

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

CV No. 2409 of 2005

**IN THE MATTER of the Estate of
Wyllis Cordell Maloney also known as
Wyllis Maloney (Deceased) late of
Chancery Lane in the Parish of Christ
Church.**

**AND IN THE MATTER of the
Succession Act, Cap. 249 of the Laws of
Barbados.**

**AND IN THE MATTER of the Rules of
the Supreme Court, Cap.117A of the
Laws of Barbados.**

BETWEEN:

**MONÉ SHAHIDA WORRELL
DAMIAN ANDRÉ DEVONISH
SELWYN ALONZO SCOTT
(acting herein by his duly consti-
tuted attorney Amy Maloney)
YVETTE MAUREEN GODDARD**

PLAINTIFFS

AND

DIANA ROSALINE ALLEYNE

DEFENDANT

Before Dr. The Hon. Madam Justice Sonia L. Richards, Judge of the High Court.

2014: February 10, 13

March 26

April 07, 24

2017: January 25

Ms. Vonda Pile, Attorney-at-Law for the Plaintiff Ms. Worrell.

Ms. Traece Codrington, Attorney-at-Law for the Plaintiffs Messrs Devonish and Scott, and Ms. Goddard.

Mr. Hilary Nelson, Attorney-at-Law for the Defendant.

DECISION

Introduction

[1] In this case, the main issue that the Court is required to determine is whether the Defendant was the spouse of Wyllis Cordell Maloney (“the Deceased”). Pursuant to that determination are consequential issues of administration, accounting and costs.

Background

[2] The Deceased passed away at the Queen Elizabeth Hospital on 01 October 2005. He died intestate. In December 2005, his daughter Moné Worrell, filed an Originating Summons seeking the following relief:

1. a declaration that the Defendant is not entitled to benefit under the estate of the Deceased;

2. an injunction restraining the Defendant from disposing of any part of the estate of the Deceased pending the final determination of all matters between the parties;
3. an order that an account be taken of the property of the Deceased that came into the hands of the Defendant, or into the hands of any other persons by order of or for the use of the Defendant;
4. an order pursuant to Section 19 of the Succession Act, Cap.249, for the administration *pendente lite* of the estate of the Deceased;
5. that a grant of administration of the real and personal estate of the Deceased be vested in Ms. Worrell with all necessary and proper accounts, directions and inquiries;
6. further or other relief; and
7. costs.

[3] By an order of Kentish J on 20 September 2011, three other children of the Deceased were added as Plaintiffs. The learned Judge also ordered, *inter alia*, that:

“(2)...the Originating Proceedings and all affidavits in support thereof do stand and the added plaintiffs herein be at liberty to file an affidavit in support of their claim and serve the same on all the parties hereto on or before the 18th day of October, 2011”.

The Pleadings

- [4] The affidavit filed by the original plaintiff, in support of the originating summons, alleges that the Defendant filed an application dated 17 October 2005 for a grant of letters of administration to the estate of the Deceased, on the basis that she was his spouse. (Para.7. of Ms. Worrell's affidavit filed on 09 December 2005). The affidavit further alleged that the Defendant did not live with the Deceased for the required period, and therefore, that the Defendant was not entitled to any share of the estate of the Deceased.
- [5] In answer, the Defendant claimed that during the year 1998, the Deceased invited her to live with him at his residence at Chancery Lane, Christ Church. She says that from about June or July of that year, they began to cohabit and live there as husband and wife. (See para. (f) of her affidavit filed on 13 January 2006). She relies on this period of cohabitation to confirm her as his spouse, and to support her application for letters of administration to the estate.
- [6] A number of persons filed affidavits on behalf of both sides. However, some of them were not tendered for cross-examination. The witnesses filing affidavits and giving sworn evidence for the Plaintiffs were Moné

Worrell, Alicia Moses, Egbert Maloney and Amy Maloney. For the Defence, affidavits and sworn testimony were given by Eustace Farley and the Defendant herself. Mr. McClaren Holder gave oral evidence at the request of the Court.

The Relevant Law

[7] Section 49 of the Succession Act (“the Act”), provides in part that:

“(3) Subject to subsection (4), if an intestate dies leaving...

(a) a spouse and children, the spouse shall take one-third of the estate and the remainder shall be distributed among the children in equal shares”.

[8] In Section 2 (3) of the Act, a spouse is defined as including:

“a single woman who was living together with a single man as his wife for a period of not less than five years immediately preceding the date of his death”.

[8] There is no dispute that the Defendant was single woman from the date of her divorce on 21 August 1990, up to and including the date of death of the Deceased. The Deceased was also a single man during the five years immediately preceding his death. The question before the Court is whether the Defendant and the Deceased lived together as man and wife for the five

years immediately preceding the Deceased's passing. The critical five year period of *consortium vitae* runs from 01 October 2000, to 01 October 2005.

