SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHMT 0118/2002

BETWEEN

CECILIA FITZ CHARLERY

*Petitioner*

vs

CORNELIUS OWEN CHARLERY

*Respondent*

Appearances:
Mr. A. St. Clair for Respondent
Ms. L. Faisal for Petitioner

---

2004: February 26
June 11

---

# JUDGEMENT

*Introduction*

[1] EDWARDS J: This is an application for Ancillary Relief made by the husband against his wife. Mr. Charlery wishes the Court to determine the extent of his beneficial interests in certain properties acquired before the marriage in Mrs. Charlery's name.

[2] The Court also must determine the extent of his beneficial interest in a hair design business started by his wife prior to the marriage, and enlarged during the marriage.

[3] There were 5 bank accounts operated by the parties which have been closed by Mrs. Charlery since their estrangement.

[4] Mr. Charlery asks that she account for all the proceeds from these accounts. He has requested the Court to make an order that all property falling within the community be divided equally between them.

*The Facts*

[5] Mr. And Mrs. Charlery were married on the 4th October 1995 in Florida U.S.A. Mr. Charlery was then an electrician and maintenance specialist employed to Sandals Hotel. Mrs. Charlery was then and still is a Cosmetologist.

[6] Prior to their marriage, they had been living together as man and wife. There is conflicting evidence as to when they began living together. Mr. Charlery states that it was from 1991 Mrs. Charlery says it was from December 1994. She has insisted that their relationship began in 1994.

[7] She contends that she met her husband in 1991 at her Hairdressing Salon at High Street, which she then called "*Cecilia's Hair Design*". She was then cohabiting with Mr. Alphonse Charles and living in a home at Cas-en-bas that was jointly owned by her and Mr. Charles. She contends that it was after her relationship with Mr. Charles had ended, that she began living with Mr. Charlery.

[8] Though Mrs. Charlery did not depone in her Affidavit as to the time when her relationship with Mr. Charles ended, a letter dated 26th September 1994 exhibited by Mr. Charlery in his 6th Affidavit filed on the 4th February 2004 has assisted me in determining this.

[9] This letter is addressed to Mr. Alphonse Charles. It was written by Alberton Richelieu and Associates, Solicitors for Mrs. Charlery on the 26th September 1994.

[10] The letter states that Mrs. Charlery informed her solicitors that she was involved in a relationship with Mr. Charles for about 8 years and they built a house at Cas-en-bas jointly. That Mr. Charles left St. Lucia in 1990 and as a consequence their relationship ended. That Mrs. Charlery had moved out of the house taking the furniture: That she was prepared to give Mr. Charles her share of the house in lieu of the said furniture that she took. That Mr. Charles had returned to St. Lucia recently, and had been constantly harassing Mrs. Charlery at her business place. That Mrs. Charlery was afraid of Mr. Charles who had a violent nature. The letter warned Mr. Charles to desist from contacting Mrs. Charlery or harassing her, failing which legal proceedings would be instituted against him.

[11] The tone of this letter suggests that Mrs. Charlery was living alone when she met her husband in 1991. There is also evidence from Mr. Charlery that in 1992 when she purchased the Marigot land, she was pregnant and they were living together. She has not denied that she was pregnant then.

[12] In the absence of any explanation from Mrs. Charlery to reconcile her evidence with this letter, in my opinion it is probable that the parties began living together in 1991 and not in December 1994.

[13] I therefore find as a fact that they began cohabiting in 1991/1992.

*Land at Marigot*

[14] It is not disputed that Geest Industries (Estates) Limited, the vendors of the land known as Parcel 137 Block 0643 B, had a policy to sell their land only to past employees and occupiers or their family members.

[15] Mrs. Charlery grew up on this land. Her grandmother qualified to purchase this land. Mrs. Charlery bought the land in her name only because of her grandmother's impecuniosity to complete the purchase of the land. The Deed of Sale was executed on the 10th November 1992.

