned in 2003, she stayed from June to November of that year. She came for her father's funeral in August 2005 and returned to the USA by November 2005. When she visited in 2008, it was not for an extended period. In about 1996, he acted as contractor and agent for the defendant in the rehabilitation and expansion of the property, which

lasted about 4 years. The cost of the work was over JD$2,000,000.00 and the money came exclusively from the defendant. The claimant's name did not appear on the defendant's MSB account, which he had access to during the works and was not a joint account between the defendant and the claimant.

[29] In cross examination William Lincoln Pryce denied that the instructions given to him for the renovation came from both the claimant and the defendant but could not say if the money for the renovation came from both of them. He insisted that the renovation was completed in 2000 and not 2002. He was not aware that the claimant shipped tiles for the renovation. On both cross examination and re-examination, he said that he knew of the claimant and the defendant living at the property from 1979 as man and wife.

Sophia Pryce

[30] Sophia Pryce is William Lincoln Pryce's wife. Her affidavit was filed on February 4, 2022. She said that the claimant and the defendant arrived in Jamaica in June 2003 and that the claimant left in or about November that year. She was the caretaker for the claimant's father and was paid by the claimant for her services. She was present when the claimant demanded that the defendant pay her for the awning she had purchased for the property and recalls being sent to the bank by the defendant with a withdrawal slip to withdraw the Jamaican equivalent of USD$1,000.00 which the defendant refunded to the claimant for the awning . She said that the claimant accepted the money and said: *"mek mi take it back a fi me money becuz me no have nothing fi get ya"*. On cross examination Sophia Pryce said she met the claimant and the defendant on their return to the island in 2003. The claimant did not stay long on the property on her subsequent trips after 2003. She came to look for her father in 2004 and then in 2005 for his funeral.

The submissions

The claimant

[31] Miss Junor, counsel for the claimant, relied on **Dalfel Weir v Beverely Tree [2014]JMCA Civ 12** and **Peaches Stewart v Rupert Augustus Stewart Claim No HCV0237/2007, unreported Supreme Court decision delivered November 6, 2007,** to argue that the fact that the parties lived as man and wife at the Dilido Boulevard house, does not preclude the court from finding that the property was the family home within the meaning of PROSA. Learned counsel argued that the evidence is that the claimant travelled back and forth between the USA and Jamaica at least once per year between 2002 and 2008, she stayed at the property when in Jamaica and maintained her marriage to the defendant by virtue of these visits. She urged me to find as "reasonable and forthright", the explanation given by the claimant for not including the property as a place she and the defendant cohabited during the marriage, in her 2013 divorce proceedings. The claimant's yearly visits to the property, argued counsel, indicate that she lived at the property rather than merely visited it.

[32] Counsel further submitted that even if I find that the claimant's primary place of residence was in the USA, the property can still be "deemed the family home" as it was used by the parties as their primary place of residence as man and wife after 2002. Support for this proposition was said to be the decision of Dunbar Green J (Ag) as she then was in **Pansy O'Conner Reid v Evan Reid [2014[JMSC Civ110.** Significance was placed on the fact that all their belongings was removed from the claimant's daughter's house in the USA in 2002 and taken to Jamaica. Counsel said this is evidence of the parties' intention to make the property their home.

[33] On the question whether the property is "property other than the family home", Miss Junor submitted that the evidence of the claimant's contributions would entitle her to a 50% interest in the property, based on the provisions of section 14(2) of PROSA. Counsel argued that the evidence shows a partnership between the parties from the time of their first marriage and throughout their marriages of

convenience to third parties. She said there was evidence of the pooling of their resources, their decision to renovate the property and to return in or about 2002 to live in it as their retirement home. Counsel essentially used the same argument to support the claimant's alternative relief of an interest in the property under a constructive trust. She highlighted the claimant's evidence of a loan from her father to assist with the renovation and the decision to ship their furniture and fitting to Jamaica with the common intention to live in the property as their retirement home.

