

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO.: SLUHMT2016/0098

BETWEEN:

MARY ROSE HARTE

Petitioner/Applicant

and

EARL MICHEL HARTE

Respondent

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mrs. Esther Green-Ernest of Counsel for the Petitioner/Applicant

Mrs. Kimberley Roheman of Counsel for the Respondent

2020: December 20;

2021: March 1, 29; (written submissions)

2022: July 5.

JUDGMENT

- [1] **CENAC-PHULGENCE J:** The petitioner/applicant, Mrs. Mary Rose Harte nee Joseph now called Mary Rose Fiona St. Aimee¹ (“Ms. St. Aimee”) and the respondent, Mr. Earl Michael Harte (“Mr. Harte”) were married on 30th October 1993. After almost twenty-three years of marriage Ms. St. Aimee filed a petition for divorce on 6th June 2016 alleging that the marriage had broken down irretrievably as a result of Mr. Harte’s unreasonable behaviour and that she could no longer be expected to live with him. Mr. Harte did not respond to the petition and the matter proceeded uncontested although in his evidence in these proceedings, he says he did not challenge the allegations levelled at him on the advice of his attorney.

¹ See paragraph 1 of affidavit filed by petitioner on 12th March 2019 wherein she indicates that she legally changed her name after the divorce.

- [2] On 7th May 2018, a decree nisi was granted and an order made that ancillary relief matters were adjourned to Chambers upon application by either party. The decree nisi was made absolute on 3rd July 2018. On 21st December 2018, Ms. St. Aimee filed an application for ancillary relief supported by affidavit pursuant to sections 22 and 24 of the **Divorce Act**² (“the Act”) which is the subject of this decision.
- [3] By that application Ms. Aimee seeks the following relief:
- (a) Mr. Harte pay \$4,000.00 monthly for her maintenance and upkeep;
 - (b) Mr. Harte transfer to her all his rights, title and interest in and to the matrimonial home (“the matrimonial home”) situate on property belonging to Ms. Aimee located at Corinth, Gros Islet and registered as Block and Parcel 1252B 345 (the Corinth property);
 - (c) Mr. Harte vacate the matrimonial home upon the order of the Court;
- Further or in the alternative, that Mr. Harte
- (a) pay such periodical payments to her for such term as the court may specify;
 - (b) secures to her such periodical payment for such term as the court may specify;
 - (c) pay such lump sum to her as the court may deem just;
 - (d) pay one half of the value of his shares in the company Tropical Cooling Limited to her;
- [4] Mr. Harte in his response to the application for ancillary relief seeks the following relief:
- (1) Immovable Property
- (i) that the matrimonial property be declared community property and be sold and the proceeds be distributed equally amongst the parties after payment of all expenses/costs applicable to the sale;
 - (ii) in the alternative, that the matrimonial property is deemed to be jointly owned as to a 50% each;

² Cap. 4:03 of the Revised Laws of Saint Lucia.

(iii) Ms. St. Aimee pay Mr. Harte his half share in the matrimonial property 1252B 345 and at the said time Ms. St. Aimee shall be deemed the sole owner of the property;

(iv) Mr. Harte shall be entitled to remain in the matrimonial property until such time as it is sold or the Respondent is paid his half share of the Property by Ms. St. Aimee.

(2) Movable Property

(i) that the movables (furnishings in the matrimonial home which are jointly owned;) on sale of the property under 1 (i) be shared equally between the parties;

(ii) on payment to Mr. Harte of his half share of the matrimonial property that the furnishings be valued and Mr. Harte be paid his half share;

(iii) that a valuation of the vehicle be jointly commissioned and Ms. St. Aimee pay Mr. Harte a half share of the vehicle;

3. That Ms. St. Aimee pay Mr. Harte maintenance as is fair and reasonable.

4. Further or in the alternative,

(i) A settlement of property order (section 24 of the Divorce Act)

(ii) Financial Provision (section 22 of the Divorce Act)

(a) Ms. St. Aimee pay Mr. Harte such periodical payments for such term as the Court may specify

(b) Ms. St. Aimee secure to Mr. Harte such periodical payment for such term as the Court may specify

(c) Ms. St. Aimee shall pay to Mr. Harte such lump sum as the Court may deem just

(d) That the parties bear their own costs of the proceedings.

[5] At the date of the filing of the application for ancillary relief in December 2018, Ms. St. Aimee was 53 years having been born on 7th January 1965 and Mr. Harte 61 years having been born on 17th October 1957.

The Applicable Law

- [6] Ancillary relief is determined by reference being had to both the **Civil Code**³ (“the Code”) and the **Divorce Act** and the procedure by reference to the **Divorce Rules 1976**. It involves an assessment of the property of the petitioner and respondent to determine the nature of the property and its ownership. In Saint Lucia, the starting point in determining ownership is the Code.⁴ The Code sets up what is deemed to be separate property and property of the community (community property) in a marriage.
- [7] Article 1190 of the Code provides that community of property is established by the mere fact of the parties’ marriage in the absence of any stipulations to the contrary.
- [8] By virtue of article 1228 of the Code, the community is dissolved by divorce, judicial separation, separation of property (which applies not to a single item of property but to the property of the community as a whole) and the absence (in the context of articles 75 and 76) of one of the spouses.
- [9] As stated by Michel JA in **Jonathan David Lesfloris v Glenda Dale Lesfloris**⁵ at paragraph 38:
- “...The property of married persons is either community property, in which each holds a moiety (which is a right exactly equal to the right of the other) or is the separate property of one of the parties....”
- [10] Article 1132 of the Code details what is considered as separate property. It comprises:
- “(a) the property movable and immovable, which the spouses possess on the day when the marriage is solemnized;
- (b) the income and earnings of either spouse, investments in the name of one spouse, and insurance policies taken out on the life and in the name of one spouse;

³ Cap. 4.01 of the Revised Laws of Saint Lucia.

⁴ Cap.4.03 of the Revised Laws of Saint Lucia.

⁵ SLUHCVP2015/0018 delivered 13th December 2019, unreported.

- (c) property, movable and immovable, acquired by succession, or by donation or legacy made to either spouse particularly;
- (d) compensation payable to either spouse for damages resulting from delicts and quasi-delicts, and the property purchased with all funds thus derived; and
- (e) fruits, revenues, and interest, of whatever nature they be, derived from separate property, the proceeds of separate property, and property acquired with separate funds or in exchange for separate property.”

[11] 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**, ‘the property of parties to a marriage is either community property or separate property and distributes itself fifty-fifty in the case of community property and one hundred – zero in the case of separate property.’

[12] Ms. St. Aimee’s application for ancillary relief is made pursuant to sections 22 and 24 of the Act. Section 22 allows for the Court to make the following orders on granting a decree of divorce or nullity of marriage or at any time thereafter (whether, before or after the decree is made absolute):

- “(a) an order that either party to the marriage shall make to the other such periodical payments and for such term as may be specified in the order;
- (b) an order that either party to the marriage shall secure to the other, to the satisfaction of the Court, such periodical payments and for such term as may be so specified;
- (c) an order that either party to the marriage shall pay to the other such lump sum as may be so specified.”

[13] Section 24 of the Act allows the Court similarly on granting a decree of divorce or nullity of marriage or at any time thereafter (whether, before or after the decree is made 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.

