

JUDGMENT

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

Judgment Book

IN EQUITY

CLAIM NO. E129 OF 2000

BETWEEN

BEVERLEY SIMPSON

CLAIMANT

AND

ANSLYN SIMPSON

DEFENDANT

Property Dispute - Improvements carried out by spouse after other party has left matrimonial home - Parties interest in a former matrimonial home - Mortgage capital and interest elements - Occupational rent

Ms. Sandra Johnson for the Claimant.

Mr. Garth McBean instructed by Pickersgill, Dowding & Bailey Williams for the Defendant.

Heard: 20th, 22nd February and November 28, 2008.

Mangatal J:

1. This case involves a property dispute between a former husband and wife. The Claimant and the Defendant were married in 1975 and the union produced 3 children. Whilst married the parties acquired property situate at Lot 170 Westchester, Saint Catherine, registered at Volume 1192 Folio 558 of the Register Book of Titles. They were registered on the Title as joint tenants.
2. The Claimant and the Defendant began to have problems some years ago and in March 1995 they divorced. Both have since remarried. The Defendant's current wife, Ann-Marie Simpson gave evidence on behalf of the Defendant in this case.

3. I wish to commend both counsel for the skill with which they presented their submissions. The following issues arise in the case, and indeed, I must commend Counsel for the Defendant Mr. Garth McBean for the very thorough and lucid manner in which he has delineated some of the relevant issues in written submissions filed on behalf of the Defendant:

Factual Issues

- (i) *Whether the Claimant carried out improvements to the property by the addition of two bedrooms and an extension of the bathroom prior to 1995, the date when the parties were divorced.*
- (ii) *Whether the improvements to the property which were carried out by the Defendant and his present wife (the Claimant admits that some improvements were carried out but she does not admit that they were extensive), which they claim to have done between 2002 and 2004 were extensive. What is the value of these improvements?*
- (iii) *Who paid off the balance due on the mortgage between 1995 after the Claimant and the Defendant divorced and up to April 2006 when the mortgage was fully paid up, and in what amounts.*

Legal Issues

- (i) *Whether the value of the Claimant's share in the property is to be determined by the unimproved value of the property or,*

- (ii) *If the Court finds that the Defendant did make improvements, how does that affect the Claimant's proprietary interest and if it does not, how should the court deal with this issue?*
- (iii) *Whether the Claimant is liable to pay half of the mortgage payments made by the Defendant, and if so, is it from 1995 or from 1999, that he solely paid off the mortgage?*
- (iv) *Whether the Defendant is liable to pay occupational rent to the Claimant*
- (v) *Whether the Defendant is liable to account to the Claimant for any rental or income accrued from the property.*

4. This claim has been pending for a long time, and in fact, on or about the 23rd April 2007, the parties arrived at a partial settlement after mediation carried out by the Dispute Resolution Foundation . The agreement was as follows:

In exchange for the promises made the parties agree as follows:

- 1. That a new Valuation of the property Lot 170 Westchester, St. Catherine, be made by a mutually agreed valuator.*
- 2. That Claimant's Attorney-at- Law accompany the Valuator to value the said property.*
- 3. That valuation costs be shared equally between the parties.*
- 4. That Ann-Marie Simpson produce all receipts at the adjourned hearing of this mediation on the 25th April 2007 – these receipts are with respect to improvements to the said property.*

5. For completeness, I should just state that at one stage it appears to have been suggested that Mrs. Ann-Marie Simpson was making a claim in respect of the property because she claimed that the premises constituted the matrimonial home for both herself and the Defendant and that she had helped to pay off the mortgage. She further stated that she had made financial contribution to improvements carried out on the property. However, in cross-examination she conceded that even if payments were made by her out of her pocket, it was really payment being made on behalf of her husband as "what belongs to me (Ann-Marie Simpson) belongs to him (the Defendant)". In addition, no formal claim was made on her behalf and the Defendant's submissions do not take that approach.
6. On the 27th September 2007 D. McIntosh J. had ordered that the Affidavits of the parties were to stand as their Witness Statements.
7. When the matter came on for trial, it was indicated to me that the Defendant was in the United States, and would be unable to come for the trial because of his current status. Ann-Marie Simpson also so stated in her evidence.
8. The Affidavit of Beverley Simpson, the Claimant, sworn to on the 2nd of October 2007, was ordered to stand as her examination in chief, and in like fashion I made an order in relation to the Affidavit of Ann-Marie Simpson, sworn to on the 24th day of August 2006. All of the exhibits attached to these Affidavits were treated as exhibits. By consent, the Valuation Report of Eric G. Douglas dated January 14 2008 was also admitted into evidence as Exhibit B.S. 8.
9. Pursuant to a Notice issued by the Defendant's Attorneys-at-Law under the Evidence Act, and to Rule 29.8(4) of the Civil Procedure Rules 2002, I ordered that the Affidavit of the Defendant, without any exhibits, sworn to on the 13th of September 2007 be admitted

