

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
BETWEEN**

**2019
FAM/DIV/00522**

T.P.B

Petitioner

AND

J.J.R.B

Respondent

Before: The Hon. Madam Justice G. Diane Stewart
Appearances: Lillith Smith- Mackey for the Petitioner
Rhchetta Godet and Sian Thompson for the Respondent
Ruling Date: 6th April, 2023

RULING

BACKGROUND FACTS

1. The Petitioner, T.P.B was married to the Respondent J.J.R.B on 4th June 2005. There are two children of the marriage, namely L.C.N.B born 4th December 2009 and S.C.B born 29th April 2011. The Petitioner is employed as an IT Engineer. The Respondent is a Technician Specialty.
2. The Petitioner filed her petition on 10th September 2019 seeking to dissolve her marriage on the ground of cruelty.
3. A Decree Nisi was granted on 19th November 2019. Ancillary matters were adjourned to Chambers.
4. The Petitioner filed a Notice of Intention to Proceed with Ancillary Relief on 6th October 2020 seeking the following:-

- i. The Petitioner and Respondent be granted joint custody of the minor children of the marriage with care and control to the Petitioner and liberal access to the Respondent to include staying access
- ii. The Respondent shall continue to pay to the Petitioner the sum of \$400.00 per month by way of maintenance for the said children of the marriage on or before the 28th day of each calendar month and continuing until the said minor children each attain the age of 18 years
- iii. The Respondent shall continue to pay the sum of \$300.00 per child in the months of April and November towards the purchase of necessities for the minor children and shall continue to do so until the minor children each attain the age of 18 years
- iv. The Petitioner shall pay the school fees of the minor child L.C.N.B and the Respondent shall pay school fees of S.C.B until each completes secondary school
- v. The Petitioner and Respondent shall equally share the back to school expenses for the said minor children which include but are not limited to school uniforms, shoes, books and school supplies until the said minor children completes secondary education
- vi. The Petitioner and Respondent shall share the cost of all medical, dental and optical expenses for the minor children until they each attain the age of 18 years

5. By Consent Order made 25th November 2020, it was ordered that:-

- i. The Petitioner and Respondent be granted joint custody of the children with care and control to the Petitioner and liberal access to the Respondent to include staying access
- ii. The Respondent shall continue to pay to the Petitioner \$400.00 per month by way of maintenance for the said children of the marriage on or before the 28th day of each calendar month and continuing until the children each attain the age of 18 years
- iii. The Respondent shall continue to pay the sum of \$300.00 per child in the months of April and November towards the purchase of necessities for the children and shall continue to do so until the children each attain the age of 18 years
- iv. The Petitioner shall pay the school fees of the child L.C.N.B and the Respondent shall pay school fees of S.C.B until each completes secondary school
- v. The Petitioner and Respondent shall equally share the back to school expenses for the said children which include but are not limited to school

uniforms, shoes, books and school supplies until the children complete secondary education

- vi. The Petitioner and Respondent shall share the cost of all medical, dental and optical expenses for the children until they each attain the age of 18 years
6. A Section 73 (1) (b) (1) Declaration was granted declaring that satisfactory arrangements had been made for the welfare of the children.
7. On 17th July 2021, it was ordered that:-
- i. There be an appraisal of the matrimonial home situate in McKinney Drive. The Petitioner and Respondent will agree on a Licensed Appraiser and share the costs of the appraisal equally
 - ii. The Petitioner will provide to the Respondent the records of the mortgage account with Royal Bank for the matrimonial home
 - iii. The Petitioner and Respondent produce financial records of the Business accounts for Bouch Maintenance Company Ltd. from 2016 to date
 - iv. The Petitioner and Respondent provide financial statements on any account signed by either party since 2019
 - v. The Respondent provide to the Petitioner the cheque stubs for Bouch Maintenance Company Ltd. and Commonwealth Construction Company
 - vi. The Respondent produce receipts evidencing the repairs done on the apartment complex situate Blue Hill and Malcolm Road
 - vii. The Petitioner produce the occupancy certificate for the apartment complex

PETITIONER'S EVIDENCE

8. The outstanding issues to be determined are a property adjustment order as set out in a further Notice of Application for Ancillary Matters filed 31 May 2021.
9. There are two pieces of property, two companies and two vans which need to be adjusted.

