

**EASTERN CARIBBEAN SUPREME COURT
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCV2015/0139

BETWEEN:

JENIFER JACINTH CARTY

Claimant

and

ORAL CURTIS CARTY

Defendant

Appearances:

Ms. Marsha Henderson for the Claimant

Mr. Adrian Scantlebury for the Defendant

.....
2017: April 25

2018: May 01
.....

JUDGMENT

Introduction and background

[1] **LANNS, J. [AG]:** Jenifer Jacinth Carty¹ and Oral Curtis Carty² became married in July 1995 after living together for five years. They divorced in November 2012, upon the petition of Mrs. Carty. Prior to the divorce, Mrs. Carty, in October 2011, moved out of the matrimonial home, taking one of the children of the family with her, and leaving the other child, then a minor, with Mr. Carty. Both children are now adults. At the time of filing of the documents, one of the children was enrolled at the University of the West Indies, Faculty of Law, and the other was unemployed.

¹ Referred to interchangeably as 'Mrs. Carty' or 'the claimant'

² Referred to interchangeably as 'Mr. Carty' or 'the defendant'

[2] By fixed date claim form supported by affidavit and supplemental affidavit filed on 18th June 2015, Mrs. Carty claims against Mr. Carty the following reliefs:

1. An enquiry as to what sums are due from Mr. Carty to Mrs. Carty in respect of occupation rent for property situate at Green Tree, Old Road, held by both parties as joint tenants.
2. An order that Mr. Carty do account to Mrs. Carty for such sums as may be found to be due to her as occupation rent for the said property;
3. An order that Mr. Carty account to Mrs. Carty for such sums as may be found to be due to her in respect of rental income collected by Mr. Carty for the 1st storey apartment of the matrimonial home
4. A declaration as to the beneficial interest of Mrs. Carty and Mr. Carty in Rainforest and Safari Tours, the business enterprise that Mr. and Mrs. Carty operated jointly up until October 2011 when the parties separated;
5. An order that Mr. Carty account to Mrs. Carty for such sums as may be found to be due to her in respect of her interest in the said business;
6. An order that the 3 remaining vehicles and food truck acquired by Mr. Carty and Mrs. Carty during the course of their marriage be valued and sold, and the respective interest therein be conveyed to the parties;
7. All necessary and consequential accounts, inquiries and directions;
8. Costs.

[3] The trial started and concluded on the 25th April 2017. At the conclusion of the trial, the parties were ordered to file submissions and authorities in support of their respective positions. The submissions and authorities were to be filed by the 18th May 2017, and upon filing, they were to be passed to me by the court office. To date, I have not received any submissions or authorities from either side. In the case of Mr. Carty, I have had sight of a letter from his counsel Mr. Adrian Scantlebury dated 20th June 2017, which letter was addressed to the Registrar of the High Court. In it, Mr. Scantlebury informed that the failure on the part of Mr. Carty to pay fees led to the non-filing of submissions on behalf of Mr. Carty. It is unclear as to what that issue has to do with the

court or the order of the court which required that submissions and authorities be filed by a specific time. Mr. Scantlebury failed to appreciate the fact that he is still on record as counsel for Mr. Carty and that his letter to the Registrar does not constitute an application to the court to be removed from the record as counsel for Mr. Carty. The failure of counsel for the parties to file submissions and authorities as ordered means that the court has derived no assistance from counsel, and the court was left to its own devices to write the judgment.

The Claimant's Case

- [4] Mrs. Carty's case (as stated in her affidavits and witness statement) is that the matrimonial home is jointly owned by her and Mr. Carty and that there is a caveat noted on the relevant certificate of title in favour of the Bank of Nova Scotia. According to Mrs. Carty, servicing of the mortgage in respect of the property remains her sole responsibility. Each month she pays EC\$1600.00 to the Bank of Nova Scotia. Mr. Carty occupies the main house consisting 3 bedrooms (including master bedroom), a living room, 2 bathrooms, laundry room, balcony at the back portion of the house, verandah and single port garage. She states that she was forced to leave the matrimonial home in October 2011 because of abusive behavior on the part of Mr. Carty.
- [5] Mr. Carty collects rental income from an apartment which is downstairs the matrimonial home. He refuses to account to Mrs. Carty as to how the rental monies are being used. She pays EC\$2,000.00 monthly for rent for furnished accommodation for herself and her daughter, and at the same time pays the mortgage for the matrimonial home. Since she left the matrimonial home she has been paying the insurance on the matrimonial home in the annual sum of EC\$4,418.93. Despite Mrs. Carty's request that he assists with repayment of the mortgage, Mr. Carty has refused to assist with the mortgage payments, except for the months of October and November 2011 after she moved out of the matrimonial home.
- [6] Mr. and Mrs. Carty are legal owners of 5 motor vehicles being 2 Safari trucks, one Toyota Pick-up, one Nissan Pajero and a Nissan Bluebird, When Mrs. Carty moved out, she took the Nissan Bluebird with her and left the other 4 vehicles with Mr. Carty. She was told and verily believes that Mr. Carty has disposed of 2 of the 4 vehicles. He did not seek her consent to dispose of the vehicles. Nor has he paid her any of the monies that would represent her interest in the vehicles of which he disposed.

- [7] Mr. and Mrs. Carty during their marriage acquired household items, a food truck and appliances used in the operation of the food truck. These items remained with Mr. Carty. Mrs. Carty says she was told and verily believes that Mr. Carty has sold some of the appliances from the food truck and has thereby benefitted solely from the said sale.
- [8] In or around 2000, Mr. Carty told Mrs. Carty that he wished to expand his taxi business to include a tour operation, offering volcano and rainforest and safari tours. As a result, they both purchased a pickup truck and suited it for tours. As business expanded, they bought 2 additional trucks that were redesigned and seated to accommodate tour passengers. Until the parties' separation in 2011, Mrs. Carty was fully involved in running the businesses, doing all the paper work and cooking for the food truck business, doing dishes and selling. When she was involved in the tour business, the business would generate approximately EC\$20,000.00 per month depending on the season and the amount of bookings for tours. She believes the business is still doing well financially. Mrs. Carty says if it was not for her involvement, Mr. Carty would not have been able to start or continue his tour operations.
- [9] Based on those pleadings, Mrs. Carty seeks the intervention of the court to determine her interest in the various assets said to have been acquired and or owned by the parties during the marriage and to her entitlement to occupation rental and rental income