[34] Reliance was also placed on the decision in **Mariette Taylor v Dazel Alexander Taylor [2017] JMSC Civ 101** in which several well-known local and English authorities which identified the requirements of a constructive trust, were cited. Counsel said that the evidence discloses that there was a common intention between the parties to return to Jamaica and to treat the property as their retirement home. The defendant, she argued, induced the claimant by his conduct to so believe, and in reliance on that inducement, she acted to her detriment by expending her own resources and sending money to him after she gained employment in the USA in 2003, to assist with the bills for the property.

The defendant

[35] The decision of Sykes J (as he then was) in **Peaches Annette Shirley Stewart v Rupert Augustus Stewart** (supra), formed the basis of the submission of Miss McLeod, counsel for the defendant, that the property was not the family home. She argued that there is no evidence to support the claimant's contention that she and the defendant habitually and from time to time resided at the property. Learned counsel submitted that the claimant provided no evidence to show that she received correspondence addressed to her at the property. She said that the entries in the claimant's passport refuted her assertion that when she returned to Jamaica in August 2002, she spent at least one year on the island. In fact, argued counsel, the passport did not reveal evidence of any extended stays on the island between 2002 to 2008, and neither did the claimant's brother's evidence support her in this regard. Miss McLeod also submitted that the NCB account statement

dated February 15, 2022, exhibited by the claimant showed that the address she used to open that account was the parties' Pembroke Pines address in Florida. Counsel also pointed out that in the claimant's own divorce proceedings she did not list the property as one of the places in which she and the defendant cohabited during their second marriage.

[36] It was argued that the evidence does not support the claimant's allegation that she intended to return to Jamaica and to make the property their retirement home. According to Miss McLeod, the claimant was only an occasional visitor, and the property was merely a place she visited, while on the island. It was submitted that the claimant is not entitled to any interest in the property based on a constructive trust. She questioned how the claimant could have contributed to the renovation of the property from earnings overseas, yet she claimed to have decided to return to the USA to work due to financial difficulties in 2003. She also submitted that the NCB account was opened after the renovation was completed, and therefore could not have been a joint account from which funds were used to finance it. Any contribution to the renovation made by the claimant, argued Miss McLeod, was insignificant and transient in nature and not sufficient to support any common intention or agreement between the parties. The decision in **Philip Henry v Patsie Perkins Reid [2012] JMSC Civ 109** was cited in support of this submission.

Analysis and discussion

[37] There are numerous points of divergence in the evidence in this case. There are however, significant facts that are agreed. It is from the agreed facts that I measure those that are disputed. It is agreed that the parties were married to each other twice and that both marriages ended in divorce. It is also agreed that they both married third parties in the USA whom they divorced. It is agreed that the parties, at some point, held joint bank accounts and that they both owned and then sold the Dilido Boulevard house in or around 2000. It is also agreed that the property was renovated, and the renovation completed sometime between 2000 and 2002, although the precise year is in dispute. It is likewise agreed that both parties

returned to Jamaica in 2002 or 2003, but again, the precise year is in dispute. It is agreed that their second marriage broke down irretrievably in 2008 and ended in divorce in 2013. It is agreed that the property is owned solely by the defendant. In determining whether the property is the family home, it is accepted that it is the period of the parties' second marriage to each other which is relevant.

Whether the property is the family home within the meaning of PROSA

[38] There is no better starting point in the analysis of the issue whether the property is the family home within the meaning of PROSA, than the decision of Sykes J (as he then was) in **Peaches Annette Shirley - Stewart v Rupert Augustus Stewart** (supra) . In interpreting the definition of "family home" contained in section 2 of PROSA, at paragraph 24 of his judgment, the learned judge said this:-

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

[39] In determining whether the property is the family home, I will first decide the disputed issue of the year the parties returned to Jamaica. The claimant says it was in 2002, while the defendant insists that it was in 2003. A copy of the claimant's

expired USA passport, which was issued on June 11, 2002, and which was an agreed document, shows that she entered the island on August 16, 2002, and again on May 13, 2003. In the absence of any documentary evidence to contradict the claimant's evidence that she and the defendant travelled to Jamaica in 2002, I accept and find that they both returned to the island on August 16, 2002, the entry date reflected in the claimant's passport. The question is whether the claimant and the defendant lived on the property as man and wife from August 2002 to sometime in 2008 when their second marriage broke down irretrievably.

