

**IN THE SUPREME COURT OF GRENADA  
AND THE WEST INDIES ASSOCIATED STATES**

**IN THE HIGH COURT OF JUSTICE**

**CLAIM NO. GDAHCV 2017/0143**

**BETWEEN:**

**BETSY RACHAEL NARAYAN ROSS**

Petitioner

**AND**

**JOSEPH FITZ-GERALD ROSS**

Respondent

**Appearances:**

Dr. Francis Alexis QC for the applicant  
Mr. Dickon Mitchell for the respondent.

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2019: February 14;  
2019: July 18  
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**JUDGMENT**

[1] **GLASGOW, J.:** This is an ancillary relief application filed by the petitioner (“Mrs. Ross”) on 30 November 2017 in which Mrs. Ross seeks the following orders:

- i. An order that the respondent (“Mr. Ross”) do pay to Mrs. Ross such monthly sum in respect of maintenance pending suit as may be just.
- ii. An order that Mr. Ross do pay to Mrs. Ross such secured lump sum as the Court thinks reasonable.
- iii. An order that Mr. Ross do transfer to Mrs. Ross his share or interest in the real property comprising land and 4 storey concrete residential building situate at H.A. Blaize Street, St. George’s, Grenada and/or such other real property as may be relevant.

- iv. An order that Mr. Ross do transfer to Mrs. Ross as may be just such of the shares and interests held by or for Mr. Ross in Joseph Ross & Company Limited (“the company”); KFC (Grenada) Limited (“KFC”); Subway Restaurants Grenada (“Subway”) and Pizza Hut Grenada (“Pizza Hut”).
- v. An order that any disposition and all dispositions of interest in property, real or personal, made by Mr. Ross since 1<sup>st</sup> August 2017 be set aside

### **Background**

- [2] Mrs. Ross is a Grenadian who was resident in Florida in the United States of America in 2008 when she met Mr. Ross, a Grenadian businessman and the Managing Director of Joseph Ross & Company Limited (“the company”). Mrs. Ross is a qualified architect.
- [3] After a brief courtship, Mrs. Ross and Mr. Ross were married on the 26<sup>th</sup> November 2009. At the time of marriage, Mrs. Ross was 35 years of age and Mr. Ross was 75 years of age. After the wedding, Mrs. Ross moved to Grenada and began her engagement with the company. The marriage produced no children.
- [4] On 21<sup>st</sup> September 2017, Mrs. Ross filed for divorce and the parties were officially divorced on 24<sup>th</sup> January 2018, when the decree absolute was made final. The court will determine the ancillary reliefs to be granted to Mrs. Ross on this application.

### **Mrs. Ross’ evidence**

- [5] Mrs. Ross filed 2 affidavits; one dated 30<sup>th</sup> November 2017 and the other dated 26<sup>th</sup> June 2018. In her testimony Mrs. Ross claims that when she met Mr. Ross she was already qualified as an architect specializing in building construction. The affidavit further states that at the time of the marriage she was employed by the

city of Miramar, Florida as a city planner “*exercising skills in architectural designs and construction.*” A business card to that effect was produced to the court.

[6] Her claim continues that after the marriage, Mr. Ross encouraged her to leave her job in Florida and join him in his businesses. At the time of her application for ancillary relief, the business controlled by the company included –

- (1) KFC;
- (2) Subway;
- (3) Pizza Hut

[7] Mrs. Ross’ testifies that she joined her husband in his business so as to be with him and to fully devote herself to him as his wife. In order to do so, she gave up her employment and life in Florida, USA and moved to Grenada. This she did in November 2009.

[8] Mrs. Ross further avers that she contributed to the improvement and building up of the company. At the time she joined the company, she says the same was in dire need of restructuring and was in danger of losing the KFC franchise. Mrs. Ross states that she worked together with Mr. Ross to get the KFC franchise back to high standard.

[9] Mrs. Ross further claims that when she started with the company, the KFC brand was the only franchise under its management. Her efforts and contribution led the company to expand from KFC to Subway in 2013 and Pizza Hut in 2015. She also alleges that in 2013 Subway granted a franchise to her and she operated it under the company.

[10] Mrs. Ross’ evidence is that she served in the following offices at the company –

- (1) KFC department of marketing;
- (2) Human Resources;
- (3) Finance;
- (4) Accounting;
- (5) Franchise meetings;
- (6) Training; and
- (7) Administration

[11] Mrs. Ross' testimony continues that she was able to bring her skills as an architect to upgrading the design and development of the KFC facilities to meet and maintain the KFC brand's standards.

[12] She explains that when the company acquired the other franchises, her responsibilities increased. Securing these brands was no small feat, she avers. The exercise entailed long periods of interrogation and interviews. These contributions, in her view, led to the increase of the company's assets.

[13] Mrs. Ross claims that when the Pizza Hut brand was acquired, it was operated by the couple under the business name, Pizza Hut until the ownership of the business name was transferred to the company. At the time of the transfer, Pizza Hut operated solely from its Carenage, St. George's location. Mrs. Ross contends that through her leadership of the company, it was able to open a new Pizza Hut branch in Grand Anse in or about 24<sup>th</sup> August 2017. Her leadership also allowed the company to acquire Subway in Grand Anse, Saint George, Esplanade Mall, Melville Street, Saint George's and on the St. George's University (SGU) Campus, True Blue, Saint George, respectively in or about 1<sup>st</sup> March 2013.

[14] Mrs. Ross states that by letter dated 1<sup>st</sup> August 2017, from Mr. Ross' Attorneys her employment with the company was terminated without any cause or justifiable reason and without the requisite notice to her. Mr. Ross' lawyers dispatched a

cheque in the sum of \$28,500.00 which they described as the sum total of her employment benefits upon being terminated by the company.

[15] After she filed suit for divorce, the parties tried to settle matters pertinent to financial provision and property adjustment by way of mediation. These efforts failed.

[16] Mrs. Ross alleges that she dedicated herself fully to Mr. Ross, the company and the businesses since she married him in November 2009. She goes on to state that as a result of the above, she was unable to practice as an architect and has been unable to develop herself. She explains that it will be difficult for her to re-enter the practice of architecture since she was out of that profession for about 8 years. Re – entry to her chosen profession would require continuing education and re-training.

[17] Mr Ross also testifies that Mr. Ross promised to provide her with proper housing accommodation, to ensure that she was financially secure and to supply her with a Volkswagon SUV. She complains that Mr. Ross has not met any of those promises but rather, he has kept her financially dependent on him throughout the marriage.

[18] In her further affidavit filed on 29<sup>th</sup> June 2019, Mrs. Ross states that she is the joint owner of a house with Mr. Ross. She claims that the couple jointly purchased the Miramar property situate at Broward County, Florida in the United States of America (“Miramar property”). She wishes to have Mr. Ross turn over his half share of this property to her.

[19] The affidavit also exhibits a document titled “City of Miramar, Human Resources Department, Comprehensive Pay Plan FY 2017, Salary Schedule (Full time classification).” I extrapolate from this document that it refers to the salary

schedule for the financial year 2017. Mrs. Ross states that she earned the salary of a planner grade 28 in the sum of USD 64,557.00. I pause here to observe that the document produced by Mrs. Ross identifies an employee serving at grade 28 as a principal planner whose minimum salary is listed as USD68,295.88 and the maximum salary as USD 115,404.885.

### **Mr. Ross' evidence**

[20] Mr. Ross filed 3 affidavits; affidavits filed on 20<sup>th</sup> April 2018, 29<sup>th</sup> June 2018, and 4<sup>th</sup> December 2018. His evidence explains that he met Mrs. Ross in the year 2008 during one of her visits to Grenada when she delivered a package sent to him from a mutual friend. He was 74 years old at the time. Mrs. Ross was 34 years old at the time. Mr. Ross was then grieving the recent loss of his beloved wife, Carmen, with whom he shared one child, Carol – Ann Ross.

