

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

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**IN THE FAMILY COURT  
AT HAMILTON**

**I TE KŌTI WHĀNAU  
KI KIRIKIROA**

**FAM-2020-019-000765  
[2021] NZFC 9618**

IN THE MATTER OF	THE PROPERTY (RELATIONSHIPS) ACT 1976
BETWEEN	[KIERON HUDSON] Applicant
AND	[ANGELA GOUGH] Respondent

Hearing: 13 September 2021

Appearances: M Roots for the Applicant  
A Foster for the Respondent

Judgment: 1 October 2021

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**RESERVED JUDGMENT OF JUDGE N J GRIMES**

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[1] Mr [Hudson] and Ms [Gough] have been unable to agree on the value and division of their relationship property or whether compensation for post separation contributions should be paid.

[2] I am required to determine the following issues under the Property (Relationships) Act 1976 (“the Act”):

- (a) Should the former family home at [address deleted – the family home] vest in Mr [Hudson] (and if so, at what value) or be sold?
- (b) The valuation of chattels and [details deleted – vehicle 1].
- (c) Whether Ms [Gough] should pay occupational rent in respect of the family home.
- (d) Whether Ms [Gough] should be compensated for post separation contributions including payment of property and child related expenses.

[3] It has been agreed that Mr [Hudson] retain the following property:

- (a) Kiwi Saver – \$11,209.51
- (b) Kiwi bank account – \$436.49
- (c) Sale proceeds of [details deleted – the motorbike] – \$3,500

[4] It has been agreed that Ms [Gough] retain the following property:

- (a) ASB Kiwi Saver – \$31,792.48
- (b) ANZ account – \$42,943.73
- (c) Sale proceeds of [details deleted – vehicle 2] – \$5000
- (d) Joint sovereign account \$409.55
- (e) Visa debt of \$1037.73

[5] It is accepted that a cash adjustment of \$31,981.01 to equalise the division of property as set out above is owed to Mr [Hudson].

## **General background**

[6] Ms [Gough] was 35 and Mr [Hudson] 30 when they commenced their de facto relationship in August 2001 in Auckland. Ms [Gough] was tertiary qualified and owned her own home. Mr [Hudson] was a storeman and had little assets to speak of.

[7] To secure their financial future the parties moved to the Waikato region where homes were more affordable and purchased the property at [address deleted - “the family home”]. The parties’ twins [Carla] and [Bradley] were born on [date deleted] 2003 and [Marni] followed two years later on [date deleted] 2005.

[8] Ms [Gough]’s earning potential was considerably greater than Mr [Hudson]’s and the decision was made for Ms [Gough] to return to paid employment and for Mr [Hudson] to care for the children. As the children grew older, Mr [Hudson] started part-time work around the children’s schooling and on [Marni] commencing college, Mr [Hudson] took on night-time work so that he remained available for the children before and after school.

[9] The parties’ relationship deteriorated during 2017 by which time there was little communication. Mr [Hudson] acknowledges he started drinking and was a regular cannabis user as he had been for many years. The parties opened separate bank accounts. Whilst Ms [Gough] informed Mr [Hudson] on occasions she no longer wanted a relationship, the parties continued to function in the household as they had been until Ms [Gough] told Mr [Hudson] the relationship was over in November 2018. Mr [Hudson] left the family home on 16 December 2018.

[10] No steps regarding the division of relationship property were taken until Mr [Hudson] sought legal advice in October 2019. At that time, Mr [Hudson] either wanted the family home sold or for Ms [Gough] to buy out his share.

[11] By this time, [Carla] had moved to [location deleted] where she was studying. She continued to have regular contact with her father. [Bradley] was in his last year at college and during the [sporting] season would share his time between his father and mother’s homes. For reasons unknown to the court, [Marni] has chosen to have

no contact with her father notwithstanding his weekly text messages to her. Mr [Hudson] and Ms [Gough]'s communication was very limited.

[12] Prior to COVID-19 2020 lockdown and unbeknown to Mr [Hudson], Ms [Gough] met with a real estate agent and commenced the process of listing the property for sale.