[40] The claimant's evidence is that she was reluctant to return to Jamaica, but as a dutiful wife, she returned with the defendant. Although she said that they both lived together on the property for "about one year", before she returned to the USA in 2003, she conceded on cross examination that she did not in fact spend one year in Jamaica before returning to the USA. I find it significant that the claimant travelled to Jamaica on her USA passport between 2002 and 2008, but on none of those occasions, did she inform Jamaican immigration and customs officials, that she was a returning resident. I would have expected her to make this declaration if during those years, her intention was to permanently reside at the property.

[41] The claimant's passport shows that each time she landed on the island, she was allowed to stay for only three months and was not permitted to be engaged in employment. She says she was in her mid-fifties when she returned to Jamaica in 2002, but she has given no evidence of what plans she had in terms of gainful employment or trade while in Jamaica. This lack of evidence is noteworthy. The claimant strikes me as a person who is quite strategic. On her evidence, she travelled to the USA undocumented, intending to "settle there" with the goal of achieving financial independence. She went through a process of divorce from the defendant to marry a third party out of convenience to obtain "her stay". I therefore rather doubt that she would decide to return to Jamaica to live, years before her

own retirement, because of her “duty” to her husband, without first being satisfied as to how she would survive financially on the island.

[42] In her 2013 divorce proceedings, the claimant did not include the property as one of the places she and the defendant cohabited during their second marriage. Her initial explanation on cross examination which was that she was “not asked” where they lived as a couple in Jamaica, is far removed from her subsequent answer on re-examination which suggests that she understood “cohabitation” to mean sexual relations. I doubt the reliability of either of her answers. She was represented in those proceedings by the same firm of experienced attorneys-at-law, who represent her in this claim. It is more probable than not, in my view, that her attorneys-at-law would have explained to her what cohabitation means.

[43] The authorities of **Dalfel Weir v Beverely Tree** (supra) and **Peaches Stewart v Rupert Augustus Stewart** (supra) **,** undoubtedly reinforce the point that couples can maintain a marriage where one party travels back and forth between Jamaica and another country , and that the house which is solely owned by one of them and which is their only residence in Jamaica, can be the family home within the meaning of PROSA. Unquestionably however, whether any home is the family home will turn on the facts of each case.

[44] In this case, there is no agreement between the parties on the frequency of the claimant’s trips to Jamaica between 2002 and 2008 and on the length of each of her stays on the island. I do not find the evidence of any of the parties’ witnesses to be particularly helpful in this regard. Horace Chamberline clearly could not speak to this issue. On cross examination he was unsure whether the claimant stayed at the property during her trips to Jamaica and did not know how often she came after 2003. Annetta Brown although claiming that she saw the claimant every day for an entire year could not say which year that was and whether the claimant returned to the property after that year. William Lincoln Pryce said the claimant was at the property for five months in 2003 and returned only about five times. But on cross

examination he said he knew the couple to live as man and wife in the property since 1979. Sophia Pryce, William Lincoln Pryce's wife, gave evidence which was largely in tandem with his.

[45] Based on the claimant's passport, she landed in Jamaica every year between 2002 and 2008. In 2007, she landed twice. She has not given any evidence about the length of any of her stays, save for her initial trip in 2002, in relation to which she conceded on cross examination, that she spent less than one year. The defendant says that in 2005 or 2006, the claimant spent six weeks or two months at the property, and that the longest time she spent was five months. Although relevant, in my view the length of each of the claimant's stay is not determinative of whether the property was the family home. The assessment, as Sykes J said in **Peaches Annette Shirley - Stewart v Rupert Augustus Stewart (**supra) is not quantitative, it is qualitative.

