

THE EASTERN CARIBBEAN SUPREME COURT

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: SLUHMT2018/0081

BETWEEN:

GLENDA SMITH nee RAYMOND

Petitioner

and

DARYL SMITH

Respondent

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mr. Dexter Theodore KC for the Petitioner

Ms. Leandra Verneuil for the Respondent

2023:	April 19;	(Trial)
	April 14, 17;	(Skeleton Arguments)
	May 5;	(Closing Submissions)
2025:	March 18;	(Further Cross-examination)
	April 17;	(Supplemental Closing Submissions)
2026:	January 30.	(Decision)

JUDGMENT

[1] **CENAC-PHULGENCE J:** The petitioner, Glenda Smith nee Raymond (now Mrs. Gedeon) and the respondent, Daryl Smith (together “the parties”) were married on 26th August 2000 in Saint Lucia. They were twenty-one (21) and twenty-four (24) years old respectively at the date of their marriage having been born on 17th June 1976 and 6th September 1978 respectively. After almost nineteen years of marriage, the parties were granted a decree nisi dissolution on 7th February 2019 and ancillary relief matters were adjourned to Chambers upon application by either party. The parties have one daughter who is no longer a minor and therefore these ancillary relief proceedings relate solely to property,

a section 41 declaration having been granted on 14th October 2019. On 1st November 2019, the decree nisi was made absolute.

[2] On 16th March 2021, the petitioner by her duly appointed attorney Cassius Raymond filed an application for ancillary relief.¹ By that application she seeks the following orders:

- (a) that the parcel of land registered as Block and Parcel 1614B 372² (Petit La Ressource property) be sold and the proceeds of sale be utilised to settle the outstanding mortgage on the property and the remainder be divided equally between she and the respondent;
- (b) that the respondent execute a deed of transfer conveying his one-half share of Block and Parcel 1019B 244 (Black Bay property) to her;
- (c) that the respondent pay the rent collected from the tenant at the Black Bay property for the period of July 2018 to date, in the sum of \$25,600.00 into Republic Bank (EC) Ltd. account no. 521858;
- (d) that the respondent direct and permit the tenant at the Black Bay property to pay the rent of \$800.00 directly into Republic Bank (EC) Ltd. Account no. 521858 until the debt owed is paid in full;
- (e) that the respondent pay her half share of the proceeds of sale of the 2007 Honda CRV registration number 53;
- (f) that the respondent pay her half share of the proceeds of the insurance payment received from Agostini Insurance Brokers Inc. in relation to the Isuzu Dump Truck, registration number T5159;
- (g) that the Isuzu Dump Truck registration number TE3617 be sold and the respondent pay her half share of the proceeds of sale;
- (h) that the respondent shall permit the petitioner to retrieve the forklift which is her separate property;
- (i) that the respondent shall pay her half share of the proceeds of sale from the sale of the jointly-owned forklift (which should have been backhoe);

¹ p 162 of the Electronic Trial Bundle (TB) filed on 17th April 2023.

² Incorrectly stated as 272 in the application.

- (j) that the respondent shall allow her to gain unhindered access to the matrimonial home to retrieve all furniture and household items specified in Schedule 1; and
- (k) that the respondent shall provide her with a half share of the proceeds of sale of the items specified in Schedule 2.

[3] In his affidavit in response filed on 2nd June 2021, the respondent asked the Court to make the following orders/declarations:

- (a) That all the debts arose from the business dealings and transactions and therefore both shareholders are liable for the extent of their shareholding;
- (b) That he transfer all his rights title and interest in the Black Bay Property to the petitioner. Upon transfer all the proceeds from both apartments be in the control and possession of the petitioner;
- (c) That the petitioner transfers to him all her rights, title and interest in the Ti La Ressource Property;
- (d) That each party be responsible for all fees associated with their own transfers;
- (e) All the sums from the proceeds of the Black Bay Property were used for the repairs to the property and that the sums collected for the downstairs apartment from Althea be paid into the account at Republic Bank;
- (f) That the proceeds from the Honda CRV, the proceeds of insurance be deemed to be the proceeds of D&G Hardware;
- (g) That the matrimonial home is no longer in existence as the rental ceased in October 2020.

Preliminary Observation

[3] It is noted that the petitioner's application does not identify what section of the **Divorce Act**³ ("the Act") it is made pursuant to. In this regard, Michel JA's pronouncements at paragraphs 33-34 of the case **Jonathan Lesfloris v Glenda Lesfloris**⁴ are instructive in this regard. Michel JA stated that it was important to state in the application the provision of the law under which the application is

³ Cap 4.01, Revised Laws of Saint Lucia, 2020.

⁴ SLUHCVP2015/0018, (delivered 13th December 2019, unreported).

being made and/or the relief is being sought, because failure to do so may lead to the sort of ambush. He went on to point out that is particularly important in the making of applications under the Act and the Divorce Rules, because the requirements for the making of applications and for the grant of relief sometimes differ under different provisions of the Act and the Rules.

- [4] It would appear from the tenor of their submissions that both parties have treated the application before the Court as having been made pursuant to section 24 of the Act and I will therefore treat the application as such.

Applicable Law

- [5] The starting point as stated very clearly in **Lesfloris v Lesfloris**⁵ is that the law recognizes only two types of matrimonial regimes: community and separate property. As a start, the Court must first determine what property is the community property of the parties and what is the separate property of each or either of the parties. As described by Michel JA in **Lesfloris**, in the case of separate property, the distribution is one hundred – zero, unlike in the case of community property where it is fifty-fifty.
- [6] In the case of community property, there is no middle ground and no discretion for the Court to vary the statutory entitlement as provided for in the **Civil Code of Saint Lucia**⁶ (“the Civil Code”). Therefore, once a marriage ends, each spouse becomes entitled to one-half of all community assets as of right. The task of the Court in ancillary relief proceedings is to determine which assets fall into the community and which do not and to make appropriate orders for division, transfer or sale, or other appropriate orders in the circumstances of a case in accordance with the Act and the Code.
- [7] Section 24 of the Act allows the Court on granting a decree of divorce or nullity of marriage or at any time thereafter (whether, before or after the decree is made

⁵ At para 38-39.

⁶ Cap. 4.01, Revised Laws of Saint Lucia, 2020.

absolute) to make the following orders so far as relevant to the circumstances of this case:

- (a) an order that a party to the marriage shall transfer to the other party such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;
- (b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the Court for the benefit of the party to the marriage;
- (c) an order extinguishing or reducing the interest of either of the parties to the marriage under any such contract or settlement.

