EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

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.GOVT.NZ/FAMILY-JUSTICE/ABOUT-US/ABOUT-THE-FAMILY-COURT/LEGISLATION/RESTRICTION-ON-PUBLISHING-JUDGMENTS.

IN THE FAMILY COURT
AT THAMES

FAM-2015-075-000067
[2017] NZFC 1072

IN THE MATTER OF	PROPERTY (RELATIONSHIPS) ACT 1976
BETWEEN	LINDA RAYLENE ARTHUR Applicant
AND	DEAN ROBERT WOOD Respondent

Hearing:	9 January 2017
Appearances:	J Hunter for the Applicant S Chatwin for the Respondent
Judgment:	9 March 2017

RESERVED JUDGMENT OF JUDGE S J COYLE
[as to relationship property issues]

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[1] Ms Arthur and Mr Wood were in a relationship from 1984 until their separation on 11 January 2013. [Details deleted]. During their relationship they established, and operated up until separation, a successful farming partnership. Proceedings have been before the Court for a number of years, and a fixture was allocated for 9 and 10 January 2017 to resolve the outstanding issues between the parties in relation to the division of their relationship property.

[2] However at the start of the fixture I was advised by counsel that the hearing would proceed on the basis of submissions only as most of the outstanding factual issues had been agreed at the Court door. There were however two factual/legal issues that were not able to be resolved and required determination by me. The first issue is whether there should be a deduction for taxation from the value of the livestock, and the second issue is how the issue of drawing/spousal maintenance was to be resolved and whether there was any consequent adjustment to either party from the partnership income to achieve fairness. There were some additional outstanding queries that Ms Hunter had in relation to the issue of drawings and accordingly the matter was stood down to enable those issues to be further explored and agreement was reached. I then heard submissions on the two outstanding issues, and it rapidly became apparent that in relation to the issue of drawing/spousal maintenance some of the calculations in counsel's submissions were wrong, and there were several issues which were not, in fact, agreed as between the parties. Both counsel confirmed however that they did not wish to cross-examine either party, and thus I have to determine the matter on the affidavit evidence before me, all of which I have carefully read.

[3] A reserved decision in relation to this matter was issued by me on 15 February 2017, in which I recorded that:

(a) At the conclusion of the hearing Ms Hunter sought to file submissions in reply to those filed in court by Mr Chatwin, and I granted her leave to do so.

(b) I also asked Mr Chatwin to file submissions in relation to an assertion by him that the partnership had paid $35,000 to Ms Arthur on account of legal fees; this was news to Ms Arthur and Ms Hunter as to date no

> legal fees have been paid by Ms Arthur to Ms Hunter, and Ms Arthur says she has never received any such sum from the partnership. Mr Chatwin has filed submissions in reply to Ms Hunter's submissions in reply (despite there being no direction that he is entitled to do so), but has filed no submissions addressing the legal costs issues. I accept the assertion of Ms Hunter that her client has not personally received those monies, and thus in the absence of any clarification from Mr Chatwin, I find that the reference to legal fees paid to Ms Arthur must be an accounting error.

[4] Subsequent to the release of that judgment, Mr Chatwin filed an application to recall the judgment on the basis that he had in fact filed the submissions in relation to the $35,000, and that this sum had in fact been paid to Ms Hunter's client. Secondly he submitted that there was a misunderstanding by me in relation to a salary paid to his client, and whether it had been actually received by Mr Wood or not. Mr Chatwin's application was well founded for the reasons he set out, and I recalled my judgment. I remain unclear why his submissions in relation to the $35,000 were never received by me. This judgment is accordingly a reissued judgment taking into account the issues raised in those submissions.

[5] Finally, in considering this matter I have carefully read and considered (now) all the submissions filed by counsel, and while I have not referred to each point in their submissions in this decision, I have taken them into account in determining the issues which form the basis of this judgment.

