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

IN THE FAMILY COURT
AT PALMERSTON NORTH

FAM-2015-054-000518
[2017] NZFC 4298

IN THE MATTER OF	THE PROPERTY (RELATIONSHIPS) ACT 1976
BETWEEN	[CASANDRA MIRAMONTES] Applicant
AND	[SAMUEL BRENNAN] Respondent

Hearing:	17 May 2017
Appearances:	Mr R Lewis for the Applicant No appearance for the Respondent
Judgment:	13 July 2017

RESERVED DECISION OF JUDGE J F MOSS
[as to division of property]

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[1] The Applicant wife sought an order dividing relationship property unequally. She pleaded that in this marriage of short duration her contribution has "clearly been disproportionately greater" than the contribution of the Respondent. Thus, she argued that the share of each spouse is to be determined in accordance with the contribution of each spouse to the marriage.

[2] Although in the evidence the Applicant suggested that she held money which she contributed to the purchase of the property during the marriage on trust for her children, that was not advanced before me.

The facts

[3] The Applicant had been married and had two children, and sometime in 2011 or 2012 her marriage ended. She became ill, and was living in supported accommodation when she met the Respondent. The parties decided to live together, which they did, occupying a tenancy which had been acquired in the Applicant wife's name. In October 2014 the Applicant's interest in former relationship property was quantified and paid. In November 2014 the Applicant purchased the home in which the parties were then living, contributing $69,000. She borrowed $184,000. The funds for the purchase came into the hands of the Applicant through a bank account owned by her daughter. From the early days of cohabiting, the Applicant gave evidence that the relationship was physically and emotionally abusive. She deposed that her daughters ceased to come to the house. They lived instead with their maternal grandmother. A neighbour made a statement to Police in June 2015 in which she described hearing frightening domestic disturbances. She said that towards the end of 2014 the Respondent threatened her and her husband.

[4] The Applicant described an environment of unpredictable mood and behaviour changes, which were influenced by the Respondent's drug taking. She described how charming the Respondent was at times and how abusive at other times.

[5] The parties married on [date deleted] November 2014 after the Respondent had, according to the Applicant begged her to reconsider her wish to end the relationship. By [date deleted] December the Applicant described that she felt desperate, that the relationship was continuing to be abusive, and she took an overdose of prescription medicine ([details deleted]). The overdose was life threatening and she spent about [duration deleted] in hospital. On 5 January 2015 the Applicant applied for and was granted a Protection Order. By February the Applicant perceived the Respondent was begging to reconcile again, and promising to stop drugs and drinking. On 10 March 2015 the Temporary Protection Order was discharged. On [date deleted] March the Respondent beat the Applicant, using crutches as a weapon. He threatened to burn the house down, which he had also

threatened to do in early December. The Applicant sought and obtained a further Temporary Protection Order. Separation occurred at that point.

[6] In the following four weeks the Applicant alleges that she was beaten, wounded in the inside of her mouth as a result of a cellphone screen being broken in her mouth, threatened, smothered and raped.

[7] In June 2015 the house was burned down. The fire was caused by some kind of explosive device being thrown into or placed in the house. Despite police investigation, no-one has been charged with offending relating to the loss of the house.

[8] The issues for the Court are to determine whether there was a relationship of short duration, whether the Applicant's contributions to the marriage have clearly been greater than the Respondent's and if that is established, then to fix the shares of each party. Post-separation contributions and Occupation rental are also in issue, as is the effect of disposal by the Applicant of a subdivided part of the land. Post-separation contributions and Occupation rental are at issue, as the consequence of the Applicant disposing of part of the land. Because of the change in the substance of the main asset between separation and hearing, valuation issues are also at issue.

Legal principles

[9] The Property Relationships Act 1976 (PRA) governs the division of the property interests. Because the parties are married, each of them has an interest in property which is classified as relationship property.

[10] The Applicant seeks a departure from the assumed equal division of domestic property, and other property acquired during the course of the relationship on the basis that the relationship was a short one, and her contributions to the relationship were clearly greater. The Respondent seeks equal division, denying that the Applicant's contributions were clearly greater.

