

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

**HIGH COURT
(FAMILY DIVISION)**

No. 563 of 2000

IN THE MARRIAGE of:

**CHRISTOPHER JOHN NICHOLAS
TOWNER**

APPLICANT/HUSBAND

AND

**DAPHNE IRENE ROSLYN
WILLIAMS-TOWNER**

RESPONDENT/WIFE

Before the Hon. Madam Justice Kaye Goodridge, Judge of the High Court.

2012: July 16, 17, 25

2014: October 17

Mr. Roger C. Forde QC, Attorney-at-Law for the Applicant/Husband.

Beverley Lady Walrond QC and Ms. Margot Greene QC, Attorneys-at-Law for the Respondent/Wife.

DECISION

Introduction

[1] This is an application for determination of the property interests of the parties under the **Family Law Act, Cap. 214 (the Act)**. This matter

has had a long and tortured history. It was beset by the misfortune of not being susceptible to an easy or early resolution, despite the desirability of bringing finality, without undue delay, to a fractured relationship such as this.

The Background

- [2] The parties were married on 28 January 1989. At the time of the marriage the Wife was 27 years old and the Husband 39 years old. There were no children born to the marriage.
- [3] At the time of the marriage, the Wife was employed as a teller at the then Caribbean International Bank of Commerce (CIBC) and was working towards completing banking examinations to become a Fellow of the Institute of Canadian Bankers. The Husband, who is a chartered accountant, was the Managing Director at Prescott Management (Barbados) Limited (Prescott), earning a salary of BDS\$10,000 a month. He is a Fellow of the Institute of Chartered Accountants of England and Wales; a Fellow of the Chartered Association of Certified Accountants and a Fellow of the Institute of Chartered Accountants of Barbados.
- [4] The Husband and Wife resided in a one bedroom apartment owned by the Husband at Rockley Resort in the parish of Christ Church.

Construction of the former matrimonial home “Tial-Ta” now called Casa del Corazon (“Tial-Ta”) was started at lots 17, 18 and 19 Polo Ridge, Holders Hill in the parish of Saint James. These lots had been purchased by the Husband for the sum of \$100,000 before the parties became engaged to be married. When the Husband and Wife moved into the home it was not fully completed. The Husband subsequently bought the adjoining lot, numbered 16. In due course work on “Tial-Ta” was completed.

- [5] After about a year of marriage, the Wife left her job at CIBC and joined Armstrong Martin, a real estate agency where she worked part time and on a commission basis.
- [6] In March 1991 the Husband was made redundant when Prescott ceased its operations in Barbados. The Husband borrowed money from his father-in-law and his father to start his own offshore insurance management business. He bought Prescott and changed the name to Towner Risk Management Limited.
- [7] Things were difficult financially for the parties for about two years. Their situation improved when the Husband started to manage the business interests of a group of investors, the Loewen Group which

- purchased the Robertson Ward building in Holetown in which the Husband previously had an office.
- [8] The Husband also established Towner International Management Services Ltd which was subsequently replaced by Towner International Services SRL and in 1993 formed a holding company, Towner Management Group Inc. (TMGI) to consolidate the “Towner” brand name. He made the Wife a director of TMGI.
- [9] Around 1994 the Wife started her real estate company Towner Realty Inc., which was operated from her Husband’s building. The Husband and the Wife were the directors. The Wife worked part time. Any income which she earned was paid into Towner Associates Ltd. The Husband maintained the Wife and allowed her access to his credit card. The Wife was also a director of Towner Associates Limited. However the Wife did not attend any directors’ meetings.
- [10] The parties lived a comfortable life and travelled together. The Wife had the assistance of a housekeeper and gardener.
- [11] In 1997 the Wife discovered that the Husband was seeking to transfer the ownership of “Tial-Ta” to a company in the British Virgin Islands. The relationship between the parties subsequently deteriorated and they separated in September 1998.

The Court Proceedings

[12] On 27 September 2000 the Husband filed an application for dissolution of the marriage and on 2 July 2001 a decree *nisi* was granted. On 10 July 2001 the Wife filed an application seeking certain declarations and orders in respect of maintenance and property settlement. The decree absolute was granted on 20 July 2001 and it was ordered by consent that the Wife is entitled to a one-half share in “Tial-Ta”.

