SUPREME COURT OF QUEENSLAND

CITATION:	*H v M* [2006] QSC 354
PARTIES:	**H** (applicant) v **M** (respondent)
FILE NO/S:	BS 3537/05
DIVISION:	Trial Division
PROCEEDING:	Civil Trial
ORIGINATING COURT:	Supreme Court Queensland
DELIVERED ON:	27 November 2006
DELIVERED AT:	Brisbane
HEARING DATE:	9 November 2006
JUDGE:	Lyons J
ORDER:	**1. That the respondent pay the applicant $9,249.10 within 60 days and that upon such payment, the applicant immediately do all acts and things necessary to transfer her interest in the Deception Bay property to the respondent.** **2. If the payment required by paragraph 1 is not made within 60 days then the property at Deception Bay be listed for sale and that upon such sale the sum of money required to ensure that the respondent receives 70 per cent of the net property pool be paid to the respondent with the applicant retaining the balance proceeds.** **3. That except as otherwise provided each party retain all property and other assets currently held by them.** **4. Liberty to each party to apply on 3 days notice in writing to the other.**
CATCHWORDS:	FAMILY LAW AND CHILD WELFARE – DE FACTO RELATIONSHIPS – ADJUSTMENT OF PROPERTY INTERESTS – GENERALLY *Acts Interpretation Act* 1954, s 32DA, s 32DA(2) *Property Law Act* 1974 (Qld), Part 19, s 260, s 261, s 286, s 287, s 293, s 296, s 297, s 298, s 299, s 399, s 300, s 303, s 305, s 309 *Bonnici and Bonnici* (1992) FLC 92-272 [cited]

McMahon and McMahon (1995) FLC 92-606 [cited]
NFO v PFA [2005] QSC 176 [applied]
Quinn and Quinn (1979) FLC 90-677 [cited]
S v B [2004] QSC 80 [applied]

COUNSEL: P J Sweetapple for applicant
C F O'Meara for respondent

SOLICITORS: Shila Batenburg & Associates for applicant
Beven Bowe & Associates for respondent

[2] **LYONS J**: This is an application pursuant to Part 19 of the *Property Law Act* 1974 (Qld) ("*PLA*") for a property adjustment. The applicant is 41 years of age and is employed by Education Queensland as a Teacher Librarian. The respondent is 50 years of age and is currently employed on a one year contract as a Captain in the Army. Whilst the applicant has one child there is no child of the relationship.

[3] Whilst the exact date is disputed, it is agreed that the parties were living together by late 2000 and that the relationship finally ended in September 2004. During the period from November 2000 to September 2004 a series of properties were purchased by the respondent, the applicant and by the parties jointly. The sequence can be set out as follows:

1. 16 November 2000 respondent signs contracts to purchase two properties at Zillmere ("Zillmere A" and "Zillmere B") for $80,000 each with a settlement date of 16 December 2000. Both properties are in the respondent's name only with a mortgages of $77,108.08 and $72,699.84 to First Australian Building Society dated 8 December 2000.
2. January 2001 the parties move to Zillmere B property.
3. April 2001 applicant buys land at Bridgeman Downs for $101,000 and enters into a construction contract for $127,500. The property is in the applicant's name only with a loan of $207,000 from Macquarie Bank which is guaranteed by the respondent with the Zillmere properties as security.
4. December 2001 parties move to Bridgeman Downs property.
5. June 2002 property at Deception Bay purchased in joint names for $104,000.
6. All properties refinanced and joint account opened July 2002.
7. September 2004 parties separate.
8. 9 March 2005 Bridgeman Downs property sold by the applicant for $435,000.
9. 17 March 2005 applicant purchases property at Albany Creek for $340,000

[4] These proceedings were commenced by originating application filed on 19 May 2005. The applicant seeks an order that the respondent pay her $190,538 within sixty days and that upon such payment the applicant will immediately transfer her interest in the property at Deception Bay, to the respondent.