[11] A marriage of short duration is defined in s 2E which reads:

2E Meaning of relationship of short duration

(1) In this Act, relationship of short duration means,—

(a) in relation to a marriage or civil union, a marriage or civil union in which the spouses or partners have lived together in the marriage or civil union—

(i) for a period of less than 3 years; or

(ii) for a period of 3 years or longer, if the court, having regard to all the circumstances of the marriage or civil union, considers it just to treat the marriage or civil union as a relationship of short duration:

(ab) [Repealed]…

[12] As all of the assets owned within this marriage were acquired during the relationship, the only exclusion to the equal sharing of domestic property provisions (ss 11-12) arises if s 14(2)(c) applies. That section reads:

14 Marriages of short duration

…

(2) If this section applies, sections 11(1)(a), 11(1)(b), 11A, 11B, and 12 do not apply—…

(c) where the contribution of one spouse to the marriage has clearly been disproportionately greater than the contribution of the other spouse.

(3) In every case to which subsection (2) applies,—

(a) the share of each spouse in the relationship property is to be determined in accordance with the contribution of each spouse to the marriage; and

(b) the share of each spouse in any other relationship property that falls for division under sections 11(1)(a), 11(1)(b), 11A, 11B, and 12, and is not determined in accordance with paragraph (a), is to be determined in accordance with sections 11(1)(a), 11(1)(b), 11A, 11B, and 12.

(4) If this section applies, each spouse is entitled to share equally in any relationship property that falls for division under section 11(1)(c), unless his or her contribution to the marriage has been clearly greater than that of the other spouse.

(5) If, under subsection (4), the spouses do not share equally in any relationship property, the share of each spouse in that relationship property is to be determined in accordance with the contribution of each spouse to the marriage.

…

[13] There are negligible bank balances and other assets, and for the purpose of division of property with real value, the relevant test is whether the Applicant's contribution to the marriage has "clearly been disproportionately greater than the contribution of the other spouse."

[14] Contributions to the marriage are defined in s 18 of the Act. Importantly, subs (2) provides:

> (2) There is no presumption that a contribution of a monetary nature (whether under subsection (1)(c) or otherwise) is of greater value than a contribution of a non-monetary nature.

[15] However, in a marriage of short duration the Court of Appeal has commented that, because of a shortage of time, the substantial contributions to a marriage will typically be financial ones. The capacity to make substantial financial contributions will arise because assets were owned before the relationship began, but became relationship property because of the use to which they have been put. That is clearly applicable in this matter. Although each spouse has contributed in the way they lived, time has not permitted the non-monetary contributions to equate to the monetary ones which were very substantial.

[16] The Court of Appeal examined this provision in *Burgess v Beaven*[1] and at para [30] said this:

> [30] Section 14 of the Act has changed the wording of this provision back to the original form in which s 15(1) was expressed, save for the introduction of the word "disproportionately". Under the present legislation the question is whether the contribution to the marriage by one spouse "has clearly been disproportionately greater" than that of the other.
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> [31] Section 14(2)(c), by adopting the order of words "clearly been", focuses on a quantitative assessment of contributions to the marriage. That accords with the view expressed by Cooke J about the same words in *Reid v Reid*. The addition of the word "disproportionately" requires a qualitative evaluation to be added when a decision is made about whether unequal sharing should occur. Not only must (for example) the quantum of the financial contribution made be clearly greater, it must also have brought a

[1] *Burgess v Beaven* [2010] NZCA 625.

> disproportionate benefit to the other party, having regard to the tangible and intangible contributions made by the other spouse.

[17] In this matter, because separation and hearing dates are separated not only by substantial time, but also by a profound property altering event it is necessary to be clear that the identification of property and the claim to an interest in that property arises at the date of separation. Property which does not exist at hearing may still be notionally divided and compensated for, if a claim to that property is identified at date of separation.

[18] However, for the purpose of quantification in dollar terms, valuation is at the date of hearing. (Sections 2F and 2G). Section 2F(1)(b) fixes the date for determination of shares at the date when the marriage ended. The end is accepted as being the separation date.