[13] COVID lockdown 2020 was a difficult time for Ms [Gough]. She was made redundant and had no paid employment for three months. All three children were at the family home during this period. Therefore, the sale process was halted by Ms [Gough].

[14] Believing that no progress was being made about the division of relationship property, Mr [Hudson] issued proceedings on 31 August 2020. Thereafter, Ms [Gough] resumed the sale process. The real estate agent contacted Mr [Hudson] who had been unaware that Ms [Gough] agreed to sell the property. Mr [Hudson] had, by this time, re-partnered and together they started thinking about purchasing the family home. As a result, Mr [Hudson] did not meet with the real estate agent.

[15] Ms [Gough] did not respond to the proceedings until 10 December 2020. When the matter came before the court for the first judicial conference on 16 December 2020, Ms [Gough] accepted that the family home could either be sold or Mr [Hudson] could buy out her share. She agreed to a valuer coming to the family home to value the same.

[16] Having received the valuation in January 2021 for \$615,000, Mr [Hudson] wanted access to the family home in order to obtain a builder's report before committing to the purchase. No agreement on entry was reached with Ms [Gough] and nor did she accept Mr [Hudson] purchasing the property for \$615,000. She would not however obtain her own valuation.

[17] On 31 March 2021, His Honour Judge Twaddle directed affidavits be filed regarding the issue of a builder going to the family home. On 6 May 2021, I made directions as to how the builder may access the family home to provide their report. I

directed the parties obtain updated valuation evidence with valuers to confer prior to the allocated one-day fixture.

[18] Both parties obtained valuation reports that were \$30,000 apart. The parties instructed their valuers to confer in accordance with the High Court rules resulting in an agreed value ('the agreed value') of the family home of \$705,000. Having discussed matters with the ANZ bank and a real estate agent, Ms [Gough] remains of the view that the family home has the potential to fetch considerably more if it was placed on the open market. She considers Mr [Hudson] would be receiving a bargain at \$705,000 and that he should bid for the property once it is on the open market. Mr [Hudson] disagrees and wants to purchase the property at the agreed value.

[19] At the conclusion of the evidence, I adjourned matters to later in the day to give the parties time to consult their Counsel and prepare draft orders for the two scenarios ie: whether the property was purchased by Mr [Hudson] or whether it was sold on the open market. I am grateful to counsel and the parties for undertaking this work.

### **Date of separation**

[20] At the commencement of the hearing, Ms [Gough] raised the issue of the date of separation. In her affidavit evidence, she deposed of informing Mr [Hudson] she no longer wished to be in a relationship in November 2017 and followed this up with further conversations in April and May 2018. Mr [Hudson] maintains that Ms [Gough] informed him she wanted to separate on 6 November 2018 with his moving from the family home on 16 December 2018.

[21] Whilst the parties opened separate bank accounts for their wages in late 2017, they otherwise continued to function as they had been, suggestive that whilst unhappy, they continued to be in a relationship.

[22] Ms [Gough] did not provide evidence of the value of property at any other date she says separation occurred other than 16 December 2018. Her affidavit of assets and liabilities provides for a date of separation of 16 December 2018 and records that

Ms [Gough] was aware that making a false statement could result in criminal proceedings. Accordingly, I find 16 December 2018 to be the date of separation.

### **Value of the chattels**

[23] The only known value of the chattels is the insurance value of \$100,000. The parties agree this grossly inflates the value of items in their home. Likewise, the parties accept their chattels were modest. I accept a number of the items were aged and of minimal value.

[24] Ms [Gough] agrees with Mr [Hudson]'s list of chattels that remained in the family home when he left. This includes the bulk of furniture, whiteware, kitchenware, linen and garden implements.

[25] Mr [Hudson] accepts he too has items but not to the extent of the list provided by Ms [Gough]. Much of this related to the motorbike and were sold with the bike.

[26] Given the lack of independent evidence about the chattels value, the parties invited me to use my discretion and apply an arbitrary figure as the value. I place minimal value on the linen, kitchenware and accept the home was minimally furnished. However, on the evidence before me I find that the bulk of furniture, whiteware and outside tools that were retained by Ms [Gough] which had some value. Therefore, I fix a nominal sum of \$5000 for the additional chattels retained by Ms [Gough] meaning she is to account to Mr [Hudson] for \$2500.

