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IN THE FAMILY COURT
AT NELSON

I TE KŌTI WHĀNAU
KI WHAKATŪ

FAM-2020-042-000208
[2022] NZFC 9704

IN THE MATTER OF	THE PROPERTY (RELATIONSHIPS) ACT 1976
BETWEEN	GAIL DOREEN PHILLIPS Applicant
AND	STUART COLIN BOLITHO Respondent

Hearing:	20 September 2022
Appearances:	S Zindel and R Brooke for the Applicant L Yong for the Respondent
Judgment:	29 September 2022

RESERVED JUDGMENT OF JUDGE R J RUSSELL
[as to a division of property under ss 23 and 25 of the Property (Relationships) Act 1976]

Introduction

[1] These are proceedings under the Property (Relationships) Act 1976 between Gail Phillips and Stuart Bolitho. In particular, it is an application by Ms Phillips for

orders determining her relationship property entitlement following the breakdown of the parties' relationship.

Brief background

[2] The parties commenced their de facto relationship in July 1996. They separated in June 2008. In 2010 Mr Bolitho moved to Australia to commence work in the mining industry.

[3] On 7 December 2011, they executed a relationship property agreement under the provisions of s 21A of the Act. It was a compromise agreement determining and dividing their relationship property.

[4] Between November 2014, until April 2015 Ms Phillips visited Australia and the parties reconciled for four months. She then returned to New Zealand.

[5] In May 2016, Ms Phillips moved back to Australia and a second period of their de facto relationship commenced.

[6] Mr Bolitho began to suffer a loss of memory mental impairment and lost his employment in September 2017.

[7] Both parties moved back to Nelson in June 2018. They resided in two rental properties before finally separating on 29 November 2019. By this time Mr Bolitho's enduring power of attorney was activated because he was certified as no longer having capacity to manage his property affairs.

[8] Following separation Ms Phillips moved to Invercargill and lived in a property which she had owned prior to their relationship commencing. This property was sold in September 2021, and the net proceeds are held in trust pending the outcome of these proceedings.

[9] These proceedings were commenced by Ms Phillips in June 2020. Mr Bolitho's daughter, Lisa Pyres, is her father's property manager pursuant to his

enduring power of attorney. Ms Pyres was served with the proceedings and filed defences on her father's behalf.

[10] A judicial settlement conference was convened on 10 May 2021, but no agreements were reached. Timetabling directions were made to track forward the issues in dispute to this hearing.

The evidence

[11] Affidavit evidence has been filed by Ms Phillips and by Ms Pyres. A significant amount of documentary evidence in support of their affidavit evidence was attached. The agreed booklet of documents covers some 262 pages and Ms Phillips and Ms Pyres have been cross-examined at this hearing. The transcript of their evidence totals a further 66 pages. This means I have had a total of 328 pages of evidence to consider before coming to this decision.

The agreement

[12] The parties signed a relationship property settlement agreement on 7 September 2011. The relevant and operative parts of the agreement provide:

(a) The sale proceeds of the parties' former home in Richmond was to be Ms Phillips' separate property.

(b) All vehicles, machinery and boats in Mr Bolitho's possession shall be his separate property.

(c) A repayment schedule for payment of $24,750 to equalise their property entitlement was to be made by Mr Bolitho over a period of six months.

(d) Any other property, including land, life insurances, company shares, bank accounts and any other property was to vest absolutely in the party who had legal title to or possession of the property at the date of the agreement.

(e) The agreement recorded each party had made full disclosure of all property which they owned or have an interest in and its current value and this agreement was not to apply to any property which had not been disclosed prior to the date of the agreement.

(f) Each party had received independent legal advice.

(g) The agreement was to be in complete settlement of all or any rights claims or demands that either may have against the other under this Act or any other Act or at common law or equity.

(h) The agreement was to be binding on the parties in all circumstances, including bankruptcy, the taking of property by creditors, the death of either of them, or the dissolution of their marriage.

