SUPREME COURT OF QUEENSLAND

CITATION:	*DR v C & Ors* [2009] QSC 392
PARTIES:	**CDR** (applicant) **v** **DWC** (first respondent) **TC S.A** (second respondent) **BB LTD** (third respondent)
FILE NO/S:	BS 3159/06
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	4 December 2009
DELIVERED AT:	Brisbane
HEARING DATE:	18-22, 25-27 May 2009
JUDGE:	Douglas J
ORDER:	**Declare that the applicant and the first respondent were de facto partners for the purposes of s. 260 of the *Property Law Act* and s. 32DA of the *Acts Interpretation Act* between June 2001 and 13 April 2006**
CATCHWORDS:	FAMILY LAW AND CHILD WELFARE – DE FACTO RELATIONSHIPS – RELATIONSHIP – Whether the plaintiff and the first defendant were a de facto couple. *Property Law Act* 1974, s 260, s 287(a) *Acts Interpretation Act* 1954, s 32DA *FO v HAF* [2007] 2 Qd R 138, 148-150 applied
COUNSEL:	P W Hackett for the applicant A J H Morris QC and J W Peden for the respondents
SOLICITORS:	Hirst & Co for the applicant Nicholsons for the respondents

[1] **Douglas J**: The issue in this dispute is whether the plaintiff and the first respondent were a de facto couple. I am not required to determine the consequences of any

findings that they were such a couple. I am required to decide the issue by reference to the allegations in para 5 of the statement of claim and para 4 of the defence. Paragraph 5 of the Statement of Claim is in these terms:

> "**De facto relationship**
>
> 5. The plaintiff and the first defendant were in a de facto relationship (hereinafter "the relationship") between February 1998 and 13 April 2006.
>
> Particulars
>
> (a) The plaintiff and the first defendant commenced to reside together in February 1998 after the first defendant asked the plaintiff to marry him;
>
> (b) The plaintiff and the first defendant resided together between February 1998 and 13 April 2006;
>
> (c) The plaintiff and the first defendant resided together in Thailand, Australia, Canada and the Unites (sic) States of America;
>
> (d) The plaintiff and the first defendant had a sexual relationship between February 1998 and 13 April 2006;
>
> (e) The plaintiff and defendant were financially dependant (sic) upon each other to differing extents at different times between February 1998 and 13 April 2006;
>
> (f) The plaintiff and the first defendant each acquired property in their own names or in the name of the second and third defendants which were used for their own personal purposes and use between February 1998 and 13 April 2006;
>
> (g) The plaintiff performed household tasks on behalf of the first defendant between February 1998 and 13 April 2006;
>
> (h) The plaintiff and the first defendant presented publicly as a couple between February 1998 and 13 April 2006."

[2] Paragraph 4 of the Defence said:

> "4. The First Defendant denies as untrue the allegations in paragraph 5 of the Statement of Claim for the reasons that:
>
> (a) the Plaintiff and First Defendant never had a relationship akin to husband/wife;
>
> (b) the relationship was casual and non-exclusive relationship, comprising weekend and holiday visits, with the exception of the period between April 2002 until mid December 2003, during which period the Plaintiff and First Defendant lived together;
>
> (c) in any event, such relationship that existed ended in mid-December 2003;
>
> (d) the Plaintiff and First Defendant did not have an exclusive sexual relationship with each other,

Particulars

(i) Many of the sexual encounters between the Plaintiff and First Defendant were in the company of various and numerous other women, to the extent that approximately fifty percent of the occasions on which the Plaintiff and First Defendant had sex was in company with other women;

(ii) Each of the Plaintiff and First Defendant had other partners from time to time during the relevant period.

(e) each of the Plaintiff and First Defendant spent significant periods of the time in question living independently in, and travelling around, Europe, Asia and North America.

Particulars

(i) the Plaintiff lived full time in Hong Kong between March 1997 until September 2001, whereas the First Defendant never lived in Hong Kong;

(ii) the First Defendant lived primarily in Bangkok between 1997 and 2002, including during that time with his Thai girlfriend. The Plaintiff visited Bangkok for business purposes on numerous occasions, including when the First Defendant was not present in Bangkok.