Agreed issues

[6] Messers Cooper Aitken, the partnership accountants, have valued the net assets of the partnership as at 31 May 2016 as being $1,504,674. The 31 May 2016 date has been chosen as that is the date the parties have agreed that the farming partnership will effectively dissolve. However, one of the premises that Cooper Aitken worked upon was that the actual land was valued at $1,726,920; however a registered valuation by Jim Glenn Valuers Limited has arrived at an agreed value of $1,525,000, and thus an adjustment of $201,920 to that figure needs to be made accordingly.

[7] Additionally the book value relied upon by Cooper Aitken of the dairy stock as at 31 May 2016 was $377,274. There is, however, an agreed stock valuation showing the market value as $615,810, and similarly an adjustment of $238,536 needs to be made. Once those adjustments are factored in, the net asset value of the partnership amounts to $1,541,290.

[8] There is agreement between the parties that each of them has household chattels, farm supplies and equipment worth $5618 each, thereby cancelling each other out. Mr Wood has a life policy worth $53,091 in his possession. Following discussions on the morning of hearing there was agreement that Ms Arthur needs to reimburse the partnership $41,744, and that she be refunded the costs she has met for obtaining the Jim Glenn Valuers Limited valuation of $1834.

[9] There is also agreement that Mr Wood should be allocated a salary for his work in the partnership dairy farming business since separation of $85,000 per annum gross or $66,000 per annum after tax.

Tax liability issue

[10] What is envisaged by way of ultimate outcome is that Mr Wood will retain the farming business, and that the assets of the farming partnership will be transferred to him solely, including the livestock which, as set out above, has been valued as at 31 May 2016 at $615,810. The book value of the livestock as at 31 May 2016 however was $377,273.50. Thus the difference between the market value and the book value is $238,536. The transfer of the livestock from the partnership to Mr Wood solely pursuant to orders of this court under the Property (Relationships) Act 1976 ("PRA") does not attract any tax liability in terms of the market value vis-à-vis the book value.

[11] However, upon the transfer of the stock from the partnership to Mr Wood, Mr Wood then proposes to transfer the assets that he would have received as a consequence of the settlement of his relationship property to the Dean Wood Family Trust, a family trust set up by Mr Wood on 21 January 2015, some two years after the parties' separation. The transfer of assets from Mr Wood to the Dean Wood Family Trust needs to occur at market value and not at book value and there is a consequent

tax liability for Mr Wood due to depreciation recovered on the livestock. His tax liability equates to $65,393 I am told. Mr Chatwin therefore submits that the tax liability of $65,393 should be deducted from the livestock valuation of $615,810 because the tax liability would be incurred by Mr Wood immediately. Mr Chatwin makes that submission with reference to paragraph 10.20 of Fisher on Matrimonial and Relationship Property, and the decision *Brophy v Brophy.*[1]

[12] For Ms Arthur, Ms Hunter strenuously argues against the position submitted by Mr Chatwin. I agree with her submissions entirely. For, as I pointed out to Mr Chatwin, it seems to me what Mr Wood is proposing is analogous to him receiving a family home by way of a relationship property settlement, then immediately placing it upon the market and selling it, yet expecting the former partner to pay half of the real estate agent's commission. That is quite simply an outrageous proposition. Further, as Ms Hunter reminded me, Mr Wood has been quite clear that his rationale for setting up his trust is to ensure that his current partner does not have a claim against his assets, he having been "stung" by Ms Arthur in these proceedings. Quite why he expects Ms Arthur to pay half of the costs incurred by him as a consequence of his efforts to try and ensure that the woman who has replaced Ms Arthur does not share in his assets escapes me. I agree with Ms Hunter's submissions that if Mr Wood chooses to restructure his affairs post-settlement in a manner which he has been advised will attract taxation liability, then that is a matter for him solely to consider and to bear the consequences. For the reality is that any post-settlement liability caused by ownership change will be entirely Mr Wood's to control. Ms Hunter also makes reference to s 20D which states as follows:

> **20D Calculation of net value of relationship property**
>
> The value of the relationship property that may be divided between the spouses or **[[**partners**]]** under this Act must be calculated by—
>
> (a) ascertaining the total value of the relationship property; and then
>
> (b) deducting from that total any secured or unsecured relationship debts owed by either or both spouses or **[[**partners**]]**.

