

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

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**IN THE FAMILY COURT
AT MANUKAU**

**I TE KŌTI WHĀNAU
KI MANUKAU**

**FAM-2019-092-000015
[2023] NZFC 2391**

IN THE MATTER OF	THE PROPERTY (RELATIONSHIPS) ACT 1976
BETWEEN	[CHHAVI GUPTA] Applicant
AND	[ARPIT PRAKASH] Respondent

Hearing: 13 March 2023 (Part-heard)
Resumed 21 April 2023

Appearances: J Attfield for the Applicant
D Purusram for the Respondent

Judgment: 23 August 2023

RESERVED JUDGMENT OF JUDGE R VON KEISENBERG

[1] The applicant [Chhavi Gupta] and the respondent [Arpit Prakash] are in dispute about how their relationship property should be divided at the end of their marriage.

Preliminary matters

[2] This matter was initially set down for a one-day hearing on 13 March 2023, however, it became quickly apparent that insufficient time had been allocated to complete it. The parties were unable to agree on most matters, including the classification and status of the majority of their assets at the date of separation.

[3] As the hearing progressed, it became clear that there were significant omissions in the evidence filed by both parties which would have assisted the Court in determining each of their claims. This included the lack of an updated valuation of the family home (the most recent being June 2021),¹ bank statements for a specific account at separation which had not been disclosed, valuation evidence for the assets in Mr [Prakash]'s possession (cars and boats) or evidence of the income he had received from the separate dwelling attached to the family home.

[4] At the conclusion of the first day of hearing, I made directions for the filing of some of this information before the matter resumed as follows:

- (a) Ms [Gupta] had failed to disclose bank statements for the [company 1] account. She was directed to produce copies of these statements from the date of separation to the date of hearing.
- (b) Mr [Prakash] had failed to provide evidence of the income received from the sleepout, or valuations in respect of the cars and boats at the date of separation. Mr [Prakash] was directed to provide copies of bank statements from the date of the last statement produced to the date of hearing showing rental payments received for the sleepout.

¹ BOD 383.

[5] The hearing resumed on 23 April 2023. Both parties complied with the directions. Ms [Gupta] was re-sworn to answer questions from counsel for Mr [Prakash] in relation to the recently produced bank statements for [company 1].

Factual background

[6] The parties commenced a de facto relationship in 2002 and married on [date deleted] 2005. The parties initially separated in May 2016 following an assault on Ms [Gupta] by Mr [Prakash]. The respondent spent from late December to mid-January in custody.

[7] The parties resumed living together in February 2017 and finally separated on [date deleted] 2017. In 2017, Ms [Gupta] obtained an interim protection order against Mr [Prakash] which was made final on 8 September 2017. The relationship is one of over 12 years duration.

[8] There are two children of the marriage, [Dulari Prakash], a girl born [date deleted] 2005, and [Abhik Prakash], a boy born [date deleted] 2009. At the date of hearing, [Dulari] was 18 years of age and has lived principally with her mother following separation. [Abhik], who is now 14, lives with his father full-time. Parenting orders were made providing for [Abhik] to live in the day-to-day care of Mr [Prakash] with contact to Ms [Gupta]. However, there are ongoing proceedings in relation to Ms [Gupta]'s contact with the parties' son.

Litigation history

[9] These proceedings have been dogged by significant delays and high conflict. On 17 December 2018, Ms [Gupta] first filed her application for orders under the Property (Relationships) Act 1976 (PRA). Mr [Prakash] did not file his response and affidavit of assets and liabilities until March 2019.

[10] In December 2019, Ms [Gupta] filed an application for an order for sale of the family home at [address A] together with an order that the property vest in her name

to achieve a sale of the property. Mr [Prakash] did not file a response to the proceedings until May 2020.

[11] Several interlocutory applications were filed for further disclosure. Despite this, as I already observed, there was a dearth of relevant up to date valuation evidence in respect of the major assets in dispute.

[12] Counsel representing the parties filed comprehensive opening submissions and at the conclusion of the hearing further closing submissions. At the start of the hearing, few issues had been agreed on apart from one concession by the respondent prior to the hearing commencing that he was no longer claiming that [address A] was his separate property but is seeking an unequal division of property on the grounds of exceptional circumstances (s 13 of the Act) and a postponement in the vesting of the applicant's share of relationship property under s 26A of the Act.

Relationship property

[13] The assets of the relationship at the date of separation are:

- (a) the former family home situated at [address A], Manurewa which the respondent has been in occupation since separation.
- (b) Various motor vehicles. At the date of separation, the parties owned the following vehicles:
 - (i) Toyota Hiace [registration X];
 - (ii) Toyota Hiace [registration Y];
 - (iii) SsangYong motor vehicle; and
 - (iv) Ford Ranger.

The dispute concerns the value and existence of the motor vehicles as at date of separation.

(c) A boat and trailer.

The respondent retained the boat and trailer in his possession on separation but failed to provide any valuations.

(d) Bank accounts: joint, separate and in the names of companies which each party operated.

(e) Household chattels in the possession of both parties at the date of separation. During the hearing the parties agreed that the amount Mr [Prakash] would pay Ms [Gupta] to compensate her for a half share value in the chattels was \$500.

(f) Classification of debts claimed by Mr [Prakash] as relationship debts. The applicant disputes that any of these are relationship debts:

(i) [company 2] \$8,836.61.

(ii) [company 3] \$2,185;

(iii) [company 4] \$4,029.

(iv) [company 5] \$10,393.91.

(v) [company 6] \$4520.49.

(vi) Debts to family members and friends.

(g) Credit card debts with ASB, BNZ and Westpac as at separation are agreed.

Issues for determination

[14] The issues for determination are:

(a) Should s 13 extraordinary circumstances apply in relation to the division of [address A] Manurewa?

(b) Should a postponement of the vesting of the applicant's share be granted under s 26A of the Act?

- (c) Whether the Court can attribute a value to the family home at a date other than as at date of hearing.
- (d) Determining the values of the motor vehicles, boat and trailer and bank balances as at the date of separation.
- (e) Determining the classification of debts and what if any proportion is attributable to the applicant?
- (f) Determining s 18B adjustments claimed by Ms [Gupta] by way of occupation rent for Mr [Prakash]'s occupation of [address A] Manurewa since separation.