The Defendant's Case

- [10] Mr. Carty's case (as stated in his defence and witness statement) is that in the year 1992 he entered into an agreement with the Central Housing Authority (CHA) to purchase government land at Green Tree Housing. The purchase money was provided by him alone by way of installments for two years. Title to the land was conveyed/registered in the names of Mr. and Mrs. Carty. Although title was conveyed /registered in both names, Mrs. Carty's true position is as trustee under a resulting trust in favour of Mr. Carty.
- [11] According to Mr. Carty, in 1992, he started construction of a house on the land at Green Tree. Mr. Carty says he is a mason and he used his labour, and the help of other labourers whom he paid with his own money, and brought the construction up to beam height in 1994. At this point, construction was complete save for the roof and finishing such as electrical, plumbing, painting and tiling for upstairs. At this juncture, both Mr. and Mrs. Carty approached Barclay's Bank (now First

Caribbean International Bank (FCIB) for a mortgage to complete the house. They succeeded in getting a loan of EC\$200,000.00. As Mrs. Carty was employed by the government as a nurse, the bank decided it would be best to put a charge on her salary which was more consistent and predictable as opposed to Mr. Carty who was involved in tourism business which was not so consistent and predicable. Mr Carty states that despite FCIB's decision to deduct the mortgage payments from Mrs. Carty's salary, Mr. Carty would refund Mrs. Carty in full.

- [12] In or about 2010, Mr. and Mrs. Carty switched the mortgage from FCIB to the Bank of Nova Scotia and borrowed EC\$112,000.00 with the same arrangement for the attachment of Mrs. Carty's salary to repay the loan. Mr. Carty says that he continued to fully refund Mrs. Carty until sometime in 2011 when they both secured a student's loan for their daughter³. Some six months after securing the student's loan, Mr. Carty was still refunding Mrs. Carty the full sum deducted from her salary for the mortgage. Thereafter, Mr. Carty, because of increased financial burden, reduced the refund to half payment, and discontinued the refunds altogether in October 2014. Although it was the original intention that both parties should contribute to the student's loan installments, it was only Mr. Carty who has ever paid, and continues to pay on the loan.
- [13] As regards downstairs the matrimonial home, Mr. Carty states the material for completion of downstairs was financed with a gift of EC\$10,000.00 from his father, and income generated from operation of Mr. Carty's taxi service. In or about late 2001, Mr. and Mrs. Carty began renting downstairs at EC\$750.00 per month. Mr. Carty asserts that it was Mrs. Carty who collected the rent from 2001 until she moved out in 2011, and she never accounted to him for the money she received. According to Mr. Carty, he paid for all household expenses such as groceries, utilities and maintenance and therefore, in his view he is entitled to the rent money he received since October 2011 as the return on his investment in the property.
- [14] As regards the claim for occupational rent, Mr. Carty says such claim is contrary to the doctrine of unity of possession. Mr. Carty further states he did not force Mrs. Carty to leave the matrimonial home and he gave his version of events which led her to move out. He says it was Mrs. Carty who,

³ Mr. Carty asserts that a caveat in favour of the Bank of the Bank of Nova Scotia was endorsed on the certificate to secure the loan for the legal education of their daughter.

by her misconduct⁴, chose to deprive herself of the benefit of living in the matrimonial home. He asserts that he provided for Mrs. Carty voluntarily up until she moved out of the matrimonial home and he pointed out that Mrs. Carty has not applied for spousal support.

[15] In relation to the vehicles, Mr. Carty stated in essence that all the vehicles were purchased by him out of his funds or from loans, or from funds provided by his father. He stated that he only placed Mrs. Carty's name on the registration records out of his love for her and not with any intention of her having a proprietary interest in the vehicles.

[16] Mr. Carty admitted that he disposed of two vehicles – the Toyota Pickup which he said was 20 years old. It was involved in an accident and declared a write off. He sold the wreck for EC\$3000.00. The other vehicle he sold was the Pajero which was purchased with money gifted to him by his father. Mr. Carty said Mrs. Carty made no contribution to the purchase of those two vehicles which he sold.

[17] As to the food truck, Mr. Carty says it was purchased with his inheritance⁵ from his father's estate, and it only operated for one year, and the money earned was ploughed back into the business to pay for stocks and to pay a cook. Any profit made was used to maintain the household, from which Mrs. Carty benefitted. Mr. Carty maintained that Mrs. Carty has no beneficial interest in the food truck, its contents or proceeds. When pressed during cross examination, he admitted that since Mrs. Carty left, he has not operated the food truck as it was too much stress and there were many competitors.

[18] In relation to the tour business, Mr. Carty says he started his tour business before he met Mrs. Carty, and his business was already on an upward trajectory before he met Mrs. Carty and before the marriage. He denied that Mrs. Carty did all the paper work for the business, and he described the types of work which he did himself. He stated, however that on a few occasions he asked Mrs. Carty to prepare bills for work he completed, and he does not think that the work she did was sufficient for Mr. Carty to claim a beneficial interest in his business.

⁴ I do not think that I am required to undergo an assessment of the conduct of the parties in order to determine the entitlement and interest of either of them in the former matrimonial home or other assets acquired during the marriage.

⁵ No disclosure as to how much the inheritance was.

[19] In relation to the household items referred by Mrs. Carty, Mr. Carty says that Mrs. Carty took household items with her when she moved out, such as dishes and sheets and curtains.

[20] Mr. Carty denies that the business is still doing well financially, in the light of the slowdown in the global economy.

[21] Finally, Mr. Carty denied that Mrs. Carty is entitled to any of the reliefs sought by her.

The Issues⁶

[22] Learned counsel for the claimant, Ms. Marsha Henderson (Ms. Henderson) identified the issues to be:

1. What are the interests of the parties in the property situate at Green Tree⁷
2. Whether the court should order the sale of the property.

[23] Learned counsel for the defendant on the other hand, identified the issues⁸ to be:

1. Whether Mrs. Carty contributed to Mr. Carty's tour business
2. If yes, from when did Mrs. Carty commence her contribution to the tour business
3. If yes, what was the nature and extent of Mrs. Carty's contribution?
4. Whether Mrs. Carty's contribution, if any was sufficient for the court to declare her as a beneficial owner
5. Whether the naming of an individual on the record at the Traffic Department is sufficient proof of ownership of a vehicle.
6. Whether Mrs. Carty is a joint owner of the vehicles in question and whether her interest is limited to that of trustee under a resulting trust in favour of Mr. Carty.
7. Whether Mrs. Carty is entitled to an accounting in relation to the vehicles disposed of by Mr. Carty
8. Whether Mrs. Carty holds title to the subject land as a trustee in favour of Mr. Carty under a resulting trust;
9. Whether Mrs. Carty is entitled to occupation rent from Mr. Carty.
10. Whether Mrs. Carty has a beneficial interest in the food truck
11. What are the interest in the parties in relation to the property situate at Green Hill

⁶ It boggles my mind that counsel has identified those two issues which do not seem rise on the pleadings. Nowhere in the prayer for relief does the claimant asks the court to determine the extent of the interest of the parties to the matrimonial home; nor has the pleadings seek an order for sale. Those issues are misconceived.