[8] Section 25 of the Act sets out the factors which the Court should have regard to when deciding whether to exercise the powers granted under sections 22 and 24 in relation to a party to the marriage. These include: (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future; (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future; (c) the standard of living enjoyed by the family before the breakdown of the marriage; (d) the age of each party to the marriage and the duration of the marriage; (e) any physical or mental disability of either of the parties to the marriage; (f) contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family; (g) in the case of proceedings for divorce or nullity of marriage, the value of either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage that party will lose the chance of acquiring.

[9] In assessing these factors, the Court's ultimate aim to place the parties so far as is practicable and just, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards each other. The parties' conduct may also be a relevant consideration in the Court's assessment. The Court's aim is to reach an outcome which is fair and reasonable given all the circumstances of the case.

The Evidence

- [10] In my consideration of this matter, I have had regard to the following affidavits: (a) affidavit in support of the application filed on 16th March 2021,⁷ and (b) affidavit in reply of the petitioner filed on 6th July 2021;⁸ affidavit in response of the respondent filed on 2nd June 2021.⁹ The parties filed skeleton arguments prior to the trial on 14th and 17th April 2023 and closing submissions after trial on 5th May 2023.
- [11] Following the trial on 19th April 2023, and pending delivery of the judgment the petitioner filed an application for an interim injunction and freezing order on 29th April 2024 with an amended application filed on 5th June 2024. This application sought an order restraining the respondent from selling, transferring ownership, disposing of, dissipating, diminishing the value of or in any way parting with possession or continuing to sell, transfer ownership, dissipate, diminish the value of or part with possession of all movable property belonging to the parties in community or to the petitioner as her separate property. The grounds in the main were that the respondent had migrated to the US since the hearing of the application for ancillary relief and appeared to be selling assets which are the subject matter of that application.
- [12] Following an initial hearing, the Court made an interim order pending final determination of the matter to preserve the status quo. The parties were cross-examined on the affidavit evidence presented in relation to the application for the interim injunction which the Court now considers as part of its determination of the application for ancillary relief. Cross-examination took place on 18th March 2025 and the parties were given an opportunity to file supplemental submissions which they filed on 17th April 2025.
- [13] In support of the application for the injunction, the petitioner filed affidavits on 29th April 2024 and 5th June 2024 and an affidavit in reply on 10th September

⁷ p 165 of TB.

⁸ p 143 of TB

⁹ p 43 of TB.

2024. The respondent filed an affidavit in response on 22nd July 2024 and a supplemental affidavit on 4th September 2024.

The Assets

A. The Matrimonial Home/Appliances/Furniture

- [14] According to the petitioner, throughout the marriage, the parties lived in rented premises at Ti La Ressource which was their matrimonial home and jointly met the rental obligations. The petitioner said that throughout the marriage and until she left the matrimonial home, she bore the primary responsibility for the upkeep of the home as the respondent was hardly home. The respondent on the other hand said that they were both responsible for the upkeep of the home and denies that he was hardly home. He claimed that he lived at Black Bay and worked in Dennery and so he was on the road the whole day. In response, the petitioner said that although the respondent contributed to the maintenance of the home from time to time, most of the maintenance and daily upkeep was done by her.
- [15] The petitioner's evidence was that she purchased several items for use in the household and following her departure from the matrimonial home, the respondent has denied her access to retrieve them. According to the petitioner, the respondent collected all the furniture and household items and uses them for his personal use. These items are listed in a schedule to her March 2021 affidavit¹⁰ and include: refrigerator, stove, washing machine, three piece living room set, dining cabinet, six-piece dining set (table and chairs), curtains, towels, shower curtain, pans and pots, utensils, two (2) Queen beds, ironing board, clothes rack, two (2) flat-screen televisions, two (2) TV stands, stereo set, four (4) plastic chairs and a plastic table, Encyclopaedia set of twenty-four (24).
- [16] The respondent said he and the petitioner purchased appliances and furniture. When the petitioner left the jurisdiction and he left the rented matrimonial home, he had to remove the furniture from the house. He admitted that he was using some of the furniture and appliances but says quite a few things had to be burnt

¹⁰ Schedule 1 at p 185 of TB.

due to termite infestation including the beds. According to the respondent when the petitioner left in March 2018, she left with both gas cylinders, all curtains in the house, bedsheets and all the beds, kitchen appliances such as blender, microwave, and a new kettle.

[17] To this, the petitioner said that her parents gave her money to purchase a stove, fridge, couch, beds, stereo sets, cabinet set and a table and six chairs because they had no money. She said she was not aware of any termite infestation, but she left in 2018 and the affidavits were filed almost three years later so it is possible that she would not have been aware. The petitioner admitted that when she left the matrimonial home on 8th April 2018, she left with one LPG cylinder, a few curtains, a blender, microwave and kettle. I note that whilst the respondent initially said that things had to be burnt due to termite infestation including the beds, he then said that when the petitioner left she left with all the beds.

[18] It is clear that all furniture and appliances were purchased by the parties during the marriage and would therefore be community property. It is clear that when the petitioner left the matrimonial home, she took some items which she wanted from the home leaving the rest behind. Three years later in 2019, she is seeking an order that she be allowed to retrieve all furniture and household items which she had in that schedule. It escapes me that the petitioner is saying that these items are her separate property when it is clear that they were purchased for the household. Whether they were purchased with funds from her parents or from the parties' funds, they belong to them equally. In fact, the petitioner agreed in cross-examination that all the items listed in Schedule 1 were all items that she and the petitioner had in the matrimonial home and some would be over twelve years old.

Conclusion

[19] The problem is the Court has no idea what the value of these items would be or even when they were purchased. In any event, any item bought when the parties got married would have been close to twenty-one years old at the date of the application and have depreciated significantly. It seems to me that the petitioner took the items which she thought were of more value to her. In fact, in cross

examination, she said that she took the curtains because they were so nice. She decided what she would take albeit the respondent jointly owned these items with her.

- [20] Given that the parties have each moved on and the fact that the petitioner has not assisted the Court with any information about the items beyond providing a list, I see no merit in making an order allowing the petitioner to retrieve the listed items. Accordingly, I make no order in relation to the appliances and furniture.