[14] Section 25 of the Act sets out the factors which the Court is duty bound to 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.

[15] In looking at these factors, the Court must ultimately exercise its powers so as to place the parties so far as is practicable and just to do so, taking into consideration their conduct, 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.

[16] In the case of **Lesfloris**, the Court of Appeal was clear that a transfer of property order under section 24 could be made with respect to the separate property of either spouse or in respect of community property. It is therefore important to assess the property of the parties to the marriage.

- [17] The property in question is as follows:
- (a) the land situate at Corinth and registered at the Land Registry as Block and Parcel No. 1252B Parcel 345. That property is registered in the sole name of Ms. St. Aimee ("the Corinth property").
 - (b) the matrimonial home
 - (c) vehicle registration no. PA9590 ("PA9590")
 - (e) shares in Tropical Cooling Limited in the name of Mr. Harte
 - (f) furnishings in the matrimonial home

Analysis of Property

The Corinth property

- [18] This piece of land is situate at Corinth in the quarter of Gros Islet and is registered at the Land Registry as Block and Parcel No. 1252B Parcel 345. It is registered in the sole name of Ms. St. Aimee. The land was purchased on 17th February 1988⁶ by Ms. St. Aimee and refers to her as a single woman. Ms. St. Aimee says that the Corinth property is very significant to her as she purchased it when she was twenty-two years old and still single.
- [19] Mr. Harte admits that when the Corinth property was purchased in 1988, they were not married but says that they had lived together for about four to five years prior in rented accommodation. In his evidence he said that after Ms. St. Aimee's father put her out, they moved in together along with Ms. St. Aimee's mother and brother. He says they decided to buy the Corinth property and it was bought in Ms. St. Aimee's name but he contributed to the payments. He says at that time they already had plans to get married.
- [20] Ms. St. Aimee says she did not move in with Mr. Harte when she left her father's house. She says Mr. Harte only moved in with her, her mother and brother when she got pregnant with their son. Their son was born in 1988 although in cross-examination, Ms. Aimee gave the year as 1980 and said she could not remember but he was now thirty-two years old.

⁶ See Deed of Sale- Instrument Number 1093/88, p 70 of Trial Bundle (TB) 3.

- [21] Ms. St. Aimee says the decision to purchase the Corinth property was not a joint decision as Mr. Harte says. This is her account of the purchase of the Corinth property. She says she got information about the lot independent of Mr. Harte and she had discussions with the vendor's agent. She says she was pregnant at the time and was contemplating her future and how she would provide for her child. She says when she told Mr. Harte about the land, he said he did not want land at Corinth but wanted land in Bonne Terre.
- [22] She says she pursued the purchase of the Corinth property and went to Scotia Bank for funding. She was self-employed at the time and made copious notes of every sale she made from her knitting, crocheting and sewing and it was this she used as proof of her earnings. She says she paid the loan diligently. She says Mr. Harte did not join her in the purchase nor was he a guarantor and there were no plans to get married at the time. They got married five years later.
- [23] Ms. St. Aimee's evidence as regards pay off of the loan which she took for purchase of the Corinth is that Mr. Harte paid \$10,000.00 and she paid \$943.19 towards the total payoff balance which was \$10,943.19. She says she purchased the property for \$18,000.00. Mr. Harte's evidence is that the loan taken to purchase the Corinth property was paid from both his and Ms. St. Aimee's joint income. He says when the loan to build their home was being taken, the bank asked that the Corinth property loan be cleared and he paid \$11,000.00 and not \$10,000.00 to pay off the loan. Ms. St. Aimee in her affidavit of 12th March 2019 says that the pay off on the property loan was \$10,000.00 as opposed to \$10,943.19 she had said in her earlier affidavit. Of significance is that Ms. St. Aimee says Mr. Harte agreed to pay off the Corinth property loan because she had financed their wedding to the tune of \$20,000.00.
- [24] Mr. Harte in his evidence says that when they bought the Corinth property, he was trying to get land in Bonne Terre. Ms. St. Aimee proceeded to purchase the Corinth property based on their decision to purchase land and he had no choice but to go along with the purchase when she finalised it and so he assisted. He says he paid the majority of the purchase price of the Corinth property.

- [25] It is clear from the evidence that the couple lived together from 1988 until their marriage in 1993. It is also clear that the Corinth property was bought prior to the marriage and in the sole name of Ms. St. Aimee. Based on article 1132 of the Civil Code, the Corinth property is the separate property of Ms. St. Aimee having been purchased in her sole name prior to the marriage.
- [26] Mr. Harte acknowledges that the Corinth property is in Ms. St. Aimee's name solely and in his response to the application for ancillary relief seeks a settlement of property order pursuant to section 24 of the Act.

The matrimonial home

- [27] The matrimonial home is situate on the Corinth property and was constructed during the course of the marriage and from the undisputed evidence is unencumbered. Ms. St. Aimee resides in the matrimonial home. She alleges that Mr. Harte maintains a presence at the house but does not appear to sleep there. Mr. Harte says he continues to live in the matrimonial home and that this is his only residence. However, by the time the matter got to trial he was no longer residing in the matrimonial home.
- [28] In relation to the matrimonial home, the evidence reveals that the couple took several loans during the period 2003 to 2006. Ms. St. Aimee was at pains to say that the borrowing during that period was to finance construction of the matrimonial home but not including the sewing room and the gym which she says she borrowed separately to construct through a grant. In 2003, the couple borrowed \$128,000.00 to build their home from FirstCaribbean International Finance Corporation (Leeward and Windward) Limited ("FirstCaribbean").⁷
- [29] Then in 2004, the couple borrowed an additional \$25,000.00 from Bank of Saint Lucia with Ms. St. Aimee as surety.⁸ The couple borrowed an additional \$53,000.00 later in 2004 from FirstCaribbean.⁹ Ms. St. Aimee confirmed this was when they consolidated their loans and moved to FirstCaribbean. The

⁷ See p. 81 of TB 3-registered as Instrument Number 5543/2003 on 12th December 2003.

⁸ See p. 92 of TB 3-registered as Instrument Number 2858/2004 on 22nd June 2004.

⁹ See p. 101 of TB3-registered as Instrument Number 6085/2004 on 17th December 2004.

additional amount was for construction of the car port and a wall to the front of the house. In 2006, the couple borrowed an additional \$16,000 and a further sum of \$33,000.00.¹⁰

[30] Mr. Harte says they borrowed jointly, and he contributed almost his full salary less \$400.00 towards all debts including the mortgage. Ms. St. Aimee says the mortgage payments were shared equally but there were times when Mr. Harte could not pay his share of the monthly instalment and she would pay in full. She provides no details of what their respective contributions were. For his part, Mr. Harte says he has always contributed the \$4,000.00 monthly and does not know of any time that he did not contribute.