⁷ No order was sought in this regard. This was not pleaded.

⁸ Learned counsel for the Defendant has basically identified the same issues as counselor the claimant, although the claimant has not specifically asked the court to decide those issues.

12. Whether the court should make an order for the sale of the property

[24] Ultimately, the main issues for determination are:

1. Whether or not Mrs. Carty can claim occupation rent from Mr. Carty.
2. If she is so entitled, when does the rent begin to accrue and at what rate.
3. Whether or not Mrs. Carty is entitled to rental income in respect of the downstairs of matrimonial property
4. If so what amount is she entitled to recover
5. Whether Mrs. Carty was a joint owner of the vehicles and food truck she left with the defendant when she moved out; or whether she holds title to the vehicles on a resulting trust for Mr Carty.
6. Is Mrs. Carty entitled to an accounting in respect of such vehicles?
7. Whether Mrs. Carty is entitled to an accounting in relation to the vehicles disposed of by Mr. Carty.
8. Whether or not the claimant has a beneficial interest in the business known as Rain Forest & Safari tours
9. Whether Mrs. Carty holds title to the matrimonial property at Green Tree as trustee in favour of Mr. Carty under a resulting trust; if not what is the extent of the interest of either party.

[25] At the hearing, Mr. and Mrs. Carty were cross-examined at length, and, having seen and heard both of them, I feel on safer ground if I were to accept the evidence of Mrs. Carty in preference to that of Mr. Carty wherever there is conflict, because Mrs. Carty seems more honest, forthright, consistent, frank and positive in her answers. On the other hand, the manner in which Mr. Carty testified, and his general demeanor left much to be desired. His evasiveness, his prevarications, his inconstancies during cross-examination lead me to conclude that he was not altogether forthright with the court and that he came to court with the set purpose of denying Mrs. Carty's claim completely.

The Occupation Rent Issue

[26] Mrs. Carty is seeking through her claim, an order that Mr. Carty pay to her an 'occupation rent' in an unspecified amount to be calculated at a rental value of EC\$3000.00 for the entire property and such sum be equally shared. Mrs. Carty did not suggest what period this rent should cover, but I take it that the intended period would be from the time she moved out to present. Mr. Carty, on the other hand, contended in his defence that charging him occupational rent would be against the doctrine of unity of possession which applies to joint tenants. The issue here is whether or not Mrs. Carty can claim occupational rent from Mr. Carty. If she is so entitled then the next question becomes when does the rent begin to accrue and at what rate.

[27] Generally, joint owners are not allowed to reap rent from one another for mere occupation of premises. This is because co-owners are jointly entitled to the entire property and each is entitled to enjoy possession along with the other.⁹ However, it appears there are exceptions to this rule as will be shown below:

[28] The principles applicable to occupation rent are set out in several cases including **Byford v Butler**¹⁰; **Leake** (formerly **Bruzzi**) **v Bruzzi**¹¹; **Suttil v Graham**¹²; and **Re Pavlou (A bankrupt)**¹³

[29] In **Re Pavlou (A bankrupt)** Millet J. stated thus:

"First, a court of equity will order an inquiry and payment of occupation rent, not only in the case where the co-owner in occupation has ousted the other, but in any other case in which it is necessary to do equity between the parties that an occupation rent should be paid. The fact that there has not been an ouster or forcible exclusion therefore is far from conclusive. Secondly, where it is matrimonial home and the marriage has broken down, the party who leaves the property will, in most cases, be regarded as excluded from the family home, so that an occupation rent should be paid by the co-owner who remains. But that is not a rule of law; that is merely a statement of the prima facie conclusions to be

⁹ See *Herbert Reid v. Michele Reid*, [2016] JMDC Civ.204; wherein Bertrand Linton J. [Ag] considered *M'Mahon v Burchell*, 47 ER 944

¹⁰ [2004] 1 FLR 56

¹¹ [1994] 2 All ER 1196

¹² [1977] 1 WLR 819

¹³ [1993] 1 WLR 1046

drawn from the facts. The true position is that if a tenant-in-common leaves the property voluntarily but would be welcome back and would be in a position to enjoy his or her right to occupy, it would normally not be fair or equitable to the remaining tenant-in-common to charge him or her with an occupation rent which he or she never expected to pay.”

(a) Applying the Principles

[30] On the totality of the evidence led on this issue, the court finds and holds as a matter of fact, Mrs. Carty is entitled to occupation rent for the following reasons:

1. While away from the matrimonial home it is Mrs. Carty who has been solely paying the mortgage on the matrimonial property occupied exclusively by Mr. Carty. Furthermore, before she moved out, and while away from the matrimonial home, Mrs. Carty has not only been making the monthly mortgage payments, but also the annual insurance and taxes for the matrimonial home.
2. Since Mrs. Carty moved out, Mr. Carty has been receiving the rental income in respect of the apartment downstairs of the matrimonial home at \$750.00 per month.
3. Mr. Carty has several times locked Mrs. Carty out of the matrimonial home at nights after she returned home from work as a nurse at the hospital. Although she had keys to the house, she still could not get in as Mr. Carty bolted the doors from inside and refused to answer the phone.
4. Mr. Carty has physically abused Mrs. Carty, resulting in a black eye and marks and bruises over her body. At one time he went after her with a crow bar. She had to run to the neighbours and called Mr. Carty's parents. His father came and calmed him down.
5. Mr. Carty was aware that Mrs. Carty was moving out as he was present when she was packing, and he begged her to stay. I believed her when she said, “I had had enough. I couldn't take any more.”

