Faulks v Cameron [2004] NTSC 61

PARTIES:	JUDITH JOY FAULKS
	v
	ANGUS JOHN CAMERON
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	DE FACTO RELATIONSHIPS ACT
FILE NO:	89/04 (20415362)
DELIVERED:	11 November 2004
HEARING DATE:	22 October 2004
REASONS OF:	ACTING MASTER YOUNG

CATCHWORDS:
De facto Relationship - property adjustment - contribution to superannuation - De facto Relationships Act 1991 (NT) ss 3, 18(1)(a), 45, 44(2) - separation Agreement - course of correspondence - Electronic Transactions Act (NT) s 9

CASES:
Green v Robinson (1995) 36 NSWLR 96; *King v Kemp* (1995) 127 FLR 279; *Killick v Killick* (1996) 21 Fam LR 331, followed

Dowrick v Sissons (1996) 20 Fam LR 466; *Arnold v Dalton* (2002) 84 SASR 482; *Fiket v Linco* (1998) 23 Fam LR 272; *Evans v Marmont* (1997) 42 NSWLR 70; *Deans v Jones* [2003] NTSC 117*; Torrac Investments Pty Ltd v Australian National Airline Commission* (1985) ANZ Conv R 82, referred to

REPRESENTATION:
Solicitors:

Plaintiff:	Northern Territory Legal Aid Commission
Defendant:	Unrepresented

Judgment category classification:	C
Judgment ID Number:	Acting mas1104
Number of pages:	18

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
AT DARWIN

No. 89 of 2004 (20415362)

Faulks v Cameron [2004] NTSC 61
89/04 (20415362)

BETWEEN:

JUDITH JOY FAULKS
Plaintiff

and

ANGUS JOHN CAMERON
Defendant

ACTING MASTER YOUNG: REASONS FOR DECISION

(Delivered: 11 November 2004)

[1] The plaintiff seeks an order for adjustment of property under Division 3 of Part 2 of the *De Facto Relationships Act*.

[2] On 3 August 2004 Master Coulehan made an order for substituted service on the defendant by service by pre-paid mail at the defendant's parents address and also by sending copies of the documents by e-mail to the defendant's last known e-mail address. Service was effected in accordance with the order.

[3] The defendant did not file an appearance, appear at trial or otherwise participate in the proceedings. As will be seen, the evidence suggests that the defendant now resides overseas, possibly in Ireland, and does not wish to have anything to do with the proceeding or its subject matter.

[4] The plaintiff relied upon an affidavit for the bulk of her evidence-in-chief. The affidavit was deficient in important respects. It did not, for example, contain a comprehensive list of assets and liabilities. This was largely remedied by oral evidence in which the plaintiff referred to relevant financial resources such as superannuation and gave evidence about her income and the financial position of a partnership conducted by the parties. I am satisfied this deficiency was merely the result of oversight but in this type of proceeding it has been suggested that there is a duty to make full and frank disclosure of all relevant circumstances, independently of any order for discovery: *Dowrick v Sissons* (1996) 20 Fam LR 466 at 472.

Property and financial resources

[5] The principal asset of the parties is a house and land at Napier Road, Katherine. The parties also conducted a mango and citrus growing partnership called "Redgum Produce" from this property.

[6] The plaintiff proposes to sell the property. There was no expert evidence about its value but a copy of an e-mail dated 20 January 2004 containing a real estate agent's appraisal was annexed to the affidavit of the plaintiff. The appraisal suggested that a sale price of $470,000 to $480,000 was "achievable". In fact, the evidence disclosed that the property has been listed for sale at $440,000 for five months before the hearing with little interest from potential buyers. The plaintiff is currently considering a reduction in the asking price. The plaintiff gave evidence that she would be liable for real estate agent's commission of 4.4 percent ($18,480 if the property is sold for $420,000) and conveyancing fees of about $1,000 when the property is sold.

