

EDITORIAL NOTE: NAMES AND/OR DETAILS IN THIS JUDGMENT HAVE BEEN ANONYMISED.

**NOTE: PURSUANT TO S 35A OF THE PROPERTY (RELATIONSHIPS) ACT 1976, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO 11D OF THE FAMILY COURTS ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE
[HTTP://WWW.JUSTICE.GOV.T.NZ/COURTS/FAMILY-COURT/LEGISLATION/RESTRICTIONS-ON-PUBLICATIONS](http://www.justice.govt.nz/courts/family-court/legislation/restrictions-on-publications).**

**IN THE FAMILY COURT
AT PUKEKOHE**

**FAM-2012-057-000297
[2016] NZFC 3584**

IN THE MATTER OF	The Property (Relationships) Act 1976
BETWEEN	BELL KELLER Applicant
AND	LEON KELLER Respondent
AND	KUZMA PAJARI, IRWIN PAJARI and JACK PARAJI as TRUSTEES of the K & P FAMILY TRUST Third Party

Hearing: 25 January 2016

Submissions filed: 8 and 12 February 2016

Appearances: P Wright for Applicant
M Vickerman for Respondent
R Blackwood for Trustees

Judgment: 7 June 2016

**RESERVED JUDGMENT OF JUDGE I M MALOSI
[Interim distribution]**

Introduction

[1] The Applicant and Respondent are engaged in proceedings commenced under the Property (Relationships) Act 1976 by the Applicant in September 2012. They were married on [date deleted] 1992 but just shy of their 20th anniversary, separated [date deleted] 2012. They have three children, [details deleted].

[2] It is common ground that at the substantive hearing (which now seems inevitable) the main issues will be:

- (i) Whether or not during the marriage, the K & P Family Trust (the Applicant's Parents' Trust, hereinafter referred to as 'the Trust') loaned the parties \$500,000.00;
- (ii) The classification, valuation and division of chattels;
- (iii) Post separation debts and contributions to the relationship property;
- (iv) Post separation dissipation of relationship property; and
- (v) Occupation rent for either party's occupation of the former family home.

Interim distribution sought by Respondent

[3] In the meantime, on 10 September 2015 the Respondent filed an interlocutory application for interim distribution of relationship property which was opposed by the Applicant, and consequently came before me by way of a submissions only hearing.¹

[4] There is no dispute that as at separation the two primary relationship property assets were the family home situated at [address 1 deleted], and an investment

¹Although Counsel for the Trust appeared with two of the Trustees, that was by way of watching brief only and the Trust did not seek to be heard on any matters.

property at [address 2 deleted] (currently occupied by the Respondent who pays the mortgage secured over it).

[5] The [address 1 deleted] property was sold in August 2015 and by agreement the net proceeds of sale, namely \$774,651.15 (plus interest accruing) are being held in the Trust Account of the Applicant's Solicitors pending resolution of these proceedings.

[6] It is from these funds (hereinafter referred to as 'the [address 1 deleted] proceeds') that the Respondent seeks an interim distribution.

[7] Although it is not accepted by the Respondent that he and the Applicant were loaned \$500,000.00 from the Trust, he concedes such amount should remain undistributed until that crucial issue has been determined by the Court.

[8] In other words, he confines his application for interim distribution from the [address 1 deleted] proceeds to the current balance in excess of the disputed \$500,000.00.

[9] The specific orders he seeks are as follows:

- (i) \$22,498.86 to be paid to his mother to repay funds advanced by her to the Respondent in order to meet relationship debts; and thereafter
- (ii) The balance of the amount in excess of \$500,000.00 to be paid in equal shares to the Applicant and Respondent.

