

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

**IN THE FAMILY COURT
AT TIMARU**

**I TE KŌTI WHĀNAU
KI TE TIHI-O-MARU**

**FAM-2020-076-000230
[2022] NZFC 4608**

IN THE MATTER OF	THE PROPERTY (RELATIONSHIPS) ACT 1976
BETWEEN	LESLIE ALLAN CAMPBELL Applicant
AND	VERONICA STRETCH Respondent

Hearing: 9 May 2022

Appearances: F Tewnion for the Applicant
C O'Connor for the Respondent

Judgment: 19 May 2022

ORAL JUDGMENT OF JUDGE D P DRAVITZKI

[1] These are Property (Relationships) Act proceedings between Mr Leslie Campbell and Ms Veronica Stretch who were in a relationship from 2015. They were married on 7 September 2018. They separated in the second half of 2020.

[2] The parties have been unable to resolve the division of their relationship property. There is no dispute about what items comprise the relationship property or about the valuation of those items. There is no dispute about the debt which needs to be taken into account in dividing relationship property.

[3] What there is dispute about is how the relationship property should be divided – whether it should be divided equally between them or whether Mr Campbell should receive a greater share of the property and Ms Stretch a lesser share.

[4] In fact, it is now clear that Ms Stretch accepts that Mr Campbell should receive more of the relationship property and she a lesser share but it still falls to me to determine the extent of that difference.

[5] The parties have filed detailed submissions about that and I will refer to those in due course.

[6] I now issue my decision in relation to this matter including the reasons for my findings:

The law

[7] Section 11 of the Act provides:

- (1) On the division of relationship property under this Act, each of the spouses or partners is entitled to share equally in –
 - (a) the family homes; and
 - (b) the family chattels; and
 - (c) any other relationship property.
- (2) This section is subject to other provisions of this Part.

[8] Section 13 which is entitled “Exception to equal sharing” states:

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

[9] Relevant cases have determined that the application of s 13 involves a two-stage process:¹

¹ *Martin v Martin* [1979] 1 NZLR 97.

- (a) firstly, identifying the circumstances and whether they are extraordinary; and
- (b) secondly, consideration of whether those extraordinary circumstances do make equal sharing repugnant to justice.

[10] Decisions under the Act must be made taking into account the purpose and principles of the Act. Relevantly, s 1M states, the purpose of the Act is:

- (b) to recognise the equal contribution of both ... partners to the ... relationship partnership:
- (c) to provide for a just division of the relationship property between ... partners when their relationship ends ...

[11] The principles of the Act, set out in s 1N include:

- (a) ... that men and women have equal status, and their equality should be maintained and enhanced:
- (b) ... that all forms of contribution to the ... partnership, are treated as equal:
- (c) ... that a just division of relationship property has regard to the economic advantages and disadvantages to ... partners arising from their ... relationship or from the ending of their ... relationship:
- (d) ... that questions arising under this Act about relationship property should be resolved as inexpensively, simply, and speedily as is consistent with justice.

[12] The issues for determination, therefore, are:

- (a) What are the circumstances which Mr Campbell argues are extraordinary?
- (b) Are those actually extraordinary circumstances either individually or in combination?
- (c) If there are extraordinary circumstances, do they make equal sharing of relationship property repugnant to justice?

- (d) If so, then what share of the relationship property should each party receive?

What are the circumstances that Mr Campbell says are extraordinary?

The current circumstances of each party

[13] The parties met later in life. There is a disparity in their age with Mr Campbell 15 years older than Ms Stretch. At the start of the relationship in 2015, Mr Campbell was 67 years old and Ms Stretch was 52 years old. Mr Campbell is now 74 years old and Ms Stretch is 59.

[14] For most of his working life, Mr Campbell was a registered pharmacist. However, he retired from that role before the commencement of the relationship. In any event, had been deregistered when an issue arose around him improperly accessing medication. The relevance of that to these proceedings is that, at age 74, Mr Campbell has very little to no ability to return to his long-term profession as a pharmacist or to reinstate that income.

[15] Mr Campbell did say he had some ability to work in other ways. He holds a number of driver licences including trade licences. He has, since separation, at times worked as a paid driver. Mr Campbell did not work in paid employment at all during the relationship.

[16] Mr Campbell has also had significant health concerns. His affidavit evidence says that he has been diagnosed with a rare form of neuroendocrine cancer that is difficult to treat.² He says:³

My health is not good and while I am seeking other forms of treatment, there is no guarantee it will work. I wish simply to live the last time that I have, in the house that I have worked so hard to finally get and I am comfortable and familiar in.

² Bundle of Documents page 85, paragraph 9.

³ Bundle of Documents page 86, paragraph 11.

[17] Mr Campbell's health issues and his age make it challenging to raise finance to pay any entitlement due to Ms Stretch under the Act.

[18] In short, Mr Campbell has limited ability to earn income to support himself and very limited ability to raise finance to acquire Ms Stretch's interest in the property. That is due to his age, the fact he has lost his registration as a pharmacist and his ongoing health difficulties.

[19] Ms Stretch is now 59. Throughout the relationship, she worked in full-time employment at a local freezing works. Ms Stretch undertook two jobs at the works. From Tuesday to Saturday inclusive, she undertook a cleaning job from 2.30 am until 4.30 am. From Monday to Friday she also worked from 6 am to 4 pm in the clothing/uniforms department at the works. In the financial year 2021, Ms Stretch earned income of approximately \$71,000. She anticipates her income for the financial year just ended to be similar. Ms Stretch's work commitments are obviously onerous and the cleaning, in particular, is undertaken at anti-social times. However, she did not say she was intending to stop working either or both jobs or that she was not able to perform them. It can be reasonably expected that Ms Stretch has the ability to remain in employment for the foreseeable future, her health permitting.

[20] I accept, therefore, the parties' abilities to earn income and provide financially for themselves is significantly different with Ms Stretch in a better position than Mr Campbell.

Contributions to the acquisition of their home

[21] By far the most significant item of relationship property is the family home situated at [address 1 deleted]Timaru. The property was valued at 20 April 2022, by registered market valuation, at \$940,000.⁴ That valuation is accepted by the parties.

[22] All of the direct financial contributions to the acquisition of initially the bare land and then the building of the home and other buildings on that property were made by Mr Campbell.

⁴ Bundle of Documents page 136-162.