[16] Mr. Charlery contends that they were then cohabiting at her hairdressing salon premises in a boarded off portion of the business space at Brazil Street. He says that she was pregnant at the time she purchased the property. That the cash price $1,647.37 came from their pooled resources, based on plans they had to build a house on the land to live in. The size of the Parcel is 8236.86 sq ft.

[17] While admitting that Mr. Charlery was then earning net income ranging from $450.17 to $565.96 from the Maintenance Department of the Sport Hotel, Mrs. Charlery has denied that they were living together then, or that her hairdressing business was undergoing financial difficulties. She has not denied that she was living in cramped quarters at Brazil Street. She has insisted that Mr. Charlery made no financial contribution to the purchase price of this property. Mrs. Charlery and her grandmother are engaged in litigation over the Marigot property.

*The Monier Matrimonial Home – Gros Islet*

[18] The documentary evidence supports the testimony of Mrs. Charlery regarding her acquisition of the land known as Parcel 325 Block 1450 B for $37,726.00 from U.D.C prior to their marriage.

[19] On the 30th May 1994, she paid a deposit of $5,000.00 cash on this Parcel. On the 20th April 1995 she paid another $5,000.00 cash. On the 24th August 1995 she paid the balance of the purchase price $27,000.00 in cash. Despite the letter dated 26th September 1994 to Mr. Alphonse Charles, I make no finding concerning the $15,000.00 she alleges came from Alphonse Charles as her share in the house at Cas-en-bas. Mrs. Charlery said that the $15,000.00 out of Court Settlement from Mr. Charles formed part of the

$27,000.00 final payment. It is undisputed that in 1994 Mrs. Charlery's hairdressing business was flourishing.

[20] The Deed of Sale for the Monier land was executed on the 29th August 1995 in the name of Mrs. Charlery only.

[21] The documentary evidence filed with the 1st Affidavit of Mr. Charlery discloses that by an Hypothecary Obligation/Mortgage dated the 23rd August 1995 Mrs. Charlery mortgaged Parcel 325 for a loan of $37, 726.50 from the Royal Bank of Canada.

[22] Both parties agree that Mrs. Charlery used the loan to build the matrimonial home.

[23] It is difficult to reconcile the information about this loan, contained in the Instrument of Radiation by Royal Bank, executed on the 10th November 1998, with the information in the Royal Bank of Canada letter (Exhibit CF 6) dated 14th January 2004.

[24] The letter states that the Residential Mortgage Loan was granted to Mrs. Charlery on the 29th June 1995 with Maturity date being 6th January 1997, and the Principal was $50,000.00 with interest $9,162.59.

[25] The letter states that "*monthly payments were initially debited from Savings Account No. 7019110 in the name of Cecelia Fitz but was changed to Account No. 800-986-2 in the names of Cecilia Fitz-Charlery/Cornelius Owen Charlery*".

[26] There is no evidence from the parties as to when Account No. 7019110 was opened and the activity on this account. However, with his 1st Affidavit, Mr. Charlery filed a letter from the Royal Bank of Canada dated 28th January which states that the Savings Account No. 800-986-2 was opened on the 1st December 1998. According to Mrs. Charlery, she was operating 3 Accounts at the Royal Bank of Canada prior to December 1994. It is probable therefore that Account No. 7018110 existed in early 1994.

[27] Mr. Charlery explained that the reason why the Deed and Mortgage was in Mrs. Charlery's name alone was because he was being trained in Jamaica by Sandals. That when he returned Mrs. Charlery told him that she had gone ahead and taken the loan, and finalized the sale of the land. Mr. Charlery stated that before he went to Jamaica they had gone together to see the lot. They chose the lot together and made a first deposit in 1993. He said that they had intended the Monier property to be their matrimonial home, and when they thought that U.D.C was taking too long, at one stage he told Mrs. Charlery to "*let us ask for our money*".

[28] The evidence also discloses that the parties operated a joint Chequing Account No. 500-128-4 prior to their marriage. This Account was opened on the 12th January 1994.

