SUPREME COURT OF QUEENSLAND

CITATION:	*E v S* [2003] QSC 378
PARTIES:	**E** **(applicant)** **v** **S** **(respondent)**
FILE NO:	S7405 of 2002
DIVISION:	Trial Division
PROCEEDING:	Originating Application
DELIVERED ON:	3 October 2003
DELIVERED AT:	Brisbane
HEARING DATE:	8 September 2003
JUDGE:	Mullins J
ORDER:	**The net proceeds of $121,737.19 from the sale of the property together with interest earned from the investment of the net proceeds of sale be divided as to the sum of $101,442.31 and interest accrued thereon to the applicant and as to $20,294.88 together with interest accrued thereon to the respondent**
CATCHWORDS:	DE FACTO RELATIONSHIPS – property settlement – where length of the de facto relationship was only 15 months – where applicant made a substantial capital contribution to the purchase of the jointly owned property – where applicant otherwise made greater financial contribution – where respondent made greater homemaking and parenting contribution – just and equitable division of net proceeds of sale of the jointly owned property required repayment of capital contribution and the balance divided as to 60% to the applicant and 40% to the respondent. *Property Law Act* 1974 *Mallet v Mallet* (1984) 156 CLR 605
COUNSEL:	AKH Cooper for the applicant AC Smith for the respondent
SOLICITORS:	Simonidis Shoebridge Lawyers for the applicant McCarthy Durie Ryan Neil for the respondent

[1] **MULLINS J:** The applicant and the respondent commenced residing in a de facto relationship at a property situated at Thornlands ("the property") from 19 January 2001 until in or about April 2002. The applicant seeks a property adjustment order pursuant to Part 19 of the *Property Law Act* 1974 *("PLA").*

[2] It should be noted that any publication of an account of this proceeding is subject to the restrictions set out in ss 342 and 343 of the *PLA.*

Background

[3] The applicant was born on 30 December 1958. The respondent was born on 22 July 1955. They commenced a relationship in late 1998 in which they continued to live in their separate households. At that stage the applicant owned a residential house property at Victoria Point and the respondent owned a residential house property at Cleveland Redland Bay Road, Thornlands ("the respondent's property").

[4] The applicant has 2 daughters born on 4 March 1988 and 8 May 1990. They were due to visit the applicant in July 2000 from the United Kingdom where they were living with their mother, the applicant's former wife. The applicant's former wife became terminally ill, so instead the applicant went to the United Kingdom in early August 2000. His former wife died and the applicant stayed in the United Kingdom to make arrangements for his daughters to return to Australia. They returned to the Victoria Point property in mid September 2000.

[5] In late October 2000 the applicant and the respondent began to look for a new home in which the applicant and his 2 daughters and the respondent and her daughter who was about 6 years old could reside.

Purchase of the property

[6] The applicant sold the Victoria Point property in December 2000. The parties contracted to purchase the property for $275,000 as tenants in common in equal shares. The purchase price of the property was obtained by the applicant's contributing the sum of $65,000 from the net proceeds of the sale of the Victoria Point property and the parties' borrowing $210,000 from the National Australia Bank Limited which was secured by a mortgage over the property and the respondent's property. Although the applicant stated in his first affidavit sworn on 12th August 2002 that he contributed from the net proceeds of sale of the Victoria Point property an amount of between $8,000 and $9,000 towards the legal costs and stamp duty on the purchase of the property, in his subsequent more detailed affidavit sworn on 21 February 2003 he stated that he contributed the sum of $70,949 (which I infer included the sum of $65,000 contributed to the purchase price) towards the purchase price of the property. I will act on the later affidavit.

[7] The mortgage over the respondent's property was also security for an overdraft provided by the bank in the sum of $60,000 to the applicant's business from March 2001 to June 2002, as the respondent gave the bank a guarantee in respect of that

overdraft which was used by the applicant's business. The respondent was not called upon by the bank to make any payment under the guarantee.

[8] The applicant and his daughters and the respondent and her daughter commenced to reside in the property as a family on 19 January 2001.