[21] During a brief courtship with Mrs. Ross he would visit Miami Florida quite often to meet with her. When he visited her, he would stay at the Marriott Hotel where Mrs. Ross would join him to spend time together. He never stayed at Mrs. Ross' home in Florida or visited her place of work. He recalls her saying that she worked for a water company.

[22] During the courtship, Mrs. Ross would also visit Grenada to meet with Mr. Ross. During those visits, he would pay for her to stay at the Blue Horizons Hotel in Grand Anse, Grenada. She was never invited to or stayed at his H.A Blaize Street home. He testifies that Mrs. Ross was never invited to that house because he viewed it as the place where he and his beloved deceased wife Carmen spent their many years of marital bliss. At paragraph 9 of his 20<sup>th</sup> April 2018 affidavit, he states that *"the H.A Blaize Property is sacred and of great sentimental value to me and I felt that it would be somewhat disrespectful to my deceased wife, and our daughter, to invite another woman into the home."*

- [23] Notwithstanding his stance on the sanctity of the H.A Blaize Street home, he invited Mrs. Ross to reside there once they got married in 2009. The couple lived there until 2017 when he wrote to Mrs. Ross requesting a divorce.
- [24] Mr. Ross addressed the acquisition of the H.A Blaize Street property and its occupation after his marriage to Mrs. Ross. He states that the property is a 4 – storey building comprising a basement (storage area) on the ground floor which is below road level (“the first floor”), a garage on the floor immediately above (“the 2<sup>nd</sup> floor”), a kitchen and dining room with a bedroom and study area on the floor immediately above (“the 3<sup>rd</sup> floor”), and a bedroom and bathroom on the top floor (“the 4<sup>th</sup> floor”).
- [25] Mr. Ross explains that he purchased the H.A. Blaize Street property together with his deceased wife, Carmen, in or about the year 1987 approximately 22 years before his marriage to Mrs. Ross. He states that he lived there with his first wife and only child, Carol-Ann Ross.
- [26] When Mrs. Ross took up Mr. Ross’ invitation to live in the H.A Blaize home after the marriage in November 2009, the couple occupied the 3<sup>rd</sup> and 4<sup>th</sup> floors of the home. Mr. Ross claims that he slept on the 4<sup>th</sup> floor while Mrs. Ross settled on the 3<sup>rd</sup> floor. The arrangement was designed to assist Mrs. Ross to utilise a study area since she had advised Mr. Ross that she was pursuing doctoral studies. In the initial stages of the marriage, Mrs. Ross would join her husband on the 4<sup>th</sup> floor at nights. He says that during the 8 year marriage, Mrs Ross made no financial or non-financial contributions to the said property. Mr. Ross explains that no renovations, alterations or extensions were made to the home while Mrs. Ross lived there.
- [27] The H.A Blaize house is physically located next to Mr Ross’ office at the company. The 2 buildings are within 2 feet of each other with a door and a flight of stairs

separating the two spaces. This structure conveniently facilitates Mr Ross' access to his business offices and his home.

[28] At paragraphs 16 to 19 of the 20<sup>th</sup> April 2018 affidavit, Mr Ross levels several charges of infidelity at Mrs. Ross and at least one act of physical abuse which was allegedly witnessed by a member of the Royal Grenada Police Force. These matters will be addressed below in this judgment. Suffice it to say that Mr. Ross explains that by the year 2017 he was satisfied that his marriage was over.

[29] As it pertains to Mrs. Ross' engagement with the company, Mr. Ross does not give much information to the court. He explains at paragraph 1 of his 20<sup>th</sup> April 2018 that his lawyers advised him that these proceedings are the "*inappropriate forum to address the Applicant's grievances.*" He offers the view that Mrs. Ross was never his employee and as such all matters of that nature should be pursued against the company. He says that the employment complaints are presently engaging the Labour Commissioner.

[30] Mr. Ross disputes that his wife contributed to the company or that she saved the same from collapse. He repeats the charge that she was a mere employee. He refutes the various promises that she claims he made to her. He says he has no knowledge of the ease with which Mrs. Ross may re-enter her previous employment. He opines that, as a qualified architect, he cannot appreciate how difficult that re-entry ought to be.

[31] Mr. Ross strongly disputes Mrs. Ross's claim that he made her financially dependent on him. He points out again that his former wife was an employee of the company earning a salary. Further, he testifies that he gave her a monthly allowance of \$1500.00 to take care of groceries for the couple. He still provided this sum to her at the time of swearing to the 20<sup>th</sup> April 2018 affidavit.



- [32] In respect of the reliefs sought Mr. Ross says that he is currently paying maintenance pending suit in the sum of \$1500.00 per month.
- [33] In respect of a lump sum payment, he does not believe that Mrs. Ross is entitled to such a payment for the reasons set out in his affidavit. When it comes to the relief sought in respect of the H.A Blaize Street home, Mr. Ross says that he “vehemently” opposes this head of relief. His view is that Mrs. Ross has failed to show the basis for such a claim. While failing to mention the same in her 2 affidavits, she has no shown how she has a legal, equitable or other interest in the same. He asserts that Mrs. Ross has made no financial, non – financial contribution to the H.A Blaize Street property sufficient in law to permit a transfer of the H.A Blaize Street property to her.
- [34] As it pertains to the transfer of shares and interests in the company, Mr Ross also relies on the fact that his former wife was employed with the company to dispute her claims to being entitled to a share.
- [35] In his 29<sup>th</sup> June 2018 affidavit, Mr Ross testifies that the Miramar property was purchased at a price of USD 274,900.00 from his personal funds and partly from a mortgage obtained from the National Commercial Bank (now Republic Bank (Grenada) Limited). He states that Mrs. Ross has made no financial contribution towards the purchase price of the Miramar property.
- [36] Further, Mr. Ross states that less than one month after he purchased the Miramar property he executed a Quitclaim Deed transferring his sole interest in it to himself and Mrs. Ross as joint tenants. The property is said to be valued at USD 387,230.00. Mr. Ross proposes to transfer his half share of the Miramar property to Mrs. Ross in exchange for his half share valued at USD 193,615.00 or ECD 516,952.05.

[37] In closing, Mr. Ross repeats his claim that Mrs. Ross was an employee of the several businesses and was well remunerated by each business she worked for. He further states that in any event, ancillary relief proceedings are improper proceedings to raise employment grievances and the court has no jurisdiction in such proceedings to hear and determine employment disputes.

[38] The 3rd affidavit filed on 4<sup>th</sup> December 2018 recites the fact that Mrs. Ross' employment complaints against the company were settled before the Labour Commissioner. The terms of that settlement were not disclosed to the court as they are said to be confidential.

#### **Submissions – Mr. Ross' comments on Mrs. Ross' evidence**

[39] Mr. Ross filed submissions on 31<sup>st</sup> January 2019 in which he highlights the limited evidential material presented by Mrs. Ross. His opening salvo is that Mrs. Ross has claimed reliefs which are not supported by the evidence which she has produced. At paragraph 55, he submits "*save bald requests for orders that the Respondent transfer his interest in real and personal property to her ..., the Applicant has not even attempted to justify or substantiate her entitlements to the orders requested ...*"

[40] Mr. Ross then addressed the evidence regarding each heads of relief sought by Mrs. Ross –

(1) **Maintenance pending suit** - Mr. Ross explains that he continues to pay Mrs. Ross the sum of \$1500.00 per month as maintenance. For reasons stated in his legal submissions, he posits that this sum should be discontinued.

(2) **Lump sum payments** – Mr. Ross submits that Mrs. Ross has supplied no evidence to assist the court to determine how it ought to award a lump sum

payment. He contends that, on the other hand, he has provided uncontroverted evidence that –

- (a) he was physically abused by Mrs. Ross;
- (b) Mrs. Ross' was unfaithful and this caused him anxiety, humiliation and embarrassment;
- (c) He paid all the living and household expenses without Mrs. Ross' input;
- (d) Mrs. Ross made neither financial nor non-financial contributions to the household;
- (e) Mrs. Ross is an architect aged 44 years old;
- (f) He is a business man aged 84 years old; and
- (g) He acquired his businesses and properties before meeting and before marrying Mrs. Ross.