[23] The actual amount of some of those contributions is clear and accepted. In my view, the actual amount of some of those other contributions is much less clear.

[24] Mr Campbell initially provided \$185,000 to purchase the bare section. The title to the property shows that the purchase was made into the parties' joint names on 28 August 2015.⁵ The source of the funds to purchase the section were the sale proceeds of an earlier property owned by Mr Campbell at [address 2 deleted] Timaru. Those funds are accepted as having been his separate property.

[25] The building of a home and the development of the property occurred over the next 18 months to two-and-a-half years.

[26] In 2017, Ms Campbell and Ms Stretch borrowed \$100,000 from Ms Campbell's brother, Geoffrey Campbell. There is no dispute that sum was a loan. It was recorded as such in a Deed of Acknowledgement of Debt.⁶ That debt remains outstanding.

[27] Mr Campbell then says:⁷

I then sold my separate property, the Temuka Pharmacy property owned by myself and my ex-wife, taking half the sale proceeds and applying it to the build of the family home being then of \$271,500.

[28] However, in oral evidence, Mr Campbell was less certain. He initially was not certain that the figure of \$271,500 was exactly how much he received as his half-share of the pharmacy building. He later said he thought that was correct. However, he was not able to say exactly how and when the funds were applied to the development of the home other than generally towards the building and development costs.

[29] In July 2018, Mr Campbell and Ms Stretch jointly borrowed \$215,000 from the Nelson Building Society (NBS).⁸ Part of that loan remains outstanding.

⁵ Bundle of Documents page 49.

⁶ Bundle of Documents page 27-31.

⁷ Bundle of Documents page 20, paragraph 19.

⁸ Bundle of Documents page 32-35.

[30] Then, to continue the building programme on the property, Mr Campbell says:⁹

After the passing of my father on 9 May 2019, I received inheritance, that again was applied to the family home being the amount of \$219,000. ...

[31] In oral evidence, Mr Campbell was less certain about exactly how and when these funds were applied to the [address 1] property.

[32] Mr Campbell says his direct financial contributions to [address 1] as capital, therefore were:

- (a) Section purchase of \$185,000 (from the sale proceeds of [address 2] Timaru);
- (b) Development building costs of \$271,500 (being a half share of the sale proceeds of the Temuka Pharmacy building);
- (c) Development building costs of \$219,000 (being inheritance from Mr Campbell's father's estate received after 9 May 2019).

[33] That is a total of \$675,500.

[34] Ms Stretch says that she does not know exactly how much money Mr Campbell put into the development of [address 1]. She accepts the purchase price of \$185,000 was funded from Mr Campbell's separate property.

[35] In terms of the sale proceeds of the Temuka pharmacy building (and whether they were all applied to the development of [address 1]) and, similarly, the exact amount of Mr Campbell's inheritance and whether and how it was all applied to the build, Ms Stretch is frank. She says that she does not know. She was not involved in that.

⁹ Bundle of Documents page 20, paragraph 21.

[36] What she does accept is that all the capital cost for the acquisition and development of the property was funded by direct contributions from Mr Campbell or through mortgage borrowings (which she was a party to).

[37] I am not satisfied Mr Campbell has proved on the balance of probabilities that he made lump sum contributions of \$675,500 towards the [address 1] property as he says. There is very little documentary evidence in support of that. I accept \$185,000 was applied to the section purchase and Ms Stretch accepts that. Even that is not supported by solicitor's trust account statements in relation to the purchase. No documentary evidence is produced of the amount Mr Campbell received from the sale of the Temuka Pharmacy building. No evidence is produced of how that sum was ultimately applied to the development of [address 1].

[38] Similarly, no documentary evidence is supplied of the amount of inheritance received by Mr Campbell, exactly when those funds were received or how and when they were applied to [address 1].

[39] No building agreement is produced in evidence. Very few invoices associated with the development are exhibited.

[40] It is possible to conclude the development of the property was a substantial and, therefore, financially significant undertaking. The home, from the recent valuation, is a 176-square-metre home built on a 2.55-hectare north-facing hill block on the outskirts of Timaru and is described as a "stylish home, linear weatherboards, wide veranda ... and double garage with internal access. The property also includes a 54m² Versatile barn".¹⁰

[41] That it is a substantial home is also obvious from the property's current market value although that will, undoubtedly, incorporate a significant increase in value from the general increases in property prices over the last several years.

¹⁰ Bundle of Documents page 137 and various photographs exhibited to the property.

[42] I accept the development of the property was a substantial and expensive undertaking. I am not satisfied it is established that Mr Campbell applied \$675,500 of separate funds to the building.

[43] I am, however, prepared to accept all of the capital for the property was supplied by Mr Campbell and, essentially, Ms Stretch accepts that. I do accept that the funds supplied by Mr Campbell were a very significant sum of money.

Nature of inheritance

[44] I also note, in relation to the inheritance monies, that s 10 of the Act applies. That provides that property acquired by succession is separate property unless:¹¹

... with the express or implied consent of the partner who received it, the property or the proceeds ... have been so intermingled with other relationship property that it is unreasonable or impracticable to regard that property or those proceeds as separate property.

[45] The inherited funds received by Mr Campbell were not received until after his father's death in May 2019. That is quite close in time to the parties' separation in 2020. Given the time it takes to administer estates, it is quite possible the funds were applied in the last 12 months prior to separation. Sometimes, in those circumstances, arguments are advanced that the funds have not been intermingled so as to lose their separate character and may still be regarded as Mr Campbell's separate property. That argument was not pursued by Mr Campbell.

[46] However, I do take into account the particular nature of inherited property. It is not property which Mr Campbell acquired as a result of his efforts during the relationship. It is actually property accumulated by his father during his father's lifetime.

[47] I accept that, in ordinary circumstances, Ms Stretch would have less of a claim on that property. That is recognised in the Act by the starting point, under s 10, that inherited property is separate property unless intermingled.

¹¹ Property (Relationships) Act 1976 s 10(2).

[48] I also note, in this case, that Ms Stretch has also received some property under s 10 of the Act. That is a gift of \$20,000, of which \$15,000 remains. It is a gift from her father. That has been placed in a bank account in Ms Stretch's sole name and not intermingled. It is her separate property under s 10(1)(a)(iii) of the Act. Mr Campbell took no issue with that at hearing.