[13] Apart from one letter dated 23 February 2011 from Mr Bolitho's lawyer to Ms Phillips' lawyer setting out a list of the assets/debts at that time, neither party was able to provide any further documentary evidence about what was considered and disclosed prior to this agreement being signed.

Analysis

[14] Section 21O provides that relationship property is subject to the provisions of this Act unless an agreement made under s 21A is made, meaning the provisions of the Act do not apply to property covered by the agreement.

[15] It is accepted this agreement was properly entered into and all of the formalities required by s 21F have been complied with. No challenge to its validity under s 21J has been made. To the extent the agreement covers the property to be divided in these proceedings, then the provisions of the agreement rather than the provisions of the Act are to apply.

[16] All of this means an interpretation of the agreement is required. Some guidance on the contractual interpretation approach to be taken is provided by the

Court of Appeal in *C v B*.[1] This agreement is a compromise agreement which divides the parties' assets and records what is to be their separate property. To the extent that an item of property has been disclosed to the other and has been recorded in the agreement then it remains the separate property of the party who received it and will not be subject of any further division in these proceedings. This implements the intention of the parties when they said in the agreement it was to be binding on them "in all circumstances". This will include a reconciliation and subsequent separation. A similar approach was taken by the High Court, Simon France J, in *Warring v Wright*.[2]

[17] All of this means that I must interpret and then apply the agreement the parties have signed to the assets which are covered by the agreement.

Issues in dispute

Jet boat

[18] Ms Phillips contended the jet boat was a family chattel within the meaning of s 2 of the Act. She accepted the jet boat was in existence prior to the relationship property agreement being signed and was specified in their agreement. She did not accept it was excluded from the relationship property to be divided in these proceedings because of its definition as a family chattel under s 2 of the Act. She explained in evidence that the jet boat was used for family occasions after the parties reconciled and contended this use converted the jet boat status from separate property back to relationship property.

[19] Mr Bolitho contended the jet boat was included in the agreement and was therefore his separate property to be excluded from the relationship property calculations.

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[1] *C v B* [2015] NZCA 421, [2015] NZFLR 863.
[2] *Warring v Wright* HC Blenheim CIV-2008-406-182, 26 March 2009.

Analysis

[20] I have little difficulty in concluding that the jet boat would have been a family chattel as defined in s 2 but for the provisions of the earlier relationship property agreement. The boat is specifically referred to in the agreement and also in the earlier item of correspondence from Mr Bolitho's solicitor. Its existence has been disclosed. Its value has already been recorded and brought into account in the relationship property calculations determining the amount which Mr Bolitho had to pay Ms Phillips in the agreement they signed. The parties recorded in the agreement that the settlement was to be binding in all circumstances, which included a reconciliation.

[21] I am satisfied the jet boat should be excluded from the relationship property calculations and remain Mr Bolitho's separate property.

Household chattels

[22] Neither party provided any valuation of the chattels they had taken from the former relationship home at the time of their final separation. This occurred when Ms Pyres' and Mr Bolitho's solicitor, Mr Turner, activated the enduring power of attorney appointing Ms Pyres as Mr Bolitho's attorney. Dissatisfied with this, Ms Phillips left the relationship home and took whatever she wanted with her. Photographs have been produced showing very little furniture left in some of the rooms in the home. There is disagreement about what items were left and what were taken. Neither party wanted any items back from the other except for a "stainless steel rifle" which Ms Phillips sought be returned to her for her son's use. Ms Pyres did not know what she was referring to.

Analysis

[23] The value to be attached to chattels should ordinarily be fixed with reference to a valuation of them. It is their market value which is relevant. The discretion under s 2G is commonly used to backdate the valuation to a date of separation because one party's ongoing use of a chattel generally diminishes its value.

