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[SQUARE BRACKETS].

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**IN THE FAMILY COURT
AT NORTH SHORE**

**FAM-2013-044-000497
[2016] NZFC 8634**

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| IN THE MATTER OF | THE PROPERTY (RELATIONSHIPS) ACT 1976 |
| BETWEEN | [RONNY HULL] Applicant |
| AND | [PAULA HULL] Respondent |

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| Hearing: | 6 and 7 October 2016 |
| Appearances: | A Croft for the Applicant P Kennelly for the Respondent |
| Judgment: | 14 October 2016 |

RESERVED JUDGMENT OF JUDGE S J MAUDE
**[Relationship property division - date of commencement of de facto relationship
- unequal division of relationship property (s 13) - whether investment from
husband's separate property became relationship property (s 8(1)(ee) -
income disparity compensation (s 15) - treatment of conduct (s 18A)]**

[1] These proceedings are between Mr [Ronny Hull] and Ms [Paula Hull].

[2] The parties have been unable to reach agreement as to classification of and division of property between them following separation.

Background

[3] Mr and Ms [Hull] met in the United Kingdom in 1998.

[4] They began living together in a de facto relationship either in 1998[date deleted – 7 months prior to birth of their child], as asserted by Ms [Hull], or in 1999[date deleted – 1 month prior to birth of their child] when moving into a home purchased by them, as asserted by Mr [Hull].

[5] Their [child], was born on [birth date deleted].

[6] They married on [date deleted] 2002.

[7] In [date deleted] they moved to live in New Zealand.

[8] Using funds received by way of partial surrender of Mr [Hull]'s United Kingdom pension funds, they purchased their family home at [family home address deleted], New Zealand in October 2004.

[9] Following the birth of [the parties' child], Ms [Hull] did not return to work on a full-time basis until [the child] entered school in New Zealand.

[10] These proceedings were commenced in March 2013.

Pool of property

[11] The following property exists for either division or classification as Mr [Hull]'s separate property:

- (a) Proceeds received from the parties' family home – \$309,718.65
- (b) [Details deleted] motor vehicle – \$4000.00

- (c) [Details deleted] motor vehicle – \$11,000.00
- (d) Bank accounts – \$4.78
- (e) Kiwibank superannuation – \$2965.28
- (f) Pension funds (from UK) – \$178,326.58
- (g) [Company name deleted] Limited current account – \$10,000.00
- (h) Livestock – \$1800.00
- (i) [Company name deleted] bonus of Mr [Hull]'s – \$7680.54

Total : \$525,495.83

Resolved issues

[12] By hearing the following had been agreed:

- (a) Mr [Hull] to retain the [\$4000] motor vehicle and Ms [Hull] the [\$11,000] motor vehicle.
- (b) Mr [Hull] to retain the Kiwisaver superannuation and his [Company name deleted] bonus.
- (c) Ms [Hull] to retain the value of the livestock (\$1800.00).
- (d) Ms [Hull] to pay to Mr [Hull] in respect of mortgage principal repaid by him post separation the sum of \$1381.72 (he having reduced the principal by \$2763.44).
- (e) Ms [Hull] to pay to Mr [Hull] in respect of credit card reduction the sum of \$1200.00.

- (f) Mr [Hull] to pay to Ms [Hull] in respect of work undertaken on the family home to ready it for sale the sum of \$2150.07.

Issues to be decided

[13] The following issues are to be decided:

- (a) Date of commencement of de facto relationship.
- (b) Whether relationship property is to be divided equally or whether extraordinary circumstances exist to justify unequal division, and if so the percentages that should apply.
- (c) Whether the balance of Mr [Hull]'s United Kingdom pensions not surrendered and used in purchase of the family home but reinvested in New Zealand are all relationship property or in part relationship property and in part Mr [Hull]'s separate property.
- (d) If the portion of the pension funds accumulated by Mr [Hull] pre-relationship are found to remain Mr [Hull]'s separate property, then what portion of the residual funds are relationship property as a result of a portion of Mr [Hull]'s United Kingdom [Pension fund no 1] scheme having been accumulated during the parties' relationship, therefore being relationship property?
- (e) Whether compensation should be paid to Ms [Hull] in respect of disparity of income and living circumstances existing between the couple at separation.
- (f) Valuation and division of relationship chattels.
- (g) The degree of compensation payable to Ms [Hull] in respect of post separation contributions.

Date of commencement of de facto relationship

[14] Mr [Hull] claimed that the parties' de facto relationship began [1 month prior to child's birth] contemporaneously with purchase of the couples' [UK location deleted] home and their moving into it.

[15] Ms [Hull] claimed that the de facto relationship began [7 months prior to child's birth], when she said she moved in to live with Mr [Hull] in his [UK location deleted] tenancy.

[16] Neither party provided any corroborating evidence for their positions.

[17] The commencement date is relevant to Ms [Hull]'s share in Mr [Hull]'s [pension fund no 1] pension scheme because he began contributing to it prior to the commencement of their relationship such that the portion of the scheme on its surrender that was relationship property is to be determined by the respective contributions to the scheme pre-commencement of the de facto relationship and post commencement of it.

