

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

CLAIM NO. SKBHMT2013/0026

BETWEEN:

PATRICIA EUDORA WELSH

Petitioner

and

ROBERT OWEN HAYNES

Respondent

Appearances:

Ms Midge A Morton of Morton Robinson, LP., of Counsel for the Petitioner
Ms Felicia Johnson of the Law Offices of Herbert Thompson, of Counsel for
the Respondent

2018: May 1st

JUDGMENT

[1] CARTER J.:The issues for the court’s determination on this ancillary hearing pertained to applications filed by the Petitioner for property determination and adjustment; custody, care and control of the children of the marriage and payments of maintenance arrears.

Matrimonial Property

- [2] The Petitioner’s application, with regard to the matrimonial property, is that the court should find that although she and the Respondent are the joint legal owners of the property, that she is entitled to a greater equitable share or beneficial interest in the property. These issues have been explored extensively in the authorities.
- [3] In *Stack v Dowden*¹, the Court found as a general principle that where there is sole legal ownership there is sole beneficial ownership and where there is joint legal ownership there is joint beneficial ownership. A heavy onus rests on the party seeking to show that the beneficial ownership is different from the legal ownership. In sole legal ownership cases it is for the non-owner to show that he has any interest at all. In joint legal ownership cases it is for the joint owner to show that he has other than a joint beneficial interest.
- [4] Baroness Hale in *Abbott v Abbott*² noted that: “When a couple are joint owners of the home and jointly liable for the mortgage, the inferences to be drawn from who

¹[2007] UKHL 17 at parag. 56.

²[2007] UKPC 53

pays for what may be very different from the inferences to be drawn where only one is the owner of the home. The arithmetical calculation of how much was paid by each is also likely to be less important. It will be easier to draw the inference that they intended that each should contribute as much to the household as they reasonably could and that they would share the eventual benefit or burden equally...At the end of the day, having taken all this into account, cases in which the joint legal owners are to be taken to have intended that their beneficial interests should be different from their legal interests will be very unusual.”

- [5] In many instances there will be no direct evidence that at the time of acquisition of property the parties discussed or adverted their minds to how the beneficial interests in the properties would be shared and therefore a Court will take into account how the beneficial interest was held at the date of acquisition and then also move on to consider the position of the parties subsequent to the property’s acquisition in order to determine whether these warrant a conclusion that there should be a change in the way in which the beneficial ownership is held.³
- [6] In **Abbott v Abbott**⁴ Baroness Hale further stated that in seeking to ascertain the parties shared intentions with respect to matrimonial property that the Court must look to the whole course of conduct of the parties in relation to it.
- [7] A variety of factors may illuminate the parties “true intentions”. A non-exhaustive list will include such factors as: the parties’ respective financial contributions towards the acquisition of the property, both initially and subsequently; how the parties arranged their finances, whether separately or jointly or a combination of both; how they discharged the outgoings on the property and their other household expenses; the reasons why the home was acquired in their joint names; the purpose for which acquired; and the nature of their relationship.⁵
- [8] These principles are reflected in such judgments in this jurisdiction such as **Williams v Williams**⁶ and **Tweed v Tweed**⁷ wherein the courts sought to resolve questions of the division of matrimonial property by considering matters such as the conduct of the parties, express or implied agreements on the acquisition of beneficial rights and the direct and indirect contributions of parties to the acquisition of the matrimonial property.
- [9] It is therefore accepted that the import of the law relating to constructive trust is generally applied in the determination of the division of property acquired during the marriage by both parties and can be seen from various accepted authorities.⁸
- [10] As stated by Counsel for the Petitioner in her submissions to the Court, there is no issue between the parties that they share legal title to the property and that the mortgage

³ Where the only additional relevant evidence to the fact that the property has been acquired in joint names is the extent of each party’s contribution to the purchase price, the beneficial ownership at the time of acquisition will be held in the same proportions as the contributions to the purchase price.

⁴ [2007] UKPC 53

⁵ These were referred to by Baroness Hale in *Stack v Dowden*.