[19] Pursuant to s 2G the assumed date for valuation is the date of hearing, but the Court retains a discretion to elect a different hearing date.

[20] Post-separation contributions arise where one of the spouses has, between the date of separation and the date of hearing made a contribution which, if the marriage had continued, would have been a contribution to the marriage. Section 18B provides for compensation to be paid as follows:

> (2) If, during the relevant period, a spouse or partner (**party A**) has done anything that would have been a contribution to the marriage, civil union, or de facto relationship if the marriage, civil union, or de facto relationship had not ended, the court, if it considers it just, may for the purposes of compensating party A—
>
> (a) order the other spouse or partner (**party B**) to pay party A a sum of money:
>
> (b) order party B to transfer to party A any property, whether the property is relationship property or separate property.

[21] A number of authorities have examined the use of s 18B compensation which would, prior to the enactment of that section, have been dealt with by the exercise of

a discretion pursuant to s 2G, by moving the valuation date. In *Bullians v Bullians*[2] Heath J stated at para [40]:

> The existence of s 18B necessitates a reconsideration of the extent of s 2G discretion. It is difficult to see how a discretion (s 2G) that must be exercised in conformity with the provisions and objects of the Act can be used to achieve a result to which a specific statutory provision is directed. In my view, it is now inappropriate to use this s 2G discretion to adjust a valuation date for the sole purpose of recognising post-separation contributions that have increased the value of relationship property. Rather, that issue should be addressed under s 18B.

[22] Heath J said that *Walker v Walker*[3] endorsed this approach, approving also the commentary in the text by Professor Peart and others.[4]

[23] Between the date of separation and the date of hearing, the applicant disposed of part of the land. The circumstances of that disposition are described later, but it is necessary to consider the application of s 18C by this section where relationship property has been dissipated, compensation is calculated and paid. Section 18C(2) reads:

> (2) If, during the relevant period, the relationship property has been materially diminished in value by the deliberate action or inaction of one spouse or partner (**party B**), the court may, for the purposes of compensating the other spouse or partner (**party A**),—
>
> (a) order party B to pay party A a sum of money:
>
> (b) order party B to transfer to party A any property, whether the property is relationship property or separate property.

[24] As with s 18B the Court of Appeal has held that the application of s 18C substantially erodes the need for and the applicability of the exercise of discretion under s 2G.

Quantity and quality of contributions – the 14(2)(c) exercise

[25] There is no doubt this was a relationship of short duration. It began, as a relationship in the nature of marriage, when the parties started to cohabit in about August 2012, and ended at the latest in March 2015. Because of the events between

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[2] *Bullians v Bullians* HC Hamilton CIV-2005-419-1283, 7 December 2005.
[3] *Walker v Walker* [2007] NZFLR 772 (CA).
[4] Relationship Property on Death (2004) at [7.3.4].

November and March 2015, I consider that it was shorter than two years Seven Months. More accurately it was two years and four months, with a brief period of trial reconciliation December to March.

[26] During the relationship, each party alleges they made positive contributions to the relationship. The Respondent's contributions were contested, in affidavit evidence, by the Applicant. He was not cross-examined in relation to the contributions because he failed to attend the allocated fixture. However, his sworn evidence sets out his record that he contributed in planning and effecting the purchase of the house, in undertaking house maintenance and renovation, in gardening, and in providing a general level of spousal emotional support.

[27] For her part, the Applicant alleged that she worked full time, and supported the household, taking sole responsibility for the mortgage and other outgoings. She said she took care of household matters, and in particular was a necessary physical support for the Respondent after he was severely injured in a car accident in November 2014. She herself did so while she recovered from significant effects of physical and psychological abuse by the Respondent. The behaviour of the Respondent, which was not significantly challenged in the evidence in these proceedings, or in the Domestic Violence Act proceedings, does not operate as a negative contribution to the marriage. This is established principle. But the fact that the Applicant continued to contribute a lion's share of the physical and financial structure of the relationship in the context of her own recovery adds value to the contribution. She contended with her own recovering health, complexities arising from the threat which the Respondent posed to her own children, leading to the need for making alternative accommodation arrangements and also the stresses of continuing her work, when injured and bruised. There are both physical and emotional costs for the Applicant placed in this position.