Relevant law

[10] Section 25(1) of the Property (Relationships) Act 1976 enables the Court to:

'(a) make any order it considers just –

- (i) determining the respective shares of each spouse or partner in the relationship property or any part of that property; or*

(ii) *dividing the relationship property or any part of that property between the spouses or partners;*

(b) *make any other order that it is empowered to make by any provision of this Act’.*

[11] Pursuant to s.25(3) the Court may at any time also make ‘any order or declaration relating to the status, ownership, vesting or possession of any specific property as it considers just’.²

[12] In *North v North*³ Courtney J had this to say in relation to the ambit of s.25(3) when she set aside an interim distribution order to IRD of approximately \$168,000.00:

‘It is true that s.25(3) is couched in wide terms and that orders may be made under s.33 to give effect to them. However, no order made under s.33 can confer rights that could not have been obtained under s.25. The extent of the power to make the orders under s.25(3) is perfectly clear and does not include the payment of relationship property to a third party which has no interest in the property.’

[13] Section 25(4) provides that:

‘To avoid any doubt, but without limiting subsection (3), if proceedings under this Act are pending, the court, if it considers it appropriate in the circumstances, may make an interim order under that subsection for the sale of any relationship property, and may give any directions it thinks fit with respect to the proceeds.’

[14] Any such order under s.25(3) or (4) must relate to a specific item of property as opposed to assets in general.

[15] In *SM v LFDB*⁴, Ellis J held:

‘First, in determining whether an interim distribution order should be made the Court must generally be satisfied that the amount sought by way of

² Regardless of ss.2

³ [2013] NZHC 2074 at para [22]

⁴ [2013] NZHC 1056 at paragraphs 29-30

interim distribution will be less than the applicant's ultimate share of relationship property: Murray v Murray (1989) 5 FRNZ 177 (CA). The reasons for this preliminary enquiry are, I think obvious enough.

Once that particular threshold is passed, there are a number of other factors that the Court may weigh in the balance in the exercise of what is acknowledged to be a broad discretion. These include:

- (a) Any possible prejudice that might arise from the making of a proposed order;*
- (b) The purpose and principles of the PRA including in particular the need to do justice between the parties;*
- (c) The needs and circumstances of the applicant;*
- (d) The purpose for which the distribution is sought;*
- (e) The applicant's likely share of the relationship property;*
- (f) The respondent's ability to give effect to an order at that time;*
- (g) The length of time until the substantive claim is likely to be heard;*
- (h) Any delays in proceedings to date and whether those delays are attributable to either of the parties; and*
- (i) Whether an interim distribution will cause further delays in finally determining the relationship property claim.'*

[16] In *CDH v IAP*⁵, Judge Geoghegan identified all of the above as factors commonly taken into account by the Court when considering whether or not to order an interim distribution of relationship property, but added the following:

- (i) Whether there is any uncertainty regarding the applicant's relationship property entitlement;
- (ii) The effect of an order on the parties' willingness and determination to finalise their claims;

⁵ FAM 2009-070-817 – Family Court, Tauranga, 11 January 2011

- (iii) Whether or not the respondent has dissipated relationship property since separation.

Extent and value of relationship property

[17] Following *SM v LFDB*⁶ then, the first consideration in respect of this application for interim distribution of relationship property is that the Court ‘must generally be satisfied’ that the amount sought by the Respondent will be less than his ultimate share of relationship property.

[18] That invariably involves an assessment of the extent and value of the relationship property overall.

[19] In terms of the [address 1 deleted] proceeds (\$774,651.15) there is no dispute that is relationship property, hence it being held in the joint names of the parties on interest bearing deposit in the Applicant’s Solicitor’s Trust Account. The only disbursement from this account agreed to by the parties was \$2,701.00 to [name of company deleted] on 10 November 2015 in part payment of a total amount of \$5,692.34 owing as at separation. That then reduced the original amount to \$771,950.15.

[20] So far as [address 2 deleted] is concerned, again there is no dispute this is relationship property. On 20 September 2013, the Applicant obtained a registered valuation from Seagar and Partners which put the value at \$345,000.00. Although there has been no updating valuation since, the Applicant estimates the current market value is between \$450,000.00 and \$500,000.00 so adopts the midway point of \$475,000.00. The Respondent takes no issue with that. As at 31 December 2015 (that being the most recent date before the Court) the Applicant says the mortgage due to ANZ was \$215,171.50. Assuming for present purposes that the valuation of [address 2 deleted] is correct, that results in a total equity of \$259,828.50.

