

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHMT2010/0046

BETWEEN:

JAMES CHANCE

PETITIONER/RESPONDENT

-AND-

DAWN CHANCE

RESPONDENT/CROSS-PETITIONER

Appearances: Mr Bertram Commissiong and Ms Mira Commissiong for the Petitioner/Respondent, Mr Emery Robertson Snr. and Ms Samantha Robertson for the Respondent/Cross-Petitioner.

2015: Jun. 2 & 4
Jul. 23

JUDGMENT

BACKGROUND

[1] **Henry, J.:** Mr James Chance married Dawn Chance in December 1989. Mr Chance had four children from a previous marriage and Mrs Chance had a son from another relationship. Their marriage produced two children, Kito and Jelani.¹ The union was dissolved 21 years after it began.² Mr Chance and Mrs Chance collectively own 4 houses, a parcel of land, vehicles, furniture, monies in bank accounts, a block making plant and \$1.2m. Mrs Chance has applied³ for a

¹ Kito is an adult and Jelani is almost 14 years old.

² By Decree absolute dated January 6, 2011.

³ By Notice of Application filed on March 12, 2013.

property settlement order in respect of the matrimonial home. She also seeks maintenance for the minor child Jelani and herself, a lump sum order in respect of the \$1.2m, a property adjustment order in relation to one of the houses and a property division order in respect of the vehicles. Mrs Chance is also seeking account of monies held at the Bank of Nova Scotia and the St. Vincent Cooperative Bank Ltd. Mr Chance contends that Mrs Chance is not entitled to share in the \$1.2m which are the proceeds of the sale of property he claims to have bought and maintained for the benefit of the children from his first marriage.

ISSUE

[2] The issues are:

1. Which of the properties are matrimonial properties; and
2. To what share in the matrimonial assets is Mrs Chance entitled by way of settlement order, lump sum order, maintenance, property adjustment or division order ?

ANALYSIS

Issue 1: Which of the properties are matrimonial property?

[3] During the trial, the parties were invited to confer and try to agree a list of properties which are jointly owned and amenable to lump sum order, settlement or property adjustment or division orders. They have indicated that the matrimonial properties are:

1. \$1.2m;
2. the matrimonial home and shop at Rillan Hill;
3. furniture in the matrimonial home and equipment in the shop;
and
4. joint bank accounts at Bank of Nova Scotia and St. Vincent Cooperative Bank.

There was no common ground between the parties in respect of the following 8 items:

1. house at Belmont registered in the joint names of Dawn Chance and her adult son Vanrick Williams;
2. House at Fairhall registered in the name of Dawn Chance;
3. Land at Choppins registered in the sole name of Dawn Chance;
4. House at Buccament Bay registered in the name of J. C. Investments Ltd., a company in which Mr Chance and his son Jawanza Chance are shareholders;
5. Pig farm;
6. Truck – registration number TE318;
7. Truck – registration number T8970;
1. Car - registration number PR992;
8. Van - registration number HN879; and
9. Infinity SUV - registration number PR229.

[4] The court must decide which of the properties are to be considered with the agreed matrimonial properties in determining these matters. It is established that in determining a couple's intentions regarding ownership of property acquired during a marriage, the court will consider the conduct of the parties in relation to the subject property.⁴ I now do so.

Real property at Belmont, Fairhall and Choppins

[5] Mrs Chance's uncontroverted evidence is that her father devised land at Belmont to her and her son Vanrick.⁵ She deposed that she has given her interest in that property to Vanrick who has mortgaged it and built his house on it. Mrs Chance has not provided any documentary proof of the transfer of her interest to Vanrick. Without such proof I find that she still owns a half share in that property. Mrs

⁴ See **Abbott v Abbott [2007] UKPC 53 at para. 19 per Baroness Hale of Richmond** where she stated: "The parties' whole course of conduct in relation to the property must be taken into account in determining their shared intentions as to its ownership."

⁵ See paragraph 2 of Mrs Dawn Chance's Further Affidavit of Means filed on April 23, 2013.

