

**BARBADOS**

**IN THE SUPREME COURT OF JUDICATURE**

**HIGH COURT**

**Family Division**

**[Unreported]**

***Family Suit No. FL 82 of 2010***

**DEBRA ANNE PATRICIA DOWRIDGE - APPLICANT/WIFE**

**AND**

**HENRY CLEVELAND DOWRIDGE - RESPONDENT/HUSBAND**

**Before:**

***The Honourable Madam Justice Maureen Crane-Scott,  
Judge of the High Court***

**2011: May 27**

**October 13, 14**

**2013: November 10, 21**

**2014: May 2**

**July**

**2015: April 17**

**Appearances:**

**Ms. Paula S. Lett for the Applicant/Wife; Sir Richard L. Cheltenham K.A.  
in association with Ms. Jewel Garner and Ms. Verla Depeiza for the  
Respondent/Husband**

## DECISION

- [1] **Crane-Scott J:** This was a contested an application for ancillary relief filed on June 3<sup>rd</sup>, 2010 by the Applicant/Wife pursuant to sections 56 and 57 of the *Family Law Act, Cap. 214* seeking, *inter alia*, declarations in relation to the ownership of property and the alteration of property interests between herself and the Respondent/Husband.
- [2] In so far as they relate to the property issues, the orders sought by the Applicant/Wife may conveniently be reproduced as follows:

*“(e) A declaration that the Respondent/Husband is entitled to a 90% share or interest in the matrimonial property situate at No. 7 Moonshine Close, in the parish of St. George in this Island and the Respondent/Husband a 10% share/interest therein;*

*(f) A declaration that the Respondent/Husband is entitled to a 90% share or interest in the matrimonial property situate at Cottage Land, in the parish of St. George in this Island and the Respondent/Husband a 10% share/interest therein;*

*(g) That the aforesaid matrimonial properties be both valued and thereafter that:*

*(i) the Respondent/Husband pay to the Applicant/Wife a sum equivalent to her 10% share of the net value of the Cottage Land property aforesaid by a time to be set by this Honourable Court;*

*(ii) the Applicant/Wife pay to the Respondent/Husband a sum equivalent to his 10% share of the net value of the matrimonial property at No. 7 Moonshine Close property [sic] aforesaid by a time to be set by this Honourable Court.*

*(h) Alternatively, declarations that the Applicant/Wife owns the Moonshine Close property absolutely and the Respondent/Husband, the Cottage Land property absolutely.*

(i) *An order that the Respondent/Husband vacate the Moonshine Close property within one (1) month of the date of the Order granted in respect of ownership of the same.*

(j) *Such further or other Order/s as this Honourable Court shall deem fit.”*

- [3] **The Affidavit Evidence:** Applicant/Wife filed four (4) affidavits in support of her application on June 3rd, 2010, April 29th, 2011, May 6th, 2011 and July 20th, 2011 respectively. Two (2) additional affidavits supporting specific aspects of the Applicant/Wife’s case were also filed on July 20<sup>th</sup>, 2011 by Vernese Graham-Hunte and Carlisle Hewbourne Hunte.
- [4] The application was opposed by the Respondent/Husband who filed four (4) affidavits on September 16th, 2010, May 19th, 2011, May 27th, 2011 and July 21st, 2011 respectively. An Affidavit was also filed on October 14<sup>th</sup>, 2011 by Frederick Cyrus in connection with the results of a title search conducted at the Land Registry on behalf of the Respondent/Husband in relation to the property at Cottage, Saint George which the Applicant/Wife says forms part of the matrimonial property.
- [5] **Statements of Financial Circumstances:** In addition to the affidavit evidence, the Court also had the benefit of Statements of Financial Circumstances filed by the Respondent/Husband and the Applicant/Wife on June 2<sup>nd</sup> and 3<sup>rd</sup>, 2010 respectively, detailing their respective financial circumstances.
- [6] **Valuation Reports:** On September 27<sup>th</sup>, 2010, in preparation for the hearing of the substantive application, *Richards J.* ordered the parties to obtain valuation reports in respect of the properties at Lot 7 Moonshine Close, St. George and Lot 27 Cottage Land, St. George.
- [7] A valuation of Lot 7 Moonshine Close, St. George was conducted and a report prepared by Felicity Limited and dated January 31<sup>st</sup>, 2011 was

annexed to the Applicant/Wife's affidavit filed in these proceedings on July 20<sup>th</sup>, 2011 as "*Exhibit DD8*".

- [8] A valuation report dated October 18<sup>th</sup>, 2011 of the property situated at Lot 27 Cottage Tenantry, St. George was adduced in evidence during the course of the Respondent/Husband's oral testimony on November 10, 2011 and marked as "*Exhibit HCD 4.*" I will return to these reports later in this decision.
- [9] **Background:** The parties were married on April 4<sup>th</sup>, 1998. However, prior to the marriage, they cohabited for approximately 3 years on the top floor of a two-storey unfinished house situated at Lot 27 Cottage Land, St. George which house, the Applicant/Wife alleges, was constructed by the Respondent/Husband and which, she contends, is owned by the him and should be treated as part of the matrimonial property.
- [10] The Respondent/Husband says that Lot 27 Cottage, St. George is in fact family land which does not belong to him and ought not to be included as part of the matrimonial assets. In the circumstances, the ownership of the house in question is an issue to be determined by the Court in these proceedings.
- [11] In August 1998, approximately 4 months following their marriage, the Applicant/Wife made a down payment on a lot of land situated at 7 Moonshine Close, St. Helens, St. George which she had applied for from the National Housing Corporation (NHC) prior the marriage. Title to the land was subsequently conveyed in the name of the Applicant/Wife only and the Applicant/Wife obtained a mortgage from the Barbados National Bank to complete the purchase of the lot.
- [12] A dispute has arisen on the facts as to whether both parties contributed to the initial deposit in equal shares with the Respondent/Husband having given her half the deposit in cash as he contends or whether the

Applicant/Wife paid the deposit entirely out of her own resources as she claims.

- [13] In 2002 the Applicant/Wife obtained a new mortgage with the Royal Bank of Canada to facilitate the construction of a home on the land at 7 Moonshine Close, St. George. The Applicant/Wife says that her acquisition of the home at Moonshine Close was all accomplished without the consent, approval or financial assistance of the Respondent/Husband. At paragraphs 6 (e) to (k) of her fourth affidavit filed on July 20<sup>th</sup>, 2011 the Applicant/Wife detailed the work she says she singlehandedly performed during the construction of the house.
- [14] The Applicant/Wife's claims are disputed by the Respondent/Husband who told the Court in his oral testimony at the trial that he had accompanied the Applicant/Wife to the Royal Bank of Canada for the mortgage of \$250,000.00 as well as a subsequent mortgage of \$40,000.00 and that they had both signed the relevant paperwork for the same. According to the Respondent/Husband, they had both been responsible to the bank for the mortgage.
- [15] He also told the Court that he had made financial contributions and had also played a role in, among other things, laying out and squaring out the house, assisting with digging the foundation and recruiting the labourers who worked on the house. The dispute surrounding the parties' respective contributions to the acquisition and construction of the home at Moonshine Close will be considered later in this decision.
- [16] On December 14<sup>th</sup>, 1999, the couple's only child, a son, was born. He initially resided with his parents in the upstairs apartment at Cottage Land, St. George until the family moved into their newly constructed three bedroom two-storey wall house at Moonshine Close in 2004. It had not been fully completed when the family moved in.