[7] In addition to the property at Napier Road the assets of the parties include farm equipment worth, according to the plaintiff's estimate, about $30,000. She gave evidence that the farm equipment comprised a tractor worth, again in her estimate, about $18,000 and some other equipment such as a spray rig and slasher. I accept the plaintiff's estimate of value. Although not the subject of expert evidence the estimate does not seem unreasonable having regard to the

depreciation schedule attached to the "Redgum Produce" financial statements for the year ended 30 June 2003. The schedule appeared to value the farm equipment at about $27,000. See *Arnold v Dalton* (2002) 84 SASR 482 at 485 for an approach to valuation where there is no expert evidence.

[8] I am satisfied that the "Redgum Produce" partnership has no value apart from the value of the property and equipment at Napier Road.

[9] There is also a Mitsubishi Triton vehicle subject to a lease. There was no evidence of the value of this vehicle but I am satisfied that it does not exceed the lease pay out figure and may be less. The initial cost of the vehicle in June 2002 was $27,570. The present lease pay out figure appears to be about $21,000.

[10] The principal liability of the parties is a mortgage debt of $318,503 owed to the ANZ Bank. The plaintiff stopped paying the monthly mortgage instalment in March 2003. The debt has been increasing at about $1,900 a month since then.

[11] There is also a power bill owed to the Power and Water Authority of $5,000.

[12] The plaintiff's counsel told me from the bar table that the plaintiff is likely to have to pay the Legal Aid Commission between $2,000 and $4,000 once the proceedings are finalised.

[13] The parties also have superannuation entitlements. Superannuation is expressly included in the definition of "financial resources" under the *De Facto Relationships Act* and regard must be had to the direct or indirect contributions of the parties to it. At 1 July 2002 (the earliest date about which there is evidence) the plaintiff's account balance in her AGEST fund was $33,729, reflecting her own and her employer's contributions. At hearing her account stood at about $56,000. The plaintiff said that this amount reflected contributions from the time of her employment with the New South Wales Government to the present. Her employment with the New South Wales Government began in 1989.

[14] There was no specific evidence about the defendant's superannuation entitlements. The plaintiff gave evidence that the defendant was a permanent employee of the Northern Territory government from 1995 to 2003 and I am satisfied that employer superannuation contributions would have been made. I would guess that the defendant's superannuation entitlements were of a similar order to the plaintiff's entitlements, at least until the time the parties separated in October 2001, but I am unable to make any specific finding about the value of his entitlements.

History of the relationship and contributions

[15] The parties began their de facto relationship in 1989 in Lismore, New South Wales. At the beginning of the relationship the plaintiff owned a second hand car and the defendant owned a motorbike. Both were of minimal value. Neither of the parties owned other assets of significant value. From 1989 to 1995 the plaintiff worked full-time with the New South Wales government in the Department of Water Resources. There was no evidence about the defendant's employment from 1989 to 1992 but from 1992 to 1995 he studied full-time for an information technology degree. The plaintiff helped support the defendant while he was studying. The plaintiff deposed that the parties supported each other financially and maintained a home together during the relationship.

[16] The plaintiff did not give any evidence about her superannuation entitlements, if any, at the beginning of the relationship.

[17] The parties moved to Katherine in the Northern Territory in 1995. The plaintiff obtained employment with the Northern Territory Department of Transport and Works. The defendant also obtained work with the Northern Territory government. I take it that this was in the information technology area but the evidence does not disclose the precise nature of his employment. No evidence was given about how much he earned.

[18] In 1996 the parties jointly purchased vacant land at Napier Road, Katherine. It was their intention to grow mangoes and citrus for sale. They formed a business partnership called "Redgum Produce".

[19] The purchase price of the land was $60,000. This was funded from joint savings of $6,000 and a loan of $54,000 from the ANZ Bank. The plaintiff was asked in evidence-in-chief how much of the joint savings she had contributed but was unable to say beyond that she thought it was the "greater" part.

[20] Later in 1996, the parties took out a business loan for a further amount from the ANZ Bank. Their indebtedness increased to $150,000.