Issue in the proceeding

[9] In the originating application that was filed on 13 August 2002, the applicant sought by way of final relief that all of the net proceeds of sale of the property together with any interest earned on those net proceeds be paid to the applicant. The applicant also sought an order in respect of the respondent's property that the respondent pay to the applicant an amount equal to 20% of the net proceeds of sale of the respondent's property or, if that property were not sold, the respondent pay to the applicant an amount equal to 20% of the net value of the respondent's property at the date of the application.

[10] A significant amount of the affidavit evidence relied on by the applicant was directed at what the applicant alleged was an agreement made by the parties in late October 2000 that the respondent would renovate the respondent's property and sell it and use an amount from the sale proceeds that was equal to the contributions which were made to the purchase of the property by the applicant to reduce the mortgage over the property. Whether or not there was such an agreement, it was never carried out. This proceeding is concerned with an adjustment of property interests. Upon the breakdown of the relationship in April 2002, what became relevant was that the respondent retained the respondent's property. That is the fact which is relevant to this proceeding and not the concern that the applicant obviously still felt about the respondent not selling the respondent's property and contributing funds to the property which the applicant had anticipated would eventuate during their relationship.

[11] The property was sold in September 2002 for $338,000 and the net proceeds of sale of $121,737.19 (after paying out the mortgage over the property which then stood at about $204,000) were invested through the applicant's solicitors, pending the determination of this proceeding.

[12] At the conclusion of the hearing, I indicated that I would not be making any adjustment order in respect of the respondent's property. It is not necessary to do so, as the property interests of the parties can be adequately adjusted by making orders in respect of the net proceeds of sale of the property.

[13] The respondent sought a 50/50 split of the net proceeds of sale of the property as a starting point with an additional adjustment of 15% in favour of the respondent to take account of her financial position being less secure than that of the applicant and of the homemaker role played by the respondent during the relationship.

[14] The issue in the proceeding was therefore what order the court considers to be just and equitable about the net proceeds of sale of the property in order to adjust the interests of the parties to those net proceeds: s 286 of the *PLA*.

Witnesses

[15] The evidence in chief was primarily the affidavits relied on by the parties. Each of the deponents was then available for cross-examination. Apart from giving evidence himself, the applicant relied on Mr S G B, Mr V P A, Ms M P B and Mr D E T B. The respondent did not rely on any witnesses other than herself.

[16] There are a number of factual matters on which I need to make findings, because the evidence of the applicant and the respondent differed on these matters. It was apparent from both the manner in which each of the applicant and the respondent gave evidence and the content of their evidence that their recollections were affected by the perspective which each had on the relationship and its breakdown. I will highlight in these reasons where I have preferred the evidence adduced on behalf of one of each of the parties to the evidence adduced on behalf of the other party.

[17] It was necessary to scrutinise the evidence of the applicant carefully. He tended to be dogmatic in his assertions which were not necessarily supported by facts within the applicant's knowledge. A prime example of that was the assertion by the applicant in paragraph 9 of his affidavit made on 24 February 2003 about the painting of the Victoria Point property whilst he was in the United Kingdom:

> "Some of the home had been painted too. This job was undertaken in my absence by my housemate, Mr M D. Mr D and I had agreed prior to my leaving Australia for the United Kingdom that he would perform this job. I paid Mr D $600.00 for his painting work via cheque number 85 from my National Australia Bank Cheque Account."

[18] This was responsive to paragraph 9 of the respondent's affidavit made on 20 August 2002 in which she stated that she had painted the 3 bedrooms, lounge, dining room, kitchen and hallway of the Victoria Point property and engaged a professional painter (whom the respondent identified was Mr D) to carry out some additional painting work.

[19] During cross-examination the applicant would not concede that the respondent had painted inside the Victoria Point property, even though the respondent had told the applicant she had painted it, because the applicant stated that Mr D had told him that the respondent did not paint it.