[28] The Applicant also disputed that the Respondent contributed to the marriage in the way he alleged. Dealing first with the financial contributions, the Applicant disputed that the Respondent contributed any household costs or living costs. Although the Respondent did exhibit some bank statements in his evidence, which showed income from furniture making, to a total of approximately $3,000, no other

financial details were disclosed, and indeed transaction particulars were blacked out of any evidence which the Respondent provided. There is no evidence of deposits by the Respondent to any household accounts, or direct payment of household bills or supplies. In relation to financial support of the household, I have had the opportunity to consider the Applicant's evidence viva voce, and prefer that. I conclude that the Respondent did not contribute to the running of the household in financial terms.

[29] The Applicant alleged that she contributed all of the funds to the purchase of the property. An analysis of the settlement documents establish that proposition. I conclude that the Applicant only contributed money to the purchase of [address deleted]. The title was in her name. The mortgage was in her name. Although the Respondent stated that that was because of his criminal past and his credit rating, I prefer the evidence of the Applicant. She said the house was purchased in that way because the house was an asset for the benefit of her daughters. She also gave evidence that the house was insured by her, but the policy contained an exception, excluding cover for any damage done by the Respondent.

[30] In relation to maintenance and improvements to the house, the Applicant denied that the Respondent did any actual work. She agreed that he had removed a carpet from the house, but noted it was because his dog had urinated on it. The house purchase did not occur until after he was injured and incapacitated, in any event. There was no call for maintenance and improvements while the parties were tenants.

[31] The Respondent stated in affidavit evidence that he contributed earnings other than furniture making referred to above, to the household. The Applicant denied that he did contribute. She described his efforts in obtaining house painting work, but noted that she saw no benefit from that. No money was contributed to the household. She described work which the Respondent did to improve a property owned by her former husband. She agreed that that occurred, and described how her former husband purchased tools for the Respondent. The Applicant proposes those tools are retained by the Respondent as his separate property. They are described in

this way in the proposed draft order submitted by counsel for the Applicant at the formal proof hearing.

[32] The exercise to analyse the contributions of each of the spouses has been complicated by the fire which altered the nature of the property. Quantification of the shares of spouses, in relationships of short duration occurs at the time of separation. Valuation of those shares occurs at the time of hearing. The house was under insured. At the time, it was subject to an unconditional agreement for the sale and purchase by a property developer.

[33] However, despite the fact that analysis of the contributions of each spouse being complex, at the point when the Court must determine the shares for division, the analysis was fairly straightforward. Bearing in mind that the Applicant contributed a home, first rented then owned, income to support the household and its occupants, and care of the Respondent during his recuperation, and bearing in mind that the Respondent contributed no material assets, and negligible income, and did grow some vegetables, I consider that the contributions of the Applicant are clearly greater. The disparity is so great that the Respondent's share can be quantified as no greater than 10%. However valuation of that share is unusually complicated.

[34] After separation, the Respondent had registered a notice of claim against the title. The insurance proceeds payable after the fire were not enough to clear the mortgage.

Post-separation contributions – positive and negative

[35] In the intervening two years the Applicant negotiated a deal with the property developer (who had been poised to purchase the property before the fire) as follows. The purchaser agreed not to require settlement. He agreed to assist with subdivision of the property. He agreed to build a house on one part of the land for the Applicant. The consideration for this was the ownership of the other part and the payment of the sum of $180,000, being the settlement proceeds from the insurance policy.

[36] The Applicant's own evidence was that as at separation date the house and land were worth $260,000, with total equity of $77,000. The land was valued by QV

at $150,000. The total build cost, which included the house, demolition work, cleanup work, subdivision and consent process work was approximately $350,000. As at date of hearing, the segment of the land and the new house had a QV of $345,000. The other portion with a new house on it has a QV of $340,000. The valuation evidence before the Court establishes that the market value as at 1 May 2017 is $378,000. $183,000 remains outstanding on the mortgage.