⁶ Supra: note 4

The Respondent's position

[21] In his submissions dated 18 January 2016, Mr Vickerman put the value of the estate at \$1,034,099.10⁷ less the Trust's claim of \$500,000.00 and the Applicant's specified claims of \$14,302.25⁸. However, at the hearing he proceeded on the basis of the Applicant's position that the total net relationship property was \$620,252.70, with one half of that being \$310,126.35.

[22] Despite Ms Wright's calculations clearly including the estimated \$475,000.00 valuation of [address 2 deleted] and the \$215,171.50 mortgage secured over it, Mr Vickerman interpreted the \$620,252.70 as excluding [address 2 deleted] leading to the unsound submission that the Respondent was entitled to \$310,126.35 of the [address 1 deleted] proceeds.

[23] Notwithstanding, I accept it is the Respondent's position that even if the Applicant's claims are upheld in their entirety, there will still be a surplus of \$77,952.75⁹ due to him from his share of the equity in [address 2 deleted] *after* meeting the Applicant's claims over and above her entitlement to an equal share.

[24] That figure is arrived at as follows:

- (i) The Applicant claims that the equity in [address 2 deleted] is \$259,828.50.¹⁰
- (ii) Of that amount the Respondent says he is notionally entitled to $\frac{1}{2}$ ie \$129,914.25.
- (iii) The Applicant's position is that she is to retain \$137,658.35 worth of property as her separate property after division,¹¹ and

⁷ [Address 1 deleted] proceeds of \$774,651.15 + equity in [address 2 deleted] of \$259,448.00

⁸ \$13,692.50 being half of the assets of [name of company deleted] in the possession of or sold by the Respondent and \$340.00 to equalise chattels division

⁹ Accepted by Counsel for the Respondent to have been incorrectly calculated in the submissions as \$74,033.75

¹⁰ Valuation of \$475,000 less mortgage of \$215,171.50 as at 31.12.15

the Respondent \$222,765.85.¹² So in order to equalise the Respondent would need to pay her \$42,553.75.

(iv) \$129,914.25 less \$42,553.75 = \$87,360.05.

(v) In the main the Respondent rejects as 'not tenable' the Applicant's claim for \$22,795.00 worth of items she alleges the Respondent retained, and for which an unqualified value is attributed. The Respondent is similarly dismissive of \$4,540.00 worth of equipment¹³ claimed to be missing. He does however, concede a deduction of \$1,202.50 is appropriate, being half of two items worth \$2,200 said to have been sold by him and \$205.00 worth of items not seen by the Valuer but nevertheless to which he attributed an estimated value. That then reduces his equity in [address 2 deleted] to \$86,157.55.

(vi) The Applicant then seeks a discretionary adjustment for post separation expenses totalling \$38,288.35.¹⁴ A deduction of ½ of that amount namely \$19,144.17, arrives at \$67,013.38.

(vii) The Applicant claims to have paid a total of \$1,166.62 in expenses said to be the sole liability of the Respondent.¹⁵ Although debatable in the Respondent's view, he deducts that

¹¹ Half share of balance of [address 1 deleted] sale proceeds (\$771,950.15 - \$500,000 being the disputed amount = \$271,950.15 divided equally) \$135,975.08; chattels in Applicant's possession \$2,565.00; specific chattels currently in the possession of the Respondent \$340.00; half of joint bank account \$275.71; partial refund of pool deposit received \$748.23; less half of relationship debt paid to [name of company deleted] \$2,245.67.