[29] Mrs. Charlery has denied that Mr. Charlery's salary was lodged to this account for use by the business. She explained that when she became involved with Mr. Charlery she added him to this account which she had opened in 1994 in order to assist him in obtaining a U.S. Visa. She said that this account was not a business account. It was a miscellaneous account used by both of them to facilitate writing cheques for utility bills, groceries and other purposes. It is obvious from the negotiated cheques for this account that were exhibited by the parties, that "*other purposes*" included the purchase of products for the business from Frank B. Armstrong from 1996 to 1998.

[30] In her Affidavit filed on the 2nd February 2004 at paragraph 35, in effect, Mrs. Charlery admitted that Mr. Charlery's salary along with other deposits made by her were paid into this account. She admitted that for the periods 9th January 1996 to 8th February 1996, 8th February 1997 to 7th March 1997, 7th March 1998 to 8th April 1998 and 9th February 1999 to 8th March 1999 she deposited a total of $12,360.00 while Mr. Charlery deposited $8,731.31. She stated that the total sum for the cheques she drew on this account never exceeded that total sum of money she deposited from month to month.

[31] Mr. Charlery has not disclosed what his salary was in January 1994, or what deposits he made to this account prior to January 1996.

[32] Mrs. Charlery said that Mr. Charlery's salary was low and he was not involved in the purchase of the Monier land, or the repayments for the mortgage loan to build the house. She denies that the purchase was in her name because he was in Jamaica. She says he showed no interest in the transaction. She did not involve him in it, she said, because her business was doing well, she could handle the purchase by herself she had no intention to share the property with him and there was no discussion between then concerning her acquisition of this property. It is obvious to me that Mrs. Charlery was the dominant spouse in this marriage, with an abounding business acumen; and that she planned her business transactions without depending on the approval of Mr. Charlery.

[33] On the other hand, apart from asserting that the funding of the purchase price came from the business and his salary, Mr. Charlery's only other evidence concerning his involvement in the acquisition of the Monier property was this:

> *"With respect to the property at Monier, I remember that the deposit for the land was $5,000.00. . . I remember when I came from Jamaica. U.D.C attempted to increase the price of the property (house and land) by six thousand dollars. . ., but after some pressure from our lawyers U.D.C capitulated and maintained the original price. I remember also that the lot which we chose was a river side lot which no one wanted, given the fact that storm Debbie had only recently passed and flooded the area. I remember that we agreed that instead of a 3 bedroom house a 2 bedroom starter house would be purchased".*

[34] Mrs. Charlery admitted that Mr. Charlery was involved in the extension of the house on the Monier land within the limits of his earnings which averaged $1,200.00 monthly between May 1999 to September 2001. She asserted that the money for the extension came mostly from earnings from the business. Neither party has provided any details about Mr. Charlery's contributions to the extension, the time the extension took place, the value of the extension, or what the extension involved.

[35] Mr. Charlery believes, and his Counsel Mr. St. Clair has submitted, that he is entitled to ½ share in this property because his salary was deposited in a joint account which was used for the business and it was the earnings from the business and his salary that provided the purchase price for the land, and the repayments for the mortgage loan.

[36] Counsel for Mrs. Charlery contends that the evidence shows that the funds used for the acquisition of the property were the separate earnings of Mrs. Charlery. Consequently, the property acquired with her separate earnings is her separate property.

[37] Ms. Faisal has argued, that in the absence of any evidence from Mr. Charlery to support his assertions that he contributed to the improvements, the Court should deem the contributions unsubstantiated, or not substantial enough to allow Mr. Charlery to acquire a beneficial interest.

***Land at Dauphin – Gros Islet***

[38] There is no dispute that this property known as **Parcel 50 Block 1651 B** is jointly owned by the parties. It was bought on the 11th August 1999 for $73,000.00. Up to the 16th August 2002, a balance of $29,000.00 was owing for this land. The parties had a joint Fixed Deposit at Royal Bank of Canada with $24,023.91 in it. Mrs. Charlery has accounted to my satisfaction for the $24,023.91 that was in the Account No. 11-423-3. I accept her evidence that she used this sum to pay off the outstanding balance the parties owed on **Parcel 50**.

