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IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

A 279/84

BETWEEN JENNIFER ANNE LUNDON
Plaintiff

AND ALLEN JAMES GRAY
Defendant

Hearing: 9, 10, 12 December 1985

Counsel: J.A.L. Gibson and Miss C.B. Matthews for Plaintiff
P.J. Tait-Jamieson for Defendant

Judgment: 14/3/86

INTERIM JUDGMENT OF HERON J.

This is an action brought by the Plaintiff, the de facto wife of the Defendant, and seeks a division of the proceeds of the sale of the home occupied by the Plaintiff and the Defendant at Chatsworth Road in Silverstream, and a division of the chattels contained in that property. The claim is brought pursuant to Section 140 and 143 of the Property Law Act 1952. A further claim in respect of a medical practice owned by the Defendant was not continued but the Plaintiff seeks orders for the share of other property including chattels, investments and savings in bank accounts. The additional assets in the further claim were not particularised in the pleadings but have emerged from the evidence. The house property and certain chattels formerly contained in the property were owned as tenants in common in equal shares, and there is owing out of the proceeds of the

sale the sum of $15,000 for her share of a section subdivided from the home now sold. There is little difficulty between the parties as to the division of those proceeds but for the further claims made by the parties. In respect of the acquisition of further property the Plaintiff claims an equal share by virtue of an express or implied trust.

It is common ground that the Plaintiff left the property on 14 March 1984 and the Defendant, by counter-claim, seeks an adjustment to the otherwise equal division between the parties, by requiring judgment for a sum equal to the share in the continuing outgoings that the Plaintiff would have been responsible for as a joint owner but which the Defendant himself paid. On 14 March to the date of sale those amounts, which I deal with in detail later, involve rates, insurances, cleaning expenses, mortgage payments and other outstanding loans referable to the property. There is also a claim for work done on the property which it is claimed should be shared. It is further alleged that whilst the property was being sold there were efforts by the Plaintiff to frustrate the sale, which resulted in damages of $10,000 and additional legal costs ($500) to the parties. In addition the Defendant says that in the acquisition of the furniture and fittings contained in the property, and presumably partly reflected in the sale price, the Defendant incurred certain debts and that those debts, along with the debts secured against the property should be also paid to the Defendant as to half, the Defendant having now met those debts. A further claim is mounted on the basis

that the Plaintiff incurred debts in her own name which the Defendant having paid, and being debts incurred prior to the date the parties separated, should likewise be refunded to the Defendant. A further claim is made in that following separation the parties took jointly owned chattels with them and an adjustment between the difference in their respective cumulative values should be made. In this brief review of issues between the parties one can immediately see that what is being sought here is the relief generally available to married persons pursuant to the Matrimonial Property Act 1976 dealing as it does with real and personal property, indebtedness and the miscellaneous adjustments that need to be made following separation. The acknowledged difficulty in this case is that the parties never married, and that the dispute must be resolved by reference to quite different principles. I should say that in the approach they took to this case, counsel from time to time were tempted to wander into the area of the Matrimonial Property Act 1976 and invited me to apply that criteria. These principles cannot be imported into the resolution of disputes between two persons whom the law regards as strangers.

The Plaintiff suggests, by reference to the proceeds that are held in a solicitor's trust account, that that sum be divided equally and that from the amount due to the Defendant, the sum of $15,000 be paid to the Plaintiff in recognition of the section transaction that I have already referred to. There appears to be no objection to that course so far as it goes,

and that will be a starting point in dealing with the funds which are presently the proceeds of sale. Thereafter and depending on the orders made by this Court, it is further suggested that since 14 March capital content of any mortgage payments made be acknowledged the equal responsibility of both parties, and that the Plaintiff pay from her share of the funds due to her, being half the sum in the solicitor's trust account plus $15,000, a payment of half to the Defendant, and further that whatever other money is agreed or ordered to be owed or paid by the Plaintiff to the Defendant, be calculated and deducted from the Plaintiff's share in a similar fashion. The Plaintiff then proposes that in regard to certain specific items distinguished from the above largely because they are items not relating to the reduction of the mortgages on the property be dealt with as follows.

Rates and insurance should be the Defendant's responsibility, and likewise an item for cleaning the property prior to sale. Mortgage repayments paid by the Defendant from his bank account be shared equally between the Plaintiff and Defendant, but only to the extent that they represent principal repayments. There is a further dispute as to amounts due on term loan accounts to the ANZ Bank at Upper Hutt, and a dispute as to work done on the property and the responsibility for payments pursuant to a mortgage secured over another property but advanced to the Defendant.