[10] In **L v. L (1984) F.L.C. 91-563**, the appeal court referred to the case of **Pavey v. Pavey** which examined the constituent elements of a marital relationship. ((1976) FLC 90-051). The three learned Judges of that court opined that these elements include:

“dwelling under the same roof, sexual intercourse, mutual society and protection, recognition of the existence of the marriage by both spouses in public and private and the nurture and support of the children of the marriage... not all of these elements need be present before *consortium vitae* can be recognised as such.” (Page 79,545; see also **Valdene Payne v. Ivan Watson, Suit No. 80 of 1972, B'dos. H.Ct., decision dated 06 November 1998**).

[11] In her treatise on family law, Karen Nunez-Tesheira identified seven elements of *consortium vitae*. These are:

1. the duration of the relationship;
2. whether or not a sexual relationship exists;
3. the degree of financial dependence or interdependence, and any arrangements for financial support between the parties;
4. the degree of mutual commitment to a shared life;
5. the care and support of children, if any;

6. the performance of household duties; and
7. the reputation and public aspects of the relationship.

(See **Commonwealth Caribbean Family Law: Husband, Wife and Cohabitant**, 2016, at pages 59-60)

[12] Whether the Deceased and the Defendant lived together, as man and wife for the requisite period, is a finding of fact to be gleaned from the evidence of the witnesses. It is that evidence which will determine whether the essential elements of *consortium vitae* were present in a relationship between the Deceased and the Defendant. The burden of proof is on the Plaintiffs to satisfy this Court that, on a balance of probabilities, the Defendant and the Deceased did not live together as man and wife during the five year period prior to 01 October 2005.

The Evidence for the Plaintiffs

[13] Moné Worrell is the youngest child of the Deceased. She initiated this action. Moné was familiar with her father's siblings; her paternal aunts and uncles. She met the Defendant for the first time at a surprise birthday party for her father. This was two to three years before he died.

[14] Moné was aware that the Defendant worked at her father's shop in Rendezvous. When she telephoned her father at the shop, the Defendant would answer. But the Defendant never answered the telephone when

Moné called the Deceased at his Chancery Lane residence. Moné never knew the Defendant to be living with her father, and neither he nor the Defendant ever told her that they were boyfriend and girlfriend.

[15] Egbert Maloney is the brother of the Deceased. They lived within walking distance of each other at Chancery Lane. The Deceased lived at the family home, and both brothers were farmers. Egbert told the Court that:

“I was at my parent’s residence almost every day. No one lived there with my brother. Up to the date of his death no one else lived there. I would have known...If anyone had moved in with him I would have known because I passed there several times during the day and night...

I have seen [the Defendant] at the family home, in a vehicle with my brother. I have seen her in the house sometime during the day, and I remember seeing her in the yard. I did not get the impression that she was living there because I did not see her there that length of time... If he had a woman living with him I would expect to see evidence of that in the house... To my knowledge I do not know of her living with my brother five years consecutively prior to his death... [The Defendant] was not living there... Amy and Margaret used to stay with [the Deceased] when they visited Barbados. They would have been aware of everything that was going on in the family home”.

[16] Alicia Moses is Egbert’s daughter, and the niece of the Deceased. She confirmed that the Deceased and her father lived in separate houses on the

same street. She lived with her father at Chancery Lane from mid 1999 to 2003. During this period, Alicia had access to the Deceased's residence.

She knew where to find the house keys. In her words:

“I went into my uncle's house between 1999 and 2002 to do things on his behalf. When we went into the house we could go anywhere in the house. When walking through the house I never saw [the Defendant] in the house. I saw no evidence of anyone other than my uncle living at his house”.

[17] Alicia also spoke about being transported to her workplace in Wildey by the Deceased. This occurred every morning from Monday to Friday from mid 1999 until May 2002 when she got her own vehicle. Her evidence is that:

“I moved back to my father's house in 1999, and Uncle Wyllis arranged to take me to work every day around 7.00 a.m. or so. He suggested that he could take me across when on his way to St. George. At times he indicated that he was going to pick up someone to take to the shop. The name of the person he mentioned in passing was Diana. This was a daily occurrence during the week, Monday to Friday. I never met Diana. I would walk across to him and he was ready, and he would take me up. He would be alone...

I never saw [the Defendant] at the house between 1999 and 2003...

When my uncle dropped me to work, no one else was in the vehicle with us...

Our ongoing contact was on mornings when he took me to work”.

[18] Amy Maloney is a sister of the Deceased. She previously lived in the USA, but she returned permanently in June 2005. While resident abroad, Amy visited Barbados regularly, and each time she stayed with the Deceased at the family home. As far as she knew, the Deceased lived at that house alone. Amy’s visits lasted between two to four weeks.