10. The Petitioner maintains that she purchased a vacant lot in 1998 where the duplex building (“the duplex”) is now constructed. She had obtained a loan for the purchase of the property and had financed the construction of the apartments out of pocket. The apartments were completed in December 2001 and placed on rent in January 2002.
11. The Petitioner asserts that the apartments were fully completed and rented prior to the marriage. She was responsible for all repairs and maintenance herself, without any outside financial assistance.
12. In July 2004 she purchased the matrimonial property for the sum of \$50,000.00. She further asserts that she had refinanced a previous loan to make the purchase to the sum of \$82,192.00. She commenced construction on the home in December 2004. She avers that she gave the Respondent \$50,000.00 of her personal money from a savings account as initial capital to begin construction on the home. She further remortgaged the property for the sum of \$200,000.00 to complete the construction of the home.
13. Monthly salary deductions were taken from her salary to repay the mortgage. The mortgage payments are still currently being deducted from her salary. All household expenses and utility bills were paid from her personal savings account. Throughout the course of the marriage, the Respondent refused to assist her or contribute to the household expenses.

14. The Petitioner’s monthly expenses were outlined as follows:-

i.	Mortgage	\$1,334.91
ii.	FINCO Loan	\$359.86
iii.	Light	\$300.00
iv.	Water	\$30.00
v.	Cable TV	\$35.00
vi.	BTC Internet	\$40.00
vii.	BTC Phone	\$35.00
viii.	Groceries	\$500.00
ix.	Family Medical Ins.	\$300.00
x.	Home Insurance	\$300.00
xi.	School Lunch	\$400.00
xii.	School Fee	\$625.00
	<u>TOTAL</u>	<u>\$4,259.77</u>

15. In November 2007 when the Respondent encountered legal issues in Canada arising out of his failure to pay child support in the amount of \$60,000.00, he asked her to assist him to pay the arrears owing by obtaining a loan and he promised to

repay the loan. The Petitioner obtained the loan but the Respondent failed to make any payments on the loan leaving the sole financial burden on her.

16. The Petitioner also asserts that she incorporated a company, Bouch Maintenance, as a vehicle for the Respondent's construction company. The Respondent solely managed the finances of this company. The Respondent mismanaged the accounts which resulted in arrears being incurred for payments required during the operation of the business.
17. The Respondent obtained a \$50,000.00 overdraft facility under the companies' name with RBC for his business which was secured by the duplex. The Respondent defaulted on the overdraft facility and the bank then converted the overdraft into a loan. The Respondent had paid the loan to June 2019 but ceased all payments when he left the matrimonial home. The outstanding balance on the loan as of November 2021 was \$15, 471.66 with late charges totaling \$340.00. The Petitioner commenced payments on the overdraft loan as the duplex was at risk of being repossessed. The Petitioner seeks an order that the Respondent reimburse her \$6,300.00 for payments made up to 28th September 2021 and resume making the monthly payments.
18. The Petitioner incorporated another company, Commonwealth Construction Company Ltd. as another vehicle, for the Respondent's business. She loaned the Respondent \$19, 751.54 to assist him with fulfilling a contract acquired by the business. The Respondent again failed to repay the Petitioner as promised.
19. In 2010, the Petitioner and Respondent agreed to invest the sum of \$10,000.00 into the Nassau Port Development through Good Harvest Investment Company Ltd. for the children's college fund.
20. In 2017 she purchased 2 vehicles. She sold one for \$4,500.00 and the other for \$3,000.00.
21. The Petitioner maintained that she has entered into agreement with RBC regarding the loan to Boucher Maintenance Company to make a lump sum payment of \$5,000.00 to prevent losing her duplex and to prevent being subjected to litigation. The Petitioner is currently making monthly payments in sum of \$730.00 on this loan.
22. The Petitioner seeks an Order that:-
 - i. The Respondent repay what is outstanding from any personal loans
 - ii. The Respondent reimburse the Petitioner for any monies outstanding on the loan for the child support payments
 - iii. The Respondent satisfies the loan with RBC