[5] The respondent filed a cross application on 12 October 2006 and seeks an order that he was solely entitled to the two properties located at Zillmere, that the applicant transfer all of her interest in Deception Bay property to the respondent and that the applicant pay the respondent the sum of $55,900 within thirty days.

Property distribution under Part 19 of the *PLA*

[6] The court may make orders adjusting property interests to ensure a just and equitable property distribution at the end of a de facto relationship.[1] In deciding what is just and equitable the court must consider the following matters:[2] Contributions to Property or Financial Resources; Contributions to Family Welfare; Effect of Future Earning Capacity and any other orders that are relevant.

[7] In addition the court must consider the following matters, to the extent that they are relevant in deciding what is just and equitable:[3]

1. the age and state of health of each of the de facto partners;[4]
2. the income, property and financial resources of each of the de facto partners;[5]
3. whether the de facto has the care of a child who is under 18 years;[6]
4. the commitments of each of the partners;[7]
5. the physical and mental capacity of each of them for appropriate gainful employment;[8]
6. what standard of living is reasonable for each of the de facto partners in all the circumstances;[9]
7. the length of the de facto relationship;[10] and
8. any fact or circumstances the court considers the justice of the case requires to be taken into account.[11]

[8] Section 291 of the *PLA* provides that in assessing contributions made by the parties, both financial and non financial contributions made directly or indirectly by the de facto spouses to the acquisition, conservation or improvement of any of the properties as well as the financial resources of the parties need to be considered. The section further provides that it does not matter whether the property or financial resources still belong to the parties when the issue of contribution is being considered.

The approach to a property settlement under Part 19

[9] The approach to be adopted in property adjustment matters under the *PLA* was set out by Mullins J in *NFO v PFA*:[12]

> "the approach that should be taken … should accord with the approach taken to the similar provision in the *Family Law Act* 1975 (Cth) which involves four inter-related steps:

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1 Section 286 of the *PLA*
2 Subdivision 3 of Division 4 of Part 19 of the *PLA*
3 Subdivision 4 of Division 4 of Part 19, s 296 of the *PLA*
4 Section 297 of the *PLA*
5 Section 298(a) of the *PLA*
6 Section 299 of the *PLA*
7 Section 300 of the *PLA*
8 Section 298(b) of the *PLA*
9 Section 303 of the *PLA*
10 Section 305 of the *PLA*
11 Section 309 of the *PLA*
12 [2005] QSC 176 at [14]

(a) the court should make findings as to the identity and value of the property, liabilities and financial resources of the parties at the date of the hearing;
(b) the court should identify and assess the contributions of the parties and determine the contribution based entitlements of the parties expressed as a percentage of the net value of the property of the parties;
(c) the court should identify and assess the other relevant matters and determine the adjustment (if any) that should be made to the contribution based entitlements of the parties established in the preceding step; and
(d) the court should consider the effect of those findings and determination and resolve what order is just and equitable in all the circumstances of the case."

[10] I accept as a basic proposition that the relationship was relatively brief as it was for a period of some four years only and that this justifies the approach set out by Mullins J in *NFO v PFA*:[13]

> "It is relevant that the length of the de facto relationship of the parties was only about 3 years. That justifies a close examination of the parties' financial contributions to the relationship: *Quinn and Quinn* (1979) FLC 90-677 at 78, 615."

[11] Section 287 of the PLA provides that the court may make a property adjustment order in certain circumstances only and this includes if the de facto partners have lived together in a de facto relationship for at least two years. I am satisfied that the relationship in this case is clearly one which falls within the definition of a de facto relationship as defined by s 260 and s 261 of the *PLA* and, accordingly, is to be determined according to the provisions of Part 19 of the *PLA*. The parties are in dispute as to when the de facto relationship actually commenced and this will therefore be the first question which needs to be determined. The respondent submits that this issue is significant because it is his contention that two of the properties were acquired by him prior to the commencement of the relationship and they should not be taken into account in the property adjustment.