B. Ti La Ressource, Dennery

- [21] It is undisputed that the parties own a parcel of land in Dennery registered as Block and Parcel Number 1641B 372 ("Ti La Ressource Property"). The Ti La Ressource Property was purchased in 2014.¹¹ The respondent says in his 2024 affidavit that when the petitioner left, only the foundation had been completed, and he undertook completion of the house by himself after the divorce in about 2020. In cross examination though, it was clear that the house was incomplete as the respondent said he lives at the bottom and the upper level has no walls. The land register for this parcel of land shows a hypothec registered in favour of Royal Bank of Canada (now 1st National Bank) for the sum of \$75,000.00 dated 16th January 2018 and a judicial hypothec in favour of Royal Bank of Canada registered on 15th June 2020.

- [22] The Ti La Ressource Property is community property, and the petitioner and respondent have a half share each. However, this property is subject to an outstanding mortgage which according to both parties was taken for the purpose of the business at La Pointe.

C. Black Bay Property

- [23] The petitioner's evidence was that on 10th September 1999, prior to her marriage to the respondent, her parents executed a Deed of Donation in her favour of a parcel of land situate in Black Bay, Vieux Fort and registered as Block and Parcel

¹¹ See Deed of Sale registered as Instrument Number 2654/2014 at p 178 of TB.

Number 1019B 244 ("the Black Bay Property").¹² By a Deed of Donation executed on 17th September 2005, the petitioner voluntarily and out of her love and affection for the respondent donated a half share of the Black Bay Property to him.¹³ The land register for the Black Bay Property shows the petitioner and respondent each owning an undivided half share.

[24] The parties' shares in this property are separate property according to article 1192(2)(c) of the Code, and not community property as they were acquired by virtue of donations. The petitioner's assertion that the respondent understood at the date of execution of the Deed of Donation in his favour and throughout the marriage that the Black Bay Property was a gift from her parents to her solely, that it held sentimental value to her and that the purpose of the transfer was to enable them to obtain financial assistance to operate their jointly owned company, D&G Hardware Supplies does not alter its legal classification.

[25] The petitioner alleged that the respondent sold furniture from the house at the Black Bay Property such as stove, refrigerator, couch and two queen sized beds. The respondent admitted this but says he was paying property taxes in the sum of approximately \$1,468.75 yearly and he undertook repairs and maintenance to the property including extension of the garage, installation of water tanks and pump though no evidence to support these assertions was produced. The petitioner in response agreed that these repairs were done to the property but says they were done with funds from their business. The respondent also claimed that in 2017 he undertook major repairs to the Black Bay Property and spent about \$17,000.00, changed tiles in the three bedrooms, changed both interior and exterior doors and some windows and repaired a major leak in the wall. The petitioner said she had no knowledge of these repairs and again the respondent produces no evidence of this expenditure. The respondent in cross-examination suggested that the repairs were done with the funds from his work in construction and little jobs that he had and not with the funds from the business.

¹² Deed of Donation registered as Instrument No. 4132/99 at p. 186 of TB.

¹³ Deed of Donation registered as Instrument Number 6007/2005 at p. 190 of TB.

[26] The respondent in his evidence claimed that when the petitioner's father donated the Black Bay Property to her, an agreement existed that the petitioner's father would be paid \$525.00 monthly and this was paid for about seven (7) years while they lived at Black Bay. They lived in the downstairs apartment for about nine (9) years. The petitioner says she knows of no such arrangement and according to her they lived in the downstairs apartment for eleven (11) and not seven (7) years. I will return to the Ti La Ressource and Black Bay Properties in my analysis.

D. Loans related to Black Bay Property

[27] According to the petitioner, she and the respondent took various mortgages on the Black Bay Property during their marriage for the purpose of running their company business and there is an outstanding loan in favour of Republic Bank (EC) Limited ("Republic Bank") formerly Scotiabank registered against the property. The respondent said the loans were taken after discussion with the petitioner and she agreed to and was aware of the loans taken.

[28] According to the petitioner, they agreed that they would rent part of the house at the Black Bay Property at a monthly rental of \$800.00 which would be used to service the loan. Despite this agreement, the respondent continued to collect the rent from the tenant without servicing the loan. As a result, her lawyer wrote to the tenant in November 2019 requesting that the rent be paid directly to the bank. The bank statement exhibited by the respondent shows payments of \$800.00 being made to the Republic Bank account from December 2019 which appears to support the petitioner's evidence.

[29] The respondent acknowledged that there are two apartments being rented each for \$800.00; the rent paid by Ellie was paid to him and the rent paid by Althea was paid to the petitioner personally and has never applied to any loan. The petitioner however said the rent from Althea is paid directly to the bank and applied to the mortgage.

[30] The respondent in cross-examination could not quite remember the last time his rental amount was paid towards the loan and surmised that it may have been about 2018/2019 from the time his daughter left. He also admitted that he stopped paying the rent to the bank account because the petitioner's rental portion was not being paid into the bank account but was being sent to her by Western Union. As indicated the bank account only shows payment of \$800.00 from the end of 2019. I have difficulty believing the respondent's evidence.

[31] The petitioner in further cross-examination admitted that she was last in Saint Lucia in December 2024 and that during that time she had given the tenant Alpheia notice to quit, but she had not informed the respondent. She also disconnected the electricity.

[32] At the date of the application, the loan balance stood at EC\$423,838.78.¹⁴ As at 1st June 2021, the bank statement shows a loan balance of EC\$435,676.47. The land register for this property shows two mortgages totalling EC\$610,000.00 in favour of Scotia Bank and a judicial hypothec in favour of Royal Bank of Canada.

[33] In her affidavit in response filed in July 2021, the petitioner said that the total balance owed to Republic Bank as at 12th May 2021 is \$735,418.88¹⁵ and to 1st National Bank Ltd (formerly RBC) as at 26th May 2021 is \$51,067.06.¹⁶ She exhibited bank and loan enquiry statements in support.

E. Business/ Company

[34] The evidence establishes that the parties jointly operated a hardware business which commenced in 2010 under the name D&G Hardware, initially as a sole proprietorship. On 21st March 2017, the business was incorporated as D&G Hardware Supplies Ltd. under the Companies Act of Saint Lucia,¹⁷ with each party holding equal shares. The business operated two branches: Thomazo,

¹⁴ See Statement dated 12th November 2020, p 194 of TB.

¹⁵ See pp 192-196 of TB.

¹⁶ p 197 of TB.

¹⁷ p 198 of TB.

managed primarily by the petitioner until she left in March 2018 and left Karan Noel one of the workers to manage it, and La Pointe, managed by the respondent which was opened in February 2013.

[35] The parties financed the business through loans secured against their properties, including Black Bay and Ti La Ressource. The Thomazo Branch maintained an account at Republic Bank, while the La Pointe Branch operated an account at Royal Bank of Canada. Both parties signed on the accounts. The petitioner said they were advised by her accountant to open separate bank accounts and prepare separate financial statements for tax purposes. She admitted that her father provided financial assistance to purchase an old Mazda Truck, and also supplied materials and equipment such as a forklift, during the early stages of the business.