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1 *Brophy v Brophy* (1992) 9 FRNZ 468 (HC).

[13] The point she submits is that any liabilities must be "owed", and she relies upon *Webb v Stenton* said:[2]

> A debt which may hereafter arise is not owing.

[14] Further the Learned Authors of Fisher on Matrimonial and Relationship Property in the very paragraph relied upon by Mr Chatwin go on to state:[3]

> An unresolved question is whether, in value stock for Property (Relationship) Act 1976 purposes, allowance can be made for the taxable difference between standard values and market values to allow for possible disposal of the herd at some time in the future. A potential liability does not seem to amount to a "debt owed" permitting deduction in the gross value of the livestock before arriving at the net divisible relationship property …

[15] Mr Chatwin further submitted that the liability was an ongoing liability which will occur anytime the stock was disposed of. When I queried Mr Chatwin whether that meant every time a dairy cow was culled from the herd and sent to the meat works the consequent tax liability arose between the actual amount received from the freezing works and the book value of that account, Mr Chatwin appeared to submit that that was in fact the situation. No evidence in the accounts shows that that is so, and I have no expert evidence confirming that proposition. But in any event that liability is potentially so remote as to make it irrelevant. That is, a three year old cow currently in the milking herd may not be sold for another five or six years at least, and it is hard to understand any proper or lawful basis upon which Ms Arthur should be bound to a future potential liability in those circumstances.

[16] Thus for those reasons I agree with Ms Hunter's submissions that an income tax liability arising on the post resolution transfer of livestock by Mr Wood to his trust after the date of 31 May 2016 does not amount to an existing debt and as such must be excluded from consideration. I accordingly reject Mr Woods' submissions entirely in that regard. If he chooses to rearrange his own affairs so as to protect his assets from future claims under the PRA then any tax liabilities that may arise are solely his to bear. No deduction should be made accordingly from the value of the livestock.

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2 *Webb v Stenton* (1983) 11 QBD 518 (CA) at 529, per Fry LJ.

3 RL Fisher (ed) *Fisher on Matrimonial and Relationship Property* (online looseleaf ed., LexisNexis) at [10.20].

Spousal maintenance/drawings issue

[17] For Mr Wood, Mr Chatwin invites me to exercise my discretion under s 32(2)(b) of the PRA to discharge the spousal maintenance award made in Ms Arthur's favour during an earlier hearing. That section provides as follows:

> **32 Orders relating to maintenance and child support**
>
> …
>
> (2) In any proceedings, the Court, if it considers it just, may—
>
> …
>
> (b) discharge, vary, extend, or suspend an order made under the Family Proceedings Act 1980 for the maintenance of a spouse or [[partner]]:

[18] Ms Hunter is critical of the fact that no formal application under s32 has been pleaded by Mr Wood. While she is correct, I agree with the submissions of Mr Chatwin that there really is no prejudice to Ms Arthur in the matter being considered by the court as the substantive submissions that were filed have clearly placed Ms Hunter on notice that this was an issue to be argued, and Ms Hunter has been afforded an opportunity to file submissions in reply. Ideally counsel should file proceedings which clearly specify each ground pleaded; that they do not should not be fatal to the court being able to considering the issue where the other party has had an opportunity to respond.

[19] In support of his submissions on s 32, Mr Chatwin relies upon the Court of Appeal decision in *M v B*[4] at [121] to [129] inclusive, and *Scott v Williams*.[5] Mr Chatwin's submissions in this regard are as follows. Firstly, he submits that Ms Arthur has already received drawings out of the partnership in excess of the maintenance she was due pursuant to the maintenance order in her favour. In fact he submitted that Ms Arthur had received significantly more than Mr Wood had withdrawn and as a consequence there should be an adjustment by her to him. For the reasons I have set out below, that submission is not accepted. Secondly, Mr Chatwin submits that the partnership accounts show an equal apportionment of income, and that accordingly

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4 *M v B* [2006] 3 NZLR 660 (CA).
5 *Scott v Williams* [2016] NZCA 356.