(3) Mr. Ross further disputes Mrs Ross' evidence in support of the lump sum payment request on the basis that the exhibit presented as proof that she earned USD64,557.00 per annum is not "*sufficient or appropriate...*"

(4) **Transfer of H.A Blaize Street Property** – Mr. Ross again asserts that this relief is unsupported. He points out that the following evidence that he has presented is uncontroverted -

- (a) The H.A Blaize Street property was purchased by Mr. Ross and his deceased wife Carmen Ross in 1987;
- (b) Mrs. Ross moved into the same in or about November 2009 after being married to Mr. Ross;
- (c) Mrs Ross made no financial or non-financial contribution to the H.A Blaize Street property;
- (d) Neither party has made any improvements, renovations, alterations, expansion to the H.A Blaize Street property;
- (e) The H.A Blaize Street property is about 2 feet away from the elderly Mr. Ross' office which affords him easier access to his home and work; and

- (f) All household expenses and general living expenses were solely borne by Mr. Ross.
- (5) **The Miramar property** – Mr. Ross accepts that this property is in the joint names of both parties. He claims that this is the only property jointly owned by the former spouses. He accepts the market value of the house as USD 387,230.00. Again, Mr. Ross claims that there is simply no basis presented by Mrs. Ross for her claim to the transfer to her of his share of the Miramar property. He proposes however that he transfer his half share to Mrs. Ross at a consideration of USD 193,615.00.
- (6) Mr. Ross points out the following uncontroverted evidence –
- (a) Mr. Ross purchased the Miramar property in October 2008 with his own funds and funds obtained from a mortgage raised with National Commercial Bank;
  - (b) In November 2008 prior to his marriage he transferred that property to the joint names of the parties;
  - (c) Mrs. Ross contributed nothing to the purchase of the Miramar property;
  - (d) Mr. Ross purchased the Miramar property as a matter of convenience and in furtherance of his courtship of Mrs. Ross; and
  - (e) The value of the Miramar property is USD 387,230.00.
- (7) **Transfer of shares** – Mr. Ross emphatically points out that Mrs. Ross has no more than demonstrated on her evidence that she is a former employee of the company who asserts her exemplary leadership. Mr. Ross asks the court to note that the company is not a party to the application for ancillary relief and this is not the appropriate forum for the relief regarding employment issues. He claims that Mrs. Ross was well remunerated as an employee. He repeats his assertion that all employment issues were settled by the Labour Commissioner.
- (8) Mr. Ross points out the following uncontroverted evidence –

- (a) Mrs. Ross was employed by the company in its businesses stated above in this judgment;
  - (b) Mr. Ross is the managing director of the company;
  - (c) Mrs. Ross was paid a salary by each of the 3 businesses in which she was employed;
  - (d) Her complaints about wrongful termination were resolved by the Labour Commissioner. A deed of release and separation was executed between Mrs. Ross and the company; and
  - (e) The company is not a party to this application.
- (9) Mr. Ross submits that Mrs. Ross' employment history with the company provides no basis for the court to order Mr. Ross to transfer his shares and interest in the company to her. Her relationship with the company was in the capacity of an employee whose services were properly compensated and properly terminated.
- (10) The point is further made that no evidence has been led as to the extent of the parties' shareholder interests in the company or any interest for that matter. It is Mrs. Ross' application, it is said, and she must lead evidence to substantiate an order for transfer of interests or shares in businesses which Mr. Ross claims to have acquired even before meeting Mrs. Ross.
- (11) Mr. Ross repeats his disputation of Mrs. Ross's claims that she saved the business from collapse or that her exemplary leadership caused the same to grow.
- (12) **Avoidance of disposition** – Mr. Ross voluntarily undertakes not to dispose of any of the property in contention until the disposition of this application or with the leave of the court.

## Mr. Ross' legal submissions

[41] **Maintenance pending suit** - Mr. Ross relies on section 22 of the Matrimonial Causes Act 1973 UK ("the Act") which reads –

*On a petition for divorce, nullity of marriage or judicial separation, the court may make an order for maintenance pending suit, that is to say, an order requiring either party to the marriage to make to the other such periodical payments for his or her maintenance and for such term, being a term beginning not earlier than the date of the presentation of the petition and ending with the date of the determination of the suit, as the court thinks reasonable.*

*[(2) An order under this section may not require a party to a marriage to pay to the other party any amount in respect of legal services for the purposes of the proceedings.*

[42] Mr. Ross submits that the terms of section 22 of the Act preclude the requested relief for maintenance pending suit. The decree absolute was granted on 24<sup>th</sup> January 2018. The cases of **Clevette Sharplis v Simon Sharplis**<sup>1</sup> and **Michael McIntyre v Margery Ann McIntyre**<sup>2</sup> are provided as authorities supporting this argument.

[43] **Lump sum payment** – Mr Ross recites section 23(1) (c) and 23(3) (a) which read-

*23. 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 –*

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<sup>1</sup> DOMHMT 2008/0012

<sup>2</sup> GDAHMT 2013/0024

*(c) an order that either party to the marriage shall pay to the other such lump sum or sums as may be so specified.*

*23.3 (a) an order under this section that a party to a marriage shall pay a lump sum to the other party may be made for the purpose of enabling that other party to meet any liabilities or expenses reasonably incurred by him or her in maintaining himself or herself or any child of the family before making an application for an order under this section in his or her favour.*

[44] Mr. Ross relies on the case of **Carmel Mason v Eldon Mason**<sup>3</sup> to submit that the onus lies on Mrs. Ross to make out a case for the reliefs that she seeks. He elaborates that Mrs. Ross has placed no evidence before the court of her financial position before or after the marriage “*so as to allow the court to make a comparative analysis and engage in a fair and informed assessment of the Applicant’s financial situation.*”<sup>4</sup> The mere prayer for relief is not sufficient. There must be “*evidence before the court that would enable the court to ascertain the reasonableness or unreasonableness of any quantum of payment under section 23.*”<sup>5</sup>

[45] Mr. Ross then turns to the factors articulated in section 25 of the Act. The section recites the factors that the court must bear in mind when it is deciding how to exercise the power to make the various orders including orders for lump sum payment. Section 25 reads –

***Matters to which court is to have regard in deciding how to exercise its powers under ss 23, 24, 24A, 24B and 24E***

*(1) It shall be the duty of the court in deciding whether to exercise its powers under section 23, 24, 24A, 24B or 24E above and, if so, in what manner, to have regard to all the circumstances of the case, first*

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<sup>3</sup> SVGHMT 2003/0057

<sup>4</sup> Mr. Ross’ submissions filed on 31<sup>st</sup> January 2019 at paragraph 71

<sup>5</sup> Ibid at para. 72

*consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.*

*(2) As regards the exercise of the powers of the court under section 23(1)(a), (b) or (c), section 22A or 23 above to make a financial provision order in favour of a party to a marriage or the exercise of its powers under section 23A, 24 , 24A, 24B or 24E above in relation to a party to the marriage, the court shall in particular have regard to the following matters—*

*(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;*

*(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 contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;*

*(g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;*

*(h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit . . . which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.*



[46] Mr. Ross opines that the court cannot make an assessment pursuant to section 25 since it has not been presented with information regarding Mrs. Ross' personal savings, "*when the uncontroverted evidence is that for the currency of the marriage, she earned 3 salaries from the 3 businesses ... and had no financial obligations in relation to the household.*"<sup>6</sup> The court is reminded that "[t]he duty to make full disclosure to the Court is imperative since it is the only way the Court can placed in a position to properly exercise its discretion under section 25 of the MCA."<sup>7</sup>

[47] Mr. Ross addressed the lack of evidence presented on each factor –

- (1) **Income, earning capacity and financial resources** – Mr. Ross says that there is no evidence of her income or earning capacity to the court except to say that she is a 44 year old woman with qualifications in architecture and building construction. He suggests that Mrs. Ross must have acquired considerable business experience during her time as an employee of the company. Acquired knowledge and skills in business will only increase her marketability.
  