[13] The Wife filed an amended application on 13 October 2004 seeking the following orders:

- "(a) An order under section 57 of the Family Law Act altering the interest of the Husband in the property known as “Tial-Ta”, Polo Gardens, Saint James so as to vest such a share of his 50 per cent interest therein in the Wife in respect of her claim under section 57 of the Family Law Act in respect of the companies listed below as to the court may seem just;
- (b) A declaration that the Wife is entitled to an interest in the shares of the company Sanderling Inc. which owns the property “Villa Falaise” situate at Coral Cliff in the parish of Saint Peter;
- (c) Further, or in the alternative, an order under section 57 of the Family Law Act vesting in the Wife such a share in the shares of the said company as to the court may seem just;
- (d) An alteration of the interests of the Husband in the following companies namely:

- (i) Second Street Holdings Ltd;
- (ii) Towner International Services SRL;
- (iii) Towner Management Services Ltd;
- (iv) Towner Associates Ltd;
- (v) Towner Risk Management Ltd;
- (vi) Towner Realty Ltd;
- (vii) Towner Associates Limited;
- (viii) and any other company in which the Husband has a controlling and/or substantial shareholding so as to vest in the Wife such a share in those businesses or such a percentage of such shareholding as to the court may seem just;

(paragraphs (e), (f), (g) and (h) of the application are not relevant)

- (i) That the Husband do pay to the Wife such a sum as and for her urgent and permanent maintenance as to the court may seem fit;
- (j) In the alternative, that the court do make provision for the maintenance of the Wife by vesting in her such an interest in the property and/or by means of a lump sum provision so as to end the relations between the parties;
- (m) That there be an Order for interim payment of the Applicant's costs of this Suit and that proper provision be made for the payment of the Wife's costs."

[14] On 8 November 2004 the court made an order that the Husband pay maintenance to the Wife at the rate of \$5,000 a month.

[15] Subsequently the Wife requested the Husband to disclose certain information about his income and financial resources. The Husband did not provide that information, and deposed that he had been advised by his then attorney-at-law that the Wife was not entitled to disclosure beyond 31 December 1999. This difficulty was resolved when the court ordered the Husband to make further disclosure.

[16] On 23 February 2007 the Husband filed an application seeking an order for the sale of "Tial-Ta". The Husband then complied with the order for further disclosure by filing an affidavit on 30 May 2007.

[17] On 20 September 2007 the Wife sought orders, inter alia, for further disclosure; an increase in maintenance and payment of interim legal costs by the Husband. The court made the order for sale of "Tial-Ta" and dismissed the Wife's application. The Wife appealed that decision.

[18] On 15 April 2010 the Court of Appeal allowed the Wife's appeal and ordered that:

- (i) The Husband must pay the Wife's costs in the appeal and in respect of the application in the court below, certified fit for two attorneys-at-law, to be taxed if not agreed.
- (ii) Pending the determination of all proceedings between the parties, the Husband shall pay \$5,000 per month towards the Wife's personal maintenance

and \$5,000 per month towards the payment of her living and household expenses.

- (iii) No sale or disposition of the property known as “Tial-Ta” must take place until all proceedings between the parties have been finally determined.
- (iv) The issue of the true ownership of the company known as Sanderling is remitted for further trial.
- (v) The Husband must provide current valuations of the property known as “St. James House”, situate at Holetown, St. James; the property known as “Villa Falaise” situate at Coral Cliff, St. Peter and the condominium designated as ‘Unit 120’ situate at Port St. Charles, St. Peter.
- (vi) The Husband shall pay the Wife, within 30 days, the sum of \$35,000 (inclusive of any VAT payable) towards the costs of retaining an expert in accounting to assist her in investigating the personal and corporate affairs of the Husband.
- (vii) The Husband shall pay the Wife within 30 days, the sum of \$75,000 (inclusive of VAT) towards her legal costs previously incurred and to be incurred.

[19] On 31 May 2012 the Husband was ordered to make disclosure in respect of the sale and purchase of various companies trading as “The Towner Management Group”. The Husband complied with the court's order by filing an affidavit on 15 June 2012.

The Evidence

[20] The Wife filed a number of affidavits in support of her application and the Husband filed his affidavits in response thereto. On 18 June 2012

the Wife filed a report prepared by her accountant, Kroll Associates UK Limited (the Kroll report), which outlined the company's valuation of the Husband's interests in the Towner Group of companies. The Wife also filed a statement of financial circumstances and an affidavit on 21 June 2012.

- [21] At the trial both parties gave evidence and were cross-examined extensively by counsel. The Wife called two witnesses, Mr. Christopher Robinson, (Mr. Robinson) a real estate broker who gave evidence regarding the property known as "Villa Falaise" and Mr. David Boyce, (Mr. Boyce) Director (ag), Exchange Control Department, Central Bank of Barbados.