those monies have already been attributed in the accounts to Ms Arthur, and as a consequence she does not have any reasonable needs. Thirdly, Mr Chatwin submits that as a consequence of the division of the parties' relationship property, there is no ongoing need for maintenance, noting that the order I made expires at the time of the parties' division of relationship property or 6 May 2017, whichever occurs earlier. Mr Chatwin's submission is that given there is agreement the partnership is to be effectively dissolved as at 31 May 2016 that any spousal maintenance liability should cease at that point. The submissions of Mr Chatwin have been forcefully argued against by Ms Hunter. Thus in order to resolve these issues I need to undertake an examination of the documentary evidence before me together with my earlier maintenance decision.

My maintenance decision

[20] A reserved judgment was issued by me in relation to a claim for spousal maintenance by Ms Arthur.[6] In my judgment I recorded:[7]

> … it would appear from the partnership accounts that consistently the income earned by the partnership, including the periods following separation, has been split between Ms Arthur and Mr Wood, and thus Mr Wood's taxable income is a half share of the partnership income. This is an accounting exercise. The reality is that Ms Arthur has never received, following separation, her half share of the partnership profits or any income, with all the profits being held by the partnership in Mr Wood's control, and at times used towards partnership debt reduction and the post-separation purchase of another farm, rather than payment of monies to Ms Arthur.

[21] Then:[8]

> Mr Wood on the other hand, as I have set out above, has available to him the partnership income. For the year ended 31 March 2014 the available partnership income increased from $169,667.49 to $532,990.59. M[s] Arthur took drawings of $73,321.55. Nevertheless the accounts attached to the affidavit of Mr Wood show a taxable income for him personally of $265,169.41. …Given that Mr Wood has effective control of the partnership assets and income, he can clearly afford to draw more than he is choosing to at present. … For both the year ending 2014 and 2015 income years, Ms Arthur is shown in the accounts as having an identical income, with the partnership paying the tax on her behalf; she has never received that income and at this stage there is no agreement that those monies will be paid to her.

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6 *Arthur v Wood* [2015] NZFC 7483.
7 At [19].
8 At [21].

> As I have stated to [M[s] Arthur's then counsel], if the monies had been paid to her, then she would have had no need of any maintenance. In effect it is Mr Wood who remains in total control of the partnership assets and income and has those resources available to him.

[22] The effect of the subsequent orders that I made as set out at [32] of my judgment is that I awarded Ms Arthur additional sums over and above that which had been paid to her by Mr Wood so as to "top up" what she had received to an effective amount of $1090 each week. However from the date of my judgment namely, 3 September 2015 that amount has increased to $1300 per week to 6 May 2017 or such earlier date upon which the parties enter into a relationship property agreement and/or order of the Court finally resolving all of their relationship property issues.

[23] There are aspects of Mr Chatwin's submissions which really seek to revisit and re-litigate issues pertaining to the award of spousal maintenance. Mr Chatwin records at [7] of his submissions that in relation to the spousal maintenance application, "the application, the evidence and judgment of Judge Coyle, were not focussed on the taxable income which had been earned by the parties from the Partnership as recorded in the financial accounts and tax returns. The application, the affidavits and judgment of Judge Coyle, were focused on practical cashflow issues."

[24] Firstly, I do not accept that submission as it is quite clear from the passages I have quoted above that I was aware of the issue of taxable income versus actual amounts received.[9] Secondly, implicit in Mr Chatwin's submissions is an assumption that Ms Arthur had no need of maintenance because she had been credited an equal amount of taxable income in the partnership accounts as Mr Wood. That submission ignores the reality that following separation she has been paid little, either by income or drawings or by any other means whatsoever from the partnership.

[25] The fact of the matter is that Mr Wood has retained all of the income in the partnership and been the sole arbitrator of the spending of the joint partnership income and assets. This has included him post-separation, without the consent of Ms Arthur, purchasing another adjacent farming block whereby increasing the debt levels and debt repayments on the partnership. His argument is that in buying that land the

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[9] As submitted by Ms Hunter in her substantive submissions and her subsequent submissions of 22 January 2017.

farming partnership was able to earn more money by way of milk production but I have no independent evidence to justify that assertion by Mr Wood.