Further matters outstanding between the parties arise as a result of the counterclaim by the Defendant seeking a refund by the Plaintiff of a half share in debts incurred, namely the sum of $4,476.93, being an overdrawn amount in the medical practice account run by the Defendant, debts of $12,923.57 on miscellaneous credit cards and a further sum of $19,190.67 to Broadlands.

The Plaintiff's further claim to chattels and other property.

The Plaintiff in this case, set out to demonstrate that there were items of property belonging to the Defendant to which the Plaintiff is entitled. As to the major assets the case raises no difficulties because the property was in fact jointly owned and has now been divided and a number of items for consideration were acquired pursuant to that acknowledged joint arrangement. The Plaintiff, not having pleaded the same specifically, asks the Court to hold that certain further items of property are held on trust for the Plaintiff pursuant to the principles in Gissing v. Gissing 1971 A.C. 886 and asks this Court to infer a common intention to own such property jointly from the conduct of the parties, and failing such common intention to perhaps accept the invitation held out in Hayward v. Giordani 1983 NZLR 140 to apply a doctrine expounded by the majority of the Supreme Court of Canada in Rettkus v. Becker 1980 117 D.L.R. (3d) 257 and impose a constructive trust by virtue of the unjust enrichment that might well flow if that was not done. There are three items which require

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consideration. A gun collection, investments in film companies and bank accounts.

I deal firstly with the gun collection. The evidence was that the Defendant owned a number of guns prior to his association with the Plaintiff and was a collector in a modest way. It would seem that some of those were sold and others purchased during the time the parties lived together. I do not think there is anything in the evidence to suggest it was agreed between the parties that those sort of chattels would belong jointly. New acquisitions were probably acquired out of the proceeds of old, wholly or if not at least in part. Nor do I think the arrangements was such that all acquisitions were subordinated to the concept of joint ownership simply because the house and the household chattels were clearly so. Nor was there any contribution in money by the Plaintiff which might on the present state of the law, have raised a suggestion of a constructive trust. The point must be made that apart from the fact that some of these chattels were acquired during the time the parties lived together there was no contribution to their acquisition made by the Plaintiff by the payment of money. They were separately acquired.

Furthermore the parties regarded property which had belonged to them prior to living together as their individual property and if they had any common intention at all I think it was that apart from furniture and fittings and domestic chattels as such property acquired individually would remain with the individual.

The same must be said for the investment in films. In respect of one particular film investment the Plaintiff holds an interest in her own right, which is the best illustration that they were separate acquisitions personal to the individual in whose name they were taken. But as the defendant's accountant made clear those investments had their value in the deduction allowable against income rather than their ongoing value. Again these were assets acquired from personal borrowings in the large part and were relevant to the Defendant's professional occupation so far as deductibility for income tax purposes was concerned. The evidence is that these investments have little or no value. There was no intention, express or implied, to treat them as joint property.

The evidence disclosed some miscellaneous bank accounts in fictitious names instigated by the husband. Again I do not think the evidence takes this matter any further than establishing that they were the Defendant's own accounts put into names of relatives, but at all times belonging to the Defendant. In a number of instances they held funds borrowed from the Defendant's father or mother. It has been suggested that they had a more sinister connotation but the amounts were small and again I am not prepared to hold that they belong other than to the Defendant. I think it should be recorded that Mr Gibson, as the evidence proceeded, and the value of the articles which he sought to include in the Plaintiff's entitlement assumed small proportions, indicated to the Court

that the Plaintiff was motivated by suspicions aroused by the matters I have mentioned and has pursued this inquiry to what is an inconclusive end. There seems a complete absence of common intention to treat these accounts as joint property.

If this case was being dealt with between husband and wife it would be a matter of strict accounting, depending largely on the date when the property was acquired, but here it is not an inquiry with anything like that precision.

Mr Tait-Jamieson on the other hand invites me to apply concepts of partnership to the relationship between the parties. He referred to Sections 4 and 5 of the Partnership Act 1908, and the rules relating to the determination of the existence of partnership, requiring as it does a relationship which subsists between persons carrying on a business in common with a view to profit. I do not think that could accurately describe what happened here and I am not prepared to accept submissions that that is the way in which the matter should be considered. Counsel relies on that submission in order to invoke Section 27 of the Partnership Act 1908 which provides that in the absence of agreement to the contrary profits and losses will be shared between the partners. That submission is made to enable the various debts which the Defendant now seeks to set off against the Plaintiff's entitlement in the property, to be taken into account.

