VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

REAL PROPERTY LIST VCAT REFERENCE NO: W138//2013

CATCHWORDS

CO-OWNERSHIP –Part IV of the *Property Law Act 1958*, whether express trust established, whether rescission of joint venture agreement destroys a beneficial interest created under that joint venture agreement – offer and acceptance; whether offer or invitation to treat; whether counter offer constitutes rejection of offer, whether concluded agreement reached.

FIRST APPLICANT	Belinda Francis Bennett
SECOND APPLICANT	Jane Elizabeth Cogan
RESPONDENT	Karyn Lee Jackson
WHERE HELD	Melbourne
BEFORE	Senior Member E. Riegler
HEARING TYPE	Hearing
DATE OF HEARING	8 May 2013, with written submissions last filed on 30 May 2014
DATE OF ORDER	9 July 2014
CITATION	Bennett v Jackson (Building and Property) [2014] VCAT 839

ORDER

1. **This proceeding is listed for a further directions hearing before Senior Member E. Riegler at 3.15 pm on 5 August 2014, at which time the parties are to make further submissions as to the form of orders to be made by the Tribunal, having regard to the *Reasons* attached these orders - 1 hour allocated**.
2. Costs reserved.

SENIOR MEMBER E. RIEGLER

APPEARANCES:

For the Applicants	Mr A Klotz of counsel
For the First Respondent	Mr A Klotz of counsel

For the Second Respondent	Ms K Jackson in person with Mr Earl Chapman.

REASONS

INTRODUCTION

1. On 26 April 2010, the parties to this proceeding signed a contract of sale for the purchase of a residential property located in Frankston (**'the Property'**) for $1M. The Property comprised two allotments, each with their own certificate of title. A residential dwelling was constructed on the Property, which straddled over the boundary of those two allotments.

2. The purchase of the Property came about as a result of a joint venture or joint endeavour entered into between the parties. In particular, they were to equally contribute to the purchase price, which was to be derived partly from the sale of other properties and partly from individual borrowings. It was intended that the parties would own the Property in equal shares and reside in it for a period of time, with the possibility of then re-selling the Property or one allotment at some future point in time, subject to re-aligning the boundary between the two allotments.

3. Regrettably, the parties fell into dispute within the first 12 months of co-ownership. As a result, from April 2011, the Respondent (**'Jackson'**) moved out of the Property and had little involvement with the Property, including making no further payments of the mortgage loan procured to fund her beneficial interest in the Property.

4. In November 2012, the dwelling located on the Property was demolished. This was to allow the separate sale of each allotment. In March 2013, one allotment was sold (**'the First Allotment'**) However, prior to the remaining allotment being sold, Jackson registered a caveat over the remaining title. She did this to prevent the transfer of that second allotment (**'the Second Allotment'**) pending agreement between the parties of matters that were then in dispute.

5. That strategy was necessary because Jackson was not registered as an owner of the Property, notwithstanding that it is common ground that she held a one third beneficial interest in the Property. Jackson was not registered as an owner on either of the titles to the Property because she was unable pay her one third share of the purchase price prior to settlement of the Property, either through the sale of her existing property, or through obtaining finance in her own right.

6. Nevertheless, the First Applicant (**'Bennett'**) and the Second Applicant (**'Cogan'**) were able to arrange finance of not only part of their own contributions but also of Jackson's share of the purchase price. To that end, it was agreed that one third of the total acquisition cost of $1,061,700 ($353,871.23) would be borrowed by Bennett and Cogan on behalf of Jackson, on condition that Jackson made all repayments under that loan (**'the Jackson Loan'**).

7. As indicated above, the parties fell into dispute not long after settlement of the Property, with the result that Jackson made no further repayment of the Jackson Loan after April 2011. According to Bennett and Cogan, the demolition of the existing dwelling and the sale of the First Allotment occurred because they were unable to continue to service the Jackson Loan, while also servicing their own financial commitments.

8. According to Bennett, the sale of the First Allotment realised a net amount of $409,909.74, after the costs of sale were deducted. This amount was applied to discharge the Jackson Loan, which, as at 23 April 2013, was said to be $369,446.28.