⁶ Claim No. SKBHCV2010/0012

⁷ Claim No. SKBHMT2005/10005

⁸ Some of the leading cases include *Pettitt v Pettitt* [1970] AC 777, *Gissing v Gissing* [1971] AC 866, *DeFreites v DeFreites*, Claim No. ANUHCV 2008/0476, *Struch v Struch* BVI Civil Appeal No.17/2002

in respect of the property was obtained in their joint names. The Petitioner however argues that when this court examines the conduct of the parties since the acquisition of the property that the court should find that her beneficial interest has surpassed that of the Respondent.

The evidence of the Petitioner

- [11] The Petitioner's evidence in support of this contention derived from a number of factors:
- a. As an employee of the Eastern Caribbean Central Bank she was able to secure a more favourable rate of interest from the First Caribbean International Bank loan portion of the mortgage;
 - b. That all deduction for the mortgage were made directly from her account into which her salary was paid at the Bank;
 - c. That as a employee of the Eastern Caribbean Central Bank she was entitled to duty free concessions which she used for the benefit of the home as she was able to secure appliances, furniture and fittings from overseas and bring them into the country duty free;
 - d. That she secured a loan from FINCO to cover other expenses relating to furniture for the home for which she was solely responsible for repayment;
 - e. That she was responsible for paying most of the utility bills for the home
 - f. That the parties share no joint account apart from the mortgage loan account and one other account which the Petitioner contends that the Respondent overdrew and for which she is now charged with repaying.
- [12] The Petitioner's was employed at the Eastern Caribbean Central Bank during the course of the marriage first as an economist and then later as the Deputy Director of Research.
- [13] The Petitioner detailed that when she and the Respondent moved into rental accommodation after they were first married that she paid for rent and her student loans. She maintained that at that point that she was taking care of the lion's share of the expenses. The Petitioner described that during the early course of the marriage that the Respondent was in and out of jobs and that especially in that period she took full responsibility for the parties' finances.
- [14] The Petitioner's evidence was:
- "In terms of timelines, we discussed the building of the home from time to time. I did not know the respondent to be a building contractor at that time. When I met the Respondent, I knew the respondent as a sales rep. at Delisle Walwyn Sports and Games Department. Our discussions were not about who had knowledge but two persons discussing building of a home and choosing."*
- [15] The Petitioner did not agree that the Respondent or his company were to build the matrimonial home. She stated that the Contractor, Roland Stanley, was hired and that the project was managed jointly by both owners. Her evidence was that it was the building contractor who submitted his quantities to the Bank with the labour breakdown and for materials.

- [16] The Petitioner indicated that she was unaware of the Respondent acting as contractor on the site although she knew that he visited the site to open a container which held the material for the construction. The Petitioner produced cheque books to show that payments made to the contractor were all signed off on cheques from the parties' loan account for the building of the home and that these Cheque books were from the start of the project to the end.
- [17] The Petitioner was questioned about services and payments relating to trucking, bins for fill, additional soakaway and fencing around the property. She maintained her evidence in chief that the Respondent did contribute to the financing of some projects connected with the construction of the home including paying for a 40ft container, for the costs of constructing a small concrete room in the yard, for finishing paint work on the outside verandah and garage of the home and for landscaping of the yard.
- [18] She agreed that with regard to the insurance of the construction site and for payments for excesses relating to the building project, the Petitioner's evidence was that both parties paid for these. And that it is the amount that was paid that is in dispute. She was adamant that with regard to excess payments that the Respondent was in and out of jobs and that his salary was therefore very inconsistent during this period.
- [19] In relation to the inability of the Respondent to produce documentation relating to the construction of the marital home, the Petitioner denied suggestions to her by Counsel for the Respondent that she had denied the Respondent access to the relevant documentation. She stated that the documents were available to both parties at the time that the Respondent left the matrimonial home. Importantly there was no suggestion put to the Petitioner of particular documents that she had not produced to the court relating to these matters. In fact, the Court notes that the Petitioner produced voluminous bundles of documents for the court's consideration.