[36] The petitioner said she and the respondent operated both branches of the business. According to the petitioner, in 2018, the respondent removed all the supplies and materials from the Thomazo Branch to the La Pointe Branch leaving Thomazo vacant. From March 2018, he used the company's supplies, assets and materials to operate a business called Smith Hardware & Building Supplies Ltd (Smith Hardware). He however continued to attempt to use D&G Hardware's business accounts and as a result the business account at RBC Royal Bank of Canada (RBC) (now 1st National Bank Limited) has been barred due to "card fraud activity".

[37] The respondent in response said he incorporated Smith Hardware on 14th July 2020¹⁸ primarily because D&G required two signatories and because of the debts owed, he could not effectively operate D&G Hardware and he had no choice but to start a new company with him as the sole director and shareholder¹⁹ so that he could earn an income. This income he said, was being used to satisfy the debts owed by D&G Hardware as this was the only way he could try to pay off that business' obligations. In cross-examination though when

¹⁸ See Certificate of Incorporation at p 109 of TB.

¹⁹ See Annual Returns for Smith Hardware at p. of TB.

asked what debts he had paid, the respondent said his own debts from Smith Hardware. He denied that he had formed Smith's Hardware with the intention of leaving the debts to the petitioner. He also said that he had not formed Smith Hardware when the Thomazo Branch closed.

[38] As far as the petitioner is concerned, the respondent chose to use the assets and materials belonging to D&G Hardware to start his own company, he is the sole recipient of the funds from Smith Hardware and there is no evidence that the income from this new company was being used to assist with clearing D&G Hardware's debts.

[39] The petitioner said Royal Bank prevented the respondent from using the business accounts because of fraudulent card activities and that is one of the reasons why he incorporated his own company. He issued cheques to Caribbean Metals, M&C Home Depot, and Innovative Concepts with one signature. She was informed by representatives of the bank that these cheques were being issued without her signature and that the respondent had told the Bank's manager that she was out of island for medical treatment.

[40] In cross-examination, the respondent admitted he tried to get cheques through the account with one signature and says that this was done with the approval of a bank officer which I totally do not believe. He also admitted that when he told the bank that the petitioner was out of island, he had told an untruth because she was still in Saint Lucia at the time.

[41] The respondent denied ever being involved in credit card fraud and explained that a credit card was used at the terminal at La Pointe Branch by an individual for purchases and the Financial Intelligence Authority (FIA) came to the business to investigate and confiscated the Point of Sale and computers but returned all the property about two months later and he was cleared of any wrongdoing.

[42] The petitioner denied this completely and says that in 2019, she was questioned in relation to the fraudulent card activities relating to the account at RBC. The

petitioner said D&G Hardware also owned a Master Card Executive Business Credit Card from Republic Bank and although she was listed as the primary card owner, the card was used by both she and the respondent for the company's transactions.

[43] The respondent said he has never used this credit card and was from the inception against the respondent getting the credit card. He said she was the only one who used it and made purchases using it. The petitioner denied this and stated that she and the respondent used the card to purchase materials for the company, as well as leisure activities for the family and for construction of the foundation of the Ti La Ressource Property. She said they had agreed that she would obtain a credit card for the purpose of assisting in the running of their company. The respondent was the secondary card holder and always had access to the account at Republic Bank.

[44] It is clear from the documentary evidence provided that there were two credit cards, a Mastercard Executive Business Credit Card in the name of D&G Hardware Supplies with the petitioner as the primary card holder. The respondent does not appear as a secondary card holder. The petitioner appeared to be surprised when this was pointed out to her in cross-examination. She however acknowledged that the last date of purchase showed 13th September 2018 and the last advance date was 29th August 2018. The balance on that card is \$33,849.22.²⁰ The second card was in the name of the petitioner and was a personal line of credit with the respondent as a secondary holder. The last purchase on that card was 9th March 2018 and the last advance was 10th March 2017 and the balance was \$196,493.08.²¹

[45] The petitioner said she did not cancel the credit card and admitted that she used it to purchase her ticket when she left the matrimonial home and then the card was blocked. Other than that, she did not use the card while in the United States. The petitioner's evidence suggests that she still had the credit card which

²⁰ See p 202 of TB.

²¹ See p 204 of TB.

showed D&G Hardware as the customer in her possession after she left the matrimonial home.

[46] The respondent claimed that he had no knowledge of the monies spent by the respondent until the accountant for D&G Hardware notified him of it and Republic Bank informed him of the extent of the debt. The petitioner however said that the respondent was always aware of the company's debt and the credit card transactions with Republic Bank.

[47] According to the petitioner, they also opened bank accounts at Royal Bank on behalf of D&G Hardware and received a credit facility from the bank which was used to operate the company. As a result of the respondent's failure to service the loans since she left the matrimonial home, the bank contacted her on two occasions demanding that the default be remedied but because of her strained relationship with the respondent she was not able to engage in discussions with him to settle this outstanding debt. The petitioner also claimed to have been contacted by business creditors as well.

[48] The respondent claimed that he made several attempts to settle the Royal Bank debt but it has not yet been settled. According to the respondent, the mortgage loan attached to Black Bay Property went into default after the petitioner left and he had to deal with all the mortgage loans. This was difficult especially as she left a lot of debt to suppliers for materials that she ordered and owed while she managed the business. He says he paid the following debts:

- (a) \$18,520.00 to Total Construction Supplies for building materials. He exhibits a letter dated 5th May 2021²² which states that as at 31st December 2019, D&G's Hardware in the name of Glenda and Daryl Smith had an outstanding amount which has since been cleared. It does not state when it was cleared but it was after December 2019.
- (b) \$15,000.00 to Great Southern Wood Miami on 30th April 2018. This is supported by a transaction history report.²³

²² See p 67 of TB.

²³ See p 69 of TB.

