

**IN THE HIGH COURT OF NEW ZEALAND  
HAMILTON REGISTRY**

**CIV-2014-419-322  
[2015] NZHC 1512**

BETWEEN SUSAN MARGARET JOHNSTONE  
Plaintiff

AND CAMERON EASTERBROOK, DAVID  
WILLIAM EASTERBROOK AND  
WRMK TRUSTEES (2013) LIMITED AS  
TRUSTEES OF THE CAMERON  
EASTERBROOK FAMILY TRUST  
Defendants

Hearing: 17 and 18 June 2015

Appearances: E J Hudson and W Bennetti for the Plaintiff  
A B Foster for the Defendants

Judgment: 2 July 2015

---

**RESERVED JUDGMENT OF ELLIS J**

---

*This judgment was delivered by me on Thursday 2 July 2015 at 11.00 am  
pursuant to Rule 11.5 of the High Court Rules.*

*Registrar/Deputy Registrar*

*Date: .....*

Counsel:  
E J Hudson, Barrister, Hamilton  
W Bennetti, Barrister, Hamilton

Solicitors:  
A B Foster, Foster and Milroy, Hamilton

[1] Ms Susan Johnstone and Mr Cameron Easterbrook were in a de facto relationship from October 2001, and they married in December 2006. After temporary separations in March 2008 and July 2011, they finally parted company in December 2013.

[2] All of the assets that might ordinarily be regarded as relationship property are owned by the Cameron Easterbrook Family Trust (the Trust). Those assets include, in particular, the home that Ms Johnstone and Mr Easterbrook built in the last years of their relationship at 53B Higginson Rd. It is not in dispute that Ms Johnstone contributed both directly and indirectly to the assets of the Trust, and to the succession of family homes owned by the Trust, from the outset of the relationship. She has no assets of her own to speak of.

[3] But Mr Easterbrook says that all she is entitled to receive from the Trust is the repayment of “loans” that she made to the Trust. He says that because she has never made a demand for interest she is not entitled to interest now.

[4] Ms Johnstone therefore claims a constructive trust over the assets of the Trust and, in particular, over the Higginson Rd property.

### **Facts and evidence**

[5] When Mr Easterbrook and Ms Johnstone first met in early 2001 Ms Johnstone was a student at Waikato University and employed part time as a pharmacy technician. She lived in a home owned (as I understand it) by her parents’ family trust in Hamilton. She had previously been married and had four children.

[6] Mr Easterbrook had previously farmed in Northland but was then employed as a farm worker with Dixel Animal Research Station in Hamilton. He had previously been married and had three children.

[7] Mr Easterbrook had settled the Trust prior to the commencement of the relationship, on 12 June 1997. At that time the Trustees were Mr Easterbrook himself, his solicitor, Neil McNab, and his accountant, Greg Gunson.

[8] As at May 2001 the Trust had net assets of \$47,671.00 which, in essence, comprised:

- (a) the equity in a property at Fuchsia Lane, Matangi acquired in 1999 for \$449,565.00. This property was occupied by Mr Easterbrook as his family home; and
- (b) the equity in a rental property at Station Road, Takanini acquired in August 1997 for \$156,219.00.

[9] The Trust at this time had considerable indebtedness including, in particular, a term loan with the Bank of New Zealand for \$243,000.00 and owed a debt to Mr Easterbrook of \$296,952.00. This debt was forgiven by Mr Easterbrook in annual increments of \$27,000 over the next 11 years.

[10] Ms Johnstone's evidence was that Mr Easterbrook asked her to sell her home and to come and live with him at Fuchsia Lane "so that we could put our money together to build up joint assets". She said that she was aware that the Fuchsia Lane property was owned by the Trust but was assured by Mr Easterbrook that whatever contributions she made to the Trust would be acknowledged and repaid and that she would always be treated fairly.

[11] Mr Easterbrook denies that his side of these conversations was quite so magnanimous. I shall return to where the truth lies later in this judgment.