When did the de facto relationship commence?

[12] Both parties agree that the relationship ended in September 2004. The applicant claims that the de facto relationship commenced in early September 2000 after the parties had dated for about fourteen months. The respondent however states that the parties did not commence a de facto relationship until he moved in with the applicant at Brackenridge in December 2000. The applicant contends that the relationship spanned four years whilst the respondent argues that the de facto relationship spanned three years and nine months only.

[13] The evidence indicates that the parties were dating from around July 1999 and that it was the applicant who was initially interested in the properties at Zillmere at the end of 2000. It is also clear from the evidence that both the applicant and the respondent inspected the Zillmere properties but that the applicant was not in a

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13 [2005] QSC 176 at [52]

position to purchase any of the properties. Subsequently the respondent decided to purchase two of the properties because it fitted in with his plans to commence a property portfolio. I accept that the respondent purchased the properties in his name only as part of this plan.

[14] The extrinsic evidence shows that the contracts for the purchase of the properties were dated 16 November 2000 with settlement within 30 days. The contracts show a purchase price of $80,000 for each property and a deposit of $4,000 for each. The contract also shows the respondent's address at Wilston as at 16 November 2000. In addition the loan documents signed by the respondent in relation to the Zillmere properties are dated 8 December 2000 and also give Wilston as his residential address. The extrinsic evidence therefore indicates that the respondent was not residing with the applicant in November or early December 2000. I accept the respondent's evidence that once he had entered into the contracts he rang the applicant and suggested that they move to one of the new properties together after settlement. I accept the respondent's evidence that subsequent to that phone call and probably by mid December (but certainly by Christmas) he moved in with the applicant at her rented premises at Brackenridge in anticipation of their move to the Zillmere B premises.

[15] In preferring the respondent's version of events I found him to have a more precise recollection of dates and circumstances surrounding the events. In particular I note that the applicant had significant difficulty in remembering the correct year in which the events occurred. The applicant relied on her memory of looking for properties during the school holidays and indicated this would have to have been September. The respondent indicated that he knew that it was both after he signed the contracts and after his birthday that he rang the applicant and suggested that they move in together. Given that his birthday is on 22 November and that the contracts were signed on 16 November I find that this is a more precise indication of when the offer was made to the applicant that they live together and that she move with him to the property at Zillmere.

[16] Whilst it is clear that the respondent was spending a lot of time at the applicant's home prior to December 2000 I am not satisfied that there was a de facto relationship in existence prior to the respondent actually moving in with the applicant in mid December. Section 32DA of the *Acts Interpretation Act* 1954 ("*AIA*") provides that a de facto partner is a reference to either one of two persons who are living together as a couple on a genuine domestic basis but who are not married to each other or related by family. In deciding whether two people are living together as a couple on a genuine domestic basis, s 32DA(2) of the *AIA* sets out a number of factors which can be taken into account, including:

> "(2) In deciding whether 2 persons are living together as a couple on a genuine domestic basis, any of their circumstances may be taken into account, including, for example, any of the following circumstances--
> (a) the nature and extent of their common residence;
> (b) the length of their relationship;
> (c) whether or not a sexual relationship exists or existed;
> (d) the degree of financial dependence or interdependence, and any arrangement for financial support;
> (e) their ownership, use and acquisition of property;

(f) the degree of mutual commitment to a shared life, including the care and support of each other;
(g) the care and support of children;
(h) the performance of household tasks;
(i) the reputation and public aspects of their relationship."

[17] In the circumstances I am satisfied that it was not until the respondent put forward the proposition that they move to the Zillmere B property together and he moved in with the applicant in anticipation of that move that the parties could be held to be involved in a relationship together which had a genuine domestic basis. I accept the evidence that up until this time the respondent kept a room and the bulk of his possessions at his friend's home at Wilston where he rented a room. It was not until December that there was a mutual commitment to a shared life together and a public acknowledgement of their relationship by the respondent giving up his rented room at Wilston. There was no evidence at all of any shared finances or financial interdependence prior to this period or of any sharing of household tasks such that would suggest a de facto relationship.