- (c) \$38,000.00 to Innovative Concepts Ltd. for cement. The documents exhibited do not show payment of this \$38,000.00. However, what they do show is that these debts were incurred between June 2017 and April 2019 and bear the name D&G Hardware & Building Supplies and in some cases are for the attention of the petitioner with dates in 2017 prior to her departure from Saint Lucia and in others for attention of the respondent with dates of 2019. The invoices total about \$38,682.65²⁴ which is about the amount the respondent said was paid but provides no evidence of the payments.
- (d) \$6,300.00.00 refunded to Marilyn for moneys paid to the respondent at Thomazo Branch and not delivered. He exhibits two receipts in the name of Marilyn dated 1st September 2016 and 1st October 2015 in the amounts of \$4,300.00 and \$2,000.00 respectively.²⁵ However, there is only evidence of a refund of \$2,000.00 to Marilyn as it appears that materials were delivered to Marilyn in January 2021 to the tune of \$4,297.15.
- (e) An existing sum to Renwick & Co. in the sum of \$80,321.20.²⁶ This invoice dated 31st May 2018 shows D&G Hardware Thomazo. There is no evidence of payment of this amount and in fact the respondent confirmed in cross-examination that he has not paid anything towards this debt.

[49] In response, the petitioner reiterated that D&G Hardware was jointly owned and operated. She said the respondent used the company's funds for his personal use including funding activities for his girlfriend (now his wife) and traveling. When questioned about this in cross-examination, he denied buying a vehicle for his girlfriend but in relation to traveling, he said that he worked hard; life was short and he had to enjoy himself. The petitioner also spoke of the respondent selling galvanise from the structure at La Pointe, Dennery, the main door and lumbar racks as well based on reports she received from third persons.

[50] The respondent made a point of saying that he and the petitioner operated the businesses separately from the separate accounts and he exhibits unsigned financial statements for the year ending 2016 for the Thomazo Branch and La

²⁴ See invoices at pp 70-76 of TB.

²⁵ See p 77 of TB.

²⁶ See p 79 of TB.

Pointe Branch.²⁷ The petitioner admitted that there were separate accounts and financial statements for the two branches but denied that the businesses were operated separately.

- [51] To the petitioner's claims that she has been contacted by several creditors about the debts, the respondent said they were both directors of D&G Hardware and as such were both contacted to settle the company's debts. In the case of the credit card where the petitioner was the primary applicant, she would have been contacted. He denied that he had not responded to the letters sent by creditors and said he has tried to make offers to settle but he first had to make the income to be able to settle the debts. He emphasised that at no time has he shirked away from his responsibilities as a director. He disagreed with the petitioner that the company's debts remain mostly unsettled.
- [52] On the contrary, the respondent said the petitioner left all the debts behind and did nothing to assist; she left Saint Lucia, filed for divorce, got married shortly thereafter and is living her comfortable life in St. Croix while he was left to face the creditors and do the best he could. The petitioner said she left because of the respondent's abuse which she had suffered for so many years. The respondent vehemently denied that he was abusive.
- [53] The respondent in his response to the injunction application said he had no choice but to leave Saint Lucia to obtain employment in order to take care of himself and his many responsibilities. During and after the trial he had to continue paying the debts from the businesses, and whilst he started the new company, the old debts still had to be paid. He said business was slow and he could hardly make ends meet because the debts from 2017 were accumulating and the truck which he heavily relied on for the business was down and not operational. He had no choice but to liquidate. As far as the petitioner is concerned, the respondent chose to leave Saint Lucia and was not compelled to do so and it was his mismanagement which led to D&G Hardware's bankruptcy.

²⁷ See p 80-108 of TB.

[54] Sometime in 2023, the respondent said the landlord of the premises he rented for the business at La Pointe informed him that he wished to sell the property and offered him first option to purchase but he was unable to raise the funds given the many debts which had been incurred by D&G Hardware, the petitioner and him. He was given notice to vacate the premises and had no place to store the equipment. He was left with no choice but to sell some of the equipment as scrap metal and the vehicles so he could pay the workers their redundancy payments.

Analysis and Conclusion

[55] I find that the petitioner and the respondent commenced D&G Hardware in 2010 with the Thomazo Branch. At that time, it was a sole proprietorship, registered as a business name according to the financial statements and therefore the petitioner and respondent were personally responsible for the debts incurred by the business. In cross-examination, the respondent said that they were operating the business without it being registered. I doubt that this was the case, but the parties did not speak to the status of the business at its commencement in 2010. In 2013, the business expanded and opened the La Pointe Branch. Though the petitioner managed Thomazo and the respondent La Pointe there was one business. As far as I can glean from the evidence, most of the debt of the business was incurred prior to the incorporation of the company in March 2017. The petitioner and respondent cannot hide behind the separate legal personality of the company incorporated in 2017 as in most cases the debts predated the company. There is no evidence that the company formed in 2017 acquired the prior debts of the business and therefore the petitioner and respondent continue to remain liable to service the debts of the business.

[53] The petitioner and the respondent used the business funds as their source of income for whatever needs they had. It is clear that the business was jointly owned by them. When the company was formed in 2017, it had separate legal personality so any debts it incurred were debts of the company and not theirs personally. The parties as directors are however responsible for ensuring that the debts of the business are paid.

F. Vehicles

(a) Isuzu Dump Truck -10-wheeler

- [54] This vehicle with registration number TE 3617, was mentioned but very little details were given. The petitioner said they mortgaged the Black Bay Property to purchase this vehicle, and she is entitled to a half share. In her 2024 application, the petitioner claimed that this vehicle was now in the possession of a man who makes blocks.
- [55] In response to the 2024 application, the respondent claimed that this vehicle overturned in the Barre de L'Isle and he had to use funds from the business to repair the truck, but the damage was too severe, and he could not repair it. He sold that vehicle for \$15,000.00. He collected the sum of \$8,000.00 and a balance of \$7,000.00 is owed on this vehicle. According to the respondent, he received approximately \$60,000.00 from the sale of this vehicle along with the Mazda pick-up (addressed later) and from that money he paid his brother \$5,000.00 and his uncle \$3,500.00 for working on the Ti La Ressource Property. He also said he gave his daughter money. In cross-examination, the respondent said this vehicle was bought in 2006. In further cross-examination, he said that he gave this vehicle away in January or February 2024 because it could not be driven and he had to vacate the premises which housed the business which would have been costly, and he did not have the money.
- [56] When the truck overturned, he had no choice but to pay a man to haul materials for him. He had to pay about \$10,000.00 to Vincent Cadette to remove and store both vehicles.
- [57] With all that the respondent says in relation to the sale and money he received and paid, he only produced a receipt in the sum of \$12,800.00 dated 23rd November 2023²⁸ which he says was paid for removal of the truck when it went down the precipice on the Barre de L'Isle. He said he is not able to produce any other documentary evidence. The respondent insisted that this receipt was in relation to removal of two trucks from the Barre de L'Isle which Counsel for the

²⁸ Migration Bundle at p 322.

petitioner says is untrue as it was only one truck which overturned. However, in his 2021 affidavit in response, the respondent had spoken to removal and storage of two vehicles.