[12] In any event, in late 2001 Ms Johnston did sell her home. From the proceeds she paid \$53,564.00 over a six month period to Mr Easterbrook who deposited the money into the Trust's bank account, as follows:

- (a) \$6,000 on 5 November 2001;
- (b) \$40,000 on 17 December 2001;
- (c) \$1,000 on 11 April 2002;

(d) \$6,564.00 on 24 April 2002.

[13] There is no dispute that these payments were made or that the Trustees used the funds for the benefit of the Trust. For example, the \$40,000.00 payment made in December enabled the Trust to refinance and repay the Bank of New Zealand loan.

[14] In May 2002 the Trust sold Fuchsia Lane for \$450,000.00 and purchased 105 Willis Road, Koromatua, Hamilton for \$548,963.00, of which \$367,000.00 was borrowed from Rabobank.

[15] The Willis Road property was a lifestyle block of some 18 hectares. Again, Ms Johnstone and Mr Easterbrook lived in it as the parties' family home. While they occupied the property various improvements were effected. Ms Johnstone said that she not only contributed to these improvements financially (by paying \$2,000 for decking and paving, \$1,075 for a new oven and \$1,000 for new curtains) but also helped with:

- (a) landscaping and tree planting;
- (b) fencing; and
- (c) painting the roof of a calf shed.

[16] Ms Johnstone's financial contributions were not disputed. The nature and extent of her physical labour was more contentious. But on the basis of the evidence I heard I have little doubt that she worked hard on the property and that, while the couple's indirect contributions to it would have been (sometimes) different in kind, there was in general terms an equal sharing of the load.

[17] Ms Johnstone also contributed to household expenses by meeting food, power and a phone account from her earnings. Her evidence was that in this period she contributed \$57,570.00. The Trust met the loan/mortgage payments.

[18] In May 2003, while Ms Johnstone and Mr Easterbrook were still living at Willis Rd, the then Trustees of the Trust and Mrs Johnstone executed a Deed of Acknowledgement of Debt. It stated (inter alia) that:

A. The Lender [Ms Johnstone] has advanced or agreed to advance to the Borrowers [the Trustees] the sum of \$47,564.

B. The parties wish to record the terms of the advance.

...

2. The Lender may at any time demand that the Borrowers repay the Debt in whole or in part.

3. The Borrowers shall, on 31 March in each year, pay to the Lender interest on the Debt from time to time outstanding during the preceding 12 months at such rate not exceeding 7.5% per annum calculated on a daily basis, as the Lender shall, by notice in writing give to the Borrowers not later than the first day of March in each year demand, provided that if the Lender shall fail to give such notice by the first day of March in any year, the Borrower shall not be liable to pay the Lender any interest in respect of the 12 months ending on 31 March in that year.

...

6. The Debt shall include any further advances which may be made by the Lender to the Borrowers after the date of this deed. The words "further advances" mean such further sum or sums advanced or credit or other accommodation provided by the Vendor [sic] to, or at the request of, the Purchasers [sic].

[19] Ms Johnstone's evidence was that she signed this Deed because she was concerned that, in the event of her death, her children would otherwise have no basis upon which they could recover from the Trust the money that she had paid in. She said the execution of the Deed had no bearing on her view of the basis upon which she was contributing to the couple's joint enterprise. Moreover, there can be little doubt that from a tax perspective it was beneficial to the Trust to have the advances documented in this way.

[20] In late 2003 the Trust sold its rental property at Takanini and acquired a motor vehicle for \$14,389.00 and a boat for \$45,000.00. In 2004 the Trust sold Willis Road for \$745,475.00 and purchased a further lifestyle block at Higginson Road, Hamilton for \$483,000.00. These transactions enabled the Trust to clear its indebtedness to Rabobank.

[21] Again, the parties regarded Higginson Road as the family home. Improvements were carried out and I accept that Ms Johnstone contributed to these in terms of labour and money including in relation to:

- (a) swimming pool, decking removal and new paving;
- (b) repainting the exterior;
- (c) painting three interior rooms; and
- (d) fencing.