The family home at [address A] Manurewa (“the home”)

[15] The family home was purchased in 2014 during the marriage but registered in the sole name of Mr [Prakash]. The home is subject to ASB bank loans and other bank charges. At the date of hearing, the current loan balance was \$366,710, comprising of two loans of \$267,479 and \$99,231. The parties have agreed to the repayment as a joint debt of the ASB bank related charging order and the other credit card debt which I will outline later in this decision.

[16] In 2021, the home was valued at \$830,000. (In 2020 it was \$670,000). As earlier noted, an up to date valuation of the home was not produced despite Mr [Prakash]'s desire to purchase Ms [Gupta]'s share.

[17] Until counsel for Mr [Prakash] had filed his submissions in January 2023, Mr [Prakash] had maintained his position that [address A] was his separate property. The parties had previously owned two properties one in [suburb deleted] (the family home) and a second property in [a different suburb]. When the properties were sold, the respondent claimed that they had reached an oral agreement so that when the [address A] property was purchased and a business referred to as [company 1] bought, [address A] would be his separate property, and the business was Ms [Gupta]'s separate property. Ms [Gupta] strongly denied this. When he abandoned his claim to

[address A] as his separate property he did so on the basis that there should be an unequal division of the family home on the basis of extraordinary circumstances. The grounds advanced by Mr [Prakash] for extraordinary circumstances were:

- (a) since the home was purchased in 2014 and following separation, he has paid all the outgoings, including mortgage rates and insurance during the relationship;
- (b) he claimed that as a result of allegations made against him by Ms [Gupta] after separation, he was unable to work for a significant period and was in receipt of a WINZ benefit;
- (c) since separation Mr [Prakash] has had the day-to-day care of the parties' son [Abhik], and still cares for him financially;
- (d) after Ms [Gupta] moved out of the home in June 2017, she moved in with her boyfriend; and
- (e) [address A] was his property until the proceedings commenced.

[18] In the alternative, Mr [Prakash] contended that if the Court was unable to make a finding of exceptional circumstances, then he was seeking a postponement of the vesting of Ms [Gupta]'s share in the home for at least a further year pursuant to s 26A(1) of the Act to allow him to complete the sale and settlement of the property, failing which he would agree to the house being placed on the market for sale.

Ms [Gupta]'s position

[19] Ms [Gupta] opposes any unequal division of property and seeks an equal share of all the parties' assets, including the family home on the grounds that it was the principal family home as defined in s 2 of the Act. She also strongly opposes any postponement of sale of the home or postponement of her share. She seeks an immediate order for sale on the grounds that Mr [Prakash] has remained in occupation of the family home for well over five and a half years since separation. Ms [Gupta] seeks s 18B adjustments as follows:

- (a) half the rental receipts the respondent has received from the separate dwelling (sleepout) at [address A] following separation; and
- (b) occupation rent in respect of [address A] from the date of separation in June 2017 to date of hearing on the grounds that she has paid rent elsewhere.

[20] She disputes the classification of the debts claimed by Mr [Prakash] as relationship debts apart from credit card debts which are secured over [address A].

Legal principles

[21] I set out the relevant legislation for division of property based on extraordinary circumstances.

[22] Section 13 of the PRA provides:

13 Exception to equal sharing

- (1) If the court considers that there are extraordinary circumstances that make equal sharing of property or money under section 11 or section 11A or section 11B or section 12 repugnant to justice, the share of each spouse or partner in that property or money is to be determined in accordance with the contribution of each spouse to the marriage or of each civil union partner to the civil union or of each de facto partner to the de facto relationship.
- (2) This section is subject to sections 14 to 17A.

[23] Under s 13 the Court has a discretion to depart from equal sharing if there are extraordinary circumstances which would render equal sharing repugnant to justice. Section 13 is similar to, but not identical to, the previous s 14 under the Matrimonial Property Act 1976. That section only dealt with the family home and chattels. The new s 13 applies to all relationship property.

[24] If extraordinary circumstances are found, then it is mandatory to determine the property in question “in accordance with the contribution of each partner to the relationship”. Section 18 of the Act defines the contributions of spouses or partners

to the marriage. The High Court considered the meaning of s 13 in *De Malmanche v De Malmanche*.² The decision confirmed that leading cases under the previous s 14 still applied.

[25] From the older decisions which include *Castle v Castle*, *Martin v Martin*, and *Kauwhata v Kauwhata* several principles emerge:³

- (a) The test is stringent and the threshold high. In an often quoted section of the judgment in *Martin v Martin* Richardson J stated:

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 the 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.

- (b) In *Brown v Starke*, her Honour Judge Fleming noted that “extraordinary circumstances making sharing repugnant to justice is a stringent and difficult test to overcome but it was not designed to be impossible.”⁴ She identified two aspects to the test:

- (i) identifying the extraordinary circumstances; and
- (ii) whether those extraordinary circumstances make equal sharing repugnant to justice.

² *De Malmanche v De Malmanche* [2002] 2 NZLR 838, [2002] FRNZ 145 (HC).

³ *Castle v Castle* [1977] 2 NZLR 97 (SC); *Martin v Martin* [1979] 1 NZLR 97 (CA); *Kauwhata v Kauwhata* [2000] NZFLR 755 (HC) at 31.

⁴ *Brown v Starke* [2016] NZFC 7132.

- (c) Although the Act does not define “justice”, the principles in s 1N provides guidance as to the accepted standards that apply.

1N Principles

The following principles are to guide the achievement of the purpose of this Act:

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

[26] Justice Woodhouse in *Martin* stated:⁵

The reference to justice is clearly to the broad statutory concept of justice outlined in the Act and not to the varying standards which might appeal to individuals.

[27] Justice Richardson stated in *Joseph v Johansen*:⁶

In determining whether the circumstances are truly extraordinary, it is not always sufficient to focus on what the particular parties may have expected from their marriage and their reasonable expectation of their roles 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...

[28] In Westlaw Commentary, several situations have been drawn from the case law where these have been treated as extraordinary circumstances.⁷ Plainly, the list of circumstances is not exhaustive, and each case is determined on its merits. These include:

⁵ *Martin v Martin* [1979] 1 NZLR 97 (CA) at 102.

⁶ *Joseph v Johansen* [1993] 10 FRNZ 302 (CA) at 307.

⁷ Nicola Peart (ed) *Family Property* (online ed, Thomson Reuters) at [PR 13].