[21] Initially the parties lived in rented accommodation in Katherine but travelled to the property to work on it. Later the parties moved to the property and lived there.

[22] The de facto relationship between the parties ended in October 2001 although they continued to live under the one roof. I am satisfied that the parties lived together in a de facto relationship for a period of not less than 2 years for the purpose of section 16 of the *De Facto Relationships Act*.

[23] After separation the parties agreed to continue their business partnership with the possibility that one partner might be able to buy the other partner's interest.

[24] In June 2002 the parties signed a lease for a Mitsubishi Triton intending to use it for business purposes.

[25] The plaintiff deposed that in 2002 the parties took out a home loan for about $155,000 from the ANZ Bank. A house was constructed on the property. Before this they had presumably lived in more temporary accommodation.

[26] It would appear from the bank statements annexed to the plaintiff's affidavit that the total indebtedness on the business loan and home loan accounts in December 2002 was about $263,000.

[27] In December 2002 the defendant left Katherine. The plaintiff learnt that he had left Australia after she reported him as missing to the police.

[28] The plaintiff contended that up to this time the contributions of the parties were "roughly equal". This is consistent with the evidence and I find that the contributions of the parties were equal up to this time. Thereafter the contributions were markedly unequal. Contributions up to the time of the application to the Court are to be taken into account: *Green v Robinson* (1995) 36 NSWLR 96 at 115 per Cole J.

[29] While the plaintiff was overseas he withdrew $7,984 from the parties' joint business loan account and $634 from the plaintiff's personal credit card account. In February 2003 the defendant contacted the plaintiff and asked her for money to enable him to return to Australia. She provided $2,500. The plaintiff also paid personal debts of the defendant while he was away amounting to $1,570. He returned to Katherine and remained there from March to May 2003. According to the plaintiff, he provided 8 days labour towards the business but otherwise made no contribution during this time.

[30] In March 2003 the plaintiff arranged with the bank to temporarily suspend the mortgage payments on condition that the property was kept in a condition suitable for sale and on condition that the mortgage was kept below $300,000.

[31] In May 2003 the plaintiff borrowed (presumably with the concurrence of the defendant) a further $26,000 in order to complete the house.

[32] Sometime in May 2003 the defendant moved to Darwin. In July 2003 the defendant left his employment in Darwin.

[33] On a date in late July or early August 2003 (the date is not shown on the tendered document) the plaintiff e-mailed the defendant saying she was in the process of preparing a separation agreement. She asked the defendant how he

proposed to compensate her for all the time and money she had put into the farm since he "abandoned it." On 4 August 2003 the defendant replied by e-mail:

> "The agreement is that you get to keep everything, that is 100 percent of proceeds. When the sale occurs and if the bank is still owed money then you should e-mail me and we will make some arrangements then. As I signed the real estate agent documents then there should be no need for any other signing to occur.
>
> Regarding the money I owe you this should be more than covered by my share of the non fixed assets, such as the tractor, that you should liquidate prior to any sale as the bank has no title on them. We discussed this previously. Additionally my tax return is to be used by you as you see fit…"

Then followed some irrelevant remarks.

[34] The e-mail was signed in printed form " Regards, Angus." The plaintiff gave evidence that the only documents signed by the defendant were those to authorise the real estate agents to list the property for sale.

[35] On 8 August 2003 the plaintiff heard the defendant had moved to Ireland.

[36] Later in August and in September there was further e-mail correspondence. The plaintiff sought a postal address from the defendant saying that she wished him to sign documents. The defendant replied, saying he was ready to sign documents if necessary, but at no stage did the defendant provide a postal address.

[37] On 3 October 2003 the plaintiff sent a document by e-mail to the defendant setting out a draft proposal for a "partnership agreement". I assume this was a proposed agreement for dissolution of the business partnership. The plaintiff said that if he agreed she intended to have the final document drawn up by a solicitor. She again asked him to provide a postal address so she could send the document to him for his signature.