[18] Accordingly, I consider the de facto relationship commenced when the respondent moved in with the applicant at Brackenridge with the intention that they would then commence living together and move on to the Zillmere property together. I find that this was in mid December 2000.

The history of the relationship.

[19] The parties resided together for a short time at Brackenridge and in January 2001 moved together to one of the Zillmere properties which the respondent had purchased, with the other property situated next door. At the time of the commencement of the relationship the applicant had no savings but rather a credit debt of $3,990 and a car loan of $5,000. The respondent however had savings in the order of $16,000 and the first homeowners grant of $7,000 which he had applied towards the purchase of the properties at Zillmere.

[20] Whilst residing at Zillmere it is clear that the parties both applied themselves to the improvement of the properties and shared the general living expenses. The applicant paid for groceries but did not pay loan commitments or any rent and as a result she paid off her debts and saved around $14,000 during the year. The applicant also received $5,000 inheritance from her aunt which she used to pay off the loan on her car. The economies that residing with the respondent brought, together with a homebuilders grant of $14,000, enabled the applicant to purchase a block of land at Bridgeman Downs in July 2001 for $101,000 and enter into a contract to build a house for $127,5000. This was achieved by a loan from Macquarie Bank of $207,000. The respondent signed a guarantee for this loan and allowed the Zillmere properties to be used as security.

[21] In June 2002 the parties decided to purchase a further property at Deception Bay for $104,000. This property was purchased in joint names and joint finances were commenced in July 2002 when the parties refinanced with the National Australia Bank. At this time the Macquarie Bank loan for the Bridgeman Downs was paid out and the respondent's guarantee released. The respondent's loan in relation to the Zillmere properties was also refinanced. Some furniture was also purchased by the parties during the relationship.

[22] Throughout the relationship the applicant was employed by Education Queensland as a teacher. The respondent was employed in various jobs until May 2003 when he ceased work in order to search for a business venture. In the 16 months prior to the end of the relationship the respondent was not working fulltime. In this period the respondent did some substantial works on the properties, managed the tenanting of the properties and received rental income of $30,451 from his Zillmere properties.

[23] The applicant's daughter resided with them throughout the relationship and her school fees totalled $6,000 per year. The applicant was assisted with the fees to a degree by an aunt who provided $3,000 in 2003. I accept that whilst the applicant would have paid for most of her daughter's expenses this would have been paid out of the joint account after July 2002. I accept that whilst the applicant did most of the cooking and washing she was assisted to a degree by the respondent who did the major maintenance and outside work on all the properties.

[24] The parties' relationship was subject to strain during 2004 as the respondent had been unable to find an appropriate business venture or any secure employment which resulted in considerable financial pressure. In September 2004 the parties separated. After separation the applicant continued to reside in the Bridgeman Downs property which she sold in March 2005 for $435,000. The property at Albany Creek was purchased by the applicant in April 2005 for $350,000.

[25] In October 2004 the respondent moved in to the Zillmere A property and continues to reside there. The respondent continues to manage the rental of the Zillmere B and Deception Bay properties.

The property, liabilities and financial resources of the parties at the time of hearing

[26] Turning then to the first step in the 4 step approach already referred to which is to make findings as to the identity and value of the properties, liabilities and financial resources of the parties at the date of the hearing. In this regard I note that it is the value of the Albany Creek home and not the Bridgeman Downs that has to be taken into account. The question raised by the respondent however is whether an amount of $20,000 should be taken into account in the respondent's favour as they consider the property was sold at an undervalue.

[27] Having considered the evidence in relation to the value of the Bridgeman Downs property where the parties were residing in at the time of the separation I accept that the sale price of $435,000 whilst slightly below the expected market value was well within the appropriate range.[14] I am not satisfied that there is sufficient evidence to establish that the property was sold below value and accordingly will not make any adjustment in this regard.