[18] The parties' [child], [name removed], was born in [date deleted].

[19] It was not suggested by Mr [Hull] that at least to some degree the parties had not lived together before [1 month prior to child's birth].

[20] Ms [Hull] was adamant that, as she put it, the couple had not simply moved into their [UK] home in [1 month prior to child's birth] and "popped out a baby [the next month]".

[21] No cross-examination analysis of the well established factors for consideration in determining whether a de facto exists or not took place.

[22] Mr [Hull] addressed the issue of moving into the [UK] home purchased [1 month prior to child's birth] as follows:

When I left my first wife in late 1997 I recall that I did make payments to her to cover living expenses. There was no order or formal agreement of this. I

just tried to help where I could while she get back on her feet. However, once I had bought a home with [Paula] in [date deleted] and after our [child] was born in [a month later] I was not in a financial position to do this. [Paula] and I moved into that home with hardly any furniture, all of which had to be bought together with everything for the baby.

[23] On the balance of probabilities, I find it more likely than not that Ms [Hull]'s account is accurate. It is unlikely that the basis of permanency of relationship had not been addressed prior to settlement of the purchase of the [UK] home; indeed, much more likely that a lead in would have occurred. Indeed, [the child] was due to be born a month after the parties moved into the [UK] home, the couple having been expecting [details deleted], when Ms [Hull] asserts the de facto relationship began.

[24] In the absence of any significant evidence from the parties, and on the balance of probabilities, I determine that the de facto relationship between the parties commenced [7 month prior to child's birth].

Whether the pool of relationship property is to be divided equally or whether extraordinary circumstances exist to justify unequal division

[25] Ms [Hull] sought to have the pool of relationship property available for division divided unequally pursuant to s 13 of the Property Relationships Act.

[26] Section 13 of the Act reads as follows:

13 Exception to equal sharing

(1) If the court considers that there are extraordinary circumstances that make equal sharing of property or money under section 11 or section 11A or section 11B or section 12 repugnant to justice, the share of each spouse or partner in that property or money is to be determined in accordance with the contribution of each spouse to the marriage or of each civil union partner to the civil union or of each de facto partner to the de facto relationship.

(2) This section is subject to sections 14 to 17A.

[27] Ms [Hull] relied on the following assertions:

(a) That Mr [Hull] had throughout the parties' relationship spent monies on prostitutes to the detriment of the parties' financial position.

- (b) That Mr [Hull] had been guilty of domestic violence towards her.
- (c) That Mr [Hull] had spent monies supporting his first wife from relationship funds.

[28] Ms [Hull] relies substantially on Mr [Hull]'s alleged misconduct.

[29] As to the Court's ability to consider conduct in determining relationship property proceedings, s 18A of the Act provides as follows:

18A Effect of misconduct of spouses or partners

- (1) Except as permitted by subsections (2) and (3), a court may not take any misconduct of a spouse or partner into account in proceedings under this Act, whether to diminish or detract from the positive contribution of that spouse or partner or otherwise.
- (2) Subject to subsection (3), the court may take into account any misconduct of a spouse or partner—
 - (a) in determining the contribution of a spouse to the marriage, or of a civil union partner to the civil union, or of a de facto partner to the de facto relationship; or
 - (b) in determining what order it should make under any of sections 26, 26A, 27, 28, 28B, 28C, and 33.
- (3) For conduct to be taken into account under subsection (2), the conduct must have been gross and palpable and must have significantly affected the extent or value of the relationship property.

[30] Ms [Hull] must show in relying on adverse conduct that the conduct relied upon was:

- (a) gross and palpable; and that it
- (b) significantly affected the extent or value of relationship property.

Domestic violence

[31] I observe at the outset that Ms [Hull] alleged, and Mr [Hull] accepted, that Mr [Hull] had used domestic violence against her.

[32] I listened with some sympathy to Ms [Hull]'s evidence.

[33] I was referred by Mr Kennelly, counsel for Ms [Hull], to the decision of Judge Green (as she then was) in *Watson v Watson*¹, in which the Judge determined in respect of a relationship of short duration that serious domestic violence perpetrated by Mr Watson on Ms Watson, coupled with periods of rendering of physical and emotional support by Ms Watson to Mr Watson, constituted a situation where the adverse conduct of Mr Watson created in Ms Watson a positive contribution that she felt able to take into account in determining whether an unequal division of relationship property should be provided for.

[34] Mr Kennelly, in referring to Judge Green's decision, quoted Professor Rebecca Bailey's reference to the following observations made by His Honour Judge Boshier in his paper to the 1998 Family Law Conference, where he said:

It is contradictory to allow for some forms of legal misconduct, such as fraud, to count during property division, while violent criminal conduct has no such effect. If violence is ignored in property settlement it leaves a perpetrator with the same rights to material property as anyone else.