### **Value of [vehicle 1]**

[27] After separation, Ms [Gough] retained [vehicle 1] and traded this in for \$4000 on 20 September 2019. She did not let Mr [Hudson] know nor did she ask him if he wished to have the vehicle as part of his relationship property entitlement.

[28] Mr [Hudson] does not accept a trade in value for the vehicle. He has provided trade me estimates of \$10,000 for vehicles of the same age with similar number of kilometres on the clock.

[29] Ms [Gough]'s evidence is that the trigger to trading in the vehicle was mechanical issues with the car breaking down whilst taking the children to the bus stop.

[30] Whilst the primary rule in s 2G of the Act is that property is to be valued at the date of hearing, this may be departed from if the court so decides. This discretion is expressed in broad terms, and although unfettered, it must be exercised in a way which is consonant with the scheme and purpose of the legislation.<sup>1</sup>

[31] It is well established that trade in value is a lower value than market value for a vehicle. Market valuation is what the court accepts and commonly at the time of separation given the usual decrease in value of vehicles over time. In this instance there is no reason to depart from such approach. As the vehicle was traded in 10 months after separation, I fix the market value at \$8000 at the time of separation meaning Ms [Gough] is to account to Mr [Hudson] for \$4000.

#### **Family home – to vest in Mr [Hudson] or sell?**

[32] Until the final submissions, Ms [Gough] did not wish to retain the family home. In his final submissions, Mr Foster advised Ms [Gough] would purchase the family home for more than \$705,000. A figure was not however provided.

[33] On the basis that Ms [Gough] has had almost 2 years since lawyers became involved to purchase the family home, her request to purchase is denied. No purchase price was provided, nor terms of settlement. As is discussed in this decision, I find that over the course of at least the last 12 months, Ms [Gough] has been deliberately difficult in resolving matters. I do not have confidence in her advising of a purchase price in a timely manner, how that would be arrived at or agreed upon. As I do not have any evidence other than the agreed value of \$705,000, I am unable to set a higher figure Ms [Gough] should pay.

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<sup>1</sup> *Meikle v Meikle* [1971] 1 NZLR 137, 158 per Richardson J

[34] Until the final submissions, Ms [Gough] did not have an issue with Mr [Hudson] buying her share of the family home but had an issue with the amount to be paid.

[35] Section 25 and 33 of the Act relevantly gives the court the power to:

- (a) Make an order for sale of the relationship property and for the division or vesting of the proceeds;
- (b) Make an order vesting the relationship property, or any part of the relationship property, in either partner.

[36] The power must be exercised on a reasonable and principled basis, having regard to the purpose of the Act to provide for a just division of relationship property and the principle that questions arising under the Act should be resolved as inexpensively, simply and speedily as is consistent with justice.

[37] The court has considered the issue of vesting property in one party as opposed to ordering a sale. In *Scott v Williams*<sup>2</sup>, the Supreme Court said that compelling reasons were not required for a vesting order and that vesting was sensible where possible because it would avoid the costs and risks of sale, and where the property had been the family home, the emotional needs of at least one of the partners and children (even if adult) could be satisfied, while still, with a proper valuation process, satisfying the equal sharing provision.

[38] The family home is where the parties raised their children. During this time, Mr [Hudson] was primarily responsible for the children's care and on resuming work, did so part-time and around the children's schooling commitments. On the basis of the division of functions within the parties' relationship, I accept his special association with the family home.

[39] Mr [Hudson] stated he wants to retain the family home for the children so they would always have a base. Whilst Mr [Hudson] accepts [Marni] does not talk to him

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<sup>2</sup> *Scott v Williams* [2017] NZSC 185, [2018] NZLR 507, [2018] NZFLR 1.



at present, he believes that, especially [Carla] will spend time at home with him. Ms [Gough] conceded that this would be the case.

[40] Mr [Hudson] is yet to seek bank approval for finance as he needed confirmation of purchase price first this having increased by \$90,000 in the past nine months. No criticism is made of him in this regard.

[41] A robust and proper valuation process has been undertaken. Mr [Hudson] has accepted the \$705,000 valuation even though it is \$90,000 greater than his January 2021 valuation. He does not accept he should then bid for a property he half owns and pay real estate agent fees if he was the successful bidder.