[22] On 25 March 2004 Craig Gunson resigned as a trustee and Bruce Thomas was appointed a trustee. Mr Thomas was an old and close friend of Ms Johnstone but became a friend of Mr Easterbrook as well. He had regular contact with the couple, at least once a month. His evidence was that he was appointed as Trustee with a view to ensuring that Ms Johnstone's contributions would be recognised and she would be treated fairly. Regardless of how that position can be reconciled with the Trustee duties he owed at the time of his appointment to the existing Trust beneficiaries in 2004, I accept that Mr Thomas would have been well aware of the work undertaken by Ms Johnstone in relation to the Trust properties and her financial contribution to the property and the relationship.

[23] The Trust subdivided Higginson Road into three titles: 53, 57A and 57B. In 2006 the Trust sold 57A for \$229,892, realising a profit of \$130,000 and allowing the mortgage to be repaid. Ms Johnstone continued to meet living costs at 53 Higginson Rd, including power and phone. She contributed \$11,000 to the Trust which was used to purchase a Nissan motor vehicle.

[24] On 5 April 2007, the Trustees signed a Deed appointing Ms Johnstone an additional beneficiary of the Trust. The appointment was, however, conditional upon Ms Johnstone and Mr Easterbrook living together "as husband and wife" at the time of Mr Easterbrook's death. It seems that Ms Johnstone was not made aware of this document until her temporary separation from Mr Easterbrook in 2011.

[25] Ms Johnstone says that in 2008 Mr Easterbrook became unemployed and that for the next three years the household was supported by the income she earned as a pharmacist. She says this income was paid to her ASB account which in turn funded a joint ASB account which was effectively operated by Mr Easterbrook and used by him to meet various expenses of the Trust. Ms Johnstone estimates that in the period August 2007 to October 2012 she contributed financially to the household the sum of \$152,491.00 which benefited the Trust directly and indirectly.

[26] Under cross-examination in Court Mr Easterbrook denied that he was unemployed during this period or that he used Ms Johnstone's money in this way. He said that he was operating a business through a company which had a separate bank account. But no disclosure had been made of this account and I decline to accept that evidence. Indeed Ms Johnstone's evidence appears to be consistent with the fact that during this period the Trust had little income and was operating at a loss as follows:

- (a) 2008: loss of \$4,325;
- (b) 2009: loss of \$13,974;
- (c) 2010: loss of \$6,130;
- (d) 2011: loss of \$10,940; and
- (e) 2012: loss of \$3,679.

[27] In 2011 the Trust began building a new home on the other section at Higginson Road, utilising bridging finance. The original family home at 53 Higginson Road was then sold for \$525,000.00 and the funds applied to the build. Mr Easterbrook and Ms Johnstone separated during this period and Ms Johnstone received \$50,000 from the proceeds of the sale, purportedly in part payment of the debt owed to her by the Trust. Ms Johnstone's evidence was, however, that the payment was made to induce her to remove the Property (Relationships) Act notice

of claim on the title of 53 Higginson Rd which she agreed to remove when she and Mr Easterbrook were in the throes of reconciliation.

[28] It seems that in the context of the proposed reconciliation Mr Easterbrook also sought advice from his lawyer (his co-trustee, Mr McNab) about making appropriate provision for Ms Johnstone, in the event of his death or their separation. In a letter dated 15 December 2011 a number of options were floated by Mr McNab, including several that would have seen Ms Johnstone receiving an (unspecified) agreed share in the Higginson Rd property.

[29] Notwithstanding Mr McNab's request that Mr Easterbrook revert to him in the new year it seems that nothing came of these proposals.

[30] Over the 12 months following the reconciliation Ms Johnstone re-applied her personal funds for the benefit of the Trust as follows:

- (a) \$20,000 to assist with debt repayment on 16 December 2011;
- (b) \$3,084 for curtains in March 2012;
- (c) \$2,238 for curtains in May 2012;
- (d) \$1,500 for a landscaping plan in June 2012;
- (e) \$14,000 for a progress payment in July 2012; and
- (f) \$11,028 for the purchase of cattle in October 2012.