into evidence as a Hearsay Statement. There was Cross-examination of both the Claimant and Ann-Marie Simpson. However, because the Defendant did not attend court there was no cross-examination of him. I have to bear this in mind in deciding what weight to attach, and how to treat his Affidavit, since I have not had the benefit of seeing the Defendant cross-examined and of observing his demeanour. This is of particular significance because the question of credibility is an important issue in this case.

First Factual Issue- Whether the Claimant Carried Out Improvements to the Property Prior to 1995

10. The Claimant said that prior to 1995 she had carried out additions to the property by adding two bedrooms and making an extension to the bathroom. She also said that whilst working in the United States she would remit monies to the Defendant to maintain the parties two eldest sons and to pay for the mortgage.
11. I agree with Mr. McBean that, based on the dates they were carried out, neither the 2006 Valuation Report of Euriel Maitland nor the 2008 Valuation Report of Eric Douglas assist me in determining the issue of whether the Claimant carried out these alleged improvements.
Nor, for that matter do these reports assist me with the question of what improvements were carried out by the Defendant and/or Mrs. Ann-Marie Simpson at a later date.
12. I did find the Claimant to be a credible witness. However, in cross-examination she was unable to state a date when these improvements were carried out. She did not produce any receipt, invoice or other documentary evidence with regard to materials or labour for the alleged improvements. The Claimant also said that she sent money by Western Union but no documents, or copies of records of any such payments were produced by her. The Claimant could not even give an estimated cost of these improvements.

Whilst I appreciate that transactions involving husband and wife are often carried out on an informal basis, without substantiating documents, I find myself unable to find on a balance of probabilities that these improvements have been established, or further or alternatively, what was the value of these improvements.

Second Factual Issue-whether the improvements to the property which were carried out by the Defendant and present wife were extensive

13. According to paragraph 10 of his Affidavit, the Defendant says that in or about early 2004, he and his present wife carried out extensive improvements and renovations to the premises and that they spent in the region of \$600,000.00. Ann-Marie Simpson states the same thing in paragraph 10 of her Affidavit. In cross-examination, Ann-Marie Simpson claims to have started carrying out the improvements in 2002.

14. In the Defence and Counterclaim filed on his behalf, amongst other matters it is stated as follows:

Defence

...4. After the year 1992, the Claimant made no further contribution to the repayment of the mortgage and indicated to the Defendant that he could have the house for himself as he had no intention of returning to Jamaica or of claiming an interest in the house. Since that time the Defendant took over sole responsibility for paying the mortgage up to its repayment in full in or about April 2006 having been persuaded that it was the Claimant's intention to surrender her interest in the property to him.

5. The Defendant denies that the Claimant did any or any extensive addition to the said premises as alleged in paragraphs 8 and 9 of the Statement of Claim or at all. From

the outset the premises were comprised of two (2) bedrooms and to date continue to be a two bedroom house. Sometime in or about 1992 the Defendant laid four rows of building blocks with the intention of carrying out an extension to the premises. This he did not pursue.

6. In or about the year 2004, holding the honest belief that the Claimant had no further interest in the property since she had indicated to him that this was her intention, the Defendant and his current wife, Ann-Marie Simpson carried out extensive improvements to the house at their own cost.

.....

Counterclaim

I claim against the Defendant:

(a) A Declaration and order that the Claimant has no beneficial interest in the said property situated at Lot 170 Westchester in the Parish of Saint Catherine and registered at Volume 1192 Folio 558 in the Register Book of Titles.

15. In paragraphs 19 and 20 of her Affidavit, the Claimant states as follows:

19. That I later learnt via the Defendant's several Affidavits herein that he and his current wife, Ann-Marie Simpson have done extensive renovations and additions to the said premises.

20. That I did not consent, agree or acquiesce to any expenditure on the said premises and did not say as is alleged, that I have no interest in the said property and that the Defendant could have it.

