

FAMILY LAW ACT 1975

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

No. NCC3896 of 2023

IN THE MARRIAGE OF

STEPHEN CHRISTOPHER COOKE
(Applicant)

and

HEATHER ANNE COOKE
(Respondent)

BEFORE A REGISTRAR

THE DAY OF 2024

UPON APPLICATION TO THE COURT IT IS ORDERED:

BY CONSENT and pursuant to Part 10.4 of the Family Law Rules, orders, declarations and notations are made in terms of the Consent Orders attached.

BY THE COURT

REGISTRAR

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IN THE MARRIAGE OF

STEPHEN CHRISTOPHER COOKE
(Applicant)

and

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(Respondent)

MINUTE OF ORDER

**PROPOSED MINUTE OF ORDER ON A FINAL BASIS FOR THE PURPOSE OF
MEDIATION ON 27 JUNE 2024**

BY CONSENT IT IS ORDERED

Sale of 1/213 Morgan Street, Merewether NSW

1. By 11 July 2024, the parties will have done all acts and things and signed all documents necessary to cause the property at 1/213 Morgan Street, Merewether NSW ("*the Morgan Street Property*") to be listed for sale and for this purpose:
 - (a) The parties are to agree on the appointment of a real estate agent and, failing agreement within seven (7) days of these Orders, the Respondent Mother shall provide the names of three (3) real estate agents to the Applicant Father, and the Applicant Father shall choose the agent from the three (3) real estate agents within seven (7) days of receiving the names, failing which the Respondent Mother shall choose the real estate agent to act in relation to the sale,
 - (b) The parties are to execute the real estate agent's Agency Agreement within seven (7) days of receiving same,
 - (c) The Morgan Street Property is to be marketed for sale by private treaty for a period of three (3) months from the appointment of the real estate agent,
 - (d) The Applicant Father and Respondent Mother are to each pay one half of all marketing and advertising costs in relation to the sale, with the Respondent Mother to pay all such costs at first instance and the Applicant Father's one-half liability for such costs to be adjusted in favour of the Respondent Mother on settlement from the sale proceeds,
 - (e) The parties are to instruct Kent Conveyancing (or such other conveyancer agreed by the parties, and which maintains a trust account) in relation to the sale to prepare a Contract for Sale within two (2) weeks of the appointment of the real estate agent for the purpose of the real estate agent marketing the Morgan Street Property for sale,
 - (f) The parties are to agree on the listing price of the Morgan Street Property and, failing agreement, the real estate agent is to nominate the listing price,
 - (g) The parties are to agree on the sale price of the Morgan Street Property and, failing agreement, as advised by the agent acting on the sale,

- (h) The settlement period for the sale is to be as nominated by the purchaser provided that such settlement period is to be 42 days,
 - (i) That in the event that Contracts for Sale are not exchanged three (3) months after being listed, the Morgan Street Property is to be auctioned within the next three (3) months with the following provisions to apply:
 - i. The parties are to agree on an auctioneer and, failing agreement, the auctioneer is to be appointed by the real estate agent,
 - ii. The parties are to agree on the reserve price of the Morgan Street Property and, failing agreement, the auctioneer is to set the reserve price; and
 - iii. Should the Morgan Street Property fail to reach the reserve price, the Morgan Street Property is to be auctioned in successive auctions, each auction being no less than two (2) months and no more than four (4) months apart, with the reserve price to reduce by 5% on each occasion until the Morgan Street Property is sold.
2. That forthwith upon settlement of the sale of the Morgan Street Property the parties shall do all acts and things and sign all documents necessary to distribute the proceeds of sale in the following order and priority:
- (a) In payment of the real estate agent's commission and auction expenses arising on the sale,
 - (b) In payment of any proper legal costs and expenses arising from the sale,
 - (c) In discharge of the Westpac Bank home loans ending #7671, #7778 and #6802 secured by registered Mortgage against the title of the Morgan Street Property, and
 - (d) In payment of the remainder:
 - i. To the Applicant, the sum so as to effect an overall equal division of the net assets (including superannuation) between the parties, and
 - ii. To the Respondent, the balance.