[58] I accept that this vehicle was bought with business funds prior to the company being formed and was acquired during the marriage. I therefore find that it is a community asset with each party being entitled to a half share of the value of the vehicle or its sale price.

(b) Isuzu 4-ton dump truck

[59] According to the petitioner, this vehicle's registration number is now "T5159". In 2019, the Isuzu 4-ton dump truck was involved in an accident, and the petitioner made a claim to the insurer. She said her lawyer sent a letter dated 4th April 2019 requesting that a share of the proceeds of the claim be paid to her, but she had not received any payment. She was informed that the respondent received \$17,000.00 from the insurance company and he has repaired the vehicle and uses it. The insurance policy which the petitioner exhibits is for the period 3rd August 2013 to 2nd August 2014 and is in the respondent's name alone.

[60] The respondent said this vehicle was purchased using funds from D&G Hardware. At the time of his response to the application for ancillary relief, the respondent said the vehicle was still in his possession, the cab was badly damaged and was considered a write off. The \$17,000.00 he received from the insurance was used to repair the vehicle and it is now back on the road. He said it was used for D&G Hardware and part of the income derived from its use, was used to pay off the debts. The petitioner said they jointly took a loan to purchase this vehicle.

[61] In her subsequent application filed in 2024, the petitioner claimed that this vehicle was seen in Dennerly where vehicles are sold for scraps. She said she believed that the respondent changed the registration numbers of the vehicles before he sold them perhaps to make it more difficult to trace them. Her searches revealed that most of the vehicles which they purchased together with company funds were now registered in the respondent's name only and while ownership

of the vehicles on the record at the Transport Board has not changed, the vehicles appear to have changed hands.

[62] The petitioner's suggestions were confirmed by the respondent in his response to her application and he indicated that he got \$30,000.00 for this vehicle. He said he cleared off other debts although he did not specify which ones, and he also provided no receipts. He also said he used the balance of the funds to go to the United States as he had no money at all.

[63] According to the documentary evidence produced, this vehicle was acquired in 2015 prior to the incorporation of the company, and I find that it is a community asset with each party being entitled to a half share of the value of the vehicle or its sale price.

(c) Forklift from father

[64] The petitioner claimed to be the owner of this forklift which was a gift from her father during his lifetime. She said it was purchased by her father for \$14,000.00. Since she left the matrimonial home, the respondent prevented her from gaining access to the forklift which she claims is her separate property.

[65] The respondent said this forklift was purchased using funds of D&G Hardware and used to do work for D&G Hardware and not for his personal use. He denied that the forklift was a gift from the petitioner's father. According to him, the father originally gave them a loan to purchase the forklift which they paid back to him. He exhibited a valuation dated 14th May 2021 in support showing this vehicle's value as \$8,000.00.²⁹

[66] The petitioner's fears that this forklift had been sold by the respondent in or around November 2023 before the respondent migrated to the United States were confirmed by the respondent in his response to the petitioner's 2024 application. The respondent said that this forklift had no engine as it had been damaged. He claimed that the forklift was not working though he spent money

²⁹ See p 113 of TB.

trying to repair it. He said he sold the forklift for \$15,000.00 (in further cross-examination, he said \$20,000.00) which he used to pay monies owed to LUCELEC and for blocks he owed. This is the same forklift he had said in his earlier evidence was valued at \$8,000.00. No evidence of these payments was provided even if that information could have been accessed either online or from the LUCELEC office. This vehicle was sold about two weeks before the respondent left, in about October or November 2023.

- [67] The respondent claimed that it had been two to three years that he had been operating at a loss, and without the truck it was difficult. He did not even get a salary. The forklift money was used to pay small debts for the business and not for him personally. He paid Lucky Construction for hauling materials from Vieux Fort to Dennerly in the sum of \$8,000.00 to keep the business afloat. No receipts were provided by the respondent to support any of these assertions.

Analysis and Conclusion

- [68] Given the evidence of the parties, I believe the petitioner's father gave them this forklift. I do not believe that the forklift was bought with D&G Hardware funds. It appears to me that like the furniture and appliances, the petitioner's father gave the forklift to the parties to assist in their joint business given that they were starting a new business. I therefore find that the petitioner and respondent are equally entitled to the value or the proceeds of sale of this vehicle

(d) Jointly owned backhoe (Initially referenced by the petitioner as forklift)

- [69] According to the petitioner in her application for ancillary relief, the parties purchased a forklift in 2017 for \$5,000.00. The respondent has since sold it, and she received nothing from the proceeds of sale. In her 2024 application, the petitioner said that her reference to this jointly owned forklift should have been reference to the backhoe.

- [69] The respondent in his initial response said this 'forklift' was inoperable with a current salvage value of \$1,000.00³⁰ and if sold the proceeds would be used to

³⁰ See Valuation dated 14th May 2021 at p. 114 of TB.

pay the company's debts. At the time he had not sold the 'forklift'. The petitioner having now clarified that this reference to this jointly owned forklift was a reference to a backhoe, the respondent referred to the backhoe which was a 1989 model which he had purchased for \$13,000.00, not with funds from the business. In cross-examination, for the first time the respondent said that his uncle had purchased the backhoe for him, and he paid him back but interestingly, he says he paid him from the business. The business ultimately paid. He said it was an old machine, and he sold it for \$14,000.00. With that money he paid Daria and Cashew \$7,000.00 each as gratuity. These were workers who were working with the petitioner at the Thomazo Branch when she closed the branch and whom he took to work with him. He claimed that he gave Cashew expensive tools which he had purchased in the United States as part of his gratuity pay since he had been with D&G Hardware the longest. Again, the respondent said the evidence of the payment to the workers was in the filing cabinets at the business premises.

[70] Given the evidence, I find that the backhoe is a community asset with each party being entitled to a half share of the value of the vehicle or its sale price.

(e) 2007 Honda CRV

[71] According to the petitioner, she and the respondent were joint owners of a 2007 Honda CRV SUV which was purchased on 13th September 2012, registration number 53. They took a loan to purchase the vehicle and its value as at 14th September 2012 was \$59,000.00. This was her primary means of transportation throughout the marriage. In June 2018, she travelled to the United States for vacation and left the vehicle at her sister-in-law for safe keeping and the respondent had the police take possession of the vehicle from her sister-in-law. The Honda CRV according to the petitioner was sold without her consent and the registration number '53' was transferred to another vehicle without her consent. She says she is entitled to half of the proceeds of sale.