16. In that same Affidavit, the Claimant describes negotiations, and exhibits documents which substantiate quite clearly that between 1999 and some years thereafter, the parties were in negotiations whereby the Claimant was offering to

sell her one-half share in the property to the Claimant. I agree with Miss Johnson that this state of affairs does render incredible the Defendant's statement that he did these alleged extensions in the honest belief that the Claimant was making no further claim or interest in the property.

17. The receipts exhibited to the Affidavit of Ann-Marie Simpson do in fact total closer to \$100,000.00 than the \$600,000.00 which the Defendant and Ann-Marie Simpson claim to have spent in improvements. However, the receipts were not put in evidence it seems, as representing the full sum spent by the Defendant and his current wife. Instead, the purpose was to persuade the Court that the Defendant in fact incurred expenditure in relation to improvements.
18. In cross-examination the Claimant states that she cannot deny that the Defendant and Ann-Marie Simpson have done extensive improvements to the premises. However, it is common ground that the Defendant's current wife Ann-Marie Simpson has not allowed the Claimant to view the inside of the premises. The Claimant states that she did see some renovations when she went to look at the premises, however, those which she has seen are not extensive.
19. In his written submissions on behalf of the Defendant in relation to this factual issue, Mr. McBean submits as follows:
5. It is submitted that this Honourable Court ought to find as a fact that extensive improvements by the addition of a kitchen, dining room , extension of the front bedroom and the addition of a verandah were carried out as stated by the Defendant....and Ann Marie Simpson...It is so submitted for the following reasons:
(a) in paragraph 5 of the witness statement of Ann-Marie Simpson she exhibits as AS 3 a photograph of the property

when she started living there in 1998. In cross-examination there was no challenge to this assertion by Counsel for the Claimant and therefore being unchallenged evidence it ought to be accepted by the Court.

.....

*(e) The Valuation Report of Mr. Eric Douglas dated 14th January 2008 is limited in its evidential value in relation to this issue because the Valuator at page 3 of his report states that **"the property was inspected from an external view on January 12, 2008"**.*

However, at page 3 of the report the Valuator stated that the dwelling unit consists of inter alia a verandah, modern French windows and doors (which is not in the photograph AS3 to AnnMarie Simpson's Affidavit).

This shows that these improvements have been made by the Defendant and his present wife since the photograph AS 3 does not show any of these.

20. I do not find that argument about the photograph persuasive because, when I look at the photograph AS3, the depiction of the house, and the view from which the photograph is taken, there is not to my mind such a great deal of readily discernible difference between AS3 and the photograph that appears in the Valuation Report that I can conclude that the renovations were extensive, or even if they were, as to the value thereof. The court must, however, do its best in the circumstances. I would have thought that given the negotiations that were going on between the parties in relation to the purchase of the Claimant's interest in the premises, and the fact that by 2000 the Claimant had filed suit herein, the receipts in respect of any amounts paid for

renovations and improvements would have been retained for proof in the future.

21. In cross-examination, although Ann-Marie Simpson makes the curious statement that she was not aware that there were negotiations going on between the Defendant and the Claimant in relation to the Defendant purchasing the Claimant's half share in the property, she nevertheless agrees that before she started any improvements, she knew that the premises were jointly owned by her husband and his former wife. She also states that during the time that she and the Defendant sought to do these improvements they did not seek the consent of the Claimant in order to do, or before effecting, these improvements.

22. In all the circumstances, and on the totality of the evidence, I am satisfied on a balance of probabilities that the Defendant did carry out renovations to the premises, particularly to the front of the house, and I am prepared to treat same as being of the order of \$200,000.00. I also find that these improvements were carried out without the knowledge, agreement acquiescence or encouragement of the Claimant.

Factual Issue No 3-Who paid off the balance mortgage between 1995 and April 2006 when the mortgage was cleared off.

23. In her closing submissions on behalf of the Claimant, Miss Johnson makes the valid point that whereas in the Defence it is said by the Defendant that the Claimant made no further contribution to the mortgage from 1992, in his Affidavit he states that the Claimant made no further mortgage payments from 1999. This is indeed a credibility issue. I note also that in letter dated August 4 1999 written on behalf of the Claimant, the Attorney is

saying that the Defendant's lawyer should let her have as promised copies of the mortgage payments made by the Defendant up to the date of the letter, which is August 4, 1999. I found it quite strange that although Ann-Marie Simpson and the Defendant in their Affidavits said they were the ones who paid the mortgage since 1999, not one of those receipts was put before the Court. In her Affidavit, the Claimant stated that she migrated to the United States to work in 1990 but remitted monies to the Defendant in Jamaica to maintain their sons and to pay for the mortgage. I cannot trace any evidence from the Claimant as to when she stopped contributing to the mortgage. However, I draw the inference that she stopped from 1995 when the parties were divorced. I find, and the Claimant does not really appear to have denied this, or to have produced any documentation or receipts that bely this finding, that it was the Defendant who paid off the mortgage between 1995 when the parties divorced and April 2006 when the mortgage was paid off in full.