[38] On 28 November 2003 the defendant replied that he had "signed the sale documents". He added "When the property is sold you get the money and until then, as I said previously, please regard the property as yours." The e-mail was signed in printed form “Regards, Angus Cameron”. In fact, there was no evidence that "sale documents" had been sent to defendant and the plaintiff deposed that none were received from him. It appears that the defendant may have been referring to the draft agreement dealing with dissolution of the partnership. It appears from a reference in the e-mail correspondence that this was signed by the defendant and sent back to the plaintiff. This document was not adduced in evidence.

[39] It appeared from the tax documents tendered by the plaintiff that the defendant’s refund for the year ended 30 June 2003, which issued on 28 November 2003, was $7854. She did not give further evidence about it but it appears she probably received that sum.

[40] By the time of the hearing on 22 October 2004 the total mortgage debt on the Napier Road property had grown to $318,503.

[41] The plaintiff deposed, and I accept, that since December 2002 she had conducted the partnership business and completed the house with no assistance or contribution from the defendant other than his 8 days labour.

[42] The plaintiff deposed that since December 2002 she had spent $55,128 of her own money on the partnership business, including money spent on the property, car lease payments and a lump sum repayment to the bank of $5,000 and that the income from the partnership since then had been $19,338. The plaintiff also deposed that since December 2002 she had devoted more than 3,200 hours of labour to the business.

[43] During the hearing the plaintiff tendered a document headed "Liabilities Associated with Partners and Partnership". The original purpose of this document is unclear but it was prepared by the plaintiff and purported to

summarise the private and business expenses of the parties and to take a form of account between them. It was not suggested that the plaintiff had any accounting qualifications and the limitations of the document were obvious. It appeared on the plaintiff's calculations that the defendant owed her about $45,000. In addition she ascribed a value of $35 an hour to her 3,200 hours of labour and, in effect, sought to debit $112,000 to the defendant's side of the ledger under that heading.

[44] The evidence was entirely inadequate to attempt the taking of partnership accounts. In any event, the proceeding was for the adjustment of the interests of the parties with respect to property under the *De Facto Relationships Act* and a "broad brush" is necessary.

[45] The financial statements of the partnership for the year ending 30 June 2003 were tendered. They showed a loss for the year of $75,241. Of the loss $55,678 was distributed to the plaintiff and $19,563 distributed to the defendant. No reason was offered for this unequal distribution of loss in an otherwise equal partnership but it might be that it reflected the plaintiff's greater financial contribution.

[46] In any event, the effect was to reduce the plaintiff's taxable income for the year ended 30 June 2003 to $900. During that year she had a gross income from her employment with the Northern Territory Government of $62,073. The amount withheld for PAYG tax was $17,684. She received a credit assessment for that amount and the amount was refunded to the plaintiff. For similar reasons the plaintiff also received a tax credit and refund of $17,188 for the year ended 30 June 2002.

[47] The plaintiff said that she expected the partnership would also make a loss of a similar order of magnitude for the year ended 30 June 2004 but that the accountants were still preparing the financial statements. I think it is likely that the plaintiff will receive a credit assessment and refund of a similar amount for that year also.

[48] It is difficult to calculate with any accuracy the extent to which the plaintiff is out of pocket as a result of the defendant's abandonment of the business partnership. While she has by necessity expended a large sum on operating the business she has been able to offset that significantly by claiming it as expenditure for taxation purposes. The best estimate I can make is that, after allowing for a direct cash contribution of about $55,000 but offset by tax credits of about $35,000 the plaintiff has made an extra contribution of about $20,000 in cash since December 2002.

[49] In addition she has expended some 3,200 hours of labour. I do not accept the plaintiff's approach that a simple dollar value can be ascribed to this extra contribution and debited, so to speak, to the defendant. I do accept that it is a very significant contribution to the conservation and improvement of the Napier Road property and must be recognised. I do not overlook that the plaintiff had the benefit of a home and, perhaps to some extent, the private use of partnership assets such as the vehicle.