[72] The respondent said the Honda CRV was left with the petitioner's current husband's sister whose husband was driving the vehicle. The husband was not an authorised driver according to the insurance policy and he sought the assistance of the police since the vehicle was being driven unlawfully. The vehicle was placed in his possession, and he included his daughter's name on the insurance policy and allowed her to drive the vehicle until she left Saint Lucia. The respondent said he sold the Honda CRV for \$24,000.00, the proceeds of which were used to pay debts at Innovative Concepts and Essential Hardware for D&G Hardware La Pointe Branch.

[73] Once again, the respondent says he used the proceeds of sale of this vehicle to pay off debts, but the documents produced from Innovative Concepts show an outstanding balance in the region of \$38,000.00 and there is no evidence of payment. The respondent produced no evidence of this Essential Hardware debt and of its payment.

[74] The respondent agreed that this vehicle belonged to him and the petitioner. I am of the view given the evidence and how the parties operated, that this vehicle is also a community asset with each party being entitled to a half share of the value of the vehicle or its sale price.

(f) Mazda Pick Up

[75] The petitioner also claimed that she and the respondent are joint owners of a Mazda Pick Up registration number 5159 which she said was purchased with funds from D&G Hardware. This vehicle now carries registration number 53 which was originally on the Honda CRV.

[76] The petitioner in her later application claimed that when this vehicle was purchased it was registered in both their names and assigned registration number 5159. She claimed that the vehicle was now only registered in the respondent's name. She relies on what she was told by friends and family in Saint Lucia and says that the vehicle was spotted with a different registration number to wit: TU1242 a change she did not consent to.

- [77] The respondent in his response claimed that this vehicle was purchased by him and the payoff to the bank was \$8,958.17. The bank seized the vehicle, and he borrowed money from his aunt and another gentleman. He claimed he sold the vehicle for \$50,000.00 and paid them off after. The valuation dated 28th April 2024 which he exhibits shows a value of \$71,000.00. In cross-examination, the respondent said that this vehicle was his personally and that he had taken a loan from 1st National Bank to purchase it in about February 2017. He was asked whether he was paying the loan from the business funds and he responded, 'obviously'.
- [78] The petitioner pointed to the vehicle valuation produced by the respondent which showed the two of them as owners of the vehicle. She claimed that the Mazda pickup was sold but she never signed any document permitting its sale or transfer of ownership; her signature was affixed to the transfer documents. She exhibits documents obtained via a search at the Department of Transport including the Application for Transfer of Ownership, Confirmation of Sale and Certificate of vehicle registration sold to Earl's Automotive Centre Limited which all show what purports to be her signature. The application for transfer shows the date of 13th March 2024 but at that date she and the respondent had absolutely no interaction, discussion or agreement regarding the sale of this vehicle.

Analysis and Conclusion

- [79] During cross-examination, it became clear how the respondent was able to sell this vehicle without the petitioner being present in Saint Lucia. He indicated that he had found some forms which the petitioner had signed in relation to a previous transaction that were not used and he used this to effect the change of ownership and to sell the vehicle. That behaviour certainly cannot be condoned as the respondent misrepresented that the petitioner had signed the documents and therefore was aware of the transaction when she was not. Counsel for the petitioner in his submissions asks for the sale of this vehicle to be declared void but this is not relief which can be granted in this matter given that there may be third party rights to be considered.

[80] I find this vehicle like all the others to be an asset of the community and that each party is entitled to a half share of the value of the vehicle or its sale price. It was acquired during the course of the marriage with funds which belonged to the parties' joint business. It was in their joint names prior to the change of ownership. I therefore reject the respondent's claim that the petitioner has no share in this vehicle.

Consideration of the section 25 Factors

Analysis and Conclusion

[81] This is an extremely difficult matter to navigate given the fact that D&G Hardware was the major source of the income of the parties. As in many of these family-owned businesses, the lines become blurred sometimes and it is not always easy to see clearly how monies have been allocated or spent. In addition, the sparsity of documentary evidence especially on the part of the respondent has made it extremely difficult to assess his evidence and this must weigh against him. The petitioner on the other hand is eager to claim her share of the assets but has not addressed the debts which the parties incurred together. It is impossible to conclude this matter and have no regard to the debts of the business.

[82] At the time of the application for ancillary relief, the petitioner was forty-two (42) years and the respondent was forty-five (45) years. They are now forty-six and forty-nine years old respectively. The marriage between the parties spanned almost eighteen years at the time the petition for divorce was filed which is a significant length of time. The petitioner's evidence was that she was forced to leave because of the respondent's abusive behaviour which the respondent denies. He suggests that he was abused by the petitioner emotionally and verbally and said if she hit him, he would hit her back. He suggested that she was hitting him first and he had to defend himself but interestingly he never said this when he responded to this allegation in his first affidavit and only chose to flatly deny it rather than qualify or explain. It appears to me that a major issue in the parties' relationship was the respondent's unfaithfulness which he openly admitted in cross examination started as far back as 2010/2011. I do not believe

the respondent that he was not abusive to the petitioner given his demeanour when he gave this evidence in cross-examination.

[83] The petitioner left Saint Lucia on 4th May 2019 and re-married in 2019. The respondent moved to the United States in November 2023 and re-married in 2020. The parties have therefore both moved on. I therefore think that the ultimate aim ought to be to carve out a solution which will inure to the benefit of each party not necessarily just financially but emotionally as well. It makes no sense for the parties to continue to be encumbered with their past.

[84] It is clear from the evidence of the parties that they both relied on the business for their personal income to maintain their household and their lives. They both worked in the business. They own two pieces of property which are very heavily encumbered by loans taken for D&G Hardware including purchase of some equipment and as well to fund vehicles for their personal use. The petitioner admitted in cross-examination that since she left Saint Lucia she has not been employed. The respondent has packed up and left Saint Lucia. Neither D&G Hardware nor Smith Hardware seem to be operating and as far as the evidence reveals D&G Hardware is heavily indebted to various creditors including Republic Bank formerly Scotiabank. There is also a judicial hypothec registered against both of the properties in favour of 1st National Bank formerly Royal Bank. The petitioner indicated that she does not work currently and has not worked since she left Saint Lucia. The respondent provided no evidence of his source/s of income after he left Saint Lucia in November 2023.

[85] The evidence does not assist the Court to adequately assess the standard of living of the parties. Suffice it to say that the parties seem to have leaned heavily on the income from the business and lived a comfortable life. There is no evidence that any of the parties suffers from any physical or mental disability for which they require any medical or specific assistance.