[31] The tension as regards the matrimonial home is in relation to the sewing room and gym. Mr. Harte is clear in his evidence that the sewing room, gym and laundry room were constructed partially from the proceeds of a Government grant and a loan. He says he contributed all the electrical work and supplies for wiring of the structure but he did not keep receipts as he never envisaged that the marriage would end in divorce. As far as he is concerned, all these rooms are part of the matrimonial home and his salary would have contributed to payment of the loan. Mr. Harte's evidence is that the application for the grant was made in Ms. St. Aimee's name but it was not paid back. He acknowledges that the sewing room was primarily used by Ms. St. Aimee and says that the gym and laundry room were not specified in the grant which was primarily for the sewing room. The gym was primarily used by him and their son and the laundry room serviced the family. He says further that the loan of \$25,000.00 taken from FirstCaribbean was paid back by both he and Ms. St. Aimee using their joint funds

[32] Ms. St. Aimee's evidence in her affidavit evidence is that in about 2004, she sought funds to extend the matrimonial home and obtained a grant from the European Fund and accessed her shares from Barbados Mutual in the sum of \$15,000.00 to construct 'her' sewing room and gym. She says this was done

¹⁰ See p. 113 of TB 3-registered as Instrument Number 2198/1006 on 4th May 2006 and p. 108 of TB3-registered as Instrument Number 6381/2006 on 30th November 2006.

solely by her and she paid it back through funds earned from sewing. She says the lower level of the house which houses the sewing room is hinged to the matrimonial home somehow suggesting that the sewing room is separate from the matrimonial home and not part of it. In cross-examination however, Ms. St. Aimee said that the loan of \$25,000.00 was for the sewing room and gym and to get the grant, the same sewing room that she said in her earlier evidence was funded by a grant and her shares at Barbados Mutual. She did not mention the \$25,000.00 loan which evidently was part of the funding mix.

[33] Ms. St. Aimee has ensured that she made it clear that the sewing room is hers suggesting that it is not part of the matrimonial home; she has exclusive use of it; it was built to house her sewing room and that she funded it on her own which as the evidence reveals is in serious doubt given the clear inconsistencies in her evidence as to how the sewing room, gym and laundry room were funded. I accept that there was a grant sought to build the sewing room but evidently, the couple took the opportunity to construct the gym and laundry area as well and augmented their funds with a loan. I do not know that because one family member uses a room in the house exclusively or even that the room was built for a specific purpose that somehow that makes it not part of the matrimonial home. The fact is that the extension was done and acquired during the course of the marriage. Ms. St. Aimee has produced no evidence that the extension was done solely with her funds as she says and that Mr. Harte made no contribution.

[34] I therefore find that the matrimonial home with all its rooms is the community property of Mr. Harte and Ms. St. Aimee and they therefore each have a half share therein and that the presumption of community property has not been displaced by Ms. St. Aimee.

Vehicle registration no. PA9590 ("PA9590")

[35] As regards PA9550, Ms. St. Aimee says she purchased this vehicle and is indebted in the amount of \$85,088.00. She does not say when she purchased the vehicle nor does she produce any evidence of the vehicle ownership or registration. Mr. Harte claims a half share in PA9590. He says he initially

injected \$7,000.00 into the purchase of a Mazda Familia which was purchased in Ms. St. Aimee's name and was subsequently sold and the monies re-invested into a Suzuki and now the current vehicle PA9590. Mr. Harte says he does not own a vehicle but drives a company vehicle. He says he has no knowledge of the loan taken to purchase PA9590. In response Ms. St. Aimee says that the contribution of \$7,000.00 referred to by Mr. Harte took place some fifteen years ago and was a gift. She says he has made no contribution to her current vehicle PA9590 which is the subject of a Bill of Sale. Ms. St. Aimee however produced no evidence of the Bill of Sale or the loan which she says she took to purchase PA9590.

- [36] Notwithstanding, in the absence of any evidence to show that Mr. Harte contributed to the acquisition of PA9590 or that he contributes to its repayment, I accept Ms. St. Aimee's evidence that she owns the vehicle solely. The contribution of \$7,000.00 which Mr Harte refers to clearly was made a long time ago and cannot be said to be a contribution to PA9590 which was acquired in 2017. I therefore find that PA9590 is the separate property of Ms. St. Aimee.

Shares in Tropical Cooling Limited in the name of Mr. Harte

- [37] In her application for ancillary relief, Ms. St. Aimee seeks an order that she be paid one half of the value of Mr. Harte's shares in Tropical Cooling. However, in the submissions filed on 1st March 2021, the petitioner states: "The Court is asked to have the Petitioner to continue to be housed at the matrimonial home where her investment in the sewing room is entrenched with the contents for her use. The husband shall keep his shares in the Company and his assets with no further obligation to the Petitioner." This appears to be different from what is sought in the application for ancillary relief. The petitioner did not ask for part of Mr. Harte's shares be transferred to her. What she asked for was half of the value of the shares.
- [38] There is no evidence to suggest that Mr. Harte's shares in Tropical Cooling were acquired with the parties' joint funds. From Mr. Harte's evidence in cross-examination, he and Mr. Altius were freelancing and realised that they could grow in the business but they did not have the capital and therefore went into

business with a gentleman and his wife and formed Tropical Kool Limited. After about three years, the other parties wanted out of the business but Mr. Harte says he and Mr. Altius could not afford to pay them off so that company went into liquidation. They then set up the new company, Tropical Cooling. The shares are in the sole name of Mr. Harte and are his separate property.

- [39] As per the valuation report of Mr. Mario Lendor,¹¹ the estimated fair market value of Mr. Harte's shares in Tropical Cooling as at 31st August 2018 was \$180,000.00.

Furnishings in the matrimonial home

- [40] Mr. Harte seeks a half share in the value of the furnishings in the matrimonial home acquired with their joint funds. The Court does not know what comprises the furnishings being referred to. It is accepted that during the course of the marriage the parties would have acquired items for the household jointly and that it would class as community property. I am not prepared to embark upon a journey of valuing furnishings in the matrimonial home as I would assume that apart from personal items, the other items purchased during the marriage were purchased jointly and for the benefit of the household.

Issues

- [41] The issues to be ultimately decided by the Court are:
- (i) Whether Mr. Harte is entitled to a share or interest in the Corinth Property and which property is registered in the sole name of Ms. St. Aimee?
 - (ii) Whether Ms. St. Aimee is entitled to have sole ownership of the matrimonial home to the exclusion of Mr. Harte?
 - (iii) Whether Ms. St. Aimee is entitled to one half share of the value of Mr. Harte's shares in Tropical Cooling?
 - (iv) Whether Mr. Harte should be ordered to pay Ms. St. Aimee \$4,000.00 monthly as maintenance?
 - (v) Whether Ms. St. Aimee should be ordered to pay a lump sum or any other sum to Mr. Harte?

¹¹ P 406-40 (8 of TB4A).

(vi) Whether Mr. Harte is entitled to one half share of the value of PA9590 registered in Ms. St. Aimee's name?

(vii) Whether Ms. St. Aimee should be ordered to pay Mr. Harte half of the value of the furnishings in the matrimonial home?

Evidence and Analysis

(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

Occupation, Income and Business Ventures

[42] It is not disputed that Mr. Harte is a trained, experienced air conditioning technician, a director and shareholder of Tropical Cooling Limited. Tropical Cooling was incorporated in 1999. Mr. Harte clarified in his evidence that contrary to what Ms. St. Aimee asserted, Tropical Cooling stopped engaging in electrical works years ago and air conditioning is the only source of income and further that there is no staff employed to do electrical work. Mr. Harte owns Tropical Cooling with Mr. Patrick Altius and they each have 280 shares in the company. Mr. Harte also clarified that he used to lecture technical courses at the Sir Arthur Lewis Community College as a guest lecturer but he has not done so in many years.