- (2) **Future financial needs, obligations and responsibilities** - the court is informed that Mrs. Ross has also failed to provide evidence of future financial obligations and responsibilities save her assertion that "*it will not be easy to re-enter the practice of Architecture, especially in the USA...building codes and standards have changed; it would require continuing education and re-training for me to even begin to re-enter the practice.*" Mr. Ross surmises that this lack of evidence will preclude the court from assessing the extent of Mrs. Ross' financial hardship.

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<sup>6</sup> Supra, note 4 at paragraph 74

<sup>7</sup> Per Mohamed J in Linda Monica Johnson v Keith Earle Johnson GDAHMT 2009/0152

- (3) **Standard of living enjoyed prior to break down** – Mr. Ross also claims that the absence of evidence regarding Mrs. Ross' lifestyle prior to the breakdown should not lead to the court to conclude that she enjoyed a lavish or extravagant lifestyle before the break down of the marriage. Mr. Ross proposes that the court ought to conclude that Mrs. Ross did not enjoy a life of grandeur due to the fact that she held 3 different jobs with the various businesses run by the company.
- (4) **The age of the parties and the duration of the marriage** – Mr. Ross explains that there is a 40 year age gap between the parties. Reference is made to **Diana Fussee – Durham nee Baker v Rodger Fussee**<sup>8</sup> where the court refused to make an order for financial provision based on the age of the parties. Based on the disparate ages of the parties, the court is urged to find it inappropriate to order an 84 year old man to make financial provisions for a 44 year old woman. Mr. Ross says that Mrs. Ross' alleged qualifications as an architect, building construction professional and the experience acquired in the company's business ought to indicate her capacity to earn.
- (5) The court is also asked to bear in mind that this is a marriage of short duration. See **Julie Brown nee McQueen v Andrew Garvin Brown**<sup>9</sup> where Mohamed J considered the relative short duration of the marriage in adjusting an award for financial provisions.
- (6) **Contributions to the welfare of the family** - Mr. Ross submits that Mrs. Ross has made no contribution to the welfare of the family. On the other hand, he claims that he bore the entirety of the family's financial responsibilities.
- (7) **Conduct of the parties** – Mr. Ross asks for the court to take cognizance of his complaints of physical abuse and infidelity allegedly committed by Mrs.

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<sup>8</sup> SVGHMT2003/0019

<sup>9</sup> GDAHMT 2013/0006

Ross. Mr. Ross submits that these acts meet the standard set out in **Wachtel v Wachtel**<sup>10</sup> where Omrod J observed that

*Where the conduct of one of the parties is.. both obvious and gross, so much so that to order one party to support another whose conduct falls into this category is repugnant to anyone's sense of justice. In such a case, the court remains free to decline to afford financial support or to reduce the support which it would otherwise have given.*

(8) Mr. Ross views it as '*inequitable and repugnant to an objective sense of justice if he were to be ordered to give the Applicant financial support after her obvious and gross misconduct.*'<sup>11</sup>

#### **Transfer of the H.A. Blaize Street Property**

[48] Mr. Ross makes 2 points against any award of the H.A Blaize property to Mrs. Ross –

(1) There is no basis in fact or law presented by Mrs. Ross to facilitate her claim to be entitled to a transfer of the H.A Blaize Street home. The burden of proof falls upon her in that regard and the court is asked to adopt the approach of Ephraim Georgis J in **Sonia Hippolyte v Cletus Hippolyte**<sup>12</sup> where his Lordship lamented the lack of proof of the claims made by the applicant.

(2) Mr. Ross also asks the court to find that the H.A Blaize Street home is not matrimonial property. He relies on the following extract from the judgment of Lord Nicholls in **White v White**<sup>13</sup>

*...property owned by one spouse before the marriage, and inherited property whenever acquired, stand on a different footing from what may be loosely called matrimonial property. According to this view, on a breakdown of the marriage these two classes of property should not*

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<sup>10</sup> [1973] Fam 72

<sup>11</sup> Supra note 4 at para. 75(vii)

<sup>12</sup> SLUHMT2004/0078; see also Rhesa Shipping CO SA v Edmunds (the Popi M) [1985] 2 ALL ER 712

<sup>13</sup> [2001] 1 ALL ER 1 at 13

*necessarily be treated in the same way. Property acquired before marriage and inherited property acquired during marriage come from a source wholly external to the marriage. In fairness, where this property still exists, the spouse to whom it was given should be allowed to keep it. Conversely, the other spouse has a weaker claim to such property than he or she may have regarding matrimonial property.*

### **Transfer of the Miramar property**

[49] Mr. Ross submits that this property is the only item that ought to be considered matrimonial property. He indicates that this property was purchased out of convenience to facilitate his visit to his newly engaged bride to be. The property is now in joint ownership and he has no issues with transferring his half share to Mrs. Ross for the sum of USD 193,615.00. The case of **Pauletta Birmingham v Samuel Birmingham**<sup>14</sup> is provided as authority for this posture. In that case the applicant grounded her request for property adjustment on her contributions of carrying water, building materials and buying groceries. The court awarded a one third share in the house based on its assessment of the extent of her contribution. Mr. Ross says a fair assessment of Mrs. Ross' contribution should turn out to be much less and as such she should be awarded less than one third share of the Miramar property. See also the **Johnson** decision (supra) where Mohamed J did not award one half of the matrimonial assets due to minimal contributions.

### **Transfer of shares and interest in the business**

[50] Mr. Ross relies on the **Johnson** decision (supra) to argue that there is no evidence that the company and its business are matrimonial property. Mr. Ross asks the court to find that the only evidence before the court is Mrs. Ross' claim to providing exemplary service as an employee. But these services were not gratuitous, he claims. His former wife was, he says, generously compensated as an employee of the company. Mr. Ross concludes that the fact Mrs. Ross worked

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<sup>14</sup> DOMHCV 2006/0052

for the company precludes any assessment that the shares and interests of the company are to be treated as matrimonial property.

### **Mrs. Ross' legal submissions**

[51] Mrs. Ross' submissions are more succinct than those presented by Mr. Ross. After reciting much of her factual contentions as set out above in this judgment, Mrs. Ross submits that she is relying on sections 23, 24 and 25 of the Act to seek the various reliefs also recited above in this judgment. Mrs. Ross makes reference to the **McIntyre** case (supra) in support of your propositions. Instructively, both Mrs. Ross' evidence and legal submissions are scant of details. For instance her submissions do not state which parts of sections 23, 24 and 25 she relies on, what facts subsist to support the requests made in regards to the statute and how both work together to make her requests viable.

### **Analysis and awards**

[52] Before elaborating on this part of the discourse, I think that 2 matters require comment –

- (1) the state of the material presented to this court; and
- (2) Mrs. Ross' request for maintenance pending suit.

