

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

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**IN THE FAMILY COURT  
AT HAMILTON**

**I TE KŌTI WHĀNAU  
KI KIRIKIROA**

**FAM-2021-019-000584  
[2023] NZFC 2945**

IN THE MATTER OF	THE PROPERTY (RELATIONSHIPS) ACT 1976
BETWEEN	ANDREW CAMPUS Applicant
AND	LUXMI CAMPUS Respondent

Hearing: 23 March 2023

Appearances: M Roots for the Applicant  
Respondent appears in Person  
M Earl as Lawyer to Assist

Judgment: 11 April 2023

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**RESERVED JUDGMENT OF JUDGE N J GRIMES**

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[1] The parties, Mr Andrew Campus and Mrs Luxmi Campus met and had some form of relationship from late 2002 until October 2008 the status of which is disputed. They moved in together in October 2008 and married on 9 January 2010. The parties separated on 15 December 2020.

[2] At the time the parties moved in together, Mrs Campus owned a property in [address 1 deleted] while Mr Campus owned properties at [address 2 deleted] and [address 3 deleted]. At separation, the parties owned three residential properties, chattels, KiwiSaver, superannuation, bonus bonds, two cars, bank accounts, and liabilities comprising of mortgages against the properties, Visa and UDC debts.

[3] The proceedings under the Property (Relationships) Act 1976 (“the Act”) were filed by Mr Campus on 28 July 2021. It is an application by Mr Campus for orders dividing property pursuant to ss 23 and 25 of the Act.

[4] Mrs Campus engaged counsel and filed an unsworn affidavit of assets and liabilities and narrative affidavit on or about 29 September 2021. These were unsworn as New Zealand was in a nationwide lockdown for COVID-19.

[5] Mrs Campus agreed to the sale of two of the three properties being the family home at [address 2] (“the family home”) and a rental property at [address 4]. By consent an interim order for sale of both properties was made on 11 October 2021.

[6] On 11 November 2021 the parties signed a sale and purchase agreement for the sale of the family home, however, Mrs Campus then refused to sign the necessary transfer documentation. Mr Campus was granted, on a without notice basis, orders on 14 January 2022 to implement the sale.

[7] Orders were also made that Mrs Campus was solely responsible for:

- (a) Any penalty interest incurred by her breaching the terms of the sale and purchase agreement.
- (b) Any out-of-pocket costs which may arise as a result of the breach.
- (c) Mr Campus’ legal costs.

[8] These orders were updated after a further without notice application was granted on 19 January 2022 providing Mr Campus with occupation of the property so he could evict Mrs Campus and implement the sale. Since settlement, the nett sale

proceeds have been held by Clyde Law on behalf of both parties.

[9] Orders were made vesting ownership of [address 4] in Mr Campus so he could affect the sale of the property. Costs of that application were reserved. That property has subsequently been sold and the nett sale proceeds are held by Clyde Law pending the finalisation of these proceedings.

[10] At the request of Mrs Campus' counsel, the Court made a r 88 declaration that Mrs Campus' counsel no longer represent her on 1 March 2022.

[11] Further judicial conferences took place on 11 April and 24 May 2022 providing Mrs Campus with opportunities to engage in the proceedings. Her failure to comply with Court directions saw her notice of response struck out on 14 June 2022 in accordance with r 195 of the Family Court Rules 2002 and she was debarred from taking any further part in the proceedings.

[12] On 17 June 2022 the Court granted an interim distribution to each party of \$30,000, made further directions to progress the proceedings and for the payment of accounts relating to the sale of the [address 4] property out of the funds held by Clyde Law.

[13] The proceedings were then set down for a formal proof hearing. There are 800 pages of affidavit evidence. Mr Roots filed submissions as to the appropriate division of property having applied the facts to the relevant law.

[14] Mr Earl as counsel to assist the Court, provided a report on the first of his two directed tasks, namely that in his opinion all evidence that was required for the Court to determine the issues was before the Court.