¹² Half share of balance of [address 1 deleted] sale proceeds \$135,975.07; [name of company deleted] Bank account as at 31.12.15 \$1,657.74; half of joint bank account \$275.71; [vehicle details deleted] \$6,800, [vehicle details deleted] \$9,500; all chattels and other vehicles in the Respondent's possession (save for the \$340.00 worth of chattels that the Applicant seeks the return of) \$70,303.00; part payment of debt owed \$500.00; less half of relationship debts paid to [name of company deleted] \$2,245.67.

¹³ Which includes two 30m extension cords given a value of \$1,200.00

¹⁴ \$2234.46 [name of company deleted]; \$5,012.81 miscellaneous payments in respect of [address 2 deleted]; \$19,707.14 miscellaneous payments in respect of [address 1 deleted]; \$11,333.94 daughter's laptop, Visa payments and [details deleted]

¹⁵ Fines, locksmith, carpet cleaning, removal of boat and insurances

amount which reduces his share of equity in [address 2 deleted] to \$65,846.76.

- (viii) The Applicant also claims the Respondent withdrew the sum of \$1,163.34 from a joint account and must account to her for half of that namely \$581.67, taking his balance to \$65,265.08¹⁶.
- (ix) The Respondent says he has borrowed \$16,970.93 from his mother and paid \$1,286.91 in relationship debts thereby increasing his equity in [address 2 deleted] by half that amount, \$9,128.92. When added to the running total of \$65,265.08 that takes the figure to \$74,394.00.
- (x) The Applicant claims a shortfall in rent received by the Respondent from the parties' son and another tenant totalling \$10,584.00, half of which is \$5,292.00 thereby reducing equity in [address 2 deleted] to \$69,102.00.
- (xi) Half of the mortgage payments made by the Respondent for [address 2 deleted] come to \$8,821.05 which has the effect of increasing his share of [address 2 deleted] from \$69,102.00 to \$77,923.05.

[25] The Respondent's bottom line then is that even after equal division of relationship property and satisfaction of the Applicant's claims over and above that entitlement, he still stands to receive \$77,923.05 from his equity in [address 2 deleted], and therefore the Court can be satisfied that ordering interim distribution of the [address 1 deleted] proceeds will be less than his ultimate share of relationship property.

Applicant's position

¹⁶ In Mr Vickerman's submissions dated 25 January 2016 at paragraph 9(l) the incorrect figure of \$62,265.08 was recorded, therefore all subsequent figures are adjusted accordingly.

[26] The Applicant roundly rejects that submission. She does not accept that the Respondent has provided a complete picture or accurately assessed the parties' relationship property. In the original submissions for this hearing filed on 18 January 2016, Ms Wright provided very detailed analysis in respect of same.

[27] The Applicant's position at that point as to the parties net relationship property as at 15 January 2015 (excluding separate property) was calculated by taking the parties assets less liabilities, and including adjustments for post separation contributions by both parties (noting disputes as to classification or values of chattels).

[28] As noted earlier, the Respondent appears to accept (for present purposes at least) that the total net relationship property is \$620,252.70.

[29] The Applicant proposed two options to achieve equal division excluding the disputed \$500,000.00 loan. Both options result in the Respondent owing the Applicant money. The first option involves the Respondent retaining [address 2 deleted] in which case the Applicant calculates he would owe her \$214,517.59, whereas if [address 2 deleted] were to be sold that would reduce his liability to the Applicant to \$84,603.34.

[30] In relation to Option 1, the amount of \$214,517.59 is arrived at as follows:

- (i) Property retained as Applicant's separate property after division: \$137,658.35¹⁷
- (ii) Property retained as Respondent's separate property after division: \$482,594.35¹⁸
- (iii) Amount required to equalise so each party receives their half share of \$620,252.70 ie \$310,126.35 \$172,468.00

¹⁷ Mostly her ½ share of the balance of [address 1 deleted] proceeds, \$135,975.08

¹⁸ Includes his ½ share of the balance of [address 1 deleted] proceeds, \$135,975.08 plus the equity in [address 2 deleted], \$259,828.50