### **The state of the material**

[53] It is accepted that the jurisdiction to make financial provisions and property adjustments is set out in the Act. See sections 23 and 24. Section 25 states the matters to which the court must have regard when considering whether to make financial provisions and/or property adjustments. The need for full and frank disclosure by all parties of all relevant material to assist the court in carrying out its mandate in this exercise has been underscored for many years and on many occasions. See for instance, the comments of Lord Brandon of Oakbrook in **Livesey (formerly Jersey) v Livesey**<sup>15</sup>

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<sup>15</sup> [1985] A.C. 424 at pgs 436 and 438. See also NG V SG [2011] EWHC 3270; SvS (Non-Disclosure)[2013] FLR 1598; Kingdon v Kingdon [2011] 1FLR 1409

*The scheme which the legislature enacted by sections 23, 24 and 25 of the Act of 1973 was a scheme under which the court would be bound, before deciding whether to exercise its powers under sections 23 and 24, and, if so, in what manner to have regard to all the circumstances of the case, including, inter alia, the particular matters specified in paragraphs (a) and (b) of section 25(1). It follows that, in proceedings in which parties invoke the exercise of the court's powers under sections 23 and 24, they must provide the court with information about all the circumstances of the case, including, inter alia, the particular matters so specified. Unless they do so, directly or indirectly, and ensure that the information provided is correct, complete and up to date, the court is not equipped to exercise, and cannot therefore lawfully and properly exercise, its discretion in the manner ordained by section 25(1).*

*It follows necessarily from this that **each party concerned in claims for financial provision and property adjustment (or other forms of ancillary relief ...)** owes a duty to the court to make full and frank disclosure of all material facts to the other party and the court. This principle of full and frank disclosure in proceedings of this kind has long been recognised and enforced as a matter of practice. The legal basis of that principle, and the justification for it, are to be found in the statutory provisions to which I have referred. (Bold emphasis added).*

- [54] Mr. Ross has correctly lamented the patently scant material placed before this court by his former wife. I have recited above in detail much of his helpful assessment of the factual information provided by Mrs. Ross. But I fear that the probing lights do not fall singularly on Mrs. Ross' case. Mr. Ross has equally failed to put before this court, any information regarding his income, earning capacity, financial needs, standard of living etc. I fear that both sides have approached this matter with clenched fists holding as much of the necessary material as closely as they possibly could to their guarded embraces. This attitude is entirely inconsistent

with the approach that each side is intended to adopt with respect to these proceedings. As is readily discernible from the extract quoted above, Lord Brandon of Oakbrook was careful to point out in **Livesey** that the exercise of the court's jurisdiction under the Act in cases of this nature places a duty of full and frank disclosure on each party.

[55] The paltry state of the evidence in this case notwithstanding, this court must march on to consider the factors set out in the Act. It cannot recoil from the duty placed upon it because of the poor state of the material.

#### **Mrs. Ross' request for maintenance pending suit**

[56] Mr. Ross rightly opposes the grant of an award of maintenance pending suit at this juncture. Section 22 of the Act has been set out above and it is quite unambiguous. An order for maintenance pending suit cannot subsist beyond the date of determination of the petition for divorce. Mrs. Ross' petition for divorce was granted on 24<sup>th</sup> January 2018. The request for maintenance pending suit cannot be countenanced at this point in the proceedings and is therefore refused.

#### **The section 25 Factors**

[57] As was stated above, in order to determine applications for financial provision and property adjustment, the court has to consider the provisions of sections 23, 24 and 25 of the Act. The relevant parts of section 23 and 25 have been recited above. The relevant parts of section 24 read –

*(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 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 to 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) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage[, other than one in the form of a pension arrangement (within the meaning of section 25D below)];*

*(d) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement[, other than one in the form of a pension arrangement (within the meaning of section 25D below)];*

*subject, however, in the case of an order under paragraph (a) above, to the restrictions imposed by section 29(1) and (3) below on the making of orders for a transfer of property in favour of children who have attained the age of eighteen.*

*(3) The court may make an order under subsection (1)(c) above notwithstanding that there are no children of the family.*

*(3) Without prejudice to the power to give a direction under section 30 below for the settlement of an instrument by conveyancing counsel, where an order is made under this section on or after granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in*



*pursuance of the order shall take effect unless the decree has been made absolute.*

[58] In order to decide whether and what apportionments are to be made in this case, the court must consider the available pool of resources available or what may be referred to as the marital assets. Indeed the first limb of section 25 of the Act enjoins the court to have regard to the income, earning capacity, property and other financial resources which each of the parties has or is likely to have the foreseeable future.

[59] With respect to property, there is some dispute between the parties as to what constitutes matrimonial property. The following properties are in contention –

- (1) Shares and interest in the company, KFC, Subway and Pizza;
- (2) Real property comprising land and a 4 storey residential property situate at H.A Blaize Street, St. George's Grenada; and
- (3) Real property comprising land and building situate at 12,800 SW 18<sup>th</sup> Street, Miramar USA.

[60] In his evidence and his legal submissions, Mr. Ross strenuously objects to treating the shares and interests in the company and its associated business and the H.A Blaize property as matrimonial property. For one thing, he says that his former wife was a mere employee in the business of the company and that she was well paid for those services. In respect of the H.A Blaize house, he contends that this was a pre-marital asset which should not be seen as part of the matrimonial property especially since the marriage was short and Mrs. Ross has not shown how she has contributed to the same after moving into the home to reside with him.

**What approach should the court adopt when it comes to disputes about property?**

[61] The law as to what is to be considered matrimonial property is fairly well settled at this point. I refer to the guidance provided in such cases as **White v White** (supra) and **Miller v Miller; McFarlane v McFarlane**<sup>16</sup>.

[62] In **White**, Lord Nicholls of Birkenhead made the following observations –

*This distinction is a recognition of the view, widely but not universally held, that property owned by one spouse before the marriage, and inherited property whenever acquired, stand on a different footing from what may be loosely called matrimonial property. According to this view, on a breakdown of the marriage these two classes of property should not necessarily be treated in the same way. Property acquired before marriage and inherited property acquired during marriage come from a source wholly external to the marriage. In fairness, where this property still exists, the spouse to whom it was given should be allowed to keep it. Conversely, the other spouse has a weaker claim to such property than he or she may have regarding matrimonial property.*

***Plainly, when present, this factor is one of the circumstances of the case. It represents a contribution made to the welfare of the family by one of the parties to the marriage. The judge should take it into account. He should decide how important it is in the particular case. The nature and value of the property, and the time when and circumstances in which the property was acquired, are among the relevant matters to be considered. However, in the ordinary course, this factor can be expected to carry little weight, if any, in a case where the claimant's financial needs cannot be met without recourse to this property.*** (Bold emphasis added)

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<sup>16</sup> [2006]3 ALL E R 1

[63] Lord Nicholls of Birkenhead also sat on the appeals heard in **Miller** (supra) where he again explained that –

*By s 25(2)(a) the court is bidden to have regard, quite generally, to the property and financial resources each of the parties to the marriage has or is likely to have in the foreseeable future. This does not mean that, when exercising his discretion, a judge in this country must treat all property in the same way. The statute requires the court to have regard to all the circumstances of the case. One of the circumstances is that there is a real difference, a difference of source, between (1) property acquired during the marriage otherwise than by inheritance or gift, sometimes called the marital acquest but more usually the matrimonial property, and (2) other property. The former is the financial product of the parties' common endeavour, the latter is not. **The parties' matrimonial home, even if this was brought into the marriage at the outset by one of the parties, usually has a central place in any marriage. So it should normally be treated as matrimonial property for this purpose. As already noted, in principle the entitlement of each party to a share of the matrimonial property is the same however long or short the marriage may have been.***

*The matter stands differently regarding property (non-matrimonial property) the parties bring with them into the marriage or acquire by inheritance or gift during the marriage. Then the duration of the marriage will be highly relevant. The position regarding non-matrimonial property was summarised in *White v White* [2001] 1 All ER 1 at 14, [2001] 1 AC 596 at 610:*

*'Plainly, when present, this factor is one of the circumstances of the case. It represents a contribution made to the welfare of the family by one of the parties to the marriage. The judge should take it into account. He should decide how important it is in the particular case. The nature and value of the property, and the time when and circumstances in which the property*

*was acquired, are among the relevant matters to be considered. However, in the ordinary course, this factor can be expected to carry little weight, if any, in a case where the claimant's financial needs cannot be met without recourse to this property.'*

*In the case of a short marriage fairness may well require that the claimant should not be entitled to a share of the other's non-matrimonial property. The source of the asset may be a good reason for departing from equality. This reflects the instinctive feeling that parties will generally have less call upon each other on the breakdown of a short marriage.*

*With longer marriages the position is not so straightforward. Non-matrimonial property represents a contribution made to the marriage by one of the parties. Sometimes, as the years pass, the weight fairly to be attributed to this contribution will diminish, sometimes it will not. After many years of marriage the continuing weight to be attributed to modest savings introduced by one party at the outset of the marriage may well be different from the weight attributable to a valuable heirloom intended to be retained in specie. Some of the matters to be taken into account in this regard were mentioned in the above citation from White's case. To this non-exhaustive list should be added, as a relevant matter, the way the parties organised their financial affairs.*

- [64] It would appear to me that the present law makes some distinction between property which is brought into the marriage by one party or inherited during the marriage by one of the parties (what Lord Nicholls terms “non-matrimonial property”) in contradistinction to property acquired by the contribution of both parties whether before or after the marriage (what his Lordship calls “matrimonial property”). However one category of “pre-owned asset” may be treated as matrimonial property and that is the matrimonial home. Lord Nicholls explains in the cited text from **Miller** (supra) that if this property was brought into the marriage by one party but it is treated as the matrimonial home, it ought to be considered matrimonial property.

