In The Supreme Court of Bermuda

CIVIL JURISDICTION

2025 no 334

BETWEEN: **SHERICA MILLER** **PLAINTIFF**[1]

-V-

DEIDRA MILLER **DEFENDANT**

Trial of an action for declaratory relief and relief under the Partition Acts 1855 and 1914

Appearances

Ms Sherica Miller in person

Ms Deidra Miller in person

Hearing date: 14 August 2026

Judgment date: 16 September 2026

In Court

MARTIN J

JUDGMENT

Introduction and background summary

1. This is the court's judgment in this matter following a short trial. The plaintiff and the defendant are sisters. They are the joint owners of a property at 63 Verdmont Road in Smith's parish ("the property"). The house on the property is divided into two dwelling units. The lower unit is occupied by the plaintiff, and the upper unit is occupied by the defendant. According to the plaintiff's

[1] The style of cause in the action is headed as between the Applicant and the Respondent. This is an Originating Summons where an appearance is required, and the rules stipulate the correct style of cause is 'plaintiff' and 'defendant'. Nothing turns on this, but in this judgment the court has adopted the formal terminology required by RSC Order 7 rule 2 (2).

evidence, the finance to purchase the property was arranged by the sisters' late mother on account of her immigration status at the time the property was purchased. Both sisters agree that the legal estate in the property is held between them equally, although copies of the title deeds were not adduced in evidence[2]. The property is subject to a mortgage in favour of HSBC Bank Bermuda Limited (hereafter referred to as "the Bank"). The Bank was not joined as a party to the proceedings or notified about them.

2. Unfortunately, difficulties have arisen between the plaintiff and the defendant over their contributions to the debt service to the Bank (and related expenses) and the way the property has been maintained and upkept. The plaintiff and the defendant have reached an impasse. The plaintiff commenced the present proceedings to resolve the dispute. The plaintiff and defendant also jointly own and manage a beauty salon business, but the matters referred to in the evidence in connection with that business are not the subject of the dispute in these proceedings.

3. Since their late mother's passing about six years ago, the plaintiff says that she and her sister agreed between themselves that they were each to contribute one half of the debt service to the Bank, pay one half of the insurance and land tax on the property, and meet one half of the ordinary ongoing maintenance costs of the property.

4. The plaintiff says that over the past several years her sister has in fact failed to make consistent equal contributions to the debt service, land tax and insurance as well as the other maintenance expenses for the property. The plaintiff also says the defendant has failed to keep the upper unit in good repair and has left two cars abandoned in the garden, giving rise to health concerns as an attraction for rodents. The plaintiff complains that the defendant has commenced a "renovation" of the upstairs kitchen in which the kitchen was removed, but the renovation has never been completed, so that there has been no functioning kitchen in the upper unit for several years. She says that the defendant has put a hole in the floor of the upper apartment which has implications for the structure of the upper and lower units. The plaintiff says that these defects adversely affect the value of the property.

5. The plaintiff says she has complained to the defendant about the defendant's failure to keep up with paying her share of the mortgage and the insurance. The plaintiff says her sister's late, insufficient and non-payment of debt service and insurance contributions have persisted for several years. The plaintiff says that in order to forestall the Bank from taking enforcement action, she has had to make up the shortfall in her sister's share of the payments and has also paid for the insurance and land tax on the property.

6. The plaintiff says she has approached her sister regularly to keep current with her share of the mortgage payments, to put the upper unit in good repair and to address the health issues surrounding the storage of her unlicensed vehicles on the property. The plaintiff says her sister ignored her requests, did not reply to her messages, and has taken no remedial action to address the plaintiff's concerns. The plaintiff says that sensible communication is now no longer possible between them, and their relationship has broken down to the point that it is not possible for them to co-manage the

[2] See paragraphs 39-41 below.

property. She has sought relief from the court either in the form of an order that she be authorised to take over the management of the property herself (at least for a time) or that the property be sold under the Partition Acts.

7. In answer, the defendant says that the style of communication between her and the plaintiff has been no different recently than it has been over the many years. The defendant says that if the plaintiff needs to reach her, she knows where she can find her (upstairs in the apartment above or at the beauty salon) or she can leave messages or arrange a time to meet to discuss the issues. The defendant has acknowledged that she has been behind in the mortgage payments, but says she always pays something and says she has made contributions to the insurance cover. The defendant says she has not had a chance to finish the renovations, but she will do so in due course, and she dismissed the concerns over the two vehicles she is storing in the garden. In effect, the defendant does not agree that there is any breakdown in their relationship that justifies the court's intervention.

Summary and Disposition

8. For the reasons given below, the court has concluded that it has no power to make an order which has the effect of excluding the defendant from the property while the plaintiff takes over its management and repair and refurbishment.

9. However, the court is satisfied that it has the power to make an order for sale of the property under the Partition Act 1914. The court is also satisfied that the financial relationship (with respect to paying the mortgage, land tax and insurance costs), the proprietary relationship (with respect to the maintenance and upkeep of the property), and the personal relationship (with regard to sensible and co-operative communication) as common owners of the property has broken down to the point where it is not possible for them to continue to act in their common interests.

10. Therefore, weighing all the circumstances, and in particular their respective financial interests, the court has concluded that it is beneficial to the parties to make an order for the sale of the property. However, the court has made provision for either one to undertake to purchase the share of the other at fair market value, less the value of the mortgage obligation, or in the absence of an undertaking, for a sale of the property at public auction. In that latter event, the court will permit either of the parties to bid at the public auction.

11. The court has made a number of directions for the valuation of the property and the process of undertaking or auction. The court has also made provision for the recoupment of the inequality in mortgage payments, land tax and insurance contributions so that any shortfall in the defendant's contributions is credited to the plaintiff before the proceeds of sale are distributed.

12. The court has also made provision to protect the rights and interests of the Bank as mortgagee and to allow the Bank to intervene in relation to the implementation of the order for sale in order to protect or enforce those rights.

13. The plaintiff was substantially successful in real life terms and is awarded her costs of the proceedings to be taxed if not agreed on the standard basis.

The Originating Summons

14. The Originating Summons was issued on 26 January 2026 by which the plaintiff sought an order requiring the defendant to vacate the premises and authorising the plaintiff to change the locks and repair and maintain the property, and to grant injunctive relief to restrain the defendant from entering or interfering with the property. On the first return date of the Originating Summons directions were given for the exchange of evidence and preparation for trial.