[37] On a simple analysis, the house and land which are owned by the Applicant have an equity of $198,000, compared to $77,000 at the time of separation.

[38] It is necessary to consider whether the Applicant has disposed of an asset with value between separation and hearing, and whether the Respondent has a claim as a result of that disposition. The Respondent had registered a notice of claim, and in February 2016 the Court released that, and directed the removal of the notice of claim. The Court file records that the Applicant "undertakes to the Court not to dispose of the property until the Property (Relationships) Act proceedings are complete." The Court also recorded the conclusion that "the contracts annexed show that the value in property will be increased by removal of the burnt home, subdivision and construction of a new dwelling." Any interest in relationship property will not be dissipated. The Court released the property in that way, fully understanding that the deal which had been done led to a reduction in the size of the land but an increase in the value of it. I construe the order made on 25 February 2016 as a finding for the purposes of s 18C that the relationship property has not been materially diminished. Indeed, the valuation of the land alone was, as far as the Applicant believes it to be, lower than the quotable value, at the earliest hearing date which could have been possible (the initiation of proceedings) because the ruins of the burnt out house remained there. There was an abatement notice by the council because of hazards, rubbish, insecure services and the like. This led to the value of the land falling. The Applicant's evidence, orally, was that it was not saleable, and even if it had been, the repayment of the mortgage would have left negative equity.

[39] It appears to me that the deal which the Applicant did with the property developer who had been about to acquire the entire property is action which falls within s 18B of the Property (Relationships) Act, as a contribution which would have

been made to the marriage, had it not ended by then. It was value enhancing. It enabled a valuable asset to emerge from land which, in Mr Lewis' submissions at hearing, amounted to little more than a "husk".

[40] The Respondent filed evidence during the proceedings in which he stated that he believed that if the land had been sold as a bare site, with its subdivision potential, it would have had an overall value of $200,000. He went on to assert that each of them could have taken out $100,000. However, there is no evidence tending to prove this. The Respondent exhibited the valuation completed at the time of purchase, for the Applicant's mortgage application, which did not bear out his stated value. The Respondent's calculation failed to account for the liability for the mortgage. It assumes he would be entitled to a half share of proceeds. None of his assumptions have merit.

Conclusions

[41] The parties are agreed that this was a relationship of short duration. At its longest, it was two years and four months. Had it been necessary to determine the matter, it may have been determined as two years and two weeks, with the period between January and March 2015 being regarded as a trial reconciliation. The seriousness of the criminal offending alleged by the Applicant may tend to favour the shorter period of time.

[42] Having heard the evidence of the Applicant I am satisfied that s 14(2)(c) applies, and that the Applicant's contribution to the marriage has clearly been disproportionately greater. The difference is, indeed, extreme. The division of property must be done by a quantification of contributions.

[43] The Applicant's contributions were:

- Settled housing, first as a tenancy, and then as an owned asset.

- Settled employment, enabling maintenance of the household.

- In the context of abusive and assaultive behaviour to her, which was psychologically abusive to her children, the contribution of maintaining the household has a higher value than in less adverse circumstances.

- The Applicant then cared for the Respondent when he was injured, assisting with his recouping from serious injuries.

[44] In terms of contributions as defined in s 18 of the Act, I note that none of the following matters were pleaded: 18(1)(a) – care of children or infirm relative; 18(1)(e) – increasing value of the separate property of the other spouse. I note that the Respondent pleaded 18(1)(f) – (performance of work or services to the relationship property or the separate property), and the Applicant disputed that he did that work. The opportunity to undertake any work improving the home itself, in a sustained way, was limited to the two months between the date of acquisition of the house and the earlier separation date which, by para [18] above I prefer as January 2014. I prefer the evidence of the Applicant, given that she was available for examination by the Court.