[65] The foregoing learning suggests to me the following general approaches in respect of non-matrimonial property –

- (1) The non – matrimonial property represents a contribution of one party to the welfare of the family and the judge has to take it into account;
- (2) The judge will decide how important it is to the case;
- (3) In determining this issue, the nature and value of the property, the time and circumstances in which the property was acquired, the way the parties organised their finances and the duration of the marriage are matters to which the judge should have recourse;
- (4) In a short marriage, fairness may very well require that the claimant should not be entitled to a share in the other’s non-matrimonial property;
- (5) In a long marriage, the weight to be attributed to a non-matrimonial property may diminish or not;
- (6) Where there is evidence that the financial needs of the claimant cannot be satisfied without recourse to this property, the distinction may carry little weight.

[66] Lord Nicholls nonetheless cautioned in **Miller** (supra) that the court ought to conduct the exercise with some flexibility when applying these principles. He gave by way of example, instances of big money cases where capital assets might be more than adequate to meet the needs of either party or to meets the requirements of compensation.

[67] Applying the foregoing to this case, I find the following to be the matrimonial property –

- (1) **The H.A Blaize Street House**. This property was brought to the marriage by Mr. Ross but his own evidence indicates that it was utilised as the matrimonial home;

- (2) **The Miramar property.** This house was purchased solely by Mr. Ross but he has stated in his evidence that he placed the house in the joint name of the parties evincing the intention that it should be jointly owned. I would hasten to add that the questions regarding distribution along lines of needs, compensation or sharing are not being decided at this point in respect of this asset or the other matrimonial assets. This part of the exercise is to identify the property and other assets that fall within the pool of available resources;
- (3) **The shares and interests in Subway and Pizza Hut.** These 2 entities along with KFC and the company are business assets but they must be considered no less part of the property of the matrimony if the facts so indicate. Lordship Nicholls explains the position thusly in **Miller** (supra),

***For the same reason the courts should be exceedingly slow to introduce, or re-introduce, a distinction between 'family' assets and 'business or investment' assets. In all cases the nature and source of the parties' property are matters to be taken into account when determining the requirements of fairness. The decision of Munby J in P v P (inherited property) [2004] EWHC 1364 (Fam), [2005] 1 FLR 576 regarding a family farm is an instance. But 'business and investment' assets can be the financial fruits of a marriage partnership as much as 'family' assets. The equal sharing principle applies to the former as well as the latter. The rationale underlying the sharing principle is as much applicable to 'business and investment' assets as to 'family' assets. (Bold emphasis added)***

- (4) When the marriage commenced, Subway and Pizza Hut were not part of the business portfolio of the company. It is acknowledged that these 2 businesses were engaged after some input by both parties. However, Mr. Ross' view is that his former wife's input must be considered solely through the lens of an employee within the company. As such her efforts in the acquisition and building up of these 2 assets must not be regarded as part of the familial

construct. I cannot join Mr. Ross on such an excursion. See again Lord Nicholls' pronouncements in **Miller** (supra) on the treatment of "business assets" recited above.

- (5) It can be uncontrovertibly deduced from the just cited exhortation given by Lord Nicholls that the modern law is not so cynical as to say to a former wife that because she was engaged in a salaried post in one or more of the businesses conducted by the couple during the marriage, that her input must be confined to that engagement and cannot be seen as part of her contribution to building of the pool of assets available to the family. My own view is that there can be no fairness in a law which says to a former wife that the time and effort that she put into the business conducted by the family must be regarded, quantified and compensated up to the point of being an employee and that her husband must have the balance of what is left. That sort of reasoning is redolent of an era in our history where the efforts exhorted by a former wife during a marriage in building up its resources be it business or otherwise were subjected to minimal and scant regard. That time has by now been gladly entombed in the grave of unfortunate memories past. This court is not endowed with powers to resurrect the skeletons of such a forgotten time or to pursue an invocation of its ghosts.
- (6) The long and short of it is that Mr. Ross himself has not denied that his wife left Florida, came to Grenada and worked in these business after they were married. A letter dated 4<sup>th</sup> July 2017 has been produced under his hand stating that she was engaged with the business and was even a franchisee of Subway. The letter went to state the extent of the income that she earned from the business. I have alluded to the fact that Mrs. Ross has not done her case many favours in the manner in which she has provided the necessary material for this court to process her requests. But these are all matters that I will consider when we are to cross the bridge as to what, if anything is to be awarded and in what proportions. At this point it suffices to show that these

properties were all acquired during the marriage and both parties were engaged, in whatever capacity and to whatever extent, in the acquisition and build up. They are accordingly matrimonial properties.

(7) **The shares and interest in KFC and the company.** I am somewhat diffident about approaching those 2 assets as matrimonial property. The biggest concern is that they were started and operational long before Mr. Ross met his former wife. He had worked to build up the reputation and profitability of these entities with his deceased wife, Carmen. However, the evidence under his own hand indicates that Mrs. Ross was engaged with the company for 8 years and in particular KFC in the position of its operations manager. These facts cannot be ignored. These businesses were brought into the marriage and Mrs. Ross made some contribution to their continued existence. Mr. Ross asks me to leave them aside and not to consider them as part of the marital property because his former wife was engaged as an employee. I will again refuse to engage in such a venture for the reasons that I have indicated above. Whether Mrs. Ross is entitled to any share of these assets will be explored later.

**Is Mrs. Ross entitled to any of the property adjustments and other reliefs that she seeks?**

[68] It is by now accepted that on applications of this nature, it is the duty of the court to have regard to all the circumstances of the case when deciding to exercise its powers under sections 23 and 24 of the Act. Indeed section 25 (1) mandates as much. The objective is to look at all the circumstances to arrive at an outcome that is fair. In **Miller** (supra), Lord Nicholls gave the following guidance on the approach to be adopted with regards to finding what is fair in all the circumstances –

*The starting point is surely not controversial. In the search for a fair outcome it is pertinent to have in mind that fairness generates obligations as well as rights. **The financial provision made on divorce by one party for the other, still typically the wife, is not in the nature of largesse. It is not a case of 'taking away' from one party and 'giving'***



**to the other property which 'belongs' to the former. The claimant is not a supplicant. 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.**

*What then, in principle, are these requirements? The statute provides that first consideration shall be given to the welfare of the children of the marriage... Beyond this several elements, or strands, are readily discernible. The first is financial needs. This is one of the matters listed in s 25(2)(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'.*

*This element of fairness reflects the fact that to greater or lesser extent every relationship of marriage gives rise to a relationship of interdependence. The parties share the roles of money-earner, homemaker and child-carer. Mutual dependence begets mutual obligations of support. When the marriage ends fairness requires that the assets of the parties should be divided primarily so as to make provision for the parties' housing and financial needs, taking into account a wide range of matters such as the parties' ages, their future earning capacity, the family's standard of living, and any disability of either party. Most of these needs will have been generated by the marriage, but not all of them. Needs arising from age or disability are instances of the latter.*