[49] Closing submissions filed by his counsel after the hearing invited me to treat part of that payment as relationship property as it reflected service provided in caring for Mr Charlie Stretch. However, there is no evidence at all of any paid arrangement under which Charlie Stretch lived with the parties and they expected payment for providing that accommodation. Even if it was given in recognition of the care Ms Stretch and Mr Campbell provided Charlie, it was quite clearly meant as a gift and not in satisfaction of some legal obligation. As a gift, under s 10 it is separate property and I treat the full amount of the gift as such.

[50] However, I do consider it is relevant, in considering the matter overall, to note that Ms Stretch is entitled to retain, as her separate property, the gift from her father while Mr Campbell's much larger inheritance is lost within the relationship property pool.

Physical work on the property

[51] Mr Campbell also says that he did a huge amount of work physically and personally on the development of [address 1]. This amounted to 18 40-hour weeks assisting the building contractors. He undertook the substantial tasks of laying electrical and Internet cables from the road boundary to the house or at least assisted with that. He painted the interior of the home and installed bamboo flooring. He installed batts on the property and assisted with the laying of foundations.

[52] Much of this work is evidenced by a large number of photographs Mr Campbell exhibited, particularly to his affidavit of 28 March 2022.

[53] He estimated, overall, that he spent more than 800 hours of work physically on the property. He said he worked on the property Mondays to Fridays when

Ms Stretch was at work. He said that work on the home was often “parked” for the weekend to give him a break and, therefore, that Ms Stretch’s physical contributions in terms of work on the property was limited.

[54] Ms Stretch said she also worked on the property. That included work on the grounds and in the garden. She also said she was involved assisting in painting the outside of the property and in staining the deck.

[55] Mr Campbell only reluctantly accepted that Ms Stretch had undertaken some minimal work on the property.

[56] Ms Stretch does not exhibit any photographs of her work done on the property.

[57] Mr Hill, who is a neighbour at [address 1] and actually did a lot of work on the property himself, says he saw Mr Campbell spend hundreds of hours helping with the building. He says he does not recall seeing Ms Stretch working there when he was there. He did accept his own property did not have direct line of sight to [address 1] and he, of course, could not know what occurred there when he was not there himself.

[58] I accept that Mr Campbell undertook the much greater share of the physical work developing the property. His evidence is clear on the specific work he undertook. Ms Stretch’s was less so and was not really explored in her affidavit evidence at all but was largely raised in her oral evidence.

[59] It was logical Mr Campbell would do more working on the property because he was not working outside the home and was deeply committed to the project. He was able to devote time to it. Ms Stretch was working long and unsociable hours right throughout the relationship. That would have limited her ability to be involved during the working week.

[60] That is not to say that Ms Stretch did nothing towards the development of the property. I do not necessarily accept Mr Campbell’s evidence that weekends were rest time with no work undertaken on the property. Ms Stretch certainly denies that. She said the work on the property was ongoing and constant and there

was much finishing to do even after they had moved in. She said they would often spend weekends working on [address 1] to the point, she said, they would take weekends away to get a break from it.

[61] The evidence in relation to the work done is, to some extent, the parties' competing assertion so that it is difficult to make definitive findings. But, in my view, Ms Stretch's account is somewhat more credible. A new home built on a lifestyle property will require constant ongoing and finishing work and development. That would involve a lot of work including often at weekends.

[62] Overall, I find that Mr Campbell made a very substantial contribution in terms of his work to the development of the property and those contributions were much more than Ms Stretch. However, I accept that Ms Stretch did also make some contribution by way of work on the property when she was available to.

Payment of ongoing costs towards the home and living expenses

[63] Ms Stretch was the only one of the couple who was working throughout the relationship. Mr Campbell did receive pension income.

[64] The parties maintained separate bank accounts in their own names into which each's individual income was received – that is, they did not have a joint account. They did, though, share some expenses.

[65] One such shared account was the mortgage. Ms Stretch paid \$1,000 per month to that. Mr Campbell says he paid \$760 per month. Ms Stretch was somewhat dubious about that when giving oral evidence. She thought the mortgage was approximately \$1,500 to \$1,600 and Mr Campbell would pay the balance above her \$1,000 contribution. There is no clear documentary evidence one way or the other.

[66] Mr Campbell says that out of the \$1,000 Ms Stretch paid each month, \$400 was received from Ms Stretch's father, Charlie, who was living with the couple. It is accepted Charlie Stretch did contribute \$100 per week. Ms Stretch says in fact that was used to pay towards groceries and not directly to the mortgage.

[67] Ms Stretch says she paid all of the insurance costs for the home and contributed equally to the rates. She said she bought by far the majority of the groceries (because she was the one working). That obviously included groceries for her and for her son who, at times, also lived with the couple for periods.

[68] She said Internet and electricity costs were paid for by her or by her son, when he was staying, as a contribution to his living expenses.

[69] Mr Campbell said grocery costs were shared. He acknowledged that Ms Stretch would sometimes do a big grocery shop. He says he would then pay his half share. He acknowledged Ms Stretch paid power and Internet costs (or her son did). I understood him to say that insurance was a shared cost. He appeared to accept that Ms Stretch contributed to the rates.

[70] He said when the couple went out for dinner, this was usually shared as a cost as were other social activities.

[71] The parties went overseas on at least three trips that were referred to, mainly to Australia. They had a honeymoon to Bali which Mr Campbell paid for although Ms Stretch said she provided spending money. Mr Campbell did pay for a trip to Sydney when Ms Stretch said he had a "big win on the pokies". She said on another trip overseas to Australia, the costs were shared.

[72] Again, these aspects of the case were largely the parties' respective assertions. No documentation was provided to show patterns of payment of outgoings for the property or for the household generally.

[73] I do note, again, Ms Stretch was the only one of them who was working and receiving regular income and it was logical she would at least contribute to those costs.

[74] I also consider that some of Mr Campbell's evidence about these matters was not credible. For example, he was asked how he funded larger items such as holidays overseas when his only income was his pension during the relationship. He said he thought some of his capital may have been used. Of course, previously

Mr Campbell had said all the capital he had received had gone into the development of [address 1] or at least all of the significant capital sums he received from the pharmacy building and his inheritance.