6. Mrs. Carty moved out on three prior occasions; and went back to live with her parents. She returned to the matrimonial home after Mr. Carty begged her to come back and promised to change his abusive behaviour which he did not change.
7. Since she finally moved out of the matrimonial home in October 2011, Mrs. Carty expressed a desire to return home on condition that Mr. Carty move to the downstairs while she occupy the upstairs of the matrimonial home, but Mr. Carty refused, suggesting instead that Mrs. Carty occupy downstairs.
8. Mrs. Carty pays rental accommodation of \$2000.00 per month, plus the repayment of the subsisting mortgage
9. Mrs. Carty admitted that she had an extramarital affair way back in 1997¹⁴, but the evidence is that the parties reconciled, and continued to have sexual relations. There is no evidence that she was involved in any further misconduct. She said, and I believe her that she did not move out to pursue any extramarital affair; she moved out because of the physical and mental abuse she was getting from Mr. Carty - the false accusations, the kicking, boxing, slapping, and the choking which at one point caused her to be admitted to the JN France Hospital. Mr. Carty acknowledged that Mrs. Carty was admitted to the hospital. She said she left the matrimonial home to preserve her sanity and her safety. I believe her. Mrs. Carty's Petition for divorce was granted on her petition on the ground of irretrievable breakdown by reason that since the celebration of the marriage, he treated Mrs. Carty with physical or mental cruelty or behaviour of such a kind as to render intolerable the continued habitation of the spouses.

[31] In my opinion, the equity is in favour of Mrs. Carty for occupation rent. I assess such rent to be EC\$56,000 (being 7 years at \$2000 per month (7 x 12 x \$2000.00 ÷ 3)).¹⁵

Rental Income

¹⁴ As previously stated, I am not required to take conduct into account to determine the interests of the parties in the assets of assets acquired during the course of the marriage

¹⁵ The figure of \$56,000 was arrived at by assessing the rent to have begun to accrue in October 2011 at a rate of EC\$2000.00 for the upstairs occupied by Mr. Carty. The resulting figure of EC\$168,000.00 is divided by 3 to take into account that one of the children remained with Mr. Carty in the matrimonial home.

[32] There is no dispute, and I accept that the downstairs area of the matrimonial home has been rented at \$750.00 per month since 2001. There is also no dispute that Mr. Carty has been collecting the rent since Mrs. Carty moved out. I accept Mrs. Carty's evidence that she did not always collect the rent before she moved out; that Mr. Carty collected it sometimes although she would write up the receipts. I believe her when she said that when she collected the rent she ploughed it back into vehicle insurance, house insurance and for the benefit of the household and for whatever was happening or needed at the time. She was adamant, and I believe her that she did not use it for her personal use.

[33] Mr. Carty, on the other hand posited that since Mrs. Carty collected the rent up until she moved out, it is only fair that he be allowed to collect the rent now and realise his investment. Under cross examination, Mr. Carty sought to explain that he applied the rental income to assist his daughter. I do not believe him. I believe that he used it for his own use because as far as he was concerned, he was entitled to 'realise his investment'. The investment, based on the evidence, was a joint venture between the parties. I find that Mr. Carty, since Mrs. Carty moved out, reaped the benefits of the rental income, solely, and did not share them with Mrs. Carty, or applied the income to assist with the mortgage payments. I hold that half of the rent collected by Mr. Carty since Mrs. Carty moved out must be paid over to Mrs. Carty since they both have legal and beneficial interest in the property. It stands to reason that she is entitled to a half share of the profits which are reaped from the rental of the apartment downstairs as an income generating asset. It appears that the apartment was rented continually from the time Mrs. Carty moved out to present. There is nothing before me to suggest otherwise. I assess the rental income to which Mrs. Carty is entitled to be EC\$31,500 (being 7 years x 12 x \$750.00 ÷ 2).

The Businesses and Vehicles

[34] According to Mrs. Carty, when she met Mr. Carty, he had a taxi business. In other words, he was a taxi driver running a taxi service. Mr. Carty disputes this and states that in addition to being a taxi driver, he operated a tour business long before he met Mrs. Carty, but full operation of the tour business occurred after Mrs. Carty became involved. The evidence which I accept is that Mr. Carty was in the taxi business when the parties met; that in or around 2000, the parties discussed the expansion of the taxi business to include a tour operation and food truck service. The desire to

expand the taxi business and to include a food truck service ultimately resulted in the parties' acquisition of additional vehicles which were redesigned to accommodate tours. Mrs. Carty's name was registered as co-owner of all the vehicles used in the business.

[35] The vehicles said to be owned by the parties were described as being 2 safari trucks, 1 Toyota Pickup, 1 Nissan Pajero and 1 Nissan Bluebird and a food truck. The evidence shows that up to the date of trial, Mrs. Carty had exclusive use of the Nissan Bluebird, and she was paying for one of the vehicles, linked to the Scotia line transaction. Mr. Carty had exclusive use of the Pajero.

[36] The court accepts, and there is no dispute that Mr. Carty has since Mrs. Carty's departure, sold two of the vehicles – the Pickup and the Pajero. Mr. Carty says that Mrs. Carty made no financial contribution to the purchase of those two vehicles, and that even though she is registered as co-owner of the vehicles, her interest is limited to that of a trustee under a resulting trust in favour of Mr. Carty. As to the 2nd safari truck, Mr Carty accepts that Mrs. Carty contributed financially to the acquisition of that vehicle, but disputes that the parties would have intended that Mrs. Carty would have an interest therein as a result of the payments she made.. Mr. Carty cannot seriously be maintaining this line of argument.

[37] Mr. Carty, in his defence has quite correctly contended that a certificate of ownership issued by the traffic department is only prima facie evidence of an interest in a vehicle. In other words it is not determinative of ownership. Thus, in **Fujimoto and Operative West Indian Sea Cotton Japan Project, a.k.a. WISICA JAPAN v CARDENAS**, JR BZ 2005 SC 23, Appendix B, **Conteh, C.J.** stated:

"In so far as the equipment, tools and vehicles are concerned, although they may be registered in the defendant's name and therefore suggestive of ownership, this point, however in my view, is tellingly disproved by the agreement dated 19th September 2002 between the defendant. A perusal of this agreement which refers to an attached list of equipment and tools (which was not produced for the court), but which is relied on by both parties, shows, in my view, that the defendant is anything but the owner of the items referred to therein. He is at least referred to as "user (person in charge)".

[38] In the instant case, the evidence shows that five vehicles in question were acquired during the marriage, and were registered in the joint names of the parties. This, I find evinces a common intention on the part of the parties that the vehicles be owned equally by both.

[39] Lord Upjohn in **Pettitt v Pettitt** stated at p 407:

“ In the absence of all evidence, if a husband puts property into his wife’s name he intends it to be a gift to her; but if he puts it into joint names then (in the absence of all other evidence) the presumption is the same as a joint beneficial tenancy.”