[31] Ms Johnstone continued to be involved in the completion and fit out of the new home.

[32] In early 2012 Ms Johnstone was made redundant. She received a redundancy payment of \$30,000.00 which she says was used to support her and Mr Easterbrook for the remainder of their marriage. Through a company known as C & S Mowing Limited, she and Mr Easterbrook acquired a lawn mowing franchise which was

operated principally by Ms Johnstone until she suffered a work-related injury in November 2012. The purchase of the franchise was funded by borrowing that was guaranteed by the Trust.

[33] The parties separated on 14 January 2013.

[34] In a letter written by Mr Easterbrook on 10 March 2013 he asked Ms Johnstone to reconcile with him and said:

*... I would greatly value your input into finishing off our home, so that no matter what happens with us we will be able to get the maximum for the property when it is sold. So to enable that to happen I have been to the bank and arranged to borrow the money to finish everything off. ... I have also put in place the security you were asking for should anything happen to me.*

(emphasis added)

[35] But it seems that these overtures came to nothing, and on 23 April 2013 Mr Easterbrook advised Ms Johnstone that the Trust property belonged to the Trust and that any money contributed by her had been by way of loan only. In a slightly more conciliatory tone, he said:

If the Trustees agreed would you think it was fair if a settlement was based on the following calculation. The current registered valuation of the property as at when you left, less the assets or [sic] the Trust as at the 31<sup>st</sup> May 2001 at the book value as per the accounts, less many [sic] liabilities. This figure would be divided by two.

Could this be a way to move forward without the need for Legal involvement.

[36] For whatever reason, however, this settlement proposal was not taken up. In evidence before me Mr Easterbrook intimated that at least one of the two (new) Trustees did not agree with it, although it was not clear whether that was the reason it did not proceed.

[37] Following the separation both Mr Thomas and Mr McNab were removed or resigned as Trustees. They were replaced by Mr Easterbrook's son, David and a trustee company, WRMK Trustees (2013) Ltd.

[38] Throughout the period in question there are Trustee resolutions and minutes relating to most, if not all major transactions entered into by the Trust, namely:

- (a) the sale of Fuchsia Lane in 2002;
- (b) the sale of Station Rd in 2003;
- (c) the after the fact acceptance of the \$47,564 “loan” from Ms Johnstone and entry into the deed of acknowledgement of debt in 2003;
- (d) the sale of Willis Rd on 8 April 2004;
- (e) the purchase and financing of Higginson Rd on 31 March 2004;
- (f) the subdivision of Higginson Rd and the financing of that in 2006;
- (g) the sale of 57A Higginson Rd in 2006;
- (h) the contingent addition of Ms Johnstone as a discretionary beneficiary in 2007;
- (i) the sale of 53 Higginson Rd in 2011 and the payment of \$50,000 to Ms Johnstone;
- (j) the guarantee of the borrowing by C & S Mowing Ltd in February 2012; and
- (k) acceptance of annual gifting by Mr Easterbrook.

[39] Nonetheless the evidence was clear that the day to day running of the Trust and all decisions relating to building the new family home at 57B Higginson Rd and any contracts entered into for that purpose were made by Mr Easterbrook (and Ms Johnstone) without reference to the other trustees. It is also clear from the Trust’s bank statements (which were partially in evidence) that Mr Easterbrook did use Trust

funds for day to day living expenses and also to make payments on credit cards and to financing companies that appear to have been personal to him.<sup>1</sup>

[40] Financial accounts for the Trust were prepared on an annual basis. There are only Trustee minutes or resolutions relating to a few of these. They consistently record the various larger amounts paid in by Ms Johnstone as loans.

[41] No evidence was called at trial from Mr McNab who was, at all relevant times, the third trustee of the Trust.