[75] He also said that, at times, he borrowed money from his brother, Geoffrey, and that these funds were over and above the acknowledged debt to Geoffrey Campbell of \$100,000. However, when Geoffrey Campbell gave evidence, he said the only money he had ever advanced to the couple was the \$100,000 debt that remains outstanding and that he had not advanced other monies.

[76] I find that Ms Stretch did contribute approximately a half share of the costs related to the home such as rates, insurance and utilities. Some may have been contributed by her father and son at times.

[77] I also find Ms Stretch paid at least half of general daily living expenses such as the weekly grocery shopping.

[78] It seems likely the parties generally shared the cost of going out. That is consistent with Mr Campbell's evidence and their basic programme of retaining their own income but contributing to joint expenses.

[79] I am unable to make definitive findings about who paid for most of the overseas trips and holidays although it seems Mr Campbell may have contributed a little more. I do not overlook that Ms Stretch says she regularly paid for weekends away as a break from the house development work.

Domestic work

[80] Mr Campbell undertook most of the cooking, again, because of Ms Stretch's work hours. She said she did undertake some of that and suggested it was a 60/40 split in Mr Campbell's favour.

[81] Mr Campbell said he also did most of the housework, cleaning and vacuuming. Ms Stretch acknowledged he did do some but she said she also did some of that work when she returned home. Ms Stretch particularly said she did all the clothes washing

as she was particularly exacting about that. Mr Campbell acknowledged Ms Stretch did do much of the clothes washing.

[82] She said her workday did not finish when she came home from work at 4.30 pm and she would often undertake housework for another couple of hours.

[83] Again, this evidence is largely the parties' respective assertions. In my view, from the evidence, it appears the domestic chores were generally shared roughly equally. Certainly not in any sort of disparity so as to be relevant to an argument about unequal sharing of relationship property.

Quality of the relationship

[84] It is mutually accepted that, from approximately the time of the couple's marriage in September 2018, the relationship deteriorated in terms of its quality and the emotional support or lack of that each provided to the other. They give different reasons for that deterioration.

[85] Mr Campbell says from that time on, Ms Stretch became "cold" and emotionally unresponsive to him. Over time he became convinced Ms Stretch was having an affair with her former partner, Mr Johnny Beech. He acknowledges that he became suspicious and untrusting of her.

[86] Ms Stretch says Mr Campbell's suspicions manifested as controlling and abusive behaviour. She denies any affair during the relationship.

[87] I do not find either of these allegations – either that Ms Stretch was involved in an affair or that Mr Campbell behaved abusively – as being established on the balance of probabilities.

[88] In relation to Ms Stretch's alleged affair, it is of minimal relevance, if any, to relationship property matters. It is clear she and Mr Beech were in contact but there is certainly no obvious evidence they entered into any relationship while the parties remained together.

[89] In terms of Ms Stretch’s allegations that Mr Campbell was abusive. He called various witnesses to rebut that. The allegations are in reasonably general terms by Ms Stretch and the evidence about them is relatively limited. Some of Mr Campbell’s behaviour might have been regarded as concerning. For example, he acknowledges accessing and producing in evidence text messaging from Ms Stretch’s phone. But there is limited information about whether that was a one-off or a repeated occurrence or of any proof of other behaviours which might be regarded as abusive. I do not consider that allegation established on the balance of probabilities.

[90] What is relevant is both of them accept that from the time of their marriage in September 2018, the relationship deteriorated badly and provided minimal emotional support, comfort or affection to either of them. In September 2018, their relationship was only approximately three years old.

[91] For the next two years, both accept the relationship was of much lesser quality, although it did, nonetheless, subsist.

Do all of these various factors, either individually or in combination, constitute extraordinary circumstances?

[92] It is clear there is a very significant mismatch in the parties’ financial contributions, particularly in relation to the acquisition and development of the [address 1] property. However, case law on s 13, as far back as the important decision in *Martin v Martin* is that a disparity in financial contributions cannot, by itself, give rise to extraordinary circumstances.

[93] The fact of a disproportionately greater financial contribution is not a circumstance which, on its own, can cause unequal sharing under s 13. *Martin v Martin* said:¹²

“Extraordinary circumstances” imposes a stringent test, particularly when it is recognised that such matters as the provision of the matrimonial home by one spouse or by gift to that spouse are not in themselves extraordinary circumstances. “Repugnant to justice”, even when stripped of its emotional

¹² Above, n 1.

overtones, is a most emphatic phrase. Moreover, it is repugnancy to justice giving full weight to the scheme and objectives of the legislation that must be established.

[94] However, it does not follow that disparity of contribution may never be regarded as relevant to the consideration of whether extraordinary circumstances exist.

[95] Again, in *Martin v Martin*, the Court said:

It would be going too far to rule out any consideration of the respective contributions to the marriage partnership whatever the circumstances. The entire range of possible circumstances is open for consideration. Circumstances may be extraordinary in kind or degree. A circumstance which is not inherently extraordinary may have some additional features which make it extraordinary. Mere disparity of contributions or even a disproportionately greater contribution is not sufficient to justify unequal sharing. But the disparity may be so gross as to be an extraordinary circumstance rendering equal sharing repugnant to justice.

[96] Applying this leading authority, the High Court in *Bowden v Bowden* has more recently said:¹³

The whole of the circumstances taken in combination need to be reviewed on a cumulative basis before determining whether there are extraordinary circumstances that make equal sharing repugnant to justice.

[97] Further:¹⁴

In order to accurately assess whether the disparity in the financial contribution of the parties is of such a dimension to be considered gross, the contextual circumstances of the relationship need to be assessed. As the Family Court Judge observed, it is trite that no two relationships are the same. An obvious and extreme disparity of financial contributions in one relationship may not be considered so gross as to constitute an extraordinary circumstance, yet in another setting the same financial disparity may attract such a categorisation.

[98] In this case, all of the capital towards the establishment of the home which is the main asset was provided by Mr Campbell. I have already said I am not satisfied it is established on the evidence that was the \$675,500 he says but it is clear the sum

¹³ *Bowden v Bowden* [2016] NZHC 1201, paragraph [30].