(f) apart from the period between April 2002 and December 2003, the Plaintiff and First Defendant lived in separate residence in different countries;

(g) each of the Plaintiff and First Defendant were independent and successful business people who were not financially dependent on each other, save to say that the First Defendant often paid for expenses when they were together;

(h) the Plaintiff and First Defendant did not present publicly as if they were a married couple."

[3] The admission in para 4(b) of the defence that the plaintiff and the first respondent lived together between April 2002 and mid-December 2003 is important as that is one of the most significant issues arising under s 32DA of the *Acts Interpretation Act* 1954, the definition of de facto partner applied by s 260 of the *Property Law Act* 1974. Section 32DA provides in subsections (1)-(4) in particular:

> "(1) In an Act, a reference to a ***de facto*** partner is a reference to either 1 of 2 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.
>
> (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.

(3) No particular finding in relation to any circumstance is to be regarded as necessary in deciding whether 2 persons are living together as a couple on a genuine domestic basis.

(4) Two persons are not to be regarded as living together as a couple on a genuine domestic basis only because they have a common residence."

[4] In this case it is also necessary to bear in mind the provisions of s 287(a) of the *Property Law Act* that a court may make a property adjustment order only if it is satisfied that the de facto partners have lived together in a de facto relationship for at least two years.

[5] The applicant understandably placed some emphasis on the importance of the admission of the period during which the parties lived together. The first respondent claimed the admission was made through a clerical error and that it did not address the full array of issues I need to consider in deciding whether the parties were a de facto couple, but that explanation lost plausibility when he decided not to give oral evidence in this proceeding and expose himself to cross-examination.

[6] Nonetheless, I do not feel able to resolve the case simply in reliance on that admission. It does not address all the relevant issues. It is convenient, therefore, to analyse the evidence by reference to each of the matters identified in s 32DA(2) of the *Acts Interpretation Act* as both parties did in their submissions. But first I shall provide some detail about the parties and the background to their relationship.

[7] The applicant is an Australian woman who moved to Hong Kong in 1989 to live and work. She worked there for a company which operated beauty spas, was promoted to a senior executive position and travelled frequently in her work in places such as Hong Kong, Singapore, Bangkok, Malaysia and Taiwan. The first respondent was a Canadian citizen who had worked as a stockbroker for a Spanish firm in Spain, Amsterdam and Bangkok. It was Bangkok where he and the applicant first met in about March 1997. He was then living in Spain but moved to Bangkok to work in November 1997. He had a daughter from a previous marriage who resided with her mother in Florida in the United States of America. His extended family lived in Canada. He did not wish to pay tax in Australia so entered this country on tourist visas that permitted him to stay for three months at a time and not

more than 180 days cumulatively in a year. He behaved during the relationship as if he was wealthy.

Nature and extent of their common residence

[8] The applicant characterised this aspect of their relationship, the nature and extent of their common residence, as a case of their sharing a number of residences between 1997 and 2006 in different parts of the world. There is much to be said for such a characterisation of the evidence particularly after the transfer of half of the applicant's interest in a residence at Sanctuary Cove in Queensland to the second respondent, a company associated with the first respondent, on 18 June 2001 and the increase in the proportion of time they lived together after that event.

[9] During 1997 they sometimes holidayed together but she continued to live in Hong Kong and he in Spain until he moved to Bangkok in November that year. She maintained a shared residence with another friend in Hong Kong but also rented an apartment in Bangkok from January 1998 where she lived with the first respondent when both were in Bangkok. The first respondent visited her in Hong Kong in January and February 1998 and in June 1999 she leased an apartment there herself to use as their residence. He had correspondence sent to him there on occasions from June 1998 including bank statements for a joint account held by him and the applicant with the Bank of Queensland and a personal account he held at the same bank. It seems likely that he spent about five to six weeks each year in Hong Kong with her between 1998 and mid-2001.