(iv)	Reconciliation adjustments ¹⁹	<u>\$ 42,049.59</u>
		\$214,517.59

[31] In relation to Option 2, the amount of \$84,603.34 is arrived at as follows:

(i)	Property retained as Applicant's separate property after division:	\$267,572.60 ²⁰
(ii)	Property retained as Respondent's separate property after division:	\$352,680.07 ²¹
(iii)	Amount require to equalise so each party receives their half share of \$620,252.70 ie \$310,126.35	\$ 42,553.75
(iv)	Reconciliation adjustments	<u>\$ 42,049.59</u>
		\$ 84,603.34

[32] At the hearing, Mr Vickerman's approach that all of the Applicant's claims could be satisfied from the Respondent's share of equity in [address 2 deleted] and therefore there was no impediment to an interim distribution of the [address 1 deleted] proceeds appeared to have taken Ms Wright by surprise. Accordingly, she was given an opportunity to file further submissions in response which she did focussing on the rationale put by Mr Vickerman.

[33] Whilst the Applicant concedes that on her best case ie satisfaction of all of her claims, the Respondent would still have some equity in [address 2 deleted] she assesses that to be only \$26,416.81, but if mortgage payments are to be factored in

¹⁹Includes adjustments for post separation contributions to relationship property including daughter's expenses, reconciliation in respect rent received and mortgage paid on [address 2 deleted], and occupation rent of [address 1 deleted] for the period 28.5.12 to 9.7.13 (58 weeks) when the Respondent was in sole occupation – estimated weekly rental of \$450.00.

²⁰ Includes ½ share of [address 1 deleted] proceeds and ½ share of equity in [address 2 deleted]

²¹ Only difference from Option 1 being the equity in [address 2 deleted] is divided equally between the parties

that reduces his equity to just \$13,753.51. Both figures of course, are a far cry from the Respondent's end point of \$77,923.05.

[34] The Applicant is at pains to stress that the valuation of [address 2 deleted] is an estimate only and should it end up below the \$475,000.00 adopted at this point, that could materially affect both parties.

[35] For now however, they have adopted the figure of \$259,828.50 as the equity in [address 2 deleted], half of which is \$129,914.25. In order to equalise (based on the Applicant's calculations) the Respondent would have to pay her \$42,553.75 thereby reducing his equity to \$87,360.05.

[36] From that point the Applicant argues the following further adjustments (representing half of the total amount) reduce that figure to \$26,416.81:

(i)	Items removed by the Respondent from the family home post separation and were either not available for valuation or sold:	\$11,422.50 ²²
(ii)	Assets/equipment of [name of company deleted] not otherwise accounted for:	\$ 2,270.00 ²³
(iii)	Post separation expenses	\$19,144.17 ²⁴
(iv)	Joint Visa and [details deleted]	\$ 5,287.48 ²⁵
(v)	Daughter's school fees	\$17,631.35 ²⁶
(vi)	Respondent's sole debts paid by Applicant	\$ 1,166.62
(vii)	Funds withdrawn by Respondent	\$ 1,163.34 ²⁷

²²Claimed by the Respondent to be not tenable but Applicant submits that is a matter for the Court and in the meantime she has an arguable claim.

²³See note 22

²⁴Included by the Respondent in his calculations

²⁵Visa debt \$9,654.96 and [details deleted] (reimbursement to Applicant's father) \$920.00

²⁶In the face of the Respondent's strong opposition to these costs being included in the relationship property pool, the Applicant points out that the Respondent has included the money he borrowed from his mother to pay some of their daughter's school fees. Furthermore, it is the Applicant's position that the Respondent agreed to the school fees and associated costs being incurred and therefore he should account to her for half of those. She has specifically removed particular items that the Respondent objected to eg stationery, uniform and guitar.