The Law and the Approach of the Court to Proceedings Relating to Property

- [22] **Section 56** of the **Act** empowers the court to make declarations as to the title or rights of the parties to a marriage or union other than a marriage in respect of property.
- [23] **Section 57** of the **Act** provides:
- “1. In proceedings in respect of the property of the parties to a marriage or union or of them, the court may either of make such order as it thinks fit altering the interests of the parties in the property including:-
 - (a) an order for the settlement of property in substitution for any interest in the property; and

- (b) an order requiring either or both of the parties to make for the benefit of either or both of the parties or a child of the marriage or union, such settlement or transfer of property as the court determines.
2. The court shall not make an order under this section unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.
 3. In considering what order should be made under this section, the court shall take into account the following:-
 - (a) the financial contribution made directly or indirectly by or on behalf of a party or a child to the acquisition, conservation or improvement of the property, or otherwise in relation to the property;
 - (b) the contribution made directly or indirectly to the acquisition, conservation or improvement of the property by either party, including any contribution made in the capacity of home-maker or parent;
 - (c) the effect of any proposed order upon the earning capacity of either party;
 - (d) the matters referred to in section 53(2) in so far as they are relevant; and any other order that has been made under this Act in respect of a Party.”

[24] In **Proverbs v Proverbs (2002) 61 WIR 91 (Proverbs)** the Court of Appeal outlined the approach which a court must take in proceedings relating to the determination and alteration of the interests of parties in property. **Simmons CJ** stated at paragraph **31**:

"In the determination of a property application under Section 57, the proper approach involves a process of three steps.

- (i) The net property of the parties must be identified and valued by the court.
- (ii) The respective contributions of the parties within the terms of section 57(3) must next be considered and evaluated.
- (iii) The section 53(2) factors, so far as relevant, should then be considered."

[25] In addition to the above, the court must not make an order altering the property interests of the parties unless it is satisfied that, in all the circumstances, it is just and equitable to make such an order.

[26] The **Act** places an obligation on parties to proceedings for the determination and alteration of any interests in property to disclose to the court all property which they own, regardless of how or when that property was acquired or the type of property involved.

[27] While it is recognised that, generally speaking, financial resources acquired by one party after separation can very rarely have been contributed to by the other party, in making an order for settlement of property, the court is obliged to look, not only to the assets acquired during the marriage, but also, to the financial resources of the parties: see **Wilson v Wilson (1980) FLC 90-880** and **Carter v Carter (1981) FLA 91-061**.

[28] As for business assets, in **Aroney and Aroney (1979) FLC 90- 709**

(Aroney) at **78,785** the court stated:

".....no distinction can usefully be drawn between so called matrimonial assets on the one hand and business assets on the other...This means that the court must look at the totality of the assets of the parties, whether acquired by inheritance, by pre-marital efforts, or by way of business activity, although... the manner in which the particular assets have been acquired or contributed to may be relevant in determining the overall distribution between the parties...."

[29] Further, the authorities have made it clear that the contribution of a spouse as a homemaker or parent entitles that spouse to a share in the totality of the assets acquired by the efforts of the parties during the marriage. This extends to business assets held by one spouse to which the other spouse (more often than not the Wife) has made no direct or indirect financial contribution. Of course that entitlement will vary depending on the circumstances of the case. (**Aroney; and Harris and Harris (1991) FLC 92-254**). Any contribution made in the capacity of a homemaker or parent, ought not to be assessed in a token way.

The Property of the Parties

The Property "Tial-Ta"

[30] The title to "Tial-Ta", the former matrimonial home is vested in the Husband. The Wife did not make a direct financial contribution

towards the acquisition of "Tial-Ta". As stated earlier in this judgment, the home was constructed on lots 17 to 19 which comprise 73,678 square feet. BCQS International has valued those lots along with the house at BDS\$3,450,000 and the adjoining lot 16 which was purchased during the course of the marriage at BDS\$550,000, giving a total value of BDS\$4,000,000. There were two mortgages on the property, which the Husband continued to pay after separation and divorce until all outstanding sums were repaid. It has been agreed that the Wife and the Husband each have a 50% interest in "Tial-Ta".

The Business Assets

- [31] During the marriage and after being made redundant, the Husband embarked upon his own business of providing management services to corporate entities such as insurances companies, international companies and other offshore entities. The business was conducted through a number of companies which were established by the Husband.
- [32] The Wife seeks an alteration of the Husband's 50% interest in "Tial-Ta" in respect of her claim of an interest in the companies set out in

her amended application and any other companies controlled by the Husband.

[33] There is a great divide between the parties as to the extent of the Wife's contribution to the companies and as to her entitlement to a share in those companies.

[34] Towner Associates Limited was incorporated by the Husband on 28 September 1979 prior to the marriage. This company is inactive.

[35] After the parties separated Towner Realty Ltd, which was the Wife's company, floundered because the Wife was unable to continue the business.

[36] According to the financial statements exhibited in the Husband's affidavit of 8 February 2008, at the date of separation the Towner companies had made consolidated profits for 1998 of US\$79,830 on consolidated gross revenues of US\$439,803.