- (a) Injection of capital towards the end of a relationship not acquired because of the relationship. In *Wilkinson* the parties were only in their twenties. The applicant had applied over \$1 million of an inheritance to the relationship property 18 months prior to the end of the marriage.⁸ The wife had contributed little by way of capital. The Court determined a 70:30 division in favour of the applicant. It found the relative brevity of the marriage and the youth of the parties relevant factors in their findings.
- (b) The longer the marriage the more difficulty a party will have in establishing extraordinary circumstances despite a large capital injection. In *J v J*, involving a 22 year marriage, the husband failed to persuade the Court that even after applying an inheritance to clear a mortgage and start a new business, this amounted to extraordinary circumstances.⁹
- (c) Gross disparity in contributions. The case law confirms that there needs to be compelling reasons for a judge to find that a disparity in contributions to a marriage is so gross that unequal division is justified. In *Brown v Starke*, extraordinary circumstances were found in a marriage just over the three year mark where the wife had contributed 80 per cent of the capital.¹⁰ The Court considered it a relevant factor that the applicant wife was 22 years older than the respondent.

Analysis

[29] Section 13 requires that the extraordinary circumstances a party is claiming occurs during the marriage not after separation. Without exception, all factors advanced by Mr [Prakash] as evidence of what he claims are extraordinary circumstances occurred after the parties had separated. There was no evidence tendered of any significant extraordinary contribution by Mr [Prakash] to the marriage

⁸ *Wilkinson v Wilkinson* [2021] NZFC 8995 at [78].

⁹ *J v J* [2001] NZFLR 1088.

¹⁰ *Brown v Starke*, above n 9.

as highlighted in *Martin* or alternatively a lack of contribution by Ms [Gupta] during the relationship to warrant the exercise of the Court's discretion under s 13. Section 13 requires a close examination of s 18 contributions to the marriage.

[30] In that regard it is not in dispute that during the 12 year marriage, the parties organised their affairs on the basis that Ms [Gupta] was the principal caregiver for the children and did not obtain employment outside the home at Mr [Prakash]'s request. However, there is also no dispute that she assisted Mr [Prakash] in the running of their joint enterprises, [company 1A] and [company 1B]. Mr [Prakash]'s payment of the outgoings on the home during the marriage is not an unusual situation and is clearly not an extraordinary circumstance.

[31] For the reasons I have already outlined, I reject Mr [Prakash]'s claim that his inability to work after separation and relying on a WINZ benefit post separation is an extraordinary circumstance. Similarly, I do not accept Mr [Prakash]'s claim that because he had the day-to-day care of the parties' younger child, [Abhik], after separation, this amounted to an extraordinary circumstance. In that regard, I agree with the submission from the applicant's counsel that the Court should approach the care arrangements between the parties following separation cautiously in view of the history of this matter.

[32] Although consent orders were made in September 2018 providing for [Abhik] to be in the day-to-day care of Mr [Prakash] and [Dulari] be in the day-to-day care of Ms [Gupta], his Honour Judge Goodwin described the arrangements as "problematic and marked by continuing non-compliance".¹¹

[33] On 24 May 2019, his Honour Judge Goodwin placed the children under the guardianship of the Court pursuant to s 31 of the Care of Children Act. It is a matter of record that Judge Goodwin in his November 2019 decision withheld his findings regarding the safety of [Abhik] in the care of Mr [Prakash] due to concerns he had about Mr [Prakash]'s estrangement behaviours, undermining comments and escalation of complaints about Ms [Gupta].

¹¹ Decision of Judge Goodwin, 24 May 2019 at [5].

[34] On 21 April 2021, an order was made discharging the s 31 order which had placed the children under the guardianship of the Court.

[35] As earlier noted, enforcement proceedings are still on foot before the Family Court. The evidence was that Ms [Gupta] has paid child support for [Abhik] while in the care of Mr [Prakash] but that Mr [Prakash] did not pay any child support to Ms [Gupta] in relation to [Dulari].

[36] In summary the test required by *Martin v Martin* is a stringent one and I am satisfied there is no evidence to support a finding of extraordinary circumstances that would make equal sharing of property under ss 11, 11(b) or 12 repugnant to justice. Accordingly, I am satisfied on the evidence that all property in existence at the date of separation is relationship property which is to be divided on an equal basis.

Sale of the home or postponement

[37] In the event that the Court does not find in Mr [Prakash]'s favour for an unequal division, counsel for Mr [Prakash] argued that on the basis that he can retain the family home he is seeking to postpone paying Ms [Gupta]'s share under s 26A of the Act for at least another year to allow him to arrange finance.

[38] Section 26A of the PRA provides:

26A Postponement of sharing

- (1) On the division of relationship property under this Act, the court may make an order postponing the vesting of any share in the relationship property, either wholly or in part, until a specified future date or until the occurrence of a specified event if the court is satisfied that immediate vesting would cause undue hardship for a spouse or partner who is the principal provider of ongoing daily care for 1 or more minor or dependent children of the marriage, civil union, or de facto relationship.
- (2) The court may order postponement of vesting under this section only for as long as necessary, and only to the extent necessary, to alleviate the undue hardship.
- (3) Nothing in this section limits section 33.

[39] The essence of s 26A is that the Court can postpone the vesting of any share in relationship property if it would cause undue hardship for the party who is the principal provider of care to one or more of the children.

[40] In considering Mr [Prakash]'s application, I must have regard to the purpose and principles of the Act which I have set out earlier in this decision. I set out the purposes of the Act, in particular s 1M(c) which is of particular relevance:

1M Purpose of this Act

The purpose of this Act is—

- (a) to reform the law relating to the property of married couples and civil union couples, and of couples who live together in a de facto relationship:
- (b) to recognise the equal contribution of both spouses to the marriage partnership, of civil union partners to the civil union, and of de facto partners to the de facto relationship partnership:
- (c) to provide for a just division of the relationship property between the spouses or partners when their relationship ends by separation or death, and in certain other circumstances, while taking account of the interests of any children of the marriage or children of the civil union or children of the de facto relationship.

[41] In *de Malmanche v de Malmanche*, the husband had custody of the children and unsuccessfully sought to invoke s 26A on the basis that the sale of the home would constitute a significant emotional wrench and another home would not have the same environmental features.¹²

[42] In *S v W*, the husband had been convicted of violent offences against the children and the wife.¹³ The presiding Judge used the postponement powers in s 26A in preference to the settlement powers in s 26. However, this was reversed on appeal. Justice Allan held that convictions for family violence offences were not relevant to the undue hardship test in s 26A. He stated:¹⁴

¹² *de Malmanche v de Malmanche* [2002] 2 NZLR 838.