The Affidavit Evidence

15. The evidence in support of the application was contained in three separate affidavits sworn by the plaintiff. In her first affidavit dated 29 December 2025, the plaintiff simply set out the relief she was seeking and annexed various documentary exhibits. These included:

> SM-1: bank statements between September and December 2025 in relation to a joint account in the names of the plaintiff and the defendant which shows their outstanding joint indebtedness on the property.
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> SM-2: bank statements for the same period in relation to the plaintiff's bank account showing her own half payment of the mortgage contribution and then further payments from the plaintiff to cover the defendant's half contribution to the mortgage.
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> SM-3: a notice from the plaintiff to the defendant giving the defendant 30 days 'notice to quit' the property dated 22 November 2025.
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> SM 4: a covering letter also dated 22 November 2025 setting out the grounds on which the notice to quit had been issued.
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> These grounds included the defendant's long-term failure to meet her financial responsibilities to the property including the failure to pay (a) her half share of the mortgage obligation for several years (b) any contributions to the payment of land tax (c) any contributions to the insurance coverage required as a condition of the mortgage. The plaintiff roughly estimated the shortfall to exceed BD$25,000 (although in her oral evidence she later increased that sum to over BD$100,000). In her letter, the plaintiff also referred to the defendant's damage to the property and neglect since 2020, referring to the demolition of the upstairs kitchen, and the dilapidated condition of the upstairs unit. The plaintiff asserted that the co-ownership relationship had become unworkable. Importantly, the plaintiff stated that in the event that the defendant did not comply with her notice to quit, she would seek relief from the court under the Partition Act 1854 (sic) and seek an order for the sale of the property.
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> SM 5: This was an unsworn second affidavit by the plaintiff that was included as part of the exhibit to the affidavit of 29 December 2025 which set out the facts upon which the plaintiff was intending to rely. These facts replicate the facts already described above so it is not necessary to repeat them. Importantly, the plaintiff included in her unsworn affidavit

an alternative claim for an order for sale of the property under the Partition Act. Because the unsworn affidavit was included as an exhibit to an affidavit that was sworn, it seems to me that it should be treated as if it were a sworn document.

SM 6: This was a form of originating summons. It was apparently a draft of the summons which also set out the relief the plaintiff intended to seek, including an alternative prayer for an order for sale under the Partition Act.

16. The plaintiff subsequently filed and served a third affidavit dated 3 February 2026 in which she added that in the period of 2021 to 2024 the defendant failed to contribute to the mortgage at all, and in 2025 had made some erratic and unequal contributions. As a result, the plaintiff said the Bank took steps to secure consistent repayment of the mortgage due to the arrears incurred as a result of the defendant's irregular payment pattern. The plaintiff described the communications between the parties since service of the Originating Summons, and said she declined to engage in oral communication with the defendant. The plaintiff also referred to a dispute in relation to the operation of the beauty business, but this is not relevant to the present proceedings.

17. The plaintiff added several more exhibits to her third affidavit. These included:

SM 10[3]: This was a table reflecting the defendant's contributions for 2021, 2022, 2023, and 2024 were largely unpaid, the defendant's contributions for 2025 were partial and inconsistent and the first payment in 2026 was late. No tabulation of actual payments was set out, and this may be because there were no payments to record for the first four years.

SM 11: This was a further selection of bank statements for the joint mortgage account for 2024.

SM 12: This was an undated message regarding the defendant's effort to get help in paying the mortgage in January (2026).

SM 13: This was an email from the defendant to the plaintiff warning her to 'be careful' if she went ahead with these court proceedings.

18. The defendant swore an affidavit in response dated 12 March 2026. In her affidavit, the defendant produced an extract from the mortgage that described the plaintiff and the defendant as the owners of the property as Exhibit A. The defendant denied the plaintiff's allegations about her payment pattern and said that she had in fact been making regular contributions to the mortgage payments in the period 2021 to 2024 and that she has never neglected the mortgage. She asserted that she has made consistent contributions to the mortgage since 2019. The defendant produced her bank statement for December 2025 showing payments of BD$1699.35 and BD$1705.00 as Exhibit B. The defendant accepted that she had needed assistance in January 2026 for the mortgage payment

[3] There is no record of exhibits SM 7, SM 8 and SM 9. This appears to be a number sequencing error.

as a result of a shortage of funds due to her payment of expenses for the beauty business to which the plaintiff had not contributed.

19. The defendant stated that she had not sent any intimidating messages to the plaintiff. The defendant claimed that the plaintiff had borrowed BD$26,000 from the beauty business to buy a car and had not repaid BD$24,000 of that sum to the defendant (or the business—it is not clear which). The defendant also exhibited some messages with an aunt which were said to be in support of this statement, but her aunt replied saying she did not want to get involved in the dispute between the plaintiff and the defendant (Exhibit C).

20. The defendant then went on to deny the allegations made by the plaintiff about property damage and neglect and said that when the plaintiff stayed with her for 14 months (at an unspecified time in the past) the plaintiff did not contribute to the expenses of her stay, including a notional contribution to the rent. The defendant asserted a claim to recover a contribution to the rent and expenses for this period. The defendant then denied that there had ever been any agreement that they would share the expenses of the property equally and asked for proof of it.

21. The defendant also asserted a claim for property damage caused by the plaintiff's boyfriend when reversing off the embankment of the property. It is not clear how this incident relates to the issues in the case.

22. The defendant also said that she had in fact made contributions to the payment of the insurance but did not know if any land tax had ever been paid on the property. The defendant's position is that she has run the beauty business without taking a salary and implied that this was (or should be treated as) her 'contribution'.

23. Finally, the defendant said that if the court were minded to make an order for the sale of the property under the Partition Act, she wanted to have the opportunity to purchase the plaintiff's share.

The Trial

24. The parties were self represented at the trial. It was a short trial lasting about two and a half hours. The plaintiff made a brief opening statement explaining the background to her claim and what she was asking the court to do. She then went into the witness box to be cross examined by the defendant. The defendant did not cross examine the plaintiff. She said she had no questions to ask.

25. The defendant then went into the witness box, and she was cross examined by the plaintiff. Under cross examination the defendant was shown four photographs which she accepted as being accurate pictures of (i) the upstairs kitchen prior to the 'renovation' process (ii) the upstairs kitchen in its present condition (iii) the kitchen floor with a large, exposed hole in the floor with joists exposed and unfinished pipework and (iv) a screenshot of an exchange of messages in July 2025 referring to a dead cat under one of the defendant's two unlicensed vehicles which are parked on the property.

26. In cross examination the defendant accepted that there had been a dead cat under one of her cars and agreed that the repairs to the roof had not been completed yet. She said that the kitchen

renovation was ongoing but had not been completed. She denied that the upstairs unit was in disrepair. The defendant maintained the hole in the floor and lack of a functioning kitchen was due to the unit being under renovation. The defendant accepted there had been disagreements about the upkeep of the house and garden. She said she had been too busy to reply to the plaintiff's messages about her concerns. The defendant said she did not produce any records of her payments because she had not been asked to do so.