[42] Ms [Gough] has maintained the position that the property is worth significantly more than \$705,000 and believes that Mr [Hudson] could bid for the property when it is placed on the open market.

[43] I find:

- (a) The best evidence before the court is the agreed value of \$705,000. Each party instructed their own valuers just prior to the hearing. They further instructed the valuers to confer and were then able to agree on a value. There was no recommendation that the home be sold to resolve any uncertainty as to house prices in the Waikato region at this time. No other evidence of an alternative value has been proffered that is not hearsay.
- (b) Mr [Hudson] has had a connection to the home notwithstanding the three-year absence. Both parties acknowledge that at least one of the children will wish to use the home as a base.
- (c) Until counsel for Ms [Gough]'s final submissions, she did not seek to retain the family home. Whilst stating at the eleventh hour she wished to purchase the home, she did not specify at what value. This creates uncertainty if she were granted the opportunity to purchase the home.

The respondent's intention to purchase the home has been well known since at least October 2020.

- (d) Delays in resolution have been exacerbated by the difficulties in Mr [Hudson] gaining access to the home in order for a builder's inspection to be undertaken. Those delays inevitably resulted in updated valuation evidence being required and the equity in the home increasing by \$90,000.
- (e) Given the parties inability to communicate or agree, I am not confident a sale process (no matter how prescriptive an order is regarding that) will be straightforward. Ms [Gough] is yet to turn her mind to where she and [Marni] will live. Given the deliberate obstruction for Mr [Hudson] to purchase the home since December 2020, I am not confident Ms [Gough] will proactively cooperate in the sale process as it is not in her interests to do so.
- (f) Not only does the vesting of the home in Mr [Hudson] accord with the clean break principle, it will be at the agreed value and will result in a just division of relationship property with a lump sum payment being made to Ms [Gough]. Whilst the proceedings have not been resolved inexpensively, simply and speedily to date, the orders I will be making will go some way to remedying that.

[44] I conclude that the family home is to vest in Mr [Hudson] at \$705,000 subject to his confirming finance within 28 days and paying Ms [Gough] the sum of \$298,051.07 as calculated at paragraph [67].

### **S18B post separation contributions (including occupation rental)**

[45] Section 18B of the Act provides:

18B Compensation for contributions made after separation

- (1) In this section, relevant period, in relation to a marriage [, civil union,] or de facto relationship, means the period after the marriage [, civil

union,] or de facto relationship has ended (other than by the death of 1 of the spouses or [partners]) but before the date of the hearing of an application under this Act by the Court of first instance.

- (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.
- (3) In proceedings commenced after the death of 1 of the spouses or [partners], this section is modified by section 86.

[46] The ways a partner may contribute to a de facto relationship are set out in section 18 of the Act and include the care of any children of the relationship and payment of money to maintain or increase the value of relationship property.

[47] It is accepted that what is involved under s 18B is a discretion, and that it has been described as “very broad”.<sup>3</sup>

[48] Post separation contributions claimed include:

- (a) Occupational rent
- (b) Payments properly incurred with respect to relationship property
- (c) Compensation for children’s expenses

#### *Occupational rent*

[49] No issue was taken with the Court’s jurisdiction to order one party to compensate the other party for post separation occupation of the family home. The court in *E v G*<sup>4</sup> decided that where one partner has made his or her share of capital in a home available to the other, this will qualify as a contribution under s 18. However,

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<sup>3</sup> *Shandil v Shandil* [2011] NZFLR 554 (HC) at [46] per Duffy J.

<sup>4</sup> *E v G* HC Wellington CIV-2005-485-1895, 18 May 2006

the fact one party has made such a contribution is not by itself sufficient to justify an award: the court must also be satisfied it is just in all the circumstances that such an order be made.<sup>5</sup>

[50] Both counsel referred to *E v G, Griffiths v Griffiths*<sup>6</sup>, *H v H*<sup>7</sup>,

[51] Mr [Hudson]'s valuer, Mr Dymock assessed rent at \$450 per week in his valuation dated 13 January 2021. There was no change on this amount in Mr Dymock's updated valuation dated 10 August 2021.