¹³ *S v W* HC Auckland CIV-2008-404-4494, 27 February 2009.

¹⁴ At [38].

In order to justify a s 26A order the Court must be satisfied that immediate vesting would cause undue hardship for a spouse or partner who is the principal provider of ongoing daily care for one or more minor or dependent children...Undue hardship will generally be reflected in evidence of the inability of the principal provider of care to manage financially in the event that the house is sold immediately. That will usually entail a need to examine income and outgoings, the ability of the claimant to meet his or her own needs, the proper requirements of the children as to schooling and so forth.

Analysis

[43] It is now over six years since the parties separated in 2017. Since that time, Mr [Prakash] has had exclusive occupation of the family home at [address A]. There has been ample opportunity for Mr [Prakash] to arrange finance to pay out Ms [Gupta]'s share of relationship property but he has not done so. There was no evidence adduced that there have even been any offers to purchase her share or that Mr [Prakash] is actually able to pay Ms [Gupta] her share of the home.

[44] He is seeking that the sale of the home is delayed until at the very least February 2024 to allow him to arrange funds to pay out the "settlement sum". This proposal is problematic in that there is no recent evidence before the Court to establish the current value of [address A] for a settlement sum to be calculated.

[45] During the hearing, Mr [Prakash] presented a letter from a bank ostensibly to prove that he had a loan. However, it was clear from the content of that correspondence that it was confirmation that he had applied for a loan not that he had been granted a loan. He also asserted that their son now aged 14 years, had an emotional attachment to the home. There was no evidence of this before the Court. Mr [Prakash]'s proposal did not appear to acknowledge the fact that Ms [Gupta] was the primary caregiver for the parties' daughter, [Dulari] or that they have lived in rental accommodation since separation.

[46] After six years following separation, I am satisfied that the clean break principle applies. Ms [Gupta] has been without the use of her share of capital since that time. Mr [Prakash] has failed to provide any evidence of undue hardship and accordingly I am not satisfied there are any grounds for the postponement of the sale of [address A]. Accordingly, I direct that [address A] is to be placed on the market for

sale in terms of the draft orders provided by counsel for Ms [Gupta]. I address these in detail at the conclusion of this decision.

[47] In his closing submissions, Mr Purusram counsel for Mr [Prakash], sought an order under s 2G of the Act if Mr [Prakash] was permitted to purchase Ms [Gupta]'s share of the home, then the Court should adopt the 2020 valuation of \$670,000 (three years after separation and substantially less than the 2021 valuation of \$870,000). The principal ground relied on was the fact that the respondent had paid the mortgage after separation. No evidence was adduced during the hearing nor was it flagged in counsel's opening submissions. The cases relied on by counsel for the respondent were mostly decisions prior to a change in the Act when s 18B and s 18C were introduced.

[48] Those sections were, as the legal commentary state "a clear legislative signal that the general discretion in s 2G (2) should now be used in this context only in cases where the requirements of s 18B and s 18C are not met but where there is none the less a need to impose a non-hearing valuation date".¹⁵ In this case s 18B adjustments do apply and further because I have made an order for the family home to be sold I do not need to address the 2G application in any detail. For the record however I am satisfied there are no grounds to value the home other than at the date of hearing.

Occupation rent – s 18B adjustments

[49] Ms [Gupta] seeks occupation rent under s 18B of the Act.

[50] Section 18B gives the Court wide discretion to order that one spouse pay a sum of money to the other or order a transfer of property if they have made a contribution to the marriage after it ends, if it considers it just to do so.¹⁶

[51] There is well established High Court authority that there is jurisdiction to grant compensation under s 18B for occupation rent to the non-occupier. The non-occupier is effectively contributing their share in the capital of the family home exclusively occupied by the other party. The occupying party retains emotional and practical

¹⁵ Peart, above n7, at [PR2G.02].

¹⁶ Property (Relationships) Act 1976, s 18B.

benefits from the continued occupation and avoids the financial burden of relocating to another home. Whether compensation is granted depends on consideration of all circumstances; who paid the outgoings; how long the period of occupation was; and whether the non-occupying party has foregone a higher standard of living and the detriment of being deprived of the capital in the house as examples.

[52] All contributions to the relationship must be balanced and assessed against the general principles of the Act set out in ss 1N and 1M. Any compensation payable is at the discretion of the Court if it considers it just. Once the court determines that compensation is payable it has discretion to determine the method of calculating it. It may order either payment of market rent or an award of interest on the non occupying party's capital.

[53] In *Griffiths v Griffiths*, Kos J held that “which alternative course is taken is essentially a matter of judicial discretion”.¹⁷

[54] Further, the overarching purpose of this compensation is to ensure that there is a just division of the relationship property by taking into account economic advantages and disadvantages to the parties arising from the end of the marriage.

[55] The Court has held that contributions made by one partner may entirely offset, or at least reduce, the amount of compensation ultimately awarded to the other partner. In *Devery v Manukonga*, Randerson J was “satisfied that it is within the discretion of the Court to allow, as an offset to any such claim, an amount for occupation rent in whatever form the Judge considers appropriate”.¹⁸

[56] Ms [Gupta] has paid rent at the average rate of \$470 per week from [the date of separation] 2017 to the date of hearing in April 2023 a total of 304 weeks at \$470 is equivalent to \$142,880. In her opening submissions counsel did not propose that credit should be given for Mr [Prakash]'s payments of the outgoings on the family home. However, in Ms Attfield's closing submissions,¹⁹ she acknowledged that Ms [Gupta]'s rental payments could be offset against the payments of the outgoings on the

¹⁷ *Griffiths v Griffiths* [2012] NZFLR 327 (HC) at [38].

¹⁸ *Devery v Manukonga* HC Auckland CIV-2003-404-005871, 21 May 2004 at [9].

¹⁹ At [48].

home by Mr [Prakash] and that the Court might consider dealing with the issue of post separation rent paid with a slight adjustment in her favour.