[20] In cross-examination the respondent denied that Mr D had painted the house and stated that he had helped her paint the house. The respondent expanded upon this and stated that "Mr D sat and had – got drunk whilst I was painting the house". The

respondent had the advantage of actually being present and was in a much better position to evaluate the extent of Mr D's assistance in painting the house. It did not reflect well on the applicant that he remained dogmatic about the extent of Mr D's involvement in painting the house, despite the information which had been provided to him by the respondent and that the respondent was present when the house was painted and he was not. I accept the respondent's evidence set out in paragraph 33 of her affidavit sworn on 20 August 2002 that she painted the 3 bedrooms, lounge, dining room, kitchen and hallway of the Victoria Point property and engaged Mr D to carry out some additional painting work.

[21] The respondent tended to be laconic in many of her responses during oral evidence. I formed the view after evaluating the respondent's evidence in the light of other evidence that there were some topics on which it suited the respondent to cut short or discourage further questioning, but that on other topics the respondent genuinely had no further information to impart in answering the questions. Whereas the applicant made a point of keeping records of expenditures, the respondent demonstrated no interest in such matters which in many instances affected the detail which the respondent could provide.

Relevant factors

[22] The matters which must be considered in deciding what property adjustment order would be just and equitable are set out in ss 291 to 295 of the *PLA*. In addition the court must consider the matters mentioned in ss 297 to 309 of the *PLA* to the extent they are relevant in deciding what property adjustment order would be just and equitable.

[23] Of particular relevance in this proceeding are the financial and non-financial contributions made by each of the parties to the property and property belonging to each of them and the financial resources of each of the parties (s 291 of the *PLA*), and the homemaking or parenting contributions made by each of the parties to the welfare of the family (s 292 of the *PLA*).

[24] Under s 297 of the *PLA*, the age and state of health of each of the parties may be relevant. There was no evidence of any health problems suffered by either party. The age difference between the parties is not of significance.

[25] In accordance with s 298 of the *PLA* it will be relevant to consider the income, property and financial resources of each of the parties and the physical and mental capacity of each of them for gainful employment.

[26] It is also necessary to take into account under s 299 of the *PLA* that the applicant has the care of his 2 daughters and the respondent has the care of her daughter.

[27] It will be relevant to consider in accordance with s 304 of the *PLA* contributions made by each party to the income and earning capacity of the other party. This is

where a small amount of credit should be given to the respondent for providing a guarantee in respect of the overdraft facility for the applicant's business.

[28] It is a requirement under s 305 of the *PLA* that the court must consider the length of the de facto relationship. It is very relevant in this matter that the relationship lasted for only about 15 months.

[29] Under s 309 of the *PLA* the court must consider any fact or circumstance the court considers the justice of the case requires to be taken into account.

[30] Amongst the objectives of the introduction of Part 19 into the *PLA* in 1999 was the objective to facilitate a just and equitable property distribution at the end of a de facto relationship in relation to the de facto partners, rather than leave de facto couples to rely on the law of contract, trusts, unconscionable conduct, estoppel or other legal remedies which often gave rise to uncertainty as to the outcome of the dispute. Part 19 of the *PLA* is based on the report of the Queensland Law Reform Commission published in June 1993: *De Facto Relationships* QLRCR 44. Part 19 of the *PLA* follows closely the *De Facto Relationships Bill* included in that report. The provisions in that proposed legislation dealing with when the court can alter interests in property on the breakdown of a de facto relationship were modelled closely on the equivalent provisions in the *Family Law Act* 1975 (Cth), as are the provisions in Part 19 of the *PLA*. It is therefore appropriate to have regard to the authorities that have considered the equivalent provisions in the *Family Law Act* 1975 (Cth) such as *Mallet v Mallet* (1984) 156 CLR 605. In that case the High Court endorsed the interpretation of s 79 of the *Family Law Act* 1975 (Cth) that it was intended that a spouse's contribution as homemaker should be recognised in a substantial way and that the policy behind the legislation was that the contribution of a homemaker or parent was to free the other party to the marriage to devote time and energy to the pursuit of financial gain, so that the contribution as homemaker and parent must be seen as an indirect contribution to the acquisition, conservation or improvement of the property of the parties (at 623, 636, 646).