¹⁴ Above at paragraph [43]–[44].

contributed was very substantial. He also contributed most of the capital towards the remaining minor relationship property (largely motor vehicles).¹⁵

[99] Ms Stretch's capital contribution is limited. She contributed \$8,550 towards a motor vehicle. Her superannuation entitlement, which became clear during the course of the hearing, is accepted as relationship property to the extent of \$16,200. That is a capital contribution to the relationship property pool. I also include, in her capital contribution, a bank account in the sum of \$8,000 which was included in her relationship property PR1 affidavit and which I intend to bring into account. Ms Stretch did not allege she had made further or other contributions of capital. The total contributed by her is, therefore, \$37,750.

[100] The contribution of capital is, therefore, an overwhelming disparity in Mr Campbell's favour. I cannot say exactly how much because I am not satisfied he has proved \$675,500 all went into [address 1] but, quite clearly, his capital contribution was in excess of 90 per cent of the relationship property pool and may, in fact, have been approximately 95 per cent of the total relationship property pool or close to it.

[101] That, in itself, is not enough to constitute extraordinary circumstances. There are additional factors which I consider to be relevant.

[102] Firstly, this is a relatively short relationship. I find that it existed from 28 August 2015. That is the same date that the [address 1] property was purchased into the parties' joint names. That quite clearly evidenced a commitment to a joint relationship. I also understand that is the date on which Mr Campbell's [address 2] property was sold. The parties clearly moved into Ms Stretch's rented Waipopo property, at the latest, then or very shortly afterwards. I note that Ms Stretch said in fact they had been living together at Waipopo for a short period before Mr Campbell sold [address 2].

[103] I am satisfied the relationship commenced, at the latest, on 28 August 2015.

¹⁵ \$69,450 versus Ms Stretch's \$8,550.

[104] The relationship ended on 25 August 2020 when Ms Stretch told Mr Campbell the relationship was over and evidenced that by moving into a motorhome on the property. She moved out of the property into alternative accommodation in early October. I am satisfied the separation date is 25 August 2020 being the date Ms Stretch communicated to Mr Campbell the relationship was over and demonstrated that by removing herself to the motorhome. The relationship was, therefore, almost exactly five years in length.

[105] I also note the agreed position of the parties that there was very little by way of support and affection from September 2018 on.

[106] Secondly, it is relevant the relationship occurred late in life, particularly for Mr Campbell. The capital he had accumulated and contributed was the result of an entire lifetime of his work and, I understand, represents all of that capital.

[107] Thirdly, it is relevant that capital contribution includes the inheritance received from his father of approximately \$219,000. The capital Mr Campbell introduced, therefore, represents not only the fruits of his working life but also his share of the assets accumulated by his father during his father's working life.

[108] Fourthly, the parties' ages and their *disparity* in age and health is also relevant in another way. Mr Campbell is 74 years old. As a result of his age, his inability to work as a pharmacist and his health issues, his ability to earn income is very limited. He is unlikely to be able to recover financially from the circumstances of the separation and the division of relationship property.

[109] Ms Stretch remains in full-time employment on a stable basis. Her work hours are onerous but she has regular, reliable and apparently stable income. Provided Ms Stretch's health remains good, it could be reasonably anticipated that she will continue to work at least one of her jobs until presumably at least retirement age of 65 – that is, another five to six years.

[110] Ms Stretch will also exit the relationship in an enhanced financial position from how she entered it. She accepted that in evidence. Mr Campbell most definitely will not.

[111] Fifthly, I do accept it is relevant Mr Campbell did much more work on development of the [address 1] property physically. This is a limited influence on me. It was somewhat inevitable he would do more work as he was at home. I've found Ms Stretch would have undertaken some work on the property, particularly at weekends. However, the overwhelming bulk of the work was undertaken by Mr Campbell and that is relevant.

[112] Sixthly, I found that the payment of ongoing costs and expenses both in relation to the home and living costs generally were met basically equally. I am not convinced by the evidence filed and the parties' cross examination that I am able to discern any clear disparity in the parties' contributions to the outgoings of the house and normal day-to-day living costs. It is accepted that Ms Stretch paid more of the mortgage. But I do think it is relevant the parties' incomes were never pooled. Ms Stretch retained her earnings and Mr Campbell retained his pension. They did contribute to shared costs but once that was done, they retained their own incomes and Ms Stretch, in particular, was free to do with hers as she wished. That, to me, is some indication of the degree of actual intermingling of finances.

[113] Seventhly, I treat the contribution to domestic chores of daily living as basically equal. I am not satisfied any disparity is established that is material to my considerations.

[114] I then stand back and consider overall whether these matters are extraordinary circumstances.

[115] I am satisfied that, in combination, overall, this set of circumstances does constitute extraordinary circumstances. The extraordinariness arises not solely from the overwhelming disparity in capital contributions to the assets of the relationship. That is relevant but not determinative. It is the cumulative combination of that and the other circumstances which, in my view, makes the overall situation extraordinary.

- (a) The short length of the relationship and the agreed fact that, for approximately the last two of its five years total duration, it lacked warmth, affection or emotional support.
- (b) Mr Campbell's advanced age at the end of the relationship and his severely impacted ability to earn income and, and therefore, to recover from the consequences of the separation and property division.
- (c) The contrasting circumstances of Ms Stretch – that she is likely to be able to continue in stable employment and, accordingly, enhance her financial position for a number of years.
- (d) Mr Campbell's capital was all contributed to the relationship property pool while the excess income Ms Stretch earned over and above her joint contribution was not combined during the relationship.
- (e) Mr Campbell's financial contributions included his inheritance from his father's estate which was materially significant and was contributed at a point in time not that much prior to separation.

[116] I am satisfied that all of these factors in combination constitute extraordinary circumstances.

Do these circumstances make equal sharing repugnant to justice?

[117] I have found the circumstances are extraordinary but I am still then required to consider whether, in those circumstances, equal sharing is repugnant to justice.

[118] I am satisfied equal sharing of relationship property in this case would be repugnant to justice. The language is obviously strong and senior courts, in applying the section over many years have emphasised the stringency of the test. But I am satisfied equal sharing would be repugnant to justice in the parties' case.

[119] There is inevitable overlap between the factors that make the circumstances extraordinary and the test of repugnancy to justice but the particular facts I rely on to find repugnancy are:

- (a) All of the assets originate directly from Mr Campbell's capital.
- (b) It appears to be accepted that comprises all of the capital he has amassed during his life or all that remains of it.
- (c) The capital contributions include his inheritance so includes his share of his father's assets.
- (d) The much smaller gift from Ms Stretch's father will remain her separate property because it has not been intermingled.
- (e) This is a relatively short relationship of agreed poor quality for its last two years.
- (f) Ms Stretch has more apparent capacity to recover from the financial consequences of the division than Mr Campbell does.