- [17] According to the Applicant/Wife, the parties had begun to experience matrimonial difficulties as early as September 1999 whilst they were still living at the Cottage Land apartment. She ascribes their marital difficulties to the fact that particularly during her pregnancy she had become overwhelmed with the amount of responsibility she had been left to carry in the marriage.
- [18] In this regard, she says that the Respondent/Husband did nothing to help around the house before, during or after her pregnancy despite being well aware of her health challenges with chronic sickle cell anaemia. The marriage steadily disintegrated and they finally separated in or about in October 2006 although both of them continued to reside separate and apart within the matrimonial home.
- [19] The Applicant/Wife filed an application for the dissolution of the marriage on February 5<sup>th</sup>, 2010. The marriage between the parties was formally dissolved on June 7<sup>th</sup>, 2010 by order of *Woodstock-Riley J (ag)*, the Court having been satisfied that the parties had made proper arrangements for the welfare of the parties' minor child of the marriage.
- [20] On June 3<sup>rd</sup>, 2003, some 4 days prior to the dissolution of the marriage, the Applicant/Wife instituted the current proceedings for ancillary relief seeking orders in relation to the Cottage Land and Moonshine Close properties as earlier identified.
- [21] **The Applicable Law:** The main statutory provisions governing applications relating to matrimonial property interests in this jurisdiction are contained in *sections 2(1), 56, 57, 53(2), 58 and 60* of the *Family Law Act, Cap. 214*.
- [22] *Section 56* of the *Family Law Act* empowers the Court in proceedings between the parties to a marriage in respect of the existing title or rights to property, to make declarations as to the title or rights, if any, that a party

has in respect of the property. An order under **section 56** is binding on the parties to the marriage but not on any other person.

[23] **Section 57(1)** of the Act provides, *inter alia*, that in proceedings in respect of the property of the parties to a marriage, the Court may make such order as it thinks fit altering the interests of the parties in the property.

[24] **Section 57(3)** of the Act mandates a Court, in considering what order should be made, to take the following factors into account:

*“(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 a homemaker 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*

*(e) Any other order that has been made under this Act in respect of a party.”*

[25] Finally, the Court has adverted to **section 2(1)** of the **Family Law Act** where the following definition of the word “property” is found:

*“property”, in relation to the parties to a marriage..., means property to which those parties are, or that party is, as the case may be, entitled in possession or reversion.”*

[26] The term is to be given a broad meaning and includes both real and personal property. Accordingly, shares in a limited liability company, an interest in a partnership, rights in respect of property held on trust and the interest of a beneficiary in a deceased's estate, have all been held to constitute "*property*" under the Australian Family Law Act. [See *Anthony Dickey- Family Law, 5<sup>th</sup> Edition @ pp483-484* for a discussion on the corresponding definition found in section 4(1) of the Family Law Act of the Commonwealth of Australia which is *in pari materia* with *section 2(1)* of our Act.]

[27] In *Proverbs v. Proverbs (2002) 61 WIR 91*, the Barbados Court of Appeal outlined the proper approach to be taken by a Court that is considering making orders for the declaration and alteration of the interest of parties in property. *Simmons CJ* offered the following guidance:

*"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 be considered and evaluated;*
- iii. The section 53(2) factors, so far as relevant, should then be considered."*

[28] **Discussion:** Following the suggested approach, I turn now to identify the matrimonial property of the parties and in so doing, to consider firstly, whether the parties or a party to the marriage in this case "*have or has, as the case may be, an existing title or rights to property to which they are entitled in possession or reversion.*"

[29] In her application for ancillary relief, the Applicant/Wife seeks Court orders in respect of two properties situated at Cottage Land, St. George

and at No. 7 Moonshine Close, St. George respectively, which she claims are matrimonial property available for distribution in accordance with *section 56* and *57* of the *Family Law Act*. The evidence adduced in respect of each of these properties will now be examined to determine whether the parties or either party, as the case may be, holds an existing title or right therein to which they are entitled in possession or reversion.

**THE PROPERTY OF THE PARTIES:**

[30] *The two-storey house at Lot 27 Cottage Land, St. George:* The Applicant/Wife claims that the unfinished two-storey house situated at Cottage Land, St. George in which the parties cohabited both prior to and during the marriage, is property owned by the Respondent/Husband and as such, should be treated as matrimonial property in which she has acquired an interest.

[31] The Applicant/Wife insists that the house situated on the land belongs to the Respondent/Husband and was constructed by him and should be treated as part of the matrimonial property. She says that the house in question is in fact one of 3 houses situated on Lot 27 Cottage Land, St. George.

[32] The Applicant/Wife's evidence is that the Respondent/Husband had informed her, prior to their moving into the house, that the house was his. At paragraph 3 of her fourth affidavit filed on July 20<sup>th</sup>, 2011 in these proceedings she states:

*“a. I met the Respondent in 1995/1996. He was then living at his parent's house in Cottage Land, St. George. However, **he told me that he had a house behind his parents' house and took me there to see it...***

*b. In response to my queries the Respondent indicated that the land had been **given to him** by his father and that **he** had built the house himself with funding from a bank*

*loan organised by a bank manager friend called Pat at Barclays Bank... ”*

- [33] The Applicant/Wife’s evidence also is that the Respondent/Husband completed the downstairs section of the property in 2002 during the marriage with the assistance of a Home Improvement Loan which he had taken out in the sum of \$15,000.00 from Barclays Bank. In support of this assertion, she annexed to her affidavit of July 20<sup>th</sup>, 2011 as ***Exhibit “DD2,”*** a copy of a Statement of Loan Account issued by Barclay’s Bank in the Respondent/Husband’s name dated 16<sup>th</sup> May 2001. The Applicant/Wife contends that the Barclays Bank loan was for the improvement of the house at Cottage Land since construction of the house at Moonshine Close had not yet commenced when that loan was taken out.
- [34] The Applicant/Wife also alleges that the Respondent/Husband collects the rental income from the two apartments which comprise the property in question. It is also her belief that the Respondent/Husband has been collecting rent from the two apartments from about the year 2004 when the couple moved to the house at No. 7 Moonshine Close.
- [35] Under cross-examination at the trial, the Applicant/Wife conceded that she had never seen any documentary evidence to support her claims that the Respondent/Husband owned the house. Under further cross-examination she also agreed that the land at Cottage Land was in the name of the Respondent/Husband’s father. She however told the Court that the Respondent/Husband had acted as if the house was his and that additionally, his family members had also behaved like the house was his.
- [36] The Applicant/Wife’s evidence is supported by that of Vernese Graham-Hunte and Carlisle Hewbourne Hunte, a married couple who reside in the Cottage Land area. They both filed affidavits on July 20<sup>th</sup>, 2011 in support of the Applicant/Wife’s application.