[43] It is clear from the evidence that Mr. Harte derives a monthly salary from Tropical Cooling. Mr. Harte produced salary slips for 2016-2018 which show a net pay of \$4,892.54 monthly in 2016 and then it appears from 2017 that he was paid \$2,446.27 fortnightly. That amount Mr. Harte says includes an allowance for meals and entertainment. Although providing no evidence to substantiate, Mr. Harte in his affidavit of 31st August 2020 says that the company only received one job for 2020 and he has not been receiving his full salary.

[44] Ms. St. Aimee is a seamstress and the proprietor of a haberdashery business called Fiona's Sewing & Accessories located at Gablewoods Mall, Sunny Acres and she says these are her sole sources of income. Fiona's Sewing was registered as a business name on 22nd November 2004, however she

commenced operations at Gablewoods Mall in February 2009. Ms. St. Aimee owns the stock in this business.

[45] Ms. St. Aimee says she earns \$4,000.00 per month from her sewing and \$3,000.00 per month from her business Fiona's Sewing when business is good. She says these are her only sources of income. Mr. Harte says he cannot account for Ms. St. Aimee's income but is aware that she runs a business called Fiona's Sewing & Accessories.

[46] It is not disputed that both Ms. St. Aimee and Mr. Harte are engaged in business ventures from which they earn their income. Just on a strict mathematical calculation, it appears that Ms. St. Aimee's monthly take home is more than that of Mr. Harte. Neither of them has any other immovable property apart from that considered to be the matrimonial home.

[47] Ms. St. Aimee insists that Mr. Harte is in a better financial position than her as he has shares in Tropical Cooling and Tropical Cooling has assets which Mr. Harte as a shareholder would benefit from if the company was dissolved. In addition, Ms. St. Aimee says that Mr. Harte has the benefit of lump sum payments which she says he and Mr. Altius would frequently pay themselves. This she says she knows from working in the company for fourteen years.

[48] Mr. Harte flatly denies this and says whatever profit the company made was ploughed back into the company. His evidence in his affidavit of 25th February 2019 is that 'in the past five years he had only ever received a lump sum payment for the Harbor Club job which he says was compensation for the hard work on the project. He did not provide any information as to what the lump sum amount was. However, in his affidavit of 15th October 2019 in response to an application for disclosure it is noted that Mr. Harte confirmed that he 'has never received a lump sum in respect of the work undertaken by Harbor Club'. He says that the contract ran at a loss. That these two statements are contradictory is immediately glaring.

[49] In his affidavit of 29th November 2019, Mr. Harte seeks to clarify what is his glaringly contradictory evidence in his previous affidavits. This is his explanation. He says that he erroneously referred to Harbor Club in his 25th February 2019 affidavit. He says in or about the period to which Ms. St. Aimee referred which was 2001, Tropical Cooling had a big job involving the merger of Barclays and CIBC Banks when a lot of overtime and lump sums were paid. He goes on to say that the Harbor Club job was a serious loss to the Tropical Cooling and relies on the accounts for 2016 which he says shows that the company was operating at a loss. In relation to Harbor Club, Mr. Harte explains that the original owner of the hotel ran out of money and the project was closed down twice. The hotel then changed hands and Tropical Cooling was forced to take a 30% reduction on outstanding invoices.

[50] Mr. Harte insisted during cross-examination that he meant to say that the only time he and Mr. Altius got a lump sum was on the merger of Barclays Bank with CIBC. He said that was the only lump sum they would have received whilst Ms. St. Aimee was employed with Tropical Cooling.

[51] It is a little hard to comprehend how Mr. Harte could have mistakenly stated that he received a lump sum from Harbor Club when he meant Barclays/CIBC merger when the two projects were in 2016 and about 2001 respectively. It is also striking that Harbor Club was such a loss for the company, and that was not foremost in Mr. Harte's mind. I have reason to believe that Mr. Harte was not entirely frank about the Harbor Club alleged lump sum.

[52] That being so however, Ms. St. Aimee although she worked at Tropical Cooling for fourteen years and claims to be very meticulous could not provide any details of the alleged lump sum payments whilst she was employed with Tropical Cooling and instead relies on Mr. Harte to fill in the blanks.

Financial Statements of Business

[53] Mr. Harte produced financial statements for Tropical Cooling for the years 2014-2017 and the General Ledger Trial Balance as at August 31st, 2018 and 2019. The petitioner has made much of the general ledger trial balance information

provided and says that the entries seem to point to the fact that a lot is spent on wage expenses while Mr. Harte claims that his earnings from the company only amount to a gross of \$52,800.00 annually. The petitioner both in her evidence and in submissions has questioned the entries in the General Ledger and cast doubt on them citing examples of what she says is significant sums paid as wages and discrepancies in the entries.

[54] Ms. St. Aimee submits that the entries in the general ledger for 2018 and 2019 are highly suspicious and urges this Court find that the entries, their headings and the evidence of Mr. Harte and his witnesses not credible. The petitioner therefore submits that the share assessment by the accountant, Mr. Mario Lendor ("Mr. Lendor"), being based on inaccurate entries in the ledger cannot be relied on.

[55] I note that whilst a lot of time was spent on pointing out alleged discrepancies in the general ledger accounts, the petitioner failed to provide any evidence from an accountant to challenge the accounts provided. The Court notes that the general ledger accounts for 2018 and 2019 were extracted from the company Tropical Cooling as was confirmed by Mr. Lendor. Mr. Lendor confirmed that these accounts were not audited. In fact, Mr. Harte in cross-examination said that the information in the general ledger accounts came from the accounting system, Peachtree. This tells me that it would be wrong to simply come to conclusions without having had the benefit of the information used to prepare the extracted accounts bearing in mind that whoever enters the data is the one who codes and may code incorrectly. Both Mr. Harte and Mr. Altius said that they relied on Mr. Lendor's expertise in dealing with the accounts as it was not an area with which they were too familiar.

[56] Mr. Lendor based on the general ledger accounts said he could not say whether the Harbor Club expense was high by simply looking at the figures because he did not go in to see what it comprised of. On this basis, I think that without a proper audit or review by a qualified accountant, the Court is not in any better position. Counsel for Ms. St. Aimee or Ms. St. Aimee is no more qualified than the Court to come to any conclusions in this regard.

[57] Ms. St. Aimee provided one financial statement for her business Fiona's Sewing for the period 1st January 2019-30th September 2019 and a personal statement of financial affairs dated 29th September 2019. The financial statement shows sewing income of \$36,606.00 and store sales of \$21,543.00. It is clear to me that the monthly income which Ms. St. Aimee referenced of almost \$8,000.00 comes from the business. Ms. St. Aimee only produced accounts for part of 2019 and it is therefore difficult to assess her income capacity from her business which she operates as a sole proprietorship.

Income earning capacity in the future

[58] With respect to earning capacity in the future, Ms. St. Aimee in her evidence says that Mr. Harte has the security of a limited liability company which can afford him earning well past retirement. In response, Mr. Harte says Ms. St. Aimee has a business which can continue to afford her earning well past retirement.