[10] They also spent time together in Bangkok during this period and had many periods of overlapping stays in that city where they shared apartments rented by the applicant. It is difficult to be precise about how long they were there together but the applicant endeavoured to show by comparing their immigration records when they were in Thailand together from late November 1997 to July 2001 that there were many periods during those years when they stayed there together for several days or more at a time, which was also the effect of her oral evidence. The documents were not a completely reliable record of when they were actually living together, however, and need to be treated carefully, as became apparent in the cross-examination of the applicant.

[11] One feature of their residence in Thailand was what the applicant regarded as an engagement party held at the apartment in Bangkok on 21 February 1998 where she is shown in a photograph wearing a large ring which she regarded as an engagement ring.

[12] There was little independent evidence that the party was an engagement party and that characterisation of it may not have been shared by the first respondent. There is, however, other evidence of people referring to her ring as the "rock" and many photographs showing it on her ring finger in public at events attended by both parties. It was a significant token of his regard for her as it was said to have cost US$80,000.

[13] The first respondent's daughter stayed with them in Bangkok in July 1998 as did his mother and aunt in February 1999, his father and the father's new partner in November 1999 as well as other friends on several occasions.

[14] Not long after the "engagement" party, the applicant agreed to buy a property at Sanctuary Cove. She was accompanied on an inspection by the first respondent who said he would buy a boat to complement the house, something he did in August 2001, not long after the second respondent received a half interest in the Sanctuary Cove property. The mortgage was prepared initially on the basis that it would be entered into in the names of both parties and both stayed there later when they lived in Australia. They visited Australia in June 1998 to complete furnishing the house before the first respondent's daughter was to visit for his birthday in July.

[15] The household insurance policy described both parties as the insured and the schedules identified personal property of each of them. Bank statements for their joint bank account with the Bank of Queensland were sent to that address from May 2002 to February 2006 as were the first respondent's personal accounts from May 2002 to April 2004 and then to a joint post office box at Sanctuary Cove from May 2004 to April 2006.

[16] On 11 January 2001 the first respondent paid out the mortgage on the Sanctuary Cove property with funds totalling $329,664.67 from a company controlled by him and on 18 June 2001 a half share in the property was transferred to the second respondent as a tenant in common with the applicant where the consideration for the transfer was expressed to be "For love and affection etc".

[17] They kept a joint account and paid Energex and other bills, including the first respondent's own bills, from it and also received correspondence at that address in both names. They also maintained a joint membership at the Sanctuary Cove Country Club from July 1998 which was split into two memberships in 2007. The first respondent kept a jeep at Sanctuary Cove. Its insurance policy extended also the applicant and to another car he purchased for her.

[18] The parties visited Australia often after the purchase of the Sanctuary Cove property until they moved to live there in about April 2002 when the first respondent admitted that it became their joint residence. There are numerous photographs showing them at social functions there and in Sydney. The first respondent bought two boats, the first in August 2001 which he later replaced by the second, for use in Australia. They were kept at Sanctuary Cove and sailed on occasions to the Whitsundays and to Sydney.

[19] On 12 March 2004 the first respondent also bought another property at Sanctuary Cove to rent out to lessees. The application for finance for his purchase of that property describes him as then being in a de facto relationship with the applicant and the body corporate fees for that property were addressed to him at their joint address from 2004 to February 2006. Until April 2002, when the first respondent admitted the jointly owned property became their residence, they had lived together there for many weeks, including perhaps 13 weeks in 2001, especially in the latter half of that year. The only real doubt about the amount of time the first respondent spent at Sanctuary Cove related to periods when he may have been on his boat separate from the applicant, something that did happen from time to time.

[20] The parties also spent time together in Tampa, Florida, and in Canada. The apartment they used in Tampa was owned by the first respondent but his application for purchase completed on 25 August 1999 described the applicant as "friend" on

one page and inserted her name above the word "spouse" on another page which also identified her as an additional occupant together with his daughter.

[21] The applicant opened an American bank account in January 2002 at the first respondent's suggestion. That account was then operated by the first respondent and his bookkeeper. The applicant and respondent spent time in Florida, sometimes separately, but often together with about 12 weeks spent there together in various periods from June 2001 to March 2002. When those periods are added to the times they lived together in Sanctuary Cove from June 2001, a distinct picture emerges that they were mainly together sharing common residences in Sanctuary Cove and Tampa from mid-2001, about the time that the second respondent received a half-share of the property in Sanctuary Cove whose mortgage the first respondent had caused to be discharged in January 2001.