[52] Initially, Mr [Hudson] sought half the occupational rent less half the rates and insurance from the time he vacated the property being 146 weeks occupation.

[53] During the course of the hearing, Mr [Hudson] conceded a six-month grace period for Ms [Gough] and sought occupational rent for 122 weeks. He calculated this as being a rental assessment \$450 per week x 122 weeks totalling \$54,900 as divided by two equalling \$27,450 less adjustment for half rates/insurances of \$4536.86 meaning a net adjustment from Ms [Gough] to Mr [Hudson] for occupational rent of \$22,913.14.

[54] In assessing that it is just to make an order in all the circumstances, I take the following into account;

- (a) Whilst Mr [Hudson] did not instruct a lawyer to divide relationship property until October 2019, nor did Ms [Gough] take any steps. She had sought the separation from Mr [Hudson] and I find it suited her interests not to then take steps to divide relationship property. The delay in commencing negotiations is not an impediment to seeking occupational rent in these circumstances.
- (b) Mr [Hudson] conceded during the course of the hearing that it would be appropriate for a six month grace period be provided to Ms [Gough]

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<sup>5</sup> *C v C* HC Auckland, CIV-2007-419-1313, 26 June 2008 at [28].

<sup>6</sup> *Griffiths v Griffiths* [2012] NZFLR 327 (HC).

<sup>7</sup> *H v H* FC Nelson FAM-2005-042-527, 29 March 2007.

that took into account her ongoing care of the children and her particularly difficult circumstances during the COVID-19 March 2020 lockdown during which she was made redundant leaving her out of paid employment for three months.

- (c) Whilst Ms [Gough] took steps to have the home placed on the market for sale, this process was unilaterally halted after Ms [Gough] was made redundant and not reviewed until November 2020 after Mr [Hudson] had issued proceedings and decided he wished to purchase the property himself.
- (d) From at least December 2020 and as recorded in Judge Brown's minute dated 16 December 2020, Ms [Gough] agreed Mr [Hudson] may purchase the home or it be sold. As already documented, Ms [Gough] chose not to accept the registered valuation obtained by Mr [Hudson]. Further difficulties arose with his entry onto the property with a builder to obtain a builder's report. That was not resolved until early May 2021 with directions required from the court. Further delays required updated valuation evidence be obtained and ultimately the property increasing in value by \$90,000 over an eight-month period.

[55] Whilst it is open to the court to consider the method for calculating compensation which could either be by a payment of occupational rent or an award of interest on the non-occupying parties capital, I find it would be unfair to simply award interest on Mr [Hudson]'s half share of the value of the family home given current interest rates afforded by banks at this time.

[56] For the reasons set out above, I find that it is just in all of the circumstances to make an award for occupational rent as calculated by Mr [Hudson] being the sum of \$22,913.14.

[57] Further, Ms [Gough] has accepted occupational rent be paid from the date of hearing until date of settlement and this is factored into the orders I make.

### *Care of Children costs*

[58] Rather than seeking a sum to recognise that the day to day care of the children had predominantly fallen to her, Ms [Gough] provided a list of what she has paid in orthodontic fees, glasses, [sporting], laptop, drivers licence, University expenses since separation totalling \$19,889.19 of which she seeks Mr [Hudson] to pay half.

[59] Mr [Hudson] was not only assessed to pay child support, he was the subject of two administrative reviews in which Ms [Gough] was unsuccessful in having Mr [Hudson] contribute towards [Carla]’s orthodontic costs or [Bradley]’s not inconsiderable [sporting] fees.

[60] Like Ms [Gough], Mr [Hudson] has provided additional financial and other support to [Bradley] and [Carla] over and above child support payments and particularly since they are no longer subject to child support payments. This included having both [Carla] and [Bradley] regularly stay at his home including for a period where [Bradley]’s care was shared during the [sport] season. Additional costs for tertiary education have been paid. Despite his desire to have a meaningful relationship with [Marni] and provide her with emotional support, that has been rejected by her.

[61] It is well understood that s 18B compensation should not result in double counting where proper child support is being paid. Further, there is no presumption that a contribution of a monetary nature is of greater value than the contribution of a non-monetary nature.