Legal Issues

24. *Whether the value of the Claimant's share in the property is to be determined by the unimproved value of the property.*
25. I think that the short answer to this question is "No". In fact, I think that the above issue and the second legal issue outlined at the start of this judgment, i.e. (i) *If the Court finds that the Defendant did make improvements, how does that affect the Claimant's proprietary interest and if it does not, how should the court deal with this issue?*

ought to be dealt with together. In my judgment, the authorities support the position that where the parties are both legally or beneficially entitled to the property, then both will also be entitled to share in the same proportions in the improved value of the

premises brought about by the expenditure of one party only. However, the party who has spent on the improvement or renovation is entitled to be compensated by the other party in respect of the expenditure carried out.

26. In the 10th edition of **Bromley's Family Law**, 2007, by Nigel Lowe and Gillian Douglas, under the caption "**Improvements to the Family Home**", the learned authors at page 169 state:

Improvements to the Family Home

It may be argued that the parties' interests in the home have been varied if, after purchase, one of them has been solely responsible for enhancing its value by extension or improvement (either by cash payments or by doing the work himself). Unlike a contribution to the purchase price, the mere fact that A does work on B's property does not of itself give A any interest in it. To establish such an interest, A must show that the expenditure was incurred or the work done in pursuance of an agreement or a common intention that it should do so or, alternatively, that B has led A to believe that the improvement would confer an interest on him so as to give rise to a proprietary estoppel.

The position of spouses, civil partners and former engaged couples

The injustice that this could cause led to the passing of s.37 of the Matrimonial Proceedings and Property Act 1970. This provides:

'...where a husband or wife contributes in money or money's worth to the improvement of real or personal property in which or in the proceeds of sale of which either or both of them has or have a beneficial interest, the husband or wife so contributing shall, if the contribution is of a substantial nature and subject to any agreement to the contrary express or implied, be treated as having been

acquired by virtue of his or her contribution a share or an enlarged share, as the case may be, in that beneficial interest...'

27. At pages 383-384 of an earlier edition of **Bromley's Family Law**, cited by the Attorneys-at Law for the Defendant, it is pointed out that it is because the House of Lords in the celebrated case of **Pettitt v. Pettitt** [1969] 2 All E.R. 385, were divided on the question whether, in the absence of an agreement, one spouse could acquire an interest in the other's property by doing work of a more substantial nature on it, that the law was made more certain by the passing of **s.37 of the Matrimonial Proceedings and Property Act 1970**.
28. As Mr. McBean points out in his written submissions, section **37 of the Matrimonial Proceedings and Property Act 1970** or its exact equivalent has not been enacted in Jamaica. Further, although under section 14 of the **Property (Rights of Spouses Act), 2004** the court is empowered in dividing property interests to take into account improvements to property, that Act is not applicable to this case. This so because section 24 of that Act provides :

The commencement of this Act shall not affect...

- (a) any legal proceedings in respect of property which has been instituted under any enactment before such commencement; or*
- (b) any remedy in respect of any such legal proceedings to enforce or establish a right, privilege, obligation or liability acquired, accrued or incurred before such commencement and any such legal proceedings or remedy may be continued or enforced as if this Act had not been brought into operation....*

29. In the present case this Act would not at this time have been applicable because the parties were divorced many years ago, and

this action was commenced by Writ of Summons instead of by way of originating summons because the parties were divorced in 1995 before the action was commenced. Under section 16 of the **Married Women's Property Act** (now repealed) only a husband or wife could bring an application by originating summons.

30. In submitting that the court should find that the Defendant's share in the property has been enlarged by virtue of the improvements which he had effected to the property, Mr. McBean makes the following intriguing arguments:

(a) *It is unjust to allow a spouse who has not contributed to improvements to benefit from improvements to property by the other spouse even if those improvements were carried out without the consent of the other spouse....*

...