The evidence of the Respondent

- [20] The respondent gave relied on his affidavits sworn at various points in the matter as his evidence in chief. These various affidavits related to issues surrounding custody, access, maintenance and in response to issues raised by the Petitioner.
- [21] In cross examination the Respondent detailed his employment history. In response to counsel for the Petitioner he gave details of his salary at various stages of his marriage to the Petitioner. Counsel for the Petitioner probed the evidence of the Respondent as to whether he did in fact earn the amounts that he stated that he did with regard to his earning in or around 2001, the Respondent stated that his earnings were not as detailed in his affidavit of the 14th of December 2015, which had stated that he was earning \$1900.00 but that instead he stated that he was receiving \$2500.00 plus commission. He sought to explain this discrepancy by saying that he had subsequently received other information which led to his now stating that the information in the affidavit was inaccurate and incorrect.
- [22] He admitted that he had worked a number of small jobs during the duration of the marriage. With regard to the land at Frigate Bay upon which the matrimonial home is built the Respondent did not agree with the Petitioner's evidence that she had paid approximately 80% of the costs for the land. However, he could not state what percentage she had in fact paid. His evidence was:

"I know a loan was taken for the Frigate Bay Land, the exact amount I can't recall at this time. The loan was obtained from Royal Bank. I can't recall the amount the loan was for."

- [23] When the respondent was confronted with the bank documents relating to the loan from the Royal Bank of Canada (PEWH 3(b)), that it was in fact \$137,000.00 that was borrowed in respect of the Frigate Bay land he maintained that his understanding was that the amount was \$75,000.00. When he was confronted with the fact that he had signed for the loan, his response was:

"A number of transactions were done by my wife who would then inform them that I would have to sign. The chemo has left me somewhat forgetful. I can't recall if it is \$137,000.00. I stand by what I said."

- [24] With regard to the ECCB staff loan, the Respondent admitted that he knew that the parties had financing for the home through that process. He accepted that the staff loan meant that they had a better rate than if they had financing from a commercial bank and therefore that this was part of the benefit and the Petitioner's contribution.

- [25] The Respondent insisted that he paid for house insurance for the home once it was built in 2010 and 2012. He stated that this amounted to some \$10,000.00. When taxed in cross examination he was unable to provide proof of same, and unable to say where he would have had funds from to make such payments. The Respondent stated:

"I found money for house insurance. The way the house insurance was set up I had funds to pay from the outset. I would have had funds ... because of work ongoing at that time."

- [26] The Respondent stated in his evidence and again in cross examination that it was agreed with the Petitioner and the officer at the bank that he would project manage the building of the matrimonial home. He stated that this agreement was never documented. His evidence on this point was:

"To finish construction of the house, she was not present when the bank officer agreed that I would construct the house. She was present when the decision was made"

- [27] The Respondent insisted that he "was aware that the bank had one contract that I was privy to for the house to be done by Roland Stanley." He further stated that:

"I was the project manager/supervisor. The Information for the house was between myself, my ex-wife and the officer at the bank. I had to submit monthly reports to the Bank as project manager."

- [28] However, in answer to counsel for the Petitioner he stated:

"I can't recall giving that information in my affidavit. Every time I had to make payments to sub-contractors they had to submit scope of work and access that I forward this information to the bank monthly. I would answer to say that the officer I dealt with at the bank and I discussed it with another senior person there but I did not get them (the documents). It got lost during that period and I did not follow up to get the documents."

- [29] He denied the suggestion that he could not produce them because such documents did not exist. The Respondent insisted that:

“In addition to Mr. Stanley’s role, I had a special role to supervise and manage the job at the beginning of the contract. I would answer to say that Mr. Stanley was the contractor, I was the project manager and the role of the project manager is to ensure that the contractor understood his role in what is to be done, to assist him in getting his role”

- [30] The Respondent went on in cross-examination to state that when the contractor left the project that this was in December 2010 and that at that point only 65% of the work that needed to be done on the home was complete. He stated:

“When finished we moved into the house in April 2011. I was the contractor who finished the house. The Bank instructed me to finish my house and that I did and my wife was present.”

- [31] With regard to finishing work on the house the Respondent stated that when he made the payments for those works that he made these payments in cash. He admitted that he could not provide copies of the invoices for such payments to substantiate this evidence. However, his evidence was that he did try to obtain various documents from the Bank but was unable to do so.

- [32] The respondent gave an account of having paid monies towards the house project even before the mortgage was acquired. He stated:

“In the beginning of the project there were some funds I had to put in, \$25,000 up front, even before the project started. I can’t recall which of the accounts it came from. ... I kept cash at the office and I would just be buying stuff.”