[37] Vernese Graham-Hunte stated that she has lived in Cottage Land, St. George all her life. She has known the Respondent/Husband (who she also refers to as “Gibbs”) all his life and says they grew up together. She also says she used to take care of the Respondent/Husband’s father who she referred to as “Pa”. This was not disputed. At paragraphs 5, 8 and 12 of her affidavit she states:

*“5. When Pa was getting down he told Gibbs in my presence, ‘Gibbs go out in the back and look for somewhere to put a house.’ Shortly after that Gibbs built a house at the back of the family home on the same land. **I saw Gibbs with my own eyes building his house with the help of a mason named Rawle. He built it quickly before his father died but he did not live in it until he met Debra. He used to live in the family home. When Gibbs was building the house he asked my husband Carlisle Hunte (who is a well-digger) to dig a well...His sister Janet also built a house on the land. Her house is very close to the family home.***

*8. I never had a disagreement with Gibbs. He still speaks to me. However, I am willing to give evidence on behalf of Debra because I like “fair”. **Gibbs has a house in Cottage Land for years...***

*12. The family home that Henry’s parents used to live in is now occupied by a relative called Ryan Dowridge, he lives there by himself.”*

[38] Under cross-examination, the witness Vernese Graham-Hunte agreed that she had never seen a deed of conveyance in relation to the land at Cottage Land, but insisted that she knows the land is the Respondent/Husband’s because she saw him building on it.

[39] In his affidavit Carlisle Hewbourne Hunte deposed that he has lived in Cottage Land since 1993 and that he knows both the husband and the wife. He further stated that in or about the year 1995 the Respondent/Husband had asked him *“to dig a well for him at a house he*

*was building for himself in Cottage Land, near to his family home.*” He dug the well, he said, and the Respondent/Husband had paid him \$1,600.00. According to him, he had also assisted the Husband “*with odd jobs around the house he built*”. At paragraph 5 of his affidavit he stated that he had “*no grouse against Henry but I know he told me he has a house at Cottage Land and he wanted me to dig a well for it, which I did.*”

- [40] As additional evidence that the Respondent/Husband was the *de facto* owner of the house, the Applicant/Wife also produced in evidence as ***Exhibit “DD3”*** to her affidavit of July 20, 2011, water and electricity bills for the property addressed to the Respondent/Husband and a Policy Schedule issued by the Insurance Corporation of Barbados in September 1998 in respect of the house at Cottage Land, St. George in both their names.
- [41] For his part, the Respondent/Husband states that he does not own Lot 27 Cottage Land, St. George and that the land is family land owned by his late father, Clarence Dowridge, an employee of Cottage Plantation to whom the land had been conveyed under the *Tenancies Freehold Purchase Act*.
- [42] The Respondent/Husband also alleges that construction of the unfinished building had commenced prior to his father’s death. He also says that his father died intestate and was survived by his widow, Violet and their six children, including himself. His mother, he says, died in 2003 and Letters of Administration in his father’s estate had up to the date of his July 21<sup>st</sup>, 2011 affidavit, not yet issued in the deceased’s estate.
- [43] The Respondent/Husband exhibited with his affidavit of July 21<sup>st</sup>, 2011 as ***Exhibit “HCD 1,”*** a copy of a Statement of Account for the property at

Lot 27 Cottage Tenantry, St. George, together with the Tax Demand Notice for the Year 2011-2012 showing the owner as Clarence Dowridge.

- [44] In his affidavits of May 19<sup>th</sup>, 2011 and May 27<sup>th</sup>, 2011 respectively, the Respondent/Husband alleged that prior to their marriage he had initially resided with the Applicant/Wife in a house rented by her at Newbury, St. George for approximately one year. The Respondent/Husband says that during this period, the couple had several discussions about their future plans and the Applicant/Wife had informed him that she had applied to the National Housing Corporation (NHC) for a house spot. According to the Respondent/Husband, they had decided as a couple that if they were to acquire a home, they would need to save.
- [45] The Respondent/Husband says that he had then spoken to his brother, Clarence, who, according to him, had unofficially assumed responsibility for the family property at Cottage Land. According to him, Clarence and his other siblings had given their consent to the couple enjoying rent-free occupation of the house. He says that having first obtained the consent of his brother, Clarence and his other siblings, for them to occupy the house, he and the Applicant/Wife had moved into the residence at Cottage Land to avoid paying rent.
- [46] The Respondent/Husband also says that the house had initially not been equipped with water or electricity and he had accordingly had these services installed and connected to make the house habitable for himself and the Applicant/Wife.
- [47] On October 14<sup>th</sup>, 2011 in the course of his evidence-in-chief during the trial, the Respondent/Husband was shown the Barclays Bank Statement of Loan Account annexed to the affidavit of the Applicant/Wife as *Exhibit "DD2"* which the Applicant/Wife said was a Home Improvement Loan

which the Respondent/Husband had obtained in 2002 to complete the downstairs section of his house at Cottage Land, St. George.

[48] The Respondent/Husband gave the following sworn testimony:

*“I had a loan from Barclays Bank to assist in the foundation which was 7 feet deep. That loan was for a couple of thousand dollars, about \$12,000.00. The loan was to help with Moonshine. I told the bank the loan was for Cottage. I told the bank an untruth. I recognise **Exhibit “DD2.”** This was a Home Improvement Loan in respect of the house at Moonshine Close, St. George which I borrowed.”*

[49] Under cross-examination he repeatedly insisted that the Barclays Bank Home Improvement Loan referred to in the Statement-*Exhibit “DD2”* had been taken out to help with construction of the house at Moonshine Close, St. George.

[50] In his re-examination, the Respondent/Husband explained that he had *“told a little lie to get a loan.”* He also explained that he had *“told a little lie more than once to get a loan”* and that he was *“accustomed to telling lies to get loans”*. He, however, maintained that the proceeds of the Barclays Home Improvement Loan mentioned in *Exhibit “DD2”* had gone into the Moonshine, St. George property.

[51] After examining *Exhibit “DD2”* and considering the evidence as a whole, I was convinced that the Respondent/Husband had been less than candid with the Court in relation to the ownership of the unfinished house in question at Cottage Land, St. George and had also not been truthful in relation to the true purpose for which the Barclays Home Improvement Loan had been taken out.

[52] In the first place, under cross-examination he vehemently denied having completed the work on the downstairs apartment of the Cottage Land

house in the period between 2001 and December of 2002 and also denied that the Barclays Bank Home Improvement Loan had been taken out to assist with completing that project. Nonetheless, when shown *Exhibit “DD2”* he agreed that the first entry shown on the Barclays Statement of Loan Account had commenced in August 2000 and that the last entry shown was in May 2001.