27. The defendant did not agree that there had been a lack of effective communication between her and the plaintiff regarding the property. She remarked that they had always communicated this way, and said "*this is how it has been forever*".

28. In making her remarks to the court by way of closing, the defendant said she was open to reimbursing the shortfall of any missed payments or contributions to insurance. The defendant maintained that the alleged difficulty in communication is untrue. She said that the plaintiff can come upstairs and she will respond, or the plaintiff can call her at home or at work. She said it was not difficult. The defendant said that she is an active joint owner and has made her contributions, although she accepted she has been late sometimes.

29. The defendant ended by saying that if the plaintiff wanted to give her share of the property to a family member she would agree to that, but the defendant said she wished to retain her own full right of ownership.

30. The plaintiff then made her closing remarks which were to the effect that her primary goal was to be able to take over the management of the property as a whole so she could fix up the upper unit. She referred to the need to pay for the repairs which she said she could do if she rented out her unit and used the rental income to restore the upper unit. She referred to the health hazard caused by the unlicensed vehicles being left in the yard which attracted rodents, and said the hole in the upper kitchen floor affects the lower unit and is causing damage to the structure of the property.

31. The plaintiff said her sister has missed about BD$100,000 in mortgage payments[4] so the loss of the right to reside in the property until it has been renovated would compensate her for the cost of alternative accommodation. The plaintiff said that the current situation is untenable, because sooner or later the Bank will seek to enforce the mortgage if the mortgage falls into arrears, and the plaintiff does not agree that the full burden of the mortgage should fall on her.

32. When asked about the court's powers to make those orders, the plaintiff was unable to make any submissions to show the court had the power to give that type of relief. The plaintiff said that if the court does not have the power to give that relief, then she would ask for an order that the property be sold. The plaintiff said that if that happens, she wishes to recover the payments that she has made to make up for the defendant's failure to pay her share of the mortgage and insurance and other expenses over the last several years. If the only way to resolve the present situation is for the court to order a sale, then the plaintiff said that is what she is seeking.

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[4] The plaintiff had estimated this figure to be BD$25,000.00 in her affidavit evidence.

33. By way of reply on the legal issues, the defendant was also asked to make any further comments or legal submissions she might have on the possibility of a sale under the Partition Acts. In response, the defendant said she would like to be able to bid on the purchase of her sister's share.

Procedural matters

34. The procedure that was followed in this case was not orthodox. This is because the parties are litigants in person and are unfamiliar with the ordinary rules of civil procedure. No fault is taken with either of them for that. However, it meant that the court was inclined to take a liberal approach to the application of the normal rules to ensure that each side had the opportunity to present their respective evidence and arguments fairly and completely, without focusing too closely on the specific legal arguments that might arise until all the relevant facts had been put forward and explained by each party.

35. This is a matter which probably should have proceeded by way of petition for relief under the Partition Act 1914. However, the court is satisfied that the plaintiff's affidavit in support of the Originating Summons and the supplemental affidavit made it clear enough that she would ask the court to make an order for sale under the Partition Acts 1855 and 1914 as alternative relief if her primary application for possession and control of the property failed.

36. The court is satisfied that in substance the same evidence would have been presented and in roughly the same way[5], and that the main issues that were to be determined were clearly enough stated by the plaintiff and understood by the defendant so that the defendant knew the case she had to meet and the substance of the relief that the plaintiff was seeking. I am therefore satisfied that any departures from procedural formality were not such as to make the proceedings in any way unfair to the defendant.

37. In assessing the evidence given by the parties, I have taken into account that the defendant did not take the opportunity to cross examine her sister on her affidavits. A decision by a party not to cross examine a witness normally means that the party is taken to accept the truth of the evidence given by that witness. It is very possible that the defendant did not appreciate the evidential significance of her decision not to cross examine her sister or to challenge her by putting her own case to her. As a result, the court has paid close attention to those matters which the defendant disputed in her affidavit when considering the reliability of the plaintiff's evidence on the key issues.

The court's assessment of the evidence

38. The plaintiff's evidence has been summarised above so I shall not set it out again here, except to explain how the court has assessed it for accuracy and reliability. I shall address the main points of the plaintiff's claim by subject matter.

[5] See paragraph 78 below.

Ownership of the property

39. On the point of co-ownership of the property, the full mortgage deed (or other title deed) was not produced in evidence. Both the plaintiff and the defendant agree that they hold their legal interest in the property jointly in equal shares. They both say that they have a right to own one half of the property each separately from the other.

40. Where a legal estate in property is held in specified divisible shares, the conventional legal analysis is that they own their shares as tenants in common, and the court has proceeded on that basis because the plaintiff and defendant have conducted themselves as owners of a divided share of the whole legal interest. It is a well-established and ancient principle of law that where parties by their course of conduct have dealt with their respective interests as separate interests, a tenancy in common will arise[6].

41. This means that in law the plaintiff and the defendant are each entitled to one half of the property interest (or, more precisely, the equity of redemption under the mortgage) in equal shares. On a sale they will each be entitled to a one-half share of the (net) proceeds of sale. On death, their respective shares will pass under their respective wills or under the rules of intestacy, and deceased tenant in common's share will not pass to the surviving co-owner. However, as tenants in common, neither one nor the other has a legal right of exclusive ownership of a particular part of the property. The law treats tenants in common as having a divisible share in the equity of the property, but each tenant in common is entitled to enjoy and occupy the whole of the property[7]. The division of their occupation of the two units in this case arises by virtue of the agreement between the plaintiff and the defendant and their conduct, not by reason of the legal estate which is vested in them as tenants in common. This is an important legal feature which has wider implications which are considered below.

42. This aspect of common ownership is also potentially significant in a very practical sense. On a sale the parties will only receive half of the net proceeds of sale of the property as a whole, not the proceeds of sale attributable to their respective units. If the upper unit is in a state of disrepair, it will necessarily negatively affect the value of the property as a whole and (if so) the plaintiff can rightly claim that this will affect the value of her interest in the whole property. It would also result in the defendant 'benefitting' from the potentially higher value of the lower unit which the plaintiff says she has maintained in good order.

[6] **Williams v Hensman** (1861) 1 J&H 546. "*...a joint-tenancy is a right which any one of the joint-tenants may determine when he pleases; and, if all continue to deal on the footing of their interests not being joint, it would be most inequitable to treat it as a joint-tenancy when all the parties, whether in ignorance or not, have dealt with their interests as several.*"

[7] "*Tenants in common are owners of distinct shares, albeit in land which has not yet been divided up physically. It is impossible to point to one parcel or area of the co-owned land rather than any other as belonging to a particular tenant in common*." See *Elements of Land Law* by Gray & Gray (5th Edition) at 7.4.28

43. It is also right to note here that the legal interest in the property presently held by the plaintiff and the defendant is an equal share of the value of the equity of redemption because the property is subject to a first legal mortgage in favour of the Bank.