[24] Mr Bolitho estimated the chattels taken by Ms Phillips were worth $35,000. This figure seems high to me in the absence of any evidence showing there were chattels of significant value in the home. In her evidence at the hearing, Ms Phillips estimated the chattels she has taken could be worth $20,000. Ms Pyres agreed to this value and so I will fix the value attaching to the chattels taken by Ms Phillips at $20,000. I will fix the chattels remaining in Mr Bolitho's possession in the home at the $5000 figure he proposed.

Ms Phillips' superannuation

[25] Ms Phillips contributed to a superannuation scheme when she worked in Australia. Documentary evidence has been provided to show this was worth $6,182. Mr Bolitho seeks this sum be included in the relationship property calculations.

[26] Ms Phillips' evidence is that she cannot locate these superannuation funds because she has lost her Australian-based identification, namely her Medicare card, her driver's licence, and does not now have a New Zealand passport because it is expired. Additionally, she said that her Australian employer has ceased trading and gone into liquidation because the business was subject of fraud by its accountant.

Analysis

[27] Although I do not have it in evidence, I consider I can take judicial notice that it is a requirement of Australian law that employees are required to pay a part of their income towards their superannuation through that country's tax system. I accept $6,182 has been contributed by Ms Phillips in this way. If her employer properly accounted for these funds as it should have then these funds should still exist. It seems to me that further and better enquiry should have been made from the Australian Tax Office (ATO). The obtaining and supplying of Ms Phillips' birth certificate, New Zealand driver's licence or some other form of identification would have been prudent in the period leading up to this hearing. While I accept some enquiries have apparently been made by Ms Phillips' solicitor, they are not sufficient for me to determine that no value should be attached to this asset as was submitted.

[28] What I propose to do is to allocate a discounted value for the scheme in the relationship property calculations and $5,000 will be attributed to it for this purpose.

Mr Bolitho's superannuation scheme

[29] Mr Bolitho went to Australia in 2010 and commenced employment in a Queensland mine. Documents confirm he became a member of the Mines' Superannuation Fund on 20 March 2011. The balance of the fund as at 22 November 2019, being the date of separation, was $233,622.02. The relationship component of the fund is agreed to be $135,645; being the amount apportioned for the period the parties were living together.

[30] Mr Bolitho contends the superannuation scheme is his separate property because it was in existence prior to the agreement being signed on 7 December 2011 and is therefore covered and protected by the agreement.

[31] Ms Phillips contends the $135,645 increase in value of the scheme occurred during the period of their second relationship and so is relationship property to be divided in this decision.

Analysis

[32] While the superannuation scheme was undoubtedly in existence when the parties signed their agreement on 7 December 2011, the agreement does not refer to this superannuation scheme. Mr Bolitho's solicitor's letter written on 23 February 2011 refers to "superannuation/savings," but does not identify what is meant and attaches no value to it. Mr Bolitho did not become a member of the superannuation scheme until 20 March 2011, so the scheme was not in existence at the date the solicitor's letter was written.

[33] I therefore have no evidence the existence of this superannuation scheme was disclosed by the time the agreement was signed. It is not specifically referred to in the agreement. While it could be technically included in the "catch-all" definition in

clause 4.1 of the agreement by the words "any other property", I am not satisfied the disclosure requirements in paragraph 7.1 of the agreement have been met.

[34] For these reasons I find that the superannuation scheme is not Mr Bolitho's separate property under the agreement and the increase in value of $135,645 is relationship property falling for division under the Act.

Section 20E adjustments

[35] The relevant provisions of s 20E provide:

> **20E Compensation for satisfaction of personal debts**
>
> (1) If a secured or unsecured personal debt of one spouse or partner (**party A**) has been paid or satisfied (directly or indirectly) out of the relationship property, the Court may make one of the following orders in favour of the other spouse or partner (**party B**):
>
> …
>
> (c) an order that party A pay party B a sum of money as compensation.
>
> (2) The Court may make an order under this section on its own initiative, but must make an order under this section if party B applies for such an order.
>
> …

[36] An adjustment is sought by Mr Bolitho under s 20E of the Act for payments made out of relationship property towards separate property or for non-authorised expenditure. Mr Bolitho sought repayment of:

(a) $21,131 used to pay off Ms Phillips' second mortgage paid in May 2019.