[15] In relation to the second task (testing Mr Campus' view that the property at [address 5] is relationship property), Mr Earl submitted there was sufficient evidence before the Court to make findings in favour of Mr Campus such that he did not require Mr Campus for cross-examination.

[16] Mr Campus was sworn in and confirmed his affidavit evidence. He answered

questions on each of the issues. Mrs Campus was present, but, given previous directions, did not take part in the hearing. While it was a formal proof hearing, I recognise I still have an obligation to make orders to provide a fair and just division of property having regard to the provisions of the Act. As can occur in cases such as this, full valuations of all the property have not been able to be obtained, and Mr Campus has provided as much evidence as he can on how much assets were purchased for and what has become of them now.

[17] The issues requiring determination are as follows:

- (a) Whether the start date of the parties relationship was material to the Court's findings.
- (b) The classification of the property at [address 5].
- (c) In relation to the family home at [address 2]:
  - (i) What costs are Mrs Campus responsible for under the 14 January 2022 orders including Mr Campus' legal fees.
  - (ii) What post-separation contributions were made by Mr Campus to facilitate the sale and who should meet the same.
- (d) In relation to [address 4]:
  - (i) What post-separation contributions were made by Mr Campus and who should meet the same.
- (e) Should any debt attaching to the 2019 Suzuki Swift vehicle be assigned to Mrs Campus.
- (f) Chattels – value and division.
- (g) The division of relationship property.

- (h) The final adjustments to be paid by Mrs Campus to Mr Campus from her share of the funds held at Clyde Law.
- (i) Directions in relation to costs.

### **Issue One: Commencement Date of Relationship**

[18] The asset that would be captured as relationship property, if the parties' relationship was found to be a qualifying relationship in terms of the Act prior to October 2008, was Mrs Campus' First State Superannuation totalling \$7,108.24. At the commencement of the hearing Mr Campus' advised he would not pursue a claim to a share of that superannuation meaning it was not necessary to decide whether the de facto relationship commenced before October 2008.

### **Issue Two: Classifications of [Address 5]**

[19] During the course of the parties' relationship, they bought and sold a number of properties. The [address 5] property was purchased on 10 November 2015 during the parties' marriage. The purchase price was \$275,000. The property was purchased in Mrs Campus' sole name and borrowings of \$280,000 from Kiwibank were secured by way of mortgage. No other funds were applied to the purchase of this property. Mr Campus classifies the [address 5] property as relationship property. Mrs Campus lives at the [address 5] property and believes it is her separate property.

[20] I accept Mr Roots submission that the onus is on Mrs Campus to prove that the [address 5] property was acquired from her separate property. As discussed below, I find that based on her own evidence, the [address 5] property was acquired using relationship property as security for the 100 per cent financing obtained from Kiwibank.

[21] Mr Campus accepts Mrs Campus' evidence that the equity in three properties was used as security for the purchase of the [address 5] property. The question then becomes whether those three properties were relationship property.

[22] The first property was situated at [address 1]. This was purchased by

Mrs Campus in 2004. It was subsequently sold during the parties' relationship. The sale proceeds were mainly applied to the reduction of the mortgage secured over the family home.

[23] The second property was unit [address 6]. This property was purchased in 2014 in Mrs Campus' name. Mr Campus says that as Mrs Campus had an existing relationship with Kiwibank, and he did not, that it made sense for the ownership to be in her name only. Mr Campus provided evidence from Kiwibank (who lent the funds for the purchase of this property) who had sought details of both parties' pay slips, the rates invoices for the family home and [address 1] property together with evidence of all bank accounts and liabilities held by the couple with other banks before advancing finance.

[24] While [address 6] was purchased in Mrs Campus' sole name, I am satisfied from the evidence that this property was relationship property as Kiwibank were relying on both parties' income and assets when approving the 100 per cent finance. This satisfies ss 8(e) and 8(ee) of the Act.