(1) *Having regard to the overriding objective it is just to make such a finding (of increased share) and unjust and contrary to the principles against unjust enrichment to allow the Claimant to benefit from improvements to which she did not contribute.*

31. As attractive as those arguments are, I must reject them. The fact that legislation was passed in the U.K. to specifically deal with these matters (albeit there was a divide within the body of common law decisions), suggests to me that I too ought not to so decide without likewise being enabled by legislation applicable in Jamaica. Secondly, the whole question of the "overriding objective of dealing with cases justly", though it permeates the rule of law, cannot in my judgment be used to decide cases against the mainstream of the common law on substantive issues. This

phrase, made popular by our **New Civil Procedure Rules, 2002** "the C.P.R.", and indeed, new civil procedural rules in England and elsewhere, is of course the ultimate goal of all adjudicators. However, "the overriding objective" is not a wild, untamed horse enabling us to ride roughshod over the tenets of established common law principles.

32. In my judgment, however, Mr. Mc Bean's alternative submission set out at paragraph 11 of his written submissions points the way to the proper resolution of the question of how best to deal justly with the improvements. It is stated:

AN ALTERNATIVE APPROACH

*11. Further or alternatively it is submitted that the Court may deal with the question of improvements by ordering that the Claimant contribute to the expenditure on the property which has enhanced the value of the property. This approach was taken in **Bernard v. Josephs** [1982] 1 Ch. 391 where the proceeds of sale were divided between the parties only after the Plaintiff had paid to the Defendant the sum of £2650 which the Defendant had spent on decorating the house thereby increasing its value.*

*In **Bromley's Family Law** 10th edition at page 177 the author states:*

" Further accounting between the parties however may be necessary. If one of them spends money on the property after they have separated he will usually be entitled to call on the other to contribute to the expenditure if this preserves or enhances the value of the asset because both will derive the benefit of the increased value when the investment is realized."

33. Save that I do not think that an equal joint owner need pay to the other the whole value of the improvement cost, I agree with this

approach. In my view the correct method of accounting is to have the one repay to the other half of the amount expended on improvements.

34. In my judgment this means that the Claimant is indebted to the Defendant, and must give him credit for half the cost of improvement expenditure, the total of which I have treated as \$200,000.00. Therefore the Defendant is entitled to be paid \$100,000.00 by the Claimant.

(iii) *Whether the Claimant is liable to pay half of the mortgage payments made by the Defendant, and if so, is it from 1995 or from 1999, that he solely paid off the mortgage?*

35. The answer to this question will partially depend on the accounting to be provided by the Defendant. However, in my judgment the correct approach is to have the Claimant credit the Defendant for her proportionate share of the capital element of the mortgage only. I arrive at my decision in relation to this question partially because of the view I have come to on another legal issue raised at the beginning of this judgment, i.e.

(iv) *Whether the Defendant is liable to pay occupational rent to the Claimant.*

36. In my judgment, the Defendant is liable to the Claimant for occupational rent. I am of the view that the answer to both of these issues is to be found in the well-thought out discussion in the 10th edition of **Bromley's Family Law**, at pages 177-178 under the caption **Distribution of assets after sale : equitable accounting;**

.....

The position regarding the payment of mortgage installments is less clear. In **Cracknell v. Cracknell** where the matrimonial home was owned jointly, the wife left to live with another man. The husband continued to pay the installments and the Court of Appeal held that she should compensate him for half the total payments he had made after their separation. In **Suttill v. Graham**, on the other hand, on virtually identical facts the Court of Appeal concluded that the wife should be required to compensate the husband only for the capital sum he had repaid, apparently on the ground that that alone increased the value of the equity. As we shall see below, the position may be complicated by the need to pay an occupational rent. Leaving this question aside, in the face of conflicting decisions of the Court of Appeal, **Cracknell v. Cracknell** is to be preferred because, as was pointed out in **Re Gorman**, the mortgagee will have a charge on the property for both unpaid interest and capital, so that the value of the equity is increased by the payment of both.