[57] Mr [Prakash] filed an affidavit in January 2023 setting out all his payments on mortgage since separation to the date of hearing. These were supported by bank statements and totalled \$121,155 from June 2017 to December 2022 and \$11,394.77 in rates, a total of approximately \$132,000. It was acknowledged that this figure would require adjustment to cover the period up to the date of hearing in April. Counsel for the respondent argued that there should not be an adjustment in favour of Ms [Gupta] for occupation rent in view of the payments made by Mr [Prakash] towards the home by mortgage, rates, and insurance but if a sum were to be awarded to Ms [Gupta], then it should be a sum of say \$5000.²⁰

[58] The amount that each party has paid post separation either by way of outgoings on the family home or for rent are very comparative and for that reason, I am satisfied that no further adjustment is required to Ms [Gupta] for occupation rent beyond the sum of \$5000 which Mr [Prakash] is to pay to Ms [Gupta].

Other adjustments on the home

[59] Mr [Prakash] accepts that since separation he has received the rent from the separate dwelling attached to the family home at [address A] which averaged \$400 per week which was deposited into his bank account. Mr [Prakash] did not voluntarily provide evidence of this prior to hearing. In his oral evidence Mr [Prakash] accepted the applicant's calculations that he rent he had received up until date of hearing was \$67,482 and that Ms [Gupta] was entitled to a share.²¹ However, Mr [Prakash] argued that Ms [Gupta] should bear her share of electricity bills and other outgoings on the flat.

[60] Evidence of these accounts were not produced, nor would I be prepared to make any further adjustments given the decision to allow Mr [Prakash]'s payments of outgoings on the home to be offset against Ms [Gupta]'s rent she paid. On that basis I

²⁰ Para 69 of the submissions of counsel for Mr [Prakash].

²¹ NOE 136 at line 20.

am satisfied that there should be no further deductions. Accordingly, I make an order that Mr [Prakash] is to pay Ms [Gupta] the sum of \$33,741 being a half share in rental payment from date of separation to the date of hearing.

[61] Given the likely delay in the sale of the home I make a further order that Mr [Prakash] is to account to Ms [Gupta] for a half share of all rental payments from the date of hearing until date of settlement of the sale of the home.

Motor vehicles and boat

[62] At the date of separation, the parties owned the following vehicles:

- (a) Toyota Hiace [registration X] (sold);
- (b) Toyota Hiace [registration Y] (retained by Mr [Prakash]);
- (c) SsangYong motor vehicle (retained by Ms [Gupta]);
- (d) Ford Ranger (retained by Mr [Prakash]); and
- (e) Boat and trailer (retained by Mr [Prakash]).

[63] Ms [Gupta] seeks that SsangYong she retained in her possession be valued at \$11,500.²² She is seeking adjustments for the motor vehicles retained by Mr [Prakash] which was the Toyota Hiace and the Ford Ranger.

[64] Mr [Prakash]'s evidence in relation to the cars in his possession and the values attributable was less than satisfactory. As I have noted earlier, Mr [Prakash] did not file any evidence with respect to the value of the Ford Ranger [registration Z] or the Toyota Hiace [registration Y]. During his oral evidence, his explanations around where the cars were or whether they had in fact been sold lacked substance and credibility. On several occasions while he was giving evidence, I had to remind Mr [Prakash] that he was under oath.

²² BOD 958.

[65] Ms [Gupta] claimed that while Mr [Prakash] was in custody, he had instructed her to transfer all the motor vehicles from his name into her name and to sell the Hiace [registration X] to his brother for \$17,000.²³ She claims the funds were utilised by Mr [Prakash] later to renovate his shop. Mr [Prakash], in his evidence, claimed that all of this was done without his authority. When I considered the evidence of each of the parties in this regard, I preferred Ms [Gupta]'s. I did not accept the claims made by Mr [Prakash] that she transferred the registration of the cars without his knowledge. I accept Ms [Gupta]'s evidence that one of the Hiace car was sold to his brother on Mr [Prakash]'s instructions and that he received the benefit of the proceeds. As this occurred prior to separation no adjustments are required in respect of this motor vehicle.

[66] Mr [Prakash] claimed that the Ford Ranger previous registration [personalised registration deleted] now [registration Z] was sold for \$15,000 and the Toyota Hiace [registration Y] was sold for \$4000²⁴ to a builder. He said he sold the Ford Ranger and applied the proceeds to pay his bank loan as he was not able to meet the mortgage at that time. Mr [Prakash] claimed that Ms [Gupta] owed him money by way of adjustment for the car she had in her possession. He refuted that there should be any adjustment made for cars in his possession at the date of separation.

Analysis

[67] I found Mr [Prakash]'s evidence in relation to the cars in existence as at the date of separation unsatisfactory. As the evidence emerged, his claims that the cars had been sold and his explanations when shown evidence that they were still in his possession years after separation were implausible.

[68] Under cross-examination, Mr [Prakash] was shown a copy of the registered valuation of the family home at [address A] completed in 2020. On the cover of the valuation was a photograph of the exterior of the home and outside the home were the

²³ BOD 6 Volume 4.

²⁴ BOD 132 Volume 1 at para 22.

motor vehicles he claimed had been sold two years earlier, the Ford Ranger and the Toyota Hiace [registration Y]. I set this exchange out in full.²⁵

Q. So this is a photograph of your home?

A. Yes.

Q. Taken for the purposes of a valuation in January 2020?

A. Yes.

Q. Which is some nine months after you sold the Ford Ranger?

A. Yes.

Q. The Ford Ranger has licence [registration Z]?

A. Yes.

Q. The Ford Ranger is in the picture?

A. Yes.

Q. So you still have it you didn't sell it?

A. I did sell it.

Q. It's at your property.

A. Yes.

The Court:

Q: I don't understand that answer. You say you've sold it but it's still at your property.

A. I sold it to the person who gave me money for my mortgage.

Q. So why is it still outside your house?

A. They're working the electrician.

Q. Pardon?

A. He's an electrician. He's a family friend.

Q. Is there anywhere in the bundle where you got the money you say you put on the mortgage where's the evidence of that?

A. It's on 2018 April, May. I just see \$15,000 in my account to pay my mortgage.

The Court:

²⁵ NOE 120.

Q. Is there any evidence of \$15,000 from the sale?

Mr Purusram: Not to my knowledge, Ma'am.