[25] I accept Mrs Campus' evidence that the equity in the [address 1] and [address 6] properties was then used as security for the purchase of the property at [address 7] on 30 September 2015.

[26] The historic search supplied in evidence confirms the [address 7] property was purchased by the parties in their joint names with a mortgage to BNZ.

[27] I am therefore satisfied that the equity in the [address 6] and [address 7] properties was relationship property which was then used as security for the purchase of the [address 5] property. I find the equity in the [address 1] property became relationship property because it was used in the acquisition of relationship property (s 9A(3)(b)).

[28] Not only was the [address 5] property purchased during the parties' relationship thus satisfying s 8(1)(e) of the Act, it was also acquired after the marriage for the common use or common benefit of both spouses. Considerable evidence was

supplied confirming this. Mr Campus was responsible for all administration involved with tenancing the [address 5] property, including preparation of tenancy agreements and advice to the tenants as to rental increases. Mrs Campus, he says, dealt with the day-to-day issues that would arise from time to time.

[29] The documentation supplied records Mr Campus as a landlord of the [address 5] property with Mrs Campus. There is evidence of both parties copying one another into emails regarding the tenancy. While Mr Campus acknowledges he signed some documentation on Mrs Campus' behalf, I accept that the divisions of functions within their marriage were such that he was responsible for administrative tasks, Mrs Campus having no tolerance for the same, but he had always informed her of what documentation had been prepared.

[30] Accordingly, I find that the [address 5] property is relationship property.

[31] Mr Campus was directed to obtain a valuation of the [address 5] property. The valuation completed by Dymock Valuers dated 31 January 2023 gives a current value of \$548,000. In her evidence, Mrs Campus stated the mortgage was \$242,636.27 at the date of separation. Mr Campus accepts that figure, meaning the equity available for division is \$305,363.73.

[32] I find the cost of the valuation would have been a joint cost if Mrs Campus' had properly engaged in proceedings. The total invoice was \$1,495 meaning Mrs Campus' share is \$747.50.

### **Issue Three: [Address 2] (the 'family home')**

[33] As set out, orders were made to implement the sale and purchase agreement of the family home entered into by the parties, after Mrs Campus failed to sign the necessary transfer documentation so that settlement could occur on 11 January 2022.

[34] The orders made on 14 January 2022 require that any out-of-pocket costs associated with Mrs Campus' actions were to be met by her. Those costs have been set out in the evidence as follows:

- (a) Costs paid from settlement funds held at Clyde Law:
  - (i) These included the late settlement penalty, arbitration award in favour of the purchasers, costs of the arbitrator, and the additional costs from Clyde Law associated with the delayed settlement.
  - (ii) Those costs totalled \$18,302.67 and are out of pocket costs associated with Mrs Campus' actions.
  - (iii) From Mrs Campus' share of the net sale proceeds, she is to reimburse Mr Campus \$9,151.34.
  
- (b) Additional legal costs:
  - (i) The arbitrator's award of \$7,927.67 was considerably less than the purchasers original claim of \$49,271.15. Mrs Campus did not engage in the arbitration. But for Mr Campus instructing Mr Roots to file submissions, the award would most likely have been much higher.
  - (ii) Therefore, a further out of pocket expense is the legal fees Mr Campus paid for Mr Roots' representation. Mrs Campus is to refund Mr Campus for those costs.
  
- (c) Costs paid by Mr Campus:
  - (i) After further orders were made on 19 January 2022, Mr Campus discovered damage to the property of an electrical nature and the property being in a state of disrepair which he says was not present when he vacated the property in December 2020.
  - (ii) Mr Campus has supplied invoices for the work undertaken and photographs of the damage.