[40] The evidence is that the parties were doing everything together. Their course of conduct showed a oneness and an intention that whatever belonged to Mr. Carty belonged to Mrs. Carty. And whatever belonged to Mrs. Carty belonged to Mr. Carty. In the foregoing premises, I am unable to agree with Mr. Carty that Mrs. Carty holds the vehicles in trust for him under a resulting trust. We have seen that of the five vehicles two have been disposed of; i.e. the pick-up truck which was purportedly sold for EC\$3000.00. The court has no idea as to when the sale took place or to whom it was sold. Mrs. Carty has not been given anything from the proceeds of sale. Mr. Carty admits the Pajero which he formerly used for his personal use has also been sold. He did not disclose the date of sale, the sale price, nor the buyer. Mrs. Carty has not been given anything from the proceeds of sale of the Pajero. We have also seen that Mrs. Carty is paying a mortgage for the safari truck which Mr. Carty, at the time of trial, was using in his tour business. It appears on the evidence that of the five vehicles, three still exist. Of the three, Mrs. Carty is using one – the Nissan Bluebird. Mr. Carty says it was a gift to her from him. Yet he registers it in joint names, and he is asking the court to find she holds it in trust for him. Mrs. Carty disputes that Mr. Carty paid fully for the Nissan Bluebird. She insists that she paid EC\$540.00 per month¹⁶ towards that vehicle. Mr. Carty has not denied this assertion in cross-examination. That leaves two safari trucks and one food truck. I think it convenient to address the contribution by the parties in the overall scheme of things.

(b) Contributions

[41] Mr. Carty in his evidence, and his learned counsel in the pretrial memorandum, have in essence minimized and undervalued the direct and indirect contributions made by Mrs. Carty to the business and the vehicles. Mr. Carty asserts that Mrs. Carty’s contribution to the business was insubstantial. Then during cross-examination, he agreed that the business generated an increase during the involvement of Mrs. Carty. He agreed further that the business generated at least

¹⁶ No information as to how long she paid that amount or to whom

EC\$20,000.00 per month after Mrs. Carty's involvement. It is unclear as to what profits were made and how the monies generated were applied. The evidence is lacking.

[42] In considering the contribution of husband and wife during marriage, the observations of Saunders J. in **Stonish v Stonich**¹⁷ are apt. Saunders J.A. stated:

"In assessing the respective contribution of husband and wife, there was a time when one regarded the fruits of the money-earner to be more valuable, more important than the childbearing and homemaking responsibilities of a wife and mother. If the man was reasonably successful at his job and the family fortunes were vastly improved, his contribution was almost automatically treated as being greater than that of the wife, who remained at home. Ironically, if the man's business failed, whether through bad luck or ineptitude, the wife invariably shared equally the couple's hard times. The court should not pay too much regard to a contribution merely because it is easily quantifiable in hard currency and too little to a contribution that is less measurable but equally important to the family structure. In the vast majority of cases where these two types of contributions are in issue -- that of a home maker and that of an income earner, it is the wife who has stayed at home while the husband has performed the role of breadwinner. There is therefore an element of discrimination in degrading the woman's role in the home".

[43] Saunders, J.A. continues

"... The point is, there is no basis in law for Courts to regard always as decisive or of special importance the financial contribution made by a party to the welfare of the family. In the normal course of things, any such contribution should be weighed in the same scale as a contribution of a different nature. Spouses may choose to perform a different role in a marriage. If the husband's skill, initiative, hard work and drive yield handsome financial rewards, it is entirely unfair to regard those rewards as being any greater in value than those of the wife who might have employed equal skill, initiative, and dedication at home bringing up the children and keeping a stable household. In such a case, I see no reason why the assets acquired during the marriage ought not to be equally divided. ... [E]ach in their different spheres contributed equally to the family, and as a general guide, equality in the distribution of the matrimonial assets should be departed from only if, and to the extent that, there is good reason for it."

¹⁷ (2003) BVI Civil Appeal No. 17 of 2002

(c) Findings: Businesses and Vehicles

- [44] In the light of the authorities, and in the peculiar circumstances of this case, I find no good reason why the vehicles shouldn't be divided equally as well as the other assets of the business including the food truck. This was a marriage of 17 years, and cohabitation of 22 years. There are two children of the marriage. Mrs. Carty had a fulltime job. She was not a stay at home wife or mother.. Notwithstanding that fact, and contrary to the defence and evidence of Mr. Carty, I find that Mrs. Carty was an active and integral part of, and partner in the business over the years, under whatever names it operated.
- [45] Mr. Carty maintains that his father assisted with funds to purchase vehicles. Even if this were true, it is evident that the assistance rendered by his father was for the parties' mutual benefit. If this were not so, Mr. Carty would not have registered the vehicles in both parties' names. As I see it, then, there is no good reason to depart from the equality principle, in relation to the business and the vehicles and "any attempt to weigh the respective contribution of the efforts of the parties in this case, would be idle and unreal"¹⁸
- [46] One of the remarkable circumstances of this case is that Mrs. Carty has always been an income earner. There was no time between 1994 and the present when her salary as a Government employed nurse was not passing through the accounts of one lending institution or the other to service loans or mortgages contracted by the parties towards the matrimonial home, and on behalf of the family. Mr. Carty had no stable salary when the parties met or when they decided to build. He admits that much; Hence the reason why Mrs. Carty's salary was attached. The evidence is that Mrs. Carty also worked in the business, whenever she was available, notwithstanding holding full-time employment as a nurse and raising two children. There is absolutely no evidence to suggest that the parties had held any intention other than that of equality in relation to the business and the vehicles although it was recognised that it was his idea to extend his taxi business to a tour operator business. Both parties worked hard – Mr. Carty as a taxi driver, then tour operator and food truck operator; Mrs. Carty as a nurse, housewife, and part-time entrepreneur in the businesses and she met the responsibilities of a wife, mother and homemaker.

¹⁸ Per Lord Nicholls in *White v White*, [2000] UKHL, 54, paragraph 14, quoting, with approval, the dicta of Holman J. in *White v White*, first instance decision.