(b) $5,000 was drawn at the time of separation to pay for the painting of Ms Phillips' Invercargill home paid in November 2019.

(c) $3,000 taken for spouting repairs on Ms Phillips' Invercargill home prior to separation and when they were living in Australia.

(d) $862 taken to pay for vehicle fines incurred by Ms Phillips' son-in-law and paid in December 2018.

[37] There were two other payments made to Ms Phillips' family members which counsel agreed could be offset against a payment to Mr Bolitho's son. This issue does not need to be considered further in this decision.

Analysis

[38] The payment of $12,131 to pay off Ms Phillips' second mortgage on her Invercargill property, $5,000 for the painting of this property and the $3,000 paid for spouting repairs were accepted. This has come from relationship property, namely from Mr Bolitho's bank accounts, and has been applied towards Ms Phillips' separate property. An adjustment under s 20E is required. I also consider an adjustment for $862 for vehicle fines incurred by Ms Phillips' son-in-law should be made. This payment was made by Ms Phillips from Mr Bolitho's account in December 2018 at a time when he had diminished capacity and directly benefited an extended member of Ms Phillips' family.

[39] No serious argument was mounted against these adjustments being made. These adjustments total $20,993 and were taken for Ms Phillips' benefit and need to be accounted for as a compensatory payment under s 20E to Mr Bolitho. This should be calculated in such a way to ensure Mr Bolitho is not disadvantaged by these sums having been taken from the relationship property pool.

The assets/liabilities

[40] Counsel compiled a list of the assets, liabilities and issues which needed to be considered in this decision. I have summarised these and incorporate the findings I have made on the issues in dispute. The position now is as follows:

Mr Bolitho - property retained

	$
BNZ – 066	40,054
BNZ – 083	19,997
ANZ – 549 – 00	7,560

ANZ – 947 – 00	690
ANZ – 947 – 025	103,992
Superannuation	135,645
Household chattels	5,000
Toyota Hi-Lux	30,000
McLeay pleasure boat	120,000
Jet boat	separate
Total assets retained by Mr Bolitho	$462,938
Ms Phillips – net value of property retained	
BNZ account	96
ANZ account	1,179
KiwiSaver	580
Australian superannuation fund	5,000
Household chattels	20,000
Toyota	9,000
Total assets retained by Ms Phillips	$35,855

Claim for unequal division under s 13

[41] Mr Bolitho seeks to use the provisions of s 13 of the Act to claim there should be an unequal division of the relationship property because of what is submitted to be a gross disparity in the financial contributions which he has made. He submits Ms Phillips received a significant benefit and was not economically disadvantaged given her minimal monetary contributions. He points to the brief period of the relationship of 3½ years and contends there were no non-monetary contributions made by her which would otherwise balance out the disparity in the financial contributions he made. He initially submitted that a 90/10 division would be appropriate, although modified this by the end of the hearing to seeking a division of 85/15.

[42] In her submissions, Ms Yong calculated the financial/asset position of the parties during their relationship to be as follows:

(a) Mr Bolitho earned $137,720. Ms Phillips earned $48,532.

(b) From Mr Bolitho's parents' family trust the parties received distributions totalling $150,689.

(c) Proceeds from an insurance policy commenced in 1982 amounting to $64,900 were received.

(d) Following Mr Bolitho ceasing his employment in the Australian mines for medical related reasons he received income protection payments of $144,815 and a permanent disability claim of $101,615.

(e) Mr Bolitho received a superannuation payout of $135,645. Ms Phillips received a KiwiSaver payment of $580 and a superannuation entitlement which I have fixed at $5,000 earlier in this decision.