- (iii) As Mrs Campus was resident in the family home from separation until Mr Campus obtained his orders, I find that the damage to the family home was within her control to prevent and therefore the cost of repair is to be met solely by her.
  - (iv) I accept the invoices totalled \$4,545.23 and order Mrs Campus to refund this to Mr Campus from her share of the settlement funds held at Clyde Law.
- (d) Allied security expenses:
- (i) As Mrs Campus was not only difficult to evict from the family home, security guards and a change of locks was necessary as Mrs Campus attempted to gain unlawful occupation of the property.
  - (ii) I am satisfied that the costs paid to Allied Security totalling \$2,006.71 were out of pocket expenses that earlier orders had determined Mrs Campus meet. These would not have been necessary had she complied with the terms of the sale and purchase agreement.

**Issue Four: [Address 4]**

[35] The Court vested ownership of the [address 4] property in Mr Campus so he could affect the sale of the same.

[36] The Court had earlier ordered that the sum of \$13,455 be paid to Mr Campus from the joint funds held at Clyde Law to meet costs of repairs. Those repairs totalled \$12,506.25, meaning the difference of \$948.75 is considered in the calculations of relationship property.

[37] I am satisfied that Mr Campus' had to meet the cost of additional work required to ready the property for sale which is to be jointly met by the parties. The invoices

have been supplied and total \$4,031.21, meaning Mrs Campus is to pay Mr Campus \$2,018.11 from her share of the settlement funds held by Clyde Law.

#### **Issue Five: UDC Debt**

[38] Since separation, Mrs Campus retained the 2019 Suzuki Swift sport vehicle which had a debt to UDC secured against it. The liability was in joint names. Mrs Campus did not make payments. Subsequently the vehicle was damaged and repossessed as the UDC debt had not been paid. The vehicle was then sold by UDC following repair for less than the outstanding UDC debt. I accept Mr Campus' credit rating was damaged as a result and that he was forced to pay off the loan to protect his credit rating.

[39] In the normal course of events a party retaining an asset subject to a debt is responsible for meeting that cost. I find that Mrs Campus is solely responsible for the debt and is to refund Mr Campus \$3,092.07.

#### **Issue Six: Chattels**

[40] Mr Campus says that when he left the family home in December 2020, he left all usual household items and the contents of the tool shed were left behind.

[41] He says he subsequently removed items that he had owned prior to the relationship being paintings collected over a period of 20-30 years, table and chairs, an oak desk, and an art deco display cabinet. He left behind all assets purchased together including, for example, an \$8,000 piece of Venetian glass.

[42] When he went to the property to retrieve those items, Mr Campus noted that Mrs Campus had removed his personal items, including watches, a Jager clock, a Sunburst guitar, Seiko watch, Rolex watch, totalling \$24,610.97. Receipts of purchase have been provided together with other information and photographs.

[43] From the evidence provided, I find that not only did Mrs Campus retain majority of household items but also jewellery purchased during the parties' relationship and other high end designer items including Louis Vuitton luggage,

designer bags, and a Chanel bag worth \$8,000.

[44] While the valuation evidence is problematic, I accept that Mr Campus does not have access to the family chattels nor is he able to retrieve his personal belongings. He is out of pocket and the division of the chattels favours Mrs Campus.

[45] Mr Campus only seeks compensation for those personal items that are no longer in his possession. I therefore order Mrs Campus to pay \$24,610.97 for those personal items of Mr Campus' that she retained noting the chattels she has retained are worth well in excess of this amount.