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[14] Affidavit of Alexander Sellar dated 12 October 2006 p 3

Value of the Properties and Assets at the time of the hearing:[15]

Property	Value
Albany Creek (Applicant)	$ 350,000
Zillmere (A) (Respondent)	$ 230,000
Zillmere (B) (Respondent)	$ 245,000
Deception Bay (Joint names)	$ 220,000
Toyota Corolla (Applicant)	$ 15,500
Toyota Camry (Respondent)	$ 1,000
Household goods (Applicant)	$ 3,140
Household goods (Respondent)	$ 1,657
Rental income produced by Zillmere B and Deception Bay	$ 10,000
TOTAL	**$1,076,297**

The Parties Liabilities

Liability	Value
Mortgage over Albany Creek (Applicant)	$190,000
Mortgage over Zillmere A (Joint)	$ 80,000
Mortgage over Zillmere B (Joint)	$ 80,000
Mortgage over Deception Bay (Joint names)	$100,000
TOTAL	**$450,000**

Net Property: $626,297

Net Assets currently held by the applicant:

Property	Value
Albany Creek	$160,000 (net)
Toyota Corolla	$ 15,500
Household goods	$ 3,140
TOTAL	**$178,640**

Net Assets currently held by the respondent:

Property	Value
Zillmere A	$150,000 (net)
Zillmere B	$165,000 (net)
Toyota Camry (Respondent)	$ 1,000

15 Property values are pursuant to agreed Valuation by Alexander Sellar dated 2 October 2006

Household goods (Respondent)	$ 1,657
Rental income produced by Zillmere B And Deception Bay	$ 10,000
TOTAL	**$327,657**

Asset in Joint Names

Deception Bay Property - $120,000 (net)

Financial Resources:

Applicant

Fund	Amount
Q Super defined benefit	$69,922
Q Super accumulation account	$12,260
TOTAL	**$82,182**

Respondent

Fund	Amount
MSBS member benefit	$ 3,714
MSBS employer benefit	$12,987
Sunsuper	$ 268
MLC	$ 5,126
STA	$ 628
TOTAL	**$22,723**

A Global Approach or an Asset by Asset approach?

[28] There are two possible judicial approaches to the assessment of the entitlement of the parties to property, namely the global approach and the asset by asset approach. The global approach involves the division of the parties' assets on an overall proportion of the global view of the total assets. The asset by asset approach involves a determination of the parties' interest in individual items of property.

[29] There is no binding principle of law controlling the exercise of the discretion in the division of property. As Philippides J said in *S v B*:[16]

> "The global approach is often regarded as a more convenient method than an asset by asset approach and counsel for the plaintiff urged that that approach should be adopted here. In doing so counsel for the plaintiff conceded that the assets in the pool were effectively all sourced from the funds which the defendant had at the commencement of the relationship.
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> However, counsel for the defendant submitted that the adoption of the global approach of a percentage of apportionment of the total assets would produce an unfair result in this case. Relying on decisions such as *McMahon v McMahon* (1995) FLC 92-606 and

[16] [2004] QSC 80 at para 51 and 52

> *Bonnici v Bonnici* (1992) FLC 92-272, it was contended that an asset by asset approach should be adopted, particularly since it was argued that the majority of the assets were derived prior to the commencement of the relationship, which was argued was of a relatively short duration. It was contended that it was inequitable for the plaintiff to now assert a percentage of the total value of the property when she had little, if any, involvement in respect of its initial acquisition and maintenance. It was thus submitted that the adoption of a global approach would result in undue weight being given to substantial assets of the defendant to which the plaintiff had little or no contribution."

[30] In this case the respondent is urging an asset by asset approach relying on the decisions of *McMahon and McMahon*[17] and *Bonnici and Bonnici*[18] on the basis that it would be unfair to take into account both the Zillmere properties which were acquired by the respondent immediately prior to the commencement of the de facto relationship. In *McMahon* the facts were summarised by the Family Court as follows:[19]

> "The short duration of and the unhappy nature of the marriage, coupled with the parties' strict division of assets and their method of dealing with them lent itself to an asset by asset approach, particularly where they had separately identified another group of assets as joint."