[35] Notwithstanding the comments of Judge Boshier and the finding on the facts in the *Watson* decision the fact remains that, pursuant to s 18B of the Act, for conduct to be taken into account in the division of relationship property the conduct must be:

- (a) gross and palpable; and
- (b) conduct that has an adverse effect on the extent or value of relationship property.

[36] In the case before me no connection is made on the evidence or in submissions between the domestic violence perpetrated (which was in part at least accepted and which was relatively serious) and the extent or value of relationship property.

¹ (1999) 19 FRNZ 24

[37] I am simply not in a position to speculate without a base of evidence on the effect of Mr [Hull]'s domestic violence on the extent or value of relationship property.

Payments to Mr [Hull]'s first wife

[38] Mr [Hull] conceded that subsequent to separation from his first wife, [name deleted – first wife], he made regular payments to her.

[39] He characterised the payments as informal support payments.

[40] Ms [Hull] claimed that the payments persisted well beyond the commencement of she and Mr [Hull]'s relationship, and that they were at a level akin to a salary.

[41] Mr [Hull] said that the sums paid were in the order of £300.00 to £400.00 per month.

[42] Ms [Hull] claimed that she found out about the payments in [date deleted] when moving items into the parties' [UK] home.

[43] Ms [Hull] reinforced her view that they continued beyond commencement of their relationship by quoting Mr [Hull] as saying that a table she wanted to purchase a year after they moved into their home could be afforded because the payments made by him to [his first wife] had ceased.

[44] If payments continued for 17 months subsequent to the commencement of the parties' relationship in the context of what was a [almost 13 year] relationship, it is hard for me to conclude that such payments were in themselves extraordinary.

[45] In reality, while Ms [Hull] relies on the statement made by Mr [Hull] a year after the couple moved into their [UK location deleted] property, the statement did not have Mr [Hull] say that payments had continued until Ms [Hull] identified the table that she wanted to purchase, the statement rather had him saying that by then payments to [his first wife] had stopped. There is no evidence to suggest when they stopped. It is likely that they ended much earlier. It might have coincided with the fiscal

responsibilities to be associated with the [UK] house purchase. Neither party in reality could assist me as to this.

Use of prostitutes

[46] Ms [Hull]'s primary concern, understandably, was her husband's expenditure on prostitutes.

[47] Mr [Hull] conceded the use of prostitutes in the marriage, estimating that he did so approximately 20 times in the parties' relationship at a cost of approximately \$5000.00 to the relationship.

[48] Ms [Hull]'s evidence was that Mr [Hull]'s use of prostitutes persisted throughout the relationship and was the cause of great distress to her, causing significant financial loss to the couple.

[49] Mr [Hull] produced bank statements for a limited period of time (a two-year period – dates deleted)) for the purpose of examination.

[50] He did not produce credit card statements.

[51] It must be observed that prostitution has been a legal activity in New Zealand since 2003.

[52] That prostitution is legal in New Zealand does not absolve Mr [Hull] from an adverse finding as to conduct, though if there was evidence that it was merely a personal activity, understood in the context of this marriage to be part of it and acceptable in it, then I would not rule adversely in respect of it.

[53] What is clear, however, from the family violence records produced and Mr [Hull]'s own evidence of Ms [Hull] being unable to put behind her the discovery of his infidelity, is that this was not acceptable conduct in the context of the relationship.

[54] In my view, Mr [Hull] sought to minimise the extent of his use of prostitutes.

[55] I refer to Mr [Hull]'s own words, written in an undated letter to Ms [Hull] when confessing to his use of prostitutes in the context of an attempt to gain forgiveness and a continuation of the marriage.

[56] The letter he wrote was entitled "To [Paula] – the least you deserve, the honest truth".

[57] The letter contained the following statements:

- That sounds like a good place to go further into the sexual stuff, because it is hinting at something more. It is hinting at prostitution. So in the interests of complete honesty let me be completely frank here. This has become a problem but is not a new one. There have been a lot of them and they started a long time before I knew you. I think the first one was in [date, prior to the commencement of the relationship, deleted].
- So we are talking about something that has been happening for 19 years.
- Why is it still going on here in New Zealand? Probably because it is so easy, readily available and doesn't seem in the slightest bit seedy ...
- There have been one or two girls that I have really liked – [name 1 deleted] and another called [name 2 deleted] ...
- There is something about having a choice that is exciting – lots of girls willing to have sex with you. But then I stuck with [name 1] for months because it was so good. We were comfortable together and that was good too.
- I did feel guilty about us, about you, but I let my own pleasure take precedence.
- What do I feel guilty about? Well mostly that I have squandered our money and left us without, while I have been happy to take my own pleasures. I feel more guilty about that than I do about the actual infidelity.
- If I want a normal relationship with my wife then there is no doubt that I have to leave the whores behind. If I can't do that then I can't have a normal marriage.

[58] What is absolutely clear from the last statement that I have referred to above is that Mr [Hull] did not regard his use of prostitutes as being an acceptable part of the norms of his marriage with Ms [Hull].