### **Issues**

[42] It is not in dispute that the outcome in the present case turns on whether or not Ms Johnstone's claim meets the *Lankow v Rose* pre-requisites for a constructive trust claim in a relationship property context.<sup>2</sup> Accordingly, Ms Johnstone must show that:<sup>3</sup>

- (a) she has made either direct or indirect contributions to the property in question;
- (b) she has an expectation of an interest in the property;
- (c) such an expectation is reasonable; and
- (d) the Trust should reasonably expect to yield her an interest in Trust property.

[43] Here, the relevant Trust property is 57B Higginson Rd, which is presently valued at \$850,000. The Trust's equity in that property is \$783,000. I accept unreservedly that this property was, at the time of the parties' separation, effectively the family home. I consider that all of Ms Johnstone's direct and indirect

---

<sup>1</sup> The fact that they are personal debts rather than debts of the Trust is made clear by Mr Easterbrook's hand written annotations on the statements, which he made to assist his accountant.

<sup>2</sup> *Lankow v Rose* [1995] 1 NZLR 277 (CA).

<sup>3</sup> At 294; *Marshall v Bourneville* [2013] NZCA 271, [2013] 3 NZLR 766 at [27].

contributions to the Trust fund ought properly be regarded as manifest in it. I did not understand there to be any real dispute about that.

[44] It is also not in dispute that, on the facts here, the first three elements set out at [42] above are met. The only issues in this case therefore are:

- (a) whether Ms Johnstone's undeniable direct and indirect contributions to 57B Higginson Rd were made with the knowledge and approval of all the trustees, such that their collective conscience is bound to recognise the validity of her claim; and
- (b) if so, what the value of that interest should be.

## **Discussion**

*Is there a constructive trust?*

[45] In my view, the case for a constructive trust has been made out, for the reasons that follow.

[46] First, as far as Mr Easterbrook is concerned, there can, in my view, be no doubt that the contributions were made with his approval and that his conscience should be bound.

[47] After hearing both his evidence and that of Ms Johnstone, I have little doubt that, when pushed (as he was from time to time) Mr Easterbrook did promise that Ms Johnstone's contributions would be recognised and that she would be looked after "fairly". But it is also tolerably clear that when he was pressed to take the necessary legal steps to ensure her position was protected, he would reassure but then prevaricate and make excuses. The occasions on which he did put the necessary wheels in motion appear to have been when the relationship was in jeopardy. And these wheels were either predicated on Ms Johnstone remaining with him or they led nowhere at all.

[48] Nonetheless, my sense is that Mr Easterbrook recognised the justice of Ms Johnstone's claim from both from an early stage of the relationship and even during the trial. I have no doubt that he knew what Ms Johnstone's position and concerns were. And knowing those things, he continued to accept on behalf of the Trust continuing and significant contributions from her to it throughout the relationship.

[49] More particularly, and as far as the Trust's properties were concerned each (other than the Takanini rental which was disposed of early on) were family homes that were shared by Mr Easterbrook and Ms Johnstone. They contributed to those properties as husband and wife and Mr Easterbrook reluctantly accepted under cross-examination that his communications with Mr McNab in December 2011 constituted recognition by him that Ms Johnstone did have an interest in the 53B Higginson Rd property. In my view his letter to Ms Johnstone in March 2013 also conveys the same recognition.

[50] As far as the other trustees were concerned, Mr Thomas (who was a trustee for almost all of the relevant period) made it clear that he had every opportunity to observe Ms Johnstone's contributions first hand and regarded them as substantial. I consider that in executing the 2007 amendment to the Trust deed (which named Ms Johnstone as a discretionary beneficiary) he considered that he was recognising and protecting her position. Unfortunately, he was not. But there can be little doubt that Mr Thomas was of the view that it would be reasonable for the Trustees to yield to her a meaningful interest in the Higginson Rd property that was above and beyond the very contingent interest conferred on her by that amendment. And contrary to what was put to him in cross-examination I do not regard that view as being in any way inconsistent with his duty as trustee to protect the interests of the other beneficiaries. As the Court of Appeal has recently said in a very similar context:<sup>4</sup>

... allowing Ms Murrell's claim does not alienate Trust property, that is it does not take away from the beneficiaries of the Trust something to which they are entitled. Rather, it means a part of the value of the Trust's property which should not accrue to the Trust does not accrue to it. Allowing Ms Murrell's claim averts the unjust enrichment which would otherwise result to the Trust - essentially the Trust getting \$37,500 for nothing - a windfall.