[69] When Mr [Prakash] was pressed on to whom he had sold it, he said the car was now owned by his company.²⁶ He was asked:

A. I bought it again. I bought, my company bought it again from him.

Q. So where is that in your evidence?

A. I didn't put it in evidence.

[70] The evidence he gave in relation to the other vehicles was equally unconvincing. Prior to separation, there was clear evidence that Ms [Gupta] had sold the other Hiace to his brother on Mr [Prakash]'s instructions, but that same Hiace was shown still to be in his possession. Under cross-examination, he was asked:²⁷

Q. But that's the Hiace that remained in your possession in January 2020 [referring to [registration X] purportedly sold by Ms [Gupta]].

A. Yeah then I went to my brother requested him to pay me. "I'll pay you pay you back to get my van back". So I paid after she left. I start paying to get the van back cause I want to...

The Court:

Q. Is that in your evidence?

A. No.

[71] In summary, while the issue about the cars in existence at the date of separation and their value was comparatively minor in the overall scheme of things, Mr [Prakash]'s overall lack of credibility in his evidence bordered on obstructiveness. Where there was a conflict in the evidence, I invariably preferred the evidence of Ms [Gupta].

[72] I am satisfied on the basis of the evidence before me that the Ford Ranger and the Toyota Hiace [registration Y] were in the possession of Mr [Prakash] at the date of separation. In the absence of any valuation evidence, I accept the submission from counsel for the applicant that the values attributable to the Toyota Hiace is \$4,000 and

²⁶ NOE 121.

²⁷ NOE 122.

the Ford Ranger is \$15,000. I attribute the value of \$11,500 to the SsangYong motor vehicle retained by Ms [Gupta]. The respondent is to pay the applicant the sum \$3,750 by way of adjustment for the cars.

The boat and trailer

[73] Mr [Prakash]'s evidence in relation to the boat and trailer in his possession at the date of separation was similarly unsatisfactory. He was cross-examined at length on this.²⁸ He gave several versions of what happened to the boat. He claimed initially that the boat and trailer had been damaged and was taken away. Later in his evidence he claimed that the motor was not working or that he had not used the boat since 2017.

[74] Under cross-examination when asked how the boat was taken away if there was no trailer, he claimed a tow truck was used. He said the last time he went fishing was in the previous month, but in a different boat. Mr [Prakash] said that he now owned another boat which he purchased six months ago for \$6,000. This was not in his affidavit evidence.

[75] When asked whether he had tried to sell it, he claimed that nobody would buy it. I set out the exchange between the Court and Mr [Prakash] on this issue:²⁹

The Court:

Q. Mr [Prakash] where is the boat and trailer now?

A. A guy took it from my house. He's in Manurewa.

Q. When did you offload this?

A. 2017 October November.

Q. How much did you get for it? You are on oath Mr [Prakash].

A. Maybe a couple of grand, maybe two grand.

Q. Why haven't you disclosed that?

A. Maybe I overlook it.

²⁸ NOE 115 and 116.

²⁹ NOE 117.

- Q. You're on oath. You said it wasn't worth anything now you say it's worth, you say \$2,000.
- A. It's worth \$2,000 but never paid the money.
- Q. Now you're saying they didn't pay?
- A. Yes Madam.

[76] I simply did not believe Mr [Prakash]'s evidence in relation to the boat. His answers were evasive and his evidence implausible. I am satisfied that the boat and trailer were in his possession at separation and more than likely are still in his possession.

[77] Counsel for Ms [Gupta] is seeking an order for the boat to be sold. I see little point in doing so because I am satisfied that Mr [Prakash] would not co-operate. Accordingly, I attribute the value of \$6,000 to the boat and trailer and Mr [Prakash] is to account to Ms [Gupta] in the sum of \$3000.

Cash

[78] Ms [Gupta] alleges that Mr [Prakash] held \$10,000 in cash from his various businesses in the family home at the date of separation. Mr [Prakash] denied this. While I am suspicious about this, I find there is no evidence to support this claim.

Business interests

[79] At the date of separation, the parties had business interests in two food related shops. The first business, known as [company 1A], which was incorporated in 2014. Ms [Gupta] was the sole director and shareholder. However, in August 2015 Mr [Prakash] was appointed as sole director and in September became the sole shareholder. The business [company 1A], which was operating out of [suburb deleted], was sold on 18 April 2017 for the sum of \$160,000.³⁰ On settlement, on 19 May 2017 some funds were paid and a balance of \$83,366.31 was due to Mr [Prakash] or the company. The balance of \$83,000 was paid into the bank account [company 1]

³⁰ BOD 133.

which was managed by Ms [Gupta]. Ms [Gupta] disclosed these bank accounts following the directions I made at the end of day one.

[80] Ms [Gupta] claims the funds which were in the MyMoney for business bank account were transferred back to Mr [Prakash] and that she is due a proportion of those funds. Mr [Prakash]'s evidence was that the bank account for the company MyMoney for Business was operated exclusively by Ms [Gupta] and that he was unable to access it. He claimed she retained the proceeds. I listened closely to their evidence. I do not accept Mr [Prakash]'s evidence that Ms [Gupta] operated and controlled this account to his exclusion or that he was unable to obtain bank statements for this account.³¹ Mr [Prakash] took over the company in 2015. There was many bank statements showing monies coming from the My Money Account into his account or transferred from this account into Mr [Prakash]'s account.

[81] On 19 May 2017 the sum of \$83,366.31 was paid into the account of MyMoney for Business.³² From that account the sum of \$35,000 was paid to a Mr [Prakash] (Mr [Prakash] claimed that it was not his brother) and from the balance of \$39,645, the sums of \$25,000 and \$10,000 were paid into Mr [Prakash]'s account on 26 May 2017.

[82] Counsel for Ms [Gupta] seeks an adjustment for Ms [Gupta] in the sum of \$41,683, being a half share of the \$83,000. I do not accept this. It is clear from the bank statements that joint bills were paid out of the proceeds of \$83,000, and the sum of \$35,000 paid to Mr [Prakash]. Mr [Prakash] acknowledged that in his evidence.³³ He argued however that this should be offset against monies he had expended on a trip the parties took to Fiji in September 2017 after separation. The evidence in that regard was difficult to follow and no receipts of the trip were tendered in evidence. Accordingly, I am satisfied there will be an order for Mr [Prakash] pay an adjustment sum of \$17,500 to Ms [Gupta].

[Company 1B]

³¹ NOE 147-152.

³² Affidavit of [Chhavi Gupta] dated 19 April 2023 statement 33.

³³ NOE 98 line 15 and NOE 108.