[26] Mr Chatwin in his submissions is further critical of Ms Arthur in referring to her affidavits filed in support of the spousal maintenance hearing to her "gross income from business" being the sum of $38,900. Mr Chatwin submits "in using this term she did not intend to refer to her taxable income. She was in fact referring to the amount of money she had received in cash. Ms Arthur was focusing on how much cash she had received rather than how much taxable income she had earned from the partnership as recorded in the financial accounts and return." That submission is without any justification in my view for the reasons I have set out above. That is, the partnership taxable income was entirely a book entry. She received none of that income because Mr Wood would not allow it.

[27] Mr Chatwin goes on to further submit that in relation to the amounts Ms Arthur has received by way of weekly payments[10] should be classified as drawings. I reject that submission in part. The amount that Mr Wood has to pay as spousal maintenance pursuant to the maintenance order to Ms Arthur cannot be classified as drawings. The decision that Mr Chatwin relies upon, *M v B*, states:[11]

> The Court has jurisdiction to make an order for spousal maintenance only if it is satisfied that party A is not able to meet their own reasonable needs, because of the circumstances of the relationship, thereby making party B liable to meet those needs.

[28] That is, the liability is a personal liability to party B (in this case Mr Wood) and not a joint partnership liability. For as I recorded in my spousal maintenance decision if Mr Wood had shared in the partnership profits with Ms Arthur, then she would not have had any basis on which to seek maintenance because her reasonable needs would have been met from the partnership. As I recorded in my spousal maintenance judgment, such was Mr Wood's control that when he felt relationship property was not being resolved according to how he wanted it resolved and in his time frame, he unilaterally reduced the payments that he was giving to Ms Arthur from $800 a week to $500 a week. Payments of monies by Mr Wood to Ms Arthur by way

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10 She has received from Mr Wood variously $700, $800 and more recently $500 per week.
11 *M v B*, above n 4, at [128].

of court ordered maintenance are payments he has made personally and are not drawings by Ms Arthur out of the partnership.

[29] Exhibit P of Ms Arthur's affidavit affirmed 13 December 2016 sets out a record of recorded drawings. The record includes the voluntary payments by Mr Wood to Ms Arthur from the date of separation (11 January 2013) of $700 a week, increasing on 31 May 2013 to $800 a week, and then decreasing on 7 April 2015 to $500 per week. I determine that the amounts that Mr Wood actually paid ($700, $800 and $500) should be classified as drawings by Ms Arthur. However, the spousal maintenance payments ordered by me are not drawings for the reasons set out above.

[30] The first period in exhibit P is from 1 June 2012 until 31 May 2013 and the total figure set out is $72,671.81. From that however needs to be deducted the period prior to separation, namely 1 June 2012 to 4 January 2013, during which there were 31 payments of $700 totalling $21,700. Additionally there are other amounts drawn by Ms Arthur which she acknowledges form part of the amount she needs to reimburse the partnership. They amount over that period to $35,471.81 leaving actual drawing of $15,500. For the period 1 June 2013 to 16 May 2014 exhibit P shows an amount of $46,600 but from that needs to be deducted $5000 of drawings by Ms Arthur, arriving at a figure of $41,600. For the period 1 June 2014 to 31 May 2015 exhibit P shows that figure of $40,171.96; from that needs to be deducted $1271.96 leaving a figure of $38,900, and then for the period 5 June 2015 to 31 May 2016 there is a figure of $26,000 which needs no adjustment. The total of those adjusted figures ($15,500, $41,600, $38,900 and $26,000) equals $122,000. Mr Chatwin has worked out that the actual amount of maintenance that should have been received[12] is $191,310, and thus a shortfall owed by Mr Wood to Ms Arthur in terms of that judgment is $69,310. Thus it is my finding that Ms Arthur has drawn $122,000 over the 3 ½ year period following separation from the partnership. Further, in accordance with my judgment Mr Wood has a personal liability to her by way of spousal maintenance of $69,310 and that this figure should not to be classified as drawings.

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[12] Up until 31 May 2016.