- iv. The Respondent deposit the cheque that he received from Nassau Port Development into the minor children's account
- v. The Respondent has no equitable interest in the matrimonial home or the apartments

23. The matrimonial home is valued at \$577,000.00.

RESPONDENT'S EVIDENCE

24. The Respondent met the Petitioner in 2003 and at that time, she owned the property situate on Blue Hill and Malcolm Road. He began assisting her with the completion of the construction of the apartments during the summer of 2003. He supplied workers and building material. The apartments were completed during the latter part of 2003.

25. He maintains that from 2003 to 2019, he consistently assisted with various form of maintenance on the duplex. He calculated his contribution towards the apartments to approximate \$75,000.00.

26. The matrimonial property was purchased in 2004. It was agreed between them that the Petitioner would pay \$50,000.00 towards the purchase of the property and the Respondent would use his salary and savings to start building the home which he did in 2004.

27. The Respondent used a portion of his salary to purchase building materials for the home. He also used funds from the parties' joint business venture, Bouch Maintenance to fund the building of the matrimonial home.

28. The Respondent, however, was not named in the conveyance as a joint owner of the matrimonial home. The Respondent maintains that he hired workers to assist with building the home and he paid the workers a weekly salary.

29. He avers that he paid a substantial amount of funds for the building of the matrimonial home. He also invested a lot of his own labour in the building of the home. He approximately spent \$230,000.00 on the construction of the home, including the land.

30. The matrimonial home is currently appraised at a value of \$680,000.00

31. In 2007 the parties agreed to jointly pay the Respondent's child support payments in arrears in the amount of \$60,000.00. The Petitioner at no time mentioned that the financial assistance was a loan. The Respondent believed that the monies were family savings. He was later advised by the Petitioner that the funds came

from a loan which she had obtained. The Respondent was unaware that the Petitioner obtained a loan to assist with his child support payments. He believes that the funds were repaid to the financial institution some years ago and that discussion regarding repayment to the Petitioner has only risen since commencing divorce proceedings.

32. The business Bouch Maintenance was established in 2005 by both parties as a maintenance business. The company held contracts with major hotels in The Bahamas. The companies' bank account is held at RBC. The net profits from the company were used to benefit the family. Both parties maintained access to the company accounts.

33. The business Commonwealth Construction was established in 2010. Both parties maintained access to the company accounts.

34. The Respondent avers that, both he and the Petitioner purchased two vans in 2017 for a cash income venture. The first van was sold for \$4,500.00 and the second van is currently being rented from the Petitioner's co-worker for \$1,000.00 monthly. The Respondent avers that he has not received any proceeds from the sale or any proceeds from the rental income of either of the vans.

35. He is self-employed as a contractor making a monthly salary of \$5,000.00. His monthly expenses are:-

i.	Rent	\$1,200.00
ii.	Electricity	\$140.00
iii.	Telephone	\$50.00
iv.	Gas (car)	\$600.00
v.	Groceries	\$720.00
vi.	Life Insurance	\$350.00
	<u>TOTAL</u>	<u>\$3,060.00</u>

36. The Respondent's annual expenses per school year for the children are:-

i.	School fees	\$3,750.00
ii.	Uniform & Shoes	\$500.00
iii.	Books	\$200.00
	<u>TOTAL</u>	<u>\$4,450.00</u> or \$370.83 per month

37. The Respondent established a new company called Bahcana Construction Ltd in 2020. He also asserted that he paid the initial mortgage for the duplex between 2005 and 2010. He further elaborated that since 2015 he has paid the second mortgage payments on the matrimonial home. He has made monthly payments amounting to between \$703.00 and \$725.86.