[46] There is no evidence that the claimant received mail or other correspondence at the property. No evidence was given by her as to where she kept her clothes and personal belongings during the years she travelled back and forth between Jamaica and the USA. The fact that she conceded that she spent most of her time in the USA during the period 2002 to 2008, it is reasonable to infer that most of her personal belongings remained in the USA. This, coupled with - a) the fact that on none of her trips to Jamaica did the claimant declare to customs and immigration officials that she was a returning resident , b) the fact that in her 2013 divorce proceedings, she excluded the property as one of the places where she and the defendant resided during their second marriage and c) the fact that the NCB statement for September 2002 has a Florida address for the parties; leave me unsatisfied that the property was the dwelling house which they used habitually or from time to time as their sole or principal place of residence during their second marriage. I rather doubt, as observed earlier, that the claimant's intentions were to return to the property in 2002, to live. But intentions aside, the evidence simply does not convince me that the property was in fact the dwelling house where the

claimant and the defendant lived, within the meaning of PROSA, between 2002 and 2008. I therefore find that it was not the family home.

Is the property 'property other than the family home' to which the claimant is entitled to a 50% interest

[47] The defendant in cross examination denied that his marriages to third parties in the USA were marriages of convenience. The claimant however says otherwise. I prefer her evidence to his on this. Within the year that she left for Florida, the claimant divorced the defendant in proceedings in Florida. Within that same year the defendant himself also travelled to Florida, met a young woman and within one year of that meeting, he marries her. Within two years of this marriage, he divorces this woman and marries yet another. The claimant for her part admits to marrying to obtain her stay in the USA and says that this was with the defendant's knowledge. She divorced that second husband in 1993. Within one year of that divorce, she remarries the defendant, but says that throughout the entire time, she and the defendant had been living together.

[48] In or about 1990 or 1991, before her divorce from her second husband, the claimant says she and the defendant both purchased jointly, the Dilido Boulevard house. The defendant claims that the purchase of this house was after the claimant's divorce from her second husband, but a boundary survey done in 1991, in relation to that house, reveal that the claimant and the defendant were in possession in 1991. The claimant's divorce from her second husband was in 1993. It certainly seems to me to be more probable than not, based on the evidence, that their marriages to third parties were with the goal of legitimising their immigration status in the USA and were marriages of convenience. In the final analysis, I accept the claimant's evidence and find, that between 1985 and 2002, the parties lived together in the USA despite being married to other persons during the period 1986 to 1993.

[49] It is my view that the claimant and the defendant jointly arranged their affairs as a couple, and acted together as a team up to the time when their second marriage began to fall apart. I have found that they both engaged in marriages of convenience to obtain legal status in the USA, and that they lived together in that country (even while married to others), during the period 1985 to 2002. In his affidavit, the defendant said that the Dilido Boulevard house was purchased by him and the claimant from mortgage financing secured by both of them as well as from their joint savings account. They acquired the Dilido Boulevard house sometime between 1990 and 1991 and remarried October 31, 1994. The claimant says that in 1995 she and the defendant agreed to renovate the property and opened an account for that purpose. She does not refute William Lincoln Pryce's assertion that he became involved with the renovation in 1996.

[50] I find it improbable, that after they both engaged in marriages of convenience while at the same time living together ; after jointly purchasing a house in the USA from their joint resources; and after remarrying each other when their marriages of convenience ended; that the defendant would unilaterally, without the input of the claimant, send money solely from his own resources to his cousin in Jamaica to renovate the property. I therefore prefer the evidence of the claimant and find on a balance of probabilities that the renovation was financed jointly from their resources. I do not believe that the claimant demanded and received reimbursement for the awning she purchased. Sophia Pryce does not say when the conversation between the claimant and the defendant which she referred to, allegedly took place, nor does she offer any explanation as to how she happened to be present both when that conversation took place and when the money was allegedly repaid to the claimant by the defendant. I doubt her credibility on this issue. I find that both the claimant and the defendant contributed equally to the renovation of the property and that pursuant to section 14(1)(b) and 14(2)(a) of POSA, the property is property other than the family home to which the claimant is entitled to an interest based on her direct financial contribution to its renovation.