[19] Having returned in June 2005, Amy stayed with the Deceased before she moved to rented accommodation. However, she had keys to the family home, and visited there at will. When the Deceased died at the beginning of October 2005, another sister Margaret was staying at the family home. Margaret had come to Barbados for the funeral of another sister.

[20] Amy became aware of the Defendant in 1999, when the Deceased took a package to the Defendant at her home at Salters, St. George. Amy remained in the motor car when the package was delivered. She met the Defendant for the first time in 2002 at the Rendezvous shop. The Defendant worked at the shop. According to Amy:

“[The Defendant] came to the family home between June and September 2005, but she did not live there. Sometimes [the Deceased]

brought her there or someone else in a vehicle. She never slept there to my knowledge. She used to come to collect meat from the freezers for the shop. She came and collected supplies and left”.

[21] Amy’s evidence is that the Deceased trusted her in his financial dealings. She was a signatory to a joint account with him. He told her that he had a checking account for the shop. Amy also paid for her brother’s funeral.

Asked if the Defendant assisted with this expense, Amy replied:

“She made no contribution to the funeral. She said she did not know anything about [the Deceased’s] business”.

[22] The Deceased retired from Hanschell Inniss in 2002. After his death, Amy wrote to that company about his pension plan, believing that she was the beneficiary of his deferred pension. Amy discovered that the Defendant was claiming a lifetime monthly pension from the company, as the common law spouse of the Deceased. Unlike the Succession Act, the pension plan requires a common law relationship of three years in order for the spouse to qualify.

[23] In her evidence, Amy also alleged that she paid her landlord to import a satellite dish on behalf of the Deceased. The dish was delivered by freighters on 30 September, 2005, the day before the Deceased passed. The Defendant is said to have removed the dish by truck the day after it was

delivered to the family home. This witness produced a receipt purportedly from her landlord.

[24] McClaren Holder was called to give oral evidence, at the request of the Court, as someone who might shed light on the purchase and ownership of the satellite dish. His evidence was adduced before the close of the case for the Plaintiffs.

[25] Mr. Holder said that the Deceased had provided U.S. currency for him to purchase a satellite dish as a surprise gift for either his wife or his girlfriend. Holder travelled to Miami on 28 July 2005. He remembered the date because it was the day before his birthday. The Deceased was given a receipt for the money received by Holder.

[26] When shown the receipt produced by Amy Maloney, Holder commented that “This doesn’t look like anything I know... This does not look like anything I bought”. Holder was not aware of the source of the money given to him to purchase the satellite dish. More interesting information was provided about receipt. The witness recalled that:

“Amy was renting from my son. After [the Deceased] died, she called and asked me to give her a receipt saying that she had bought the dish. I told her I could not do that because my grandmother had not taught me to do that”.

[27] Holder also informed the Court that he knew the Deceased long before 1998, however “He never told me he had a girlfriend named Diana Alleyne”. Holder knew the Defendant by going into the Rendezvous shop. He visited the shop when he was working in the nearby Rockley area. And, from frequenting the shop, Holder made observations about the relationship between the Deceased and the Defendant.

“I thought [the Defendant] was his wife, but now I know she was his girlfriend...I thought she was his wife based on the close relationship I saw between them. This was from seeing them in the shop... We never formed that conversation about whether she was his wife. It was not my business. I formed this opinion”.

[28] Holder had no personal knowledge about the living arrangements between the Deceased and Defendant. What he shared with the Court was based on unconfirmed sources.

“I heard she used to live at a house at Chancery Lane with [the Deceased]. I knew she lived at a house in Chancery Lane from going to the shop. I can’t remember if I heard this from [the Deceased]. I can’t recall if [the Defendant] told me she was living in Chancery Lane in 2005”.

The Evidence for the Defence

[29] The evidence for the Defence came from the Defendant and Eustace LeGay Farley. Mr. Farley is considered to be the best friend of the Deceased. He knew him for forty years, and delivered the eulogy at his funeral. Except for the Defendant, Farley is the only witness who claimed any personal knowledge that the Deceased and the Defendant lived together as man and wife for more than five years.

[30] Farley testified that:

“In 1996 I was on a visit to Barbados and on visiting [the Deceased] he introduced me to [the Defendant] as his fiancée. In 1998 in a phone conversation, before coming to Barbados, he told me that he had persuaded her to move in with him at Chancery Lane. Subsequently, I visited Barbados twice in 1999, once in 2000, three times in 2001, and once in 2002. On each of those visits I stayed partly at [the Deceased] at Chancery Lane and found [the Defendant] to be living there. In 2003 I returned to Barbados for good. I found [the Deceased and the Defendant] still living together at Chancery Lane.

Between my return and his death I observed the relationship between them. Based on my observations, I have no doubt that she lived with him as his spouse”.