²⁷The Applicant claims the whole amount whereas the Respondent factors in only ½ of this sum

(viii) Occupation rent \$26,100.00²⁸

[37] The Applicant accepts that she should account to the Respondent for:

- (i) Post separation contributions made by him (even though he rejects her like claim) \$ 9,128.92²⁹
- (ii) Difference between rent received on [address 2 deleted] and total funds paid by the Respondent between August 2012 and August 2014 \$5,292.25³⁰
- (iii) Personal funds advanced by the Respondent to [name of company deleted] for mortgage payments on [address 2 deleted] for the period September 2014 to 31 December 2015 \$ 8,821.05

[38] Significantly, in respect of the last two adjustments the Applicant's position is that the Respondent was living in [address 2 deleted] from November 2013 to current and she was living in [address 1 deleted] until it was sold last August. During those times each of them was paying outgoings on the respective properties, but only [address 2 deleted] was subject to a mortgage. Provided that for these periods neither party makes a claim against the other for occupation rental, the Applicant considers it fair and reasonable for her to pay half of the total [address 2 deleted] mortgage post separation not covered by rental received from tenants, including for that period of sole occupation by the Respondent from November 2013 to current. If however, a claim is made for occupation rental the Applicant rescinds her agreement to account to the Respondent for the sums of \$5,292.25 and \$8,821.05.

[39] The Applicant stresses that the \$26,416.81 she calculates as the Respondent's share of the equity in [address 2 deleted] after all her claims are met, includes the reimbursement to the Respondent by her of half of the mortgage costs on [address 2 deleted] in the period the Respondent was in sole occupation of the property, of \$12,663.30. Her position is that such inclusion is subject to neither party claiming occupation rental from the other. If such a claim is made by the Respondent the

²⁸For the 58 weeks that the Respondent was in sole occupation of [address 1 deleted] 28.5.12 – 9.7.13, weekly rental set by the Applicant at \$450.00.

²⁹Includes payments made by 3rd parties on his behalf

³⁰The Respondent included this as an adjustment due from him to the Applicant

Applicant rescinds her agreement to account to the Respondent for \$12,663.30 and the amount of his equity in [address 2 deleted] further reduces to \$13,753.51.

Discussion

[40] When considering the Applicant's assessment of the Respondent's net equity in [address 2 deleted] and correspondingly her claims against him, I am mindful of the significant and highly contestable amounts in respect of their daughter's school expenses (approximately \$35,000.00) and the items he is alleged to have either removed from the family home post-separation, deliberately not made available for valuation, or sold (worth approximately \$27,500.00). Although I have not reached the point where I have been persuaded such claims are untenable, the possibility of the Respondent persuading the trial Judge to that view cannot be ruled out.

[41] I have also taken into account the Applicant's concern that [address 2 deleted], if sold or revalued, would yield less than \$475,000.00. In the current market I consider that highly unlikely.

[42] In any event the Applicant concedes that the Respondent will be able to satisfy all of her claims over and above her entitlement to an equal share of the relationship property, albeit by a small margin, from the equity in [address 2 deleted].

[43] Given that there is no dispute that the parties are entitled to half of the [address 1 deleted] proceeds, less the disputed \$500,000.00, I find that the Respondent has crossed the threshold of generally satisfying the Court that his application for interim distribution is less than his ultimate share of relationship property.

[44] I turn then to consider whether or not the Court should exercise its discretion and make the orders for interim distribution as sought.

[45] In respect of the Respondent's application for an interim distribution of relationship property to be made to his mother for \$22,498.86 (to repay funds she

advanced to him in order to meet relationship debts including their daughter's school fees), I consider *North v North*³¹ can be distinguished on the facts because that case involved a payment to a 3rd party who had no interest in the parties' relationship property. In this instance the purpose to which the funds from the Respondent's mother were put is largely agreed, and there is nothing to suggest that money was not to be repaid at some point (although it might be arguable by whom).

[46] If I am wrong about that distinction, then *North* applies and there is no jurisdiction to make the order sought.