[120] I have particular regard to the purposes and principles of the Act that I have referred to.¹⁶ I acknowledge the parties are to be regarded as having equal status and that all forms of contribution, financial and otherwise, to the relationship are to be treated as equal.

[121] I take into account the principle that a just division of property should have regard to the economic advantages and disadvantages to the parties arising from the end of the relationship.

[122] Overall, I am satisfied an equal division of relationship property in Mr Campbell and Ms Stretch's particular and very specific circumstances would be repugnant to justice.

¹⁶ Property (Relationships) Act 1976 ss 1M and 1N.

How, then, should the relationship property be divided?

Parties' submissions

[123] Mr Campbell of course submits in support of an unequal division in his favour. In submissions filed after the hearing, Ms Tewnion submits, on his behalf, the relationship property should be divided 80 per cent in his favour and 20 per cent in Ms Stretch's favour.

[124] I am referred specifically to the decisions of the High Court in *Bowden v Bowden* and the Family Court decision of *Brown v Starke*.¹⁷

[125] Ms Stretch, it appears, has been open to the unequal division of relationship property from early in the proceedings. In her narrative affidavit filed on 9 February 2021, she says:¹⁸

I am willing to investigate a division of relationship property short of a 50/50 equal basis. However, for the Applicant to say my contributions to our relationship property are less than 5% is a slap in the face.

[126] I requested, in final submissions from Ms Stretch, confirmation of whether she formally accepts the criteria under s 13 of the Act are established. It is clear from the submissions filed by Mr O'Connor, on her behalf, that she does accept that notwithstanding the stringency of the test provided by s 13 of the Act.¹⁹

Ms Stretch recognises an equal distribution of the parties' relationship property would result in an inequitable position for Mr Campbell given the duration of their relationship (either just over or just under five years), the disparity in age/income earning ability and, predominantly, Mr Campbell having contributed significant amounts of his separate property to acquire the family home.

[127] While that is accepted, Mr O'Connor's submissions continue to urge me not to overlook Ms Stretch's contributions to the relationship.

¹⁷ Above n 13; *Brown v Starke* [2016] NZFC 7132.

¹⁸ Bundle of Documents page 184.

¹⁹ Mr O'Connor's submissions on behalf of Respondent dated 12 May 2022.

[128] Mr O'Connor's submissions specifically refer me to the decisions in *Venter v Trenberth*, *Vann v Fay* and *Woolridge v Kumari*.²⁰ Ms Stretch does not specifically propose an appropriate percentage division of relationship property. However, Mr O'Connor does note that in both *Vann v Fay* and in *Woolridge v Kumari* the ultimate division adopted by the Court was 65 per cent to 35 per cent. Those cases had some similarity to the current case. Therefore, Mr O'Connor suggests that a similar distribution of the parties' relationship property should be adopted in this case.

[129] I have considered and read all of the cases provided to me, including the decision of *Venter v Trenberth*. In that case the Family Court divided the relationship property on an 85 per cent, 15 per cent basis and that decision was upheld on appeal by the High Court. That case does have some similarities to Mr Campbell and Ms Stretch's position but it also has some, in my view, very important differences.

In *Venter v Trenberth*, there was no contribution at all by one partner to any costs in relation to the home including any ongoing debt servicing. All of the costs in that case in relation to the parties home were met by the partner who was ultimately found to have a much greater share in the property. That is quite clearly not the case in Mr Campbell and Ms Stretch's situation where Ms Stretch was contributing to mortgage payments throughout and made a number of other important contributions which I will shortly address.

[130] A reading of all of the cases reinforces that, while there are similarities, the individual facts in relation to each are highly important and each case does need to be considered on its own facts.

[131] I have found that s 13 is satisfied. In those circumstances, the share each partner is to receive in the relationship property is to be determined in accordance with the contribution of each to the relationship.²¹

²⁰ *Venter v Trenberth* [2015] NZHC 545, [2015] NZFLR 571; *Vann v Fay* [2016] NZFC 1676; *Woolridge v Kumari* [2021] NZHC 1975, [2021] NZFLR 461.

²¹ Property (Relationships) Act 1976 s 13(1).

[132] Contributions are defined by s 18 of the Act. In addition to the matters I have already discussed, I will now consider those classes of contributions as set out in s 18.

18(1)(a) The care of any child of the relationship or any aged or infirm relative or dependent

[133] The parties had no children together. For periods during the relationship, Ms Stretch's adult son lived with them. Little information beyond that was provided to the Court. However, Ms Stretch's father also lived with the couple. I accept Mr Campbell did provide support, particularly to Ms Stretch's father, throughout the relationship. That appears to have included a reasonable personal relationship between them. Mr Campbell and Charlie Stretch would have spent periods together when Ms Stretch was at work. There is undisputed evidence that on at least two occasions Mr Campbell travelled with Charlie Stretch (without Ms Stretch) to Mr Stretch's former home in the North Island to tidy his affairs there. I accept that was a contribution provided by Mr Campbell.

18(1)(b) The management of the household and performance of household duties

[134] I have noted I find those to be broadly similar on the evidence before me.

Section 18(1)(c), (d) and (e)

[135] These sections relate to the provision of money, including the earning of income; the acquisition or creation of relationship property including the payment of money for those purposes; and the payment of money to maintain or increase the value of the relationship property or either party's separate property.

[136] Again, these are dealt with in detail above. The provision of capital was overwhelmingly in Mr Campbell's favour. Provision and payment of ongoing expenses I found was approximately equal. It is accepted that, early in the relationship, Mr Campbell repaid a pre-relationship separate debt of Ms Stretch's. She says she offered to pay him back but he wanted to gift this repayment to her. She accepts the value of that debt was between \$5,000 and \$6,000. Mr Campbell says it was more

than that but no proof is provided. I take it into account at a value of approximately \$5,500 and consider that to be a further contribution by Mr Campbell.

18(1)(f) The performance of work or services in respect of the relationship property or the separate property of the other partner

[137] I have already found that Mr Campbell did much more of the development of the home. But there were two contributions of Ms Campbell's that should specifically be taken into account under this heading.

[138] This is, of course, in addition to the fact that I have found she contributed, albeit in a lesser way, to the development of [address 1].