[59] Ms. St. Aimee says that the business environment is difficult and her earnings from sewing are not guaranteed and that as she advances in age it gets more difficult for her though she does not say how. She also says that she is a sole proprietorship and there is an expiration date to what she can produce and for how long, that she cannot delegate her work and that the haberdashery business cannot be said to be a big income earner. All of these statements by Ms. St. Aimee are bald statements and she provides no basis for them. She says the haberdashery business is not a big income earner yet the business has survived for eighteen years and she says she earns approximately \$3,000.00 from it monthly.

[60] Mr. Harte in response says that Ms. St. Aimee's income is higher than his and he does not accept that she is unable to hire and train employees in the same way a company does. He says he is older than Ms. St. Aimee and faces the challenges applicable to his age and he is approaching retirement age. In fact, at the date of writing this decision, I believe Mr. Harte may be close to attaining the National Insurance retirement age of sixty-five years if he is not already that age.

Bank accounts

- [61] Both Mr. Harte and Ms. St. Aimee provided bank statements to the Court. Mr. Harte details his bank accounts as follows: Savings Account balances of (i) \$122,730.20 at Scotia Bank as at 31st October 2019; (ii) \$30,640.23 in shares at the Civil Service Credit Union and (iii) \$6,057.86 at 1st National Bank as at 5th February 2019. The Scotia Bank account shows deposits of \$10,000.00 and \$30,000.00 between 2017 and 2018.
- [62] Ms. St. Aimee produced bank statements for an account at 1st National Bank held in the name of Mary Rose Harte t/a Fiona's Sewing & Accessories for the years 2016-2018. As at 30th September 2018, the balance showed \$872.05. However, these statements show significant deposits ranging between \$5,000.00 and \$12,000.00. There is also a lot of withdrawal activity on that account. Ms. St. Aimee also exhibits statements for accounts held in her own name at (i) Bank of Saint Lucia Limited with a balance of \$149.07 as at 3rd March 2019, (ii) Scotia Bank with a balance of \$77.21 and (iii) 1st National Bank with a balance of \$2,612.00. The evidence also revealed that Ms. St. Aimee maintains a joint account with Jane Wilson-James at 1st National Bank and the balance as at 10th December 2019 was \$4,789.59. That account started with a balance of \$85,929.92. In her affidavit of 12th March 2019, Ms. St. Aimee explained that she is on this account simply to facilitate remittances to Ms. Wilson-James for her medical treatment and that she has no claim to these monies. Ms. St. Aimee did not provide any evidence to support the remittances which she referred to.
- [63] I have noted that in the Annual Returns for 2018, to which is attached an Income Statement for Mary Rose Fiona St. Aimee trading as Fiona's Sewing & Accessories, the amount shown as the net income of \$25,009.00 is stated as Ms. St. Aimee's wages and salaries. It will be recalled that Ms. St. Aimee's evidence was that she made \$3,000.00 from the business and \$4,000.00 from sewing. The Income Statement shows both sewing income and store sales but the net income does not come close to what Ms. St. Aimee stated as her monthly income in her evidence in chief.

(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

[64] Ms. St. Aimee states that her monthly expenses for the business are \$2,701.50 whilst her personal and home expenses total in the region of \$8,288.64 monthly. I note that the vehicle insurance is listed as an item of personal expense in the affidavit of 21st December 2018 but appears as an expense of the business in the in the Income Statement for January to September 2019.

[65] In terms of liabilities, Ms. St. Aimee in her affidavit of 21st December 2018 mentions that she is indebted to Bank of Saint Lucia in the sum of \$20,309.56 which she took to pay off the fridge and other miscellaneous debts (no evidence of this loan provided). In her affidavit dated 12th March 2019, Ms. St. Aimee exhibits statements form the Credit Union which shows a zero balance on the loan as at 6th March 2019; 1st National Bank loan taken on 10th December 2018 for \$35,040.00 to consolidate debts-the balance was \$33,580.00 as at 3rd March 2019; Bank of Saint Lucia loan of \$10,000.00 to defray personal expenses taken on 13th July 2018 -the balance as at 3rd March 2019 was \$7,709.70. The balance on the Scotia bank credit card as at 7th January 2019 was \$12,430.63.

[66] Mr. Harte puts his monthly expenses at \$4,541.55. He details his liabilities as being Scotiabank \$15,000.00; Credit Union \$16,025.76; Income Tax of \$954.58 for the years 2016 and 2017; overdraft facility at 1st National Bank of \$5,000.00 and at Courts of \$4,000.00. His FirstCaribbean credit card shows a balance of \$16,328.97 as at 22nd January 2019.

(c) the standard of living enjoyed by the family before the breakdown of the marriage

[67] Mr. Harte suggests that their lifestyle was basic. Ms. St. Aimee described it as comfortable. There is no evidence that the standard of living of this family was above average or had any special features. Whilst there was talk of family vacations, there was no evidence of frequency or the nature of the vacations.

(d) the age of each party to the marriage and the duration of the marriage

[68] Mr. Harte is now sixty-four (64) years and Ms. St. Aimee is fifty-seven (57) years having been born on 17th October 1957 and 7th January 1965 respectively. The Hartes were married for almost twenty-three (23) years. The evidence clearly reveals an unhealthy relationship at some stage of the marriage although it is not clear when the breakdown occurred or was apparent. Ms. St. Aimee agreed that at some stage in the marriage she and Mr. Harte slept in separate bedrooms. She hesitatingly agreed that it was Mr. Harte who had moved out of the bedroom which they shared into a separate bedroom in the matrimonial home. From the evidence, both Ms. St. Aimee and Mr. Harte kept their separate rooms locked.

(e) any physical or mental disability of either of the parties to the marriage

[69] Ms. St. Aimee says she suffers from hypertension for which she takes prescribed medication and with stress related issues like anxiety and loss of appetite leading up to and since the divorce. Ms. St. Aimee however provided no evidence to support her statements as to her health. She says this was aggravated by the death of her mother during which time Mr. Harte showed no empathy. I note from cross-examination that her mother passed in February 2016 at which time the relationship was already well on its downward decline.

[70] Mr. Harte for his part did not identify any physical or mental disabilities or health challenges. He said he was not aware that Ms. St. Aimee had any health issues and put her to strict proof of such.

(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

[71] Ms. St. Aimee in her evidence says that was a dedicated wife and mother. She cared for her family, kept a clean and well-maintained home all this whilst working full time and sewing part time. She also sold 'Avon' products, baked cakes, worked real estate on a commission basis, did knitting and crocheting in order to augment her income. None of this is denied by Mr. Harte. There is no doubt that Ms. St. Aimee was the one who managed the household and that she was frugal. She appeared to have been very ambitious. In fact, Mr. Harte in

cross-examination said that she was a good and supportive wife, and an excellent mother to their two children. Mr. Harte acknowledged that Ms. St. Aimee managed and budgeted for everyone and in his words, 'she could make a dollar stretch'. Hence, he says he entrusted his salary to her to meet their financial obligations.