[22] The parties also visited Canada from time to time from mid-2003 until the end of 2005, staying at a property owned by the second respondent where some family events were also held. There was contested evidence as to the contribution made by the applicant to the renovation of the property in Canada, which she leased from the second respondent at the first respondent's request, and as to what happened to antique furniture she relocated to the property. I am inclined to believe the version that the applicant gave of those events but, for present purposes, the significant feature of the evidence is that the parties lived together in that house for periods of roughly four to five weeks in 2003, seven weeks in 2004 and seven weeks in 2005 when they were also living together generally in Sanctuary Cove and sometimes in Tampa.

Length of the relationship

[23] The first respondent's admission as to the length of the period during which the parties lived together was that it extended from April 2002 until mid-December 2003. My conclusion from the evidence I have already discussed is that they were effectively living most of the time in common residences in Sanctuary Cove and Tampa from June 2001. They had been in an intimate relationship since 1997.

[24] By December 2003, however, it is clear that they were having problems with their relationship. The first respondent left Australia on 8 January 2004 but returned on many occasions after then and continued to live with the applicant in Sanctuary Cove when he was in Australia and she with him in Canada, particularly until these proceedings were issued on 13 April 2006 and they finally separated. Significantly, however, the applicant had filed an earlier application under the *Property Law Act* in March 2004. It was not served on the first respondent but has never been withdrawn. It seems likely that he became aware of it only after the institution of these proceedings in 2006.

[25] The first respondent argued that the filing of that application evidenced an admission by the applicant that the relationship was then over. Her evidence was that they were then having problems and she was very concerned about their relationship, that she consulted a solicitor for advice but did not give instructions to issue proceedings. That seems unlikely to be the case as it seems she also must have given instructions to lodge a caveat and proceedings would have been required to be issued to support the caveat.

[26] It was suggested to her that the earlier application was not pressed because she must have realised that it had been issued less than two years after they moved into Sanctuary Cove permanently in April 2002 and thus she would not have been able to show the necessary two-year period of living together to invoke the powers of the court under this Act. She rejected that suggestion and said in an affidavit as an explanation for not proceeding with the earlier application that she feared that the first respondent would react violently to her when served with it. She intercepted a notice regarding a caveat lodged over the first respondent's rental property after the first application was filed on her behalf in 2004. Otherwise it would have come to his attention. She blamed her former solicitor for the fact that it had come to their house but that explanation is not terribly plausible unless it is true that the former solicitor had exceeded her instructions in commencing proceedings then and lodging caveats on the first respondent's properties. That solicitor did not give evidence so I am reluctant to form any adverse conclusion about her conduct. The episode does, however, cast doubt on the applicant's sincerity in continuing her relationship with the first respondent after the earlier application was lodged in 2004.

[27] There was also some evidence from which the conclusion could be drawn that the applicant searched through personal papers of the first respondent and took some of them. That practice was described as "methodical and long standing" but the main evidence related to her doing that at the time of separation. I am not persuaded that it was such as to give the lie to the parties' mutual commitment to each other for the greater part of their relationship.

[28] The other available evidence suggests that the relationship did continue until April 2006 and that they spent significant periods together and shared participation in many events as a couple with others up until then. The correspondence from the applicant after separation suggests a recent breakdown in their relationship as do the words used by the first respondent in paragraphs 6 and 7 of ex 2, immediately after the separation in April 2006, when he swore that he had tried to discuss a property settlement with the applicant three weeks before, saying to her "let's end it right now". He also said about an argument they had on 3 April 2006 that he said words to the effect of "let's end it now" to the applicant. It seems clear that what was being referred to was their then existing de facto relationship.

[29] In spite of the issuing of the earlier proceedings and the doubt that cast on the applicant's sincerity in maintaining the relationship thereafter, it seems to me that they did continue to be a de facto couple and that the probabilities are that the applicant resolved genuinely to attempt to continue the relationship rather than terminate it earlier. If her true concern was to ensure only that they had been living together for a demonstrably clear period of two years, and not to attempt to continue in the relationship, then there was no obvious need to wait a further two years to issue these proceedings. That one party to a relationship contemplates separation does not necessarily have the effect of bringing it to an end.