### **Issue Seven: Division of Relationship Property**

[46] I accept Mr Roots' submissions as to the proposed division of assets other than the joint funds held at Clyde Law will be as follows:

[47] Mr Campus is to retain assets being:

(a)	Kiwisaver ([number deleted])	\$ 723.53
(b)	Visa Platinum	\$ 28.76
(c)	Westpac 000	\$ 112.00
(d)	Westpac 002	\$ 2,250.00
(e)	2020 Kea Reo	\$24,990.00
(f)	Cash	\$14,000.00
(g)	Cash from the Clyde Law distribution	\$ 948.75
	<b>Total</b>	<b>\$43,053.04</b>

[48] Mrs Campus is to retain:

(a)	[address 5] property	\$305,363.73
(b)	Bonus bonds	\$ 12,120.00
(c)	Tower KiwiSaver	\$ 48,050.00
(d)	Kiwibank 00	\$ 37.40
(e)	Serious Saver 50 account	\$ 304.47
(f)	ANZ Freedom	\$ 233.97
	Less	
(g)	Liabilities of Kiwibank credit card	\$ 428.72
(h)	Kiwibank Visa 02	\$ 508.71
	<b>Total</b>	<b>\$365,172.14</b>

[49] The total value of these assets is \$408,225.18, a half share of which is \$204,112.59.

[50] To equalise the division of assets, Mrs Campus is to pay Mr Campus \$161,059.55 from her share of the settlement funds held at Clyde Law.

#### **Issue Eight: Final Adjustment**

[51] The joint funds held at Clyde Law as at 8 March 2023 total \$1,065,952.61. In relation to those funds the following orders are made:

- (a) The funds are to be divided equally between the parties.
- (b) From Mrs Campus' share of those funds \$207,393.91 is to be paid to

Mr Campus for:

- (i) Cash adjustment to equalise the division  
of all other assets (paragraph 50) \$161,059.55.
- (ii) Half-share of the [address 5]  
Valuation (paragraph 32) \$ 747.50
- (iii) Refund the UDC Finance debt associated  
with the Suzuki Swift (paragraph 39) \$ 3,092.00
- (iv) Out of pocket expenses paid from joint funds  
held at Clyde Law (paragraph 34(a)(iii)) \$ 9,151.34
- (v) Out of pocket expenses paid by the  
Applicant (paragraph 34(c)(iv)) \$ 4,545.23
- (vi) Allied security expenses for the  
Family home paid by Mr Campus  
(paragraph 34(d)(ii)) \$ 2,006.71
- (vii) Half cost of repairs for the [address 4]  
property (paragraph 37) \$ 2,018.11
- (viii) Compensation for retention of Mr Campus'  
personal chattels (paragraph 45) \$ 24,610.97

(ix) Half the cost of the bundle of documents \$ 162.50

**Total** **\$207,393.91**

(c) Any costs award in Mr Campus' favour is to be paid from Mrs Campus' share of the joint funds.

### **Costs**

[52] Costs are in issue. Costs have already been ordered as part of the orders made on 14 January 2022. Those are indemnity costs. Mr Roots costs for his work in relation to the arbitration are also captured within the 14 January 2022 orders as these were out of pocket expenses that would not have been necessary but for Mrs Campus' failure to complete the sale and purchase of [address 2].

[53] I direct Mr Roots file, within 21 days, a memorandum that sets out:

- (a) The indemnity costs covered by the 14 January 2022 orders including work associated with the arbitration.
- (b) In relation to the balance of costs sought, a schedule of costs on a 2B basis is to be supplied. If costs are sought on a schedule 3C or indemnity basis, then schedules of costs and submissions are required.
- (c) Mrs Campus has 14 days to reply. Thereafter my decision as to costs will be made on the papers.

[54] There will be no distribution of the funds held by Clyde Law until such time as my decision regarding costs has been made. Costs will be paid from Mrs Campus' share of the sale proceeds held at Clyde Law.

[55] Within 21 days Mr Roots is to file draft orders leaving blank the figure to be paid for costs and final adjustment figure payable by Mrs Campus to Mr Campus. Such orders should be filed in Word form.

[56] Counsel are thanked for their considerable work in these proceedings and providing the Court with sufficient evidence to be able to complete this matter in a timely fashion.

[57] Mr Earl's appointment as counsel to assist is now discontinued with the thanks of the Court.

N J Grimes  
Family Court Judge