[43] Ms Yong calculates Mr Bolitho's contributions of money and assets to the relationship, including the jet boat which I found to be his separate property, amount to $832,069 which equals 93.7% of the total. She calculates Ms Phillips contributed $55,294 being 6.3% of the total.

[44] Ms Phillips acknowledges the short duration of the relationship and there was a substantial injection of capital into the relationship property pool from Mr Bolitho's inheritances and insurance payouts, which included a lump sum permanent disablement payment. She accepts his financial contributions to the relationship were "far greater" than hers. She submits her contributions to the relationship must not be overlooked. She worked and earned income in Australia, although accepts Mr Bolitho was earning more. She contends he spent money on gambling and consumption of alcohol and she provided a greater degree of care for him during the latter periods of the relationship as his cognitive capacity diminished. If extraordinary circumstances justifying an unequal division were found to exist, then she contended a 55/45 division would be appropriate.

[45] Both counsel referred to case authority in support of their respective clients' position on this issue.

Section 13 – the law

[46] Section 13(1) of the Act provides:

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

[47] In certain cases, the existence of extraordinary circumstances can mean equal sharing of relationship property may be displaced by unequal sharing of property in accordance with actual contributions to the marriage partnership or the de facto relationship. Before this can occur, there must be extraordinary circumstances that make equal sharing of property under section 11, 11A, 11B or 12 of the Act repugnant to justice.

[48] The earlier decided cases show that a high threshold is required before s 13 can be invoked. In *Martin v Martin,* Richards J set out the applicable principles in this way: [3]

> Clearly enough "extraordinary circumstances" and "repugnant to justice" are strong words and reflect a parliamentary intention that the primacy of the equal sharing of the matrimonial home and the family chattels is not to be eroded in ordinary circumstances of marriage. … "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 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. And, when regard is had to the legislative intent that a disproportionately greater contribution to the marriage partnership should not in itself justify departure under s.14 from equal sharing of the matrimonial home, it seems to me that the legislature intended to impose a rigorous test allowing very limited scope for unequal sharing of the matrimonial home and the family chattels under s.14.

[49] In *Castle v Castle,* Quilliam J held: [4]

> The extraordinary circumstances will, I think, require to be those which force the court to say that, notwithstanding the primary direction to make an equal division, the particular case is so out of the ordinary that an equal division is something the court feels it simply cannot countenance.

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[3] *Martin v Martin* [1979] 1 NZLR 97 (CA) at 111.
[4] *Castle v Castle* [1977] 2 NZLR 97 (SC) at 102.

[50] The nature of the factual inquiry the Court must make was highlighted in *Joseph v Johansen*.[5] Richardson J held:[6]

> … in determining whether the circumstances are truly extraordinary it is not always sufficient to focus on what the particular parties may have expected of and from their marriage and their reasonable expectations of the role and responsibilities of each within the marriage. It is proper in appropriate cases to consider whether in the New Zealand society of the times the circumstances advanced can truly be characterised as extraordinary by any standards in the context of marriages generally. That is not to make an assessment against some kind of marriage norm, but rather to consider whether tested against the whole range of marriages the particular circumstances are to be characterised as extraordinary. Thus it is not extraordinary for wives to go out to work – or to be engaged in the community or with family or to stay at home. It is not extraordinary for one spouse to provide the family home and family chattels or for there to be substantial disproportion in financial contributions. It is not extraordinary for a spouse to suffer poor health or to be less than dynamic. In considering whether the circumstances are extraordinary it is also crucial not to devalue the intangible benefits of love, friendship, companionship, loyalty, and support which may be of overwhelming importance. And full weight must be given to the diversity of marriages and the great range of circumstances within marriages. But in extreme conditions various features of a particular marriage may constitute extraordinary circumstances.