[37] Subsequent to separation and divorce of the parties, the Husband incorporated the following companies:

- (i) Second Street Holdings Limited in March 2001;
- (ii) Capricorn Concepts Ltd in November 2001;
- (iii) Second Street Properties Ltd in December 2001.

(The Kroll report referred to those companies, including Towner Associates Limited, collectively as the Towner Group of Companies.)

[38] According to the Kroll report, Second Street Holdings Limited is the parent holding company for The Towner Management Group Inc. and St. James Group Inc. Capricorn Concepts Limited is the holding company for the shares of Safrane Corporation, which owns Unit 120 at Port St. Charles in the parish of St. Peter in which the Husband resides. Second Street Properties Limited is a real estate holding company whose main asset is a commercial property known as St. James House located at Second Street, Holetown, St. James. These companies including Towner Associates Limited are 100% owned by the Husband.

[39] The Kroll report had calculated that the fair market value of the Husband's interests in the Towner Group of Companies as at December 2009 was as follows:

Description	Barbados \$	
	Low	High
1. Second Street Holdings Ltd	\$7,220,000	\$ 9,120,000
2. Capricorn Concepts Ltd	\$ 624,000	\$ 1,524,000
3. Second Street Properties Ltd	\$1,394,000	\$ 1,394,000
	\$9,238,000	\$12,038,000

In summary, the Kroll report had valued the interest of the Husband in the companies at a low of BDS\$9,238,000 and a high of BDS\$12,038,000 as at December 2009.

[40] However, the valuation provided by the Kroll report was of limited assistance to the court since the Husband disclosed that the assets of the Towner Management Group Inc. were sold in May 2012 for the sum of US\$7,210,560 to Jardine Lloyd Thompson Group PLC of London, United Kingdom. After expenses the net sum realised by the Husband was US\$4,090,998 or in excess of BDS\$8,000,000. According to the evidence, US\$2,000,000 of that amount will be used to invest in an annuity for the Husband, US\$1,000,000 has been set aside for a contingent liability and the mortgage sum of US\$551,682 on St. James House was repaid by the Husband. Further, the Husband retains an interest in the re-branded JLT Towner US company in the amount of US\$182,893.

[41] The Kroll report also detailed that between 2000 to 2009 the Husband received dividends of approximately BDS\$815,634.00 annually, mainly from Second Street Holdings Ltd and the Towner Management Group, but no information was provided as to how the Husband disposed of those funds.

[42] The Husband's interest in St. James Group Inc is valued at a low of BDS\$790,000 and a high of BDS\$1,970,000 giving a mean value of BDS\$1,014,000. The Husband deposed that he owns a 50% share and the other 50% is owned by the Holetown Settlement.

[43] As can be seen from paragraph [37] above, some companies were incorporated after the parties were divorced. It therefore cannot be argued with any degree of success that the Wife made a contribution to acquisition of the same.

[44] Based on the foregoing, it is clear that the business and wealth of the Husband grew at a steady rate after the separation and divorce of the parties, no doubt through the hard work of the Husband. It is also clear that the Husband's financial position is considerably better than that of the Wife.

[45] During cross-examination, the Husband revealed that he and his tax accountant own a company, Christopher Towner Properties which owns a house in Broward County, Florida. No information was provided as to the date of acquisition or the value of the same.

The Issue of Ownership of Sanderling Properties Limited

[46] In 1994 a company, Sanderling Properties Limited, (Sanderling) was incorporated with the Husband and his father, Mr. Eric Towner, as

the two directors. Sanderling purchased a property called “Villa Falaise” at Coral Cliff in the parish of Saint Peter for the sum of \$250,000 with funds which were provided by way of an interest free loan to Sanderling by the Husband's father. There is no evidence that Sanderling had any other assets or property. “Villa Falaise” was subsequently sold for the sum of \$575,000 to Sunny Isle Motors Limited in September 2008.

[47] The Wife has acknowledged that she did not give any money towards the purchase of “Villa Falaise” nor did she contribute to the share capital of Sanderling but it is her contention that she is entitled to a share of the Husband's interest in Sanderling which she has placed at 51%.

[48] The Wife has insisted that the Husband has not been truthful as to his interest in Sanderling. In support of this contention, she drew the court's attention to the evidence of her witness Mr. Robinson who testified that he had been asked by the Husband to assist with the sale of his parents' home, “Villa Falaise”, and after some discussion, it was agreed that the property would be offered discreetly at BDS\$1,000.000.

[49] According to Mr. Robinson, he enquired of the Husband who was the registered owner of the property and was informed by way of an e-mail dated 30 June 2007 from the Husband of the following:

"A local company, Sanderling Properties, which is owned between me and my late father; I am the sole executor, and the beneficiary is my mother and she has agreed that we should sell it."