[62] However, Mr [Hudson], during the course of the hearing, agreed to meet half of a number of expenses relating to [Carla]’s glasses, [Bradley]’s [sporting], laptop, drivers’ licence and university deposit. He did not agree to meet [Carla]’s orthodontic fees given this had been the subject of the child support administrative review nor [Bradley]’s expenses at University as he too has made a contribution towards these. Given the outcome of the previous child support reviews, I find that Ms [Gough] is attempting to use s 18B as a way of having a “second bite of the cherry” which is not the statutory intention behind s18B.

[63] Given his concession, I find Mr [Hudson] responsible for one half of \$8641.39 worth of expenses being \$4320.69.

*Property expenses*

[64] Ms [Gough] detailed property and insurance expenses paid by her. In draft orders supplied she sought a one-half share for expenses totalling \$6928.04.

[65] On reviewing the list during cross-examination, Mr [Hudson] accepted \$4899.07 worth of expenses. He did not accept the AMI contents insurance, AMI house insurance nor cost of a skip. As the contents insurance related to the items Ms [Gough] has retained and the house insurance has already been taken into account in the occupational rent payable I do not include those figures. However, as Ms [Gough] obtained a skip to declutter the yard, I find this has been a contribution for both parties benefit and accordingly Mr [Hudson] is to meet half the cost which totalled \$350.

[66] Therefore, I find that Mr [Hudson] is to pay half the sum of \$5249.07 being \$2624.53

**Calculations**

[67] Given the above the final settlement adjustments will be as follows:

- (a) The family home value \$705,000, adjustment to Ms [Gough] \$352,500
- (b) Plus adjustment from Mr [Hudson] to Ms [Gough] for property/children's costs of \$6945.22
- (c) Less occupational rent \$22913.14
- (d) Less adjustment for difference in asset value retained by the parties as recorded at paragraph five \$31,981.01
- (e) Less adjustment for [vehicle 1] \$ 4,000

(f) Less adjustment for chattels \$2,500

Total to pay Ms [Gough] \$298,051.07.

(g) Less adjustment for half occupational rent between date of hearing and date of settlement.

### **Orders and Directions**

[68] I make these orders.

[69] The following assets to [Kieron Hudson] as his separate property, namely:

(a)	Kiwisaver	\$11,209.51
(b)	Kiwibank account	\$ 436.49
(c)	[Motorbike]	<u>\$ 3,500.00</u>
		<u>\$15,146.00</u>

[70] The following assets to [Angela Gough] as her separate property, namely:

(a)	ASB Kiwisaver	\$31,792.48
(b)	ANZ Bank account	\$42,943.73
(c)	[Vehicle 2]	\$ 5,000.00
(d)	Joint Sovereign account	\$ 409.55
(e)	[Vehicle 1]	\$ 8,000.00
(f)	Chattels	\$ 5,000.00
(g)	Visa debt	<u>\$ 1,037.73</u>



[71] Adjustments from [Angela Gough] to [Kieron Hudson] in respect of assets:

- (a) [Angela Gough] shall pay [Kieron Hudson] an adjustment of \$38,481.00 at the settlement from her share of the relationship property representing an equalisation of the difference in relationship property to be retained as separate property by [Kieron Hudson] and [Angela Gough].

[72] The [family home] shall vest in [Kieron Hudson]:

- (a) [Kieron Hudson] shall have the option to purchase [Angela Gough]'s interest in [the family home] at the agreed value of \$705,00, such option being communicated to Ms [Gough]'s lawyer on or before 29 October 2021.
- (b) [Angela Gough] shall provide access to [the family home] to [Kieron Hudson] and his partner for a pre-settlement inspection to occur at [Kieron Hudson]'s election on either 24 or 25 November 2021 between 9am to 3pm, such access to be for no more than one-hour duration.
- (c) Settlement is to occur on 26 November 2021 at which time [Kieron Hudson] shall pay to [Angela Gough] the sum of \$298,051.07 ("the settlement sum"), which takes into account adjustments between the parties in respect of:
  - (i) \$38,481.01 to equalize relationship property.
  - (ii) Adjustment to [Angela Gough] for children's expenses and post-separation relationship property maintenance of \$6,945.22.
  - (iii) Occupational rent owed by [Angela Gough] to [Kieron Hudson] and to be determined by the Court at \$22,913.14.