[50] I find the assets and their approximate values and the liabilities of the parties are as follows:

ASSET	**VALUE**
Napier Road	$420,000 to $440,000
Farm Equipment	$30,000
Mitsubishi Triton	Unknown but does not exceed lease pay-out figure
LIABILITIES	
Mortgage Napier Road	$318,563
Power & Water Authority	$5,000
Estimate of commission on sale of Napier Road	$18,480
Estimate of conveyancing charges	$1,000
Estimate of payment to NT Legal Aid Commission	$2,000 to $4,000
Net	$102,957 to $124,957

[51] I also take into account the plaintiff's superannuation entitlement and the probable superannuation entitlement of the defendant. The Supreme Court of the Northern Territory has not considered the issue of superannuation under the *De Facto Relationships Act* in detail although Thomas J in *Fiket v Linco* (1998)

23 Fam LR 272 dealt with some aspects. The Full Court of the Family Court considered the issue in relation to the *De Facto Relationships Act*, pursuant to cross-vesting legislation, in *King v Kemp* (1995) 127 FLR 279. In the absence of any evidence about the nature of the respective superannuation funds I would follow *King v Kemp* and not treat the superannuation as property. The entitlements are financial resources and regard must be had to the contributions of the parties to those resources.

[52] The correct approach to assessing the contribution to superannuation is not entirely clear. In *King v Kemp*, at 297, the Full Court referred with approval to the approach of the trial judge who found the mother had made an indirect contribution to the superannuation of the father in her role as a home maker and by caring for the children. This was generally the approach adopted in the Family Court. The NSW Court of Appeal in *Green v Robinson* (1995) 36 NSWLR 96 considered the same issue under similar legislation. Kirby P (as he was then) favoured the same approach as the Family Court. Powell JA, although cautioning against adopting all the jurisprudence developed by the Family Court, accepted that a partner may make a contribution as homemaker. In the particular case he found that the parties kept their financial resources separate and that the appellant had made no claim of contribution to the respondent's superannuation. Cole JA found there was no evidence of contribution, direct or indirect, by the appellant to the respondent's superannuation.

[53] In *Fiket v Linco* Thomas J, although warning against simply assuming equality of contribution between de facto couples to the superannuation entitlement of one of them, in fact adopted a formula whereby one partner's entitlement to the superannuation fund of the other was based on 50% of the fund after taking into account the length of the cohabitation as a proportion of the length of membership of the fund. In practical terms this is like the approach of the Family Court (before the major legislative changes dealing with superannuation under the *Family Law Act*) and Kirby P. I am satisfied that each of the parties has made financial or direct contributions to their own fund and non-financial or indirect contributions to the fund of their partner up to the time of separation and those contributions were equal. However, in the absence of any evidence

about the defendant's superannuation entitlement I would not be prepared to make any adjustment in the property interests of the parties on the basis of those contributions and, in view of the conclusion I have reached, it is unnecessary to do so.

[54] The plaintiff did not suggest I should have regard to anything other than the factors mentioned in section 18(1)(a) of the *De Facto Relationships Act* nor did any other factor appear relevant. It is therefore unnecessary to attempt to resolve the ambiguity in the judgements of the NSW Court of Appeal in *Evans v Marmont* (1997) 42 NSWLR 70 identified by Mildren J in *Deans v Jones* [2003] NTSC 117. Accordingly, having regard solely to the contributions of the parties to their property and financial resources and particularly to the plaintiff's contributions after December 2002 I would consider it just and equitable that the plaintiff's additional financial contribution result in an extra 10% of the net value of the property. Having regard to her non-financial contributions I would increase that by a further 10% resulting in the plaintiff receiving 60% and the defendant 40% of the net value of the assets.

[55] However, I will not make orders in these terms because I have concluded, for the reasons that follow, that I am bound to give effect to a separation agreement between the parties.