[139] Firstly, when the parties commenced their relationship, they lived in Ms Stretch's rented property in Waipopo. The making available of her home is, of course, a contribution by Ms Stretch while the [address 1] property was developed and the home built on it. It is accepted Mr Campbell paid \$150 rent for at least part of the period they lived together at Waipopo although Ms Stretch says she didn't ask for that. Her making available her property for the couple to live in is a contribution.

[140] Secondly, an important contribution of Ms Stretch's is her commitment to entering into the mortgage lending with the NBS. That required her to assume joint and several personal liability with Mr Campbell for bank lending of \$215,000. That is a significant liability. Those funds were important to enable the continued development of the property and were funds utilised in finishing the building. Mr Campbell accepted Ms Stretch's income was relevant (no doubt it was important) to the bank when considering and approving that lending. Of course, his only income at the time was his pension.

[141] Mr Campbell's evidence was that he had an alternative plan if the lending was not approved or if Ms Stretch was not willing to be a party to it but the fact is that borrowing was undertaken and it enabled the continued development of the property. It was a commitment by Ms Stretch to a significant liability. She subsequently

serviced that liability in a greater share than Mr Campbell until the end of the relationship.

[142] It might be said that the bank's lending was secured by mortgage over the property and the loan was of relatively modest value compared to the property's value so that it was unlikely there would ever need to be personal recourse to the borrowers under the mortgage but, notwithstanding that, it was a commitment and a meaningful contribution by Ms Stretch.

18(1)(g) The foregoing of the high standard of living that would otherwise have been available

[143] This matter is not advanced in evidence.

18(1)(h) The giving of assistance or support to the other partner

[144] I have already included, in relation to that, Mr Campbell's assistance to help somewhat in the care of Ms Stretch's father.

[145] I remind myself there is no presumption that a contribution of a monetary nature is of a greater value than a contribution of a non-monetary nature.²²

[146] I do, though, note where the relationship is relatively short, the extent of those non-monetary contributions, such as work and support, will be over a lesser period of time than during a longer relationship. Therefore, monetary considerations and contributions, particularly the provision of capital, may assume more significance.

[147] I note that all cases are slightly individual. In this case, the relationship is not as short as a number to which s 13 has been found to apply but I also take into account the agreed poor quality of the relationship for its last two years. While the relationship was reasonably short, it is well over the three-year threshold at which equal sharing is presumed to apply and it did subsist until almost exactly the five-year anniversary.

²² Property (Relationships) Act 1976 s 18(2).

[148] I note the large disparity in the provision of capital. Materially almost all comes from Mr Campbell. It is substantial but that capital has also clearly grown over the time of the relationship by the increase in value of the family home. That is evident from the various valuations provided. Ordinarily, Ms Stretch would be expected to share in that increase in value over time.

[149] I also note, quite clearly Ms Stretch contributed more than equally to mortgage payments once those funds had been borrowed and, I have found, equally to ongoing costs in relation to the home and general living expenses.

[150] A number of the cases to which s 13 has been found to apply are ones where the partner with a lesser share has moved into a property already owned by the other partner. There has been little to no contribution by way of work or financial payment to that property for the duration of the relationship, nor any change in the actual home resided in.

[151] That is not the case for Mr Campbell and Ms Stretch. They have jointly acquired and developed the property at [address 1]. It was bought, from the outset, together in 2015 and was developed entirely during their relationship together. It is accepted that Mr Campbell did most of that work physically but, nonetheless, that must have been supported and enabled as well as, to a lesser extent, actually physically contributed to, by Ms Stretch.

[152] I take these matters into account and the other contributions that I have already referred to. I weigh them all.

[153] I have determined that, on the basis of the parties' comparative contributions, the relationship property should be divided by two thirds to Mr Campbell – (that is 66.66 per cent) – and one third (33.33 per cent) to Ms Stretch.

Division of property

[154] I reproduce [as appendix 1 attached at the end of this decision] a schedule of relationship property that is based on a schedule provided by Mr O'Connor during

the hearing.²³ It was discussed with both parties when they gave their evidence and both accepted the items listed as relationship property and the values attributed to those items.

[155] I note in relation to the assets and values:

- (a) Ms Stretch's superannuation information was provided during the hearing. She is a member of Meatworkers' Employees Insurance Scheme. The accepted relationship property value of that superannuation is the increase in its value during the relationship. That is the difference between the scheme's value at 31 March 2016, of \$11,555 (the end of the financial year closest to when the relationship commenced) and 31 March 2020 of \$27,749 (the financial year closest to the date of separation). The difference between those figures of \$16,194 (rounded up to \$16,200) is the agreed value for relationship property purposes.
- (b) The Mazda CRX referred to replaces a Holden Colorado ute that was traded in. The trade-in value of \$23,000 is acceptable to both parties. The CRX vehicle has been retained by Ms Stretch.
- (c) The values of the Holden Commodore, motorhome and livestock were acceptable to both parties when they gave oral evidence.
- (d) The Mortgage balance of \$190,000 was the approximate value outstanding to NBS at the time of separation in 2020. Mr Campbell has remained in occupation of the property and has met all outgoings in relation to that since separation. He has reduced the mortgage principal outstanding to now approximately \$170,000. However, Ms Stretch accepts he is entitled to a credit for the amount by which that mortgage principal has been reduced by his payments since separation. On that basis, the separation date loan balance is adopted.

²³ See Appendix 1 attached.

- (e) The parties acknowledge the \$100,000 debt remains outstanding to Mr Campbell's brother.
- (f) Mr Campbell says he has solely paid plumbing and power bills for the property totalling \$3,500 which are relationship debts under s 20. He seeks compensation from Ms Stretch. Ms Stretch believed she had contributed to at least one of those accounts but no evidence was produced and she did not appear to take issue with them being recognised as a liability which she should contribute to.
- (g) I have also included, in the final schedule, a bank account of Ms Stretch's holding \$8,000. That was not included in the table prepared by Mr O'Connor but it was an asset declared by Ms Stretch in her initial affidavit of assets and liabilities and was accepted in that affidavit as relationship property. There was no discussion about that particular asset during the hearing but, against that background and without further explanation, it should be brought into account as relationship property retained by Ms Stretch at the end of the relationship.