*In most cases the search for fairness largely begins and ends at this stage. In most cases the available assets are insufficient to provide adequately for the needs of two homes. The court seeks to stretch modest finite resources so far as possible to meet the parties' needs. Especially where children are involved it may be necessary to augment the available assets by having recourse to the future earnings of the money-earner, by way of an order for periodical payments.*

*Another strand, recognised more explicitly now than formerly, is compensation. This is aimed at redressing any significant prospective*

*economic disparity between the parties arising from the way they conducted their marriage. For instance, the parties may have arranged their affairs in a way which has greatly advantaged the husband in terms of his earning capacity but left the wife severely handicapped so far as her own earning capacity is concerned. Then the wife suffers a double loss: a diminution in her earning capacity and the loss of a share in her husband's enhanced income. This is often the case. Although less marked than in the past, women may still suffer a disproportionate financial loss on the breakdown of a marriage because of their traditional role as home-maker and child-carer.*

*When this is so, fairness requires that this feature should be taken into account by the court when exercising its statutory powers. The Court of Appeal decision in SRJ v DWJ (financial provision) [1999] 3 FCR 153 at 159–160 is an example where this was recognised expressly.*

*Compensation and financial needs often overlap in practice, so double counting has to be avoided. But they are distinct concepts, and they are far from coterminous. A claimant wife may be able to earn her own living but she may still be entitled to a measure of compensation.*

*A third strand is sharing. This 'equal sharing' principle derives from the basic concept of equality permeating a marriage as understood today. Marriage, it is often said, is a partnership of equals. In 1992 Lord Keith of Kinkel approved Lord Emslie's observation that 'husband and wife are now for all practical purposes equal partners in marriage': R v R (rape: marital exemption) [1991] 4 All ER 481 at 484, [1992] 1 AC 599 at 617. This is now recognised widely, if not universally. The parties commit themselves to sharing their lives. They live and work together. When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary. Fairness requires no less. But I emphasise the qualifying phrase: 'unless there is good reason to the contrary'. The yardstick of equality is to be applied as an aid, not a rule.*

*This principle is applicable as much to short marriages as to long marriages: see Foster v Foster [2003] EWCA Civ 565 at [19], [2005] 3 FCR 26 at [19] per Hale LJ. A short marriage is no less a partnership of equals than a long marriage. The difference is that a short marriage has been less enduring. In the nature of things this will affect the quantum of the financial fruits of the partnership.*

*For the same reason the courts should be exceedingly slow to introduce, or re-introduce, a distinction between 'family' assets and 'business or investment' assets. In all cases the nature and source of the parties' property are matters to be taken into account when determining the requirements of fairness. The decision of Munby J in P v P (inherited property) [2004] EWHC 1364 (Fam), [2005] 1 FLR 576 regarding a family farm is an instance. **But 'business and investment' assets can be the financial fruits of a marriage partnership as much as 'family' assets. The equal sharing principle applies to the former as well as the latter. The rationale underlying the sharing principle is as much applicable to 'business and investment' assets as to 'family' assets.** (Bold emphasis added).*

[69] It remains to apply the foregoing salutary exposition to an assessment of the various factors set out in section 25 of the Act. Thereafter, I will consider whether any or all of the reliefs sought ought to be granted and if so, to what extent.

#### **Income, earning capacity, property and other financial resources present or future**

[70] I have alluded to the parsimonious generosity of both parties with regards to disclosure in this case. However the following can be extracted –

- (1) Mrs. Ross is a qualified architect who was, in all probabilities employed in her trade before the marriage to Mr. Ross. I have already addressed the difficulty that I have accepting the income that she claims to have previously earned. For my part, I cannot comprehend how difficult it would have been to introduce

some evidence from her former employers as to her employment history at the time that she left her job in Florida to join Mr. Ross in the businesses;

- (2) In terms of earnings after she joined the company, Mrs. Ross produced the letter dated 4<sup>th</sup> July 2017 in which Mr. Ross sets out the various posts that she held in the company and its businesses. These have been recited above. The letter states that she earned a salary of \$180,000.00 per annum. This engagement with the company was terminated by letter dated 1<sup>st</sup> August 2017.
- (3) Mrs. Ross's qualifications ought to aid her earning capacity in the future. She has indicated that she may encounter some difficulty with re-entering the practice but then again there is very little evidence of the details of any requalification, relicensing, retraining, retooling etc. that may be necessary. Bluntly, it would be her burden in this court to produce evidence that demonstrates the nature and degree of difficulty envisaged with regards to these issues. Her statements amount to nothing more than bland assertions that she would encounter challenges re-entering the field of architecture. However, courts do not subsist in cloistered towers far removed from reality. It is quite reasonable to deduce that Mrs. Ross may have to retool or retrain to re-enter her practice of architecture. This court will make what it can of this evidence in trying to give Mrs. Ross what seems fair based on the case that she has presented.
- (4) Mrs. Ross has also testified of her experience with the company and of her assistance with its growth and expansion. I assume that this experience will not be lost but will also augment her chances of successful and soonest re-entry into the world of work outside of the company;
- (5) As stated above both parties have some interest in the matrimonial property which consists of the matrimonial home, the company and the various

businesses being operated by the company. The extent of their interests will be discussed below when I address contributions;

- (6) Mr. Ross has also failed to disclose his income and earning capacity present or future to this court. But I surmise from his evidence that his income is derived from the businesses. He has not said to the court whether he has other investments, savings, pensions etc. I hasten to add that Mrs. Ross has equally failed to produce any of this evidence. No valuation of the businesses has been presented. Similarly not one iota of evidence has been proffered as to the profits of the companies or Mr. Ross' earnings from them. The businesses are going concerns. I assume that they will so continue and that Mr. Ross will be earning his future livelihood from these businesses.

#### **Financial needs, obligations and responsibilities of each party in the present and/or future**

- [71] Again this part of the case is plagued with little material but it can be deduced that Mrs. Ross will need a place to live, money to retool to re-enter the practice of architecture and maintenance while she retools to pursue future employment. Mr. Ross will similarly need a home and an income to subsist on for the rest of his life.

#### **The age of the parties and the duration of the marriage**

- [72] Mrs. Ross is much younger than Mr. Ross. In my view she stands a better chance of retooling for another career and readjusting post marriage. The marriage is what can be termed a short one. It subsisted for about 8 years.

#### **The standard of living enjoyed by the family before the breakdown of the marriage**

- [73] The income that both parties earned from the company and its businesses seem to have formed the support structure for their subsistence and lifestyle. Notwithstanding the fact that they have not disclosed the value of the company and its businesses and how much it earned, the scant evidence informs me that

the company and its businesses were able to provide Mrs. Ross with income of about \$15,000.00 per month. Mr. Ross was able to manage the expenses of a large house in Grenada plus afford the mortgage for the Miramar property purchased at a cost of about USD 275,000.00. Mrs. Ross testified that she was able to afford to pay the utilities and taxes on the Miramar property. In my assessment, the evidence suggests that the former couple lived a more than comfortable lifestyle in terms of local standards

**Physical or mental disabilities of the parties**

[74] None has been presented

**The contributions that each has made or is likely to make in the future to the welfare of the family**

[75] Much of the evidence here from Mrs. Ross has to do with her contributions to the build – up of the company and its businesses. There is very little to show what she did in regards to, for instance, the acquisition of the Miramar property or the maintenance of the H.A Blaize Street family home. Mrs. Ross did produce utilities and tax payment receipts for the Miramar property and these have not been challenged by Mr. Ross. Mr. Ross on the other hand was more forthcoming on matters regarding the 2 homes. I am not going to recite in detail what has been said above. Suffice to say that it is Mr. Ross who acquired both homes and pays the mortgage for the Miramar property. He gave Mrs. Ross a monthly stipend to purchase food and other items for the matrimonial home. His evidence suggests that he made the greater contribution to the build-up and maintenance of the 2 homes. The bulk of contribution by Mrs. Ross can be extrapolated from what has been recited above as to her contribution to the businesses. Again, much of what I am recounting here is proceeding on the slightest of material. In respect of Mr. Ross' contribution to the businesses, other than saying that he is the managing director of the company and its businesses, very little else is presented. It is however clear that he spent his life building his businesses. They are his life's work into which he must have poured great effort and energy.