Mortgage, taxes, insurance and other expenses

44. The plaintiff's account of the history of the defendant's failure to meet her obligations to pay her share of the mortgage is credible and is backed up by a sufficient amount of contemporaneous documentary materials to show that the plaintiff made the mortgage payments throughout the period 2021 to 2024. Although the documentary record is far from complete, it establishes a sufficiently convincing pattern to support the plaintiff's case on this issue.

45. Although the defendant says in her affidavit that she has consistently paid her share of the mortgage since 2019, she produced only one bank statement for December 2025 in support of her claim. By contrast the bank statements produced by the plaintiff showed her own payments to the mortgage and also her supplemental payments to the Bank to make good the defendant's shortfall. In addition, the defendant says she made several payments towards the home insurance but does not specify when or how much and does not recall paying any land tax at all.

46. The defendant also makes the curious point that because she has been working without salary for the jointly owned business, this somehow makes up for her lack of contributions to the mortgage. She also says that the plaintiff's failure to repay BD$24,000 (which the defendant says the plaintiff borrowed from the beauty business) offsets the BD$25,000 the plaintiff originally claimed was the approximate shortfall in the defendant's payments. The precise meaning the defendant places on these (alleged) facts is unclear and it was not further explained. But the combination of these two points contradicts the defendant's claim that she has been making equal contributions to the payment of the mortgage all along. Otherwise, the suggestion that the defendant's contribution to the beauty business and the plaintiff's failure to repay the car loan cancel out or make up for the amount the defendant has failed to contribute would make no logical sense.

47. The defendant also appears to have taken the position in her affidavit that there was no agreement between her and her sister that they would each share the expenses of paying the mortgage and maintaining the house and asked for some documentary proof to show the agreement. However, the extract of the mortgage deed exhibited as Exhibit A shows that the mortgage obligation is owed by the Borrower, which is a defined term meaning the plaintiff and the defendant. They are both obligors under the mortgage because they are both owners.

48. The defendant also says she has been making regular payments throughout, which contradicts her statement that there was never any agreement between them that she would pay half the mortgage and other expenses. Overall, the plaintiff's proposition that as joint mortgagors of the property the plaintiff and defendant agreed to meet the mortgage, insurance, land tax and property expenses in equal shares is simple and consistent with common sense. It is also consistent with the obvious arrangement that each of them occupies one of the two units on the property. The defendant herself maintains that she has been making regular contributions to the mortgage since 2019. The

defendant’s responses to the plaintiff’s straightforward case are therefore confusing, illogical, and inconsistent.

49. On a balance of probability, I am therefore satisfied that it is (much) more likely than not that (i) the plaintiff and the defendant agreed to meet all the expenses of the mortgage, insurance, land tax and other expenses in equal shares and (ii) the plaintiff’s history of the financial management of the property, the payment of the mortgage, insurance, land taxes and other outgoings is broadly correct.

50. I therefore prefer the plaintiff’s evidence and find that the defendant has not been making equal or consistent contributions to the mortgage in the period between 2020 and 2025 and has in fact made few if any contributions to the insurance, land tax or to the maintenance costs for the property during that period. The plaintiff’s account of events is supported by some documentary evidence, while the defendant’s account of events is unsupported by documentary evidence, except for one mortgage payment in December 2025.

51. It is not possible (for the present) to calculate the precise amount of the shortfall of the defendant’s contributions to the mortgage and other related expenses. This issue is addressed in more detail below. For now, the point goes to the existence of a genuine breakdown of the financial relationship between the plaintiff and the defendant as common owners of the property.

Failure to keep in good repair

52. The plaintiff’s evidence was that the defendant commenced a renovation by ‘demolishing’ the kitchen in the upstairs unit, leaving a large hole with unconnected pipes sticking out of the floor. This ‘renovation’ has not progressed for several years. The hole in the upstairs kitchen exposed the ceiling in the apartment below, and according to the plaintiff, represents structural damage to both units.

53. In support of this the plaintiff produced a ‘before and after’ sequence of photographs showing the upstairs unit’s kitchen before the defendant removed it (which was a normal kitchen layout) and a picture of the kitchen as it now appears. These photos were put to the defendant in cross examination. The defendant accepted that four of these photos were accurate representations of the ‘before and after’ comparison of the upstairs kitchen, but she refused to agree with one photo which was (as a result) not admitted in evidence.

54. It is clear from the photos which were accepted by the defendant that the present condition of the upstairs kitchen is not functional in any modern sense of the meaning of a ‘kitchen’. It is also clear that the hole in the floor would be unacceptable to any ordinary person living in the unit for any length of time. The court therefore does not accept the defendant’s attempt to explain it away as a ‘work in progress’ or a ‘renovation’ that has not been completed. It has been in this state for several years. There is no plan to complete the work.

55. The plaintiff also referred to a dead cat under one of the defendant’s unlicensed cars that are ‘parked’ in the garden or yard. She said this was unsanitary, and as a result of the defendant’s failure to remove it, the plaintiff had to do so. The plaintiff produced copies of messages she had sent to the defendant

regarding the need to deal with the removal of the dead cat. The defendant said she did not receive any messages about the dead cat, or at least if she did receive them, she did not read them because she was busy. The defendant did not challenge the accuracy of the plaintiff's evidence.

56. In addition, the plaintiff said the storage of the defendant's unlicensed vehicles in the yard was attracting rodents such as rats, and that the garden area needed to be cleared of overgrowth and the cars needed to be removed. The defendant accepted that the attraction of rodents was an issue that needed to be addressed, but she maintained it was her right to park her unlicensed vehicles on her own property.

57. The plaintiff made a passing reference to a problem with the roof that needed to be addressed (which it was implied was a problem that fell within the defendant's responsibility because it relates to the upkeep of the upper unit). There was no clear evidence on the extent of the issue or its effect, so the court cannot make any assessment of its seriousness or relevance to the alleged failure to maintain or upkeep the property by the defendant.

58. Overall, the court accepts the plaintiff's evidence on the upkeep and repair issue as being accurate, especially where her evidence is supported by unchallenged photographic evidence. The other evidence regarding the problems presented by the dead cat and attraction of rats due to the unlicensed cars being parked, and the overgrowth of grass and foliage in that area, was convincing and was not really challenged by the defendant. Therefore, the court also accepts the evidence of the plaintiff that the defendant has persistently failed to adequately maintain and keep the upper unit in good repair and condition, and that this has had the consequential effect of affecting the property value overall in which the plaintiff has an equal legal and financial interest.