[31] The Defendant’s evidence lasted over three days. The essential aspects of her evidence, that relate to her relationship with the Deceased, are as follows:

“I knew [the Deceased]. I met him in 1987 through a mutual friend. A relationship developed after I met him...The relationship ended after he was deceased...I went to live with [the Deceased] in 1998. He asked me when he was not well. I was living there up to the time of his death... It is said that when a woman and a man live together for five years she is entitled to some of his assets... If they can discredit me from being there it would be better for the Maloneys...

I was living there from 1998 to 2005 because Wyllis asked me to come, he was not well... I saw Alicia at Chancery Lane. She used to come over on mornings sometimes to get a lift. This was just before [the Deceased] stopped working in 2002. She had to be [at work] by a certain time...

It was a romantic relationship with [the Deceased], a man woman relationship... I vacated the premises a week after he died...

When [the Deceased] was having medical problems it had a serious effect on his body... There was a significant change in our sexual relationship from the time our relationship started to the time I moved in with him. When I moved in there was sexual activity. It was not as frequent as it used to be. It was infrequent. When I moved in with him my primary concern was his health. He had a housekeeper who would come in and assist him in getting things done around the house. I cooked for him at the shop. He ate at the shop. Sometimes I cooked for him exclusively. I would make sure that he was well rested and had clean clothes to put on. I would take his blood pressure and blood sugar on mornings. I washed his clothes occasionally. I

would take him walking on mornings for exercise.

I don't agree that what I did for [the Deceased] was not sufficient to make me a spouse...

I lived with [the Deceased] from 1998. It was like mid year June or July. It could be about there... We used to sleep in the back bedroom... I did not pay for utilities at Chancery Lane”.

[32] The Defendant was knowledgeable about the various health issues that plagued the Deceased. He was diabetic and hypertensive with heart and colon challenges. He experienced kidney stones, anxiety attacks, and a number of hospitalisations.

Evaluation of Evidence

[33] While assessing the evidence for and against the existence of any *consortium vitae* between the Defendant and the Deceased, the Court proposes to consider what weight may be attached to the evidence of the witnesses in this case. In so doing, comments will be made about the credibility of some of these witnesses, and the strengths and weaknesses of their evidence.

[34] Moné Worrell claimed to have a close relationship with her father, the Deceased. However, she provided no information about visiting her father either at the shop, or, more significantly, at his home. She relies on

telephone contact with the Deceased. Although she was present with the family at her father's birthday party, her evidence by itself does not establish on a balance of probabilities that there was no *consortium vitae*.

[35] Egbert Maloney lived on the same street as the Deceased. He passed the family home regularly. He had no knowledge of the Defendant living with the Deceased. He was never introduced to her as his brother's girlfriend. He believed that two of their sisters, Amy and Margaret, would have a better knowledge about the day to day occupation of the family home.

[36] Egbert will receive no benefits from either his father's estate, or from the estate of the Deceased. And there is no evidence of a strained or any relationship between Egbert and the Defendant. This witness does not appear to have any interest to serve. Therefore, his evidence may be of assistance to the court.

[37] Egbert's daughter Alicia was the most compelling witness for the Claimants. She had access to the home of the Deceased, and she spent time with him when he drove her to work on weekday mornings between 1999 and 2002. The Defendant confirmed these morning trips. Alicia has no personal interest to serve, and her evidence was not shaken during cross-examination. The Court assessed her as a witness of the truth.

[38] The witness Amy Maloney has credibility issues. McClaren Holder directly challenged aspects of her testimony. Holder did not recognise the receipt for the satellite dish produced by Amy. He also spoke about her futile attempt to persuade him to give her a receipt for the dish in her name.

[39] The Court also believes that Ms. Maloney was not forthright in her evidence about how well she knew Eustace Farley. Even if the Court ignores his evidence of her various attempts to develop a relationship with him, the Court is not persuaded by her evidence that:

“I do not know him very well. I heard of him”.

After all, this was her brother’s best friend, and the person chosen by the family to deliver his eulogy.

[40] There is a well known animosity between this witness and the Defendant, arising out of an altercation between them. As a result of the altercation, charges were brought against the Defendant. However, the charges were dismissed by the Magistrate.

[41] The Court has adopted a cautious approach to the evidence of this witness. Her evidence will be relied on only in so far as it was either unchallenged, or confirmed by other witnesses or by accepted documentary evidence.

[42] McClaren Holder cannot assist with the determination of whether the Deceased and the Defendant lived together. His comments in this regard were based on hearsay, and not on any personal knowledge of the living arrangements.

[43] Despite his evidence of a spousal relationship between the Deceased and the Defendant, Farley's evidence is deficient in certain respects. He testified about receiving two briefcases from the Deceased:

“I was given two briefcases by [the Deceased]. The reason given to me was that he was concerned about them being at his home, and his sister Amy Maloney having access and searching the contents. He described her as a searcher...