I think the answer is to be found elsewhere. The Court is exercising its powers pursuant to Section 140 relating to the sale of jointly owned property and jointly owned chattels. Section 143 (1) enables orders for division and allows the Court to make such order and give such consequential directions as the Court or a Judge thinks fit. Likewise the Court has the power to direct the sale of land, and a division of the proceeds. It seems to me an integral part of the division of any proceeds that adjustments can be made in respect of debts which are secured on or which have been incurred in the acquisition of such property. Not to do this would make the division entirely artificial, the gross proceeds only being distributed. Not only that, but in my view I am required to look at the debts to see if they can be truly regarded as applying to the property and the chattels contained therein, or relate to other matters which were not the subject of the joint ownership, and by way of illustration, out of which various chattels may have been acquired by Dr Gray and which I have held to be his own property. There may well be some possessions which fall into that category so far as Mrs Lundon is concerned.

In Bourke v. Bourke 1983 2 NZFLR 55 Bisson J. considered the appropriate orders on an application for division of proceeds pursuant to Section 140. In that case he said:

> "However it has been recognised in suits for partition or sale that one co-owner is entitled to equitable relief if he has added to the value of the property by the expenditure of his own monies in repair and improvements. But he will be required as a condition of his equitable

> relief to pay an occupation rent for any part of the property of which he has been in personal occupation."

In that case the principal reduction which Bisson J. treated as payments going to improvement in value were offset by the likely rental for the use and occupation over a period of approximately four years. Here the payments made as I have dealt with them but including interest would be in excess of the notional rental which the Defendant should pay so it is a real issue as to whether I further analyse the payments made into principal and interest. This would in fact involve further information and an inquiry would have to be ordered to ascertain this, but it can easily be done.

As in Hargreaves and Anor. v. Fleming 1975 NZLR 209 principal repayments present no difficulty. The circumstances here were however that the Defendant remained in occupation a relatively short time only and the property was put on the market and nearly sold a few months following separation. Delays in the sale were attributable to the absence of agreement between the parties so to that extent the occupation enjoyed by the Defendant was not entirely a matter of convenience for him, nor was it on the facts completely acquiesced in by the Plaintiff. Had the Defendant decided not to meet the payments under the respective mortgages the parties would have incurred substantial penalties and no doubt default proceedings might have been taken with an attendant risk of enforced sale and a lesser price. Whereas in Bourke the meeting of interest payments over a long period was not considered as a

contribution to the value of the property and the same approach seems to have been taken in Hargreaves v. Fleming (supra).

I think there is a difference in the situation which occurred here. In my view the action of continuing to meet all of the outgoings for this short period was essentially protective of the value of the property to both parties and in the result has led to the Plaintiff receiving a half share enhanced by the actions which the Defendant took. It would seem a strange result if the occupier of property pending its sale and after the co-owner had left possession to him, should be encouraged by the law to abandon the obligation he accepted under mortgages because he will be faced with no right of adjustment with his co-owner in respect of interest and other payments on a division of the proceeds. That may well be the case where the assumption of liability under mortgages is treated as the ongoing payment for the use of the property but here the circumstances were short term to the certain knowledge of both parties. A sale of the property was the inevitable result of the separation in the circumstances here.

Cases such as In Re Jones Farrington v. Foster 1893 2 Ch 461 were decided of course in circumstances uncomplicated by inflation. Often the mere payment of interest on a mortgage and otherwise meeting its terms is a factor in preserving and indeed enhancing the value of the property. This case is not such a case but I see difficulties in drawing too fine a distinction between principal and interest payments so far as

adjusting the rights of co-owners inter se are concerned. As Cotton L.J. said in Leigh v. Dickenson 15 QBD 60;67:

> "Therefore, no remedy exists for money expended in repairs by one tenant in common, so long as the property is enjoyed in common; but in a suit for a partition it is usual to have an inquiry as to those expenses of which nothing could be recovered so long as the parties enjoyed their property in common; when it is desired to put an end to that state of things, it is then necessary to consider what has been expended in improvements or repairs: the property held in common has been increased in value by the improvements and repairs; and whether the property is divided or sold by the decree of the Court, one party cannot take the increase in value, without making an allowance for what has been expended in order to obtain that increased value; in fact, the execution of the repairs and improvements is adopted and sanctioned by accepting the increased value. There is, therefore, a mode by which money expended by one tenant in common for repairs can be recovered, but the procedure is confined to suits for partition. Tenancy in common is an inconvenient kind of tenure; but if tenants in common disagree, there is always a remedy by a suit for a partition, and in this case it is the only remedy."