Inability to engage in a constructive dialogue

59. The plaintiff's evidence was that she has tried to engage in a constructive dialogue with the defendant about addressing the issues described above. The plaintiff complained that despite numerous reminders and requests for attention, the defendant has in effect ignored her. The plaintiff said her sister has refused to answer her calls, return her calls or reply to her messages. The plaintiff said this behaviour has led to a complete breakdown in their ability to communicate with one another about the essential matters of running a commonly owned property. The plaintiff says that their inability to co-operate has in turn led to the deterioration of the property's condition. The plaintiff said that she has repeatedly tried to get the defendant to meet her equal share of the financial obligations to forestall the Bank taking enforcement action, but these requests have gone unheeded.

60. The defendant's response to the allegation of a total breakdown in communication was that if the plaintiff needs to reach her, she knows where she lives and she can see her at home or can reach her at the beauty business or leave a message. As to their style of communication, she says that this has always been the way they have communicated with each other. The defendant denies that there has been any breakdown in their communication and rejects her sister's complaints.

61. The plaintiff's evidence on the issue of breakdown of communication with her sister was coherent, persuasive and consistent with ordinary common sense and experience. The defendant's evidence in

answer to the plaintiff was inconsistent and insubstantial. It is obvious that the defendant has been deliberately unco-operative and unresponsive to the genuine issues of concern raised by the plaintiff over a sustained period.

62. Weighing the evidence, the court is satisfied that the plaintiff's complaints about the defendant's failure to engage with her and address serious problems regarding the maintenance are justified and represent a breakdown in every practical sense of meaningful communication. The defendant has obviously ignored the plaintiff's requests over a long period of time, and her claim that she has just been too busy to reply, discuss or address any of her sister's concerns is neither reasonable nor credible.

63. The defendant's persistent failure to contribute to the mortgage and other expenses has put additional strain on the plaintiff's resources and this has no doubt led to an escalation of tensions. The defendant has failed to acknowledge the obvious and serious risk that this represents to their joint interest in the property and gave the strong impression in her written evidence that her management of the beauty business justifies her not making her contribution to her financial obligations under the mortgage.

64. The defendant has also not responded or engaged in a meaningful or constructive way with the plaintiff to address the various concerns about the maintenance and upkeep of the upstairs unit or the sanitary risks associated with the rodents and removal of the dead cat.

65. Due allowance has been made in the assessment of the defendant's style of communication for the often complex relationship between siblings and the untold backstory of how they have arrived at their present state of restrained hostility to one another. No judgment is made on that account.

66. However, the defendant's approach to the obvious ongoing problems has been neglectful over a sustained period. That same posture was apparent in her approach to the litigation and was evident in the way she answered questions under cross examination, which was at times flippant and argumentative. The defendant's accounts were almost entirely contradicted by the written and photographic evidence. Her obstinate denials of the obvious truth contained in the documentary record of the mortgage payments did her no credit.

Conclusions on the facts

67. On the basis of the evidence presented by the plaintiff, which the court accepts for the reasons already given above, the court is entirely satisfied that the relationship between the plaintiff and the defendant has broken down to the point where it is not realistic for them to continue to manage the property as tenants in common. There has been a lack of proper contribution to the mortgage, a failure to keep the property in reasonable condition and a failure to communicate and co-operate which taken in combination are liable to reduce the value of the property as a whole and therefore the plaintiff's equal interest in it.

The law

68. The court must now apply the law to the facts as I have found them and as summarised above. If it is not possible for the plaintiff and defendant to co-operate and manage their respective financial and proprietary relationship as tenants in common, the court must consider what remedies are available in law to resolve the present difficult and unfortunate situation.

69. The primary relief the plaintiff seeks in her Originating Summons is a suite of orders requiring the defendant to vacate the property so that the plaintiff can take over the management of the property, renovate and repair it, and use the rents from renting out the lower apartment to fix up the upper unit. The plaintiff also seeks injunctive relief to restrain the defendant from coming back to the property or interfering with the plaintiff's management until the property has been restored to good order and the costs of doing so have been recouped. At some (unspecified) time in the future, the plaintiff says she is willing for the defendant to resume occupation of the upper unit.

70. Leaving aside the obvious practical challenges that such a course would involve, the court must first be satisfied it has the jurisdiction and power to make such orders. The plaintiff was unable to assist the court on this aspect of the case. The defendant did not address the court on this issue save to say that she held to her rights as a joint owner of the property.

71. As explained above in paragraphs 39 to 41, the basic theory behind common ownership is that each tenant in common owns a divisible share of the whole property but has the right to possess and enjoy the whole of the property. It is not a divided interest as to one specific portion of the property. The arrangement that the plaintiff and defendant have agreed as to their separate occupation of the upper and lower units does not affect their respective legal rights as legal owners of the whole property as tenants in common.

72. Therefore, in my view, it must follow from the right of common ownership of the whole of the property that one tenant in common has no right to exclude another tenant in common from the use and occupation of the land. I have been unable to find a case directly in point, and so I have drawn what appears to be the only principled conclusion that flows from the nature of common ownership. In my judgment, therefore, the court cannot order the defendant to vacate the property or grant the power of management of the property to the plaintiff to the exclusion of the defendant. This means that the court must refuse the primary relief sought by the plaintiff.

73. The plaintiff has made it clear that the present circumstances cannot continue and if the court cannot grant the primary relief she seeks (i.e. to eject the defendant from the property so the plaintiff can take over its management), the plaintiff wants an order for the sale of the property under the Partition Acts.

The Partition Acts

74. Under the Bermuda Conveyancing Act 1983 there is no provision which corresponds to sections 3 and 4 of the English Trusts of Land and Appointment of Trustees Act 1996 which governs the disposition of jointly owned property. The position in Bermuda is governed by the Partition Act 1855 and the Partition Act 1914 which replicate the old provisions of the English Partition Act 1885.

75. It is helpful to set out some of the relevant provisions of the Bermuda legislation for clarity. Section 2 of the Bermuda Partition Act 1855 provides (so far as relevant):

> *"Where any co-tenant prefers a petition to the Supreme Court verified upon oath...praying for the partition of any land in Bermuda held by him in co-tenancy...the Supreme Court, if it sees fit to do so, may proceed upon such petition in a summary manner under this Act for the partition of such land:*
>
> *Provided that if from any circumstance whatsoever at any time in the course of the proceedings it appears to the Supreme Court that the ends of justice are not likely to be so fully attained by a summary proceeding under this Act as they might be under some other mode of proceeding...it shall be competent to the Court, if it thinks fit to dismiss the petition and all further proceedings thereon."*

76. Section 3 of the 1855 Act provides for the relevant procedure, which includes service of the petition on all co-tenants and the appointment of a date for all co-tenants to appear to show cause why the order for partition should not be granted. There is also provision for the appointment of a three-person commission to inspect the land and report to the court, but this is optional[8].