[31] For the sake of completeness I note that Mr Chatwin refers to *Scott v Williams* in support of his submissions; for the reasons I explained to him in Court, that decision is not at all relevant, principally because of the facts of this case are entirely distinguishable from the facts in that case, but also in recognition that in this case the Court has already made a final spousal maintenance order. In *Scott v Williams* spousal maintenance was being considered contemporaneously with division of relationship property.

[32] Mr Chatwin further submits that spousal maintenance liability should cease as at 31 May 2016. I disagree. Whilst that is the effective date of dissolution of the partnership, the reality is that Ms Arthur will not receive her relationship property entitlement until such time as Mr Wood refinances or, if he is unable to refinance, until the farm is sold. Thus Mr Wood's liability to pay spousal maintenance should continue until such time as monies are physically paid to Ms Arthur at which point she will be able to meet her reasonable needs and to that extent only I exercise my discretion under s 32 and vary the spousal maintenance order that I made. Having elected to continue the spousal maintenance I decline to award a loss of use of money interest. For if I do, as Mr Chatwin submitted, I would in effect negate a large portion of maintenance, notwithstanding that it would not in fact have been received.

Adjustment for a salary

[33] There is an agreement between Mr Wood and Ms Arthur that he is to be deemed to have received an agreed salary of $66,000 net. But, as submitted by Ms Hunter, my maintenance judgment records he has received additional and significant other benefits from the partnership including residence expenses, car expenses, a lease fee to his family trust arising as a consequence of the property he purchased post-separation, legal costs, life insurance premiums, and the like. Thus while Mr Wood was deemed to have received an income of $66,000, the actual reality is that he has had benefits in the same period from the partnership meeting his expenses in excess of $150,000. I accept Ms Hunter's submission that there needs to be an adjustment back into the relationship property pool to reflect those tangible benefits as they in effect amount to de facto drawings from the partnership.

[34] Mr Chatwin in his submissions appears to be treating the salary adjustment owed to Mr Wood of $66,000 per annum after tax as being an asset. If he is to be credited that as an asset, then it only is proper that the taxable income of the partnership should be similarly treated and therefore shared equally and I do not envisage that to be an intended consequence by Mr Chatwin. Rather the recognition of a salary needs to be taken into account in weighing up the drawings issue. In terms of the amount due to the partnership from the respondent as I have set out above the management salary amounts to an effective income for him of $1269.23 net per week. The period following separation on 11 January 2013 until 31 May 2016 amounts to three years and 20 weeks or 176 weeks arriving in effect at a total amount nominally earned of $223,384.48. Mr Chatwin in support of his submissions for recall recorded at [3]:

> There was a further misunderstanding between counsel and Judge Coyle in that Judge Coyle recorded in his judgment … Mr Wood had received an agreed salary of $66,000 net per annum giving a total of $223,384.48 … whereas Mr Wood has not received one cent of this amount.

[35] Thus Mr Chatwin is submitting that I erred in my original decision in recording that this was an amount received by Mr Wood on the basis that he had not actually received that sum of money. The irony of that submission appears to have escaped Mr Chatwin. That is, that is exactly Ms Arthur's argument in relation to spousal maintenance; there is a book entry showing her earning $188,000 of which she has not received a cent because Mr Wood has had total control of the finances. Thus on the one hand Mr Chatwin appears to be submitting that Ms Arthur should be credited for money she did not receive, but on the other hand Mr Wood should not be credited for monies that he did not receive. The two propositions are incompatible.

[36] Secondly in his submissions of 11 January 2017 at [3] Mr Chatwin records an adjustment of $223,385 (presumably a rounding up of the exact figure of $223,384.48) as being an "agreed adjustment". Thus Mr Chatwin in those submissions suggested Mr Wood should be credited that amount, leaving an after tax profit from separation date to 31 May 2016 of $376,000 of which he says Ms Arthur's half share was around $188,000.