[50] Mr. Robinson also testified that he had received an offer from a Mr. Bernie Weatherhead of BDS\$1,050,000. He was advised by the Husband that he needed to consult his mother before accepting the offer. The property was taken off the market. Mr. Robinson stated that he subsequently discovered that "Villa Falaise" had been sold in 2011. Mr. Robinson's company has sued Sanderling for commission in relation to the sale.

[51] Counsel for the Wife noted that Villa Falaise was listed with Mr. Robinson for sale for the amount of \$1 million and yet it was subsequently sold for \$575,000. Counsel submitted that there is a real likelihood that the Husband obtained more than the stated purchase price for the property.

[52] According to the Wife's oral evidence, it was her understanding that "Villa Falaise" was an investment for the parties. She had expended much time and effort on "Villa Falaise" and had helped with the

interior decorating and provided some of the soft furnishings. She had also assisted with the landscaping of the garden and some of her flowers and plants went to the house.

[53] The Husband's evidence in respect of his shareholding in Sanderling is as follows. In his affidavit of 5 November 2004 he deposed that he was a 51% shareholder in Sanderling in 1999. On 8 February 2008 the Husband deposed:

- "5. On the 11th day of November, 1994, and at a time when no Shares were issued, Sanderling Properties Ltd. purchased a property at Coral Cliff in the parish of Saint Peter for the sum of \$250,000. The Purchase Price was provided by my father.
8. In accordance with the Resolution passed at the Organisational Meeting on the 14th day of March, 1995 my father Eric Towner was issued with 49 Shares and I was issued with 51 Shares but my share certificate was not duly signed.
9. Upon the issuance of the shares, my father and I entered into an oral agreement for the transfer of my Shares to him at par value for I had made no contribution to the capital of Sanderling Properties Ltd and there was no consideration for my shares as required by Section 30 of the Companies Act."
10. By a Resolution dated 14th March 2003 my father and I perfected the said Agreement and I transferred to him the said Shares".

[54] During cross-examination, the Husband restated his position that he held the shares in trust for his father and that the transfer had been

effected for the sum of \$51 in 2003. He contended that the information given by him in the email to Mr. Robinson was not correct. He also denied selling the property for more than \$575,000.

[55] The Wife's witness, Mr. Boyce testified that the Central Bank of Barbados issued a certificate in respect of the transfer of an issue of 49 shares from Sanderling to Mr. Eric Towner, but there is no such record in respect of the transfer of 51 shares from the Husband or Sanderling to his father. Mr. Boyce also stated that if Mr. Eric Towner was a non resident of Barbados permission should have been sought for the transfer of the shares from Sanderling to the Husband and similarly if the Husband held the 51 shares in his name in trust for his father.

[56] If, as the Husband stated, no shares had been issued at the time of the purchase of "Villa Falaise" in 1994, then the certification on the conveyance that Sanderling was controlled by a citizen of Barbados for the purpose of the Property Transfer Tax Act, Cap. 84A would not have been accurate. It might well have been that the Husband and his father did intend that they should hold the shares in the percentages as appears in the share certificates issued in 1995.

[57] In the court's opinion, the fact that no shares had been issued at the time when the purchase was made cannot be interpreted as an attempt to defeat any alleged interest of the Wife, for there is no evidence that the relationship between the Husband and the Wife was other than stable in 1994. Indeed, it was in 1994 that the Husband assisted the Wife with the establishment of Towner Realty Ltd, her real estate company.

[58] Different considerations arise upon the transfer by the Husband of his shares to his father in 2003 because the relationship between the Husband and Wife had long since ended. The question which must be asked is this: if the contents of the e-mail are true, why would the Husband indicate to Mr. Robinson in 2007 that he was part owner of Sanderling if he was not? The court carefully observed the Husband when he gave his evidence in chief and under cross-examination. My assessment of the Husband is that he is a highly intelligent individual. The court is not convinced that the information which he provided to Mr. Robinson was untrue. It is not unreasonable to assume that after the divorce the Husband desired that the true nature of his relationship with Sanderling not be known to the Wife.

- [59] Having assessed the evidence before the court I find that the property, “Villa Falaise”, was bought for use as a residence by the Husband's parents during the 4 to 5 months which they spent in the island and was leased on a short term basis during their absence.
- [60] Whatever suspicion the Wife might harbour as to the sale of the property for the sum of \$575,000, there is no evidence before this court that “Villa Falaise” was sold for other than the sum stated. The court has also taken note of the fact that there was exchange control permission for the remittance of those funds to the Husband's mother who was listed as the beneficiary under the father's will.
- [61] It is the finding of the court that the Husband held 51% of the shares in Sanderling. It is also the finding of the court that the Wife made no contribution, financial or non-financial, directly or indirectly, to the acquisition of the shares of Sanderling or to the management of the company.