77. Section 7 provides that a partition ordered by the court shall be binding and conclusive on all co-tenant parties and their heirs and administrators. Section 8 makes provision for the payment of a sum of money to achieve equality of partition between the co-tenants.

78. Pausing at this stage to apply these provisions to the present proceedings, two things are clear. First, the court can proceed either by way of petition or some other proceeding. The court is concerned with making sure that all co-tenants have been served with the proceedings and the materials in support thereof. It seems to me that the basic requirements of the Partition Act 1855 regarding service on the co-owner have been met in this case even though this proceeding was not by way of petition, and that the court can therefore proceed to determine the plaintiff's claim for partition. The defendant was aware of the alternative claim and answered it in her own affidavit, so there is no surprise or failure to give her the opportunity to object to it. The section also says the court could have ordered a trial by way of some other originating process in any event, such as by way of originating summons. It is for these reasons that I consider that the procedural method by which the plaintiff sought relief from the court is immaterial.

79. The second element that is clear is that the court is required to take into account all the circumstances of the case and is (unsurprisingly) required to seek the full attainment of justice between the parties in the exercise of its powers under the Act.

80. However, the 1855 Act did not permit the order for a sale of the property which was the subject of the partition application, unless all the co-owners agreed[9]. This was addressed in the Partition Act 1914 which provides in section 1:

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[8] **Holder v Holder** BM 2014 SC 20 per Hellman J at paragraph 46.
[9] **Pitt v Jones** (1880) 5 App Cas 651.

> *"If in any action for the partition of any land in Bermuda or on any petition for the partition of any such land, where if this Act had not been passed the Supreme Court might have decreed or ordered a partition, it appears to the Supreme Court that by reason of the nature of the property to which such action or partition relates or of the number of the parties interested therein, or the absence or disability of some of the parties, or of any other circumstances, a sale of the property and a distribution of the proceeds would be more beneficial to the parties interested than a division of the property between or among them, the Supreme Court may, if it thinks fit, on the request of any of the parties interested, and notwithstanding the dissent or disability of any other or others of them, direct a sale of the property accordingly, and may give all necessary or proper consequential directions."*

81. Section 2 of the 1914 Act provides:

> *"If in any such action for partition or on the hearing of any such petition as aforesaid where if this Act had not been passed, the Supreme Court might have decreed or ordered partition, any party interested in the property requests the Supreme Court to direct a sale of the property, and a distribution of the proceeds instead of a division of the property between or among the parties interested, the Supreme Court may if it thinks fit, unless the other parties interested in the land or some of them undertake to purchase the share of the party requesting a sale, direct a sale of the property and give all necessary or proper consequential directions."*

82. This provision essentially enables the court to accept an undertaking from an interested party to purchase the share of the party requesting a sale without making an order for sale.

83. Section 3 of the 1914 Act gives the court the power to order a valuation of the property if one party gives an undertaking to buy the share of the party who has requested the sale. Even though the defendant indicated an interest in a family member buying the plaintiff's share, no such undertaking has been given by the defendant, so this provision has not been invoked by the defendant.

84. Section 4 of the 1914 Act allows the court to permit any interested party to bid on the sale, and section 5 does not require a party to seek a partition if they have asked for a sale and distribution of the proceeds.

85. These provisions have been the subject of detailed consideration by Hellman J in **Holder v Holder**[10] and **Smith v Smith**[11] which are of great assistance in explaining the operative provisions and general guiding principles to be applied in a partition case. I gratefully adopt Hellman J's analysis and reasoning.

[10] BM 2014 SC 20
[11] [2014] SC Civ Bda 48

86. Hellman J analysed the old English case law under the English Partition Act 1855 and derived two guiding principles. First, the meaning of beneficial in section 1 of the Bermuda Partition Act 1914 means beneficial in a pecuniary sense, meaning monetary results[12]. Second, when applying the provisions of the Partition Act 1914 in a modern context, the court should apply a broader approach, and the term beneficial should be applied in a holistic way, including financial benefit as a core consideration, but should include other relevant non-pecuniary factors in the case so as to achieve substantial justice between the parties[13].

87. Hellman J went on to modify his analysis in **Holder** slightly in **Smith v Smith** in which he held that the power of the court to order a sale under section 2 of the 1914 Act is narrower than the power under section 1, because the terms of section 2 do not refer to the court considering the sale to be 'beneficial'. However, this limitation only applies where one of the co-tenants undertakes to purchase the share of the party requesting the sale. As explained above, this is not such a case, so the court is able to apply the broader approach permitted under section 1.

Applying the principles to the present case

Jurisdiction

88. I am satisfied that the court has jurisdiction to entertain an application for an order for sale of the property in this case because it is clear that both parties accept that they are tenants in common and therefore fall within the term 'co-tenant' used in the Partition Act 1855. The term co-tenant is deliberately widely cast to capture any form of joint ownership and must include a tenancy in common. Therefore, the plaintiff's prayer for relief in the present case relates to an interest which could have been the subject of a partition claim under the 1855 Act and is therefore amenable to the court's powers of sale under section 1 of the Partition Act 1914.

89. The basic premise behind the modern law of joint or common ownership is that such an interest should not be "locked in" forever, or subject to the other joint owner's ability to object to the sale. This is both as a matter of fairness and public policy in relation to a person's right of freedom to alienate his or her property.

90. However, as Hellman J observed in **Holder v Holder**, the partition of a jointly owned property (whether as joint tenants or as tenants in common) does not operate to override the rules as to subdivision of property, which is subject to a separate legislative regime under the Development and Planning Act 1974.

Factors to be taken into account when deciding whether to grant relief

91. It is relevant to note that the court's starting position under section 3 of the 1855 Act is that an order for partition should be made unless the other parties 'show cause' why partition should not be made. This strongly suggests a policy in favour of sale rather than retention of the joint interests as one, for the reasons noted above.

[12] **Drinkwater v Ratcliffe** (1866) Eq 528.
[13] At paragraph 54 of **Holder v Holder**, applying the principle of interpretation described in **R v Ireland** [1988] 147 that the court must construe the statute as being deemed to be 'always speaking' (per Lord Steyn at 158.