- (d) From the date of hearing being 13 September 2021 [Angela Gough] shall pay to [Kieron Hudson] occupational rent of \$225 per week to the date of settlement. The settlement sum will be adjusted to take into account this payment.
- (e) [Angela Gough] shall ensure that [the family home] is left in a clean and tidy condition.
- (f) From the final settlement sum to be paid by [Kieron Hudson] to [Angela Gough] at settlement the sum of \$20,000 shall be held as bond, to be released to [Angela Gough]'s nominated conveyancer on Monday 29 November 2021 if [the family home] is presented for [Kieron Hudson]'s occupation in the same state of repair and condition as inspected by Bennet Building Inspections on 24 May 2021 save fair and reasonable wear and tear.
- (g) In the event that there is a dispute as to the condition of [the family home] at the pre-settlement inspection or upon entry at settlement then, failing negotiation and agreement, either party may seek that the matter be brought back to Court for further direction on that issue in which case the bond shall be held pending the Court's determination.
- (h) Either party may seek that the matter be brought back to Court to give effect to the Court's orders on seven days' notice.
- (i) Costs may be reserved in the event that there is a breach of the Court's order.
- (j) [Kieron Hudson] may elect to use either Essential Law or Bogers Scott Shortland to undertake the conveyancing for the transfer of [the family home].

- (k) Both parties shall take all such steps as may be necessary to complete the transfer from [Kieron Hudson] in [the family home] to [Angela Gough].
- (l) Each party shall bear their own legal costs in respect of the conveyancing of [the family home] to [Kieron Hudson].

[73] Sale of [the family home] to a third party:

- (a) In the event Mr [Hudson] does not take up the option to purchase [the family home], it is to be placed on the market for sale. The following shall occur:
  - (i) Keven Deane (Harcourts) shall be instructed by the parties to facilitate the sale of [the family home] at auction.
  - (ii) The following sale timeline shall apply:
    1. Placed on the market on 5 November 2021.
    2. Auctioned on 26 November 2021 (or the closest Harcourts auction date to 26 November 2021);
    3. With vacant possession to be provided by [Angela Gough] for seven days prior to settlement.
- (b) The reserve price for [the family home] shall be \$705,000.
- (c) From the net proceeds of sale, expenses shall be deducted for the payment of real estate agent's fees, legal costs on the sale and any rates adjustments. The parties will share equally in the sale proceeds with [Angela Gough] to pay [Kieron Hudson] \$54,448.93 from her share of the proceeds as calculated at paragraph 72(c), together with occupational rent of \$225 per week from 13 September 2021 until the date of settlement.

- (d) Essential Law at Hamilton is to undertake the conveyancing for the sale of [the family home].
- (e) The parties will share the legal costs, equally in respect of the conveyancing of the sale of [the family home].

[74] The order shall constitute full and final satisfaction, release and discharge of all right to property which the parties might otherwise have against the other at all times in the future under the Property (Relationships) Act 1976, the Law Reform and Testamentary Promises Act 1949, the Family Protection Act 1955, or under any other enactment, or enquiry.

[75] The division contained within this order shall be binding in all circumstances, including bankruptcy, the taking of property in execution by creditors, separation (whether one or more occasions), reconciliation, dissolution of marriage, or the death of one or both parties provided that if the Court is required to determine costs in relation to the implementation of this order then the issue of costs may be reserved.

[76] Either party may bring the matter back to Court on seven days' notice to seek such directions as may be required to facilitate the transfer or sale of [the family home] to give effect to the terms of this order.

### **Costs**

[77] Costs have been highlighted as an issue in these proceedings. If counsel are unable to reach agreement on this issue then Mr [Hudson] is to file submissions regarding costs (including calculations) within 21 days with Ms [Gough] to respond 14 days thereafter. The submissions will then be dealt with by me in chambers.

[78] Once again, I thank counsel for their submissions and draft orders that have greatly assisted me in providing this decision in a timely fashion.

N J Grimes  
Family Court Judge