38. Throughout the course of the marriage, the Petitioner controlled the family finances and he did not have access to any of the family's personal accounts. He only had access to the business accounts.

39. The Respondent seeks an Order that:-

- i. The Petitioner pay to the Respondent within 60 days, a lump sum payment representing his equitable interest in the matrimonial home situate at McKinney Drive. In favour of which the Respondent will release all of his right, title, interest and ownership in the said property in favour of which the Petitioner shall indemnify the Respondent from any mortgage obligation thereon with respect to the outstanding liability with Fidelity Bank with respect to the extant mortgage
- ii. Should the parties fail to comply with paragraph 1 thereafter, the matrimonial home shall be sold and the proceeds will be used to pay the outstanding mortgage. The remainder of the proceeds will be divided equally between the Petitioner and Respondent. The Petitioner and Respondent shall both be responsible for immediately listing the jointly owned property with two registered agents at the appraised current market value
- iii. In the event that either party is unable to or refuses to execute the Deed of Conveyance that the Registrar of the Supreme Court is appointed to execute the same
- iv. The Petitioner pay to the Respondent his share in the sale and rental of the vans purchased in 2017 for the benefit of both parties. The Petitioner provide the Respondent with an accounting for the van

DECISION

40. The court ordered that the Petitioner add the Respondent to the account held with Scotiabank in trust for the children on the condition that joint signatures are required to remove any funds. The dividends for the Port shares are deposited in this account.

41. The outstanding issues are property adjustment orders and repayment of the various loans.

42. **Section 28 of the Matrimonial Causes Act (MCA)** enables the Court to make property adjustment orders in divorce proceedings. The marital assets which fall for consideration are the matrimonial home, the duplex, the vans and the assets or liabilities of the companies.

43. The Petitioner submits that this is a case where the equal sharing principle should be departed from on the basis that the Respondent has not made a substantial financial contribution to the purchase or maintenance of the matrimonial home or the duplex. The Respondent submits that the Court should not depart from the equal sharing principle because he contributed to the construction and maintenance of both properties.
44. The starting point in these proceedings is the equal sharing principle unless there exists a compelling reason to depart from it. In **A v B [2010] 2 BHS J No.18, Barnett CJ**, reaffirmed the principle established in **White v. White [2001] 1 All ER** that the modern day approach to the division of assets in The Bahamas is equal sharing of property unless there is compelling reason to depart from it.
45. In **White v White [2001] 1 All ER** Lord Nicholls stated:-
- “Divorce creates many problems. One question always arises. It concerns how the property of the husband and wife should be divided and whether one of them should continue to support the other. States in the most general terms, the answer is obvious. Everyone would accept that the outcome of these matters, whether by agreement or by court order, should be fair. More realistically, the outcome ought to be as fair as is possible in all the circumstances. But everyone’s life is different. Features which are important when assessing fairness differ in each case. And sometimes different minds can reach different conclusions on what fairness requires. Then fairness, like beauty, lies in the eyes of the beholder.”**
46. The equal sharing principle may be departed from in order to ensure that the marital assets are distributed fairly, based on need, contributions and to ensure fairness amongst both parties.
47. Further **Miller v Miller; McFarlane v McFarlane (2006) 3 All ER 1** the House of Lord stated:-
- “This element of fairness reflects the fact that to greater or lesser extent every relationship of marriage gives rises to a relationship of interdependence. The parties share the roles of money-earner, home-maker 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 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.”**
48. The consideration for the distribution of the matrimonial property begins at the breakdown of the marriage and when mutual support ended. This was enunciated

in Rosemary Edit Burrows v Sylvester John Burrows SCCivApp No. 58 of 2021 where Crane Scott JA held:-

“The legal principle is that the date when the marriage broke down and mutual support ended is the point in time at which the property and financial resources of the parties which are or will be available for equitable distribution is to be assessed. That overarching principle is, in our view, well established and not seriously in dispute.”