Chance admits that she owns a ½ acre lot of land at Fairhall⁶ with a house on it, which is a gift from her father.⁷ She averred that her brother took up residence in the house without her permission and that she obtained an order of possession against him in 2013. Mrs Chance provided no further evidence of the current occupancy status of that house. Neither did Mr Chance. Regarding the land at Choppins, Mrs Chance attested that pursuant to a court order in Suit No. 439 of 2004, she is no longer the owner.⁸ She did not provide any details regarding her acquisition of that property, the court order or of any benefit she received from her interest in it. The court takes judicial notice that Mrs Chance is no longer the registered owner of the land located at Choppins and registered by Deed of Assent No. 3574 of 1999. That Deed was cancelled by Consent Order of the court seemingly after Mrs Chance failed to enter a defence to a claim initiated against her by one St. Elmo John.⁹ Mrs Chance did not receive any share or other benefit in that property in the court order.

[6] Mrs Chance provided only a very basic description of the *inter vivos* and testamentary gifts of land to her from her father. Mr Chance appears not to have much more information of either transaction. The joint gift to her and Vanrick was made by will and the devise was effected by conveyance in 2006.¹⁰ He deposed:¹¹

“To the best of my knowledge Ms Chance is the owner absolutely of the property exhibited as DC5. As far as I can tell she is also still the joint owner of DC4.”¹²

Neither the four children nor I have any interest whatsoever in any of Ms Chance’s properties even though I spent approximately \$40,000.00 of my own money to repair the dwelling house on the

⁶ Ibid. at paragraph 2 of Dawn Chance’s Further Affidavit of Means.

⁷ Conveyed to her and her brother Mark Williams by Deed No. 1435 of 2005 and subsequently from Mark Williams to her by Deed No. 2511 of 2006.

⁸ Ibid. at paragraph 2 of Dawn Chance’s Further Affidavit of Means.

⁹ By Order dated December 1, 2004 in Claim No. 439 of 2004..

¹⁰ By Deeds numbered 1435 of 2005 and 2511 of 2006 respectively.

¹¹ At paras. 8 and 9 of James Chance’s Affidavit of Means filed on May 17, 2013.

¹² DC4 and DC5 are exhibits which refer respectively to Deeds Nos.1435 of 2005 and 2511 of 2006.

Fair Hall Property where Mrs Chance's parents lived."

[7] Based on his account, Mr Chance obviously knew very little about the transactions between Ms Chance and her father. I infer from this that Mr Chance was not intended to be a beneficiary of either gift. His reference to investing sums in the repairs of the Fair Hall property suggests that the arrangement was between him and his father-in-law before the gift was made to Mrs Chance and did not involve her in any way. Mrs Chance appears to have dealt exclusively with both properties. In such circumstances, it is clear that the parties had no intention that Mr Chance would become a part owner or beneficially entitled to an interest in either property. The two properties must therefore be excluded from consideration as matrimonial assets.

House owned by J.C. Investments Ltd.

[8] Mr Chance testified that he bought a flat house at Cane Grove with part proceeds of the \$1.2m. He indicated that the company's directors are Jawanza Chance, Jomo, Ms Allie Cadogan and himself. Having conceded that the full \$1.2m is to be considered matrimonial assets, Mr Chance's objection to this house forming part of those assets is problematic as it conflicts with his former position. He has provided no reasons to differentiate the treatment of those two assets which have a common source. For consistency, it is reasonable to include Mr Chance's interest in this house as part of the matrimonial assets.

Vehicles – TE318, PR229, PR229, T8970 and HN879

[9] Mrs Chance deposed that although van HN879, car PR992 and truck T8970 are registered in Irasta Chance's name, they are owned by his father James Chance. She asserts that Mr Chance has registered those assets in his son's name to hide them. Mr Chance responds that those three vehicles belong to Irasta¹³ and he has exhibited respectively copies of an insurance policy endorsement,

¹³ Supra. at paragraphs 30 and 32 of James Chances Affidavit of Means filed on 17 May 2013; and paragraphs 9, 13 and 14 of James Chance's Affidavit in reply to Affidavit of Dawn Chance filed on 14 August 2013.

certificate of insurance and motor renewal notice in respect of the vehicles.¹⁴ Mr Chance has acknowledged that he owns truck and SUV with registration numbers TE318 and PR229 respectively. I accept Mr Chance's testimony that his son Irasta owns HN879, PR992 and T8970. No evidence has been produced to the contrary. I note too that Mr Chance has admitted ownership of two of the vehicles. His acknowledgment tends to discredit Mrs Chance's accusations that he is trying to hide assets. I therefore disregard those assertions.