- [47] The marriage lasted from July 1995 to November 2012 – seventeen years of mutual toil. Now that the parties are going their separate ways, the benefits must be shared and the burden must be borne mutually -- that is, equally and equitably, subject to any adjustment by the court.
- [48] It is obvious that I accept Mrs. Carty was substantially involved in the running of the businesses, doing bookkeeping and other paper work and booking tours, buying stocks and cooking for the food truck business and doing the dishes. I accept that during the time she was so involved, the business generated at least EC\$20,000.00 per month. Mr. Carty agreed that much during cross examination. Tellingly, Mr. Carty testified during cross-examination that he does not run the food truck and tour operation businesses anymore because they were too stressful. This only goes to show that Mrs. Carty was the driving force behind the businesses, especially the food truck service. I have no hesitation in finding and holding that the vehicles and the Rain Forest & Safari Tour and food truck service businesses were owned in equal shares by both parties. And I so declare. Accordingly, I propose to order that Mrs. Carty holds a 50% interest in the businesses at they stood at the time of her departure, and that a valuation be done to determine the value of the businesses up to the time Mrs. Carty discontinued her involvement therein. I also propose to order that a valuation be done of the remaining vehicles, (excluding the Nissan Bluebird used by Mrs. Carty and any vehicle (other than the Safari truck for which Mrs. Carty is paying the mortgage) used personally by Mr. Carty on a daily basis) and that the food truck be valued and sold and the proceeds be divided equally between the parties

The Matrimonial Home at Green Tree Housing

- [49] It is obvious that the findings I have made in relation to occupation rent and rental income are predicated on the footing/finding that the matrimonial home and the land on which it stands are owned jointly by Mr. and Mrs. Carty as is shown on the Certificate of Title. I do not find the facts/circumstances of this case give rise to a resulting or implied trust in favour of Mr. Carty in respect of the matrimonial home nor the land on which the matrimonial home stand.
- [50] Notably, Mrs. Carty has not in her fixed date claim form or statement of claim directly asked the court for an order determining the extent of her interest in the matrimonial home. Nor has Mr. Carty counterclaimed for any declarations or orders in that regard. As I have said, the issue was raised in their respective pretrial memorandum as primary issues to be decided by the court, and it

was canvassed before me briefly. Mrs. Carty would wish the court to find that the matrimonial home is owned jointly in unequal shares with the greater portion being owned by her. Mr. Carty on the other hand would wish the court to declare that Mrs. Carty holds the property in trust for him under a resulting trust basis. At the same time, in his pretrial memorandum, Mr. Carty states: “[T]he Defendant admits that the Claimant would have a beneficial interest in the building on the land by reason of, and to the extent of the mortgage payments being made by salary deduction from the Claimant’s account from about October 2014 to the present.”

The Applicable Law

- [51] There is no modern statute in St Kitts and Nevis that is applicable to, or impacts on the issue of division of matrimonial property or alteration or property adjustments. The Matrimonial Causes Act 1948 (Cap 50) which gave the court power in respect of the division of matrimonial assets, has been repealed by the Divorce Act, 2005, No. 32 of 2005. The Divorce Act gives the Court no power in relation to division of matrimonial property, although it saved the Matrimonial Causes Rules, (1937 No. 1113).
- [52] Thus, it appears that the statement made by Baroness Hale of Richmond in the Antigua case of **Lynn Abbott v Dane N.L. Abbott** applies with equal force to St Kitts and Nevis. At paragraph 2 of her judgment, Baroness Hale stated: “Unlike some other Caribbean countries, Antigua and Barbuda has no equivalent of the wide powers of property adjustment enjoyed by divorce courts in the UK. Property disputes have therefore to be resolved according to the ordinary law.”
- [53] The Married Women’s Property Act of St Kitts and Nevis, which dates back to 1887 seems prima facie to be the applicable law in this case. Section 19 which provides for the division of matrimonial assets, gives the court a free hand to do whatever it thinks just as regards the title to family assets.

Section 19 of the Act provides in part:

“ In any question between husband and wife as to the title to or possession of property either party ... may apply by summons or otherwise in a summary way to any Judge, and such Judge may make such order with respect to the property in dispute ... as he thinks fit.

[54] Section 19 of the Married Women's Property Act 1887 of Antigua and Barbuda corresponds with section 19 of the Married Women's Property Act 1887 of St Kitts and Nevis. Section 17 of the Married Women's Property Act UK corresponds with Section 19 of Married Women's Property Act of St Kitts and Nevis. In the UK, Section 17 is usually invoked when marriages have broken down, but some schools of thought take the view that section 17 is merely procedural and that the High Court has no jurisdiction to determine questions of division of matrimonial property in respect of a joint tenancy.

[55] Nevertheless, in **Monica Tyson v Eston Tyson**, Divorce Suit No. 4 of 2000, the High Court in St Kitts and Nevis exercised jurisdiction under the Married Women's Property Act in respect of a joint tenancy. In that case, Hariprashad-Charles J quoted Lord Denning in **Hine v Hine** [1962] 3 All ER 345 as saying:

"It seems to me that the jurisdiction of the court over family assets under section 17 is entirely discretionary. Its discretion transcends all rights, legal and equitable, and enables a court to make such order as appears to be fair and just in all the circumstances of the case."

[56] At that time, the cases that construed the Married Women's Property Act were set out in

- 1.) **Mahibir v Mahibir** [1964] 7 WIR 133
- 2.) **Hine v Hine** (1962) 3 All ER 345;
- 3.) **Davis v Davis** (1969) 14 WIR 141;
- 4.) **Rimmer v Rimmer** [1952] 2 All ER 863; and
- 5.) **Stevenson v Stevenson** [1969] 4 WIR 405

[57] With those initial observations, I proceed to consider the extent of the interest of the parties in the matrimonial home.

The Land at Green Tree Housing on which the Matrimonial Home Stands

[58] In settling this property dispute, I would be content to take into account the pronouncement of Baroness Hale in **Stack v Gordon**¹⁹ where Baroness Hale stated at paragraphs 66, 68 and 69:

"66. But the questions in a joint names case are not simply 'what is the extent of the parties' beneficial interest?' but did the parties intend their beneficial interest to be different from their legal interest?' and if they did, in what way and to what extent?"

¹⁹ [2007] 2 All ER 948

“68. The burden will ... be on the person seeking to show that the parties did intend their beneficial interest to be different from their legal interests, and in what way.”

“69 When a couple is joint owners of the home and jointly liable for the mortgage, the arithmetical calculation of how much was paid by each is likely to be less important. It will be easier to draw the inference that they intended that each should contribute as much to the household as they reasonably could and that they would share the eventual benefit or burden equally. At the end of the day, having taken all this into account, cases in which the joint legal owners are taken to have intended that their beneficial interests should be different from their legal interests will be **very unusual.**” (Bold mine). Perhaps this case can be classified as an ‘unusual’ case.

[59] There is in evidence the certificate of title to the matrimonial property. It is dated 18th January 1994.