Applicant's circumstances

[31] During the relationship the applicant was engaged in his own business as a logistics consultant. He has continued in that business, since the relationship ended. For the year ended 30 June 2001, his taxable income was $64,063. For the year ended 30 June 2002 the gross income which he received from his business was $97,474. That business is continuing to grow.

[32] The applicant purchased in his own name in August 2000 a unit at Greenslopes as an investment which the applicant rented out. He took a loan to purchase that unit and made the payments under the mortgage that were due during the period of co-habitation. As at 12 September 2002 the amount owed under the mortgage was approximately $193,000.

[33] In order to meet living expenses during the relationship, the applicant borrowed the sum of $15,000 from his business. He subsequently repaid that debt from funds which he borrowed from his brother. He still owed the debt of $15,000 to his brother in February 2003. The applicant also borrowed $2,500 from his mother to pay school fees which he still owed at the time he swore his affidavit on 21 February 2003. At the time of swearing that affidavit that applicant also owed $12,000 on his Visa card account which he attributed to his financial contributions to household expenses during the relationship.

Respondent's circumstances

[34] The respondent completed a TAFE course in panel beating and spray painting about 15 years ago. The respondent describes herself as having a car restoration and car spotting hobby. Both during and subsequent to the relationship the respondent has earned income from selling cars which she has restored and from her involvement in the trading of cars. This was one of the topics on which the respondent was less than forthcoming in the evidence.

[35] One of the matters agitated by the applicant was the extent of the income which the respondent generated from this activity during cohabitation and is able to generate from this pastime. During the period of cohabitation, the daughter of the applicant's friend, Mr A, purchased a motor vehicle from the respondent. Another friend of the applicant, Mr B, observed on more than one occasion when he visited the applicant at the property that the respondent had one of the cars she had done up outside the property for sale. Mr B had the respondent repair his vehicle. Mr B, who was the neighbour of the applicant and the respondent during the period of cohabitation, sold cars from his front yard for the respondent at her request for which he would receive $100 cash for each car that he sold. There is no evidence of the frequency of these sales. From the evidence of these witnesses and respondent's description of her activities and skills, I find that she has the capacity to earn income from this activity of restoring and selling cars.

[36] At the commencement of the relationship the respondent owed about $75,000 to Wide Bay Capricornia Building Society which had a mortgage over the respondent's property.

[37] At the time the relationship commenced, the respondent was in receipt of a sole parent pension and family assistance allowance. It appears that the respondent continued receiving those benefits during the relationship and has continued to do so subsequent to the breakdown of the relationship. The respondent estimated her total income from all sources was at the rate of $17,367 per annum during the period of cohabitation. Since mid August 2002 the respondent has been receiving income of $80 per week for rental of storage space at the respondent's property.

[38] In or about May 2002 the respondent obtained a line of credit up to $300,000 from the National Australia Bank which she used to repay the mortgage debt owed to Wide Bay Capricornia Building Society and from which she used $120,000 to advance to a private company Neo Lido Pty Ltd on 30 July 2002. It appears that the

respondent was to earn a significant amount of interest from that loan, but instead the loan is being repaid at the rate of $1,000 per month. The line of credit was also used to pay for the renovations to the respondent's property that the respondent was undertaking at the time the relationship broke down. At the time of the hearing, the respondent owed $300,166 in respect of the line of credit.

Contributions to financial and property resources

[39] At the outset the parties implemented arrangements for meeting expenses arising from the relationship. The applicant had a bank account into which his income was banked and from which he arranged for the monthly mortgage repayments on the property of $1,600 to be deducted. The applicant authorised the respondent to have a card on his Visa account. The applicant arranged for the rates and insurance for the property to be paid from his Visa account. The applicant also arranged for all bills such as electricity, telephone, purchase of food and household supplies, petrol and domestic care related expenses to be paid from either his bank account or the Visa account.