[47] That said I have not been persuaded on the evidence that the situation for the Respondent's mother is such that an interim distribution should be made to her at this point, or that she should be preferred over others who are also owed money by the parties (including the Applicant's father). If the Respondent wishes to repay his mother out of any order for interim distribution made then that is a matter for him, and an adjustment can then be sought at the substantive hearing.

[48] In terms of the needs and circumstances of the respondent, it is accepted that he is in receipt of ACC following a [event details deleted] accident shortly prior to separation. He receives \$402.00 per week, and is slowly returning to work. After paying the \$265.00 per week mortgage on [address 2 deleted] he has a disposable income of \$137.00. Even for one person that is a meagre amount to have to survive on. I note that the Applicant works fulltime and appears to have family resources far greater than the Respondent.

[49] In the course of these proceedings the Respondent has changed Counsel, and at times has represented himself. That has not assisted in the speedy resolution of these proceedings which have been on foot for nearly four years now.

[50] Unsurprisingly, the Respondent seeks the interim distribution to meet his day to day living costs, and legal fees.

³¹ Supra; note 3

[51] The substantive hearing is likely to be some months away yet, but with the return of long cause fixtures to South Auckland as from 1 October 2016 it is hoped this matter might come on for hearing sooner than previously expected.

[52] I see no reason why an interim distribution would cause further delays in finally determining the relationship property claims, particularly when the [address 1 deleted] proceeds are immediately available. Indeed, it seems to me that both parties are desperate for these proceedings to be finally resolved so they can move on with their lives.

[53] Any possible prejudice that might arise from the granting of an interim distribution in favour of the Respondent from the [address 1 deleted] proceeds is mitigated by the Respondent's ability to meet all of the Applicant's claims, including the disputed ones, out of his share in the equity in [address 2 deleted].

Result

[54] Whilst ultimately I have been satisfied that an interim distribution from the [address 1 deleted] proceeds to the Respondent is appropriate, I do not consider the amount sought by the Respondent would do justice between the parties.

[55] Balancing the Respondent's overall circumstances with the need to protect the Applicant's likely entitlement to relationship property, I determine that an interim distribution in the sum of \$80,000.00 balances those competing interests. In my view that then provides a comfortable margin of error.

[56] Accordingly, pursuant to s.25(3) and (4) of the Property (Relationships) Act 1976, I make the following orders:

- (i) Interim distribution in the sum of \$80,000.00 in favour of the Respondent;
- (ii) Interim distribution in the sum of \$80,000.00 in favour of the Applicant (if she elects to receive such now);

- (iii) To be paid out of the proceeds of sale of [address 1 deleted] held in the joint names of the parties in the Applicant's Solicitor's Trust Account;

Application by Respondent for leave to file further evidence

[57] The Respondent seeks leave to file three further affidavits in relation to the sale of [address 1 deleted] and his position that the Applicant caused loss on the sale.

[58] Ms Wright advises that subject to a right of reply, there is no objection to the affidavit of the Real Estate Agent who marketed the property, George Shoushkoff being filed nor one from a registered valuer (when instructed) on the valuation of [address 1 deleted] once a code of compliance certificate is issued.

[59] The Applicant does object to the affidavit of the purchaser, Tiffany Coteman arguing that she has no personal knowledge of any events or actions of either party prior to her purchase to evidence alleged loss on sale and who is responsible for that loss. That may be so, but the evidence she does give about unfinished work on the property and the overall presentation of it at the time of purchase is potentially relevant.

[60] Accordingly, leave is granted to the Respondent to file all three affidavits, and the Applicant may now file affidavits strictly in reply within 21 days (or in the case of the valuer within 21 days of receiving it).

[61] No further affidavits are to be filed without leave (which will hopefully not be sought so this case can finally proceed to a substantive hearing).

[62] This matter should now be placed in a Registrar's List in 5 weeks for Counsel to confirm the estimate of time for hearing, and that the matter is ready to be set down.

[63] Costs on both interlocutory applications are reserved pending determination of the substantive claims.

I M Malosi
Family Court Judge