[45] It does appear to me, in the context of the allegations of an abusive relationship, particularly as set out in the narrative affidavit of the Applicant 1 December 2015 paras 8-28 that the Applicant had forgone a higher standard of living than otherwise have been available, because of the complex and abusive behaviour of the Respondent. The abusive history of the relationship is borne out by the evidence of the Applicant's ex-husband. He described seeing his ex-wife bruised, and that police were called on a number of occasions.[5] The Applicant's former husband also gave evidence that he contributed money to assist to maintain the Applicant's household, supporting the mortgage while she was hospitalised.

[46] In terms of the Respondent's abusive behaviour the most compelling corroboration appears in the description of the Respondent's behaviour when the applicant overdosed, as described above at para [5]. Her ex-husband described the event in this way:[6]

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[5] Affidavit of [Zak Vincent] 16 November 2016, para 14, 16 & 18.
[6] Ibid para 23-24.

> 23. These events culminated in me receiving a phone call from [Samuel] saying that "your stupid bitch has overdosed, again". I rushed around and found [Casandra] on the floor of the hallway slipping into unconsciousness. I was trying to keep her conscious whilst ringing 111. I tried to pinch her fingers, used cold water on her, and tried to keep her engaged but she did slip into unconsciousness.
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> 24. During all of this [Samuel] was going on about how he was feeling pain and sore and tired and not to worry about her. He wouldn't ring 111 himself. I asked him why he didn't do that. He said he wouldn't because the "pigs" (meaning the police) would come around. Despite him getting quite aggressive, yelling and ranting at me, I called for an ambulance.

[47] Thus, her contribution in terms of that falls for counting in terms of s 18(1)(g).

[48] Finally, I have already recorded the particular assistance which the Applicant gave the Respondent in supporting his recouping from injury (a contribution under 18(1)(h)).

[49] By contrast, there were times when the Applicant accepts that the Respondent was a loving partner. In particular, there was a period when he was on home detention which met that standard. The Applicant also agreed that the Respondent grew vegetables which she was able to take and share at [workplace deleted] where she worked.

[50] Other contributions are borne out in the evidence, by way of approximately $3,000 paid for furniture made by the Respondent. These funds were not contributed to the relationship. One payment of $500 was made to the Applicant's bank account in respect of a painting job in April 2014. The Applicant disputes more than that sum was paid into her bank account. As previously, I prefer her evidence to the Respondent's, but accept that $500 was paid to the Applicant.

Conclusion

[51] The acquisition of the family home occurred within the final weeks of the relationship. During the course of the separating process the Respondent threatened to burn the house down.[7] Three months after the final separation date it did burn

[7] Affidavit of Zak Vincent, para 33 and statement to NZ Police of [Cerys Crawford], 21 June 2015,

down. No-one has been charged, but the Court has evidence from the Applicant, and also from her neighbour tending to establish that the house burned down as a result of foul play, rather than electrical failure as alleged by the Respondent. This event cannot be taken into account as misconduct for the purposes of s 18A. If there were proof that the Respondent played a part in the destruction of the property it would be a contribution made after separation for the purpose of 18B and, as a result, an effect which could be counted in terms of s 18A(3). If there were proof that the Respondent had had a part in the fire-bombing of the house that would surely have been gross and palpable conduct which significantly affected both the extent and the value of the relationship property. However, despite the Applicant's belief, there is insufficient evidence for the Court to be satisfied on the balance of probabilities that the Respondent did indeed arrange the burning, or directly caused the burning of the house.

[52] The summary of contributions made by each spouse establish on the balance of probabilities, however, that the preconditions in s 14(2)(c) are made out. The contribution of the Applicant wife has clearly been disproportionately greater. The contributions summarised above record that contributions to the marriage were unusually one sided. As is usual with marriages of short duration, and as recognised by the Court of Appeal in *Burgess v Beaven*[8], the quantification of contribution tend to focus on material contributions. There were significant material contributions by the Applicant. I am satisfied on the balance of probabilities that there were no material contributions by the Respondent. In as far as the Respondent made personal and social contributions, these were far outweighed by those of the Applicant, bearing in mind the abusive and hostile environment, the effective exclusion from the household of her children, and the degree of the Applicant responding to the demands of the Respondent once he was injured.