The Case for the Wife

- [62] The case for the Wife is that she be granted full ownership of "Tial-Ta", a share of the business assets built up as a result of their joint efforts and that a lump sum be vested in her for her future maintenance.

- [63] The basis for the Wife's contention regarding her entitlement is as follows. Counsel submitted that the Wife left her job at CIBC because the Husband wanted her to be available to travel with him on business. She worked part-time in real estate which allowed her that flexibility.
- [64] Counsel for the Wife acknowledged that the Wife did not make either a direct or indirect financial contribution towards the acquisition of "Tial-Ta". However she submitted that the Wife made a contribution which was substantial, was non-financial, direct and indirect not only to "Tial-Ta" but to the business which was built up during the marriage and which later became the successful Towner Group of companies.
- [65] Counsel also submitted that the Wife had expended much time and effort in decorating the home and establishing a garden. She entertained the Husband's clients at home in the early days of the business when finances were limited and on occasion some clients stayed with them. The Wife stated that she assisted some clients by finding suitable accommodation for them and organised tours for the spouses. The Wife decorated the Husband's office for business meetings and took flowers from her potting shed and her china to the

office all to improve the ambience. Light refreshments were provided for his clients on occasion.

[66] It was submitted further that the Wife made a significant non-financial contribution to the acquisition, conservation or preservation of the total assets acquired during the marriage for which she ought to be compensated in large measure. In support of this submission, counsel relied on the following cases: **In the Marriage of W, 1980 FLC 90-872; In the Marriage of Crawford [1979] FLC 78,165; W v W(1980) FLC 90-872; Matthews v Matthews (1980) FLC 90-887; Carter v Carter 1981 FLC 91-061 and Aroney.**

The Case for the Husband

[67] The evidence of the Husband is that the Wife's role was primarily as a homemaker who was provided with household help in the form of a maid and gardening services. Her contribution in relation to the establishment and maintenance of the garden was not disputed. According to the Husband, on occasion the Wife would entertain clients at their home, set up tables and provide flowers for his business. He agreed that she helped to outfit his office.

[68] It is submitted on behalf of the Husband that the Wife made no direct or indirect financial contribution to the acquisition, conservation or

improvement of the former matrimonial home but that she made a minimal non-financial contribution to the conservation or improvement of the same by assisting in the furnishing and preparation of the gardens. She also made a contribution as a partner to the Husband. The court should therefore alter the interest of the Husband in “Tial-Ta” in accordance with the order made on 20 July 2001 which would vest a one-half share of “Tial-Ta” in the Wife. The effect of such an order would be to provide the Wife with a capital sum of \$2,000,000.

[69] It was submitted further that there should be no alteration of interest in Second Street Holdings Ltd; Capricorn Concepts Ltd; Second Street Properties Ltd or Safrane because these companies were incorporated after separation or divorce. This submission was advanced on the ground that the evidence disclosed that the Wife did not make any financial or non-financial contribution, directly or indirectly, to the acquisition, conservation or improvement of the shares of the companies, and/or any financial or non-financial contribution, directly or indirectly, to the conservation or improvement of the management of the companies.

[70] In addition, Counsel referred to the cases of **Cozantis v Cozantis (1979) FLC 90-643** and **Turnbul v Turnbull (1991) FLC 92-258** and submitted that these cases show that where after separation one party has managed a business asset and the other has made no contribution then the party who has made no contribution is not entitled to a share in the business asset.

[71] With regard to Towner Management Group Inc, Towner Risk Management Ltd and Towner International Services SRL, the submission is that the court should alter the interest in these companies which were incorporated during the marriage because the Wife made a minimal non-financial contribution to the same. However, that contribution should be assessed no higher than 10% of their value at the date of separation i.e \$83,000. There should be no alteration for Sanderling since the Husband held no shares in the company and the Wife made no contribution thereto.

Assessment of Contributions of the Parties

[72] The Wife brought no assets or financial resources to the marriage. It is accepted by all parties that the Wife made no direct or indirect financial contribution towards the acquisition of "Tial-Ta". It was the Husband who had purchased the land at Polo Ridge prior to the

marriage and he alone repaid the mortgages on the property. The Husband gave evidence, which was not challenged, of his selling his apartment at Rockley Terrace, Christ Church, and using the proceeds to assist with the completion of the home. This was a major contribution by the Husband. Further, the Husband was responsible for maintaining the Wife and provided money to meet all the outgoings for the home.

[73] After the Husband was made redundant, he started his own business and it is clearly through his effort and skill that the business became a very successful enterprise over the years. The Wife made no direct or indirect financial contribution to the acquisition of the business nor was she actively involved in the management of the business.

[74] It is the finding of the court that throughout the marriage which lasted for over nine years, the Wife made a significant non-financial contribution in the capacity of homemaker to the acquisition, conservation and preservation of the former matrimonial home. The nature and extent of that contribution appears in the earlier part of this judgment and it is unnecessary to repeat those details here.