92. Under section 1 of the 1914 Act, the court is required to have regard to the nature of the property, the number (or disability) of the other parties *or of any other circumstances* in considering whether an order for sale would be more beneficial (in the wider sense explained above). I consider that there are a number of factors which are relevant to the court's assessment as to whether it should make an order for sale and which fall within the scope of 'any other circumstances'.

93. First and foremost, it is clear beyond any sensible argument that the relationship between the plaintiff and defendant has reached a point that it is no longer practicable for them to continue to manage the expenses and obligations of the property together. The plaintiff cannot reasonably be expected to continue to make up the shortfall in the defendant's joint payment obligations in order to forestall enforcement action by the Bank. Nor is it reasonable to expect her to have her own financial position in relation to the property to be subject to the defendant's failure to complete the renovations, or keep the property in a state of ordinary repair and upkeep.

94. For the reasons already explained, I am satisfied that the plaintiff has taken all reasonable steps and made all realistic attempts to resolve the impasse, and that the defendant has failed (for whatever reason) to engage with those efforts. In the court's view, the plaintiff should be entitled to take her stake in the property and move on if she wishes to do so.

95. It is not possible for the court to make an order which divides the property into two separate parcels and allocate them to each of the plaintiff and defendant. This is because a subdivision can only be registered if certain requirements are met under the Development and Planning Act 1974. The parties would have to agree on the terms of a subdivision and comply with the minimum requirements by dividing the land into two separate lots. This is not legally possible in a single building, but even if it were, there is no reasonable prospect of the plaintiff and defendant agreeing on anything, for the reasons already given above.

96. In addition, the property is subject to a mortgage in joint names, and the title of the property would have to be re-registered and the Bank would have to agree to separate the financial obligations to service each separate mortgage. There is no prospect of this being practical, especially given the difficulty the defendant has had in meeting her share of the financial obligations in the past.

97. Against these considerations, I have to balance the respective financial interests of the parties in the assessment of whether the court considers that it is 'beneficial' to order a sale. The price sale of the property in its current state is likely to fetch a lower price that if it were in good repair. But it is impossible to make any estimation of the likely diminution in the property's value on this account without proper evidence and assessment by independent experts. However, whatever that ultimate net value is, it will be shared equally between the parties, after discharge of all debts and obligations relating to the property.

98. I also have to weigh into account that the property is the home of both the plaintiff and the defendant, which was purchased in their names from assets that came from compensation resulting from their

father's untimely death, which was used by their late mother in the purchase of the property in their names, no doubt to provide long term security for her daughters.

99. Weighing all of these factors in the balance, I have come to the inescapable conclusion that there is no choice but to order a sale of the property. I consider that there is greater financial benefit to the parties individually to sell the property and divide the proceeds net of expenses (and any other necessary adjustments) to enable the parties to take their respective financial shares and start again on their own. It is certainly not in the financial interests of either of the parties to be in a precarious financial situation every month, constantly fending off the prospect of enforcement proceedings because the defendant has failed to pay her half share, or for the parties to live under the shadow of the disruption that a mortgage enforcement would cause to them both. They cannot get along. They must each be allowed to go their separate ways, financially and otherwise.

Order for sale

100. The court therefore considers that it is in the interests of justice and in the best financial and other interests of the parties that an order for sale of the property be made, subject to appropriate directions and conditions. However, any order for sale will expressly preserve the right of each of the parties to bid on the sale or purchase the interest of the other at a properly assessed value. Directions will need to be given in order to preserve this possibility.

The Bank's interest

101. The Bank was not made a party to, served with or notified about the present proceedings. There may have been sound strategic reasons why the parties decided not to approach the Bank until the outcome of the application had been determined by the court. However, the court must ensure that the Bank's priority rights as a secured lender are not affected by any orders this court makes in these proceedings.

102. Obviously, it goes without saying that when the property is sold, the Bank will be able to satisfy the outstanding principal and any accrued arrears of principal or interest out of the proceeds of sale in accordance with its rights under the mortage. However, if one or other of the parties makes a successful bid for the purchase of the other's share in the property, this may need to be taken into account when considering the enforcement of those rights, and directions will likely need to be given to preserve the Bank's priority.

103. The court will therefore give the Bank liberty to intervene in the sale process in the consequential directions and orders given at the end of this judgment.

Other matters

104. It is also necessary to consider the equitable principles that apply when the court is seeking to attain the ends of justice in ordering a sale of the property under the Partition Acts.

105. This consideration arises because the plaintiff has claimed that she has paid a substantial proportion of the defendant's share of the mortgage payments for an extended period between 2020 and 2025, along with the land tax and insurance costs. The plaintiff has estimated the additional contribution

at somewhere between BD$25,000 and BD$100,000.00. In achieving the ends of justice, the court needs to consider what if any adjustments or directions need to be made to any order for sale or the distribution of proceeds to take into account any inequality in the payments made by the plaintiff and the defendant. It would in my view be unjust for the property to be sold without a formal account being taken to ensure that the plaintiff's additional contributions are reflected in the distribution of the proceeds of sale.

106. The plaintiff has estimated that the amount she has paid to make up for the defendant's shortfall in contributions is between BD$25,000 and BD$100,000. This is a wide range and is apparently based on guesswork rather than based on a proper financial record of missed payments. If it is true that the defendant did not make payments for almost 5 years, then this is likely to represent a significant adjustment which needs to be taken into account in the interests of overall fairness and equity between the parties. However, the documentary record of payments is very far from complete. Before any adjustment can be made to equalise the payments between the plaintiff and the defendant to the mortgage and related expenses, the plaintiff must produce a full and detailed account of her payments supported by a full documentary record to support her claim.

107. It has already been explained that the plaintiff and the defendant are entitled in law to one half of the residual value of the property (or equity of redemption) and will share equally in the distribution in the proceeds of sale after the mortgage has been repaid and the costs of the transaction have been paid. This is the case even though it appears likely that the value of the upper unit is likely to be lower than the value of the lower unit, and the poor condition of the upstairs unit will likely have a negative effect on the value of the whole property. The plaintiff's half share of the value of the whole property will therefore be less than it might have been had the upper unit been kept in proper repair. Similarly, the defendant's half share of the whole value of the property will be increased somewhat by the better condition of the lower unit compared to the upper unit.

108. However, I do not think the court has the power to make any division of the equity of redemption as between the plaintiff and the defendant as co-owners. However, I do consider that the court can make an order that the defendant must reimburse the plaintiff for the additional contributions to the mortgage, land tax and insurance costs of the property that the plaintiff has paid (in effect) on the defendant's behalf. This is in accordance with the parties' agreement to pay an equal share of the mortgage, land tax and insurance, and their course of conduct. It also reflects the defendant's statement in the witness box that she would be open to making good any shortfall in equal payments on her part.