### **The conduct of each party if that conduct would be inequitable to ignore**

[76] Mr. Ross wishes the court to consider allegations of infidelity and physical abuse. The law regarding the approach the court should adopt to conduct has been helpfully set out in such cases as **Wachtel v Wachtel** (supra) and **Miller** (supra). For this present discourse I do not believe that I must be troubled too much with Mr. Ross' allegations since they are entirely unsubstantiated. In his submissions he points out that Mrs. Ross has not controverted his allegations of abuse. That is indeed correct but then that is not the end of the matter. I am required to look at his case to see if it has been made out. For instance he claims that one instance of physical abuse occurred in front of a police officer. Was the incident reported? If so, why wasn't some evidence of the report or otherwise produced to this court? Was any action taken by the police based on a report or otherwise? If so, why was there no attempt to place that material before the court? Similarly, I do not find that Mr. Ross has made out a case of infidelity by Mrs. Ross. The allegations are sufficiently serious that the court ought not to simply accept them because Mr. Ross has said so.

### **The value of any benefit which each of them may lose by reason of the dissolution**

[77] Neither party has stated whether they will lose any such benefit. I note that Mrs. Ross is no longer engaged with the company. As such she may stand to lose employment and/or retirement benefits. However no claim of this sort has been presented to the court for its consideration.

### **The awards**

[78] Based on the foregoing findings as to the circumstances in this case I find the following to be fair –

- (1) Mrs. Ross will need a home or money to go towards getting a home. Based on the material available, I will award her sole ownership of the Miramar property.
- (2) Mr. Ross is to transfer his 50% interest in the Miramar property to Mrs. Ross within 28 days of the date of this judgment.

- (3) Mrs. Ross is to assume sole responsibility for the mortgage and other obligations of the Miramar property from the date of the transfer of the same to her.
- (4) The above arrangement is designed to meet Mrs. Ross' need for a home in the present and future.
- (5) Mr. Ross is to retain sole ownership of the H.A Blaize Street home. This will address his needs for a home in the present and future.
- (6) Mrs. Ross' needs also include an income to maintain her whilst she retools to reenter the world of work. In his third affidavit, Mr. Ross makes much of the fact that Mrs. Ross has settled employment issues with the company. He testifies that the contents of that settlement are confidential and cannot be disclosed to the court. My view is that such an approach is wholly inconsistent with the duty to give full and frank disclosure of all relevant material to the court. See my discussions above on the law on full and frank disclosure by both sides. Section 25 entails the disclosure of information regarding whether and how Mr. Ross and Mrs. Ross (in particular Mrs. Ross) would be able to maintain themselves in the future. It would have certainly been possible for both parties to agree to disclose the terms of the settlement report to the court. I am hardly surprised though at the non-disclosure since it is entirely consistent with the unsatisfactory manner in which Mr. and Mrs. Ross have approached their duty to disclose material on this application.
- (7) Having found that at the very least that Mrs. Ross must receive some form of maintenance for a reasonable period while she prepares herself for reentry into the practice of architecture, I am ordering Mr. Ross to pay her a monthly sum of \$15,000.00 for 2 ½ years totaling \$450,000.00. Payments are to commence from the last working day of August 2019 and are to continue on the last working day of each month thereafter. Mr. Ross is permitted to pay this award to Mrs. Ross as a lump sum payment of the total of this award which amounts to \$450,000.00 which lump sum payment must be made to her within 28 days of the date of this judgment. This seems to be a fair award to Mrs. Ross to provide some income to maintain her and to assist her with retraining for a fair period while she pursues re-entry into the world of work.



[79] Having addressed Mrs. Ross's needs as I have found them on the facts presented, it is quite evident that the balance of the matrimonial assets will be left to Mr. Ross to meet his needs and otherwise. Without rehashing the fact that I do not have before me the value of these assets or the income that he may derive from them, there appears to be more than sufficient left in the pool of assets to meet Mr. Ross needs. In other words, Mr. Ross is left with the bulk of the matrimonial property. This outcome may be proportionate in a fit case but is it proportionate in this instance having regard to all the facts? Put another way; is it a manifestly fair outcome in all the circumstances of this case to decide that Mrs. Ross' entitlement to a share of the pool of matrimonial assets is properly met by that portion of the assets that satisfies her needs? The answer may lie in reminding myself that both parties are meant to share equally in the property of the marriage expect where a different outcome is justifiable based on the facts. My own view is that in this case, a fair sharing of the balance of the matrimonial assets is warranted based on all the circumstances previously outlined.

[80] In respect of all the circumstances reference is made in particular, along with all the other facts, to the following –

- (1) The company and its businesses except Subway and Pizza Hut were started by Mr. Ross long before the parties met;
- (2) There is no evidence that the company and its businesses were anything but successful by the time of Mrs. Ross' entry. Mrs. Ross claims otherwise but like I have said with respect to Mr. Ross' claims re: conduct, not because Mrs. Ross says that the businesses were failing that means it was so. The parties are meant to prove their case. They both have a burden of full and frank disclosure. They have both faltered demonstrably in this regard;
- (3) This was a relatively short marriage; and
- (4) Pizza Hut and Subway were added to the company's portfolio as a result of the efforts of both parties.

[81] Accordingly, I also find the following to be fair in all the circumstances –

- (1) Mrs. Ross must be granted a 25% percent share/interest in Subway and Pizza Hut;
- (2) I will not award her any interest in the company or KFC;
- (3) I add the observation that the extent of the award of shares/interest in the businesses is not a finding that Mrs. Ross' interest could not be greater. However, while Mrs. Ross may have given substantial service to the company and KFC and was instrumental in the acquisition and build – up of Subway and Pizza Hut, her relationship with the company and its businesses was engaged over the course of a relatively short marriage. In my assessment, notwithstanding the contributions made by Mrs. Ross, these businesses especially the company and KFC emerged from the ground work laid by Mr. Ross over many years before he met Mrs. Ross. It must also be recalled that this case has not been aided by many details. The court has done what it can with the disclosure provided by both parties;
- (4) Subway and Pizza Hut are to be valued within 3 months of the date of this order by an expert jointly agreed to by the parties;
- (5) Mrs. Ross is to be paid the value of her 25% share/interest within 4 months of the conclusion of the valuation;
- (6) If the parties fail to agree on a joint expert to conduct the valuation as ordered, either party may apply to the court for an expert to be appointed by the court;
- (8) Mr. Ross is to stop paying the \$1500.00 per month maintenance that he currently makes to Mrs. Ross;
- (9) The parties are to each bear their own costs on this application.

[82] The awards on this application are as follows and they are to be met in the manner set out above –

- (1) Mr. Ross is to transfer his share of the Miramar property to Mrs. Ross within 28 days of the date of this judgment. Mrs. Ross is to assume all

responsibilities for the Miramar property including payment of the mortgage from the date of transfer;

- (2) Mr. Ross will retain the sole ownership of the H.A. Blaize Street home;
- (3) Mr. Ross will pay Mrs. Ross the monthly sum of \$15,000.00 per month as maintenance for 2 ½ years commencing on the last working day of August 2019 and continuing on the last working day of each month thereafter. Mr. Ross is permitted to pay this award to Mrs. Ross as a lump sum of \$450,000.00 which must be paid to her within 28 days of the date of this judgment;
- (4) Mrs. Ross is to be paid the value of a 25% share/interest in Subway and Pizza Hut in the manner set out above;
- (5) Mr. Ross is to cease payment of the monthly sum of \$1500.00 to Mrs. Ross;  
and
- (6) The parties are to bear their own costs on this application.

[83] I thank counsel and the parties for their assistance and their patience.

**Raulston L. A. Glasgow**

High Court Judge

**By the Court**

**Registrar**