[59] What is absolutely clear from the letter written by Mr [Hull] is that he indulged in prostitutes over almost the entire relationship with Ms [Hull], and indeed before it. That against a background of Mr [Hull] stating when questioned that he estimated that he had used a prostitute or prostitutes 20 times during the couple's marriage, particularly between [a two-year period - years deleted].

[60] He went on to say that he had used them only a handful of times in the years after that.

[61] Questioned about a particular week in England before the couple moved to New Zealand and referred to bank statements relating to that particular week, Mr [Hull] was evasive as to whether he had used prostitutes in the week, and indeed only after persistent questioning did he accept that he might have.

[62] I find it difficult to accept that with the issue such an important one, Mr [Hull] did not specifically know whether or whether not in respect of the week in question he had used prostitutes. He was able particularly to recall he and Ms [Hull] meeting at a hotel when she travelled to join him after he had been away for work, and yet was not able apparently to recall whether he had used prostitutes in that time. I cannot accept the truth of his statement.

[63] Mr [Hull] accepted that in [date deleted] he had been dismissed from the [employment details deleted] over a minor inappropriate use of his work bank card, and under pressure of cross-examination accepted that the dismissal likely was because the year previous he had been found to have used the same work credit card at a brothel.

[64] Mr [Hull] sought to understate the importance of his use of a work bank card at a brothel by indicating that he had always intended to repay the sum.

[65] It was accepted by Mr [Hull] that the couple had counselling that led to an agreed transparent use of money in an attempt to address Ms [Hull]'s concerns that their funds were being frittered away by prostitution use.

[66] There was an occasion, Mr [Hull] accepted, when he was apprehended for driving with excess breath alcohol losing his licence for a period of time. He accepted that the occasion was one where he had driven home in the early hours of the morning having been at a brothel in Auckland.

[67] I have considerable sympathy for Ms [Hull] as to the emotional impact that Mr [Hull]'s dishonesty and infidelity must have had on her.

[68] I am entirely satisfied, against a background of "fronting up" with his letter of apology that I have referred to but then his continued use of prostitutes, that his behaviour was, in terms of the provisions of s 18A of the Act referred to above, "gross and palpable".

[69] For Ms [Hull] to benefit I must be satisfied that the conduct seen together with Mr [Hull]'s use of relationship funds (albeit for a short period of time) to pay support to his first wife and his domestic violence have significantly affected the extent and value of the couple's relationship property.

[70] The start point as to that assessment must be the statement that I have referred to above as having been made by Mr [Hull] in his *meā culpā* letter to Ms [Hull] that read:

What do I feel guilty about? Well mostly that I have squandered our money and left us without, while I have been happy to take my own pleasures.

[71] Balanced against the above, Mr [Hull] said in the same letter:

How did I get all this money, for whores and laptops and pens and books. Well some of it came to be as a small legacy from [name deleted]. That is when I bought the computer. That is when I set up another account in my sole name to do all this.

[72] Mr [Hull] did not produce any records of the account opened by him in respect of the legacy he received from his [relative], nor was there any evidence produced to establish whether the funds had remained his separate property or been intermingled with relationship property so as to lose their status as separate property.

[73] What I must do to determine whether the conduct of Mr [Hull] has been such as to justify an unequal division of relationship property, pursuant to s 13 of the Act, is to assess in the best way I can whether there has, as a matter of fact, been a significant effect on the extent or value of the relationship property pool. If there is not that, I am unable to take account of his conduct.

[74] Mr [Hull] was shown a bank statement that identified multiple debit transactions of \$240.00 at [club name deleted].

[75] Mr [Hull] did not accept that all were transactions relating to him having sexual relationships with prostitutes; he, however, inferred that some were and that some were simply his purchase of a woman's time for the purpose of having a drink and talking.

[76] What he did accept was that the hourly rate charged by a woman at [that club] was \$240.00.

[77] If I try to draw some inference then from an hourly rate of \$240.00 the cost to the relationship of Mr [Hull]'s use of prostitutes, if I were to accept that he used them 20 times as he suggests, would have been \$4800.00 – almost the same figure as he suggested he had spent from relationship funds.

[78] If I was to conclude that he had used prostitutes on approximately 100 occasions during the parties' relationship, the total cost to the relationship would have been \$24,000.00.

[79] I have no evidence other than Mr [Hull]'s evidence as to frequency of use of prostitutes. I do not accept Mr [Hull]'s evidence, it plainly dispelled by his own letter to Ms [Hull], which clearly acknowledges the use by him of prostitutes for a period of 19 years prior to the writing of the letter.

[80] The letter is not dated by inscription on it, nor is a date given to it in the evidence. It is, however, plainly a letter written in New Zealand.

[81] It is clear that until at least [date deleted] Mr [Hull] was continuing to use prostitutes on a regular basis, he having accepted his dismissal from the

[employment details deleted] in that time for that reason, and it is further clear that he was using prostitutes in New Zealand in [date deleted – the following year], when the evidence shows he was at the [club] in [location deleted] purchasing their use at \$240.00 per hour.