***The Business***

[39] Cecilia's Hair Design was a success story from the beginning states Mrs. Charlery. However the evidence of Mr. Charlery and his 2 witnesses suggest that it was not.

[40] Mr. Charlery remembered that in 1992 when the business was at High Street, they were in arrears with the rent and their landlord gave them notice. That there were days when they would wish to have customers, that they sometimes survived off his small salary, that when they moved to Brazil Street they lived in the boarded up small section of the salon. The evidence discloses that they slept on a foam on the floor and had breakfast and dinner everyday for quite a while at Mr. Charlery's mothers home. Mrs. Lucy Charlery, the applicant's mother, attested to this.

[41] Mr. Charlery remembered also how he assisted Mrs. Charlery physically, did the plumbing and electrical jobs for the business to be successful, purchased and supplied beauty products, restocked the Salon, did book keeping for the Salon, cleared products from customs, went to New York with Mrs. Charlery to shop for supplies, and in his own words "became an integral part of the business from 1992". He stated that it was he who instilled in her the need to pay N.I.S. and gave her tips on stock keeping and management control, which he had acquired from his exposure to and in his mother's common law husband's electrical business.

[42] I have already dealt with Mr. Charlery's contention that he deposited his salary in the joint chequing Account No. 500-128.4 at the Royal Bank from 1994, and that it was used to run the business (see paragraph 29 and 30 supra). For all these reasons, Mr. Charlery asserted, and Mr. St. Clair argued, that he has a ½ share in the business.

[43] Both parties agree that at one stage Mr. Charlery was operating a branch of the business in Soufriere after he had stopped working at the hotel. Mr. Charlery says this was in 1993. Mrs. Charlery said that during that time Mr. Charlery was paid $900.00 monthly by her for his assistance. Mr. Charlery denies this. She says that she had to close down this branch in less than 1 year as it failed miserably. I believe Mrs. Charlery.

[44] It is undisputed that Mr. Charlery become a partner in the business from the 24th March 1999 when it was registered as a firm under the name "*Cecilia's Hair Design and Beauty Supply*", until it was converted into a company in 2000 by Mrs. Charlery. Mr. Charlery was unaware that the firm had been converted into a company till Mrs. Chalery testified to this. Mrs. Charlery said that she decided to join Mr. Charlery as a partner in 1999 because she did not want to make him feel inferior in any way. That he had made no financial contribution to the business up to then, gave no consideration for his partnership and he made no contribution to the existing capital which comprised her personal assets. There was also no agreement between them she said, that he should take any existing assets.

[45] In her 2nd Affidavit Mrs. Charlery stated:-

> ***"14.- Before the said registration of March 24, 1999, the business was my separate enterprise and the income it generated my separate earnings. As time went on I expanded upon the business to include hairdressing and cosmetology appointments overseas, as well as a school, where I teach up-and-coming cosmetologists and hairdressers the basic skills of trade.***
>
> ***15. – Because of the extent of the services offered I was advised by my accountant to register the business as a limited liability company. He never complained or indicated any opposition because at the time he had no interest in those matters. . .***
>
> ***16. –The business was the vehicle behind which I marketed my skills and services. It had no assets of its own. My personal input was its greatest asset, without which there would be no business. All the equipment with which it was started was my sole personal property".***

[46] The company Cecilia's Hair Design and Beauty Supplies Limited was registered on the 7th June 2000. Mr. Charlery is not a shareholder. Counsel Ms. Faisal submitted that Mr. Charlery had made no financial or any significant contribution to the business which would qualify him to obtain any share in the

business. She argued that the assistance he gave was incidental to the relationship of husband and wife.