[51] It is necessary to comment on the NCB joint bank account. There is inconsistent evidence and dispute between the parties, in relation to it. The claimant said that in 1995 that account was opened when it was agreed to renovate the property. In cross examination, she denied ever saying that the account was opened in 1995 for purposes of the renovation, but later recanted that denial. The parties agreed that NCB was the successor to MSB. The statement and email correspondence from NCB exhibited by the claimant, speak to a joint account being opened in September 2002 in the names of both the claimant and the defendant with the claimant being the primary account holder. But the evidence is that by September 2002, the renovation had been completed. This would mean that based on the documentation from NCB, the NCB bank account would have been opened after the renovation was completed.

[52] The defendant on cross examination, emphatically denied ever having any account at MSB, but later said he opened an account with that bank in 1964, but it was only William Lincoln Pryce's name that he placed on it. The defendant provided no documentary evidence to support his assertion that it was this 1964 bank account to which he sent his earnings and from which he alone financed the renovation. I accept William Lincoln Pryce evidence that it was in or about 1996 that he became involved with the renovation. This evidence is more consistent with the claimant's evidence, that it was in 1995 that she and the defendant decided to renovate the property and opened a joint bank account at MSB for that purpose. It is not in dispute that William Lincoln Pryce's name was added to a bank account at MSB to facilitate his access to funds for purposes of the renovation. I do not accept William Lincoln Pryce's evidence that the claimant's name was not on this account. One wonders how he would know this. He gave no evidence explaining how this information would have come to his knowledge. I therefore find on a balance of probabilities that there was in fact a joint MSB bank account (which later became NCB), held by the claimant and the defendant, which they used for the renovation

and to which William Lincoln Pryce's name was added. Whether or not this is the same account referred to in the exhibited NCB documents is unclear.

[53] There is uncontradicted evidence that the renovations costs JD$2,000,000. 00 There is no evidence of the value of the property either prior to the renovation or since the renovation. No valuation report was exhibited by either party. I am therefore not able to determine the extent to which the value of the property has been enhanced by the renovation. I bear in mind that the property is legally owned by the defendant and that, based on my findings, the share of the claimant's contribution to the cost of the renovation is half of JD$ 2,000,000.00. Doing the best I can with the evidence before me, I believe that a just and reasonable assessment of the claimant's contribution to the renovation ought to result in her being awarded a 15% interest in the property. I therefore find accordingly.

If PROSA does not apply does the defendant hold a 50% interest or any other percentage interest in the property on a constructive trust for the claimant.

[54] Having found that the property is property other than the family home within the meaning of PROSA, the issue whether the defendant holds a percentage interest in the property on a constructive trust for the claimant is now otiose and I therefore need not consider it.

Conclusion

[55] In the result I make the following declarations: -

a) The property located at 60 Woodstock Housing Scheme, Buff Bay in the parish of Portland ("the property") is not the family home within the meaning of the Property (Rights of Spouses) Act

b) The property located at 60 Woodstock Housing Scheme, Buff Bay in the parish of Portland ("the property") is property other than the family home

pursuant to section 14 of the Property (Rights of Spouses) Act and the claimant is entitled to a fifteen percent (15%) share in it.

[56] I also make the following orders: -

c) The claimant and the defendant are to agree a valuer to determine the current market value of the property, the cost of which, is to be equally borne by them. Should the parties not agree a valuer within 60 days of this order, C.D. Alexander Company Realty Limited is appointed the valuer.

d) The defendant is given the first option to purchase the claimant's 15% interest in the property which option is to be exercised within thirty (30) days of the receipt of the valuation report from the valuer. Failing the exercise of this option by the defendant, the property is to be sold on the open market, and the claimant receive 15% and the defendant 85% of the net proceeds of sale. The claimant's attorneys-at-law are to have carriage of any such sale.

e) The Registrar of the Supreme Court is empowered to sign all such documents necessary for the completion of the sale of the property in the event of the incapacity, neglect, or wilful refusal of either the claimant or the defendant to sign any such documents within twenty - one (21) days of being requested to do so.

f) Each party to bear his / her own costs.

g) Liberty to apply.

A Jarrett
Puisne Judge