Separation agreement

[56] The plaintiff submitted that the e-mail correspondence constituted a "separation agreement" or, in the alternative, if I was not satisfied as to the requirement for a signature that I should still have regard to the terms of the agreement.

[57] Section 3 of the *De Facto Relationships Act* defines "separation agreement" to mean:

> "..an agreement (whenever entered into) between 2 adults, whether or not there are other parties to the agreement, which –
>
> (a) is made in contemplation of terminating a de facto relationship between them or after terminating it; and

(b) makes provision with respect to financial matters (whether or not it also makes provision with respect to other matters)."

[58] Section 45 of the *De Facto Relationships Act* provides that:

(1) "This section applies where a de facto partner applies to a court for an order under Division 3 or 5 of Part 2 and the court is satisfied on the application that there is a cohabitation agreement or separation agreement between that partner and the other.

(2) Where the court is also satisfied that the agreement is in writing and is signed by the other de facto partner, the court may make an order under Division 3 or 5 of Part 2 notwithstanding that the agreement purports to exclude its jurisdiction to do so, but (except as provided..[not relevant for present purposes]) shall not make an order which is in any respect inconsistent with the terms of the agreement.

(3) Where the court is not satisfied as mentioned in subsection (2), the court may make such order under Division 3 or 5 of Part 2 as it could have made if there were no such agreement between the partners, but may nevertheless have regard to the terms of the agreement."

[59] Subsection 44(2) provides that:

"Except as otherwise provided by this Part, a cohabitation agreement or separation agreement is subject to and enforceable in accordance with the law of contract."

[60] In *Killick v Killick* (1996) 21 Fam LR 331 the New South Wales Court of Appeal, considering almost identical statutory provisions, held that for a separation agreement to be valid it must be enforceable at common law. The Court held also that a court may, pursuant to the equivalent of subsection 45(3), have regard to the terms of an agreement not complying with the formal requirements of the equivalent of subsection 45(2) only if the agreement is enforceable at common law.

[61] The plaintiff's evidence about the agreement was sparse. She did not give evidence of any negotiation or discussion leading to mutually acceptable terms. It may be that such a negotiation or discussion did take place. That is an inference open from the defendant's use of the word "agreement" in his e-mail of 4 August 2003. On the other hand, as much as anything, his remarks may suggest a unilateral act and that he was simply washing his hands of the matter. One may suspect that his conduct was unnecessarily disadvantageous to himself or that emotions such as guilt played a part in his thinking but even if this were so it is irrelevant. Contract law applies an objective test of contractual intention.

[62] I am satisfied that the defendant intended, in a legally binding way, the plaintiff to have the entirety of the proceeds of sale of the property and equipment at Napier Road and to assign or transfer his interest to her. I am satisfied about that notwithstanding the defendant's refusal to co-operate by providing a postal address or by facilitating the execution of a formal agreement. Over a period of about four months from August to November 2003 he consistently evinced this intention in e-mail correspondence. I infer from the reference to the "agreement" in the defendant's e-mail of 4 August 2003 that the plaintiff also intended this even though she gave no direct evidence about it. The terms of the agreement are not vague or uncertain. Consideration for the agreement, which might seem one sided, can be found in the finality brought to the parties' financial relationship and the resolution of prospective claims each may have against the other. I am satisfied that the course of this correspondence constitutes an agreement enforceable at common law and that it is a "separation agreement" according to the definition in section 3. The terms of that agreement are set out in the passage reproduced from the e-mail of 4 August 2003.

[63] The agreement is not signed in handwriting. It is unnecessary to refer to the many cases about electronic or telexed signatures such as, for example, *Torrac Investments Pty Ltd v Australian National Airline Commission* (1985) ANZ Conv R 82 where Derrington J held a telex authenticated with a printed name was signed. Section 9 of the *Electronic Transactions Act* provides:

(1) If, under a law of the Territory, the signature of a person is required, the requirement is taken to have been met in relation to an electronic communication if –

(a) a method is used to identify the person and to indicate the person's approval of the information communicated;

(b) having regard to all the relevant circumstances at the time the method was used, the method was as reliable as was appropriate for the purposes for which the information was communicated; and

(c) the person to whom the signature is required to be given consents to the requirement being met by the use of the method referred to in paragraph (a).