[82] I have little doubt that Mr [Hull] used prostitutes on a regular basis throughout the couple's relationship. The relationship extended for a period of some 13 years.

[83] The evidence suggests an almost compulsive use of prostitutes. His own letter to Ms [Hull] acknowledged squandering family money, leaving the couple without.

[84] I do not refer in this judgment to some of the explicit descriptions of Mr [Hull]'s activities with the prostitutes and his views about his use of them set out in his letter to Ms [Hull]; however, I draw the conclusion from the comments that there was, if not an addictive, an almost addictive pattern to his use of them.

[85] Such a conclusion suggests a use of prostitutes not less than 10 to 15 times per annum and likely more often. Such a conclusion would lead to a calculation at \$240.00 per hour of cost to the relationship of between \$31,200.00 and \$46,800.00.

[86] The relationship property pool available following sale of the family home for division was approximately \$525,000.00, or if the residue of Mr [Hull]'s United Kingdom pensions are subtracted, approximately \$347,000.00.

[87] Prostitute use 10 times per annum throughout the relationship would equate to expenditure of 5.9% of the relationship pool now available, and at 15 per annum 8.9%.

[88] The percentages that the above usage rates indicate of the relationship pool of property exclusive of Mr [Hull]'s residual UK pensions would be 9% and 13.5%.

[89] If Mr [Hull]'s residue of United Kingdom pensions are to be considered as now relationship property, it is fair to treat the inclusion of them as a contribution made by Mr [Hull] to the parties' relationship to be weighed with Mr [Hull]'s conduct in determining whether there are exceptional circumstances to justify an unequal division of relationship property.

[90] Mr [Hull] contributed to the pool of relationship property from his [pension fund 2] pension NZ\$90,866.28 and a portion of his [pension fund 1] United Kingdom pension, which cashed up into NZ\$ produced \$195,682.24, some of which however was relationship property.

[91] Mr [Hull] was the primary income producer for the relationship.

[92] Ms [Hull] has been the primary caregiver for the parties' [child], albeit returning to the workforce when [the child] commenced school.

[93] While there is a sense when analysing the conduct of Mr [Hull] looked at through the eyes of the relationship's particular expectations of it in terms of conduct that it would be repugnant not to compensate Ms [Hull] as a result of Mr [Hull]'s use of relationship funds on prostitutes, the reality is that the percentage of monies expended on them referenced to the total relationship property pool pales into insignificance when compared to Mr [Hull]'s contributions by way of his pensions if I am to conclude later in this judgment that they have in their entirety become relationship property.

[94] If, however, I am to conclude later in this judgment that the residue of pensions invested in New Zealand remain Mr [Hull]'s separate property (subject to the percentage left that would be relationship property from the [pension fund 1] scheme developed significantly during the parties' relationship) then expenditure in the order of 9 to 13.5 percentage of a relationship property pool on prostitutes becomes significant, and therefore conduct that I would view as relevant through the eyes of s 18A of the Act as to my consideration of whether relationship property should be divided equally or unequally, particularly in the context of Mr [Hull]'s concession that he had squandered relationship funds leaving he and Ms [Hull] without.

[95] The conclusion I reach is that if I find that the residual pension invested in New Zealand is Mr [Hull]'s separate property, then his conduct has been such as to demand adjustment by way of unequal division of relationship property pursuant to s 13 of the Act. If, however, my conclusion is that the residual pension funds are in their entirety relationship property, then when I analyse the respective contributions made by the parties to the relationship and Mr [Hull]'s conduct the s 13 threshold for unequal division is not reached.

Whether the balance of Mr [Hull]'s United Kingdom pensions not surrendered and used in the purchase of the family home are relationship property or Mr [Hull]'s separate property

[96] Ms [Hull] argued that the funds now held in the [Trust name deleted] were relationship property because:

- (a) On separation from Mr [Hull]'s former wife he had in order to preserve his pensions as his separate property agreed to pay her funds on a progressive basis, which payments continued into hers and Mr [Hull]'s marriage such that relationship funds were spent on the pension's retention.
- (b) She had been told by Mr [Hull] that the funds were cashed up and brought to New Zealand as pension monies for their retirement.

She said that she was told by Mr [Hull] that she did not need to direct funds from her income in New Zealand into a Kiwisaver pension scheme because of the presence of the retirement funds.

She argued that pursuant to s 8(1)(ee) of the Act the funds invested in New Zealand were acquired for the parties' common use or common benefit, therefore relationship property.