[47] Concerning his partnership in the business since the 24th March 1999, Ms. Faisal canvassed that though Mr. Charlery is registered as a partner, in the absence of any money contributions for the purchase of the assets of the business, he is holding on trust for Mrs. Charlery who gave him the partnership in her business. Counsel canvassed further, that since the business was now a limited liability company, to which the assets originating from the sole proprietorship were transferred on the 7th June 2000, the business ought not to be the subject of a claim for ancillary relief.

[48] The evidence of Mr. Maurice Lennie, accountant for Mrs. Charlery and the documents exhibited with his Affidavit shows the following:-

**(a) The Assets of the Firm that were transferred to the Company valued $136,590.00.**

**(b) The Income Tax Return for year ending 31st December 1999 shows that the Gross Business Income was $119,475.00 and net was $40,306.00.**

**(c) The Income Tax Return for year ending 31st December 2000 shows the Gross Business Income as $134,535.00 and Net was $45,466.00.**

***The Law***

[49] Article 1192 of the Civil Code of St. Lucia recognizes that married persons may have separate property and property of the community. Separate property under Article 1192 (2) (a) includes "*the property movable and immovable; which the spouses possess on the day when the marriage is solemnized*".

[50] Separate property under Article 1192 (2) (c) includes "*the income and earnings of either spouse, investments in the name of one spouse. . .*". Article 1194 also provides that the income and earnings of each spouse are their separate property.

[51] Article 1192 (2) (e) states that separate property also comprises "*fruits, revenues, and interest, of whatever nature they be, derived from separate property, the proceeds of separate property, and property acquired with separate funds or in exchange for separate property*".

[52] Article 1192 (3) states that property which has been acquired during the marriage and which is not separate property, is the property of the community. Article 1 paragraph 4 defines "*Community*" to mean "*the common interest of a man and his wife in certain of their property,. . . The term is also used to designate the property to which this common interest attaches. The term "a community" or "the community" is also used in the latter sense"*.

[53] By Article 1193, "*Property is deemed to be the joint acquisition of the community unless it is admitted or proved to have belonged to, or have been in the legal possession of one of the spouses previously to the marriage; or if acquired after marriage, is admitted or proved to have been acquired*" as separate property, or to belong to one of the spouses only.

***Findings***

[54] Based on these statutory provisions it is clear to me that the Marigot and Monier lands are separate property since they were acquired by Mrs. Charlery before her marriage.

[55] In my Judgment, the business of Mrs. Charlery prior to the 24th March 1999 was separate property, falling under Article 1192 (2) (c) as an investment, or under Article 1192 (2) (e) within the category of an "*interest of whatever nature*", having existed prior to the marriage.

[56] After Mr. Charlery was registered as a partner on the 24th March 1999 the business was transformed, and therefore is deemed to be the joint acquisition of

the community, subject to it being proved to have belonged to Mrs. Charlery only, pursuant to Articles 1193 (1) and 1192.

[57] The land at Dauphin, and the household items consisting of a computer, 2 sets of sofas, a table and chairs, 2 large television sets, a refrigerator, a deep freezer, a stove, an electric oven, a microwave, 4 beds and a chest of drawers are undisputed property of the community.

***Bank Accounts***

[58] The law is that where there is no indication that a joint account was kept for a specific purpose, each spouse can draw on it for his or her own benefit; and any item or investment purchased belongs to the person in whose name it was purchased: (**RE Bishop, National Provincial Bank Limited –vs- Bishop** [1995] 1 All E.R. 249).

[59] If a joint account was opened only for administrative convenience, then the money put into it belongs to the spouse who provided it: (**Helestine –vs- Helestine** [1977] 1 All E.R. 952 Per Lord Denning M.R.).

[60] Bank Account No. 800-474-9 is a savings account with Royal Bank of Canada in the name of Mrs. Charlery only. Article 1195 of the Civil Code states that "*a deposit in a bank in the name of one spouse is presumed to be . . .her separate property*".