It is interesting to note however that the conclusion just referred to came only after considering the situation where the parties were compelled to repair i.e. bound to third parties to repair. It was accepted that to that extent a right of contribution between tenants in common might well exist not separately but on a partition. Lindley L.J. whilst concluding that a suit for partition was the only remedy confirms that within that remedy "the rights of the various owners can be properly adjusted". I do not think these authorities are in any way restrictive of a proper adjustment in respect of all outgoings required to be paid by the joint owner as between such owners.

The cases relating to partition seem to be concerned with voluntary assumption of liability for payments in respect of the subject property and then a claim for recovery. Here there was a joint obligation to meet all of the above outgoings. Finally it must not be overlooked that the Court is exercising an equitable remedy and the requirement of a payment of an occupation rent is a means of ensuring that sums expended in the maintenance and upkeep of the property should be adjusted only after reciprocal benefits have been acknowledged.

The law is not particularly sophisticated or flexible in this area. The action for partition no longer exists in England since 1926, the matter now being resolved by application of principles under the law of trusts and in my view there is in New Zealand a need for statutory directions as to adjusting rights between co-owners because the circumstances vary considerably and such ownership is becoming more common. As was acknowledged in Leigh v. Dickenson 15 QBD 60:

"Tenancy in common is a tenure of an inconvenient nature, and it is unfit for persons who cannot agree amongst themselves; but the evils attaching to it can be dealt with only in a suit for partition or sale, in which the rights of the various owners can be properly adjusted."

Lindley L.J.

The counterclaim has a number of parts to it. Common to the first part are claims for a refund by the Defendant of half the outgoings being the various mortgages and related expenses concerning the property which were the contractual

responsibility of both parties but were from the separation paid by the Defendant alone. That is not to say that previously the Plaintiff in fact shared the responsibility for payment. The only income sufficient to attempt to meet this level of outgoings came from the Defendant's medical practice. I consider the circumstances of this case allow me to make proper adjustments inter se as follows.

The rates figured claim needs a slight adjustment because some of the rates were in fact paid from settlement proceeds and are thereby being shared equally in any event. The proper figure is $579.25 in respect of rates, and the Defendant on the counterclaim is entitled to a refund of half that amount. Likewise the insurance premiums should be shared.

The Defendant gave evidence that into the joint account following the separation on 14 March he made further payments, all of which went to pay outgoings which were the joint responsibility of the parties. In effect he says that the amounts shown as owing on the settlement statement of solicitors Roache Cain & Chapman would have been increased by the amount of the instalments that he met pending the sale. It seems to me that the evidence established, with some minor adjustments, all the amounts set out in paragraph 5 of the the counterclaim and it is appropriate that the Defendant receives half those amounts from the Plaintiff by way of adjustments to the monies now owing to them both. The amount in respect of

the Post Office mortgage is to be reduced by $209.92, as it would seem the December instalment was never paid, the loan having been repaid by that time.

In respect of the mortgage payments due on the first mortgage the same comment can be made. The February instalment was paid whilst the parties shared the property. The December instalment was anticipated by the repayment of the loan itself. Accordingly the figure for mortgage payments paid by the Defendant on the first mortgage is reduced to $3,004.80. Likewise the amount in respect of the Medical Securities Ltd mortgage is reduced to the sum of $3,756.32 as only eight instalments were paid, the final instalment being anticipated by repayment of the mortgage. The Defendant also funded payments in respect of a term loan account out of the same joint account at the rate of $255.24 per month, and nine instalments of $255.24 totalling $2,297.16 were made, plus a further sum for interest of $255.14 was met on this loan by the Defendant. In addition the Defendant paid the mortgage instalments on a property owned by his father which had been mortgaged to provide funds to him and two payments totalling $825 were made in this period. This mortgage is in a slightly different category in that it seems that any obligation was that of the Defendant alone. However the Plaintiff appears to accept, by virtue of the further particulars, that it was a loan relevant to the acquisition and outfitting of the Chatsworth Road property and has allowed the principal sum outstanding to be repaid out of the joint proceeds. That being

so it seems to me that I can regard it as joint responsibility and if that is so it is appropriate to have the Plaintiff contribute to her half share of the further instalments that were required to be paid.

