

FAMILY LAW ACT 1975

**IN THE FEDERAL CIRCUIT AND
FAMILY COURT OF AUSTRALIA
(DIVISION 2)**

AT NEWCASTLE

No. (P)NCC3896/2023

BETWEEN

**STEPHEN CHRISTOPHER COOKE
(Applicant)**

AND

**HEATHER ANNE COOKE
(Respondent)**

ORDER 13/9/2024

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(DIVISION 2)**

FILE NO: (P)NCC3896/2023

BETWEEN:

STEPHEN CHRISTOPHER COOKE (Applicant)

AND:

HEATHER ANNE COOKE (Respondent)

BEFORE:

JUDICIAL REGISTRAR FURNER

DATE:

13 September 2024

MADE AT:

NEWCASTLE

UPON APPLICATION MADE TO THE COURT IN CHAMBERS and there being no requirement for appearances.

THE COURT ORDERS BY CONSENT AND ON A FINAL BASIS THAT:

1/213 Morgan Street, Merewether

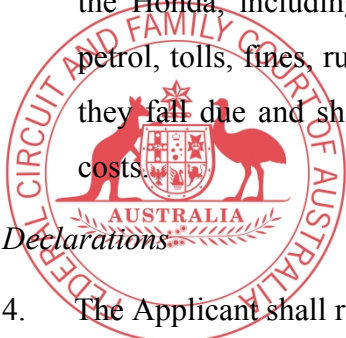
1. Within seven (7) days of the date of these Orders, the parties shall do all acts and things and sign all documents necessary to direct Ramsden Family Law to distribute the balance of the net proceeds of sale held in their Trust Account on behalf of the parties as follows:
 - a. To the Applicant, the sum of \$250,306.00, and
 - b. To the Respondent, the balance.

2015 Honda CRV

2. Within seven (7) days of the date of these Orders, the parties shall do all acts and things and sign all documents necessary to transfer the 2015 Honda CRV registration #DAI47C (“*the Honda*”) to the name of the Applicant.
3. From the date of these Orders, the Applicant shall be solely responsible for all costs relating to the Honda, including but not limited to the registration, insurances, maintenance, repairs, petrol, tolls, fines, running costs and other costs, and shall make such payments as and when they fall due and shall indemnify and keep indemnified the Respondent in relation to such costs.

Declarations

4. The Applicant shall retain to the exclusion of the Respondent:



- a. His interest in the Praemium Prae investments portfolio account ending #8788;
- b. All IT equipment in his possession;
- c. Any interest in cryptocurrency;
- d. All furniture and furnishings in his possession;
- e. All bank accounts in his name including Westpac account ending #3193; and
- f. All superannuation entitlements held in his name including member entitlements with Future Super.

5. The Respondent shall retain to the exclusion of the Applicant:

- a. Her interest in 703/1 Como Crescent, Southport QLD (*“the Como Crescent Property”*) and the associated Westpac offset account ending #2136;
- b. The 2020 Audi Q3 Wagon registration #EIN83R (*“the Audi”*);
- c. Her sole trader business Heather Anne Cooke ABN 79 687 721 943;
- d. Any interest in and control of Heather Anne Cooke Discretionary Trust;
- e. Her Telstra shares;
- f. All furniture and furnishings in her possession;
- g. All bank accounts in her name including Westpac business accounts ending #6525 and #6533; and
- h. All superannuation entitlements held in her name including member entitlements with Q Super.

6. Subject to the specific terms of these Orders, the Applicant is entitled to retain for his sole use and benefit absolutely free from any claim or demand from the Respondent:

- a. All items of personal property, furniture, household goods and effects that belong to him or are presently in his possession,
- b. All monies, savings, shares and investments including any life assurance or superannuation benefits in his name or due or accruing to him and to which he may become entitled to,
- c. All benefits, rights or entitlements due or accruing or to which may vest in his absolutely under any trust or deceased estate, and
- d. All entitlements or benefits due or accruing to him by reason of or arising out of his employment including long service leave and benefits or to be paid in respect of resignation, retrenchment, dismissal or separation from his employment.



7. Subject to the specific terms of these Orders, the Respondent is entitled to retain for her sole use and benefit absolutely free from any claim or demand from the Applicant:
- a. All items of personal property, furniture, household goods and effects that belong to her or are presently in her possession,
 - b. All monies, savings, shares and investments including any life assurance or superannuation benefits in her name or due or accruing to her and to which she may become entitled to,
 - c. All benefits, rights or entitlements due or accruing or to which may vest in her absolutely under any trust or deceased estate, and
 - d. All entitlements or benefits due or accruing to him by reason of or arising out of her employment including long service leave and benefits or to be paid in respect of resignation, retrenchment, dismissal or separation from her employment.

Liabilities

8. Subject to the terms of these Orders, the Applicant will indemnify and keep the Respondent indemnified from all liability in relation to any liability he has in his sole name.
9. Subject to the terms of these Orders, the Respondent will indemnify and keep the Applicant indemnified from all liability in relation to any liability she has in her sole name, including:
- a. Westpac home loan ending #2919 secured by registered Mortgage against the title of the Como Crescent Property;
 - b. Westpac car loan ending #6300 over the Audi;
 - c. Westpac credit card ending #2809;
 - d. Repayment of overpayment of wages to NSW Health; and
 - e. Any BAS debts in relation to her sole trader business Heather Anne Cooke ABN 79 687 721 943.
10. Subject to the terms of these Orders, each party shall be liable for any loan secured over any item of property to which they are entitled under these Orders and will indemnify the and keep the other party indemnified from all liability in respect of such loan.