THE CLAIMS

9. Bennett and Cogan now seek orders pursuant to s 233 of the *Property Law Act 1958* (**'the Act'**) that Jackson account to them or pay them compensation or reimbursement in respect of payments which they claim that they have made in repayment of the Jackson Loan. They seek further orders pursuant to s 232(j) of the Act that the Registrar of Titles be directed to amend the register by removing the caveat encumbering the title to the Second Allotment.

10. At the conclusion of the hearing on 8 May 2014, orders were made by consent for the removal of the caveat encumbering the remaining title and for the sale of the Second Allotment. Consequently, the extant issues for determination are confined to the orders sought pursuant to s 233 of the Act:

    (a) That pursuant to s 233 of the Act, Jackson pay Bennett the sum of $133,668.36 made up as follows:

        (i) $18,379.78, being the amount paid by Bennett towards the Jackson Loan, prior to settlement of the First Allotment; PLUS

        (ii) $116,404.85, being the amount paid by Bennett towards the Jackson Loan following settlement of the First Allotment; LESS

        (iii) $1,116.27, being half the amount paid by Bennett towards holding costs over and above her one-third share.

    (b) That pursuant to s 233 of the Act, Jackson pay Cogan the sum of $133,668.36 made up as follows:

        (i) $18,379.78, being the amount paid by Bennett towards the Jackson Loan, prior to settlement of the First Allotment; PLUS

        (ii) $116,404.85, being the amount paid by Bennett towards the Jackson Loan following settlement of the First Allotment; LESS

(iii) $1,116.27, being half the amount paid by Bennett towards holding costs over and above her one-third share.

11. Jackson disputes the claims made against her on several grounds. She contends that:

(a) Both Bennett and Cogan have repudiated the joint venture agreement, with the result that Jackson had no further interest in the Property after she vacated in or around April 2011;

(b) Alternatively, the joint venture agreement was mutually terminated by agreement, with the result that her interest transferred to Bennett and Cogan.

12. Jackson contends that by reason of the termination of the joint venture agreement, she had no involvement in the demolition of the existing dwelling or the sale of the First Allotment. She further contends that she has no liability to either Bennett or Cogan in respect of any payments which they made in reduction of the Jackson Loan or for that matter, any liability in the event that the net proceeds of sale prove to be insufficient to restore the parties to the position they were in prior to purchasing the Property. By the same token, she asserts no interest in any capital gain through the sale of the remaining Second Allotment (if any).

WAS THE JOINT VENTURE AGREEMENT CANCELLED?

Mutual termination

13. As indicated above, Jackson contends that the tripartite joint venture agreement was terminated by agreement between the parties. She gave evidence that after she vacated the Property in April 2011, she received a letter from *Urban Law Group*, the solicitors acting on behalf of Bennett, which stated:

> I refer to the above and advise I act for Ms Belinda Bennett.
>
> My client has advised that due to irreconcilable differences it has become necessary to escalate the sale of the property in order for this matter to be resolved. It is proposed to resolve this matter by returning to you in a one lump payment, the funds that you have paid to date towards your portion of the loan secured by my client and Ms Cogan in respect of the acquisition of property.
>
> Payments made to date by you are as follows:
>
> 27/09/2010 $2400.00
> 26/10/2010 $2454.00
> 26/11/2010 $2500.00
> 24/12/2010 $2450.00
> 27/01/2010 $2454.00 [sic]
> 28/02/2011 $2460.00
> 28/03/2011 $2450.00
> 27/04/2011 $2460.00

TOTAL $19,628.00

Funds will be electronically transferred to your account of choice by my client on completion of removal of all your furnishings and personal belongings.

In consideration of the above payment you shall release Ms Cogan and my client from any claim in respect of the property. I shall prepare a simple agreement finalising the dispute for signing by all three of you.

Please sign this letter and return to me, by way of acknowledgement.

14. According to Jackson, she went to Bennett's work with that letter and signed it before handing it personally to Bennett. Jackson's evidence is confirmed by Bennett who said that Jackson came to her office, signed the letter and gave it to her. She said that she then gave it to her lawyer.