[72] Mr. Harte says he handed over his total salary less \$400.00 to Ms. St. Aimee every month for use in payment of the bills including the mortgage and to maintain the home. Ms. St. Aimee acknowledged that Mr. Harte used to give her \$4,000.00 monthly but says that this stopped two months after he was served with the divorce papers. Mr. Harte responded and said that he stopped around November 2017 when he realised that the monies were not being used for its intended purpose and the electricity was disconnected twice. From that date, he assumed responsibility for the payment of the electricity, water and internet. He says he did not know specifically how the monies were allocated as Ms. St. Aimee did not disclose her income to him.

[73] It is unclear what the family's financial obligations were throughout the years which would now be drastically changed as there is no longer a mortgage and the two children of the family are over the age of eighteen and do not live at home. What the evidence reveals is that both Ms. St. Aimee and Mr. Harte contributed to the welfare of the family and they both helped out. Mr. Harte also says that Ms. St. Aimee's mother lived with them and assisted them with maintaining the home. After her death, Mr. Harte says he and his daughter took over the cleaning. Mr. Harte in his evidence says it was his responsibility to take the children to school and he engaged in activities with them such as taking them to the beach and on trips to the United States sometimes twice a year. None of this evidence was controverted by Ms. St. Aimee.

(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.

[74] In her December 2018 affidavit, Ms. St. Aimee says she has no retirement funds and expected that their joint income would provide for retirement. She says in contrast, Mr. Harte is entitled to a pension from the National Insurance and held a life insurance policy with a savings component and another policy paid for by Tropical Cooling. I note that in the affidavit of 25th November 2019, Ms. St. Aimee exhibits a statement from the National Insurance Corporation showing the contributions made on her behalf which total 291 months.¹² She did not say what retirement sum she may be entitled to, but she admits that she may get a pension from the National Insurance at age 65 years but that this will not exceed \$1,500.00 monthly.

[75] Mr. Harte's evidence is that the life insurance policy referred to was cashed in January 2019 in order to purchase a vehicle for their daughter, Earlyn Melissa Harte ("Earlyn") for \$24,000.00. He exhibits the Statement of Account-Surrender which shows the pay-out amount of \$24,568.71. He says this was the only policy he held. Ms. St. Aimee he says knew of the purchase of the car.

[76] Ms. St. Aimee says that their daughter had informed her that she had to repay Mr. Harte by monthly instalments. This was flatly denied by Earlyn in her evidence who said there was no such requirement that she pay back the \$24,000.00. In any event, this Sagicor policy is of no moment to Ms. St. Aimee as the beneficiaries under that policy had it not been cashed were their son and daughter.

Other Matters

Improvements to the matrimonial home

[77] In her affidavit of 31st August 2020, Ms. St. Aimee claims that Mr. Harte no longer has access to the matrimonial home and had stopped coming there and was completely absent for nine months. She says she changed the front door and

¹² P. 10 of Trial Bundle 3.

the locks for security reasons. Mr. Harte's emphatically denies having left his home for a period of nine (9) months whether continuously or at all and says that the matrimonial home continued to be his main place of residence until the locks were changed forcing him to have to pay rent of \$600.00 monthly.

[78] Ms. St. Aimee says there were significant repairs to be done to the matrimonial home to preserve it, the total cost of those repairs being \$40,729.48. The kitchen cupboards were termite infested and had to be refurbished. She says since January 2020, she replaced the front doors, had the plumbing fixtures replaced, electrical connections redone. She says she did the work as she got finances. The expense she says was necessary to avoid further deterioration of the property.

[79] Mr. Harte says he did not approve the said expenses and some of the work he could have undertaken himself. He says Ms. St. Aimee acts as if the Court has given her ownership of their home. She has changed the locks, undertaken works and broken into his separate room which was locked. Ms. St. Aimee's explanation for 'breaking into' Mr. Harte's room was that their son needed access to the internet which was not working. Mr. Harte denies that any of the works were necessary due to deterioration and he says the sum claimed to have been expended is unreasonable.

[80] It is noted that these improvements/renovations were undertaken by Ms. St. Aimee without Mr. Harte's involvement and at a time when she alleges he had left the matrimonial home. The works undertaken were substantial. In cross-examination, Ms. St. Aimee said the funds to undertake the repairs mostly from orders to make masks during the Coronavirus pandemic and from sales at the business. She indicated that the repairs were necessary, and Mr. Harte had said he would not spend a cent on the house.

[81] It would appear that Ms. St. Aimee wishes that this be taken into account in the Court making the order she desires, that is, that the matrimonial property should be solely hers and Mr. Harte should transfer his share of the property to her.

However, for the purposes of this matter, the valuation of the property will be assessed based on the valuations provided to the Court. I will address this later.

Property Tax and House Insurance

- [82] Ms. St. Aimee's evidence is that since the divorce, Mr. Harte has made no contributions to the upkeep of the matrimonial home, insurance and property taxes. She says she paid house insurance for two years in the sum of \$11,600.00 and \$3,500.00 in property taxes and there was still owing \$1,000.00 arrears on the property taxes.
- [83] Mr. Harte says the mortgage was already paid off and the household responsibilities would therefore be the grounds-hedges and grass as well as the insurance and property tax. He says he paid the electricity, water and internet up until May 2020 when the locks were changed.
- [84] Mr. Harte says when Ms. St. Aimee approached him for a contribution to the insurance and property tax, he asked her to produce the bills which she did do. Mr. Harte says he accepts that on proof of billing, he is to contribute half of the insurance and property tax.
- [85] Whilst it is accepted that Mr. Harte would have to contribute half of the monies paid towards the house insurance and property taxes, the Court notes that Ms. St. Aimee has not given the Court satisfactory proof of the payments made for these two items since the filing of the divorce. Ms. St. Aimee has thrown many receipts at the Court most of which are part payments towards the insurance and property tax. It cannot be the Court's job to wade through the receipts to ascertain what was actually paid. In addition, it is unclear whether all the documents relate to the house insurance as they have different policy numbers. It would have been extremely helpful if the information on the payments made had been provided in a manner which made it easy to see what was paid and reference made to the relevant receipt. The Court is not going to embark upon the tedious exercise of trying to sift through receipts to get the information.

[86] Any order for payment of a portion of the house insurance and property tax will be subject to Ms. St. Aimee providing a proper statement from the relevant sources detailing the amounts paid towards these items from November 2017 when Mr. Harte says he would have received the second disconnection notice and stopped giving Ms. St. Aimee the \$4,000.00 contribution. That evidence remained uncontroverted even if Ms. St. Aimee had originally said that Mr. Harte stopped the contributions two months after he was served with the divorce petition in July 2016.

Valuation of matrimonial property

[87] Ms. St. Aimee presented a valuation of the matrimonial home and Corinth property by Adrian M. Dolcy & Associates Inc. dated 26th September 2018. In that report Mr. Dolcy provides estimated market values. He values the Corinth land at \$116,536.00; the matrimonial home at a total of \$870,900.00 comprising: upper floor-\$277,640.00, middle floor-\$468,260.00, lower room (sewing room, gym)-\$100,000.00, facilities - \$25,000.00.¹³ She produces an estimate of the cost of upgrading to the matrimonial home prepared by Adrian M. Dolcy dated 24th November 2018 in the sum of \$87,270.00.¹⁴ In the report, Mr. Dolcy says that the general condition of the building can be described as good but that the building needs some upgrade and renovation including repairing/replacing of some windows, laundry area needs to be demolished and rebuilt and fascia board and ceiling require general repairs. He puts the realizable value of the property at \$950,000.00 and the forced sale value at \$780,000.00.