[97] Section 8(1) of the Act reads as follows:

8 Relationship property defined

- (1) Relationship property shall consist of—
- (a) the family home whenever acquired; and
 - (b) the family chattels whenever acquired; and
 - (c) all property owned jointly or in common in equal shares by the married couple or by the partners; and
 - (d) all property owned by either spouse or partner immediately before their marriage, civil union, or de facto relationship began, if—
 - (i) the property was acquired in contemplation of the marriage, civil union, or de facto relationship; and
 - (ii) the property was intended for the common use or common benefit of both spouses or partners; and
 - (e) subject to sections 9(2) to (6), 9A, and 10, all property acquired by either spouse or partner after their marriage, civil union, or de facto relationship began; and
 - (ee) subject to sections 9(3) to (6), 9A, and 10, all property acquired, after the marriage, civil union, or de facto relationship began, for the common use or common benefit of both spouses or partners, if—
 - (i) the property was acquired out of property owned by either spouse or partner or by both of them before the marriage, civil union, or de facto relationship began; or
 - (ii) the property was acquired out of the proceeds of any disposition of any property owned by either spouse or partner or by both of them before the marriage, civil union, or de facto relationship began; and
 - (f) *[Repealed]*
 - (g) the proportion of the value of any life insurance policy (as defined in section 2), or of the proceeds of such a policy, that is attributable to the marriage, civil union, or de facto relationship; and
 - (h) any policy of insurance in respect of any property described in paragraphs (a) to (ee); and
 - (i) the proportion of the value of any superannuation scheme entitlements (as defined in section 2) that is attributable to the marriage, civil union, or de facto relationship; and
 - (j) all other property that is relationship property under an agreement made under Part 6; and

- (k) any other property that is relationship property by virtue of any other provision of this Act or by virtue of any other Act; and
- (l) any income and gains derived from, the proceeds of any disposition of, and any increase in the value of, any property described in paragraphs (a) to (k).

[98] Sadly, as can be said for other aspects of the pleadings, little or no support evidence was provided to justify the bland assertion made by Ms [Hull].

[99] Ms [Hull] claimed that there was an agreement implicit or explicit that the pension funds were invested in New Zealand for the parties' common use or common benefit.

[100] Mr [Hull] denied that that was the case, refining his position when giving oral evidence to say that he would have said that the funds were invested for them "if together". From his perspective, separation ended that.

[101] It is seldom in the lives of couples pre-separation, unless legal advice is sought, that the nuances of legal interpretation are within the realms of their contemplation.

[102] On cashing up of the United Kingdom pensions by Mr [Hull], it is clear that the [pension fund 1] scheme was partly relationship property and partly separate property, and that the [pension fund 2] scheme was entirely separate, not caught by s 8 of the Act because it had been accumulated entirely pre this couple's relationship.

[103] It is clear that Mr [Hull] decided in consultation with Ms [Hull] to use what of the schemes could be used for the purpose of acquiring a family home in New Zealand. It was put to him that what was cashed for the house purchase was as much as the schemes allowed. He was somewhat evasive in his answer, but in my view accepted that to be the case. The implication is that if more had been cashable more would have been invested in the family home.

[104] What was left of the separate component of the pensions remained Mr [Hull]'s separate property unless so intermingled with relationship property as to no longer be identifiable as separate property, or unless caught by s 8(1)(ee) of the Act.

[105] I invited submissions as to the issue of whether the joining together of the entirely separate [pension fund 2] fund and the partly separate/partly relationship [pension fund 1] fund created an interminglement such that the entirety became relationship property.

[106] Ms [Hull] through counsel did not pursue that issue.

[107] The only evidence that Ms [Hull] provided (which was her own) to support the argument that the pensions when invested in New Zealand were invested for the parties' common use and benefit was her evidence to the effect that Mr [Hull] told her that there was not a need for her to contribute from her income to a Kiwisaver superannuation scheme because of the existence of the pension investment in New Zealand which was set aside for the couple's retirement.

[108] Mr [Hull] denied making the above statement though, as with his evidence on a number of occasions, was somewhat vague or evasive when answering questions, concluding by way of rationalisation for his comments if made that he would only have intended the pension investment in New Zealand for the parties' retirement if they remained together.

[109] I regret to have to conclude, against the background of Mr [Hull]'s lack of honesty in his relationship and evasiveness when questioned before me, that I cannot accept his denial that he told Ms [Hull] not to invest in Kiwisaver because of the presence of the pension investment for the couple's retirement.

[110] Mr [Hull]'s dishonesty within the relationship included:

- (a) Failure to advise Ms [Hull] that he was in fact not divorced from his first wife, [name deleted].
- (b) Failure to advise Ms [Hull] until she found out that he was from relationship funds making support payments to his ex wife, [name deleted].
- (c) Attempting at hearing to minimise his use of prostitutes.

- (d) Use in the relationship of his [employer] work cards for purposes beyond what was allowed by his employer (that is using the card at a brothel).

[111] What I find occurred was that in deciding to move to New Zealand the parties discussed how to finance the move and acquisition of a family home, surrendered all that they could of Mr [Hull]'s pensions, used the surrendered portion of the pensions for a deposit on their first New Zealand home, then consciously deciding to invest the balance for their retirement.

[112] The conclusion that I reach is that the investment of pension funds derived from the United Kingdom in New Zealand by Mr [Hull] was an investment made specifically for the common use and benefit of both parties.