49. The Court must also take into consideration the established statutory principles set out in Section 29 of the MCA.

50. In Jupp v Jupp SCCrApp No.37 of 2011, a Judge must take into consideration section 29 when exercising his discretion.

“It must be remembered that authorities from the United Kingdom cannot trump what the statute law of The Bahamas says. It is only if these cases are consistent with the statute law can they apply. Section 29 is very), clear as to what a judge must take into consideration when considering whether to exercise her powers under section 27 or 28 or even section 25 of the Act. Any sharing principle enunciated by case law must be construed in this light. The statute required that you look at all the circumstances and you make the order which puts the parties in the financial position so far as it is practicable that they would have been in if the marriage had not broken down. The division of the assets must be fair in its entirety. It is not the role of the judge to list the assets of the family and to divide them one by one. The trial judge must look at the circumstances on the whole; examine the entire context of the case and make an award accordingly, stating sufficient reason for the same.”

51. In considering the statutory guidelines and determining what is fair in the circumstances, I accept the following:-

- i. The parties were married for fourteen years. This was a relatively long marriage.
- ii. There is no evidence that either party suffers from any physical or mental disability, therefore their earning capacity is not hindered in any way by disability. Both parties are working and are able to continue to work. Each party has a residence to live in.
- iii. The parties have each presented evidence which is contradictory of the other’s contributions throughout the course of the marriage. The Petitioner maintains that she financed a mortgage to purchase and construct the matrimonial home, whereas it is the Respondent’s evidence that he paid for the construction of the matrimonial home with his cash and free labour. The Petitioner maintains that the Respondent contributed very little to the finances and obligations of the family. The Respondent denies this and maintains that his contributions were substantial.

- iv. The Petitioner alone purchased the property on which the matrimonial home was built prior to the marriage. When the parties met the building was partially constructed to belt course.
- v. The Petitioner obtained a loan from RBC to assist the Respondent with his child support payments in Canada.
- vi. The Petitioner incorporated the two companies for the benefit of the Respondent as he was unable to legitimately create a company in the jurisdiction to conduct his business as a non-Bahamian national. The Petitioner also obtained loans to assist the Respondent with his businesses.
- vii. The Respondent has failed to repay the Petitioner any of the monies borrowed as promised. The Petitioner is presently obligated to pay the loan which initially was obtained as an overdraft for the Respondent and by which the duplex was used as collateral but upon the Respondent's default was converted to a loan.
- viii. The Petitioner is still paying the mortgage existing on the matrimonial home.
- ix. There is no evidence of any pension available to any party.

52. I am satisfied that the Petitioner has made the greater financial contributions to the acquisition of the marital assets throughout the course of the marriage, while the Respondent's primary contribution was physical by way of labor. Despite this, the Respondent's contribution cannot be disregarded.

Duplex

53. Based on the evidence presented, initially this duplex would fall to be considered as a matrimonial asset. The Petitioner has presented evidence to assert that she secured a loan to finance the construction of the duplex. She has also presented evidence that she had obtained a Certificate of Occupancy in 2001 before she met the Respondent. Even though the Respondent asserts his contribution to the construction and maintenance of the duplex. I accept that the Certificate proves that the Petitioner came into the marriage with this asset. It was not intended to be the matrimonial home. It was an investment. Despite the Respondent's averments he has not produced any direct objective evidence to support his averments. No evidence was led by him as to if and how the family benefited from the income from the duplex.