[88] Mr. Harte refers to the valuation presented by Ms. St. Aimee and indicates that this was undertaken solely by her. He points to the fact that there was a jointly commissioned valuation dated 23rd August 2016 done by the same Adrian M. Dolcy.¹⁵ As far as I can see, the only difference between the two reports is that the 2018 report provides an estimated cost of the renovations/repairs required and an estimated future market value of \$116,536 for the land and \$882,625.00 which were absent from the 2016 report. The assessment of the general

¹³ P. 119 of TB 3.

¹⁴ P. 134 of TB 3

¹⁵ P. 266 of TB 3.

condition of the building and what required upgrading/repairing is identical to the 2018 report but the report does not provide an estimated cost of the renovations/repairs.

[89] I agree with counsel for the petitioner that there is little divergence between the two valuations. I am of the view that the fair thing to do is to utilize the 2018 valuation which is the latter valuation, provides for the fact that the building does require renovation and is more reflective of the current value of the matrimonial property.

[90] I will use the market value as per both valuation reports of \$987,436.00 for the Corinth property and the house erected thereon. I will accept the estimated cost of renovations/repairs as done by Mr. Adrian Dolcy. I will not factor in additional deduction for repairs which Ms. St. Aimee said she undertook as there was no cost estimate produced for those works and they were undertaken without any prior discussion with or advice to Mr. Harte who has an interest in the property.

Factors to be considered

[91] Having reviewed all of the evidence in the matter and having regard to all the factors as outlined in section 25 of the **Divorce Act**, I make the following findings and observations.

- (a) As relates to the business ventures of the parties, it is the case that both of them were formed during the course of the marriage. However, from the evidence it does not appear that neither Ms. St. Aimee nor Mr. Harte was integrally involved in the setup of each other's business. It is clear from the evidence that Mr. Harte does not know what his wife's income from the haberdashery business.
- (b) Ms. St. Aimee was employed with Tropical Cooling from 2000 to 2014 as a receptionist for which she was a salaried employee. Mr. Harte admits this, but the parties disagree on the extent and scope of Ms. St. Aimee's duties during her period of employment at Tropical Cooling. However, I do not believe that this is material to the issues on ancillary.

- (c) Whilst Mr. Harte does not claim a share in Ms. St. Aimee's business in his response to the application for ancillary relief, he says that he lent her \$10,000.00 to acquire stock for the business for which he is still owed \$9,000.00. He also claims to have paid for sewing courses for her. Ms. St. Aimee denies that Mr. Harte ever financed purchase of any stock for her business. She admits that he encouraged her to take a course in sewing some thirty-five years ago and flatly denies that she is in any way indebted to Mr. Harte in the sum of \$9,000.00.

Given how it appears these parties carried on their business as separate entities with little to no involvement in each other's business affairs, the fact that there is no evidence whatsoever of this \$10,000.00 injection into Ms. St. Aimee's business by Mr. Harte and the fact that Mr. Harte does not seek repayment of any sum as part of the relief articulated in his prayer setting out the relief which he seeks, I cannot make any such finding or give any such relief. I am of the view that if Mr. Harte contributed to his wife's business it was a normal part of what spouses sometimes do-help each other.

- (d) At first blush, it appears that Mr. Harte is in a better financial position than Ms. St. Aimee. His bank accounts look healthier, and he receives a monthly salary. Ms. St. Aimee on the other hand has full control of the earnings of her business and it appears from the evidence that she uses the income from her business for her personal use as well and according to her evidence her monthly income is quite healthy being more than Mr. Harte's. For example, her vehicle expense is shown on the income statement for the business which she presented. The business income is hers whilst income of Tropical Cooling is not that of Mr. Harte but belongs to the company albeit he has a say in how it is dealt with.
- (e) Whilst counsel for Ms. St. Aimee submitted that Mr. Harte has not been frank with the Court about his finances, it is clear to me that both parties may not have given the Court the total picture as regards their finances. I am not satisfied that Mr. Harte did not receive lump sums apart from the

CIBC merger which he spoke of and it is still unclear the frequency of any such payments if any. Ms. St. Aimee only produced an income statement for a short period in one year for her business and that is insufficient to make a full assessment of her income earning capacity and the health of the business when she wants the Court to find that the haberdashery business is slow and not profitable. In the case of **Payne v Payne**¹⁶ Wilmer J said:

“It is well established that the Court is entitled to draw inferences adverse to a husband who has not made a proper disclosure of his available resources. That was held by Sachs J in **J v. J [1955] 2 All ER 85**, a decision which was subsequently upheld, so far as that point at any rate was concerned, by the Court. It was also held by Lloyd Jones in **Ette v. Ette [1965] 1 All ER 341**, where again it was again decided that it was proper to draw inference adverse to the husband from the fact of his failure to make a proper disclosure.”

I believe that both Mr. Harte and Ms. St. Aimee gave the information sparingly at first and after several rounds of disclosure then started providing bits and pieces which accounts for the way in which the evidence was filed and unfolded in the case.

- (f) Counsel for the petitioner referred to the fact that Mr. Harte’s Scotia Bank statement shows two lump sum deposits totalling over \$40,000.00. However, Mr. Harte was not cross-examined on the source of these funds and in the absence of such, the Court will not assume what they represent.
- (g) The shares which Mr. Harte owns in Tropical Cooling are not cash assets and are not immediately available for use by Mr. Harte. Their ultimate value will depend on the health of the company at the relevant time. The audited financial statements for the company show that between 2014 and 2017, the company only had a profit in 2015. I also note that Mr. Harte is not the only director and shareholder of Tropical Cooling and as both he and Mr. Altius indicated, they take decisions together. The business does not belong to him alone. It is also noted that Ms. St. Aimee made no contribution to the acquisition of these shares. In any event it would appear

¹⁶ [1968] 1 AER 1113 at 1117.

from her submissions that Ms. St. Aimee has abandoned her claim for a half share of the valuation of the shares.

- (h) Both parties are skilled in their respective fields. Mr. Harte has attained the mandatory National Insurance age of 65 years whilst Ms. St. Aimee is seven years away from there. Whilst Ms. St. Aimee says Mr. Harte is entitled to a pension from National Insurance, she too may well be entitled to some benefit or even pension from the National Insurance given her contributions as detailed in the statement which she provided. In any event, it is well-known that pension from the National Insurance is not a substantial amount at all.
- (i) It is the case that it cannot be inferred from any of the evidence presented that Mr. Harte has a better chance at longevity in business. There is no evidence to support Ms. St. Aimee's plea that she will not be able to work for much longer. Certainly, her sewing business depends on her ability to continue sewing but there is no evidence to suggest that she is unable to or will be unable to sew in the future. Seamstresses work well beyond retirement age once they are able. Ms. St. Aimee says that persons opt for readymade clothing and drapery and import online and this has a negative impact on her business. Unfortunately, Ms. St. Aimee made this bald statement and did not provide any further information as to what her volume of sewing looked like before and what it is currently. Also, Ms. St. Aimee has been operating her haberdashery business from 2009 to present at the Gablewoods Mall. It cannot be that it is not profitable.