Pig farm and block-making machine

[10] Ms Chance seeks a share in the pig farm. She has provided no evidence of any contributions she made to acquisition, management or maintenance of either. Ms Chance appears to be relying on her contributions to the management of the household to ground her alleged entitlement to share in the proceeds of the pig farm. On the other hand, Mr Chance testified that he started the pig farm when he received some animals from a relative of his who resides in Cane Garden. He explained that he and his four children by his first wife, were the ones who took care of the farm while Mrs Chance and her children were responsible for managing for the grocery shop and its auxiliary activities including the games room and pool table.

[11] Mr Chance explained that Mrs Chance retained all the income from the grocery except for sums expended in purchasing fresh supplies. Based on Mr Chance's unimpeached account of the division of labour in and benefits from the family businesses, I am satisfied that the parties intended that Mrs Chance would be the sole beneficiary of the proceeds from the sale of groceries while Mr Chance would retain the income from the pig farm. I therefore exclude the pig farm from the matrimonial assets. Accordingly, the items which will be considered for purposes of division of property are:

1. \$1.2m;
2. the matrimonial home and shop at Rillan Hill;

¹⁴ Exhibited as "JC2", "JC6" and "JC8" respectively.

3. furniture in the matrimonial home and equipment in the shop; and
4. joint bank accounts at Bank of Nova Scotia and St. Vincent Cooperative Bank;
5. House at Buccament Bay registered in the name of J. C. Investments Ltd. a company in which Mr Chance and his son Jawanza Chance are shareholders;
6. Truck – registration number TE318; and
7. Infinity SUV - registration number PR229.

Issue 2 - To what share in the matrimonial assets is each party entitled?

[12] On the dissolution of a marriage, the court has wide powers to make settlement orders, lumps sum orders, financial provision, maintenance and property adjustment and division orders in favour of a spouse or child of the family.¹⁵ The

¹⁵ See sections 29, 31 and 32 of the Matrimonial Causes Act, Cap. 239 of the Revised Laws of Saint Vincent and the Grenadines, 2009 (“the Act”) which provide (in part) respectively:

“29 (2) The property adjustment orders for the purposes of this Act are the orders dealing with the property rights available (subject to the provisions of this Act) under section 32 for the purpose of adjusting the financial position of the parties to a marriage and any children of the family on or after the grant of a decree of divorce, nullity of marriage or judicial separation, that is to say-

- (a) any order under subsection (1) (a) of that section for a transfer of property;
- (b) any order under subsection (1) (b) of that section for a settlement of property; and
- (c) any order under subsection (1) (c) or (d) of that section for a variation of settlement.

31. (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the Court may make any one or more of the following orders, that is to say –

- (a) an order that either party to the marriage shall make to the other such periodical payments, for such term, as may be specified in the order;
- (b) an order that either party to the marriage shall secure to the other, to the satisfaction of the Court, such periodical payments, for such term, as may be specified;
- (c) an order that either party to the marriage shall pay to the other such lump sum or lump sums as may be so specified;
- (d) an order that a party to the marriage shall make to such person as may be specified in the order for the benefit of a child of the family, or to such a child, such periodical payments, for such terms, as may be so specified;

court is also empowered to make orders for sale of matrimonial assets.¹⁶ Fairness is the “ultimate and overriding objective” of the court when making

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- (e) an order that a party to a marriage shall secure to such a person as may be so specified for the benefit of such a child, or to such a child, to the satisfaction of the Court, such periodical payments, for such term, as may be so specified;
 - (f) an order that a party to the marriage shall pay to such person as may be so specified for the benefit of such a child, or to such a child, such lump sum as may be so specified,

subject, however, in the case of an order under paragraph (d), (e) or (f), to the restrictions imposed by section 37 (1) and (3) on the making of financial provision orders in favour of children who have attained the age of eighteen.”

32. On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the Court may make any one or more of the following orders, that is to say –

- (a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child, such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;
- (b) an order that a settlement of such property as may be so specified, being property to which a party of the marriage is so entitled, be made to the satisfaction of the Court for the benefit of the other party to the marriage and of the children of the family or either or any of them;
- (c) ...
- (d) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement,

subject, however, in the case of an order under paragraph (a), to the restrictions imposed by section 38 (1) and (3) on the making of orders for a transfer of property in favour of children who have attained the age of eighteen.”