[51] The foregoing cases refer to s 14 of the 1976 Act, before it was amended in 2001 and became s 13, which is similar but not identical to the old s 14. There is little change in approach. This is confirmed in *De Malmanche v De Malmanche*:[7]

> [114] On any analysis the substantive thrust of s 13 is identical to s 14's. The provision permits a departure from the equal sharing regime. The Court can invoke the provision if it concludes that there are "extraordinary circumstances" which would make equal sharing "repugnant to justice."

[52] Misconduct in the relationship can be alleged in support of a s 13 claim for an unequal division of property. The relevance of misconduct was considered by the Court of Appeal in *J v J*.[8] This confirmed that prior to the 2001 amendment, misconduct might have been relevant to an assessment of whether extraordinary circumstances existed but now, because of the new s 18A, misconduct is now only relevant to the weighting of contributions to be assessed under s 18 once the jurisdiction has been made out, ie, that extraordinary circumstances have been found to exist.

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[5] *Joseph v Johansen* (1993) 10 FRNZ 302 (CA).
[6] At 307.
[7] *De Malmanche v De Malmanche* [2002] 2 NZLR 838, (2002) 22 FRNZ 145 (HC).
[8] *J v J* (2005) 25 FRNZ 1 (CA).

[53] In *Turner v Churcher*, Churchman J reviewed recent case law under s 13 in this way:[9]

> [63] The first case is *Bowden v Bowden*, a 2016 High Court decision in which an appeal from a decision of the Family Court where it had been found that extraordinary circumstances making equal sharing repugnant to justice existed was dismissed.
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> …
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> [66] In the High Court, Mander J said:
>
> > [27] Disparity and [sic] contribution by itself cannot give rise to the exception to equal sharing. The fact of a disproportionately greater contribution is not a circumstance which on its own will attract unequal sharing under s 13. However it does not follow that disparity of contributions may never be regarded as an extraordinary circumstance.
> >
> > [28] The "extraordinary circumstances" that make equal sharing of property repugnant to justice must give rise to an exceptional situation and one so out of the ordinary as to make an equal division, something which the Court "simply cannot countenance." Neither an imbalance in the contributions of the parties to the relationship nor even a substantial imbalance will be sufficient to constitute an extraordinary circumstance. Such a situation in the context of relationships is unremarkable.
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> [67] Mander J then states that "there may be cases where the disparity in contributions is so gross as to compel a Court to conclude that an equal division of property would be repugnant to justice", and quotes the following observation of Richardson J:
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> > 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.
>
> [68] In setting out the relevant law, he concludes:
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> > [30] 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.
>
> …

[9] *Turner v Churcher* [2019] NZHC 2018 (footnotes omitted).

> [92] The existence or absence of this type of contribution to a relationship is important and should not be overlooked. In the case of *Joseph v Johansen*, Richardson J said:
>
> > It is not extraordinary for a spouse to suffer poor health or to be less than dynamic. In considering whether the circumstances are extraordinary it is also crucial not to devalue the intangible benefits of love, friendship, companionship, loyalty and support which may be of overwhelming importance. And full weight must be given to the diversity of marriages and the great range of circumstances within marriages. But in extreme conditions various features of a particular marriage may constitute extraordinary circumstances.

[54] An 80/20 division was ordered by Churchman J in *Turner v Churcher* and Mander J in *Bowden v Bowden.*[10] In *Venter v Trenberth* there was a relationship of brief duration and a home owned prior to the relationship commencing which comprised 90 per cent of the value of relationship property.[11] In that case extraordinary circumstances were found and an 85/15 division was implemented.

Analysis

[55] I need to determine whether the evidence shows extraordinary circumstances exist in this case which would make equal sharing repugnant to justice. As the cases show, it is a high threshold which must exist before a departure from the equal sharing principles of the Act can occur.

[56] As will be noted, and has been accepted by Mr Zindel, Mr Bolitho's financial contributions to the relationship were much greater than Ms Phillips. Following the case authority I have referred to, I accept a disparity in the financial contribution by itself does not necessarily mean there should be an unequal sharing of property at the end of the relationship. That Mr Bolitho earned more than Ms Phillips during the period of the relationship does not by itself invoke the thresholds required by s 13.