[30] My conclusion about the length of the relationship is, therefore, that it extended from early in 1997 until April 2006 but that the period during which they lived most of the time together in common residences stemmed from about June 2001.

Whether or not a sexual relationship exists or existed

[31] There is no doubt that the parties were involved in a sexual relationship during the whole period from 1997, on the first night they met, until about two weeks until they separated in April 2006. The applicant admitted engaging in two "threesomes" involving another woman at the urging of the first respondent but maintained that her relationship was otherwise exclusively with the first respondent. I accept that and do not conclude that the "threesomes" changed the character of their relationship for the purposes of the Act.

[32] It was put to the applicant that she knew the first respondent had relationships with other women but I accept also that she was not aware of that possibility until shortly before they separated. It was significant also, that the first respondent, although not physically present at this hearing was in contact with it by a video link and had the opportunity to give oral evidence by that video link. He chose not to support the damaging allegations put through his counsel, for example, that he had conducted an affair with one of the applicant's best friends. His lack of participation in the proceedings by his failure to give oral evidence did him little credit when one considers the allegations he made in the pleadings and through his counsel without exhibiting the courage to support them by oral evidence.

The degree of financial dependence or interdependence, and any arrangement for financial support

[33] The first respondent spent money freely, paying for most things, but the applicant contributed to the joint expenses in respect of the Sanctuary Cove home. They had a joint account for those expenses. Their business affairs were separate, although the first respondent did lend the applicant US$250,000.00 on 1 March 2001 to establish a business in Australia. That loan was the subject of promissory notes between the parties.

Their ownership use and acquisition of property

[34] Much of the evidence relevant to this issue has been covered in the earlier discussion dealing with their common residences including the apartments in Hong Kong and Bangkok where they resided together from time to time during the earlier years of their relationship. The applicant's purchase of the Sanctuary Cove property in 1998, the discharge of its mortgage at the direction of the first respondent in January 2001 and the transfer of a half interest in it to the second respondent in June 2001 were significant events in the development of their relationship because of their use of the house when they were in Australia. The property in Tampa was also used regularly by them. Although bought by the first respondent with no financial contributions by the applicant, both parties lived together there for significant periods.

[35] The first respondent's boats in Australia appear to have been used mainly by him but both of them stayed on the vessel in the Whitsundays and in Sydney from time to time.

[36] I accept that the applicant also had a role in helping to direct some renovations of the property acquired by the second respondent in Canada, the house in which they lived when in Canada. She had little involvement with rental property bought separately by the first respondent at Sanctuary Cove or with two condominiums at a ski resort bought by the first respondent and a friend of his through a company they

formed. She did stay there on occasion with him but it does not seem to have figured as largely as the other properties.

Degree of mutual commitment to a shared life, including the care and support of each other

[37] I accept that the applicant was committed to a permanent relationship with the first respondent for most of the time their relationship lasted. His own attitude was not supported by any persuasive evidence called on his behalf but, objectively speaking, the evidence suggests a significant commitment by him over a lengthy period evidenced by the extent to which they lived together, shared property, attended social occasions as a couple and kept in touch when apart. They were also together for significant events such as Christmas, New Year, birthdays, including the first respondent's daughter's birthdays, and holidays.

[38] I am not confident that the party referred to by the applicant as their engagement party on 14 February 1998 was really such a celebration as no witnesses were invited to it on the understanding that it was an engagement party. The applicant was given the money for the large ring to which I have already referred around that time but she purchased it, apparently, without any other involvement by the first respondent. She did not invite one of her close friends to that party and that friend was not told that there had been an engagement and would have expected to have been invited.

[39] Another party at Sanctuary Cove in February 1999 was described as an informal engagement party by the applicant. Her father gave evidence that he congratulated the parties then on becoming engaged but his evidence was not supported by any other significant independent evidence that it really was an engagement party.