[53] Although he continued to insist that the Barclays Bank loan had been taken out by him to assist with the foundation work for the Moonshine Close property, the Court found that having regard to the entry dates shown on the Barclays Home Improvement Statement of Account *Exhibit “DD2,”* it was more likely than not that the loan had been taken out to complete the downstairs apartment at Cottage Land as the Applicant/Wife has stated.

[54] Additionally, in view of the letter *Exhibit “DD5”* dated January 18<sup>th</sup>, 2001 from the Chief Town Planner granting the Applicant/Wife permission to commence building works at Moonshine Close, this strongly suggested that building works could not have commenced on construction of the Moonshine Close house until sometime after January 2001. The Court was satisfied that this fact made it most unlikely that the loan had been taken out to assist with the foundation work at Moonshine Close as the Respondent/Husband had contended.

[55] Faced with the documentary evidence, the Court could only conclude that the Respondent/Husband had lied.

[56] Secondly, the Court was struck by the fact that in none of his affidavits did the Respondent/Husband ever mention or concede that there were in fact three houses on his father’s land at Lot 27 Cottage, St. George. In his initial affidavit of September 16<sup>th</sup>, 2010, he admits having moved to a *property* in Cottage Land, St George with the Applicant/Wife, but told the

Court that the *property* belonged to his late father and that he had to obtain his brother's permission to occupy the top apartment of the *property* as his brother had built the house. The impression clearly conveyed in this initial affidavit is that the only property in question was one house, built by his brother.

[57] In subsequent affidavits filed on May 27<sup>th</sup>, 2011 and July 21<sup>st</sup>, 2011 respectively, the Respondent/Husband continued to deny ownership of the *property* situate at Cottage Land, St George. Once again, he made no mention in either affidavit of the presence on the land of three houses and interchangeably referred to "*the family house*" and "*my father's property*."

[58] While it is unclear whether the Respondent/Husband's omission to mention the presence of three houses on the land at Cottage, St. George or to differentiate between them was intentional or merely unintentional, the effect of his not having done so gave the Court the erroneous impression that the unfinished two-storey house to which the Applicant/Wife had made reference in her claim was the only house on Lot 27 Cottage Land, St. George.

[59] The fact that there are in reality three houses on the land at Cottage was only finally revealed to the Court when the Applicant/Wife's fourth affidavit was filed on July 20<sup>th</sup>, 2011 attaching photographs *Exhibit "DD1"* of the unfinished two- storey house which is the subject of these proceedings and the other two houses on the land.

[60] I have accordingly accepted the evidence of the Applicant/Wife, largely corroborated by that of Vernese Graham-Hunte and her husband Carlisle Hunte that there are in fact three houses situated on Lot 27 Cottage Land, St. George. The presence of three houses on the land is further confirmed by the Valuation Report of October 18<sup>th</sup>, 2011 prepared by Felicity Limited *Exhibit "HCD 4"* which was adduced in evidence at the trial.

- [61] The first house is the family home formerly occupied by his parents, which Vernese Graham-Hunte says is now occupied by a relative, Ryan Dowridge. The second house is said to be owned by the Respondent/Husband's sister Janet who, according to Vernese Graham-Hunte, built her house very close to the family home. Finally, the third house is the unfinished two-storey house which is the subject matter of these proceedings and which Vernese Graham-Hunte told the Court she had actually seen the Respondent/Husband building "*with her own eyes*" with the help of a mason named Rawle.
- [62] The Valuation report prepared by Felicity Limited clearly states that the house, the subject of these proceedings, is situated to the rear of Lot 27 Cottage Land while the other two houses (not included in the valuation) are sited at the front of the lot. While the exact location of the house on the land is, by itself, not conclusive of anything, it was nevertheless quite significant that according to Vernese Graham-Hunte, she heard the Respondent/Husband's father telling him to "*go out in the back and look for somewhere to put a house.*"
- [63] Additionally, in her affidavit of July 20<sup>th</sup>, 2011, the Applicant/Wife told the Court that when they first met in 1995/96, the Respondent/Husband had told her (which he denies) that he had a house *behind* his parent's house and had taken her there to see it.
- [64] The Court found that the evidence of Vernese Graham-Hunte about her having seen the Respondent/Husband building the house, is diametrically opposed to the evidence of the Respondent/Husband who at paragraph 4 of his affidavit of September 16<sup>th</sup>, 2010 initially deposed that the house had been built by his brother Clarence Anderson Dowridge.
- [65] The Respondent/Husband's subsequent affidavit of July 21<sup>st</sup>, 2011 which refers to a "*family house*" construction of which commenced prior to his

father's death and which all of his siblings had assisted in building, also contradicts his earlier assertion about the house having been built by his brother, Clarence.

- [66] Based on the evidence of legal clerk, Frederick Cyrus who conducted the title search at the land Registry, I have also accepted that the land comprised in Lot 27 Cottage Land, St. George is former tenantry land which, in all probability, was legally vested in the Respondent/Husband's late father, Clarence Dowridge who purchased it from Cottage & Groves Limited, the owners of Cottage Plantation on or around September 30<sup>th</sup>, 1991.
- [67] The Court is aware that the fact that the land was vested in the Respondent/Husband's late father, Clarence Dowridge whose name appears on the tax roll, coupled with the fact that the Respondent/Husband's father died intestate leaving a wife and six children, including the Respondent/Husband would, without more, tend to support a layman's conclusion that the entire land at Lot 27 Cottage, St. George is family land.
- [68] However the Court is well aware that in law, even if this were the case, this would not necessarily preclude the Respondent/Husband from acquiring "property" in the form of a right in possession in the house spot on which the two storey unfinished house allegedly constructed by him and which is the subject of these proceedings stands.
- [69] Under the law, the fact that land is family land owned by a deceased's estate and over which letters of administration have not yet been issued, will not necessarily prevent a person in occupation of a house spot forming part of the deceased's estate from eventually obtaining a possessory title provided that person has been in undisturbed possession for a minimum of 10 years.

- [70] Accordingly, if, as the evidence as a whole tends to suggest, the Respondent/Husband and his sister Janet each constructed and affixed houses on the land owned by their late father prior to his death and with his consent as Vernese Graham-Hunte testified, it would be legally possible, notwithstanding the existence of a conveyance in the name of their late father covering the entire lot, for each of them to approach the High Court, seeking declarations as to their individual rights to an existing possessory title in respect of the house spots which they have each been in undisturbed possession of for the prescribed minimum limitation period.
- [71] Accordingly, the Court is satisfied that it is no answer to the Applicant/Wife's claim for the Respondent/Husband to simply assert that the land as a whole is "*family property*".
- [72] In addition to the Respondent/Husband's apparent evasiveness about the ownership of the unfinished house in question at Cottage Land, St. George and his denial that he had taken out a home improvement loan with Barclays Bank to complete construction of the unfinished downstairs apartment, another inconsistency has arisen between the Respondent/Husband's testimony at the trial and his affidavit evidence filed on September 16<sup>th</sup>, 2010 regarding his role in the collection of rent for the house at Cottage Land. The inconsistency has once again caused the Court to seriously question the veracity and weight of the Respondent/Husband's evidence as a whole.
- [73] In his affidavit of September 16<sup>th</sup>, 2010, in response to the Applicant/Wife's claims that both apartments in the two-storey house at Cottage, St. George had been rented out for at least \$800.00 each, the Respondent/Husband confirmed that rent was being collected from the property. He, however, claimed that the rental income is kept in an account and used for the maintenance and upkeep of the property. The

Respondent/Husband's affidavit evidence in relation to the rental income however, is seemingly inconsistent with the oral testimony which he subsequently gave under cross-examination at the trial.