[40] The respondent's daughter attended the same private school as the applicant's daughters and the applicant paid for the respondent's daughter's education expenses until February 2002 when the respondent took over paying her daughter's school fees and other personal expenses.

[41] The applicant requested the respondent to contribute the sum of $1,000 per month on account of the living costs of her daughter and herself. The respondent states that she paid the sum of $1,000 per month for almost 11 months of 2001. The applicant claims that the respondent made 6 or 7 monthly payments of $1,000 each. There was an issue between the parties as to whether or not the respondent was contributing the sum of $1000 per month on account of the monthly payment due under the mortgage over the property. I find that, irrespective of what the agreement between the parties actually was, the sum of $1000 per month that was paid by the respondent to the applicant was contributed towards the living expenses of the joint household which included the mortgage payments.

[42] By reference to his records the applicant has calculated that during the period of cohabitation he contributed the sum of $157,783.97 to the household. For that purpose the applicant has taken the period of cohabitation up until May 2002, when it is common ground that the relationship ended during April 2002. The applicant asserts that this sum excludes any business expenses, payments in respect of the Greenslopes property and any advances which he made to the respondent personally or payments which he made towards her telephone account at the respondent's property or her mobile telephone account. The list includes an amount of $2,619.40 on account of income protection which is a business expense. The list includes all payments made under the mortgage over the property. It also appears that this calculation includes the expenditure of the monthly payments of $1,000 per month contributed by the respondent to the household.

[43] The applicant claims that during cohabitation, he paid a total sum of $3,097.58 from either his cheque account or Visa account in relation to expenses relating to the respondent's activity with cars. This was not disputed by the respondent.

[44] In paragraphs 38 and 39 of the applicant's affidavit sworn on 21 February 2003, reference is made to 79 fuel receipts signed by the respondent against the applicant's credit card totalling $2,100 and an estimated further 110 "fuel purchases" totalling in excess of $3,000 attributable to the respondent in the period February 2001 to May 2002, although the applicant does note that "her purchase of cigarettes and snacks are probably included in this figure". I do not understand from the applicant's evidence that this amount of $5,100 is not covered by the total expenditure of $157,783.97 which the applicant analysed in paragraph 19 of that affidavit. It was apparent from the evidence of both the applicant and the respondent that purchases made on the Visa account at a petrol station were not necessarily for fuel, but covered many purchases for the benefit of the household which for convenience were made at a petrol station.

[45] Apart from having a card on the applicant's Visa card account, the respondent also used her Bankcard during the relationship. The respondent has prepared a summary of her Bankcard transactions which were for living expenses during the relationship (Ex 8). In addition the respondent tendered copies of her credit card statements (Ex 9) on which she had also included a summary of expenditures made by her on her cheque account that she claims were made for living expenses during the relationship. Her credit card expenditures amount to $16,850.86. The cheque account expenditures (excluding the contributions of $1,000 per month) amount to $4,564.10. Despite the respondent being cross examined as to some of these items being expenditures for her activities in relation to cars and not the household, I accept the respondent's evidence that Exs 8 and 9 show a summary of expenditures made by the respondent for living expenses of the household during the relationship. Some of these expenditures are applicable due to the respondent's car being used as the family car during the relationship. On the basis of the respondent's evidence (which I accept) that she paid the monthly contribution of $1000 to the applicant in December 2001 and on the basis of Ex 9, I find that the applicant paid at least $9000 to the respondent by way of monthly contributions to living expenses of the household.

[46] In his affidavit sworn on 21 February 2003 the applicant states that, in addition to the household expenses, he advanced to the respondent during cohabitation the sum of $21,420 (of which $10,000 was for the renovations at the respondent's property which has been repaid by the respondent). The applicant claims to have used part of the proceeds of the sale of the Victoria Point property to pay out the balance of the respondent's credit card debt which was an amount of $11,500. The respondent responded in her affidavit sworn on 20 August 2002 that the sum of $6,000 and not $11,500 was paid by the applicant towards her credit card debt and stated in paragraph 13:

> "The amount of $6,000.00 was partial reimbursement for materials and work that I had carried out on his Triumph Stag motor vehicle

> and his property at Victoria Point during the period that he had returned to England."