[113] The above conclusion is consistent with Mr [Hull] having told Ms [Hull] that she should not put monies from her earnings into Kiwisaver.

[114] The consequence of the above decision is that I do not need to determine what portion of the New Zealand pension fund would otherwise have been the separate property of Mr [Hull] and what portion would have been the relationship property of the parties.

[115] In coming to the above conclusion, I observe that had I not reached it I would have seen it necessary, pursuant to s 13 of the Act, to divide the relationship property pool unequally.

Whether compensation should be paid to Ms [Hull] in respect of disparity of income and living circumstances existing at separation

[116] Ms [Hull] claims compensation in respect of a disparity she alleges existed at separation between she and Mr [Hull]'s income and living circumstances.

[117] Section 15 of the Act reads as follows:

15 Court may award lump sum payments or order transfer of property

- (1) This section applies if, on the division of relationship property, the court is satisfied that, after the marriage, civil union, or de facto relationship ends, the income and living standards of one spouse or partner (party B) are likely to be significantly higher than the other spouse or partner (party A) because of the effects of the division of functions within the marriage, civil union, or de facto relationship while the parties were living together.
- (2) In determining whether or not to make an order under this section, the court may have regard to—
 - (a) the likely earning capacity of each spouse or partner:
 - (b) the responsibilities of each spouse or partner for the ongoing daily care of any minor or dependent children of the marriage, civil union, or de facto relationship:
 - (c) any other relevant circumstances.
- (3) If this section applies, the court, if it considers it just, may, for the purpose of compensating party A,—
 - (a) order party B to pay party A a sum of money out of party B's relationship property:
 - (b) order party B to transfer to party A any other property out of party B's relationship property.
- (4) This section overrides sections 11 to 14A.

[118] Ms [Hull] did not produce evidence as to the disparity between the parties' living circumstances.

[119] As to disparity of income at separation, Ms [Hull]'s evidence was that she earned \$60,000.00 and Mr [Hull] \$130,000.00 with the opportunity for bonuses.

[120] Ms [Hull]'s evidence was of leaving school at the age of 15, working in [employment details deleted], completion of a [details of education deleted] by night while working, work in [UK location deleted] and then ceasing to work a month before [the child]'s birth.

[121] She was the primary caregiver for [the child], doing odd jobs only until [the child] started school at the age of five, when she returned to the workforce.

[122] Ms [Hull]'s evidence was that initially when returning to the workforce when [the child] started school she worked in a [employment details deleted], she then returning to fulltime work in [date deleted].

[123] Ms [Hull] was out of the fulltime workforce from [dates deleted – 9 years].

[124] It is worth noting that little direct evidence was produced as to Ms [Hull]'s circumstances as defined in the above paragraphs, the evidence rather elicited under cross-examination.

[125] The Court was not provided with:

- (a) Any evidence as to Ms [Hull]'s work prior to the birth of [the child].
- (b) Any evidence as to Ms [Hull]'s current work.
- (c) Any employment consultant indicators as to her likely career track prior to the birth of [the child] and the impact on it of her nine years out of the fulltime workforce.

[126] Ms [Hull] has been responsible for [the child] subsequent to the parties' separation, though Mr [Hull] has been assessed for payment of child support with arrears having accumulated which are enforceable, and indeed which will be paid as a consequence of this judgment. She now works fulltime.

[127] The reality also is that when I look in totality at the outcome of these relationship property proceedings, Ms [Hull] benefits from the introduction into the pool of relationship property by Mr [Hull] of his United Kingdom pensions.

[128] I accept that I am able to make a finding on the facts without actuarial evidence.

[129] On the evidence before me there is, however, not proven an income and living standards disparity that results from the functions of the parties' relationship.

[130] If there is one, and feasibly there is a delay in promotion progression, there is absolutely no evidence before me that would enable me to make an assessment as to what compensation could or should be paid even if adopting a “broad brush” approach.

[131] I decline to make an award in respect of disparity of income and living circumstances in favour of Ms [Hull].

Valuation of and division of relationship chattels

[132] Despite a multitude of efforts to have the parties’ chattels valued, neither have had the items in their respective possessions valued.

[133] Mr [Hull] argued that he had not had the chattels in his possession valued as he wanted his and Ms [Hull]’s valued by the same valuer contemporaneously.

[134] There is some logic to the position taken by Mr [Hull] that the same valuer should value all chattels.

[135] There is not logic to Mr [Hull]’s position that he could not have had his chattels valued, leaving it then to Ms [Hull] to have hers valued by the same valuer.

[136] Having, however, considered the multitude of efforts made to have Ms [Hull] contact the [Auckland valuers], to arrange for a valuation of the chattels in her possession, I am satisfied that her delays were unacceptable.

[137] The parties’ respective views as to the value of the pool of relationship chattels varied between \$50,000.00 and \$240,000.00.

[138] There are occasions when a Judge will be prepared to make a robust valuation decision based on his or her own knowledge of indicative values for small house loads of older furniture. This is not one of those cases, given the reality that there are family heirlooms, valuable books and significantly disparate opinions as to chattel valuation.