[83] The parties second business interest is a business known as [company 1B]. This was sold on 14 February 2016 prior to separation in the sum of \$170,000³⁴ to [company name deleted]. Mr [Prakash]'s evidence was that from 1 June 2017 to 9 November he had made a payment plan for the owners to pay the balance sum owing of \$55,000.³⁵ Mr [Prakash] alleged that Ms [Gupta] had received and retained the payments after separation. However, Mr [Prakash]'s bank statements revealed regular weekly payments being deposited into his account of \$1,000 per month or fortnight from [the purchasing company] from 19 June 2017 to 16 October 2017³⁶ a total of \$11,000. Despite initially claiming that Ms [Gupta] had received all the payments, he accepted in his evidence that he had received \$11,000.³⁷

[84] Mr [Prakash] claimed that he had not received any further funds from the purchasers but did not take any steps to recover the balance.³⁸ Despite the sale being by way of a written agreement, he said in his oral evidence that his lawyer had told him said he could not sue. This evidence was not contained in his earlier affidavit evidence. As I also noted, until the hearing Mr [Prakash] had not acknowledged that he had been receiving \$1,000 per week. In view of my earlier credibility findings about Mr [Prakash], I am not satisfied that he did not receive any further funds from the purchaser. My impression of Mr [Prakash] is that he is a capable businessman and I do not accept that he would simply walk away from \$44,000. Accordingly, I make an order that Mr [Prakash] is to credit Ms [Gupta] with half the balance of \$55,000 being \$27,500 which I round off to \$25,000.

Other debts

[85] Mr [Prakash] seeks an order that the Court classify the debts set out below as relationship property debts and that Ms [Gupta] pays him half.

[86] The debts Mr [Prakash] seeks to be classified as relationship debts are:³⁹

³⁴ BOD 133 at para 30.

³⁵ BOD 177.

³⁶ BOD 556-577.

³⁷ NOE 154.

³⁸ NOE 105 to 106 lines 16 onwards.

³⁹ BOD 338 and 339.

- (a) Company debts owed to [company 2], \$8,836.61;
- (b) [company 3], \$2,185;
- (c) [company 4], \$4,029;
- (d) [company 5], \$10,393.91;
- (e) [company 7], \$5,166;
- (f) [company 8], \$49,180;
- (g) [company 9], \$40,882.50; and
- (h) [accountant], \$28,964.

[87] I am satisfied that none of these are relationship debts as defined under s 20E of the Act. Mr [Prakash] acknowledged in his evidence that many of these debts were debts of the company that he operated, [name deleted]⁴⁰ In relation to the [company 6] Services debt for example the only evidence of this was a [company 7] demand. An invoice produced for [company 9] was 2014-2015 with no GST number. There was no cogent evidence of the debts which Mr [Prakash] claims are owed to his brother or other persons referred to as [names deleted] and that these are relationship debts.

[88] Accordingly, no adjustment is made in respect of these claims.

[89] However I am satisfied that the following debts are relationship debts:

- (a) the ASB bank debt as at October 2017 which is a charge against the home of approximately \$19,000; and
- (b) the BNZ credit card and Westpac credit card of \$5,064 and \$6,000.

⁴⁰ NOE 125 – 129.

[90] In summary, the only debts that have been proven as relationship debts are the credit cards and the ASB bank debts.

Other debts

[91] Ms [Gupta] accepts there should be an adjustment for water rates due at the date of separation. Accordingly, I make an order that any water rates or land rates due and unpaid at date of separation is a joint debt to be shared equally. If it has been paid then Mr [Prakash] is entitled to an adjustment in his favour for half the amount.

[92] Ms [Gupta] seeks an adjustment in her favour for payments made totalling \$5,247 that she paid for vehicles which were in the possession of Mr [Prakash] but registered in her name. This included \$1,064 for MOJ fines, credit control of \$1,148.89 and road user charges of \$2,664.37 of [company 7] fines of \$212 and [details deleted] of a further \$160. I am satisfied on the evidence that these were Mr [Prakash]'s debts and that he should reimburse Ms [Gupta] fully in the sum of \$5,247.97.

Result

[93] Attached to this decision as Appendix A are the orders which I have made in this decision which are summarised below:

- (a) The home at [address A] Manurewa is declared the family home pursuant to the Property (Relationships) Act.
- (b) The home is to be placed on the market for sale immediately and proceeds divided equally less adjustments which are summarised below.
- (c) Payment of \$5000 by the respondent to the applicant for occupation rent up to date of hearing. (See paragraph [58] of this decision).
- (d) Payment of \$33,742 by the respondent to the Applicant for rental income from [address A] up to the date of hearing. (See paragraph [60] of this decision).

- (e) The respondent is also to pay to the applicant half of all future rental income from the minor swelling from the date of hearing until settlement of sale of the family home. (see paragraph [61] of this decision).
- (f) Payment of \$3,750 by the respondent to the applicant as an adjustment for the cars. (See paragraph [72] of this decision).
- (g) Payment of \$3000 by the respondent to the applicant as an adjustment for the boat and trailer. (See paragraph [77] of this decision).
- (h) Payment of \$17,500 by the respondent to the applicant for her share of sale proceeds of [company 1]. (See paragraph [82] of this decision).
- (i) Payment of \$25,000 by the respondent to the applicant for her share of sale proceeds of [company 1B] (See paragraph [84] of this decision).
- (j) Payment by the respondent to the applicant in the sum of \$5,294.97 for payment by her of the respondent's personal debts post separation (see paragraph [92] of this decision).
- (k) All other matters are dealt with in the orders attached.

[94] Leave is reserved for the parties to apply on three days' notice for further orders or directions to give better effect to these orders or assist in its implementation.

[95] Ms [Gupta] has been successful in her application for orders under the Act and on that basis she is entitled to apply for costs. I direct that if Ms [Gupta] is seeking costs, she is to file a memorandum 14 days from the date of this judgment. Mr [Prakash] has 14 days thereafter to respond.

Signed at Auckland this 23rd day of August.2023, at pm.