[74] He initially denied dealing with the rental of the house at Cottage Land. However, on his being reminded of his affidavit evidence, he agreed that the property had been rented out during the marriage but stated that the rent was collected by his sister's son, Kayn Dowridge on behalf of the family. Pressed as to his own role, he subsequently admitted that during the marriage he had collected the rent on behalf of his brother, Clarence Anderson Dowridge who lives in New York and told the Court that he had done so because he and his brother are very close.

[75] Under further cross-examination about whether the house in question was owned by his brother Clarence Anderson Dowridge, the Respondent/Husband vaguely told the Court that "*the house concerns family.*" In so doing, he seemingly contradicted his initial affidavit filed on September 16<sup>th</sup>, 2010 in which he had clearly stated that his brother had built the house.

[76] With so many inconsistencies and vague responses, I found the Respondent/Husband's evidence unreliable and was not prepared to place much weight on much of what he said. In contrast, I found the evidence given by the Applicant/Wife more credible and consistent and ultimately placed greater weight on what she had to say.

[77] In the circumstances I find, and so hold, that the unfinished two-storey house situate at Lot 27 Cottage Land, St. George on land owned by the late Clarence Dowridge and which was occupied by the Applicant/Wife and the Respondent/Husband during the early years of the marriage, is "*property*" within the meaning of the ***Family Law Act***.

- [78] I am satisfied, in particular, that the house was constructed by the Respondent/Husband on land behind his parents' house and with his father's permission. Furthermore, I accept that the house was already standing, although not fully complete when the parties met in and around 1995/1996.
- [79] In the circumstances, I am satisfied that while the legal title in the land at Lot 27 Cottage may still be vested in the estate of his late father, Clarence Dowridge, the Respondent/Husband has acquired an existing right in possession in the two-storey house which he built on the land and which is capable of distribution in these proceedings.
- [80] As the Valuation report *Exhibit "HCD 4"* of October 8<sup>th</sup>, 2011 clearly shows, Felicity Limited was requested to conduct an assessment of the market value of the entire parcel of land at Cottage, St. George together with the unfinished two-storey house which is the subject matter of the proceedings. The other two houses sited on the land were not included in the valuation.
- [81] The report revealed that Felicity Limited used two approaches to the valuation of the Cottage Land property. Firstly, the Contractor's Method suggested that the entire parcel of land (17,213 sq ft) together with the depreciated replacement value of the unfinished two- storey structure was \$453,000.00 while the Comparison Method suggested that the property would fetch \$440, 000.00 as at October 15<sup>th</sup>, 2011.
- [82] The Court, however, has two reservations regarding the valuation which was presented for the Cottage Land property. Firstly, the report itself is now almost 4 years old. Secondly, based on the evidence in these proceedings, the precise land area occupied by the other two houses on Lot 27 is evidently not matrimonial property and ought properly to have

also been excluded from the valuation. In the absence of agreement, these concerns should be addressed by obtaining an updated valuation report.

[83] No. 7 Moonshine Close, St. George: The next asset to be considered is No. 7 Moonshine Close, St. George. There is no dispute that this property, was the matrimonial home at the time of the parties' separation and that it falls to be considered as part of the assets for distribution. Both parties accept that the title to the property is vested in the Applicant/Wife alone and is not in the parties' joint names.

[84] However, the matter has become contentious, due to the many factual disputes which have arisen in relation to what direct and indirect contributions each of the parties made (if any) to the acquisition, conservation and improvement of the property during the marriage. I shall return to consider and evaluate the respective contributions of the parties imminently.

[85] In the meantime, the Applicant/Wife has presented the Court with a valuation of the Moonshine Close property prepared by Felicity Limited and dated January 31<sup>st</sup>, 2011. The property consists of an unfinished two-storey, detached three-bedroom standing on 5,073 square feet of land.

[86] Felicity Limited used two approaches to the valuation of the property. Firstly, the Contractor's Method suggests that the land area (5,073 sq ft) together with the depreciated replacement cost of the dwelling was \$601,234.00 while the Comparison Method suggests that the property would fetch \$590,000.00 as at January 15<sup>th</sup>, 2011.

[87] As the Felicity Limited valuation report is now almost 4 years old, the Court is of the view that the justice of the case is best served if a more recent valuation of the Moonshine Close property is obtained.

**ASSESSMENT OF THE PARTIES' RESPECTIVE CONTRIBUTIONS:**

- [88] In accordance with the guidance of Simmons CJ in *Proverbs v Proverbs*, and in accordance with *section 57(3)* of the Act, I must now consider and evaluate, *inter alia*, the respective contributions of the parties to the acquisition, conservation or improvement of the two properties which I have identified for distribution.
- [89] *The two-storey house at Lot 27 Cottage Land, St. George:* I have already held that the two-storey house at Lot 27 Cottage Land, St. George is the Respondent/Husband's "*property*" within the meaning of the *Family Law Act*. I specifically found that the house had been built by the Respondent/Husband on his father's land, with his father's permission and was "*property*" in which he has acquired an existing right in possession capable of distribution on this application. [See paragraph [79] above]
- [90] I must now determine whether the Applicant/Wife has acquired an interest in the Respondent/Husband's two-storey house Cottage on the basis of any direct or indirect financial contributions she may have made during the marriage.
- [91] It is not in dispute that the structure of the two-storey house situate at Lot 27 Cottage Land had been in place before the Applicant/Wife moved went to live there in and around the year 1995/96-approximately 3 years before their marriage in 1998.
- [92] On the one hand, the Applicant/Wife states that at the time she was first shown the house after they met in 1995/1996, it had been a "*well appointed two-bedroom house on columns with a space underneath for further construction*". She claims that the Respondent/Husband completed the construction of the ground floor apartment in 2002 with the assistance of a Home improvement loan which he had taken from Barclays Bank in the sum of \$15,000.00 (see *Exhibit "DD2"*).