54. **In Rossi v. Rossi [2006] EWEC 1482 (Fam)**, Judge Nicholas Mostyn QC provides useful guidance on the distinction between non-matrimonial and matrimonial property:-

"1. the matrimonial property is likely to be divided equally, although there maybe departure if (i) the marriage is short, and (ii) part of the matrimonial property is "non-business partnership, non- family assets' or if the matrimonial property is represented by autonomous funds accumulated by dual earners; and

2. the non-matrimonial property is not in fact quarantined or excluded from the court's powers. It simply represents an unmatched contribution by the party who brings it to the marriage. The court must decide whether it should be shared and, if so, the proportions in which it is to be shared. In reality, the longer the marriage, the more likely the non-matrimonial property will become merged with matrimonial property. By contrast, in a short marriage, non-matrimonial assets are not likely to be shared unless needs dictate.”

55. Henry P in Dean v Dean 1991 BHSJ No. 164, from the Court of Appeal of The Bahamas defined family assets,

“... it is clear that it is not every capital asset acquired by the party to the marriage either before or during the subsistence of the marriage that will automatically become a family asset. The intention of the party acquiring the asset is vital if one of the spouses acquire a house and meets the purchase and furnishing expenses exclusively but nonetheless use the house as the matrimonial home, the house acquire the attribute of family assets because of the intention of the spouse in whom the legal ownership resides and because the house is being used for the benefit of the family as a whole.”

56. Therefore, I find that that in the absence of any documentary evidence to support his contention of financial contribution or the absence of any evidence that the duplex was used as a family asset, the Respondent does not have an interest in this property.

Matrimonial Home

57. The Petitioner secured a mortgage to purchase and construct the matrimonial home. The Respondent avers that the agreement between the parties was that the Petitioner purchase the matrimonial property and he construct the home with his personal funds. While I am satisfied that the Petitioner made a greater contribution to the matrimonial home, financially and otherwise, I also find that there is evidence that the Respondent contributed, albeit to a lesser degree. I am satisfied therefore that the Petitioner's interest is considerably greater than the Respondent. Upon the evidence led, I am satisfied that this is a case where it is fair to depart from the equal sharing principle.

58. Upon a review of the Respondent's evidence in his affidavit, I accept his evidence as to the work which he carried out in the construction of the matrimonial home. He does not however produce any evidence of the payment of his own funds despite his averment that he did in fact use his funds. The only evidence led at the hearing was the payment by the Petitioner of the initial \$50,000.00 to him and then the loan proceeds which I accept were used to complete the construction of the home in the manner that he described. The loan was obtained by the Petitioner.

59. I hereby order that the Petitioner be awarded 75% of the equity of the matrimonial home and the Respondent 25%. The Petitioner shall have the option to purchase the Respondent's interest as hereinafter qualified in the matrimonial home within 90 days of the date of this ruling. Upon receipt of the said sum, the Respondent will release all of his right, title, interest and ownership in the said property to the Petitioner and the Petitioner shall indemnify the Respondent from any mortgage obligation thereon with respect to the matrimonial home. Should the Respondent fail to execute any document required to give effect to this ruling the Registrar is empowered to execute the same.

60. The house is valued at \$557,000.00 but it is subject to a mortgage which balance at 2021 was \$121,836.57. The equity in the property therefore was \$435,163.45. The Respondent's interest in the equity is therefore \$108,790.86.

The Businesses

61. The court must consider whether the businesses, Bouch Maintenance Company Ltd. and Commonwealth Construction Company are marital assets, thus making both parties prima facie financially liable for any debts owed and entitled to share in any profits from the same.

62. Matrimonial assets were also described by Lord Denning in **Wachtel v. Wachtel 1973 1 All ER 829** as:-

"1. ... those things which are acquired by one or other or both of the parties, with the intention that there should be continuing provision for them and their children during their joint lives and used for the benefit of the family as a whole."