I was given the two attaché cases after Amy Maloney came to Barbados to live... [The Defendant] was living at the house when I got the two attaché cases. They were not given to me at the house. I do not know where they were kept....

I gave the two attaché cases to [the Defendant] after [the Deceased] died. I never looked into them. I don't know what was in them. I no longer wanted to have them in my possession; that was my judgment call. I thought that she was the most appropriate person to give them to....

I know he dealt with Hutson Linton. Linton was his lawyer. I did not think it prudent to hand the cases to Hutson Linton”.

[44] The Defendant's evidence about the safekeeping of these briefcases differs. To her knowledge, the briefcases were kept by Velcie, a sister of the Deceased. It was after the death that Farley delivered the cases to the Defendant. She told the Court on 26 March 2014 that:

“I am aware that [the Deceased] had two briefcases he moved with. Those briefcases are at my home. They were handed to me by Mr. Farley on the day of [the Deceased's] death. I was at Chancery Lane. I have been in possession of them every since until now. I looked into one. It had in a lot of books and sales from Hanschell Inniss. He had retired from Hanschell Inniss at the time of his death. They are both brown. I can't get the other one opened. It has a combination lock. The briefcases were at Velcie's house. I did not know they were at Velcie's house until Mr. Farley gave them to me.....

Mr. Farley and I are the only ones who had possession of [the Deceased's] briefcases since they left Velcie”.

[45] And on 07 April 2014, the Defendant added that:

“I said I knew [the Deceased] gave two briefcases to Velcie. Mr. Farley gave them to me the same day [the Deceased] died. One had a combination by numbers, and one just had a clip. [The Deceased] did not give me the number for the one with the combination lock. [He] never gave me the combination. I knew he gave them to Velcie his sister. He told me he gave them to Velcie. I did not see him hand them to Velcie. All he said to me is that Amy liked searching. I

did not question him as to why he gave them to Velcie”.

[46] Farley never mentioned Velcie as having possession of the briefcases. The Court thinks it unusual that he omitted this essential element pertaining to the custody of the briefcases. As will be seen, the briefcases are also an important aspect of the Defendant’s evidence. (Infra at paras. [59] to [61]).

[47] Although Farley knew the Deceased for several years, he was only acquainted with two of his children. He had no idea that there were other children, and he was not aware that his friend was a grandfather. He was aware of Moné Worrell, but he had never met her. This leads the Court to reasonably infer that, however close the Deceased was to Farley, there were parts of his life that were not shared with or known to Farley. On the other hand, the Deceased’s family was familiar with Moné and the other children.

[47A] As someone who emphasized his familiarity with the Deceased’s home, and who spent time there, Farley displayed uncertainty about some aspects of the home. He was uncertain as to the number of bedrooms. He believed that the house had two bedrooms. However, when it was suggested to him that there were three bedrooms, Farley’s reply was that he would not be surprised. In addition, he could not recall if the kitchen had cupboards, or whether the Deceased’s bedroom had a lock.

[49] Farley also claims to be a creditor to the estate of the Deceased. He referred to a loan that was not repaid in full by the Deceased. With interest this loan amounted to approximately \$27,000.00 in January 2010. (See Exhibit ELF3). Farley produced an unwitnessed promissory note signed by himself and the Deceased in early 2004. He accepted that the document was inaccurate as it stated that the Deceased's last payment was in 2004. The Defendant handed over one of the vehicles owned by the Deceased to Farley, in order to offset this alleged debt. In an affidavit filed on 25 April 2013, the Defendant assessed the debt at \$18,000.00. (See para.10(a) of affidavit).

[50] Farley's evidence, about the domestic arrangements between the Deceased and the Defendant, was lacking both in depth and in detail. Farley did not assist the Court with his observations about the domestic arrangements. He did not define the precise role the Defendant played as the alleged spouse in a relationship with the Deceased.

[51] When asked specific questions about the Defendant's performance of household duties, Farley was dismissive and unhelpful. He responded that:

“I can't recall if [the Defendant] swept the house. I was not there to observe her household duties. I did not take specific notice of her washing his clothes. I did not see her cleaning the bedroom she and [the Deceased] used... I

don't recall seeing [her] clothing on the line. I have come a Christmas time. I don't recall seeing her changing curtains. I don't recall seeing her prepare a Christmas meal. I have seen her in the kitchen preparing meals".

[52] Farley knew that the Deceased had a housekeeper, Cynthia Browne. He saw Ms. Browne cleaning the room he occupied at the house. But he did not recall seeing the Defendant doing any cleaning at Chancery Lane. He was not aware that Ms. Browne did the Deceased's laundry. More importantly, there is no evidence from Farley about any interaction between the Defendant, as a spouse, and the housekeeper.

[53] Farley observed a spousal relationship between the Deceased and the Defendant. But it is curious that, except for living together at the same house, occasional cooking, and sharing a bedroom, Farley was unable to speak definitively about other domestic arrangements relating to the household. For example, he offered no insights into their division of labour in the home.