¹⁶ Ibid. at section 33 of the Act which states:

“(1) Where the Court make, under section 31 or 32, a secured periodical payments order, an order for the payment of a lump sum or a property adjustment order, then, on making the order or at any time thereafter, the Court may make a further order for the sale of such property as may be specified in the order, being property in which, or in the proceeds of sale of which, either or both of the parties to the marriage has or have a beneficial interest, either in possession or reversion.

(2) Any order made under subsection (1) may contain such consequential or supplementary provisions as the Court thinks fit and, without prejudice to the generality of the foregoing provisions, may include –

- (a) provision requiring the making of a payment out of the proceeds of sale of the property to which the order relates; and
- (b) provision requiring any such property to be offered for sale to a person, or class of persons, specified in the order.

(3) ...

such orders.¹⁷ In exercising this discretion, the court must give primary consideration to the welfare of any children of the family and attempt to secure a “clean break” between the former spouses.¹⁸ A child is considered to be a child of the family if he is a child of both parties or has been treated by both parties as a child of their family.¹⁹ Likewise, the court must take into account all of the circumstances of the case, including the length of the marriage, the age of the parties, their respective current and future incomes, earning capacity, financial resources, needs, obligations, responsibilities.²⁰ The court must also consider

(4) Where an order is made under subsection (1), the Court may direct that the order, or such provision thereof as the Court may specify, shall not take effect until the occurrence of an event specified by the Court or the expiration of a period so specified.”

¹⁷ **Timothy Stonich v Tamara Stonich BVIHC VAP2002/0017 at para. [27] per Saunders J.A. (as he then was)** where he stated:

“One of the useful features of the MPPA is that it gives the Court a broad discretion in apportioning assets built up over the course of the marriage. The ultimate and overriding objective that the court must strive at is fairness.”

¹⁸ See **Miller v Miller [2006] UKHL 24, paragraphs 5, 6 and 9 per Lord Nicholls of Birkenhead** where he said:

“Primary consideration must be given to the welfare of any children of the family. The court must also consider the feasibility of a ‘clean break’. ... Implicitly, the courts must exercise their powers so as to achieve an outcome which is fair between the parties. ... Each party to a marriage is entitled to a fair share of the available property. The search is always for what are the requirements of *fairness* in the particular case.”

See also **White v White [2001] 1 A.C. 596, pages 599 letter G and page 605 letters B, F and G per Lord Nicholls of Birkenhead** where opined:

“Everyone would accept that the outcome on these matters, whether by agreement or court order, should be fair. More realistically, the outcome ought to be as fair as is possible in all the circumstances.”

¹⁹ See section 2 of the Act which defines:

“child of the family”, in relation to the parties to a marriage, means –
(a) a child of both of those parties; and
(b) any other child who has been treated by both of those parties as a child of their family;”

²⁰ Section 34 of the Act which provides:

“(1) It shall be the duty of the Court in deciding whether to exercise its powers under section 31(1)(a), (b) or (c), 32 or 33 in relation to a party to a marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say -

(a) the income, earning capacity, property and other financial resources which

each spouse's physical and mental health and their respective contributions to the family's welfare and the standard of living enjoyed by the family during the marriage.²¹ I now examine each of those indicia.

Age, duration of marriage, physical and mental health, income, earning capacity, standard of living

[13] Mr Chance is 56 years of age while Mrs Chance is 49. Their marriage lasted for 21 years and from their accounts, it appears to have been a productive and profitable union during which they amassed a range of assets comprising real and personal property. During cross-examination, Mr Chance explained that at a certain point in their marriage when their fortunes had declined, he embarked on the illegal pursuit of farming and selling marijuana and used the proceeds to stock the grocery. He stated that Mrs Chance operated the grocery, selling items wholesale and retail. Quite candidly, he attributed the family's ability to rebound financially to his excursions into drug trafficking. He admitted that he

each of the parties the marriage has, or is likely to have, in the foreseeable future;

(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has, or is likely to have, in the foreseeable future;

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

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

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

(f) The contribution made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;

(g) In the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage that party will lose the chance of acquiring,

and to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just so to do, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.”