A Global Approach

[31] In the circumstances of the current case however I do not consider that there was a strict division of assets and I consider that the global approach is the fairer approach due to the fact that the dealings with all of the property had many of the characteristics of a joint venture from the very beginning.

[32] It is clear that the parties' property investments were launched by an initial financial contribution from the respondent only. The respondent had about $16,000 in savings and he received $7,000 first home-owners grant which makes a total initial contribution of $23,000.[20] However both parties contributed to the renovation and upkeep in relation to both of the properties from the time of settlement. Despite the fact that the deposit and initial outlays were made by the respondent the parties moved to the property together and those properties in essence became a joint undertaking. The respondent concedes that the applicant assisted with the internal painting and organised tradesmen on both the Zillmere properties. In addition the ability to pool resources and share expenses led to economies of scale for the respondent as well as the applicant which allowed him to pursue his property plan.

[33] Despite the respondent's ability to "kick start" the venture by his contribution of the deposit the very success of the property venture from the very beginning was due to their joint efforts. This initial financial contribution by the respondent was significant however and it should be recognised. Whilst I therefore consider that the

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17 (1995) FLC 92-606

18 (1992) FLC 92-272

19 At 82, 0443

20 Transcript at p 7 line 53. Whilst the figure of $31,000 is referred to this is not borne out by the mortgage documents and I can find no substantiation for this higher figure.

global approach is fairer overall I consider that within this approach the respondent's initial financial contribution should be specifically taken into account.

Initial Financial Contributions

[34] Turning then to the next step which involves an analysis of the contributions the parties made and a determination of the contribution based entitlements of the parties expressed as a percentage of the net value of the property of the parties.

[35] The initial contributions and initial liabilities of the parties were as follows:

Applicant	Respondent
Toyota Starlet (loan of $5,000 paid out with gift from father and sold for $6,800 after separation)	Honda motor vehicle sold for $200
Furniture	A chest of drawers
Credit card debt of $3,990	$16,000 savings

[36] As previously indicated, whilst a global approach should be adopted because the commencement of ownership of the assets is so closely allied to the commencement of the relationship, recognition should be given to the role the respondent played in relation to the success of the couples financial affairs. The respondent had saved the initial funds by living frugally and renting a room at a friend's place after returning from overseas. He saved these funds with the intention of starting a property portfolio and he then commenced his property acquisitions. Furthermore it was the respondent's initial savings of $16,000 plus the $7,000 home-owners grant which really launched the whole property portfolio.

[37] Importantly it was the respondent's discipline and financial skills which made the whole enterprise achievable. Whilst it is clear that both parties worked hard to develop and maintain the properties it was the respondent who should take the credit for the initiation and success of the venture to a large degree. It was really the respondent's financial plan which the applicant got caught up in and benefited from. Whilst acknowledging the applicant's contribution it has to be said that the applicant is in a significantly better financial position due to the skills of the respondent. I also note the evidence that the applicant was able to pay off her debts and save some $14,000 whilst residing with the respondent in the year 2001.

[38] In the absence of any savings by either party which survived the relationship, the applicant submits that each party contributed the whole of their net incomes, plus grants of government assistance, into the relationship during cohabitation. Whilst an estimate of the financial contributions are as set out below I note that at least $6,000 per year would have been expended on the applicant's daughters school fees with further amounts necessary for her clothes, groceries and other expenses. It is also clear from the evidence that the respondent lives quite frugally and that it is the applicant who had the greater expenses during the relationship.

[39] I also note that there should be an acknowledgement of the fact that the applicant was the only party working full time for the period May 2003 to September 2004 and the respondent's income was essentially rental income which then attracted significant tax deductions.