[75] It is also the finding of the court that the Wife made a non-financial contribution to the business assets which were acquired during the

marriage and she is therefore entitled to a share of those assets. However it is my opinion and I hold that the Wife is not entitled to a share of the assets which were acquired after the marriage ended. The court therefore holds that the Wife is entitled to a 50% share in “Tial-Ta” in respect of her contribution to the former matrimonial home and to the business assets.

The Section 53(2) Factors

The Submissions of the Parties

[76] Counsel for the Wife submitted that there should be a significant uplift in respect of the **section 53(2)** factors, having regard to the Wife's age, her health status, her lack of a profession or assets and her inability to look after herself financially. Conversely, it is submitted that the Husband has assets and the ability to earn income and the justice of the case demands that the Wife be properly provided for in the circumstances.

[77] Counsel for the Husband submitted that there should not be any adjustment for those factors. However, if the court were of the opinion that an adjustment was required, that adjustment should be in the range of 10 to 20 per cent and limited to the value of the assets at the date of separation.

[78] I turn next to consideration of the **section 53(2)** factors relevant to this case. In relation to the application of **section 53(2) Simmons CJ** stated at para **38 in Proverbs**:

"[38] ...the section 53(2) factors come into play in situations where there is a disparity in earning capacity, or there are special needs on the part of one party.... An adjustment is made because one has greater needs and the other has stronger means."

[79] It must be borne in mind that these factors will also be relevant when the court is considering the Wife's application for maintenance under **section 50 of the Act**.

(a) The age and state of health of the parties

[80] The Wife is now 52 years old. She is diabetic and suffers from gastro-intestinal problems. After dissolution of the marriage the Wife suffered a fall which resulted in titanium plates being inserted in her arm. The arm is arthritic and swells depending on the weather. If she goes too close to a hot stove the heat causes the plates to burn her. The Husband is 64 years old. His health issues include a problem with his hip which has been stabilised through painful injections, high cholesterol for which he takes medication and severe intestinal damage.

(b) The income, property and financial resources of each of the parties parties and the physical and mental capacity of each of them for appropriate gainful employment.

[81] The only income which the Wife has is the maintenance of \$10,000 per month which was ordered by the court. She has a one-half share in the former matrimonial home which is valued at approximately \$1.725 million. The Wife also owns a vehicle which is approximately 12 years old. She was previously a real estate agent but is no longer engaged in this work because she considered that it was not viable.

[82] The Wife has no qualifications apart from her secondary school education. She did not complete her banking examinations. Sometime after the parties separated the Wife had enrolled at BIMAP but did not continue because the Husband stopped paying the fees. The Wife has been out of the labour market for a long time. It was only recently that the Wife enrolled as a part-time student at the Barbados Community College at the Pom Marine Hotel undergoing courses in pastry making and wedding cake icing. Her capacity for gainful employment is therefore limited.

[83] The Husband received substantial sums for the sale of his companies. He had testified that he intended to purchase an annuity which would yield him the sum of US\$10,000 monthly before tax for the rest of his

life. He receives money from JLT Towner USA and is a director of other companies. He also receives approximately BDS\$11,000 monthly for the rental of his business property in Holetown, St. James.

[84] The Husband has a one-half share in “Tial-Ta” and is part owner of a company which owns a house in Florida. His company Safrane owns unit 120 at Port St. Charles in St. Peter. The Husband is an accountant and is still able to earn income if he so desires.

(d) The financial needs and obligations of each of the parties

[85] In her statement of financial circumstances filed on 21 June 2012, the Wife set out her financial needs, which included expenses related to the upkeep of “Tial-Ta”. She has no source of steady income to meet those needs and is unable to adequately maintain herself. On the other hand, the Husband has ample resources to meet his financial needs.

(f) The eligibility of either party for a pension, allowance or benefit under any Act or rule or under any superannuation fund or scheme, or the rate of any such pension, allowance or benefit being paid to either party

[86] The Husband is entitled to receive a pension from the National Insurance Scheme having contributed to the same. There is no evidence that the Wife will receive a pension.

- (g) Where the parties have separated or the marriage has been dissolved, a standard of living that in all the circumstances is reasonable**

[87] For most of the marriage the parties enjoyed a good standard of living which included travelling and there is no doubt that the Husband continues to enjoy such a standard of living. The position of the Wife is not the same as that of the Husband.

- (h) The extent to which the payment of maintenance to the party whose maintenance is under consideration would increase the earning capacity to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain gainful income**

[88] It is the Wife's intention that once she successfully completes the courses which she has undertaken she wishes to purchase equipment to enable her to earn a living. However the Wife has not provided any information which would allow the court to make a determination as to the feasibility of such an undertaking. There is also the fact that the problem with her arm might restrict any efforts in this regard.