[86] The respondent says his attorney explained to him that he needed to have obtained permission to sell the items but according to him he was desperate and did not want to leave Saint Lucia without settling most of the debts owed

and get himself out of what seemed like a bottomless pit. He claims that the sale of the items was not malicious and he is truly remorseful, but the debts were driving him insane. He was tired of calls from creditors and was at his wits end.

[87] In cross-examination, the petitioner admitted that when she left, she did not leave any signed cheques because she was afraid to go to the business, nor did she prepare a list of creditors or have one prepared. She admitted that the respondent had no access to the business bank account as it required both their signatures. She left a young man in charge of the Thomazo Branch. She said she told the creditors that everything was in the hands of her lawyer. This is the business that the petitioner says she operated with the respondent jointly, yet she left knowing that he would not be able to access the bank account and would most likely not be able to pay debts if the business could not function. The respondent made the point that both he and the petitioner were responsible for the debts, and the petitioner ran away from them. According to the respondent, when the petitioner left the Thomazo Branch she left Kayan in charge and eventually the branch had to be closed because it was partially empty. He says he absorbed the other workers into Smith Hardware.

[88] The respondent admitted that he did not produce any receipts for debts he paid or receipts issued in relation to the sale of the various vehicles. At one point in the cross-examination, he said he gave them to his lawyer and then he said the receipts were all in a filing cabinet at the La Pointe Branch, at the building he had to vacate. It seems to me that understanding the seriousness of the matter, the respondent would have made a greater effort to retrieve these important documents. Counsel for the petitioner suggested that his wife could have assisted as she was in Saint Lucia, but the respondent said he did not involve her in the matter. He did not make enough of an effort in my view. He could have contacted the places he said he paid to get a copy of the receipts, and he could have asked his wife to assist instead of simply saying he made all of these payments in relation to debts without any proof. He casually said he had the receipt for the sale of the Mazda Pick up on his phone, yet he made no real effort get it to his lawyer. In fact, when he was asked why he had not passed on the information he had recently received, he said he was busy and did not get a

chance to send it to his lawyer. This does not strike me as someone who was eager to ensure that the Court had all the information necessary to enable it to assess his own evidence.

[89] The respondent's evidence was very fluid and evolved as the matter continued. For example, for the first time in cross-examination the respondent spoke to the petitioner's father lending him and the petitioner \$60,000.00. He said they paid him an initial \$28,000.00 and then took a loan to pay the balance, the car and rent. The respondent accepted that he had said nothing about this in his affidavit.

[90] The petitioner acknowledged in further cross-examination that when she filed the injunction application in 2024 she was aware (a) that nothing could happen in relation to the Ti La Ressource and Black Bay Properties and could not be dealt with without her signature on a Deed of Sale or Transfer; (b) of the rental arrangement in relation to the Black Bay Property and this had been addressed in the 2021 application; (c) from the trial that the Mazda Pick-up had been sold and it had been addressed in the respondent's affidavit in response to the initial application and of the change in registration; (d) that the forklift had also been addressed in the respondent's 2021 affidavit; (e) that the furniture, appliances, equipment, parts and structural materials were also addressed in the 2021 affidavit. She also admitted that since the trial in 2021, she never made any efforts to find out what happened to the furniture and appliances, nor did she ask her lawyer to write to the respondent to obtain information about the equipment at Thomazo.

[91] The basis for the petitioner's application in 2024 contained matters which had been present at the time of the trial and were not new matters, but they were presented to the Court as if they had occurred since the trial. While some of the matters were post-trial, the majority were not.

[92] The respondent admitted that he knew that all of the assets he had dealt with were part of the Court case, but he did not know that the Court had to decide who they belonged to because as far as he was concerned, they all belonged

to the company. He did not consider the implications of disposing of the items as he was the one paying the rent for the premises and he had to get the items out.

[93] Even if that were the case, the respondent chose to handle matters on his own and did not contact his lawyer for advice. He denied that it was because the judgment had not yet been delivered and he thought he could just do anything.

[94] I note that the petitioner has asked for the transfer of the respondent's share of the Black Bay Property to her, but she has not addressed the mammoth debt which is attached to this property which was incurred whilst they were running their joint business. The debts attached to the properties must be addressed. The parties cannot expect to benefit from the two properties and simply walk away when there are civil suits filed in relation to the debts with a judicial hypothec in favour of 1st National Bank attaching to both of them.

[95] The respondent from his evidence collected \$91,000.00 from the sale of the various vehicles identified above all of which I have determined were jointly owned by the parties. He has said he used this money to pay several debts but failed to produce any supporting evidence to confirm this. He had a duty to account for the proceeds of sale, and he has not except for the payment of \$18,520.00 to Total Construction and \$2,000.00 as a refund to Marilyn for goods which she paid for and did not receive. Taking these two amounts into account, that leaves the sum of \$70,480.00 unaccounted for. The respondent gave evidence that he used some of the money for his personal use; to pay his relatives for work they had done for him on the house and to travel overseas. Therefore, the respondent must pay this amount. Given that there are debts incurred prior to 2017 which are still outstanding, the Court is of the view that fairness demands that no one party benefits more than the other.

[96] The Court at the further hearing held in 2025 encouraged the parties to attend a mediation session with another judicial officer and whilst the respondent was amenable, the petitioner was not receptive to this idea. In the circumstances, I will order that the parties bear their own legal costs.

Order

[97] Based on the foregoing discussion, the Court considers that the appropriate orders in the circumstances of this case are as follows:

1. Subject to the approval and agreement of the relevant financial institutions, 1st National Bank St. Lucia Limited and Republic Bank (EC) Limited, the following two properties be sold to wit:
 - (a) Block and Parcel Number 1614B 372 (Ti La Ressource Property) and
 - (b) Block and Parcel Number 1019B 244 (Black Bay Property).
2. The proceeds of any sale of the properties identified at paragraph 1 are to be applied to the debts owed to the two financial institutions in the order of their priority.
3. Any surplus remaining after the payment of the debts owed to 1st National Bank St. Lucia Limited and Republic Bank (EC) Limited shall be divided equally between the petitioner and the respondent.
4. In the meantime and until the property sold, any monies collected from the rental of the Black Bay Property by any of the parties is to be paid to and applied towards the amount owed to the loan in favour of Republic Bank (EC) Limited.
5. The respondent shall pay the sum of \$70,480.00 towards the Renwick & Co. debt which is outstanding.
6. Each party shall bear his/her own costs.

**Kimberly Cenac-Phulgence
High Court Judge**



By the Court

Registrar