[57] In her oral evidence at the hearing Ms Phillips accepted the non-financial contributions each party made to the relationship during the time they were together would have been about the same. This is an appropriate concession to make from the

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[10] *Bowden v Bowden* [2016] NZHC 1201, [2017] NZFLR 56.
[11] *Venter v Trenberth* [2015] NZHC 545, [2015] NZFLR 571.

evidence I have heard. Each of the parties have contributed to the nature and quality of their relationship in different but equally important ways.

[58] There are three factors, however, which, when taken together, makes this case extraordinary.

[59] Firstly, the McLeay boat was purchased during the relationship for $120,000. This is the second largest asset in the relationship property pool. It was accepted the boat falls within the definition of a family chattel under s 2 because of its use by the parties during the relationship. The evidence shows the purchase was funded from external capital sources, namely a distribution of $60,000 from the Bolitho Family Trust, which is Mr Bolitho's parents' trust. The remaining funds amounting to $64,900 came from a pre-relationship Sovereign policy in Mr Bolitho's name which had been started by his father in 1982.

[60] Secondly, Mr Bolitho's declining health meant he was unable to continue with his employment in the Australian mine. He was dismissed and then instituted personal grievance procedures, leading to a permanent disability payment of $101,615 being received. These were additional funds received into the relationship solely because of Mr Bolitho's declining health, with the unspent part of them being represented in the bank account balances which belong to Mr Bolitho and which are to be included in the relationship property calculations.

[61] Thirdly, for the period 21 June 2018 when the parties returned to New Zealand and their separation on 22 November 2019, their sole source of income they lived on were distributions received from the Bolitho Family Trust. This amounted to $1,500 a week for this 17-month period. $500 per week went towards payment of rent back to the Trust because it owned the house in which the parties were living in. The remaining $1,000 per week were used for general living expenses for both of them. I calculate this would amount to a total of $ $110,500.

[62] I record I have not included in this assessment the income protection payment of $144,815 which has been received following Mr Bolitho's employment ceasing.

This is a form of income he would otherwise have been able to earn, had his employment not ceased.

[63] As I have observed, when considered together, these three factors I have mentioned make this case extraordinary and markedly stand apart from others. It involves external capital which would not have been otherwise received and used during the course of their relationship. It came from Mr Bolitho's family connections, his medical disability or his pre-relationship contribution to the Sovereign insurance policy. It did not come from either Mr Bolitho's or Ms Phillips' efforts during the 3½ year period of the relationship.

[64] I consider the thresholds necessary for a finding that there were extraordinary circumstances in this relationship meaning that equal sharing would be repugnant to justice have been met.

[65] With this first step having been satisfied, I next need to determine what the appropriate share each party is entitled to with reference to their contributions to their relationship. This is the second step required by s 13 and is assessed with reference to the contributions each party has made under s 18.

[66] Addressing the s 18 criteria:

Section 18(a) – any child of the relationship or any aged or infirm relative or dependent

[67] There were no dependent children or relatives of this relationship to be considered.

Section 18(b) – the management of the household and the performance of household duties

[68] It was accepted the parties made equal non-financial contributions to their relationship.

Section 18(c) – the provision of money, including income for the purposes of the relationship

[69] Mr Bolitho contributed income of $137,720 and income protection payments of $144,815, totalling $282,535 during the period of the relationship.

[70] Ms Phillips contributed $48,532.

Section 18(d) – the acquisition or creation of relationship property, including payment of money for these purposes

[71] Mr Bolitho brought the McLeay boat worth $120,000 into the relationship property pool, funded by external capital. He also brought his superannuation policy worth $135,645 into the relationship property pool.

[72] Ms Phillips brought her superannuation scheme worth $5,000.