[37] What Mr Chatwin's submissions fail to recognise is that it is Mr Wood who has unilateral control of the partnership income since separation. There is an

agreement between the parties that he has to be credited a salary but that is simply a book entry. Mr Chatwin in his submissions of 11 January 2017 submits that:

> Mr Wood has drawn significantly less than the total amount allocated to him for a salary and his half share of the profit. Mr Wood left the balance invested in the Partnership.

[38] If Mr Wood chose to leave monies in the partnership, then that was the result of a unilateral decision made by Mr Wood to the detriment of Ms Arthur. If he had in fact paid her a half share of the profit of the partnership that the accounts show she was entitled to, she would have no need of spousal maintenance. It is entirely proper in my view that in terms of the calculations an adjustment needs to be recorded as Mr Chatwin accepts in his 11 January submissions for the allocation of a salary to Mr Wood.

[39] For the period following separation on 11 January 2013 until 31 May 2016, Ms Arthur received from the partnership by way of drawings the sum of $122,000. Thus Mr Wood has received an additional $101,384.48 over and above what Ms Arthur has received from the partnership. That figure however excludes the additional drawings that have been paid by the partnership on behalf of Mr Wood for residence expenses, and the like. Ms Hunter in her submissions submitted that this figure equates to an additional $159,185. It is, from the evidence as presented to me, impossible to resolve how that figure has been calculated particularly given that it is disputed by Mr Wood, and yet neither counsel sought to cross-examine the other party. I can do no more than simply arrive at a figure that I think is accurate and fair. I therefore fix the additional amount accrued as part of those benefits as amounting to $100,000. In effect therefore Mr Wood has received additional benefits over and above that of Ms Arthur from the partnership of $201,384.48. He needs to account for half of that amount.

Adjustment for "legal fees"

[40] It appears that a sum of $35,050.81 has been paid to Ms Hunter. Ms Hunter in her oral submission was adamant that it had not been received by way of legal fees as she indicated to me that her client had paid her no legal fees to date. I took from that submission that no monies had been received by Ms Hunter on behalf of her client, contrary to the record in the financial accounts set out on page 1018 of the Bundle of

Documents. However as Mr Chatwin sets out in his submissions of 11 January 2017 that is not in fact the situation.

[41] Indeed, Ms Hunter in her 20 February 2017 submissions clarifies her client's position. At [3] she states:

> Counsel apologises for having evidently created a misunderstanding. Ms Arthur has always acknowledged receiving $35,050.81. What Ms Arthur has not acknowledged is receiving the $35,050.81 as a drawing of her own to pay legal fees….

[42] I accept Mr Chatwin's submissions that the sum of $35,050.81 appears under the heading "personal expenses" in the financial accounts. This amount was not paid to Ms Arthur directly but rather was paid into the trust account of Ms Hunter. As Mr Chatwin submits if this sum had been paid to Ms Arthur directly it would have been quoted as a drawing by the accountants and included in the total personal drawings. It appears that the accountants assumed that because the money was paid into the trust account of Ms Arthur's solicitor, that it was a payment in respect of legal costs incurred by Ms Arthur and owed to Ms Hunter. As Mr Chatwin records, Ms Hunter informed the Court that none of the funds were utilised to pay legal fees. Mr Chatwin in his submissions however deposes that the funds were in fact paid out by Ms Hunter to Ms Arthur.

[43] Ms Hunter in her submissions of 22 January 2017 at [43] appears to be accepting the monies were paid, but infers that it was in part payment of the spousal maintenance debt owed by Mr Wood to Ms Arthur pursuant to my earlier spousal maintenance decision; this is further confirmed by Ms Hunter at [5] of her 20 February submissions. Thus there appears to be an acceptance by Ms Hunter that that amount was received by her client, and an adjustment needs to be made accordingly.