Exclusive occupancy of 1/213 Morgan Street, Merewether NSW

- 3. That pending settlement of the sale, the Applicant Father shall have exclusive occupancy of the Morgan Street Property provided that he does all acts and things necessary to allow access to the property to the real estate agent as requested by the real estate agent, tradespeople and any prospective purchasers, and to keep the property clean and in a fit and proper state of repair to settlement of the sale of the property.
- 4. That pending the sale of the Morgan Street Property, the Respondent Mother shall pay all costs in relation to the Morgan Street Property as and when they fall due, including home loan repayments, land rates, water rates, utilities and building insurance.

Transfer of 2015 Honda CRV #DAI47C

- 5. That 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 to the name of the Applicant Father.

Superannuation

6. That in accordance with Section 90XT(4) of the *Family Law Act 1975*, a base amount of \$83,075.00 is allocated to the Applicant Husband out of the Respondent Wife's interest in Q Super.
7. That, in accordance with Section 90XT(1)(a) of the *Family Law Act 1975*:
 - (a) The Applicant Husband (or the Applicant Husband's legal personal representative) is entitled to be paid, using the base amount allocated in the immediately preceding order, the amount calculated in accordance with Part 6 of the *Family Law (Superannuation) Regulations 2001*; and
 - (b) The entitlement of the Respondent Wife in Q Super (or the entitlement of such other person who becomes entitled to receive a payment out of the Respondent Wife's superannuation interest) is correspondingly reduced by force of this Order.
8. That the trustee of the Q Superannuation Fund ("*the trustee*") shall do all such acts and things and sign all such documents as may be necessary to:
 - (a) Calculate, in accordance with the requirements of the *Family Law Act 1975* the entitlement awarded to the Applicant Husband in the immediately preceding clause of this Order; and
 - (b) Pay the entitlement whenever the trustee makes a splittable payment from the Respondent Wife's interest in Q Super.
9. That Orders 7 and 8 have effect from the operative time and the operative time is the fourth business day from the date of service of a certified copy of the sealed Orders on the Trustee of Q Super.
10. That, after service of the payment split notice in accordance with the *Superannuation Industry (Supervision) Regulations 1994* ("*the SIS Regulations*"), the Applicant Husband shall do all such things and sign all such documents as may be necessary, including but not limited to exercising the Applicant Husband's request in accordance with the SIS Regulations, for the retention of the non-member spouse interest in the Applicant Husband's name in Q Super or has transferred or rolled over the transferable benefits pursuant to these Orders to a complying superannuation fund of the Applicant Husband's choosing.
11. That pending the superannuation split to the Applicant Husband pursuant to the above Orders, the Respondent Wife is restrained from:
 - (a) Doing any acts and things that may have the effect of reducing her superannuation entitlements; and
 - (b) Making any Death Benefit Nomination in respect of her superannuation entitlements.
12. That the Court notes:
 - (a) The value of the non-member spouse interest is calculated in accordance with the SIS Regulations; and
 - (b) Any payments from the Respondent Wife's superannuation interest in Q Super made after the trustee has created a new interest in the Applicant Husband's name in Q Super or has transferred or rolled over the transferable benefits pursuant to these Orders to a complying superannuation fund of the Applicant Husband's choosing are not splittable payments in accordance with the requirements of the *Family Law (Superannuation) Regulations 2001*.

Declarations

13. That the Applicant Father shall retain to the exclusion of the Respondent Mother:
 - (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.
14. That the Respondent Mother shall retain to the exclusion of the Applicant Father:
 - (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,
 - (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.
15. That subject to the specific terms of these Orders, the Applicant Father is entitled to retain for his sole use and benefit absolutely free from any claim or demand from the Respondent Mother:
 - (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.
16. That subject to the specific terms of these Orders, the Respondent Mother is entitled to retain for her sole use and benefit absolutely free from any claim or demand from the Applicant Father:
 - (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

- 17. That subject to the terms of these Orders, the Applicant Father will indemnify and keep the Respondent Mother indemnified from all liability in relation to any liability he has in his sole name.
- 18. That subject to the terms of these Orders, the Respondent Mother will indemnify and keep the Applicant Father 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 2020 Audi Q3 Wagon registration #EIN83R,
 - (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.
- 19. That 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

- 20. That 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

- 21. That each party is to pay their own costs of and incidental to the proceedings.

NOTATIONS

- A. 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*.
- B. 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.
- C. 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.
- D. 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.