(2) This section does not affect the operation of any other law of the Territory that makes provision for or in relation to requiring –

(a) an electronic communication to contain an electronic signature (however described);

(b) an electronic communication to contain a unique identification in an electronic form; or

(c) a particular method to be used in relation to an electronic communication to identify the originator of the communication and to indicate the originator's approval of the information communicated.

[64] I am satisfied that the printed signature on the defendant's e-mails identifies him and indicates his approval of the information communicated, that the method was as reliable as was appropriate and that the plaintiff consented to the method. I am satisfied that the agreement is "signed" for the purposes of subsection 45(2).

[65] Counsel for the plaintiff asked me to also deal with the contingency of the proceeds of sale not satisfying the amount owed to the bank. In that eventuality I would consider it just and equitable that both parties be equally liable for any shortfall. I would expect that the mortgage provides that both parties are jointly and severally liable. I cannot change that but I will make an order for the sake

of clarity in the event that it is suggested that the orders imply that the plaintiff should indemnify the defendant in the case of a shortfall. That is not intended.

[66] In the event of any difficulty with the sale I will give liberty to apply.

[67] The plaintiff has sought costs. The plaintiff has been successful but the application was not opposed. Section 36 of the *De Facto Relationships Act* requires a court, as far as is practicable, to make orders that will finally determine the financial relationships between the de facto partners and avoid further proceedings between them. I do not consider that a costs order is appropriate.

[68] I order as follows:

1. That within 30 days of the date of these orders, the parties do all acts and things and sign all necessary documents, deeds or instruments necessary to effect the sale of the real property known as and situate at Portion 4485 Napier Road, Katherine in the Northern Territory of Australia ("the real property").

2. That, for the purpose of the sale of the property in order 1 above:
   (a) the listing price for the real property shall be determined by the plaintiff;
   (b) the real property shall be listed for sale by either private treaty or by public auction at the discretion of the plaintiff alone.

3. That upon the sale of the real property the nett proceeds of sale shall be applied as follows:
   (a) first, to pay all costs, commissions and expenses of sale and to pay any council and water rates and levies outstanding in respect of the real property;
   (b) secondly, to discharge the mortgage and any other encumbrances effecting the real property;
   (c) the balance to the plaintiff.

4. In the event the sale price is insufficient to cover the debts or liabilities in relation to the real property, the loss is to be borne equally by the plaintiff and defendant.

5. That the plaintiff be and is hereby authorised to deal exclusively with the Mitsubishi Triton motor vehicle registration number NT 709 197 and the lease in respect of that vehicle, including taking any steps to sell, transfer, terminate, sub-lease or otherwise deal with the vehicle or the lease, without the authority of the defendant.

6. That, in the event that the defendant refuses or neglects to comply with order 1 above, the Registrar of the Supreme Court of the Northern Territory is hereby appointed to execute any instruments in the name of the defendant and to do everything necessary to make the instrument valid and operative.

7. That pending the sale or transfer of the real property the plaintiff shall have the sole right to occupy the property to the exclusion of the defendant.

8. That all farm machinery, equipment, chattels, furniture, household contents and personal property presently in the possession of or under the control of the plaintiff, including any property in the joint names of the parties or in the name of "Redgum Produce", vest in the plaintiff.

9. That except as otherwise specified in these orders:
   (a) any interest of the defendant in any property in the name or possession of or under the control of the plaintiff vests in the plaintiff;
   (b) any interest of the plaintiff in the property in the name of or in the possession of or under the control of the defendant vests in the defendant;
   (c) each party shall indemnify the other in respect of any liability arising in relation to any items of property that vest in him or her pursuant to this order.

10. That each party retain all right, title and interest in any superannuation in his or her name.

11. Liberty to apply.

12. No order for costs.