[40] The transfer of the half share in the Sanctuary Cove property to the second respondent is persuasive evidence, however, of their mutual commitment to a shared life.

[41] The first respondent criticised the applicant in this context as having misrepresented her health to him by telling him she had cancer when she did not. The motive was said to be to lure the first respondent to spend time with her in Australia when she wished to move back here.

[42] It is clear that the applicant was concerned about her health and was at least careless about what she said in her affidavits and to other people about having cancer when tests had established that she did not have that condition. I am not prepared to conclude on the available evidence, however, that her motive was such as to detract from the conclusion that the parties were mutually committed to a shared life. There are other possible explanations such as self-delusion or hypochondria that need not bear the interpretation urged by the first respondent. She certainly suspected she had cancer but any growths she believed she had appeared to have been benign. She was also not a good witness in the sense that she had great difficulty in focussing on answering the particular question put to her and had a tendency to gloss over obvious inconsistencies and falsehoods in documents produced by her, such as a bank loan application which seriously overstated her income and assets.

[43] Her evidence about the earlier application and the instructions given to her former solicitor and about what work was meant to be done for the fees initially paid to that solicitor raised significant issues about her credit also but I believed the essence of her evidence about the nature and extent of the relationship she had with the first respondent.

Care and support of children

[44] The first respondent's daughter lived generally with her mother and step-father but the applicant saw her regularly and appeared to have a good relationship with her from what she said and from the photographic and documentary evidence, including an email from the daughter on 28 December 2000 saying she "couldn't ask for a better step-mother" and one from the first respondent's former wife of 22 September 2000 describing the applicant as being "a great and life long influence" in the daughter's life.

The performance of household tasks

[45] The applicant cooked and cleaned for the first respondent and performed some administrative work for him. She was a good cook and liked to prepare food but they ate out often and had some domestic help.

The reputation and public aspects of their relationship

[46] The applicant relied on a significant body of photographic and documentary evidence pointing to their being accepted as a couple when attending celebrations, events and family functions and being written to by others as a couple. Their bank manager in Australia treated them as a de facto couple and many documents were addressed to them jointly. I have mentioned their joint membership of the Sanctuary Cove Country Club where the accounts were addressed to "Mr & Mrs DW & CF C & DR". The first respondent's car insurance policy named the applicant as an insured and a significant number of witnesses gave evidence that they regarded them as a couple.

[47] The respondent criticised the evidence of some of those witnesses as being from people who had not seen much of the parties over the relevant period and for the failure to call one of the applicant's best friends in respect of this issue. She was apparently nervous through past experience at the prospect of giving evidence. The failure to call her was more comprehensible when it became clear that the first respondent asserted to the applicant through his counsel that he had conducted an affair with that friend. The friend's husband was also visited with that news in the witness box, an assertion unsupported by any evidence led for the first respondent.

[48] It was clear that the applicant was not previously aware of such an allegation because of the emotional reaction the question produced in the court room.

[49] With the failure of the first respondent to grace the witness box himself, or to call other evidence, I have had little difficulty in concluding that the evidence establishes clearly that the parties were regarded publicly as a couple, not least by the first respondent's own daughter and former wife.

Conclusion

[50] In approaching the fundamental requirement, that, to establish the existence of a de facto relationship, the parties must be "living together as a couple on a genuine domestic basis" the following passages from *FO v HAF*[1] in the judgment of Keane JA are instructive:

> "[21] The commencement of the legal relationship of marriage is readily established by the solemnities and formalities by which the parties declare that relationship to each other and to the world. By contrast, questions as to whether and when a relationship has become a de facto relationship may be attended with considerable uncertainty.
> …
> [24] It can be seen that the legislation does not provide any great assistance in resolving the uncertainty which attends the identification of the point at which a de facto relationship can be said to have commenced. None of the matters listed in s. 32DA(2) of the *Acts Interpretation Act* 1954 is necessarily of decisive significance in this regard: those matters are identified as relevant considerations. The ultimate issue to which they are relevant, however, is whether the parties "are living together … on a genuine domestic basis". This phrase necessarily draws attention to whether the parties are living, or have lived, together to maintain a household in a relationship which exhibits the characteristics of the relationship of marriage, save for the solemnities involved in the formal exchange of wedding vows. That this focus is correct is confirmed by the reference in s. 292(1)(b) of the PLA to 'the family constituted by the de facto partners …'.
> [25] In *PY v. CY*, this Court confirmed that continuing cohabitation in a common residence is not necessary to establish the continuation of a 'de facto relationship' where the parties have lived together as a couple, and have not effected a permanent separation. Nevertheless, the definition of 'de facto relationship' suggests that, usually, the parties should have, at some stage, been 'living together as a couple on a genuine domestic basis'. It must be shown that 'the parties have so merged their lives … that they [were], for all practical purposes, living together as a married couple'. The fact that the parties have never lived together in a common abode must be acknowledged to be a strong indicator that they have not 'lived together as a couple on a genuine domestic basis'. This indication will be especially significant where the parties have not shared the burden of maintaining a household.
> [26] The circumstances of human affairs are so various that the courts should refrain from attempts to define more precisely than the legislature the kind of relationship regulated by pt 19 of the PLA. Nevertheless, as this Court said in *KQ v. HAE*, it will be an exceptional case where two people who have not lived in a common residence, and who have not made actual provision for their mutual

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1 [2007] 2 Qd R 138, 148-150, footnotes omitted.

> support, can be said to have been ‘living together as a couple on a genuine domestic basis’. A case is not rendered exceptional in this context merely because the parties intend, eventually, to live together as a couple. That is simply a case where an existing courtship has not matured into the kind of commitment in which the parties have so merged their lives that they were, for all practical purposes, a married couple. Just as people who are affianced cannot be confused with people who are married, so people who intend to live together as a couple should not be confused with people who do live together as a couple.
> [27] With these considerations in mind, I turn to consider the appellant's criticism of the finding of the learned trial judge that ‘[t]he probabilities are that the parties' de facto relationship did commence at least by December 1997’.”

[51] The facts of this case are rather unusual because of the parties’ lifestyles and the variety of places in which they lived. The nature of their relationship before about June 2001 seems to me to be more readily characterised as one of people who intended to live together as a couple rather than of people who did live together as a couple. The evidence about the nature of the relationship and the lower frequency with which they then saw each other, coupled with the fact that they were often in different parts of the world, does not persuade me that they were then living together as a couple.

[52] The transfer of the applicant’s half interest in the property at Sanctuary Cove to the second respondent on 18 June 2001 was, however, a significant event marking the start of a new phase in their relationship that coincided with them living together most of the time either in Sanctuary Cove or Tampa up until their more permanent move to Sanctuary Cove in April 2002. Although that was then their main base they also had other common residences in Canada and Tampa after that and spent most of their time together.

[53] When that evidence is coupled with their continued sexual relationship up until about March 2006, the applicant’s significant financial support from the first respondent, their common ownership and use of the Sanctuary Cove property, what I regard as their mutual commitment to each other during the bulk of the period, the applicant’s good relationship with the first respondent’s daughter and other members of his family and her performance of household tasks for him and the significant evidence of their reputation and the public aspects of their relationship, the conclusion I have formed is that they were de facto partners from June 2001 until 13 April 2006.

[54] As Keane JA remarked, there is a degree of uncertainty associated with the fixing of the start of the relationship. I have chosen June 2001 as the time when the parties effected the change of ownership of Sanctuary Cove as I believe it marked the occasion when they changed from people who intended to live together to people who were living together as a couple. That is buttressed, as I have said, by the significant degree to which they lived with each other in various places in the world after that event. His purchase of the boat to moor at Sanctuary Cove in August 2001 supports that conclusion also. I have preferred to adopt a reasonably objective approach to this question because of the doubts I have about the reliability of some

of the evidence of the applicant and the scepticism I have in respect of the case advanced by the first respondent caused by his unwillingness to give oral evidence.

[55] The concluding date of the relationship I have fixed as the day on which this application was filed.

Orders

[56] Accordingly I shall declare that the applicant and the first respondent were de facto partners for the purposes of s 260 of the *Property Law Act* and s 32DA of the *Acts Interpretation Act* between June 2001 and 13 April 2006.