	Applicant	**Respondent**
FY ending 30 June 2001 (9 months only)	E$37,000	$25,006 net income, plus $7,000 First Home Buyer's grant
FY ending 30 June 2002	$39,548	$35,075
FY ending 30 June 2003	$37,883 plus $14,000 home builder's grant	$33,763
FY ending 30 June 2004	$41,691	$30,451 ($3,920 net after deductions)
FY ending 30 June 2005 (4 months only)	E$14,000	E $5,000

[40] Overall then I should take into account the significant financial contribution made by the respondent at the commencement of the relationship together with his ongoing financial skills but I should balance this against the applicants higher income during the entire period which was paid into the joint account for the last two years of the relationship. In the circumstances I would give the respondent an adjustment of 10% in his favour.

Non Financial Contributions

[41] I accept that both parties made non-financial contributions. It is clear from the evidence that both parties contributed to the success of the property ventures and I accept that both parties worked hard to improve all of the properties. There is clear evidence that they both painted the houses and planted tress and generally did all that was required to improve the properties. I also accept that until 2003 the applicant spent significant time in relation to the renting of the properties and the co-ordination of tradesmen particularly during school holidays. There is also clear evidence of the maintenance and handyman work done by the respondent. He also built walls and did significant landscaping on the properties. When he was not working the respondent also spent significant periods improving the properties. In the circumstances I do not find that one party made any significant non financial contribution over and above the contribution of the other. I would accordingly find that both made non financial contributions of 50 per cent each.

Contributions since separation

[42] The parties have both continued to deal with the assets in their own power since separation. The applicant sold her house at Bridgeman Downs and purchased her current home. The respondent has continued to deal with the properties at Zillmere and Deception Bay and has lived in one of the properties and has rented the other two properties.

[43] Since separation, the applicant has paid off the parties' $11,000 debt to Citibank, while the respondent has been responsible for the $4,000 debt to the National Australia Bank.

Other relevant matters

[44] The next step requires the court to identify and assess other relevant matters and determine the adjustment if any to the contribution based entitlements that was established in the preceding step. Regard must also be had to the effect any proposed order has on the earning capacity of the de facto partners[21] and the other matters referred to the extent they are relevant in deciding what order adjusting interests in the property is just and equitable.[22] In the circumstances of this case the proposed orders should not have any effect on the parties earning capacities.

The age and state of health of each of the de facto partners

[45] Whilst both parties are currently experiencing depression this should resolve once these proceedings are finalised and accordingly I will not take this factor into account for either party.

[46] I also accept that both parties are experiencing some back problems. I note that the applicant has moderate to severe disc degeneration[23] and the respondent has degenerative changes in the lumbar spine as well as bilateral patello-femoral joint arthritis.[24] Of significance to the respondent however is the specific recommendation in the medical report of Dr Norman that he is best suited to sedentary duties not involved with the military which means he is unlikely to get any further contract work with the army despite the fact that his conditions are the result of the respondent's previous 10 years service with the Army, which finished in 1986.

[47] The respondent is approximately 10 years older than the applicant and I accept the respondent's submission that his employment prospects are now more limited than the applicants as he is over 50 and has no formal qualifications. I accept the respondent's evidence as to the difficulty he has experienced in obtaining employment. I further note that his employment is now restricted to sedentary or semi-sedentary work as he has a known back problem. I note that his current employment is a limited contract with the Army which will expire in December 2006. The report of Dr Tracey Hunter indicates that the respondent is very well motivated particularly with respect to starting his own business and that he has an average level of transferable skills but that he would need support to secure future permanent employment outside the armed forces.

[48] The applicant does have more secure and remunerative employment and this has to be taken into account in making a property adjustment between the parties.

The income, property and financial resources of each of the de-facto partners

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21 Section 293 of the *PLA*
22 Section 296 of the *PLA*
23 Report of Dr T Demetriades 27 May 2006
24 Report of Dr Mark Norman 31 July 2006 and Dr Peter Johnstone 5 October 2006

[49] Both parties continue to be capable of generating sufficient income to support themselves and, in the applicant's case, her daughter.