[61] The Savings Account No.800-98-2 in the name of both parties had a balance of $6,781.25 in January 2002. Mrs. Charlery has accounted to my satisfaction how she dealt with this balance. Mr. Charlery has benefited from her management of his debt obligations. He ought not to complain.

[62] I have already dealt with the Fixed Deposit Account No. 11-423-3 at paragraph 38 of this Judgment.

[63] Mr. Charlery requested that Mrs. Charlery account for the $15,526.27 in their joint Savings Account No. 11-7524309, and $16,257.49 in Account No.11-7503162 at the RBTT Bank Caribbean Limited. These accounts were opened on the 10th March 1999 and 19th May 1998 respectively. They were closed on the 15th October and 16th October 2002 respectively. Mrs. Charlery explained that the funds in these accounts were savings from the business which she has been operating as a company since 7th June 2000. It appears to me, that she has accounted adequately for these two amounts in the accounts. Again, Mr. Charlery has benefited from her expenditure of these sums.

***Separate Property***

[64] The fact that property is separate property, does not prevent Mr. Charlery from claiming a beneficial interest in it.

[65] Section 45 (b) of the Divorce Act No. 2 of 1973 provides for the Court to make an order on the application of either party made before the decree absolute:-

> ***"If any property of the parties or of either of them is separate property within the meaning of the Civil Code and the Court is satisfied that the other party has made a substantial contribution (whether in the form of money payments, or services, or prudent management, or otherwise however) to improvement or preservation of such property:-***
>
> > ***(ii) directing that either party pay to the other such sum either in one sum or in installments and either forthwith or at a future date and either with or without security as the Court thinks fair and reasonable in return for the contribution made by the other party".***

[66] Counsel Ms. Faisal referred to several cases in support of her well argued submissions, including the celebrated cases **Pettit –vs- Pettit** [1969] 2 All E.R. 385 and **Gissing –vs- Gissing** [1970] 2 All E.R. 780.

[67] Relying on these 2 cases, Ms. Faisal argued that since the Monier and Marigot lands were conveyed in the sole name of Mrs. Charlery, Mr. Charlery has no interest in these properties unless the existence of an express or constructive or resulting trust is established. Ms. Faisal reviewed the law on Trust and the relevant Statutory Provisions. Counsel Mr. St. Clair confined his submissions to the facts.

[68] In summary, the law as I understand it, states that a resulting trust can only arise in the following cases:-

**(a) Where Mr. Charlery has proven that he provided or contributed directly to the purchase price or mortgage payments for separate property; or**

**(b) Where there is evidence that Mr. Charlery contributed substantially to the improvement of the separate property by money payments, or physical help or services or by prudent management; or**

**(c) Where Mr. Charlery has proven that there were expressed words, or it can be inferred from the facts that there was a common agreement or intention for him to have a beneficial interest in the separate property.**

[69] In determining the common intention of the parties, I am required to discover the full facts as I have already done, and try to conclude what was in their minds at the time Mrs. Charlery acquired the properties.

[70] "*The Court does not decide how the parties might have ordered their affairs; it only finds out how they did. The Court cannot devise arrangements which the parties never made. The Court cannot ascribe intentions which the parties in fact never had*": (PER Lord Morris in **Gissing –vs- Gissing** [1970] 2 All E.R. at page 784).

[71] I am also guided by the statement of Lord Diplock at page 791 in **Gissing –vs-Gissing** where he said:-

> ***". . .parties to a transaction in connection with the acquisition of land may well have formed a common intention that the beneficial interest in the land shall be vested in them jointly without having used express words to communicate this intention to one another. . . . it may be possible to infer their common intention from their conduct. . ..***
>
> ***In the branch of English Law relating to constructive, implied or resulting trusts effect is given to the inference as to the intentions of parties to a transaction which a reasonable man would draw from their words or conduct and not to only subjective intention. . . . It is for the Court to determine what those inference are".***

[72] A case which demonstrates how the law operates in principle is **Kowakzuk –vs-Kowakczuk** [1973] 2 All E.R. 1042.