---

<sup>4</sup> *Murrell v Hamilton* [2014] NZCA 377 at [30].

[51] As I have said, Mr McNab did not give evidence. A submission was made that that should count against Mr Easterbrook's position. It certainly does so in that he is unable to contest the inferences which I consider can reasonably be drawn from the evidence that *was* given, and which I set out below.

[52] First, there can be little doubt that Mr McNab would have been aware of Ms Johnstone's financial contributions almost from the outset. As both a trustee and (as I understand it) the lawyer acting for both the Trust and for Mr Easterbrook he would have been well aware of those contributions, which were specifically recorded in the Trust's financial statements.

[53] Although I acknowledge that Mr McNab would also have known that in 2003 those contributions had been formally documented (after the initial fact) as a loan, it seems to me that there were obvious tax and other imperatives driving that. And it may also be that at that time (only a year or so into the relationship) he considered the payments were justifiably treated in that conservative way.

[54] But by the time the Trust came to purchase Higginson Rd, and certainly by the time that the new house was being built at 57B, Mr McNab must have known that:

- (a) for the previous 10 years Ms Johnstone had contributed significant personal capital to the Trust, which was of real benefit to it; her contributions in part enabled the Trust to make the property purchases it had and helped fund the build at Higginson Rd;
- (b) she and Mr Easterbrook had lived in three successive houses owned by the Trust as their family homes; and
- (c) notwithstanding the initial formal characterisation of the advances as loans, Ms Johnstone had never demanded interest and, by not doing so, had each year foregone a significant opportunity for personal gain. Her omission to make any such demand would be wholly irrational

unless she was expecting a share in the trust's assets to which she had contributed.

[55] While the amendment to the Trust Deed in 2007 in reality paid no more than lip-service to her interest in Trust property it was, nonetheless, a mealy-mouthed recognition of it. More importantly, the advice given by Mr McNab to Mr Easterbrook in late 2011 necessarily suggests that Mr McNab viewed as reasonable the suggestion that Mr Easterbrook's and the Trust's affairs be restructured in a way that properly and formally recognised Ms Johnstone's interest in Higginson Rd.

[56] For completeness, I mention that although there was evidence that Mr Easterbrook used the Trust's bank accounts to pay personal debts and to some extent operated the Trust as his *alter ego*, it is not necessary for me to tread that precarious route. I do, however, regard Mr Easterbrook's use of Trust funds for personal purposes as relevant to any assessment of the parties' respective contributions to the Trust over time.

[57] Similarly, I do not need to suggest that Mr Thomas and Mr McNab so completely abjured their trustee responsibilities in relation to the build at 57B Higginson Rd that *Murrell v Hamilton* applies by analogy.<sup>5</sup> I merely record that, had such an approach been necessary, there would be evidentiary support for it. Just as in *Murrell*, the build at Higginson Rd was run personally by Mr Easterbrook and, beyond the initial purchase of Higginson Rd some six years earlier, there was no evidence of any Trustee involvement in the relevant decision-making.

[58] As I have said, however, it is not necessary to go down that route. For the reasons I have given I consider that Ms Johnstone's contributions were made with the knowledge and approval of all the trustees, in circumstances where their collective conscience is bound to recognise the validity of her claim.

---

<sup>5</sup> At [27] – [28].

*What should Ms Johnstone's share be?*

[59] This is a more difficult issue, due largely to the absence of a complete set of financial records and bank statements and the absence of any real analysis of the Trust's accounts.