[60] During the course of writing the judgment, I discovered that the certificate of title places legal title in the joint names of ‘Earl Vanlow’ and ‘Jenifer Louard’. Because of this anomaly, I was forced to recall the matter in open court for further hearing. Both parties gave additional viva voce evidence whereupon it emerged that Mr. Carty, before he became married to Mrs. Carty, and at the time of acquiring the land on which the matrimonial home stands, carried the name and surname ‘Earl Vanlow’, and Mrs. Carty’s maiden name/surname was ‘Louard’. The surname ‘Vanlow’ was the surname once carried by Mr. Carty’s father²⁰ but when Mr. Carty decided to get married his father told him that his correct name is Oral Carty. Upon the direction of the court, Mr. Carty provided an affidavit of identity with exhibits²¹ deposing that the names ‘Earl Vanlow’ and Oral Curtis Carty refer to one and the same person who is Oral Curtis Carty; and Mrs. Carty provided an affidavit of identity together (with documents in proof) showing that the names ‘Jenifer Louard’ and ‘Jenifer Jacinth Carty’ refer to one and the same person who is ‘Jenifer Jacinth Carty’.

[61] That having been said, evidence was led to show that the land on which the matrimonial home stands was paid for directly by Mr. Carty. He paid CHA EC\$7,169.75 for it, and at his request, the land was transferred from CHA in the joint names of Mr. and Mrs. Carty. It is recognised that the certificate of title indeed places legal title in the joint names of Mr. and Mrs. Carty. There are no words indicating that the land is held in any distinct share. A certificate of tile into joint names

²⁰ It is said that Mr Carty’s father’s once carried his father’s surname “Vanlow” but his mother’s surname was Carty which he subsequently used.

²¹ Including his certificate of birth

establishes a prima facie case of joint and beneficial tenancy with survivorship, unless and until a contrary intention is proved. There is no evidence to show any agreed intention by the parties that the property belong to them in any particular shares other than in equal shares. Nor are there any words in the certificate of title to suggest any distinct share; so a joint tenancy with survivorship is presumed.

[62] Accordingly, the court declines to look behind the words of the certificate of title to declare the intention of the parties. The property being placed in joint tenancy, that is prima facie proof that each spouse is intended to have, subject to severance of the joint tenancy, joint beneficial interest in the disputed land. It would seem on these facts, that Mr. Carty, by placing the title in both names evinced an intention that Mrs. Carty was to have a legal and beneficial interest in the land.

[63] What is more, the land was acquired during the time the parties were living together in a relationship akin to marriage, and they already had a child together, who was one year old at the time of acquisition of the land. At the time of acquisition and during the payment of the installments to CHA, Mr. Carty was working and Mrs. Carty was working, and raising a child, and being a home maker, paying rent and sharing outgoings. It would be a step backward to say in this day and age, because Mrs. Carty did not make a direct financial contribution to the purchase price for the land that she must be taken not to have made any contribution towards its acquisition. She must be taken to have contributed indirectly to the acquisition of the land. In the words of Baroness Hale in **Stack v Gordon**, the law has moved on.

[64] This is not a case where Mrs. Carty was at home doing domestic work and Mr. Carty was the sole breadwinner. Both parties worked assiduously before and during the marriage. It seems unreasonable and unconscionable for Mr Carty to come now to ask the court to say that Mrs. Carty holds title in trust under a resulting trust for him. The court is satisfied, that there is evidence that the common intention of the parties from the inception was that they would have both legal and beneficial interest in the land and that the intention was that they would own the land in equal shares, with rights of survivorship, I therefore declare that that the parties are entitled to an equal share in the land and that no resulting trust arises in respect of the land, the land and I so hold.

[65] That declaration concludes the question of entitlement to interest in the land itself.

(c) The Matrimonial Home

- [66] In relation to the matrimonial home, Mr. Carty takes the position that Mrs. Carty is only entitled to what she paid towards the mortgage payments on the house. He does not quantify that amount. He attributes the contribution to the construction of the house before the FCIB loan to his efforts only. If in fact Mr. Carty's father gave him EC\$10,000.00 and it went towards the downstairs, then that is ordinarily regarded as a contribution by Mr. Carty to the marriage or the family. Mrs. Carty admitted during cross examination, that Mr. Carty, in addition to being a taxi driver is a mason. She further admitted that he provided personal labour, and that friends helped to get the building to beam height. But she stated that there was paid labour as well. And that paid labour and materials came from monies belonging to both parties. Furthermore, she insisted that she was working all that time – from 1985 when they met, and was mother and homemaker and therefore contributed directly and indirectly to the construction of the home before the mortgage loans obtained.
- [67] I accept the evidence of Mr. Carty and find she contributed to the construction of the matrimonial home in the initial stages before the parties approached FCIB for the loan of EC\$200,000.00, and the Scotia Bank loan of EC\$112,000.00. She contributed financially and non-financially by being a mother, home maker and income earner. As I previously stated, this is not a case where Mrs. Carty was exclusively a home maker doing only domestic chores daily in the home. She was a working mother and then wife whose income went towards household expenses, and rearing her children. Mr Carty would wish to minimize and undervalue her contribution but as we have seen above, Saunders J in **Stonich v Stonich** warned against undervaluing the homemaker and child rearing roles.
- [68] The court finds that Mr. Carty also made substantial contribution towards the construction of the matrimonial home to beam height prior to the FCIB and Scotia loans, and he also assisted with household expenses and raising the children. I am inclined to the view that the parties' contribution prior to taking out the FCIB loan was equal. I believe her when she said, "it was not his money. It was our money, and I had the children to look after."

[69] I do not find any resulting trust regarding the matrimonial home as Mr Carty has pleaded. On the contrary, I find an equal contribution prior to the mortgage with FCIB.

(d) The FCIB Mortgage Loan and Scotia Student Loan

[70] The parties are diametrically opposed as to the contributions made by either party to the mortgage. Mrs. Carty denied that Mr. Carty refunded her any mortgage payments monthly. She stated that he only assisted her in October and November 2011²² and since that time, she alone had been servicing the mortgage which at one time fell into arrears because Mr. Carty withdrew monies from the joint account in which her salary was lodged for payment of the mortgage. Mr. Carty did not deny withdrawing monies from the joint account but said that he withdrew what was his.

[71] It seems odd that Mr. Carty would refuse to assist in payment of the mortgage while the parties were living together, and decided to assist Mrs. Carty for the first two months after she moved out.

[72] I find, and there is no dispute that the parties are jointly and severally liable, for the mortgage payments for the matrimonial property, for one of the safari trucks and for the student loan., but it is Mrs. Carty alone who has been repaying the mortgage for the matrimonial home, and the safari truck while Mr. Carty occupies the said matrimonial home and uses the safari truck, and is reaping the benefits thereof.. I think Mrs. Carty is to be commended for keeping the matrimonial home from being foreclosed upon,²³ while still paying rental accommodation for herself and her daughter, and supporting herself.