- [93] On the other hand, the Respondent/Husband repeatedly told the Court under cross-examination at the trial that the ground floor apartment had been completed even before they first moved in. Additionally, he has insisted that the Barclays Bank Home Improvement Loan had been taken out to help the Applicant/Wife with the construction of the house at Moonshine Close.
- [94] This particular dispute of fact has already been settled in the Applicant/Wife's favour and accordingly, the Court has accepted that that construction of the unfinished downstairs apartment at Cottage, St. George was completed in 2002 during the marriage when the Applicant/Wife and the Respondent/Husband still lived at Cottage, St. George. [See paragraph [53] above.]
- [95] The Court is satisfied that the evidence established that the Applicant/Wife made no direct financial contributions to the acquisition of the Respondent/Husband's house at Cottage Land. In any event she has claimed none. However, it is her contention that whilst at Cottage, she made direct and indirect contributions as a wife, homemaker and parent.
- [96] According to her affidavit evidence, the Applicant/Wife claims she paid the telephone bills, purchased the groceries and was the primary cook. She also took care of the minor child, did all the cleaning and "*other household and wifely duties*". She also claims to have contributed financially to the conservation of the property, having paid the house insurance along with the Respondent/Husband.
- [97] The Applicant/Wife claims to have made a contribution towards the improvement of the property and alleges that during the 8 years she lived at the house, she had planted rose bushes, several fruit trees and a kitchen garden around the home.

- [98] In her fourth affidavit filed on July 20<sup>th</sup>, 2011, she annexed photographic evidence showing the fruit trees which she claims to have planted whilst she lived at the Cottage, St. George and which are still growing on the property. Significantly, the Respondent/Husband has never refuted these specific claims.
- [99] In her evidence-in-chief the Applicant/Wife said that they never had a housekeeper at Cottage Land. The Applicant/Wife also stated that her aunt, who had a disability, used to go to the house a couple evenings a week when there was no one to look after the minor child. Whilst waiting on the child to get home from school, her aunt would iron his school clothes and also iron her clothes and some of the Husband's clothes. The Applicant/Wife claims she paid her aunt \$60.00 per day as she was the one "who brought her there". She also stated that the Respondent/Husband paid for the aunt's services when they moved to Moonshine Close and would pay her \$60.00 and sometimes \$70.00 if there were a lot of clothes.
- [100] For his part, the Respondent/Husband's evidence is that he too purchased food, paid all the utilities, "water, light, telephone and cooking gas". At paragraph 28 of his affidavit of September 16<sup>th</sup>, 2010, he also claims to have paid for housekeeping services in the sum of \$100.00 per week or \$120.00 per week if there was "additional pressing".
- [101] In her written submissions at the close of the case, Counsel for the Applicant/Wife submitted that the Applicant/Wife has conceded that the property was constructed by the Respondent/Husband and had been substantially complete when she moved to the property in 1995/96 and that, accordingly, she had made no direct financial contribution to the acquisition thereof. She however submits that based on her direct and indirect contributions to its conservation and improvement, together with her contributions as a parent and homemaker, the Applicant/Wife's

interest in the Respondent/Husband's property at Cottage Land, St. George should be assessed as at least 10% of its value.

[102] Counsel for the Respondent/Husband made no specific submissions to the Court in relation to whether the Applicant/Wife made any indirect contributions which may have entitled her to an interest in the property.

[103] The law is that while a spouse may not be able to point to any direct or indirect contribution to the *acquisition* of a property, the spouse may nevertheless be able to rely on contributions he or she may have made to the *conservation or improvement* of the property.

[104] The following dicta of Judge J. in the Australian case *Carter v Carter (1981) FLC 91-061 at p. 76,492* is instructive:

*“Where property is absolutely owned by one spouse before marriage, different considerations may apply under section 79(4)(a) and (b) (section 57(3)(a) and (b)) in the sense that the other spouse may not be able to show any direct or indirect contribution to the acquisition of that property. Nevertheless the other spouse may be able to rely on a contribution to the conservation or improvement of that property...The position is that all property is to be brought into account and appropriate weight is to be given to the different factors relevant to each of item.”*

[105] Having considered the evidence regarding the respective contributions of the parties in relation to the two-storey property at Cottage Land, St. George, I am satisfied and hold that the house was *acquired* by the Respondent/Husband prior to 1995/96 with no direct or indirect contributions from the Applicant/Wife.

[106] Nevertheless, the Court has accepted the unchallenged evidence of the Applicant/Wife and holds that in addition to her contributions as a parent and homemaker, she did contribute directly and indirectly to the

*conservation* and *enhancement* of the Cottage land property during the 8 years she resided there.

- [107] No. 7 Moonshine Close, St. George: The next asset to be evaluated is No. 7 Moonshine Close, St. George, the former matrimonial home. However, the ownership of the home and the respective contributions of the parties to its *acquisition, conservation* and *enhancement* are highly contentious.
- [108] The Applicant/Wife's evidence is that she alone had had initiated the process of finding and purchasing a parcel of land on which to build her dream home. The process she said had started in 1990, long before she married the Respondent/Husband. She claims that after waiting 7 years NHC approval was granted to her by letter *Exhibit "DD1"* dated March 18<sup>th</sup>, 1997 addressed to her in her maiden name.
- [109] According to her, she paid a deposit of \$2,032.97 to the NHC for the land, funds which she claims came from her personal savings. This fact is refuted by the Respondent/Husband who, doubtless in an attempt to establish a direct financial contribution to the *acquisition* of the property, claimed to have given her cash representing his half of the deposit. I reject the Respondent/Husband's evidence on this point and find that the deposit for the land at Moonshine Close was paid for by the Applicant/Wife from her own resources.
- [110] As discussed earlier, the Respondent/Husband also attempted to establish that he had made another direct financial contribution to the construction of the house, claiming to have taken out a Barclays Home Improvement Loan of \$15,000.00 to assist with the foundation of the Moonshine house. The Court has also rejected his claim for reasons which were earlier discussed. [See paragraph [53] above].
- [111] In his testimony at the trial, in what is obviously yet another attempt to establish a direct financial contribution to the *acquisition* of the

Moonshine Close property, the Respondent/Husband claimed to have purchased building materials using money from savings and his salary. He estimated that he had contributed approximately \$30,000.00 in all towards construction of the house. Once again, given my earlier unwillingness to accept him as a truthful and credible witness, I was not prepared to accept his testimony in the absence of documentary evidence, for example banks statements or receipts, supporting these claims.

[112] In another attempt to establish a direct financial contribution to the *acquisition* of the matrimonial home, the Respondent/Husband claimed in his evidence in-chief at the trial, that he had accompanied the Applicant/Wife to the Royal Bank of Canada to obtain a mortgage of \$250,000.00 to construct the house. He told the Court that they had signed various documents and had been jointly responsible for paying the mortgage instalments. He also claimed to have co-signed documentation for a subsequent mortgage for an additional \$40,000.00.

[113] The Court considered that if the Respondent/Husband had in fact signed the mortgage documents as he claimed, he ought to have substantiated his claim to have made a direct financial contribution to the acquisition of the property by, at the very least, producing a copy of the relevant Mortgage Deeds to establish that his name had in fact been added as a Guarantor or Surety for the mortgage. However, no such evidence was produced by the Respondent/Husband to support his claim to have signed the mortgage documentation and the Court was initially very reluctant to believe his claim.

[114] In stark contrast, the Applicant/Wife produced many documents in support of her evidence that she was the only one who made direct financial contributions toward the *acquisition* of the land at Moonshine Close. At paragraph 6 of her affidavit of June 3<sup>rd</sup>, 2010, the Court was told that the

full purchase price for the land had been \$20,329.77 and that she had obtained a mortgage loan of \$18,000.00 from the Barbados National Bank to complete the purchase from NHC. According to her, she had qualified for the mortgage on the basis of her earnings alone and the conveyance and the mortgage deed had been issued in her name alone.