[54] Except for the surprise birthday party held for the Deceased, Farley gave no evidence of other social events that the Deceased and the Defendant attended together. Did they host social events as a couple at Chancery Lane? Did they shop together between 1998 and 2005? Did either one publicly acknowledge the other as a spouse? It was not enough for Mr.

Farley to say that he observed a spousal relationship, without intimating what he saw that led him to conclude that the Deceased and the Defendant were living together as man and wife.

[55] The Defendant's evidence did not fill in these gaps. She spoke of cooking for the Deceased at the Rendezvous shop, and about washing his clothes occasionally. (Supra at para.[31]). She offered little evidence about the domestic arrangements between herself and the Deceased. Her evidence was that she paid no utility bills at Chancery Lane. What was the financial arrangement between them for Chancery Lane? Did they entertain friends or family? Did they go to social events together? What about the maintenance of the home over the seven years they were supposed to have lived together? As the alleged mistress at the Chancery Lane home, could the Defendant give instructions to the housekeeper?

[56] The Defendant admitted to naming, on a National Insurance document, three persons who could corroborate that she was the spouse of the Deceased. These persons were Cynthia Browne, the housekeeper; Lawson Als, a very good friend of the Deceased; and Hazel Wiggins, a sister of the Deceased. None of these persons gave any evidence in this Court to verify the relationship. And it is interesting that Farley's name was not included

on the document. Also of significance is the fact that no confirmatory evidence was solicited from any of the Chancery Lane neighbours.

[57] During her oral testimony, the Defendant said, more than once, that the Defendant had asked her to come and live with him in 1998 because he was ill. She recalled that he was sick during the night, and he called and asked her to come and stay with him. She also admitted that when she moved in with him her primary concern was his health. This suggests a temporary arrangement, and not an offer for a permanent spousal relationship. The Defendant referred to a similar situation when her sister spent three months with the Deceased during one of his illnesses.

[58] This witness also admitted to a conflict between her oral evidence and the assertions in paragraph 9(b) of her affidavit filed on 13 January 2006. In that affidavit the Defendant stated that she completed and filed an application form for a survivor's benefit on 14 December 2005, as indicated by the National Insurance Department's stamp. She agreed that what she said in her oral evidence, about the document being stamped before she completed and filed it, was not correct. The Defendant further admitted that, after the Deceased died, she left Chancery Lane with more than her personal property. She also took with her property belonging to the estate of the

Deceased. This was contrary to the assertion, in her affidavit, that she only took her personal property.

[59] This Court also had cause to question the truthfulness of the Defendant. It will be recalled that she gave evidence of her inability to open one of the Defendant's briefcases. This briefcase was described as brown with a combination lock. (Supra at para. [44]). On 07 April 2014, the Court ordered, inter alia, that the Defendant produce this briefcase to the Court at the next sitting.

[60] On her return to Court on 24 April 2014, the Defendant produced an unlocked briefcase. The incredulity of her explanation speaks for itself.

“I recall saying that only one briefcase was opened. I am now saying that both briefcases were opened. I said that when I received the second briefcase it could not be opened, it was locked. I took possession of the briefcases on 01 October 2005. I took them to Salters, St. George...

I gave evidence that Farley gave me the briefcases after [the Deceased's] death. That was on 01 October 2005....The briefcase with the combination was opened on 08 April 2014. When I saw the clips I pulled them and they opened. I said it had a combination and I could not get it opened. I recall being asked if [the Deceased] gave me the combination. There was no key to open it. They both carry clips at the side to open.

I don't know how I made that mistake. I did not try to open it by pulling the clips at the side. On 08 April I was curious. I am sure that is the briefcase I was referring to, and that I have not brought the wrong briefcase. In the nine years [that I have kept it] this is the first time that I tried to open the case. When I told the court that I tried to open it and could not because it had a combination lock I was telling the truth. No one was present when I opened it on 08 April 2014. I did not keep the briefcases in my bedroom at Salters. I kept them outside in a shed.

I see the three combination things. I gave evidence of one briefcase having a combination. I remember saying I could not get it unlocked because I did not have the combination to it. I can't remember exactly what I said.

[Evidence of 26 March 2014 read back by Court].

I recall saying that to the Court under oath on 26 March 2014. I heard the order on 07 April 2014 to bring the briefcase with the combination lock to the Court. My attorney did not give me instructions to open the briefcase. I opened it because I was curious”.

[61] The Court wishes to make two observations about these briefcases, *en passant*. Why would the Deceased go to such lengths to deliver them to a third party for safe-keeping, if they contained nothing of intrinsic value to his estate? It is more than passing strange. And what role, if any, did Velcie play in this drama?