Section 18(e) – the payment of money to maintain or increase the value of relationship property or separate property

[73] There are no particular factors to consider under this section. While monies were paid from the relationship property pool to Ms Phillips' Invercargill property, these have already been brought into account in the calculations under the s 20E adjustment. I have heard evidence that some monies were spent on the McLeay boat and work was undertaken on the jet boat, but I have no particular details of this to consider.

Section 18 (f) – the performance of work or services in respect of relationship property or separate property

[74] Again there are no particular factors to consider under this section. Clearly some work was done and some money spent on the boat. Ms Phillips said they only spent a week in Invercargill at her home, which was rented to others for most, if not all, of the period of the relationship.

Section 18(g) – the forgoing of a higher standard of living that would otherwise have been available

[75] There are no factors to consider under this section to consider.

Section 18(h) – the giving of assistance or support to the other partner which enables the acquisition of qualifications or to carry on his or her occupation or business.

[76] I have heard evidence Ms Phillips provided support and assistance to Mr Bolitho in the latter years of his relationship as his cognitive capacity declined. She is a carer by occupation, and I accept some support and assistance was provided, but this would not have been to acquire qualifications or carry on any occupation or business.

[77] Finally, I have specific regard to the provisions of s 18(2) which provides that there is no presumption that a contribution of a monetary value is greater than a contribution of a non-monetary value. It means that each party can contribute to a relationship in different but equally important ways.

Section 13 – conclusion

[78] I have found there are extraordinary circumstances in this case which would make equal sharing repugnant to justice. I have regard to the evidence I have read and heard and the legal submissions which have been made. I have regard to the 3½ year length of this relationship. I have regard to the various s 18 contribution to relationship factors which I have recorded. I have regard to the purposes set out in s 1M(c) of the Act which requires a just division of relationship property between partners at the end of the relationship. There is no particular arithmetical calculation which can or should be made, but rather an assessment is required of all of the factors I have recorded. I have concluded that an 80/20 division of property in Mr Bolitho's favour is the appropriate outcome.

[79] While each case must be assessed on its own particular facts, as a crosscheck this outcome is broadly consistent with the outcomes determined as being appropriate

in *Bowden v Bowden* and *Turner v Churcher* (80/20) and similar to *Venter v Trenberth* (85/15) which counsel had referred me to.

[80] This means Ms Phillips is entitled to 20 per cent of the net value of assets retained by Bolitho. Twenty per cent of $462,938 is $99,587. Mr Bolitho is entitled to 80 per cent of the net value of assets retained by Ms Phillips. Eighty per cent of $35,855 is $28,684. The monetary adjustment therefore required is $63,903.

[81] Section 20E adjustment is made as a compensatory payment in addition to this. Eighty per cent of the funds taken by Ms Phillips amounting to $20,993, should be paid back to Mr Bolitho. This amounts to $16,794.

Outcome and orders

[82] I make the following orders and directions:

(a) Mr Bolitho shall have vested as his separate property the items belonging to him as set out in this judgment.

(b) Ms Phillips shall have vested as her separate property the items belonging to her as set out in this judgment.

(c) Mr Bolitho shall pay to Ms Phillips the sum of $63,903 in satisfaction of her relationship property entitlement.

(d) Ms Phillips shall pay to Mr Bolitho the sum of $16,794 as a compensatory payment for relationship property being applied to her separate property under s 20E.

(e) Ms Yong, being counsel for the applicant is directed to provide a draft order for sealing by the registrar in terms of this judgment.

(f) The costs of the filing fee, hearing fee and sealing fees paid to the court are to be shared equally.

(g) All other costs are reserved. If sought, memoranda is to be filed within 21 days with a right of reply and a further 14 days following which the file is to be referred back to me in chambers for decision.

(h) Leave is reserved to any party to seek further directions as to the implementation of this order on three days' notice.

_____
Judge RJ Russell
Family Court Judge | Kaiwhakawā o te Kōti Whānau
Date of authentication | Rā motuhēhēnga: 29/09/22 at 3.30 pm