Execution of instruments



11. In the event that either party refuses or neglects to execute any deed or instrument required to be executed by these Orders within seven (7) days of a written request to do so, the Registrar of the Newcastle Registry of the Federal Circuit and Family Court of Australia is hereby appointed pursuant to Section 106A of the *Family Law Act* to execute such deed or instrument on behalf of such refusing or neglecting party and to do all acts necessary to give validity to the operation to the deed or instrument upon the Registrar being provided with verification of such refusal or neglect by way of affidavit.

Costs

12. Each party is to pay their own costs of and incidental to the proceedings.

THE COURT FURTHER ORDERS THAT:

13. The interim hearing listed on 27 September 2024 is vacated.
14. The *Application in a Proceeding* filed 19 July 2024 on behalf of the Applicant, is dismissed.
15. All outstanding financial and spousal maintenance applications are dismissed.
16. The parenting matter remains listed on **15 October 2024** for Mention before Judicial Registrar Furner.

THE COURT NOTES THAT:

- A. By consent the parties request the Court note the following:
 - i. The parties agree that these Orders are intended to finally determine the financial relationships between the parties in accordance with section 81 of the *Family Law Act 1975*.
 - ii. Each of the parties acknowledge his or her right to make application or claim under or pursuant to the provisions of the *Succession Act 2006* (NSW) (“the Succession Act”) and any Act in the State of New South Wales or elsewhere replacing or amending the same or make like or similar provisions or giving like or similar right to those under the Succession Act.
 - iii. Each of the parties will, if called upon to do all acts and things and sign all documents necessary to support the application of the other (whether made in the lifetime or after the death of either or both of the parties) to the Supreme Court of New South Wales for the approval of the Court under section 95 of the *Succession Act* to a release under the provisions of that Act.



- iv. Each of the parties acknowledge that they have been respectively and independently advised by their legal representatives of their rights and by virtue of the provisions of the *Succession Act*.
- B. In making the final property Orders herein, consideration was given to the filed documents and the joint letter dated 11 September 2024 containing background facts sufficient to enable the Court to be satisfied that the Consent Orders are just and equitable in the circumstances. A copy of this correspondence is retained on the Digital Court File.
- C. Section 114Q of the *Family Law Act 1975* provides that it is an offence punishable by imprisonment for up to one year to communicate to the public an account of family law proceedings which identifies a party to the proceedings, a witness in the proceedings, a person related to, or associated with, a party to the proceedings, or a person who is, or alleged to be, in any other way concerned in the matter to which the proceedings relate, unless specifically authorised by the court. Penalties may apply under section 114Q of the *Family Law Act 1975* to the communication of any material contained in this report other than for use in connection with the proceedings.
- D. If in any proceedings there are allegations of family violence and the provisions of s 102NA of the *Family Law Act 1975* apply (see attached Family Violence Information Sheet), any unrepresented party will not be permitted to personally cross-examine the other party/parties. Affected unrepresented parties may apply to the Commonwealth Family Violence and Cross-Examination of Parties Scheme (“the Scheme”) for representation but any such application must be made at least 12 weeks prior to the final hearing. Further information about the legislation and the Scheme can be found at Part 4 of the attached Family Violence Information Sheet.

By the Court



Registrar



Family Violence Information Sheet

This information sheet contains important information for litigants who have experienced, or are alleged to have perpetrated, family violence. This information is not a substitute for legal advice.

About family violence

Family violence means violent, threatening or other behaviour that coerces or controls a member of the person's family (the family member), or causes them to be fearful (section 4AB *Family Law Act 1975*).

The Federal Circuit and Family Court of Australia (the Court) takes family violence very seriously. Protecting family members from the effects of family violence and ensuring the safety of all people engaged in the family law system, including when attending court, is a high priority for the Court.

Safety at court

Parties concerned about their safety when attending court events can contact the Court's registry in which their matter is listed to arrange a safety at court plan prior to the listing.

Legal and support services

The Family Advocacy and Support Service (FASS) is a free legal and support service provided by Legal Aid to assist family law litigants who have been affected by family violence. Litigants can attend the free Legal Aid Family Law Duty Service. For more information about FASS, see Family Advocacy and Support Services, Legal Aid, see the Legal Aid section of Find a Lawyer or contact the Court.

Cross-examination

Division 4 of Part XI of the *Family Law Act 1975* provides that **unrepresented litigants** will be **unable** to cross-examine the other party at an interim or a final hearing if there are allegations of family violence **and**:

- i. either party has been charged with or convicted with an offence involving violence or threat of violence involving the other party: section 102NA(1)(c)(i)
- ii. a final Family Violence Order applies to both parties: section 102NA(1)(c)(ii)
- iii. an injunction has been made under section 68B or section 114 of the *Family Law Act* for the personal protection of one party against another: section 102NA(1)(c)(iii), or
- iv. the Court makes an order that personal cross-examination should not be permitted: section 102NA(1)(c)(iv).

In matters involving alleged family violence which **do not** fall into the above categories, the Court may permit personal cross-examination by an unrepresented party but must ensure alternative protections, such as cross-examination via video link, are implemented: section 102NB.

These provisions apply to all proceedings under the Family Law Act, not just parenting proceedings.

Parties who are not permitted to personally cross-examine another party may retain private legal representation or apply to the Commonwealth Family Violence and Cross-Examination of Parties Scheme (the Scheme) to obtain legal representation. The Scheme is not means or merits tested, but applicants may be required to contribute to the cost of their representation. Applications are made through the relevant state or territory Legal Aid Commission. All applications to the Scheme must be made at least 12 weeks prior to the final hearing.

Unrepresented litigants who do not have legal representation either privately or through the Scheme will be unable to cross-examine the other party at the final hearing.

Further information can be found on the Court's website: www.fcfoa.gov.au/fl/fv/overview

This information sheet provides general information only and is not provided as legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Court. The Federal Circuit and Family Court of Australia cannot provide legal advice.

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