²¹ Ibid. at section 34 of the Act.

ran afoul of the law and served time in prison about 8 times as a consequence. Mrs Chance did not dispute this account.

[14] Neither Mr nor Mrs Chance complained of any physical or mental impediment which would affect their ability to earn a living. Mrs Chance alluded to a hearing impediment. It appears she wears a hearing aid which enables her to function competently in business and social settings. She participated in and followed the proceedings in court without any apparent difficulty.

[15] Mr and Mrs Chance both acknowledged that before the breakdown of the marriage, the couple managed a business selling groceries and alcoholic and non-alcoholic beverages. The business was operated from the ground floor of the matrimonial home where Mrs Chance now resides. The uncontroverted testimony of Mr Chance is that Mrs Chance retained all of the proceeds of sale which on average totaled \$3,000.00 on weekends. Mr Chance also averred that he and Mrs Chance considered the shop to be her business and while he assisted her in the evenings and weekends with sales, he gave Mrs Chance all monies he collected, which she deposited into a joint account they had at Bank of Nova Scotia. Mr Chance attested that the account should have accumulated between \$18,000.00 and \$21,000.00 around the time the marriage broke down. He is unable to account for those sums as he has not handled the account, although when he inquired at the bank on September 9, 2013, he was informed that the account was closed.

[16] Further, Mr Chance deposed that when he left the matrimonial home, the stock, goodwill and contents at the shop amounted conservatively to \$125,000.00.²² He exhibited two photographs of the shop with the shelves fully stocked around that time. Mr Chance also testified that he routinely gave Mrs Chance \$200.00 each week to buy groceries for the family and she did not have to pay any overheads for the running of the shop as he paid all bills from the proceeds of

²² Mr Chance testified under cross-examination that the goods in the shop were worth between \$80,000.00 and \$100,000.00.

the pig farm. Other than claiming that Mr Chance took almost all of the goods from the shop when he left, Mrs Chance does not counter any assertions made by Mr Chance regarding the operations at the shop.

[17] I accept Mr Chance's candid account and reject Mrs Chance's denial. I conclude that Mrs Chance retained the grocery business and stock in it and should have been able to maintain it as a profitable, going enterprise after Mr Chance's departure if she so wanted. Neither Mr nor Mrs Chance provides any information regarding their income prior to the breakdown of the marriage. From his account which I accept, Mr Chance has continued his trucking and farming endeavours uninterrupted. All things being even, he will be able to earn a modest income from those enterprises and his grocery shop for the next 10 to 20 years. Mrs Chance owns the building from which the family grocery was run for several years. If she is so inclined, she would be able to command a reasonable income once the shelves are re-stocked. In addition, Mrs Chance owns a house at Fairhall which can be rented and would undoubtedly yield a respectable rental. She is also co-owner of property at Belmont and could realize some financial benefit from it. Neither party is destitute. I am confident that Mr Chance has a monthly surplus and that Mrs Chance has reserves from the days she operated the grocery.

[18] Mr and Mrs Chance paint a picture of a family who lived comfortably and well before the breakdown of the marriage. Both of them are very enterprising and seem to have inculcated those laudable practices into their children who except for Jelani (a teenager) appear to have ventured into some entrepreneurial undertaking. Mr Chance from both accounts appears to have been the main bread winner and mainstay of the family. His trucking, farming, animal husbandry, drug trafficking and block making earned the family a comfortable though somewhat turbulent lifestyle. Mr Chance recounted that he purchased a vehicle for Vandrick who sold it and bought a Mercedes Benz. His sons Irasta and Jawanza are also owners of their own businesses and vehicles. Jelani is

the youngest of the off-spring and still attending secondary school. It does not seem that either party is experiencing lack at this time.

[19] Both Mr and Mrs Chance have been less than frank with the court. Neither party has produced evidence of bank accounts held by them. No mention is made of any accounts except the joint accounts which appear to have been depleted (without explanation), after the breakdown of the marriage. I find it strange that a couple who demonstrated that they have utilized the bank's services through the years to acquire loans²³ and for savings, has mysteriously and unaccountably discontinued transacting business with banks in the 3 and a half years since their divorce. It is highly unusual and I draw the irresistible inference that both Mr and Mrs Chance have withheld the true state of their finances from the court. In the premises, I am entitled to and unhesitatingly draw adverse inferences from this conduct and conclude that both parties are hiding assets in a bid to benefit unduly.²⁴

[20] While Mrs Chance could benefit from a very modest social security benefit on reaching retirement age, Mr Chance will not as he seems not to have made the statutory contributions to social security. Neither party can look forward to that safety net in their later years. All things being even and good health prevailing, they have roughly 15 to 20 years to accumulate savings to cushion any shocks which could arise in the economy or in their lives during their golden years and erode their financial bedrock.