[50] The respondent currently has the two Zillmere properties in his name and the applicant has the Albany Creek property in her name. There is one property which is jointly owned.

[51] The applicant has almost $60,000 more superannuation than the respondent, but must wait 10 more years than the respondent to access her superannuation entitlements. The applicant does receive some funds from time to time from an overseas relative. The applicant also has the prospect of a small inheritance from her deceased father's estate but this is not a certainty.

[52] I would allow a 10 per cent adjustment in the respondent's favour given his greater age, less secure employment and greater difficulty in finding employment as well as his lower level of superannuation.

The commitments of each of the de facto partners necessary to enable the de facto partner to support himself or herself or another child

[53] The respondent has only himself to support, while the applicant must support both herself and her teenaged daughter.

[54] It is clear from the respondent's evidence that the respondent is capable of living very frugally while the applicant had greater difficulty in restricting her expenditure prior to the commencement of the relationship.

The standard of living that is reasonable for each of the de facto partners in all the circumstances

[55] It is appropriate in the circumstances that both parties enjoy a standard of living which is equivalent to the standard they enjoyed during the relationship.

The contributions made by either of the de facto partners to the income and earning capacity of the other de facto partner

[56] Neither party has significantly contributed to the earning capacity of the other as a result of the de facto relationship.

The extent to which the de facto relationship has affected the earning capacity of each of the de facto partners

[57] The de facto relationship was too short for the relationship to significantly impact upon the career options of either party.

[58] In all of the circumstances, an adjustment of 20 per cent overall in the respondent's favour is warranted. In the circumstances therefore the respondent should receive 70 per cent of the net pool of $626,297 and the applicant 30 per cent.

[59] This would give the respondent an entitlement to $438,407.90 of the net assets. The respondent currently has $327,657 of the net assets. There needs therefore to be an adjustment in his favour of $110,750.90.

[60] There is a further $120,000 worth of net assets in the jointly owned property. Of this amount the respondent is entitled to $110,750.90 and the applicant is entitled to $9,249.10.

[61] Accordingly an appropriate property adjustment which is just and equitable is for the respondent to pay the applicant an amount of $9,249.10 and in return the applicant is to transfer her interest in the property at Deception Bay to the respondent. In essence this means the respondent receives assets as follows:

Zillmere A	$230,000.00
Zillmere B	$245,000.00
Deception Bay	$220,000.00
Car and Household items	$ 2,657.00
Rent	$ 10,000.00
Total Assets	**$707,657.00**
Minus debts (Zillmere mortgages of $160,000 + Deception Bay mortgage of $100,000 + Cash Settlement of $9,249.10)	$269,249.10
Balance	$**438,407.90**

[62] The applicant therefore receives assets as follows:

Albany Creek	$350,000.00
Car	$ 15,500.00
Household goods	$ 3,140.00
Plus cash settlement	$ 9,249.10
Total Assets	**$377,889.10**
Less Mortgage	$190,000.00
Balance	**$187,889.10**

[63] If the payment of $9,249.10 is not made within 60 days then the property at Deception Bay should be listed for sale and that upon such sale the sum of money

required to ensure that the respondent receives 70 per cent of the net property pool be paid to the respondent and the balance be paid to the applicant.

ORDERS

[64] The orders are:

1. That the respondent pay the applicant $9,249.10 within 60 days and that upon such payment, the applicant immediately do all acts and things necessary to transfer her interest in the Deception Bay property to the respondent.
2. If the payment required by paragraph 1 is not made within 60 days then the property at Deception Bay be listed for sale and that upon such sale the sum of money required to ensure that the respondent receives 70 per cent of the net property pool be paid to the respondent with the applicant retaining the balance proceeds.
3. That except as otherwise provided each party retain all property and other assets currently held by them.
4. Liberty to each party to apply on 3 days notice in writing to the other.

[65] I will hear counsel for the parties as to costs.