[115] At paragraph 8 of her affidavit of June 3<sup>rd</sup>, 2010, the Court was told that having paid off the BNB loan, the Applicant/Wife approached the Royal Bank of Canada for mortgage financing to build the house and a new mortgage was created in favour of the Royal Bank of Canada in her name as Mortgagor. In her evidence, the Applicant/Wife made no mention of the Respondent/Husband having co-signed the mortgage documentation.

[116] Given the state of the evidence, the Court had initially been inclined to find that the Applicant/Wife was the only one who made direct financial contributions toward the *acquisition* of the land at Moonshine Close and that the Respondent/Husband's claims to have made direct financial contributions to the *acquisition* of the property had not been established. However, I am satisfied that the justice of the case requires me to take into account the existence of certain documentation pertaining to the mortgages created in favour of the Royal Bank of Canada which clearly substantiates the Respondent/Husband's claim to have made a direct financial contribution to the *acquisition* of the Moonshine Close property.

[117] As clearly appears from the documents attached to the Written Submissions filed on behalf of the Applicant/Wife on January 18, 2013, the Court has been made aware of the existence of a letter dated November 20<sup>th</sup>, 2012 written by Hanschell & Company to Counsel for the Applicant/Wife in relation to 2 mortgages covering the property at Moonshine Close.

- [118] The said letter and the attached statements refer to both parties to the marriage as borrowers in account with the Royal Bank of Canada and clearly substantiate the Respondent/Husband's evidence-in-chief at the trial that he did indeed sign papers at the Royal Bank along with the Applicant/Wife for the initial mortgage of \$250,000.00 as well as for a subsequent mortgage of \$40,000.00.
- [119] Also attached to the "Statement of Facts & Issues" filed on behalf of the Applicant/Wife" on July 20<sup>th</sup>, 2011 were photocopies of i) a Deed of Charge by way of legal mortgage dated November 1<sup>st</sup>, 2002 and ii) a Deed of Further Charge dated March 15<sup>th</sup>, 2004 respectively executed between the Applicant/Wife "as Mortgagor", the Royal Bank of Canada "as Mortgagee" and the Respondent/Husband "*as Surety*".
- [120] In the circumstances, the Court was satisfied that the Respondent/Husband did in fact make a direct financial contribution to the *acquisition* of the Moonshine Close property by his assuming financial obligations "*as Surety*" under both Royal Bank mortgages jointly with the Applicant/Wife.
- [121] The Respondent/Husband testified at the trial that he had also made indirect contributions to the construction of the house by laying out and squaring the house. He also claimed to have worked on the foundation alongside the labourers on Saturdays and Sundays. He also claims to have supervised the work throughout the construction.
- [122] The Respondent/Husband also testified that he had plaited all the steel in the house, in the foundation as well as in both floors and claims to have put up all the windows and door frames himself. He called no witnesses to corroborate his many claims. Furthermore, as the Respondent/Husband's claims had not previously been contained in any of his affidavits filed

prior to the trial, the Applicant/Wife was unable to refute them directly either by affidavit before the trial or in her evidence in chief at the trial.

[123] Additionally, at the trial, the Respondent/Husband's several claims to have performed physical work on the property at Moonshine Close during its construction were never put to the Applicant/Wife during her cross-examination by Counsel for the Respondent/Husband. Once again, the Applicant/Wife was not afforded the opportunity to respond to the Husband's several assertions. Accordingly, in the interest of fairness, I was satisfied that very little weight could be given to the Respondent/Husband's unsubstantiated claims.

[124] In the circumstances, I find that both parties made direct and indirect contributions to the acquisition of No. 7 Moonshine Close, but that the Applicant/Wife's contribution to the acquisition, conservation and improvement of the home was far greater than that of the Respondent/Husband. Additionally, I have accepted that the Applicant/Wife's contributions as wife, parent and homemaker were also substantial.

**THE RELEVANT SECTION 53(2) FACTORS:**

[125] I now turn to consider the s. 53(2) factors which I find to be relevant to this case.

[126] *(a) The age and state of health of the parties:* The Wife is now 47 years of age and the Husband is 53. On the evidence, the Husband appears to be in relatively good health.

[127] On the other hand, the Wife's evidence is that she suffers from sickle cell anemia. Details of her medical condition were outlined in the letter of Dr. Eyitayo Fakune dated 24<sup>th</sup> September 2010 and annexed to the Wife's affidavit filed on 29<sup>th</sup> April 2010 as *Exhibit "DD1"*. That letter states that

the Wife “*has been maintaining a fair steady state with controllable sickle cell crises on an out-patient basis.*”

[128] It further states that the frequency of symptoms associated with sickle cell anemia “vary among the affected individual depending on the intensity and sensitivity to predisposing factors” which include “stressful situations, infections and extreme temperatures”. Despite that, Dr. Fakune also opined that the Wife “should be able to take care of her son and herself with little or no assistance from any family member in the event of any circumstance.”

[129] Counsel for the Wife argued that, due to her “chronic illness”, it is expected that the Wife would need specialized medical treatment as she ages. However, the evidence adduced did not support this contention.

[130] *(b) The income, property and financial resources of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment:* The Applicant/Wife is an Administrative Officer within the Ministry of Health. In her Statement of Financial Circumstances filed on June 3<sup>rd</sup>, 2010, her annual income was stated as \$63,874.00.

[131] She has no other property apart from any shares and interests she may have in the properties situate at Cottage Land and Moonshine Close.

[132] The Husband is a mason by profession. His Statement of Financial Circumstances filed on June 2<sup>nd</sup>, 2010 listed his annual income as \$57,600.00 per annum, some \$6,274.00 less than that of the Wife.

[133] Another inconsistency appears to have arisen in his evidence. This time in respect of his income. Although, his 2010 Statement of Financial Circumstances has him earning income below that of the Applicant/Wife, in his affidavit filed on July 21<sup>st</sup> 2011 he clearly indicates that throughout the marriage, he has always earned twice as much as the Applicant/Wife.

[134] The relevant paragraphs of this most glaring inconsistency is reproduced below for what it is worth and speaks for itself:

*“11. I am currently employed by Ridgeview Construction earning \$4,000.00 net monthly. Notwithstanding the decline in the construction industry, I still work on weekends building and renovating properties for private individuals...*

*12. Throughout the marriage, including the periods we have cohabited as man and **wife I have always enjoyed a much larger earning capacity** than the Applicant and have at all times earned twice her income...*

*13. The Applicant is an Administrative Officer...She was earning approximately \$3,000.00 when we got married but now earns approximately \$5,000.00 monthly.”*

[135] I now turn to the issue of whether the Respondent/Husband has any additional sources of income. Given my earlier finding that the house situate at Lot 27 Cottage Land is his property, I must now consider the application of the rental income generated from that property. In his affidavit filed on September 16<sup>th</sup>, 2010 the Respondent/Husband stated that rent is collected from the property, placed in an account and used for the maintenance and upkeep of the property. I reject his evidence as untruthful and hold that the rental income collected from the apartments at Cottage in fact provides him with an additional income, not currently reflected in his Statement of Financial Circumstances.