[44] Thus the asset schedule is as follows:

The net assets of the partnership as at 31 May 2016	$1,504,674.00
Less adjustment for book value of land	-$201,920

Plus an adjustment to reflect the actual value of dairy stock		$238,536.00
Subtotal		$1,541,290.00
Household chattels of applicant		$5,618.00
Household chattels, farm supplies and equipment with the respondent		$5,618.00
Mr Wood's life insurance policy		$53,091.00
Reimbursement due to partnership from applicant		$41,744.00
Reimbursement due to partnership from respondent		$100,000.00
Adjustment for overpayment of salary		$101,284.48
Less costs met by Ms Arthur for Jim Glenn Valuers Limited valuation	-$1,834.00	
Sum for equal division is		$1,846,811.48
Each parties' half share		$923,405.74

Settlement due to applicant

Chattels in applicant's possession		$5,618.00
Car in applicant's possession		$4,651.00
Reimbursement due from the applicant		$41,744.00
Less costs met by applicant for valuation	-$1,834.00	
Subtotal		$50,179.00
Balance due Ms Arthur at 31 May 2016		$873,226.74

Settlement due to respondent		
Net 30/5/16 worth of partnership less car with applicant		$1,536,639.00
Household chattels, farm supplies and equipment and other sundries		$5,618.00
Respondent's life policy		$53,091.00
Reimbursement due to partnership from respondent		$100,000.00
Adjustment for additional income received by respondent over and above that of the applicant		$101,284.48
Less amount requiring to be paid to applicant	-$873,226.74	
Total		**$923,405.74**

[45] Thus in order to achieve an equalisation the respondent will need to pay to the applicant the sum of $873,226.74 plus the outstanding amount of spousal maintenance. As set out earlier that amount has been calculated at $69,310.00, but from that will need to be deducted the sum of $35,050.81 being the amount already paid on account of spousal maintenance as set out at [42] above. Accordingly there is a balance owed by Mr Wood to Ms Arthur of $34,259.19 by way of outstanding spousal maintenance. Additionally there is then the issue of ongoing maintenance, at $1300 per week, which is payable by Mr Wood to Ms Arthur from 31 May 2016 to the date in which the settlement monies are paid. I would ask that Ms Hunter forward the draft orders for sealing to reflect this judgment.

[46] Mr Wood has obtained finance to buy out Ms Arthur's interests, although the exact offer from his bank is not before me in evidence. Mr Chatwin conceded that if I ordered Mr Wood to pay a sum to Ms Arthur which exceeded his lending limits then the farm would need to be sold, and Ms Arthur paid accordingly. I need to make orders accordingly.

Orders

[47] If Mr Wood is able to confirm within seven days of the date of this judgment that he has sufficient funds to pay the monies as set out in [44] above then the following orders shall apply.

(a) Mr Wood is to pay to Ms Arthur the sum of $873,226.74 plus outstanding spousal maintenance of $34,259.19, and ongoing maintenance from 31 May 2016 to the day in which the monies are to be paid at the rate of $1300 per week within 20 working days of the date of this judgment.

(b) Upon receipt of those monies the land, buildings, plant, machinery and stock of the parties farming partnership shall be solely in Mr Wood. Each party shall have chattels in their possession and control as at the date of this order vesting in them as their separate property.

(c) Any motor vehicles in each parties' respective possession and control as at the date of this order shall be vest in that party.

(d) The respondent's life insurance policy shall be vest in him.

[48] If Mr Wood is not able to advise that he has sufficient funds then the following orders are to apply:

(a) There is to be an order for immediate sale of the farm partnership.

(b) The net assets of the partnership including the value of the land and the stock will be determined by way of the actual sale price received, and thus if the figure is less that the agreed values, then the value of the partnership as set out at [43] above is to be adjusted accordingly.

(c) Upon sale of the partnership property and realisation of the net sale proceeds, the chattels and car in Ms Arthur's possession are to vest in her, and she is to be paid a sum as adjusted in [44] depending on the actual sale proceeds received.

(d) The balance of the sale proceeds are to vest in Mr Wood, with his life policy, household chattels, farm supplies and equipment and other sundries in his possession and control to vest in him.

(e) Out of the net sale proceeds Ms Arthur is to receive from Mr Wood's half share the outstanding amount of spousal maintenance of $34,259.19 and ongoing maintenance from 31 May 2016 until the date upon which monies are paid to her at the rate of $1300 per week.

[49] As set out at [44] above I direct Ms Hunter forward draft orders for sealing.

S J Coyle
Family Court Judge