- [33] On the matter of maintaining the family financially, the Respondent’s evidence was:

“Mrs. Haynes would have bought minimal stuff. We shopped at all the supermarkets. In the week we needed small items she would get those. The bulk of the shopping was on me. Hers was very minimal...I would buy \$500. to \$600, sometimes \$800.00. In most cases she was less than \$100.00.... Apart from groceries, I paid cable, water and for the yard and a large proportion of the grocery bills. It was agreed that Mrs. Haynes would deal with the electricity.”

- [34] In answer to Counsel for the Petitioner the Respondent accepted:

“I do not consider cable, water and the yard equal to electricity and the mortgage. It is not equal to it. I am not sure what percentage it is. I accept it is more than 60% (of the expenses). I wouldn’t go to 70%”

- [35] In submissions filed on behalf of the Respondent, Counsel asserted that the Petitioner was unable to speak of certain specifics regarding the construction process such as the providers of services such as trucking and grading while the Respondent was able to give detail in relation to several aspects of the construction process including identifying the various service providers. This, counsel contended, was evidence of his direct and extensive involvement in the construction of the home and his non-financial contributions in this regard.

The evidence of Trevor Cornelius

- [36] Mr. Cornelius was called on behalf of the Respondent. He was hired to complete the painting at the matrimonial home. He was hired by the contractor Roland Stanley. He stated that he was on the painting project for three months as stated in his evidence in chief. He agreed that as far as he was aware the contract was with both Mr. and Mrs. Haynes. When confronted with a copy of the contract, he agreed that the contract stated that its duration was to be for 18 days. At this point he insisted that:

"I spent more than 18 days. I had a longer period of time working in this place. It was extra work; same contract but extra work."

- [37] He agreed that although he received cheques for the work from Mr. Haynes that it was signed by both parties. He stated that he received \$14,000 for the job, although the contracted sum was \$7000.00. His evidence did not advance the case significantly on behalf of the Respondent.

Court's findings

- [38] This court is unable to accept the evidence of the Respondent as representing the true position of the parties in this case. The respondent was evasive throughout his testimony. He prefaced many of his answers with: "How I would answer that.." and "What I would say to you.." and it appears to this court obvious that it was really how he would answer the questions and not necessarily the truth of the matters. The respondent could provide no documentary evidence to support most of his assertions. I do not accept that the Petitioner prevented the Respondent from having access to the documentation concerning the matrimonial property's construction and in any event the Petitioner has produced extensive documentation for the Court's consideration.
- [39] When confronted with documents by counsel for the Petitioner, the Respondent continually found convenient excuses why he had been unable to provide same although freely admitting that he knew that they may have been necessary to support his case, if they did in fact exist. I prefer the Petitioner's evidence to that of the Respondent, whom it was obvious was not as intimately connected to the financing and construction of the matrimonial home as he sought to portray to this court. However, the Petitioner readily admits that the Respondent did contribute in other areas and that he was involved in the construction of the matrimonial home even if she did not accept that he was the project manager or supervisor of the construction at any point.
- [40] With regard to the beneficial interest in the property this court is mindful that the practical reality of the parties' contributions does not automatically result in a division of the beneficial interest along purely financial lines. The court must consider that there would be discrepancies in income between the parties and that this would affect the amount of and type of contribution that they may make in the context of the matrimonial property.
- [41] While I must bear in mind the principles expressed at Paragraph [41], it is obvious to this Court that the Respondent was trying, unsuccessfully, to bolster the extent of his financial and or other contributions. The Respondent was not employed in a professional capacity as the Petitioner and I accept that he did not receive the level of income that he suggested, especially in the early years of the marriage so that he could not have supported the Respondent to the extent that he portrayed in his evidence.

[42] I do not accept that the Respondent's evidence that he was the major contributor to bills for the maintenance and upkeep of the home or that he spent up to \$800.00 per month while the Petitioner only contributed maybe \$100.00. Even if that were the case, the fact that the Petitioner contributed up to seventy percent of the total for the utility bills coupled with her payments for the mortgage and other loan gives an indication of the significant contribution that she made.

[43] This court is mindful of the principles applied in *Gissing v Gissing* when seeking to ascertain the extent of a spouse's contribution where there is no evidence of an express agreement as to how that share is to be quantified:

"In such a case the court must first do its best to discover from the conduct of the spouses whether any inference can reasonably be drawn as to the probable common understanding about the amount of the share of the contributing spouse on which each must have acted in doing what each did, even though that understanding was never expressly stated by one spouse to the other or even consciously formulated in words by either of them independently."