[73] A house was bought by a husband over 2 years before his marriage as his sole property. This house became the matrimonial home after the parties were married. The wife had made no contributions to the purchase price of the house. There was evidence that the wife did contribute both in money, and by her own physical help to the repairs, alteration and improvement to the house and garage.

[74] Lord Denning M.R. opined (at page 1045):-

> ***"In these circumstances the wife gets no share in the house by reason of subsequent contributions unless they are directly referable to the making of improvements to the house or to the payments of the mortgage installments. . .".***

[75] Speaking of the wife's contributions regarding improvements under Section 37 of the Matrimonial Proceedings Property Act 1970 U.K. (comparable in substance to

Section 45 (b) of the Divorce Act No. 2 of 1973 of St. Lucia) Lord Denning continued :-

> ***"Such contributions come within the scope of that S37 and there would be a trust for her in that regard".***

[76] Buckley L.J said (at page 1046):-

> ***"It may be that the wife after the marriage made contributions to the family expenses – may even have paid, as the registrar found that she did, I think, some of the mortgage installments, and in that way have assisted her husband in discharging his liabilities under the mortgage; but that alone in my Judgment would be insufficient to raise any constructive trust, although it might possibly give the wife, a right to relief against her husband on some other ground such as for instance; that she had paid money for use or something of the kind; but [that] would not give her any equitable interest in the property. . . .***
>
> ***It seems however, to be clear that if she did make contributions towards the cost of improving the property she would be entitled under S 37 of the 1970 Act to some interest in the house under the Statutory Provision contained in that section".***

[77] Applying the law to the evidence my views are as follows from the evidence relating to the conduct of the parties, their existing bank accounts and the other surrounding circumstances, I cannot infer that there was any common intention that the beneficial interest in the Marigot and Monier lands should be vested in Mr. And Mrs. Charlery jointly, at the time Mrs. Charlery acquired these properties.

[78] I accept Mrs. Charlery's testimony concerning how the purchase price for both properties was financed. The documentary evidence clearly establishes that the

account to which Mr. Charlery's salary was lodged was not used for mortgage payments.

[79] I find that Mr. Charlery made no financial contributions to the purchase price for the Marigot property and he is not entitled to any interest in this property.

[80] I find that Mr. Charlery made no financial contributions to the purchase price or mortgage payments that would entitle him to a beneficial interest in the Monier property.

[81] In the absence of any evidence regarding the improvements to the house on the Monier land, I am make no pronouncements as to whether or not Mr. Charlery acquired an interest by substantial improvements.

[82] Though Mr. Charlery assisted Mrs. Charlery in her business between 1992 to March 1999, there was no common intention for him to have a beneficial interest in the business.

[83] However, in my view, though he may have given physical assistance and services which may have substantially contributed to the improvements in the business, and which may have helped the business to flourish from 1993/1994 onwards, it appears that he was adequately compensated for his contributions.

[84] Mrs. Charlery said she bought him a car before they got married. She paid $23,000.00 cash for this car on the 8th September 1995, Mr. Charlery said it was the business that gave him that car.

[85] The loan history document for the Mitsubishi Pick-up for $42,400.00 acquired on the 28th July 2000, is in Mrs. Charlery's name only. Mr. Charlery drives the pick-up. Mr. Charlery said it was the business with his salary that provided this puck-

up for him. Mrs. Charlery had to continue servicing this loan after he stopped making contributions towards the vehicle and the home expenses.

[86] Mrs. Charlery said that Mr. Charlery had an expensive lifestyle, he had to pay child support monthly, maintain the car she bought him, and that he took several long distance courses that he had to pay for, only one of which he completed. Accepting her testimony on this, it seems to me that he would have utilized most of his salary monthly for his own purposes.

[87] When I take all these things into account, I am compelled to conclude that Mr. Charlery has already been compensated for the services he rendered to the business before he became a partner in 1999.

[88] Regarding his partnership in the business since March 1999, Mr. Charlery is demanding 50% of the interest in the business.