[21] Mr Chance's children²⁵ from his previous marriage were not incorporated into the family unit. Mr Chance deposed that they lived with his mother and Mrs Chance states that they lived for roughly 7 years with her and Mr Chance. She deposed that Uganda and Irasta then migrated to Trinidad to live with their

²³ In Mr Chance's case.

²⁴ **NG v SG [2011] EWHC 3270 at para.16.**

²⁵ Jawanza, Irasta, Carritious and Uganda.

mother while Jawanza and Carritious went to live with their grandmother. Mr Chance alleges that those boys did not get along with Mrs Chance and that their relationship was characterized by friction. Notwithstanding, Mr Chance accepted Vanrick as a child of the family and he was treated as such. I am left with the impression that Mrs Chance's children enjoyed the full attention of their father Mr Chance while Mr Chance's other children were relegated to second place in his life. Sadly, it does not appear that Mrs Chance had any interest or concern for those children and they were not except for a short period incorporated into the family unit as children of the family. Mr Chance seems to harbor some regret about this and perhaps with good reason.

Property, financial resources, financial needs, obligations and responsibilities, contributions to family's welfare

[22] Mrs Chance owns one house outright, a half share in another house owned jointly with her son Vanrick and a parcel of land. Mr Chance owns 2 vehicles and part interest in a dwelling house which is registered in a company's name. The main matrimonial assets are the matrimonial home and shop valued at roughly \$281,000.00, the furniture in the house and equipment in the shop valued at \$55,500.00 and the proceeds of sale of land at Buccament Bay amounting to approximately \$1.2m. Mr Chance has testified that he used \$250,000.00 of those funds to purchase the house at Cane Grove.²⁶ That would leave a balance in the region of \$850,000.00. The other joint assets are the funds remaining in the joint savings accounts at Bank of Nova Scotia and St. Vincent Cooperative Bank Ltd., truck and Infinity SUV owned by Mr Chance. Mr Chance's testimony is that the Bank of Nova Scotia savings account had approximately \$18,000.00 in it when the marriage broke down. He testified that he withdrew none of those funds. I believe him. Neither party indicated how much was in the other joint savings account. Mr Chance testified that Mrs Chance did all the banking. I accept that

²⁶ Registered to J. C. Investments Limited.

testimony, however in the absence of evidence regarding the balance in that account I will not speculate.

[23] Mrs Chance deposed that she earns \$400.00 per month currently and she produced a copy of her pay sheet reflecting a net monthly income of \$386.00. She listed a series of monthly expenses totaling roughly \$900.00. Mrs Chance explained that she gets help from a friend to meet her monthly expenses and she also receives \$100.00 weekly from Mr Chance as maintenance for Jelani. Mr Chance claims he is self-employed as a truck driver, farmer and shopkeeper. He deposed that he earns approximately \$500.00 monthly from trucking, \$400.00 from farming and \$900.00 in monetary gifts from his children. He did not indicate how much he earned from the shop, but he estimated his monthly expenses as roughly \$1829.00. Mr Chance's failure to ascribe a figure to the intake from the grocery shop suggests that he enjoys a monthly surplus and I so find.

[24] Mr Chance and Mrs Chance from all accounts have managed by dint of hard work and sacrifice, to amass substantial assets and although they could in my opinion have lived a comfortable lower middle class lifestyle, they both appear to have continued to eschew the trappings of the middle class and maintain modest working class living standards. For this reason, they are not likely to incur unmanageable debt and through their actual and potential investments will each be able to afford a very comfortable livelihood for the foreseeable future. Mr Chance was the main wage earner although Mrs Chance contributed her fair share directly and indirectly to the family's acquisitions. Although the Chances have not admitted to having any present savings, I rather suspect that both Mr and Mrs Chance have spirited away some emergency funds which they have not declared to the court. I draw this inference from their pattern of behavior over their 21 year old union during which they exhibited a proclivity for saving and investing.