15. Under cover of letter dated 18 May 2011, *Urban Law Group* sent a draft *Deed of Settlement* to Jackson. The *Deed of Settlement* stated, in part:

> 3. ASSIGNMENT OF EXISTING OWNER'S RIGHTS
>
> Subject to the provisions of this Agreement, the exiting owner shall assign or transfer any right (legal/equitable) it may have arising out of the association and/or the property to the remaining owners and the remaining owners agree to take an assignment of those rights free from any mortgage, lien, charge or other encumbrance whatsoever as and with effect from the Settlement Date.
>
> 4. CONSIDERATION
>
> In consideration of the assignment in clause 3 above the Purchaser agrees to pay to the Vendor the Settlement amount in Schedule 1.

16. The copy of the draft *Deed of Settlement* tendered in evidence did not contain *Schedule 1*. Therefore, no particulars were given as to what amount was to be paid to Jackson in consideration of her transferring her interest in the Property to Bennett and Cogan. Nevertheless, as the draft *Deed of Settlement* was prepared by Bennett's lawyers following receipt of the signed letter dated 2 May 2011, it is reasonable to assume that the price to be paid to Jackson was commensurate with that set out in the letter.

17. According to Jackson, she subsequently sought legal advice in relation to the draft *Deed of Settlement*. She said that all further dealings regarding the proposed settlement agreement then went through the parties' respective solicitors. In her witness statement, adopted as her evidence in this proceeding, she states that *the parties ultimately could not agree on the terms of the settlement agreement*.[1]

18. Jackson's witness statement is somewhat at odds to the evidence she gave during the course of the hearing. It is also at odds to what is said on her

[1] Witness statement of Karyn Jackson dated 2 May 2014 at paragraph 33.

behalf in her written closing submissions. In particular, she gave oral evidence that after she signed the 2 May 2011 letter, she believed that she was absolved of any further liability or profit-sharing in relation to the Property. In her written closing submissions, she states:

> An offer was made to the respondent in July 2010 in writing, for the respondent to have all the funds she has contributed towards the loan to date refunded to her, in exchange to walk away and no longer be required to make any further payments towards the applicant's loan, a letter of offer along with a settlement deed was drawn up and signed by the respondent, this is supported by txt's that this document had been drawn up and received by the applicant and to come in to the applicant's workplace and sign the documents. The respondent immediately drove to the applicant's work address and signed it on the spot, in hope to get on with her life and put this all behind her.

19. As indicated above, the written closing submissions do not accord with Jackson's witness statement, or her oral evidence given during the course of the hearing. Moreover, it is clear from the documents tendered in evidence that the proposal set out in the *Urban Law Group* letter dated 2 May 2011 predated the first draft of the *Deed of Settlement*. Therefore, it is unlikely that the draft *Deed of Settlement* was in the possession of Jackson when she visited Bennett at Bennett's workplace.

20. The only copy of the *Deed of Settlement* signed by Jackson and produced during the course of the hearing is a copy attached to a letter dated 9 August 2011 from *Lantern Hill Lawyers*, the solicitors previously acting on behalf of Jackson. That letter was addressed to *Urban Law Group* and stated, in part:

> We refer to previous correspondence in this matter.
>
> As previously stated, our client is willing to resolve this matter in an amicable fashion. She reiterates her position, that on receipt of payment in the amount of $21,600, she will provide a Withdrawal of Caveat.
>
> We enclose a Deed of Settlement signed by our client in the above terms, with the nominated settlement date as 19 August 2011. Should your client and Jane Cogan accept to resolve the issues on that basis, we would be pleased if you could have them sign the Deed and return a certified copy to us.

21. There is no evidence that the *Deed of Settlement* was ever signed by Bennett and Cogan, nor is there any evidence that they agreed to its terms. In my view, the statements made by Jackson in her witness statement, that there were further dealings between the solicitors following receipt of the 2 May 2011 letter and that the parties could not ultimately agree on the precise terms of settlement, reflect accurately what occurred. In particular, the proposal put forward in the 2 May 2011 letter was that $19,628 was to be paid to Jackson in consideration that she relinquished all interests in the Property. That proposal was put to Jackson by Bennett alone. It was not stated to be an offer made on behalf of both Bennett and Cogan.