63. While I do not deny that there is a presumption to provide financial support to a spouse during the course of a marriage, and that the Petitioner had incorporated these two companies to assist the Respondent in his business, it was the Petitioner who obtained the loans to assist the Respondent and who was obligated to repay them due to the Respondent's default. The Petitioner did not specifically benefit from these loans. One of these loans required collateral which was provided by an equitable mortgage over the Petitioner's 'duplex. The Respondent who originally agreed to pay these loans ceased doing so. In order to save her duplex, the Petitioner had to pay the loan. The Petitioner has been left with the debt and is even at a risk of having her duplex apartments repossessed. This debt should be shared. I am not satisfied that I should depart from the equal sharing principle for these loans. The Petitioner is an astute business woman and fully aware of the risks of borrowing money. If the loan is obtained for one party and secured by the property of the other, there is an implied consent to the risk.

64. The Petitioner maintained that although she incorporated Bouch Maintenance to assist the Respondent she did not use any of the funds of the company for her personal use. In fact, she submitted that the Respondent managed the funds and averred that when approached on the default of the loan to Bouch he admitted that a relative had mismanaged the account. The Respondent on the other hand averred that it was the Petitioner who withdrew large sums of money from the account. Upon hearing the parties, I prefer and accept the Petitioner's evidence that it was the Respondent who controlled or failed to control the funds and accordingly he should equally bear the responsibility for the repayment of the loan.
65. As at June 2021 the balance outstanding was \$22,271.85, one half of which is \$11,132.92. I order that \$11,132.92 shall be deducted from the Respondent's interest in the matrimonial home.
66. I also accept that the Respondent took advantage of the Petitioner's financial kindness in obtaining her funds to the sum of \$49,751.54 to help him out of difficulties which arose as a result of his questionable management of clients funds paid into Commonwealth Construction Company Ltd. This second company was incorporated by the Petitioner to assist him in his business. He operated the business and managed the accounts.
67. I am satisfied that both these companies are marital assets, however they are vehicles used primarily by the Respondent to operate his profession as an Industry Specialty. The two contributions by the Petitioner to Commonwealth Construction shall be borne equally with the Respondent who shall repay \$24,875.77 to the Petitioner. This sum shall be deducted from his interest in the matrimonial home.
68. The loan to the Respondent to assist with his arrears of child maintenance in Canada is to be repaid to the Petitioner. This was not an expense of the family but of the Respondent personally. I do not accept the evidence of the Respondent that he was unaware that the monies came from a loan. It is apparent from the banking records provided by the Petitioner that she borrowed the funds. The Respondent's records do not reflect that he had the funds available to pay the arrears of child maintenance.
69. I accept that both vans have been sold and the proceeds of sale exceeded the costs of the vans by \$2,800.00. The Respondent is entitled to \$1,400.00 of that sum.

CONCLUSION

70. The duplex is not a matrimonial asset.
71. The Respondent is entitled to a 25% interest in the equity on the matrimonial home in the amount of \$108,790.86.
72. The Respondent shall pay the Petitioner the sum of \$11,132.92 representing one half of the loan secured by the duplex which sum shall be deducted from his interest in the matrimonial home.
73. The Respondent shall pay to the Petitioner the sum of \$24,875.77 representing one half of the loan to the Respondent to assist with the mismanagement of client's funds. This sum shall be deducted from his interest in the matrimonial home.
74. The Respondent shall pay the Petitioner the \$60,000.00 which was borrowed by the Petitioner to assist the Respondent to pay his arrears in child support in Canada. Such sum is to be deducted from the Respondent's interest in the matrimonial home.
75. The Petitioner shall pay the Respondent the sum of \$1,400.00 representing his interest in the two vans.
76. The balance of the sums owed to the Respondent is \$14,182.17 which shall be paid within 90 days of the date of this ruling. Should the Petitioner fail to pay the said sum within the time specified, the matrimonial home is to be sold and the Respondent is to receive the said sum less 25% of the legal costs incurred for the sale.
77. Each party is to bear their own costs in these proceedings.

Dated this 6th day of April 2023



The Hon. Madam Justice G. Diane Stewart