[62] Another area of concern was the evidence given by the Defendant in relation to the Rendezvous shop. She insisted that it was her business, that she opened in December 1999, with two loans totalling \$16,000.00 from a sister. No documentary evidence was provided to the Court, and the sister gave no evidence to confirm the loans.

[63] The Defendant insisted that she was not the employee of the Deceased. The business was licensed in her name; she cooked lunches, sold dry goods and alcoholic beverages; and she was responsible for stock taking. She closed the business in October 2013, and she took the equipment to her house at Salters, St. George.

[64] Despite these assertions, the Defendant also revealed that the Deceased paid for stock in the shop; brought in agricultural produce from his farm at Chancery Lane; and assisted with the writing up of shop sales. The Deceased also owned various pieces of equipment at the shop, or he shared the cost of purchasing other equipment. He supplied pork and chicken to the shop, and he shared the cost for purchasing fish.

[65] There is evidence from the Defendant that the Deceased used earnings from the shop to pay a vehicle loan, and to pay farm workers. She was driven to admit that the Deceased made a financial contribution to the business between 1999 and his death in 2005. It was further admitted that his

contribution of equipment assisted her to carry on the business from 2005 to its closure in October 2013.

[66] The Defendant also confirmed Amy Maloney's evidence that a joint account existed for the business. The Deceased's name was on the account. The totality of this evidence indicates that, at the very least, the Deceased was a partner in the Rendezvous business. The Defendant was not the sole owner of the business.

[67] There is no evidence that the Defendant made any contribution to the burial of the Deceased. In this regard, she did not dispute the evidence that Amy Maloney paid for the funeral. The only explanation as to why, as an alleged spouse for seven years, the Defendant did not bear part or all of the expenditure for the funeral of her dearly departed, was advice from a lawyer that his estate should bury him. The Court's assessment of this witness is that her evidence raised more questions, about the existence of a spousal relationship, than it provided answers.

Assessing the Evidence Against the Guidelines

[68] Following on from the assessment of the witnesses and their evidence, the Court now turns to an evaluation of the evidence against the guidelines suggested by Nunez-Tesheira for determining whether *consortium vitae* exists. (Supra at para.[11]).

[69] The Court is prepared to accept that the Deceased and the Defendant were involved in an intimate relationship. The witness McClaren Holder confirmed the relationship when he was asked by the Deceased to purchase a satellite dish for either a wife or a girlfriend. And, according to Alicia Moses, it was at the Deceased's birthday party that the family "...got to put a face to a rumour at the time".

[70] From Holder's evidence the Court gathered that the relationship existed in 2005. And Alicia's evidence indicates a suspicion about the relationship from 2002 or 2003. Therefore, the intimate relationship was ongoing for a period of about three years before the Deceased passed away. However, the existence of an intimate relationship does not infer *consortium vitae*.

[71] There is no evidence before the Court from which to extrapolate a degree of financial dependence or interdependence between the Deceased and the Defendant. While there was extensive evidence about the running of the Rendezvous shop, none of this evidence related specifically to the Chancery Lane residence. Additionally, there was no evidence about arrangements for financial support between the parties.

[72] Nothing in the evidence assists the Court in determining that there was any degree of mutual commitment to a shared life. Requesting an individual to move in because one partner is ill, does not by itself demonstrate mutual

commitment to a shared life. And, apart from Farley's evidence about what the Deceased told him, there is no additional evidence of things said or done by the Deceased and the Defendant, during the alleged period of cohabitation, that points to a mutual commitment to a shared life at Chancery Lane. The hallmarks of domesticity are remarkably sparse. (See Nunez-Tesheira supra para.[11] at p.60, and **Alleyne v. Dorant, Suit No.296 of 1986, H.C. B'dos, decision dated 11 November 1986**).

[73] There is no evidence of children being a part of the relationship. The Defendant had no interaction with any of the children of the Deceased. In fact, she was only aware of Moné Worrell. Her two sons were 24 and 20 years old respectively, when she allegedly moved in with the deceased in 1998. She informed the Court that the Deceased "was there for me and my children". But there is no evidence of her children visiting or frequenting the Chancery Lane home while she allegedly lived there.

[74] The Court noted with interest that neither of the Defendant's sons offered any evidence in this matter. Surely they were uniquely positioned to say if and when their mother left them at Salters in St. George to move to Chancery Lane. They too would have known how long the Defendant lived at Chancery Lane, if at all. One of the sons is supposed to be a creditor to the estate, but not even Farley knew about an agricultural venture between

this son and the Deceased. The Court is unable to point to any care, support, nurturing or inclusion of any of the children of the parties within a spousal relationship.

[75] With respect to the performance of household duties, the Court has already commented on the paucity of evidence in relation to the division of labour in the household. (Supra at paras.[50] to [53] and [55]). The Court again refers to **L v. L** (supra at para.[10]), where the learned Judges posited that dwelling under the same roof:

“...assumes greater importance in determining the existence of a de facto relationship. Naturally, it does not mean that a de facto relationship exists whenever parties happen to live under the same roof such as a lodger and his landlady. What is meant is whether the parties are living in a common household...