[73] Significantly, account must be taken of the student loan which apparently is secured on the matrimonial property, and which Mr. Carty says is the responsibility of both parties, but he alone has been paying it. I see no evidence as to how much he is paying on the student loan and what is the balance remaining. That said, it is unclear as to how to quantify the respective contribution of the parties towards payment of the mortgage in respect of the matrimonial home, the safari truck and the student loan. The evidence in this regard is scant or nonexistent.

²² She did not disclose how much she received in October and November

²³ The loan fell into arrears consequent upon Mr. Carty's withdrawal of monies lodged to the joint account from Mrs. Carty's salary to pay the mortgage loan.

- [74] Doing the best I can with what is before me, I am prepared to accept that both parties serviced the loan jointly up to November 2011, and from then, till now, (date of trial), and that Mrs. Carty. has been bearing the burden solely. However, I am unable to say what percentage of the loans either party has paid, but it is apparent, and I accept that Mrs. Carty has been paying the lion's share. I do not believe Mr. Carty Mrs. Carty the mortgage installments up until 2014. However, it is likely that he did contribute to the repayments, if not by direct financial contributions to Mrs. Carty, by indirect nonfinancial contributions by assisting with household expenses, thereby enabling Mrs. Carty to pay the mortgage. I would assume that the parties benefitted jointly and severally from the EC\$20,000.00 generated from the businesses. Mrs. Carty gave evidence that in addition to the joint account, the parties had separate accounts. This was undisputed, but neither disclosed the balances thereon.
- [75] In her pretrial memorandum, Mrs. Carty's counsel urged the court to find that Mrs. Carty is entitled to a greater share of the equity than Mr. Carty, but she has not suggested what percentage of the equity that might be. No assistance was forthcoming in this regard since no submissions were filed; and the evidence is scant.
- [76] Similarly, it is not possible to measure Mr. Carty's contribution towards the loan payments, but in his defence and pretrial memorandum, counsel advanced three different positions which I need not repeat.
- [77] As I see it, the limited evidence and circumstances call for a departure from the principle of equity is equality; and a consideration of an alteration of the interest of the parties in the matrimonial home (house and land) in favor of Mrs. Carty since she has obviously contributed the lion's share towards same especially in respect of the mortgage refinancing by Scotia Bank.
- [78] No evidence was forthcoming as to what the balance of the mortgage is; or on the student loan which is linked to the matrimonial property. No suggestion as to what the net equity is. No valuation of the property has been put forward by either side. . And no account has been given as to the balance outstanding on the student's loan. The method usually adopted to determine the net equity is taking the market valuation of the property and subtracting outstanding debts thereon. On

the facts of the instant case, it would mean taking the market value of the property (house and land) and subtracting the balance due on the mortgage²⁴ (if any) as well as the balance on the student's loan.

- [79] What would be a just solution of this matter? I am of the view that a just solution would be to make a property adjustment as I see fit in accordance with section 19 of the Married Woman's Property Act. I am not of the view that I should apply the equality principle, since the contribution of Mrs. Carty was of a substantial nature as to warrant a greater beneficial interest in the property. I am inclined to treat the house and land as one asset as Hariprashad-Charles did in the Nevis case of **Tyson vs Tyson**²⁵ and as the Court of Appeal did in the BVI case of **Stoutt v Stoutt**²⁶. **Thus**, treating the land and matrimonial home as one asset which is the matrimonial property, and taking into account that Mrs. Carty has been, and will continue to pay the mortgage, I would assess Mrs. Carty's interest in the matrimonial property to be 55% and Mr. Carty 45% of the equity in the matrimonial property.

Conclusion

- [80] For the reasons stated above, the court makes the following declarations and orders:

1. A declaration that the facts/circumstances of this case do not give rise to a resulting or implied trust in favour of Mr. Carty in respect of the matrimonial home nor the land on which the matrimonial home stands; nor the vehicles registered in the joint names of the parties.
2. A declaration that Mrs. Carty is entitled to 55% of the equity in the matrimonial property and Mr. Carty to 45%.
3. An order that a value be agreed upon by the parties and or their counsel to view and value the matrimonial property and provide a valuation report within one month from the date of this delivery of a sealed copy of this judgment, the cost of the valuation be borne equally by both parties. Mr. Carty must permit entry to the valuer to the property for the purpose of carrying out the valuation.
4. A declaration that Mrs. Carty is entitled to recover the sum of EC\$31,500.00 representing rental income due to her from the apartment downstairs for the period November 2011 to present, and an order that Mr. Carty do pay Mrs. Carty such amount within 3 months hereof, or at such other date as may be agreed upon by the parties.

²⁴ It would appear that the mortgage was to be repaid in 2016. Unclear as to whether it has been repaid.

²⁵ DIV Suit No. 04 of 2000, Nevis Circuit.

²⁶ Civil Appeal No. 10 of 1994, BVI

5. A declaration that Mrs. Carty is entitled to recover EC\$56,000.00 as occupation rent; and an order that Mr. Carty do pay to Mrs. Carty said amount within 6 months hereof, or at such other date as may be agreed upon by the parties.
6. An order that the Nissan Bluebird shall remain with Mrs. Carty absolutely, and that both parties do what is necessary to transfer the said vehicle to Mrs. Carty absolutely. In the event that Mr Carty is unwilling or unable to execute the requisite transfer documentation as may be required to be executed following upon this order, then the Registrar of the High Court is authorised to execute any such documentation on Mr. Carty's behalf.
7. An order that the vehicle presently used by Mr. Carty for his personal use shall remain with Mr. Carty absolutely; and if necessary, the parties do what is necessary to transfer the said vehicle to Mr. Carty absolutely. In the event that Mrs. Carty is unwilling or unable to execute the requisite transfer documentation as may be required to be executed following upon this order, then the Registrar of the High Court is authorised to execute any such documentation on Mrs. Carty's behalf.
8. A declaration that Mrs. Carty had a 50% beneficial interest in the business called Rain Forest and Safari Tours as it existed in October 2011 when Mrs. Carty moved out and had no further dealings with the business.
9. An order that the parties appoint a single accounting expert to undertake an accounting exercise so as to (a) ascertain what was the net worth of the business in October 2011 (b) to determine Mr. Carty's dealings with the following vehicles: 2 safari trucks, one Pajero, and one food truck. The parties shall bear equally the costs associated with the accounting exercise.
10. An order that the parties shall bear their own costs of these proceedings.
11. An order that there be liberty to apply for further orders or directions.

Pearletta E. Lanns
High Court Judge [Ag]

By the Court

Registrar