When cross-examined on this paragraph of her affidavit as to how she could say that amount was for partial reimbursement, the applicant stated:

> "Because Mr E wouldn't give me anything that I wasn't due for. He wouldn't give me any money for no reason."

The following exchange then took place (at p 59 of the transcript):

> "Indeed, Mr E had started your relationship indeed on 17 October 2000, paid a further $5,000 towards your credit card, hadn't he?-- I don't know.
>
> Though in actual fact by the time that the cohabitation commenced Mr E had contributed $11,000 towards your credit card?-- I don't know, but if Mr E – if I may just say this – has given me that money it would be because he owed it to me. He wouldn't owe me $11,100 and it would not be $10,090. It would be the exact dollar that he would return back to me.
>
> Are you saying it's possible that Mr E owed you $11,000 at the start of your relationship?-- Possibly.
>
> And what for?-- Repairing his other car. I have repaired two cars for Mr E and furnished the home for the children. I don't know how much it cost."

[47] The assertion made by the respondent that the applicant did not give her any money unless he considered that it was owed by him has the ring of truth. The applicant presented as a person who was meticulous (if not over meticulous) in his record keeping and his tracking of his expenditures, particularly in respect of his relationship with the respondent. Although he does not qualify the assertion in his affidavit sworn on 12 August 2002 that he used the net proceeds of sale of the Victoria Point property to pay an amount of $11,500 in order to pay out the balance of the respondent's credit card debt, I accept the evidence of the respondent that any such payment was made only for the purpose of reimbursing the respondent for sums which the respondent had otherwise paid to benefit the applicant. In the light of the evidence, I find that the payment of $11,500 was comprised of at least two payments, one of $6,000 and one or more payments totalling about $5,500.

[48] It is common ground that the applicant paid the sum of $2,000 to the respondent after their relationship ended in June 2002. The parties differ as to what the purpose of the payment was. The applicant asserts in his affidavit sworn on 21 February 2003, that he made the payment so that the respondent could pay some bills in respect of the renovations of the respondent's property and that he was hopeful that they would be able to reconcile. The respondent claims that the payment was made by way of part reimbursement of school fees which the respondent had paid in

February 2002. The fact of the payment is what is relevant. It is not necessary to resolve the purpose of the payment.

[49] It is not disputed that the applicant continued to meet the expenses in respect of the property after the relationship broke down until the property was sold, but the applicant had the benefit of continuing to reside in the property.

[50] In February 2001 both parties contributed to renovating the top floor of the property in order to make a fourth bedroom. I accept the evidence of the respondent that she organised for the assistance of a friend who was a builder to erect a new wall and doorway at no charge, but I find that both parties were involved in carrying out this renovation.

[51] The respondent gave evidence about expenditures which she undertook in respect of the yard of the property and work undertaken by her in landscaping the property. This was disputed by the applicant in a dismissive way. The detail of the respondent's evidence on this topic supported its reliability. I find that in February or March 2001 the respondent paid for the removal of stumps and trees from the front yard of the property and for the front yard to be levelled by a bobcat (which expenditures have been included in Ex 9) and that the respondent prepared the front yard of the property for turf, paid for turf to be delivered and the respondent laid, rolled, watered and maintained the turf.

[52] I accept the evidence of the respondent in respect of the purchase of a tree for approximately $950 and that she spent a further $550 on other plants for the front garden.

[53] The respondent claims to have mown and maintained the gardens of the property. The applicant claims to have taken care of the gardens and lawns. It was apparent from listening to both the applicant and the respondent that each was reluctant to attribute credit to the other for work done in maintaining and improving the property. After considering the evidence of both of them on this topic, I find that each undertook mowing and maintenance of the garden, but not to the exclusion of the other.