[89] The law regarding apportionment of shares in a property jointly owned by husband and wife is applicable. It was explained as follows by Lord Denning in **Bernard –vs- Joseph**: [1982] 3 All E.R. 162 at page 166, paragraph (b) to (e).

[90] When property is in the joint names of spouses, it does not necessarily mean equal shares. The spouses acquire the property into their joint names without taking into account all the factors, such as their contributions, to the purchase money and other things.

[91] If there is no declaration of trust, the shares are usually to be ascertained by reference to their respective contributions, just as when it is in the name of one or the other only.

[92] The share of each depends on all the circumstances of the case, taking into account their contributions at the time of acquisition of the property, and in

addition their contributions in cash or in kind, or in services up to the time of separation.

[93] The departing party may be entitled to half, quarter or even one-fifth depending on the contributions made by each and all the circumstances of the case.

[94] Justice requires that the Courts should have a discretion to apportion the shares and there should not be a rigid rule of equal shares. This reasoning also applies to persons living together as if they are husband and wife.

[95] Applying this statement of the law to the present partnership issue, I have no evidence before me concerning Mr. Charlery's contributions to the partnership in cash, kind, or in services from the 24th March 1999 until the 7th June 2000 when the firm ceased to exist.

[96] All I have is the evidence of Mrs. Charlery that she made her husband a partner because she did not want him to feel inferior to her. She gave him a gift. Article 1283 of the Civil Code recognizes that one spouse can make a gift from their separate property to the other spouse.

[97] I find significant, the fact that the 2.66 acres of agricultural land at Dauphin – **Parcel 50**, which was bought in August 1999, was financed by a loan taken by Mrs. Charlery in her name only for approximately $39,000.00. The loan history documents exhibited by Mrs. Charlery substantiates this. Apparently buying this property in their joint names over 4 months after making him a partner was another attempt by her to prevent him from feeling inferior.

[98] Since Mr. Charlery was employed to Sandals at that time, it could not be that she intended to give him ½ share in her business. As she has said, the business was the vehicle behind which she marketed her skills and services. Given her persona

and the nature of the business, it is reasonable to infer that she intended him to share in the profits of the business only in my view.

[99] I therefore consider it just and proper to declare that Mr. Charlery's share in the partnership from its registration to the 7th June 2000 is 20% and no more, of the profits of the business for this period.

***Conclusion***

[100] By virtue of my findings **IT IS ORDERED AND DECLARED**:-

(a) The land at Marigot known as **Parcel 137 Block 0643** in the Land Registry is the separate property of Cecilia Fitz Charlery.

(b) The land at Monier, Gros Islet known as **Parcel 325 Block 1450 B** in the Land Registry and the house thereon are the separate properties of Cecilia Fitz Charlery.

(c) The land at Dauphin, Gros Islet known as **Parcel 50 Block 1651 B** in the Land Registry is community property, and I direct that this property be sold and the proceeds divided between the parties equally.

(d) The Respondent is entitled to 1/5th share in the profits of the firm Cecilias Hair Design and Beauty Supplies for the period commencing 24th March 1999 to the 7th June 2000.

(e) The furniture items namely, a computer, 2 sets of sofas, a table and chairs, 2 large television sets, a refrigerator, a deep freezer, a stove, electrical oven, microwave, 4 beds and a chest of drawers are declared to be the property of the Respondent who must remove them from the matrimonial home within 3 weeks from the date of delivery of this Judgment.

(f) The Respondent is to return the laptop computer, that he removed from the matrimonial home, to the Petitioner within 3 weeks from the date of delivery of this Judgment.

(g) The ownership of the respective vehicles now being driven by Petitioner and Respondent shall be transferred to their individual names within 3 weeks from the date of delivery of this Judgment. Thereafter the respective vehicle will be deemed to be each party's separate property.

(h) There will be no order as to costs.

.....
*OLA MAE EDWARDS*
*High Court Judge*

Dated this 10th day of June, 2004