Therefore, it is implicit that the offer was subject to Cogan also agreeing to its terms. Hence, the need to prepare a formal document to be signed by all parties. However, that formal document, being the *Deed of Settlement*, was never signed by all parties. What occurred after Jackson received the first draft of that document was that she, through her solicitors, sought to increase the settlement amount from $19,628 to $21,600. In my view, that increase in the settlement amount constituted a counteroffer. As highlighted by Jackson herself, that counteroffer was not accepted by Bennett and Cogan.

22. Moreover, the conduct of Jackson following receipt of the 2 May 2011 letter and subsequent draft Deed of Settlement is inconsistent with there being a concluded agreement. In particular, on 18 July 2011, Jackson lodged a caveat against the title of the Second Allotment. The grounds of claim stated on that caveat were:

> That the registered proprietors hold their interest in the land as trustees for themselves and Karyn Lee Jackson the Caveator by virtue of an implied resulting or constructive trust.

23. Further, by letter dated 9 August 2011 *Lantern Hill Lawyers*, the solicitors acting on behalf of Jackson, responded to a suggestion by Bennett and Cogan that Jackson did not have a caveatable interest in the following terms:

> Your suggestion that our client does not have a caveatable interest in respect of the above property is not supported by the facts of the matter, notwithstanding your client's instructions. We do not believe that you have been placed in possession of all the relevant information to make such a judgement or to properly sign the required certificate in accordance with section 89A(2)(b) of the Transfer of Land Act. [sic]
>
> …
>
> In the above circumstances, there can be no doubt that our client has an equitable interest in the … property pursuant to a Constructive Trust arising from the agreement between the parties, which is evidenced by the original contract to purchase the property, our clients contribution to the mortgage payments, our clients residence at the property, and our clients contribution to the expenses of the property.

24. The letter dated 9 August 2011 makes no mention of any agreement, the effect of which was to relinquish Jackson's interest in the Property. In fact, the letter asserts precisely the opposite.

25. Having regard to the above, I do not find that the signing of the 2 May 2011 letter constituted a concluded agreement between the three parties. Although, on one view, it appears to be expressed as an offer, I am of the opinion that its correct categorisation is an invitation to treat, rather than an offer capable of being accepted. The distinction between an offer capable of being converted into a contract by acceptance and an invitation

to treat is succinctly described in the following extract of *Cheshire and Fifoot's Law of Contract*:

> An offer, capable of being converted into a contract by acceptance, must be distinguished from what is somewhat quaintly referred to as an invitation to treat. This expression covers all those aspects of the negotiating process falling short of the final offer. In other words, anything that is said that invites a bargaining response rather than an acceptance is an invitation to treat.[2]

26. Therefore, I find that, notwithstanding that the parties intended Jackson to transfer her beneficial interest to Bennett and Cogan, no concluded agreement was ever reached to that effect.

Repudiation

27. Jackson further contends that the tripartite agreement has been repudiated by Bennett and Cogan. A number of grounds are raised by her in support of that contention, which include the following:

    (a) the breakdown in the relationship between the parties;

    (b) comments allegedly made by Cogan that Jackson's beneficial interest in the Property was less than one third;

    (c) Jackson was precluded from re-occupying the Property after April 2011;

    (d) no formal demand was made of Jackson to continue to make monthly repayments of the Jackson Loan; and

    (e) decisions were made affecting the Property without first consulting Jackson.