[54] Even allowing for these expenditures which I have found that the respondent made for the benefit of the joint household, it is still apparent that the applicant contributed a greater proportion of his much larger income to the joint household than the respondent did of her income. It does not follow, however, and there is no evidential basis for the assertion made on behalf of the applicant that the respondent was able to save money, as a result of the applicant's contribution to her personally which she used to pay for the renovations to the respondent's property. The evidence is to the contrary, because of the use made by the respondent of the line of credit to pay for the renovations.

[55] I consider that the applicant's evidence of his contributions to the respondent's property was overstated. I infer from the focus of their relationship on the property

that the applicant did little, if anything, by way of activities to improve the value of the respondent's property. It appears that most of the renovations to the respondent's property took place after February 2002 when, as the applicant acknowledged in his evidence, the respondent had assumed a greater role in bearing her own living expenses.

[56] The applicant claims to have paid in excess of $1,000 for the respondent's telephone service at the respondent's property. The respondent denied this. In re-examination, the applicant identified the telephone bills in Ex 6 as those for the telephone service at the respondent's property which he had paid. They were, in fact, accounts for the respondent's mobile service. I reject the applicant's evidence on this aspect.

Contribution to family welfare

[57] Prior to the parties and their children commencing to reside at the property, the respondent states that she was homemaker for the applicant's daughters who were grieving for their mother at the respondent's property from September 2000 until the parties took up residence in the property. The applicant acknowledges the respondent's "considerable contribution to the settling of my children in the period prior to cohabitation".

[58] The applicant was working fulltime in his business during the relationship. He estimated that he was working in excess of 50 hours per week, although some of that time was for work on his business that he did whilst at home. He also travelled for his business which resulted in his being away from home including one trip to New Zealand for 2 weeks.

[59] The applicant asserted in his affidavit sworn on 21 February 2003 that from about March 2001 the respondent became very busy with her car business and he estimated that she was regularly devoting in excess of 50 hours per week (including weekends) on her car business and the renovation of the respondent's property. In view of the amount of time which the applicant spent during the week away from home at work, it is difficult to see how he was in a position to accurately estimate the amount of time the respondent was spending on her interest in cars.

[60] When the respondent was cross-examined on the amount of time she spent on buying and selling cars, she stated that it would depend on what she was doing on that day and that she might spend 1, 2 or 3 days straight in working on the cars and that it depended on what she was doing with the car and what she had planned for the rest of the week. The respondent stated that what she was doing in relation to cars was "a hobby".

[61] Ms B was employed by the applicant as a cleaner at the property from 23 November 2001. From then Ms B worked three hours per week on one day cleaning the house and doing the ironing. The respondent was not always present at the property when Ms B was there, or sometimes she was down the back of the property. Ms B

usually saw the respondent when she arrived at the property. Ms B stated that the respondent was frequently on the telephone "buying and selling cars" and Ms B could also recall "many occasions" when people would come to the applicant's home to buy cars. In view of the time that Ms B commenced employment and the time when the relationship broke down, this could be over a period of no more than five months.

[62] The evidence of Ms B and Mr B goes some way to support the contention that there was some regularity about the work that the respondent undertook in relation to restoring and selling cars. As the respondent mainly undertook the renovations of the respondent's property in the latter part of the period of rehabilitation, the applicant's allegation against the respondent in respect of 50 hours per week must relate primarily to the respondent's activity with cars. I reject the applicant's estimation of the respondent putting in over 50 hours per week on that activity as an exaggeration.

[63] The applicant describes that her primary role throughout the relationship was homemaker and she provided care to the applicant, his daughters and her daughter. The applicant describes her regular tasks as including taking the children to school or to the bus stop in the morning, being at home for the children after school, supervising the children's homework, playing games with the children, doing the washing and ironing, cleaning the house, cooking meals for the family, making costumes for school plays, taking the children on outings, driving the applicant home after social outings and shopping for groceries and household supplies.

[64] From March 2001 until Ms B was engaged in November 2001, the applicant engaged various housekeepers through an agency to clean the house and do the ironing on one occasion each week.