- (i) The extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party**

[89] The Wife did not contribute income to the maintenance of the household, (except for the modest sums which she earned as a real estate agent and paid into Towner Realty). It was the Husband who

maintained the home and the Wife. She contributed in her capacity as a homemaker as stated earlier in this judgment.

(j) The duration of the marriage or union other than a marriage and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration

[90] The marriage lasted nine years and the Wife's earning capacity was affected somewhat as she left her job at CIBC in order to be available to travel with her Husband. However, some thirteen years have passed since the parties were divorced.

(m) The terms of any order made or proposed to be made under section 57 in relation to the property of the parties

[91] After the court has decided on the terms of the order which should be made under **section 57**, then determination will be made as to whether there should be a further order for maintenance.

(n) Any other fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account

[92] The Husband is the party who has control of the assets. He has paid the mortgage payments, gardening expenses and land tax for some years.

[93] The court does not share the view of counsel for the Husband that there should be no adjustment for the **section 53(2)** factors. On the contrary, having considered those factors, it is my finding that these

factors warrant an adjustment of 15% of the Husband's 50% interest in "Tial-Ta" thereby giving the Wife a 65% interest in the property.

The Issue of Maintenance

[94] The final issue for the court relates to the question of maintenance.

Section 50 of the **Act** provides:

"50.(1) A party to a marriage or union other than marriage is, subject to subsection (2), liable to maintain the other party, to the extent that the first mentioned party is reasonably able to do so.

(2) The liability of a party under subsection (1) arises only where the other party is unable to support herself or himself adequately, whether by reason of having the care or control of a child of the marriage or union who has not attained the age of 18 years, or by reason of age or physical or mental incapacity for appropriate gainful employment or for any other adequate reason having regard to any relevant matter set out in section 53(2)."

[95] In this case the Wife does not have the care or control of any child of the marriage because there were no children of the marriage. The evidence is that the Wife gave up her job at CIBC and worked part-time and later with her real estate company. She has not worked for a considerable period of time and since the divorce her sole source of income has been the maintenance paid by the Husband. The Wife has no qualifications and it is unlikely that she can earn an income sufficient to maintain herself on completion of her courses.

[96] Having considered the **section 53(2)** factors, the court has determined that the Wife has satisfied the requirements of **section 50** in that she has established her inability to adequately support herself.

[97] There is no doubt that the Husband's financial resources are such that he is in a position to pay the Wife maintenance. The court is of the opinion that the Wife's maintenance should be dealt with in the following way. There should be a further adjustment of the Husband's interest in partial fulfilment of the maintenance component. In the circumstances I consider it just and equitable to make the following orders in lieu of making a maintenance order for the Wife. The Husband's 35% interest is varied so as to vest in the Wife his share and interest in "Tial-Ta". The Wife will therefore become the sole owner of "Tial-Ta", which encompasses lots 17 to 19, Polo Gardens, St. James. It will be necessary for the Husband to transfer the legal title to this property to the Wife. The title to lot 16 will remain vested in the Husband.

[98] Further, the court will order the Husband to pay to the Wife a lump sum of BDS\$600,000 on or before 30 April 2015. The sum of BDS\$35,000 which was paid to the Wife towards the costs of

retaining an expert has been taken into account by this court in accordance with the order of the Court of Appeal.

The Issue of Costs

[99] At paragraph (i) of the application, the Wife has sought an order that the Husband pay her costs of these proceedings. In her written submissions it was stated that a draft bill of costs would be submitted. No such bill has been received by the court. In the circumstances, any determination on the issue of costs is reserved until submission of a bill and after counsel for the Husband has had the opportunity to review the same and file any submissions in response thereto.

Disposal

[100] In view of the foregoing it is ordered that:

1. Pursuant to **section 57** of the **Family Law Act, Cap. 214** the interest of the parties in the property known as “Tial-Ta”, Polo Gardens, Saint James is altered so as to vest the Husband’s one-half share or interest in that property in the Wife so that she shall become the sole legal and beneficial owner of that property.
2. Pursuant to paragraph 1 above, the Husband shall convey the legal interest in lots 17, 18 and 19 together with the dwelling house to the Wife on or before 2 March 2015.
3. In the event that the Husband shall fail to execute all necessary documents to effect this order the Registrar of the Supreme Court is hereby authorised and required to execute such documents in the name and on behalf of the Husband

upon being satisfied by affidavit that such failure has occurred.

4. The Husband shall pay to the Wife a lump sum of \$600,000 for her maintenance to be paid in instalments of \$300,000 each on 15 January 2015 and 15 April 2015 respectively.
5. The issue of costs is reserved.

Kaye Goodridge
Judge of the High Court