That leaves two items for further consideration. An amount for the cleaning of the property of $210. It seems to me that is an expense incurred in relation to the property but more relevant to the Defendant's use of it and unrelated to its maintenance pending sale. It seems to be in that category of voluntarily assumed liabilities for which there is no recourse against co-owners.

The evidence satisfies me that the account for grading, levelling and metalling the drive was in respect of the property jointly owned but it seems to have been voluntarily assumed as an expenditure on improvements. I consider it should be allowed on that ground.

Mr Tait-Jamieson submitted that the rule in McCormick v. McCormick 1921 NZLR 384 prevented recourse by one co-owner against another for any compensation for the use of the property, in this case for approximately nine months between March and December 1984. On the other hand he said that there was no impediment to his counter claim for a return of both principal and interest paid in respect of mortgages and the other relevant outgoings between one co-owner and another. In his case both principal and interest are sought together with

those outgoings which go to the maintenance, upkeep and retention of the property. So the Defendant is seeking somewhat more as co-owner, namely a reimbursement of all expenses incurred. Should he be lible to pay something for the use and occupation of the home, albeit reluctantly and for a relatively short time? It provided him with a home which he would otherwise have had to find at some expense.

In McCormick v. McCormick (supra) Salmon J. said at p.387:

> "In this state of the authorities I prefer to follow the express and definite decision in Griffies v. Griffies that there is no general right even in a partition suit to charge an occupying owner with an occupation rent. I think that the obligations of co-owners to account to each other are the same in equity as at law, and are the same in a partition suit as in other proceedings, save only that in a partition suit if an occupying owner claims an allowance for his expenditure he can obtain it only if he consents to be charged with an occupation rent."

But as I have allowed a substantial reimbursment of expenses whilst the Defendant was in occupation I have only done so on the basis that an occupation rental should be paid and that the authorities require it as a precondition to a refund of expenses. There was evidence that a rental of between $120 - $150 was appropriate for this house and I think the appropriate figure is $120 per week for nine months. Such a rental is of course the property of both parties and only half of the amount is required to be paid or adjusted between the Defendant to the Plaintiff. As he seeks in his counterclaim an order for half of the amount of the various outgoings then he should give credit for the rental I have fixed. The total rental for the period in question I fix at $4,680.

That deals with the claim by the Defendant for a sum equal to the share the Plaintiff was responsible for as joint owner during the period where the Defendant remained in the property and until its sale. It seems to me that that is simply a matter of adjustment between the parties, they being otherwise jointly responsible. The matter is not advanced by concepts of desertion or liability to maintain. The parties were content to leave their relationship in this informal fashion and it seems that one must simply apply legal principles of joint ownership to the relationship in endeavouring to adjust the entitlement to the proceeds.

Damages and costs for delaying the sale

On the evidence it seems that every effort was made to dispose of the property as soon as possible. I am not prepared to accept that the part the Plaintiff played in delaying the sale gave rise to any loss. She was a registered proprietor and entitled to be consulted and to refuse to sell if she thought it was not appropriate to do so. In the end the property was sold and I do not allow any claim for additional legal costs there were in dealing with the situation where the two proprietors could not agree on the method of disposal.

The Defendant also counterclaims as follows:

> "9. That to provide carpets and floor coverings and complete the property during the time the Plaintiff was resident there the Defendant overdrew his medical practice account in the sum of $4,476.93, incurred debts of $12,923.57 on his credit cards and incurred a debt of $19,190.67 to Broadlands. The Defendant is entitled to a contribution from the Plaintiff in the sum of $18,295.58."

The Defendant seeks from the Plaintiff some share in the capital deficit in his medical partnership account. He says that that money went mainly to maintain the property and into general living expenses. That may be so, but it has not been established to my satisfaction, and I know of no legal basis on which a claim can be made against the Plaintiff for any share of that. The parties were living together, living I may say clearly beyond their means, a fact that was more obvious to the Defendant than it was to the Plaintiff, who was in my view somewhat naive about these matters. Nevertheless there is no basis contractually or otherwise that could possibly involve Mrs Lundon in having to share a liability to the medical partnership. Again the parties have applied the statutory principles that are now available by virtue of Section 20 of the Matrimonial Property Act 1976. In no way can those principles be transferred across to two persons who are legal strangers. I have already determined that in my view the parties were not in partnership. The only joint liability they had was by virtue of the ownership of the property and the joint responsibility flowing from that.