[25] In determining what interest either party has in the matrimonial assets, the court must examine their conduct over the course of their marriage to ascertain

whether they intended to share the beneficial interest in the respective properties and if so, in what proportions.²⁷ I turn now to consider what interests Mr and Mrs Chance owns in the several properties, namely the Infinity SUV and truck, savings in joint accounts, the matrimonial home and shop valued at roughly \$281,000.00, the furniture and equipment in them valued between \$55,000.00 and \$60,000.00 (to which I apply the median valuation of \$55,500.00); and the Cane Grove house and the \$1.2m. Mr Chance has testified that he used \$250,000.00 of those funds to purchase the house.²⁸ That would leave a balance in the region of \$850,000.00.

Infinity SUV and truck and joint savings

[26] The only evidence regarding the value of the vehicles was provided by Mrs Chance. She estimated the combined value of all the vehicles to be \$125,000.00.²⁹ She does not indicate how she arrived at that value and in the absence of a valuation from Mr Chance the court is not in position to ascribe a value to the Infinity or the truck. I accept Mr Chance's evidence that he purchased the truck by obtaining a loan from the St. Vincent Cooperative Bank Ltd. above Mrs Chance's protestations. I accept his testimony that it was never his or Mrs Chance's intention that she be a part owner or hold any beneficial interest in the truck. I accordingly find that Mrs Chance has no beneficial interest in it. I award it to Mr Chance. Very little evidence is provided regarding the circumstances under which Mr Chance acquired the Infinity SUV. I note that it appears to have been a relatively recent purchase coming on the heels of the sale of the Buccament Bay property. I infer that it was acquired from proceeds of that sale and will treat with it subsequently. The joint savings of \$18,000.00

²⁷ See **Abbott v Abbott [2007] UKPC 53 at para. 4 per Baroness Hale of Richmond** where she stated: *"There are of course, two separate questions: first, was it intended that the parties should share the beneficial interest in a property conveyed to one of them only; and second, if it was so intended, in what proportions was it intended that they share the beneficial interest."*

²⁸ Registered to J. C. Investments Limited.

²⁹ Including those excluded as belonging to Irasta.

admittedly were raised collectively by both parties. Each is entitled to a half interest in those monies. The uncontroverted evidence is that Mrs Chance utilized all those monies. I therefore find that she holds 50% or \$9000.00 of those monies, in trust for Mr Chance.

Matrimonial home, shop, furniture and equipment

[27] Mr Chance acknowledges that Mrs Chance is entitled to a 50% share in the matrimonial home and shop valued and the furniture and equipment in them. He proposes that his half share be conveyed to Kito and his younger brother Jelani. Mrs Chance does not object to this proposal. It is accordingly ordered that Mr James Chance shall convey his one half interest in the matrimonial home and shop to Kito and Mrs Chance in trust for Jelani Chance as tenants in common in equal shares until Jelani attains the age of majority or further order of this court whichever is sooner. This determination effectively takes care of Jelani's accommodation needs. It would be impracticable to require the parties to sell the furniture and equipment and divide the proceeds. Fairness suggests a more reasonable approach which I consider is adequately satisfied by allowing Mrs Chance to retain sole ownership of the furniture and equipment, with Mr Chance's interest in them being offset against any beneficial interest or other award which may be made to her.

Dwelling house at Cane Grove and \$850,000.00

[28] The asset which was most hotly fought over was the \$1.2m realized through the sale of the Buccament Bay property. Mr Chance explains that his love for his four older sons caused him to embark on an investment into farming through which he acquired 1.46 acres of land at Buccament Bay. The proceeds from the sale of that land is the main bone of contention between Mr and Mrs Chance. Mr Chance maintained throughout that he bought that property as a venture separate and apart from any joint endeavours in which he and Mrs Chance engaged. Mrs Chance insists that it was a joint undertaking. Having heard the

parties, listened to their testimonies and examined the lease and other supporting documentation³⁰ generated and executed when the property was being leased and purchased, I accept Mr Chance's version of the circumstances surrounding the acquisition and the use of the property. I do not accept that there was ever a common intention that Mrs Chance would gain a beneficial interest in that property. Mr Chance obviously loves all of his children and he has evinced a clear intention to assist each of them in acquiring interest in real property.