[60] As the Court of Appeal made clear in *Lankow v Rose*, the starting point in a case such as this is not the presumption of equal sharing under the PRA. Ms Johnstone's interest in Trust property must reflect her contributions to it. That said, those contributions are not limited to those of a direct financial kind and, insofar as her indirect input is concerned, arithmetical precision will generally be unattainable and is not necessary. As well, however, I note the observations of Hardie Boys J that:<sup>6</sup>

... by contributions to assets one is not referring to those contributions to a common household that are adequately compensated by the benefits the relationship itself confers. The contribution must manifestly exceed the benefits. Putting it in conventional estoppel terms, the plaintiff's contributions must have been to his or her detriment; or in Canadian terms they must have resulted by the end of the relationship in the enrichment of one to the juristically unjustified deprivation of the other. Further, the contributions need not be in money; they may be in services or in any other respect. But there must be a causal relationship between the contributions and the acquisition, preservation or enhancement of the defendant's assets for, as a claim to a constructive trust is a proprietary claim, a claim to an interest in property, the contributions must have been made to assets; not necessarily to particular assets, but certainly to the defendant's assets in general.

[61] I reject Ms Johnstone's submission that shares can be determined by simply taking the Trust's financial position at the start of the relationship (when it had net assets worth \$47,671) and her own initial contribution (as recorded in the acknowledgement of debt) of \$47,564 and then simply pro-rating the equity in the 57B property on that basis.

[62] Nor do I consider that Mr Easterbrook's adoption of the same methodology but with the \$297,000 debt owed by the Trust to him in 2001 added into the Trust's starting position (ie he says the starting point is that the Trust had net assets of about \$345,000). Apart from anything else, that approach unfairly fails to take into

---

<sup>6</sup> *Lankow v Rose*, above n 2, at 286.

account Ms Johnstone's subsequent direct contributions, and her indirect ones. Nor does it take account of the fact that the value of the Trust's assets (and its ultimate equity in the Higginson Rd property) was diminished by Mr Easterbrook using Trust funds to pay personal debts during the relevant period.

[63] I have considered whether, instead of making what is necessarily rough and ready calculation based on the above considerations, I should make an order that accounts be taken. But that would simply be a further cost to the Trust and therefore to the parties. Nor am I sure that the missing records still exist. So I shall attempt to ascertain Ms Johnstone's share as best I can on the material before me.

[64] On the analysis that follows Mr Easterbrook's contributions are effectively treated as contributions of the Trust.

[65] Building from the starting point proposed by Ms Johnstone (her initial contribution and the Trust's existing assets), I consider that account should be taken of:

- (a) further direct contributions by Ms Johnstone, less any repayments she received; and
- (b) Mr Easterbrook's own direct contribution in the form of the \$297,000 forgiveness of debt.

[66] But as I have said, I do not consider that the totality of Mr Easterbrook's direct contribution should be taken into account because:

- (a) he used Trust funds to meet personal debts during the relevant period;
- (b) Ms Johnstone indirectly contributed to Mr Easterbrook's ability to forgive the debt by virtue of the greater contribution she made to the finances of the relationship (as to which see [25] above);
- (c) some of the funds contributed by him should also be regarded as having been applied to the other business purposes of the Trust

(principally the small-scale purchase and sale of cattle, which appears not to have made any significant profit).

[67] In my view, Ms Johnstone's indirect contributions (labour and so on) to the properties occupied by her and Mr Easterbrook over the term of their relationship (and owned by the Trust) are balanced out by Mr Easterbrook's own indirect contributions to those same properties and I do not propose to take these separately into account.

[68] As best as I am able on the basis of the material before me, therefore, I consider that the Trust holds on constructive trust for Ms Johnstone a 35 per cent share of the property at 57B Higginson Rd. The Trust's equity in that property presently amounts to approximately \$783,000. Accordingly I direct that the Trust is to pay to Ms Johnstone the value of her share in the property, namely the sum of \$275,000.

[69] Ms Johnstone is also entitled to costs on a 2B basis.

---

Rebecca Ellis J