Neither party has suggested that there was any understanding or formulation at the time of acquisition or during the course of the construction of the matrimonial home.

[44] Further the court went on that: "It is only if no such inference can be drawn that the Court is driven to apply as a rule, and not as an inference of fact, the maxim "equality is equity" and to hold that the beneficial interest belongs to the spouses in equal shares."

[45] I note the further definition of these principles where the court went on to state:

"I think that the high sound brocard "equality is equity" has been misused. There will of course be cases where a half share is a reasonable estimation but there will be many others where a fair estimate might be a tenth or a quarter or sometimes even more than half."

[46] I have listened to both parties' evidence and considered the documentary evidence as well as Counsel's submissions. It is not for the Respondent to prove that he is entitled to 50% equitable interest in the matrimonial property. It is the Petitioner who asserts that she should have more than 50% and all the authorities are clear that the onus on her to prove why she should be so entitled. There is no evidence of express or inferred intention however imperfectly remembered or however imprecise their terms may have been. In the absence of same the parties' whole course of conduct in relation to the matrimonial property including their financial contributions and or/other contributions and how the property was financed or purchased both initially and subsequently lean to a conclusion that the significantly greater financial contribution made by the Petitioner should be reflected in according the respective beneficial interest of the parties in the matrimonial property.

[47] I bear in mind that the Petitioner's steady substantial income meant that in real terms the actual amount that she invested in the home would be greater than the Respondent who was not in steady employment for significant portions of the relevant period. However, I balance that against the percentage of that income or interest that went directly into the home from the reduced interest rates on the mortgage loan, duty free concessions for furniture and fittings, that the mortgage loan payments have been

made solely by her throughout the entire period while maintaining and contributing significantly to the household expenses and the children of the marriage. For these reasons the Petitioner is entitled a beneficial interest of 70% interest in the matrimonial property. The respondent to the remaining 30%.

- [48] The last valuation before the Court put the value on the property in the amount of XCD\$1,232,806.00.
- [49] There are also two vehicles owned by the parties.

Custody of the children of the marriage

- [50] The Divorce Act states at Section 16(a):

“A Court may, on application by either or both spouses or by any person, make an order respecting the custody or access to, or the custody of and access to, any and all children of the marriage.”

A court must always have the welfare and interests of the children of the marriage as its paramount consideration.

- [51] The Petitioner has sought that there be joint custody of the children of the marriage with physical custody to her and that the Respondent have access to the children at agreed stipulated times. The Respondent states in his submissions filed on the 13th January 2016 that he does not oppose joint custody but has sought to have the physical custody shared equally between the parties taking into account vacation or holiday periods.
- [52] The Petitioner submitted: “The Court has witnessed the obvious tension that exists between the parties just from their very appearances before the Court over the last two years and certainly at the two-day trial. The Petitioner submits that it is her case that she and the Respondent do not get along and that there are potentially many matters on which they would not agree thereby resulting in the children being disadvantaged one way or other.”
- [53] This court also witnessed the interaction between the Respondent and the elder child of the marriage when she was called to give evidence in this case. The evidence of the daughter Owrencia was instructive. She was clearly reluctant to be in court and to be asked questions which could hurt either party. I believe her evidence. She stated that:
- [54] Asked about why her father was not invited to attend when she was to receive an academic award, her answer was telling:

“My dad and my brother have a good relationship. Between my dad and myself, there’s not much of a relationship compared to my brother and him but we talk. There was a relationship when I was younger. I used to go out with him and my brother. The relationship changed. I don’t exactly remember when.”

“I didn’t want to take the chance of there being a back and forth between them. In terms of dinner they would have had to sit together and I didn’t want to chance it if he did not want to sit with us.”

[55] She also refuted any proposition that the Petitioner had prevented her and her younger brother from speaking to the Respondent.

[56] There is no doubt in this Court's mind that both parties played an important part in the development of their children's early development. Although the Respondent appeared to be inviting this court to find that the Petitioner was an absentee mother I am not persuaded that this was the case. It is clear that as the primary breadwinner the Petitioner was required to be out of the home to pursue her studies and for work.