[139] All chattels in the possession of each party are to be valued by [the Auckland valuers] within 28 days.

[140] [The Auckland valuers] are to be instructed jointly by counsel.

[141] [The Auckland valuers'] fees are to be met from the pool of funds held at interest bearing deposit from the sale of the parties' family home.

[142] Each party is to retain the chattel in his or her possession at the date of this judgment.

[143] The party who by value has the greater share of chattels is to pay to the other one half of the difference between the value of the items in each party's possession.

Degree of compensation payable to Ms [Hull] in respect of post-separation contributions

[144] Ms [Hull] claims compensation for the following expenses incurred subsequent to the parties' separation:

- (a) In respect of vehicle repair costs for hers and Mr [Hull]'s vehicles, \$1600.00 and \$1400.00.
- (b) In respect of [gifts] purchased for [the child] for [their] birthday, \$1400.00.
- (c) For the washing of the house and repair of guttering for sale, \$719.00.
- (d) In respect of fencing work, \$3527.00.

[145] Mr [Hull] accepted responsibility for contribution to the cost of the house washing and guttering repair and fencing work, which would require of him to compensate Ms [Hull] a payment of the sum of \$2123.00.

[146] There was no evidence of any agreement reached as to contribution by Mr [Hull] to Ms [Hull] for the purchase of the [gifts] for [the child]; as such, she must bear responsibility for that.

[147] There was simply insufficient evidence by way of invoice record or otherwise to sustain Ms [Hull]'s claim for a contribution to the cost of car repairs.

[148] While I have found against Mr [Hull] in respect of his credibility, it is too large a leap to make to simply accept without question oral evidence alone of Ms [Hull] as to costs incurred.

[149] The result is that by way of reimbursement for post-separation expenditure Mr [Hull] is ordered to pay to Ms [Hull] the sum of \$2123.00.

Tax money

[150] It was accepted by Ms [Hull] that from the account operated in respect of [the Company] there was removed by her the sum of \$11,756.00 in late 2010.

[151] Mr [Hull] sought adjustment in respect of that sum.

[152] Ms [Hull]'s position was that the funds were expended on relationship costs, including the items referred to above under the head of post-separation contribution compensation.

[153] The reality is that Ms [Hull] accepts receipt of the sum. The further reality is that Mr [Hull] has been ordered to reimburse her for the funds that she says she spent from the account for relationship purposes.

[154] Ms [Hull] has not been able to prove the use to which the balance of the funds removed was put to.

[155] Ms [Hull], despite requests, had not by hearing produced bank statements in respect of the account into which the funds were lodged.

[156] The parties in their evidence and submissions appear to have lost sight of the reality that [the Company] is a separate entity to the entity that constitutes the parties' marriage and that any monies transferred from the company to Ms [Hull], if reimbursement is required, should be to the company.

[157] Because the sum removed is not significant, I propose to take a robust approach and allow Mr [Hull] credit for one half of the sum removed, noting of course that I have already provided for adjustment to Ms [Hull] in respect of her s 18B contributions.

Child support

[158] Mr [Hull] accepted that properly calculated arrears of child support owed by him to Ms [Hull] should be paid from his share of relationship property to Ms [Hull] by way of deduction from the house sale proceeds held on deposit.

[159] Mr [Hull] argued that of the \$11,619.00 displayed in the child support statement of account issued on 22 August 2016, only a portion should be reimbursed because he intended to challenge the calculation in respect of the year ended 31 March 2015.

[160] The best evidence available to me is the child support statement dated 22 August 2016 as modified by a letter produced to me with submissions directed to Ms [Hull] on 6 October 2016 showing arrears of now \$10,558.61.

[161] Mr [Hull]'s position was that the funds should be paid by way of deduction from his share of relationship property to the Inland Revenue Department on behalf of the child support agency for on payment to Ms [Hull], rather than by way of payment directly to her.

[162] I see little to be gained in payment that is not made directly to Ms [Hull], and direct that it be made to her directly with the Inland Revenue Department on behalf of the child support agency notified immediately on payment that the debt has been satisfied.

Summary

[163] Orders are made in accordance with the above.

[164] In particular, as a result of my determination that Ms [Hull] succeeds in her submission that the funds held in New Zealand sourced from Mr [Hull]'s United Kingdom pension funds are relationship property, she fails in her application for unequal division of relationship property pursuant to s 13 of the Act.

[165] Counsel are to submit draft orders for sealing in accordance with this judgment.

[166] The proceeds held on interest bearing deposit not already distributed by interim distributions from the sale of the parties' family home are to be distributed in accordance with the terms of this judgment and the agreed positions referred to in it within 14 days of the date of receipt of the chattel valuation from [the Auckland valuers].

[167] Any submissions as to costs are to be filed within 14 days with replies within seven days thereafter.

S J Maude
Family Court Judge

Signed 14 October 2016 at 3.30 pm