109. In applying the guiding principles of doing justice as between the parties, it seems only fair and just that prior to the distribution of any of the proceeds of sale is made, an account should be taken of the amount by which the defendant's payments toward the mortgage, land tax and insurance of the property have not been equal. I will refer to this sum as the "Shortfall Amount". Once the Shortfall Amount has been determined (either by agreement or court adjudication) the defendant should pay that amount to the plaintiff out of her half share of the net proceeds of sale.

110. In making provision for the payment of the Shortfall Amount out of the defendant's share of the net proceeds of sale, the court is applying the broad discretionary powers under section 1 of the 1914 Act to seek the ends of justice which were explained and applied by Kawaley CJ in another partition case. In **Young v Young**[14] the learned former Chief Justice held that while the court could not make adjustments to the contributions to a purchase in the names of joint owners, the court could give credit for the difference (if any) between 50% and the contributions made by one party to the capital and interest payments on the joint debt.

111. In my view, in the present case it would be plainly unjust for the defendant not to give credit to the plaintiff for the payments made to make up her failure to meet her obligation to pay half of the mortgage and related expenses. No issue of limitation of action arises in relation to missed payments dating back to 2020.

112. Accordingly, I order and direct that once an account has been taken of the respective contributions made by the plaintiff and the defendant to the mortgage, land tax and insurance on the property, the distribution of the net proceeds of sale shall be adjusted to reflect the Shortfall Amount for the period between 2020 and the date of the sale of the property. It is noted that the plaintiff sought reimbursement for other expenses, but these were not produced in evidence. As a result, the court is limiting the plaintiff's recoupment claim to equalise their payments of (i) mortgage payments (ii) land taxes and (iii) insurance costs. If the defendant is getting half of the net proceeds, it seems to me that she must at least pay her half share of the debt obligations, land tax and insurance costs that related to the property.

113. Once credit for the total Shortfall Amount has been given, the defendant will of course be entitled to her half share in the net proceeds of sale after payment of the bank debt and sale expenses. The court will therefore make an order for an accounting to be taken of the Shortfall Amount, to be approved by the court prior to the distribution of the net proceeds of sale to the parties.

Costs

114. The court considers that the plaintiff has succeeded in real life terms in the action and should be entitled to her costs to be taxed on the standard scale if not agreed.

Order and Directions

115. The court therefore gives the following orders and directions to give effect to the order for sale and the other steps that will need to be taken to give effect to the terms of this judgment.

Valuation

116. Either of the parties may commission a valuation report from an independent and accredited property valuer to determine the fair market value of the property in its present condition and each party shall give the other reasonable access to their respective units for that purpose. This valuation report shall be used in support of any offer either party wishes to make for the purchase of the other's share.

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[14] [2013] Bda LR 9 at paragraph 48.

117. Such valuation report(s) are to be obtained within 30 days of the date of this judgment and a copy served on the other party.

Undertaking to purchase

118. Although neither party gave a formal undertaking to purchase the other's share within the meaning of section 2 of the Partition Act 1914, the plaintiff and the defendant each expressed interest in purchasing the other's share. This is likely to be subject to financing being obtained as to which the court has no evidence and about which it is premature to speculate. However, it seems to me to be just and fair to allow the parties to offer to purchase one another's shares if they are able to arrange financing.

119. In order to facilitate this, the court directs that either party shall be at liberty to make an offer to purchase the other's share within 30 days of the date for obtaining a valuation report. Such offer must be for cash or must be supported by fully approved bank financing.

120. If such an offer is made it shall be by way of a binding undertaking to purchase the other's share under section 2 of the Partition Act 1914 ("Undertaking"). The Undertaking to purchase the other's share must equal one half of the independently assessed value of the property after deduction of the amount of the outstanding principal debt owed to the Bank; provided that (i) in the case of an Undertaking by the plaintiff there shall also be a deduction of the Shortfall Amount (defined below) or (ii) in the case of an Undertaking by the defendant, the Undertaking must include the Shortfall Amount in addition to the offer made for the value of the plaintiff's share .

121. In the event that one party is able to complete a purchase of the other party's half share in accordance with an Undertaking, then that party may apply to the court for an order giving effect to that Undertaking under section 2 of the Partition Act 1914 within 60 days of the date of this judgment.

Accounting

122. The plaintiff is at liberty to prepare an accounting of the Shortfall Amount claimed against the defendant for the defendant's share of missed mortgage payments or defaults in paying her half share of land tax and insurance in respect of the property between 2020 and the date of the sale of the property. This accounting must be served on the defendant within 60 days of the date of this judgment, together with copies of bank statements and other records or receipts in support thereof. If the Shortfall Amount is not agreed by the defendant, the plaintiff must apply to the court to determine the Shortfall Amount.

Sale

123. In the event that neither party is able or willing to give an Undertaking to purchase the other party's share within 60 days of the date of this judgment, the court orders that the property is to be sold at public auction to be conducted by an accredited and licensed real estate agent or auctioneer. If the parties cannot agree on the identity of such real estate agent or auctioneer, the parties may apply to the court to appoint one.

124. The court further directs that the sale of the property shall be with vacant possession, and the date for completion of the sale shall be not sooner than 120 days from the date of this judgment to allow the parties sufficient time to vacate the premises.

125. The court also directs that the plaintiff and the defendant shall be permitted to bid on the sale at auction if they wish to do so.

126. The court directs that the net proceeds of sale (after satisfaction of the mortgage, the costs and expenses of the auctioneer, stamp duties and legal expenses associated with the transaction) are to be paid into court. Thereafter the Shortfall Amount will be deducted from the defendant's half share of the proceeds of sale and credited to the plaintiff's half share of the proceeds of sale and distributed accordingly.

The Bank's interest as mortgagee

127. The parties are directed to serve a copy of the judgment and the accompanying Order on HSBC Bank Bermuda Limited as mortgagee within 7 days of the date of this judgment.

128. It is hereby expressly declared that nothing in the terms of this judgment or accompanying Order shall prejudice or affect any right of the mortgagee under the terms of the mortgage dated 5 December 2016.

129. The Bank is hereby granted liberty to intervene as an interested party in the event further directions need to be given to protect its interest as mortgagee in relation to the implementation of the terms of the judgment, or with respect to the enforcement of the Bank's rights under the mortgage.

Liberty to apply

130. The parties are also granted liberty to apply for further directions with respect to the implementation of the terms of the court's judgment and accompanying Order.

Dated this16th day of September 2026

THE SEAL OF THE SUPREME COURT OF BERMUDA

SIGNED

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THE HON. MR. JUSTICE ANDREW MARTIN

PUISNE JUDGE OF THE SUPREME COURT