[29] I find that the acquisition of the Buccament Bay property was an investment pursued solely by Mr Chance with no intervention or involvement from Mrs Chance. Mrs Chance seeks a lump sum payment from that amount. In deciding whether to make such an order, the court must take into account the cost of providing Mrs Chance with the standard of living she may reasonably expect, her contributions to the marriage, and the prospect of any benefit she would have lost by reason of the dissolution of the marriage. It is established that it is "proper to treat a wife as potentially entitled to benefit at some time from the husband's capital assets".³¹ Some estimate must be made where the amount is not predictable as a matter of probability.³² The court must take account of the whole financial structure of the parties' assets. Having examined the surrounding relevant facts in this case, I am satisfied that Mrs Chance would have benefitted from the proceeds of the sale of the Buccament Bay property if the marriage had not broken down. Mr Chance throughout his marriage displayed a measure of caring and generosity towards Mrs Chance which is admirable. I have no doubt that this would have continued if the marriage had survived.

[30] Mrs Chance has several valuable assets and is positioned to continue her life with little diminution in her standard of living especially if she resumes her business as a grocer. While I believe she has some hidden assets, she would

³⁰ Including receipt numbers 14125, 15265 and 39196 in James Chances name, evidencing payment of rent for the Buccament Bay property.

³¹ See **Jones v Jones [1971] 3 All E.R. 1201** and Halsbury's Laws of England 4th Ed. Vol 13 at para 1110.

³² **Trippas v Trippas [1973] Fam 134.**

have received some additional benefit from the \$1.2m. She still has the care and control of Jelani and it would be just to award her a lump sum to reflect such benefit that she would have realized as Mr Chance's wife. I estimate that a fair representation of that benefit would be roughly \$300,000.00. I order that Mr Chance pays Mrs Chance the sum of \$300,000.00 as a lump sum payment less Mr Chance's 50% interest in the savings account at Bank of Nova Scotia and in furniture and equipment in the Rillan Hill property. This amount will enable her to re-stock the grocery if she wishes, take care of any liabilities and assist her to better care for Jelani's immediate and long term needs. I infer from all of the facts that Mr Chance purchased the Cane Grove house and Infinity from the proceeds of the Buccament Bay property. Like Mrs Chance he is entitled to a home. Having regard to the "clean break" principle. Accordingly, he shall retain any interest he has obtained in the Cane Grove house³³ and the Infinity SUV. I therefore make no property adjustment or division order in Mrs Chance's favour in respect of the Cane Grove property or the Infinity SUV.

ORDER

[31] It is therefore declared and ordered:

1. Mr James Chance and Mrs Dawn Chance each owns and is entitled to a net share of 50% in the matrimonial property and grocery shop situated at Rillan Hill valued at \$281,000.00.
2. Mr James Chance shall convey his one half interest in the matrimonial home and shop to Kito and Mrs Chance in trust for Jelani Chance as tenants in common in equal shares until Jelani attains the age of majority or further order of this court whichever is sooner.
3. Mrs Dawn Chance shall retain the furniture and equipment in the matrimonial home and grocery shop and Mr Chance's 50% interest in them shall be offset against the order for the lump sum payment to Mrs Chance.

³³ Registered to J. C. Investments Limited.

4. Mrs Dawn Chance holds one half of the \$18,000.00 she withdrew from the Bank of Nova Scotia joint savings account, in trust for Mr James Chance to be offset against the order for the lump sum payment to Mrs Chance.
5. Mrs Dawn Chance's claim for a property adjustment or division order in respect of the Cane Grove property, the Infinity SUV and truck registration no. TE318 is dismissed.
6. Mr James Chance shall pay to Mrs Dawn Chance a lump sum payment of \$263,250.00.³⁴
7. Mr James Chance shall pay agreed costs of \$30,000.00 to Mrs Dawn Chance.

[32] The Court wishes to thank counsel for their submissions.

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Esco L. Henry
HIGH COURT JUDGE

³⁴ Being \$300,000.00 \$9,000.00 and \$27,750.00 (deducted as Mr Chance's interest in the furniture and equipment in the matrimonial house and the grocery shop, and the joint savings at Bank of Nova Scotia.)