That involves a sharing of the physical facilities of the house, a sharing of the functions of the household such as washing, cleaning, cooking, gardening, etc., and a common use of resources to maintain the household. We do not mean to imply that all of the sub-elements have to be present in every case. It may be possible for parties to live in a de facto relationship even if they keep their financial resources separate. Certainly they do not have to keep a common bank account. In many cases, they may simply pay their share of the expenses or one party may pay for all the expenses. It is one of several factors to be taken into account...

Another aspect to be considered would be whether the parties moved their respective household belongings or as the ancients would call it, their lares and penates, into the house".
(Page 79, 545).

[76] Even if the Court accepts that the Deceased did indeed tell Farley that he had persuaded the Defendant to move in with him at Chancery Lane, neither Farley's evidence, nor that of the Defendant, condescended to particulars about a common household. The Court reiterates that neither of these witnesses directed their evidence to specific details about the household arrangements between the parties. The Defendant was better positioned than Farley to give this evidence, but she failed to do so.

[77] It is also noteworthy that within one week of the Deceased's death, the Defendant was able to disengage quickly from Chancery Lane, and return to her home at Salters, St. George. This suggests to the Court that during her alleged seven year sojourn at Chancery Lane, she did not plant deep roots that would have required a longer period and process of removal. In other words, the Defendant did not keep a significant portion of her lares and penates at Chancery Lane. Farley was able to take her back to St. George in his vehicle. Other vehicles were used later to remove the Deceased's property and the satellite dish.

[78] While the Court has found evidence of an intimate relationship, the evidence does not support a public acknowledgment of a spousal relationship by either party. The Deceased's immediate family members, Egbert Maloney and Alicia Moses, did not observe a spousal relationship. Neither did the Deceased introduce the Defendant to them as his girlfriend or his spouse.

[79] It is only Eustace Farley and McClaren Holder who heard the Deceased refer to the Defendant as either a fiancée, a girlfriend or a wife. And Farley also said that the Deceased informed him that he had persuaded the Defendant to move in with him. This was information provided by the Deceased to individuals, on separate occasions, and in private settings. It was not enough to constitute a public acknowledgment of a spousal relationship by the Deceased.

[80] Except for the birthday party, there is no evidence of the Deceased and the Defendant socialising together. And none of the witnesses, who attended that party recalled the Deceased and the Defendant introducing them-selves as boyfriend and girlfriend or as living together. The Defendant did not take the opportunity to inform Moné Worrell, his youngest child, that the Defendant was his girlfriend, and more significantly, that she lived with him at Chancery Lane. This reinforces the Court's conclusion that the

evidence does not demonstrate a public acknowledgement of a cohabiting relationship between the parties.

Disposal

- [81] Having carefully considered all the evidence in this case, the Court finds that the Defendant was not the spouse of the Deceased. She may well have spent time at Chancery Lane with the Defendant, but it was not on a permanent basis as she contended.
- [82] It follows that the Defendant is not entitled to any part of the estate of the Deceased under Section 49 of the Succession Act. Her only possible claim would be based on proof that she is a creditor of the estate.
- [83] The Defendant must provide an account for the earnings of the Rendezvous shop from 01 January 2005 to the date of its closure. The Defendant must also provide a detailed list of the contents of the shop from 01 October 2005, when the Deceased passed away, to the date of closure. This list shall include any property removed or disposed of by the Defendant, with approximate values therefor.
- [84] The Court will grant orders for the administration of the estate *pendente lite*, and for the administration of the real and personal estate of the Deceased. However, before making those Orders, the Court wishes to hear

from counsel for the Plaintiffs as to whether one or all of the Plaintiffs should be granted these orders.

[85] The Court made no finding of fact with respect to the ownership of the satellite dish. The dish was meant to be a gift to the Defendant. However, it was delivered to the home of the Deceased on the day of his death. The question, still to be determined, is whether ownership of the dish was transferred to the Defendant by the Deceased, or whether it remains a part of his personal estate. These issues were not ventilated by the parties in these proceedings, and may engage the Court in the future, if the parties are unable to agree.

[86] Costs are awarded to the Claimants, to be agreed or assessed.

Apology

[87] This matter was filed by the first Defendant since December 2005. It passed through the hands of five High Court Judges before reaching this Court on 26 November 2013 for pre-trial review. Trial of the matter commenced on 10 February 2014, with the decision reserved on 24 April 2014. Unfortunately, the last of the written submissions was not filed until 31 August 2016, at which time, preparation of the judgment commenced. The Court tenders a sincere apology to all parties for the time this matter has taken from initial filing to the delivery of this judgment.

Sonia L. Richards
Judge of the High Court