[156] I also note, but do not include in the relationship property, Ms Stretch's term deposit of \$15,427.15.²⁴ That is the remainder of the sum gifted to Ms Stretch by her father and which she has kept separate and not intermingled. It is separate property under s 10. I have already rejected an argument that sum or any part of it can be considered relationship property.²⁵

[157] In closing submissions, Ms Tewnion sought post-separation adjustments in Mr Campbell's favour. I understand that is in relation to costs paid by him on the property and the mortgage since separation. I decline to order post-separation compensation pursuant to s 18B of the Act or otherwise for two main reasons:

²⁴ Bundle of Documents page 130–131.

²⁵ See paragraph [48] and [49] above.

- (a) Firstly, the amount Mr Campbell says he has paid since separation is set out in his affidavit at page 134 of the bundle. He asserts paying, since separation, \$2,500 (approximately) of insurance costs, \$27,000 of mortgage principal and interest expenses and \$2,319 in rates. I decline to make adjustments for these payments for the following reasons:
- (i) Mr Campbell is already to receive an effective post separation credit for half of the amount of the mortgage reduction he has made since separation by adopting the separation date balance of that mortgage, rather than the current mortgage balance.
 - (ii) While he has particularised the amount he has spent, Mr Campbell has made no effort to assess that against the benefits which he has received since separation. The obvious one, of course, is his continued occupation of the family home to the exclusion of Ms Stretch. To a large extent, insurance and rates costs for example and probably mortgage interest payments could and should, quite reasonably, be regarded as the normal costs that would be expected to be paid by the party who is in occupation.

[158] Overall, I am not satisfied it is just to make an order for compensation to Mr Campbell based on his alleged post-separation contributions.

[159] I simply then note that the asset schedule attached records the total relationship property assets as value \$1,014,000, the total liabilities as \$293,500 and the resulting equity as \$720,500.

[160] The relationship property equity of \$720,500 shall be divided two thirds (\$480,333) to Mr Campbell and one third (\$240,166) to Ms Stretch.

[161] Taking into account the assets Ms Stretch is retaining of \$47,200, the adjustment sum due to Ms Stretch is \$192,966.

[162] I, therefore, make the following orders to resolve these proceedings:

- (a) Within 25 working days from today's date, Mr Campbell is to pay Ms Stretch the adjustment sum required of \$192,966 in cleared funds.
- (b) Contemporaneous with payment of the said sum, Ms Stretch is to provide to Mr Campbell all necessary documentation and consent to enable the transfer of the family home – being the property at [address 1]– to Mr Campbell or an entity of his choosing.
- (c) The parties shall then retain, without further adjustment, as their separate property, the assets and liabilities set out in appendix 1 to this decision. That will constitute a full and final division of all relationship property owned between the parties.
- (d) In the event Mr Campbell fails to pay the adjustment sum due to Ms Stretch by the stipulated date (or any later date agreed between the parties or subsequently permitted by this court), the following shall apply:
 - (i) The property at [address 1] shall be then immediately placed on the open market for sale by a real estate agent agreed on by the parties or, failing agreement, appointed by registrar of the Timaru Family Court.
 - (ii) The parties shall market the property as agreed but, failing agreement, according to the recommendations of the real estate agent appointed.
 - (iii) The parties shall accept any offer made to purchase the property for a sum of at least a figure five per cent less than the registered valuation of \$940,000 obtained in the proceedings from Steve Binnie Valuation and dated 22 April 2022. That is provided that

any such offer is not subject to unusually onerous or difficult to fulfil conditions.

(iv) Upon the sale of the property, the sale proceeds are to be applied as follows:

- (1) Repayment of the mortgage balance then outstanding.
- (2) Payment of any legal fees in relation to the sale of the property and any real estate agent's commission or costs.
- (3) Payment to Mr Campbell's brother, Geoffrey, the acknowledged debt of \$100,000 owed to him.
- (4) A payment to Mr Campbell of a sum being the difference between \$190,000 and the mortgage balance at the date of settlement of the sale. That is to compensate him for the post-separation reduction he has made in the mortgage principal.
- (5) The remaining net sale proceeds shall then be substituted for the figure of \$940,000 in appendix 1 and division of the relationship property shall proceed in accordance with the terms of this decision.

[163] The parties shall be entitled to seek such further and other orders as are necessary to give effect to and to implement the terms of this decision.

Costs

- (a) Costs are reserved. If either party seeks costs, they are to file a memorandum (no more than seven pages) within 10 working days of receipt of this decision.
- (b) Any reply submissions (no more than seven pages) are to be filed within 10 working days of receipt of any application for costs.

(c) Parties competing submissions on costs shall be referred to me in chambers for determination on the papers.

[164] I note I have dictated this decision as an oral decision in the presence of the parties' counsel. It is a lengthy decision. I reserve the right to amend it as to readability and grammar and clarity but not as to the essential reasoning or, of course, the outcome reached.

Judge DP Dravitzki

Family Court Judge | Kaiwhakawā o te Kōti Whānau

Date of authentication | Rā motuhēhēnga: 18/06/2022

Appendix 1

LA CAMPBELL - VM STRETCH
RELATIONSHIP PROPERTY SCHEDULE

Assets	Value	Mr Campbell	Ms Stretch
Family Home	\$940,000.00	\$940,000.00	
Superannuation	\$16,200.00		\$16,200.00
Holden Colorado	\$23,000.00		\$23,000.00
Holden Commodore	\$12,000.00	\$12,000.00	
Motorhome	\$14,000.00	\$14,000.00	
Livestock	\$800.00	\$800.00	
Ms Stretch's bank account	\$8,000.00		\$8,000.00
TOTAL	\$1,014,000.00	\$966,800.00	\$47,200.00
Liabilities			
Mortgage	\$190,000.00	\$190,000.00	
GF Campbell	\$100,000.00	\$100,000.00	
Plumbing/Power bills	\$3,500.00	\$3,500.00	
Total	\$293,500.00	\$293,500.00	
Equity	\$720,500.00	\$673,300.00	\$47,200.00
Equity divided by two =	\$360,250.00		
Equity divided by two thirds =	\$480,333.33		
Equity divided by one third =	\$240,166.67		
Calculation of Sum due to Ms Stretch			
One third share of equity	\$240,166.67		
Currently retained funds	-\$47,200.00		
Amount to be paid to Ms Stretch	\$192,966.67		