[53] The share of the Respondent is no more than 10%. When considering valuation, the Court's exercise is rendered complex because of the post separation activity of the Applicant which significantly increased the value of property. If the Respondent's own proposal were accepted, he proposed that the land would have

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[8] *Burgess v Beaven* [2010] NZCA 625.

sold for $200,000, as a bare site, and that the parties would then share in the proceeds. Adopting that proposal, the Respondent's share would have been 10% of $17,000, being the net proceeds after repayment of the mortgage. That amounts to $1,700.00. If the Court adopted the separation date QV the Respondent's share would have been 10% of $77,000 being the net equity. However, this calculation ignores the value of the contribution of the Applicant in salvaging the property by doing the deal referred to at para [35] above. Likewise, adopting the valuation at hearing date, and deducting the mortgage indebtedness, leads to an equity of $195,000, of which 10% is $19,500. If this full sum were awarded to the Respondent it would enrich him for work done and creative deal making done entirely by the Applicant.

[54] The range of potential awards outlined above is set out to display for the Respondent, who did not attend the hearing the Court's approach to calculation. This considers the house issue only and does not quantify the value of tools retained by the Respondent or bank accounts and the like. His evidence is incomplete. I accept the evidence of the Applicant that the Respondent's tools were recently bought, with a value of $1,000. I have considered other potential claims which the Respondent may have had, including occupation rental. I have excluded quantification of that because the house was uninhabitable for most of the period between separation and hearing, and because the Applicant solely supported ongoing mortgage payments, while paying rent. Counsel did not quantify those payments, and it is not, therefore, possible to consider the extent to which the Respondent should bear those costs between separation and hearing date, and therefore share in the adversity experienced by the Applicant[9].

[55] Because the nature of the significant asset of the marriage has changed substantially between separation and hearing date, due primarily to the negative effect of the house burning down and the positive effect of the creative deal-making by the Applicant, which is a contribution to value which sits solely to the credit of the applicant, the fairest way to resolve valuation of the asset is to consider the land value as it was after the fire. At that point, as recorded above at para [39] the

[9] Assuming an interest rate of 4.5%, interest costs were approximately $670 pcm, of which 15% is $100 pcm, the total from separation to date of hearing being $2,700.

property was subject to an abatement notice, and given the size of the mortgage indebtedness, the land was unsaleable. The Applicant was still contending with the potential that the unconditional purchaser could insist on normal contractual remedies. Thus, I consider that adopting the land value as at separation is the best guide. I have considered adding inflation to that sum, but note that the Applicant has borne the cost of ownership entirely. She had significant negative equity at the point that the house burned down, and the land was then bare and unusable. Thus, in terms of valuation for the purposes of calculating the Respondent's 10% share, the asset value of [address deleted] the purpose of this hearing is zero. The Respondent does not have a contingent liability in respect of mortgage indebtedness, because he was never on the title. Thus, in terms of s 11 property, there is no value to divide. The affidavit of assets and liabilities 1 December 2015 of the Applicant records no value in chattels, as they were destroyed in the fire. She records a value for a vehicle at that point being $2,500. She records no other assets.

[56] The Respondent records possession of chattels with a value of $1.000. He does not declare ownership of the tools purchased for him by the Applicant's ex-husband, but I accept that they have some value, probably similar to the purchase price of $1,000. The Applicant makes no claim in respect of assets held by the Respondent. I am satisfied that the value in relationship property of $4,500 in total is divisible as to 90% in favour of the Applicant and 10% in favour of the Respondent. She held $2,500 at separation, and he held $1,000. The Applicant makes no claim in respect of the interests of the Respondent. Thus, it is proper for there to be no order that the Applicant account to the Respondent for a sum of money.

[57] I am satisfied that a fair resolution of property will be reflected in approving the draft order prepared and submitted by counsel. As proposed, there is no order to costs.

J F Moss
Family Court Judge