[57] She gave evidence of her working hours early in the marriage and what her duties entailed and how that affected the family after they had children. She was quite open that she travelled for work and sometimes worked late hours and she stated that during those times that the Respondent would see to the children's needs when they returned home as the parties took advantage of the ECCB afterschool programme which ran from 3-6 pm on school days. She stated:

"When the Respondent took them he fed and took care of them. When I was overseas, Mr. Haynes did take care of them on each occasion. There were occasions when I came home 2-3 am. This did not happen 3 days per week or on a regular basis, only when there was a special project I had to undertake, it was not a regular occurrence.

During the period when I was pursuing my masters' Degree, Mr. Haynes took full responsibility in caring for the child, with the help of my parents. He cooked, cleaned, took them to church, well taken care of. I would also have ensured that a portion of my salary was left which Mr. Haynes had access to take care of my portion/maintenance."

[58] The Petitioner detailed instances of behaviour where she submitted that the Respondent was unmindful of the children and asked the court to note the Respondent's attitude to the child maintenance payments since the divorce and other instances of the Respondent's behaviour toward the Petitioner to support her argument that she should be awarded sole custody of the children.

[59] The Respondent submits that the reported complaints against the respondent "relate to the inconsistent maintenance contribution and the presence of a female friend of the Respondent." Counsel referred the court to **Re D (children) (shared residence orders)**⁹ and **Re A (children) (shared residence)**¹⁰ in support of her submission that neither of these matters were such as to cause this court not to award joint custody.

[60] There is no doubt in this Court's mind that the issue of custody is one that it should examine very carefully in the context of the bitter relationship between the parties. I was especially moved by the evidence of Owrencia Haynes and the manner in which she presented here evidence. Here more than ever was evidence of the effect of the parents' relationship on a child of the marriage.

[61] In all the circumstances it is clear to me that the children's interest and welfare would be better met if they were with one parent. In the circumstances as described, this court's assessment is that the Petitioner should have sole custody of the children of

⁹ [2001] 1 FCR 147

¹⁰ [2002] EWCA Civ. 1343

the marriage. The Respondent is to have liberal access to the children at times to be agreed by the parties and the parties should as far as practicable share the children's vacation between each parent.

Maintenance arrears

- [62] The only other issue which arises is with regard to maintenance of arrears. The Respondent has consistently failed to make the payments for maintenance as Ordered by this court. The Respondent openly submits that he has had some financial difficulties which have arisen from his being unable to work when he was ill, and this has caused an inability on his part to obtain a resumption of a strong income flow. The Respondent however indicates that he remains willing to address the outstanding maintenance once he is able to do so.
- [63] The court's order is as follows:
- a. The Petitioner shall have custody and day-to-day care and control of the children of the marriage.
 - b. The Respondent shall have liberal access to with the children of the marriage to include shared vacation and holiday at times to be agreed between the parties.
 - c. The Petitioner is entitled to a 70% share in the matrimonial property. The Respondent is entitled to a 30% share in the matrimonial property
 - d. The property shall be valued by a reputable and independent valuator to be agreed upon by the parties within one month of the date of this order
 - e. The amount of the maintenance arrears as at the date of this Order are to be deducted from the amount of the Respondent's equity in the value of the property
 - f. The Petitioner shall be at liberty to purchase the Respondent's 30% share in the net value of the matrimonial property, taking into account the amount of the outstanding mortgage and maintenance arrears within three (3) months of the date of this order. The Respondent shall be permitted to remain in the matrimonial property until receipt of the value of his 30% share in the net value of the property.
 - g. If the Petitioner is unable to purchase the Respondent's share of the property within the time stipulated as above, the Respondent shall be at liberty to purchase the Petitioner's 70% share in the net value of the matrimonial property, calculated as outlined in paragraph 8 above within nine (9) months of the date of this order.
 - h. If at the end of this period neither party is able to purchase the other's share in the value of the property, the matrimonial property shall be sold and the net proceeds divided in the shares as outlined above and taking into account the outstanding mortgage as well as outstanding maintenance arrears.
 - i. Each party will retain usage of the vehicles in their possession. The Respondent will pay to the Petitioner 50% of the purchase price of the vehicle

which he had retained, such price to be deducted from his entitlement at paragraph (c) herein.

- j. Each party will bear their own costs.

JUSTICE MARLENE I CARTER
High Court Judge