Mr. Harte is also in a position to continue working for as long as he can even after reaching the retirement age and there is no evidence to say that he would not be able to. He says he no longer does electrical work but he is a licensed electrician and the option to undertake work in that field is always there. The harsh reality is that both of these parties are leaving each other in their twilight years to start all over and that is always difficult.

- (j) The reality is that both Mr. Harte and Ms. St. Aimee are involved in business which by its very nature is fickle and subject to many occurrences and

variables outside their control. There can be no justifiable reason to order Mr. Harte to pay Ms. St. Aimee \$4,000.00 maintenance when the major expenses of the mortgage and care for the children are no more. They will both have to maintain separate lives paying utilities etc. as a result of the divorce and it would not be reasonable to order any maintenance payments to either of the parties.

- (k) It is clear that both Ms. St. Aimee and Mr. Harte contributed to the household and building a life together. Whilst Ms. St. Aimee appeared to have been the one in charge of the finances, she did not deny Mr. Harte's contribution over the years.
- (l) The property which is the matrimonial home of the parties is no longer subject to a mortgage and the two children of the family are now grown. Mr. Harte no longer lives at the house according to Ms. St. Aimee and according to Mr. Harte he maintained a presence at the house until the locks were changed in 2020.
- (m) Mr. Harte contributed significantly to the mortgage which was taken to purchase the Corinth property. While the property was bought in Ms. St. Aimee's name, at the time of purchase the evidence shows that the parties had had discussions about purchasing land albeit Mr. Harte was not too keen on Corinth and preferred Bonne Terre. It is clear that it was the parties intention to purchase property and that is cemented by the fact that they then both contributed over the several years to construction and improvement of the matrimonial home on the very Corinth property. To deny that Mr. Harte has a share in the Corinth property would go totally contrary to what is fair.
- (n) Mr. Harte did not contribute to the acquisition of PA 9590. He cannot claim that his contribution of \$7,000.00 years ago is connected to this vehicle acquisition when this vehicle appears to have been acquired after the petition for divorce was filed and through a loan taken by Ms. St. Aimee. The vehicle is Ms. St. Aimee's solely.

- [92] I am always struck by the fact that once parties go through divorce, they now begin to isolate their respective contributions. This is clearly not what is contemplated in a marriage where the parties jointly attempt to deal with their finances. Invariably one party may contribute more than the other, but the **Civil Code** does not make that the basis for the parties' shares. It expressly makes the basis acquisition during the course of the marriage regardless of who contributed what unless a party can show that the particular property was purchased with their own separate funds. The starting point is that once the property is acquired during the course of the marriage and is not deemed separate property by virtue of article 1132 of the **Civil Code**, each party is entitled to a one-half share in the property. That is the concept of community property.
- [93] At every opportunity Ms. St. Aimee made sure to remind that 'her sewing room' is located at the matrimonial home where she conducts her business as a seamstress.
- [94] It is clear that Ms. St. Aimee and Mr. Harte led a very toxic relationship at some point in their twenty-three year marriage. Whilst they continued to live in the matrimonial home despite the obvious breakdown of the relationship, they each give a picture of being totally estranged from each other. Both Ms. St. Aimee and Mr. Harte say they restrict themselves to their respective bedrooms and keep them locked when they both occupied the matrimonial home. Ms. St. Aimee says she fears Mr. Harte's outbursts and his clearly demonstrated disdain and resentment towards her. Mr. Harte for his part says that he and Ms. St. Aimee hardly come into contact with each other, and he denies having any outbursts. He says he says nothing to Ms. St. Aimee except good morning and she does not respond. Both accuse the other of hurling abuses at the other especially as relates to the outcome of the divorce proceedings. For this reason, I am loathe to have them continue to reside in the same household but Mr. Harte should be able to maintain his bedroom and have access to it in the meantime to be able to remove any items which he has stored there for a stated period.

[95] It is very clear to me that Ms. St. Aimee has provided no proper basis for the Court to dispossess Mr. Harte of his half share in the matrimonial home and transfer same to her. Ms. St. Aimee's responses in cross examination indicate that this position is borne out of her feelings towards Mr. Harte. When asked whether she saw Mr. Harte as owing a share in the house, she responded that she could not answer that question because she did not want to say the wrong thing and she had put her all into the house. The more striking part of her response to me was that Mr. Harte could have settled amicably and he did not want to. She flatly said that Mr. Harte was not entitled to anything that she and he had built during the course of the marriage. Mr. Harte is of the view that Ms. St. Aimee's position seeks to disentitle him from his life's earnings and contribution which cannot be right and it is unreasonable and unjust.

[96] It must be remembered that the basis of orders made pursuant to sections 22 and 24 of the **Divorce Act** is not to seek to punish Ms. St. Aimee or Mr. Harte. The purpose of the proceedings is to arrive at a position which is fair, reasonable and just in all the circumstances of the case.

[97] In light of the foregoing discussion, I make the following orders:

- (1) The Court declares that the respondent, Mr. Harte is entitled to and has a 50% interest in the value of the separate property of the petitioner, Ms. St. Aimee which is situate at Corinth and registered at the Land Registry as Block and Parcel 1252B 345 ("the Corinth property").
- (2) The petitioner, Ms. St. Aimee is to pay the respondent Mr. Harte one half of the value of the Corinth property and the matrimonial home in the sum of \$493,718.00 less (a) the sum of \$87,270.00 for renovations which were identified as required and (b) the sums paid for house insurance and property tax from November 2017 to the date of judgment provided that the petitioner, Ms. St. Aimee furnishes the respondent within 60 days of the date of this judgment with a detailed statement from the relevant insurance company/companies and the Inland Revenue Department showing the respective sums paid from November 2017 to the date of judgment.
- (3) The petitioner shall pay the sum stipulated in paragraph 2 within six (6) months from the date of this judgment.

- (4) On payment of the sum as detailed in paragraph 2 above, the petitioner, Ms. St. Aimee shall be deemed the sole owner of the matrimonial property comprising the Corinth property together with the house erected thereon and Mr. Harte shall relinquish all rights, interest and entitlement which he has in the matrimonial property.
- (5) The respondent, Mr. Harte is entitled to maintain his room in the matrimonial home and have reasonable access to same until the petitioner, Ms. St. Aimee pays him the sum ordered at paragraph (2) above. Access to the bedroom shall be on notice to the petitioner who shall facilitate such access as far as is reasonable.
- (6) The vehicle registration number PA9590 is the sole property of Ms. St. Aimee and Mr. Harte is not entitled to one half share of the value of the vehicle.
- (7) The petitioner, Ms. St. Aimee is not entitled to one half share of the value of the respondent, Mr. Harte's shares in Tropical Cooling and the said shares are deemed Mr. Harte's sole property.
- (8) There shall be no order for the payment of maintenance or periodical sums in favour of either the petitioner or the respondent.
- (9) The petitioner and respondent shall agree on the separation/distribution of the furnishings in the matrimonial house within six (6) months of the date of this judgment.
- (10) Each party shall bear his/her own costs.

[98] I wish to sincerely apologise to counsel and the parties for the delay in the delivery of this judgment which was due to circumstances beyond my control. I regret any inconvenience caused to the parties as a result.

**Kimberly Cenac-Phulgence
High Court Judge**

By The Court

Registrar