[65] Although the applicant disputed the degree to which the respondent did these activities which she described as part of her homemaker role, I infer from all the evidence that for most of the period of cohabitation the respondent did undertake these tasks to a much greater extent than the applicant (other than the ironing). I accept that there were difficulties in the household between the applicant's daughters and the respondent by the end of 2001 and that as the relationship broke down, the respondent reduced her involvement in some of these tasks which she had undertaken regularly.

[66] I reject the evidence of the respondent which elevated his contribution to homemaking and parenting as equal to the respondent. I find that for most of the period of cohabitation the respondent's role as homemaker was significantly greater than the applicant's contribution to the family welfare.

Decision

[67] The overriding consideration for determining the property adjustment order is that the length of the de facto relationship was only about 15 months. As a starting

point, the applicant should have returned to him the sum of $71,000 which was the capital sum which he contributed that enabled the property to be purchased and for both parties to benefit from the accretion in the value of the property.

[68] When weighing up the other factors which favour the applicant and comparing them against the factors which favour the respondent, even after excluding the sum of $71,000 which must be returned to the applicant from the net proceeds of sale, the preponderance of contributions still favours the applicant. Allowing for the repayment of $71,000 to the applicant, leaves the sum of $50,737.19 to be divided between the parties. This sum remains, because of the accretion in value of the property during the period of cohabitation. An appropriate division of that sum, after recognising that the applicant will be repaid the sum of $71,000, is 60% to the applicant and 40% to the respondent. This results in the sum of $121,737.19 being divided so that the applicant receives $101,442.31 and the respondent receives $20,294.88.

[69] In the light of all the findings which I have made, this represents a just and equitable distribution of the net proceeds of sale. Each party is entitled to receive the interest which has accrued on that proportion of the total sum payable to that party.

Jurisdictional issue

[70] At the commencement of the hearing Mr Smith of counsel on behalf of the respondent sought a ruling on whether the court had jurisdiction to make a property adjustment order. It was submitted that none of the conditions set out in s 287 of the *PLA* was satisfied.

[71] If a party to a proceeding under Part 19 of the *PLA* wishes to dispute the jurisdiction of the court that would normally be raised as a preliminary issue to be determined by the court in advance of the hearing of the application. As the parties had prepared for the final hearing which was likely to last 1 day only, I deferred dealing with the jurisdictional issue until the end of the hearing.

[72] Section 287 of the *PLA* provides:

> "A court may make a property adjustment order only if it is satisfied-
> (a) the de facto partners have lived together in a de facto relationship for at least 2 years; or
> (b) there is a child of the de facto partners who is under 18 years; or
> (c) the de facto partner who applied for the order has made substantial contributions of the kind mentioned in section 291 or 292 and failure to make the order would result in serious injustice to the de facto partner."

[73] The respondent argued that none of conditions (a), (b) or (c) was satisfied, which had the result that the court had no jurisdiction to make a property adjustment order.

[74] The applicant relied on both conditions (b) and (c). It is not necessary to consider condition (b), as I am satisfied that condition (c) has application.

[75] There were no authorities to which I was referred which had interpreted the phrase "serious injustice" in the context of s 287 of the *PLA*. The respondent relied on authorities from other contexts which were of no real assistance. The phrase must be interpreted in the light of the reform intended to be achieved by Part 19 of the *PLA*.

[76] In the circumstances of a short term de facto relationship as this one, the fact that the applicant made a substantial capital contribution to the purchase of the property in which both parties were registered as equal owners is sufficient to support the conclusion that there would be a serious injustice to the applicant, if a property adjustment order were not made.

Order

[77] The order which is made is:

The net proceeds of $121,737.19 from the sale of the property together with interest earned from the investment of the net proceeds of sale be divided as to the sum of $101,442.31 and interest accrued thereon to the applicant and as to $20,294.88 together with interest accrued thereon to the respondent.

[78] Although the jurisdiction to award costs in a proceeding of this nature is limited by s 341 of the *PLA*, I will give the parties an opportunity to make submissions on the issue of costs.