A similar question that arises after separation is whether the party who remains in the home must pay an occupational rent to the other (or to the trustee in bankruptcy). In **Dennis v. McDonald** the Court of Appeal held that if the parties are co-owners, whether in law or equity, each is entitled to possession: consequently, if one leaves voluntarily, he or she is not entitled to any rent. If, however, one forces the other to leave, justice demands that he should pay rent to compensate the latter for the right she has lost and the need to pay for accommodation elsewhere: in **Dennis v. Mc Donald** the sum ordered to be paid was one-half of what would be a fair rent under the Rent Act. It has been subsequently held in the High Court that it is not necessary to establish that one party has been excluded from the property before the party remaining can be

required to pay an occupational rent . For example, in **Byford v. Butler** the husband was made bankrupt but he and the wife continued to live in the matrimonial home, the wife meeting the mortgage payments. The trustee in bankruptcy made no effort to realize his interest in the property until after the husband's death some nine years after the bankruptcy. The wife argued that she should not be obliged to pay an occupational rent but it was held that the fact that there has not been an ouster or forcible exclusion from the property is not conclusive. As Lawrence Collins J. pointed out, the trustee cannot reside in the property nor can he derive any financial enjoyment from the property while the bankrupt's spouse resides in it, and the bankrupt spouse's creditors can derive no benefit from it until he exercises his remedies. Since the wife had had the benefit of continuing to live in the property, it was just to require her to pay an occupational rent.

If the party in occupation is bound to pay rent and is also paying mortgage installments, it may be simpler (as was in fact agreed by the parties in Byford v. Butler) to regard the payment of interest as equivalent to the payment of rent and thus avoid a double computation. In such circumstances it would be proper to order the party who has left to account for his or her proportionate part of the repayment of capital only. This occurred in Leake v. Bruzzi, where the wife left the husband and obtained a divorce based on the fact that the husband's behaviour had been such that she could not reasonably be expected to live with him. (my emphasis).

37. In my view, this is a case where, albeit the Claimant left the property voluntarily,(it not being necessary to establish that she has been excluded from the property), the Defendant is bound to pay occupational rent to her. However, since the Defendant also paid the mortgage installments, inference being from March 6

1995 to April 11 2006, it is simpler, as in Byford v. Butler [2003] EWHC 1267 (Ch) [2004] 1 FLR 56, and Leake v. Bruzzi [1974] 2 All E.R. 1196, CA, to regard payment of interest as equivalent to payment of occupational rent.

(i) *Whether the Defendant is liable to account to the Claimant for any rental or income accrued from the property.*

38. I accept the Claimant when she says that for a period of time, particularly during the period 1996 to 1999, the Defendant was in receipt of rental from the subject premises. As a co-owner of the property, he must account to the Claimant for this income.

39. The declarations and orders I make are as follows:

- (1) Judgment for the Claimant on the Claim and on the Counterclaim.
- (2) The Counterclaim is dismissed.
- (3) Each party is entitled to a half share in the improved value of the premises at Lot 170 Westchester Place, St Catherine, being the property registered at Volume 1192 Folio 558 of the Register Book of Titles.
- (4) The Claimant is liable to reimburse the Defendant \$100,000.00, being the half share of the cost of the improvements.
- (5) The property is to be valued by D.C. Tavares Finson & Co., Valuers agreed by the parties' Attorneys. The Valuation is to be performed by the 12th January 2009 and each party is to pay half the costs attendant on such Valuation.
- (6) The Defendant has the first option to purchase the Claimant's half share in the property (less

\$100,000.00), such option to be exercised within three months of the date of receipt of the Valuation Report.

- (7) Failing the exercise by the Defendant of the option as aforesaid the property is to be sold by private treaty and the net proceeds divided equally between the parties after taking into account the \$100,000.00 regarding improvements and other equitable accounting to be carried out between the parties as set out in paragraphs (8) and (9) below.
- (8) The Claimant is to pay to the Defendant half of the amount paid by the Defendant on account of the capital (or principal) element of the mortgage installments between March 6 1995 to April 11 2006 after production by the Defendant of an authenticated statement of account from the National Housing Trust or authenticated receipts for the period March 6 1995 to April 11 2006. The authenticated accounts are required to show the split between the capital (or principal) and interest elements. The interest element of the mortgage is treated as the occupational rent due from the Defendant to the Claimant. This accounting is to be produced by the Defendant by the 26th January 2009.
- (9) The Defendant is to account to the Claimant by the 26th January 2009 for all rental received for the said property from March 6 1995 to date and to pay to the Claimant half of the amount so accounted for .
- (10) The Registrar of the Supreme Court is to carry out all necessary enquiries after the said accounting is provided.

- (11) The Registrar of the Supreme Court is empowered to sign all necessary documents and Instruments of Title in the event that either party shall be unable or unwilling so to do.
- (12) Liberty to Apply.
- (13) Claimant's Attorneys-at -law to have Carriage of Sale.
- (14) Half costs to the Claimant on the Claim and on the Counterclaim to be taxed if not agreed.