The next item of $12,923.57. The Plaintiff says that the debit balance on the Marac Cash Management Account is largely explained by a payment of $6,600 to his bank to reduce the

amount of the overdraft in September 1983 when the parties were still living together and it was a result of pressure brought on him by the bank. But on further consideration the Defendant accepted that that amount had really been used to fund a personal debt, namely his tax liability. Nor is he able satisfactorily to link the amounts that he borrowed in his personal capacity clearly to meet the imbalance that was occurring as a result of the extent of his commitments on the house property and otherwise, to any liability that the Plaintiff should be involved in as a joint owner of the property. No doubt in the matrimonial context they were debts which related to the upkeep of them both and it seems the monies were borrowed in one case to repay or to fund the surgery account.

The Broadlands' debt is much the same. It comprises three loans, one of $5,000, one of $4,200 and one of $10,000, together with accumulated interest. The latter two loans were raised to pay debts incurred shortly before the Plaintiff departed. The $10,000 loan was required to meet a tax commitment. The first loan of $5,000 is suggested as a rollover of liability incurred in the acquisition of certain chattels. But it was in the Defendant's own name, both then and earlier, and without some acknowledgment on the part of the Plaintiff that she should be responsible for it jointly I am unaware of any authority which would enable me to hold that this was a joint liability even if I was completely satisfied that part of it was incurred in the acquisition of fittings in

the property. It follows from what I have said that the Defendant does not succeed in respect of this part of his counterclaim.

The Plaintiff's debts in her name

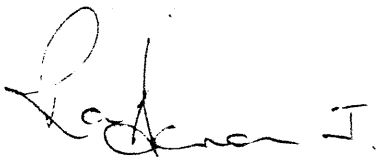
The evidence seems to be that the Plaintiff incurred certain debts in her name. Again the matter is complicated by considerations of husband and wife relationships. The evidence is that the Plaintiff has made some payments in reduction of the account, but the admission of the Plaintiff contained in the particulars is sufficient in the absence of any other evidence to accept that the account is in the Plaintiff's own name. In the absence of any agreement that the Defendant has accepted liability for the amount it remains the liability of the Plaintiff. But in this case the Defendant has paid the various accounts without, it would seem, immediately seeking payments from her, but now seeking recovery. But again if the Defendant wishes to meet those obligations, presumably pursuant to some obligation he felt, having regard to the fact that the parties had been living together for some time, then it seems to me there is no cause of action entitling him to seek recovery. No authority for such a proposition was advanced. It is clear that for a period of time he was meeting similar accounts no doubt for the reason that the Plaintiff was living with him. I would disallow the whole of paragraph 10 of the counterclaim.

I come now to the chattels. In Hargreaves v. Fleming 1975 NZLR Casey J. held that whilst there was no specific right to direct a sale pursuant to Section 143 there was an implicit right based on the long practice of the Chancery Court in England to do so on the dissolution of a partnership. However Casey J. was reluctant to make the sort of orders that are sought here, namely that there should be a partition in fact but then a compensating monetary adjustment. He said that that was going further than an order for division of chattels or consequential directions and appears to be something more properly left to the agreement of the parties. This was the point that I was endeavouring to make during the trial, and the parties have not been able to see their way clear to do this. They will however see the difficulties the Court is in in giving effect to individual requests for chattels without a division overall.

I invited the parties to endeavour to settle the question of the possession of the chattels and I am going to give them another opportunity of doing so. At this stage I do not have sufficient evidence for me to embark on a division of the chattels pursuant to Section 143. To do so I would need to know not only their value, but the particular requirements of the Plaintiff and the Defendant. The Plaintiff has expressed a certain requirement that chattels be vested in her name, and is resistant to any suggestion that there be an order for sale. The Defendant on the other hand is attracted by the suggestion that there be an order for sale, but that may be brought about by a motive to inconvenience the Plaintiff. If this matter is

not resolved the parties are to submit a schedule of the particular chattels, in whose possession the chattel is, evidence of it being jointly owned and the use to which it is put, and the reasons which should be advanced for it being retained by one party or the other. That part of the claim and counterclaim is adjourned.

The parties will now see the way in which the money should be divided and the various adjustments which are to be made. This is an interim judgment and leave will be reserved to any party to apply for directions to give effect to the orders that I have made or declined to make. I will make interim orders in precise terms for the division and payment out of the monies held by the solicitors in accordance with the findings that I have made if the parties cannot agree overall.



Solicitors

Macalister, Mazengarb, Parkin & Rose for Plaintiff

Salek, Turner, Cuttance & Partners for Defendant