[136] The Respondent/Husband testified that he runs a small catering business. There is no doubt that the income generated from this business must be considered an additional financial resource of the Husband. However, the Husband has failed to list the income of that business in his Statement of Financial Circumstances. Unfortunately, whilst the existence of his catering business was raised during his cross-examination, no information as to the income generated therefrom was adduced.

[137] At this point I make reference to the dicta of **Williams JA** in *Wilson v Wilson*, **Civil Appeal No. 5 of 2003 (date of decision 22 March 2006)** where he said at paragraphs [47] and [48]:

*[47] This appeal illustrates the importance of the parties placing before the court full and frank affidavits. The point was made by the Full Court of the Family Court of Australia **In the Marriage of Stay (1997) FLC ¶92-751 at 84,130** as follows:*

*“There is a positive obligation on a party in proceedings for property settlement to make a full and frank disclosure of all relevant financial affairs. Once it is clear that there has been a non-disclosure, the Court should not be unduly cautious in making findings in favour of the innocent party: **Black and Kellner (1992) FLC ¶92-287** and **Weir and Weir (1993) FLC ¶92-338.**”*

*In **Tate v. Tate (2000) FLC ¶93-047 at paras. 50 to 53** the duty to make full and frank disclosure of all relevant financial circumstances was reiterated by the Full Court, which regarded the requirement as fundamental to the whole purpose of the Family Law Act in financial cases.*

*[48] Attorneys-at-Law in family cases have an obligation to ensure that full disclosure is made. A party that has failed to make disclosure of material evidence or whose credibility is questionable cannot expect a favourable assessment of his or her case. **The Judge must inevitably make an assessment based only on the credible evidence; there is no scope for speculation especially in favour of an untruthful party or a party who fails to make full and frank disclosure of all material facts and documents.**”*

[138] In all the circumstances and applying this authority to the current case, I am satisfied that the Respondent/Husband’s Statement of Financial

Circumstances does not accurately reflect his total income and cannot be relied upon by the Court in this exercise.

[139] (c) Whether either party has the care or control of a child of the marriage or union other than a marriage, who has not attained the age of 18 years:

As noted above, on 18 August 2010 **Kentish J** ordered that the Husband pay to the Wife the sum of \$500.00 per month, with effect from 25<sup>th</sup> June 2010 together with half of all medical, dental, ophthalmic and educational expenses until the minor child of the marriage reaches the age of 18 years or until he completes his tertiary education or varied by an order of the Court. That order has not so been varied.

[140] In her affidavit filed 20<sup>th</sup> July 2011 the Applicant/Wife admitted that the since June 2010 the Respondent/Husband has paid the \$500.00 towards the maintenance of the minor child, but stated that his payment towards the additional expenses has been “*dismal*”.

[141] The minor child of the marriage is now 14 years of age and the Court has borne in mind that the Respondent must continue to pay maintenance for that child for at least another four years.

[142] (d) The financial needs and obligations of each of the parties: The Wife has listed her total annual expenses as \$71,838.72 and the Husband has listed his annual expenses as \$66,280.00.

[143] As appears from the evidence both parties remain indebted to the Royal Bank of Canada in respect of both mortgages covering the property situate at Lot 27 Moonshine Close - the Applicant/Wife in her capacity as “Mortgagor” and the Respondent/Husband as the “Surety” on the mortgage documents.

[144] As at November 14, 2012, the principal balance due and owing on the property at Moonshine Close was \$217,215.84. The principal balance due and owing on the Further Charge was \$34,180.07.

- [145] *(f) The eligibility of either party for a pensions:* As noted above, the Wife is employed as an Administrative Officer within the Ministry of Health. On her evidence, she has been employed in the public sector since 1990. She will be eligible for a pension at age 67.
- [146] The Husband is a mason and is self-employed. He has adduced no evidence as to his NIS contributions and, therefore the Court is unable to determine whether or not he will receive a pension when he reaches retirement age.
- [147] Having weighed the respective contributions of the Applicant/Wife and the Respondent/Husband and taking into account the relevant *section 53* factors identified above, including the Applicant/Wife's contributions as a wife, mother and homemaker, I am satisfied that in all the circumstances it is just and equitable that the Applicant/Wife's contribution to the conservation and improvement of the Husband's house at Cottage land, St. George warrants an adjustment to the Husband's 100% interest in the Cottage Land property to give the Wife a 20% share in that property.
- [148] Having also weighed the respective contributions of the Applicant/Wife and the Respondent/Husband in relation to the acquisition, construction, improvement and conservation of the property at Moonshine Close including the Applicant/Wife's contributions as a wife, mother and homemaker, I am satisfied that in all the circumstances, it is just and equitable that the Wife's 100% ownership in this property be altered so as to vest in the Respondent/Husband a 30% share and interest in the Moonshine Close property.
- [149] Neither party adduced evidence with respect to any furniture and appliances in the matrimonial home and I make no declaration in relation to such.

**DISPOSAL:**

[150] In the light of the foregoing, I make the following declarations and orders:

- 1) The Applicant/Wife is entitled to a 20% share and interest in the Respondent/Husband's two-storey house situated at Lot 27 Cottage Land, St. George;
- 2) The interest of the Respondent/Husband in the said property is altered so as to vest in the Applicant/Wife a 20% share and interest therein;
- 3) The Respondent/Husband is entitled to a 30% share in the matrimonial home at Moonshine Close, St. George;
- 4) The interest of the Applicant/Wife in the said matrimonial home is altered so as to vest in the Respondent/Husband a 30% share and interest therein;
- 5) That updated valuation reports shall be obtained in relation to the properties at Cottage Land and Moonshine Close respectively and shall be filed with the Court no later than June 30<sup>th</sup>, 2015.
- 6) As discussed at paragraph [82] of the Court's decision, in the absence of a survey plan, the updated report in respect of the two-storey house at Cottage Land shall endeavour to exclude from the valuation, land areas within Lot 27 Cottage Land not immediately connected with the enjoyment of the said house;
- 7) That the Respondent/Husband shall pay to the Applicant/Wife a sum equivalent to 20% of the market value of the two-storey house and the area occupied by the house at Cottage Land, St. George when that value is determined;
- 8) That the Applicant/Wife shall pay to the Respondent/Husband a sum equivalent to 30% of the market value of Moonshine Close when that value is determined;

- 9) That the Applicant/Wife is at liberty to enter into immediate and exclusive possession of the former matrimonial home situate at Moonshine Close, St. George;
- 10) Pursuant to section 94(1) of the *Family Law Act*, each party will bear his or her own costs of these proceedings;
- 11) Liberty to apply.

**Maureen Crane-Scott  
Judge of the High Court**