R von Keisenberg
Family Court Judge

(Appendix A follows)

Appendix A: ORDERS

RELATIONSHIP PROPERTY ORDER
Pursuant to s 25 and 33 of the Property (Relationships) Act 1976
(Before Judge R von Keisenberg)
23 August 2023

FAM:2019-092-00015

IN THE FAMILY COURT
AT MANUKAU

I TE KOTI WHANAU
KI MANUKAU

[CHHAVI GUPTA]
Applicant

v

[ARPIT PRAKASH]
Respondent

UPON APPLICATION MADE TO IT, THE COURT MAKES THE FOLLOWING
ORDERS:

Family home

1. The property situated at [address A] Manurewa, Auckland, more particularly described as [details deleted] is declared the family home pursuant to the Property (Relationships) Act 1976.
2. The property situated at [address A] Manurewa, Auckland, more particularly described as [details deleted] (hereinafter referred to as “the family home”) shall be sold on the following terms and conditions;
 - (a) In the event that the respondent undertakes to the Court he will co-operate with the sale then;

- (i) A half share of the property shall vest in the Applicant, and the parties will own the property as tenants in common in equal shares.
- (ii) Within 21 days the applicant and respondent shall agree upon a real estate agent to list the property for sale, and in the event of non-agreement the President of the Real Estate Institute of New Zealand shall appoint the vendors real estate agent. Both parties shall forthwith do all such things necessary to co-operate and consult on an ongoing basis with the vendor's real estate agent, including allowing the erection of sale signage at and around the property and entry by the real estate agents with prospective purchasers at all reasonable times.
- (iii) The applicant and respondent shall forthwith do all things necessary to ensure that the property is properly exposed to the market, marketed, and sold to achieve the best possible price pursuant to these orders.
- (iv) No party shall do anything to diminish the property's value.
- (v) The property shall be listed for sale at such sum as advised by the nominated real estate agent, and as agreed in writing by the applicant and the respondent. Failing agreement, the property will be listed for sale at a price to be approved by the Court.
- (vi) Within 21 days the parties shall agree upon a solicitor to attend to the conveyancing upon the property sale, and in the absence of agreement a solicitor shall be appointed by the President of the New Zealand Law Society.
- (vii) Each party shall do all such things as may be necessary to sell the property including the execution of all documentation required to achieve a sale. For the avoidance of doubt, in respect to any agreement presented the parties are required to immediately respond to requests for instructions from either the vendor's real estate agent or the vendors' solicitors. In the

absence of such co-operation the Registrar shall be authorised to execute any/all documents required to give effect to the property's sale pursuant to these orders.

- (viii) The proceeds from sale, after payment of the usual expenses associated with sale, and settlement of any mortgage obligations and other charges against the property are to be held in the trust account of the parties nominated solicitor for division in accordance with the further terms of this order.
- (b) In the event the respondent does not undertake to the Court he will co-operate with the sale of the property, the;
- (i) The property shall vest solely in the applicant and be registered in her sole name.
 - (ii) Within 21 days the applicant shall appoint a real estate agent to list the property for sale.
 - (iii) The applicant and respondent shall forthwith do all things necessary to ensure that the property is properly exposed to the market, marketed, and sold to achieve the best possible price pursuant to these orders. The respondent will allow any prospective purchasers and the appointed real estate agent access to the property at any reasonable time.
 - (iv) No party shall do anything to diminish the property's value.
 - (v) The property shall be listed for sale at such sum, as advised by the real estate agent, agreed with the applicant, and as approved by the Court.
 - (vi) Within 21 days the applicant shall appoint a solicitor to attend to the conveyancing upon the property sale.
 - (vii) Each party shall do all such things as may be necessary to sell the property.
 - (viii) The proceeds from sale, after payment of the usual expenses associated with sale, and settlement of any mortgage obligations and other charges against the property are to be

held in the trust account of the nominated solicitor for division in accordance with the further terms of this order.

Adjustments in relation to the family home

3. The respondent will pay to the applicant the sum of \$33,741 being a half share of the rental income earned in relation to the separate unit at the family home since the date of separation to the date of hearing in April.
The respondent will account and pay to the applicant half the rental earned from the unit from the date of hearing until the date of settlement of sale of the family home.
4. In the event the mortgage debt to BNZ has increased from the date of separation to the date of settlement of the sale, then the additional debt will be the separate property of the respondent, and an adjustment in favour of the applicant will be made accordingly.
5. In the event there are arrears incurred to the Auckland Council due to non-payment by the respondent then the respondent will be solely responsible for the arrears, and an adjustment in favour of the applicant will be made accordingly.
6. The respondent is solely liable for the water rates account payable from the proceeds from sale of the family home.
7. Both parties will be equally responsible for the Real Estate fees and commission, and legal costs associated with the conveyancing associated with the sale.
8. The applicant Ms [Gupta] will be solely liable for the repayment of any sum due to the Legal Services Commissioner from the net proceeds, and an adjustment in favour of the respondent will be made accordingly.
9. The following debts will be paid out of the net proceeds of sale:

- (a) The amount due to ASB to settle the repayment of the charging order;
and
 - (b) The sum of \$5,064.56 to the BNZ credit card debt;
 - (c) The sum of \$6,708.32 to the Westpac credit card debt.
10. Upon the payment of the above, the net proceeds of sale will be divided equally subject to the further adjustments ordered below.

Household chattels

11. The respondent will pay to the applicant an adjustment sum \$500.00 in respect to the household chattels and thereafter each party will retain any household chattels in their possession as their separate property.

Motor vehicles and Boat

12. Each party will retain as their separate property the vehicles in their possession. In order to equalise the division of the motor vehicles, the respondent will pay to the applicant the sum of \$3,750.00.
13. The respondent will pay the applicant the sum of \$3000 for her half share of the boat and trailer and thereafter the boat and trailer will be the separate property of the respondent.

Business interests

14. The respondent shall pay to the applicant the sum of \$17,500 being a half share of the net proceeds received by the respondent from the sale of [company 1's restaurant].
15. The respondent shall pay to the applicant the sum of \$25,000 being the balance of the net proceeds received by the respondent from the sale of [company 1's other restaurant in a different suburb], after the date of separation.

Bank accounts

16. Each party will retain their bank accounts as their separate property, and any balances held in those accounts on 10 June 2017 shall be divided equally between the parties.

Post separation contributions

17. Upon proof of payment, the applicant will pay to the respondent a half share of any land rates and house insurance payments that he paid in respect to the property from the date of separation to the date of this order.
18. The respondent will pay to the applicant the sum of \$5000 being occupation rent for the period of the respondent's exclusive occupation of the property.
19. The respondent will pay to the applicant the sum of \$5,247.97 in respect to the debt incurred and paid by the applicant that related to the vehicles in the possession of the respondent.
20. Leave is reserved to apply for further orders or directions to assist in the implementation of this order.