28. In my view, it cannot be said that a repudiation of the tripartite joint-venture agreement gives rise to Jackson losing her beneficial interest in the Property. Her beneficial interest in the Property vested upon settlement of the sale contract and the subsequent legal transfer of the Property to Bennett and Cogan. It was at this point that Jackson's beneficial interest in the Property was created through the operation of an express trust. In *Hohol v Hohol*,[3] O'Bryan J identified three essential elements of a common intention constructive trust:

> From the cases I have referred to it can be said that the essential elements of the trust are, first, that the parties formed a common intention as to the ownership of the beneficial interest. This will usually be formed at the time of the transaction and may be inferred as a matter of fact from the words or conduct of the parties. Secondly, that the party claiming a beneficial interest must show that he, or she, has acted to his, or her, detriment. Thirdly, that it would be a fraud on the claimant for the other

[2] NC Seddon and MP Ellinghaus *Cheshire and Fifoot's Law of Contract* (Eighth Australian edition) (LexisNexis Butterworths) at paragraph 3.14, page 104.
[3] [1981] VR 221.

party to assert that the claimant had no beneficial interest in the property…[4]

29. Even if the tripartite joint venture agreement was at some later point in time repudiated by the acts or omissions on the part of Bennett and Cogan, that fact alone would not disentitle Jackson of her beneficial interest in the Property, it being an accrued right that vested at an earlier point in time.

30. Therefore, it is unnecessary for me to consider whether the acts or omissions on the part of Bennett and Cogan constitute a repudiation of the tripartite joint-venture agreement. The fact of the matter is that, regardless of their actions, proven or unproven, Jackson retains her beneficial one third interest in the Property. She is entitled to profit on the sale of the Property, to the extent of her beneficial interest and taking into account the parties' respective contributions to the purchase price and costs of maintaining the Property. By the same token, she is liable in respect of any capital loss, to the extent of her beneficial interest, taking into account the parties' respective contributions to the purchase price and cost of maintaining the Property.

BENNETT'S AND COGAN'S CLAIMS

31. As indicated above, there are two main elements which comprise the claims made by Bennett and Cogan against Jackson. It is necessary to consider each of those heads of claim separately.

Pre settlement payments

32. The pre-settlement payments relate to funds which Bennett and Cogan paid towards the Jackson Loan from the period when Jackson ceased making monthly repayments (27 May 2011) to the date when that loan was fully discharged (23 April 2013).

33. The evidence given by Bennett and Cogan in respect of payments made towards the Jackson Loan from May 2011 until April 2013 is confusing because part of the repayments were sourced from additional borrowings drawn from the same account which funded the Jackson Loan. In particular, it appears that the amount originally borrowed and reflected in the home loan account number *037-157 22-7069* (**'the 7069 Account'**), being the account which funded the Jackson Loan, was more than the Jackson Loan of $353,871.23. According to Bennett, additional amounts were borrowed to allow for contingencies and also to fund an overseas holiday that Bennett had planned to take with her mother. Those additional amounts were held in separate accounts, including an offset account and were used to make the monthly repayments into the 7069 Account, after Jackson ceased making repayments, until those additional amounts were exhausted. Bennett explains the transactions as follows:

[4] Ibid at 225.

70. … from April 2011 Karyn ceased paying Karyn's Loan Account until March 2013 …, Jane and I had to continue making repayments on Karyn's Loan Account. We paid this amount as follows:

a. On 27 April 2011, we withdrew the extra funds available of $19,700 from Karyn's Loan Account, and deposited this amount into Jane's Loan Account. We did this as a safeguard because we were worried Karyn might try and access these funds after her meeting with the bank.

b. From May 2011 to July 2011, Jane then arranged for the sum of $2,540 each month to be transferred from Jane's Loan Account into the Offset Account where we had a direct debit arrangement for the payments for Karyn's Loan Account to be taken from.

c. On 1 August 2011 we decided to put the remainder of the moneys we had withdrawn, being $14,534, to the Offset Account.

d. The remaining $14,534 was then used to pay Karyn's Loan Account by direct debit from the Offset Account until October 2011 when these funds were depleted. The total amount of funds withdrawn from Karyn's Loan Account paid towards the interest on Karyn's Loan Account was $15,240 (which was made up of six payments of $2,540 per month).

e. From November 2011 to February 2012, I made four payments on to Karyn's Loan Account of $2,540 per month to cover the interest. I used the extra funds available I had on My Loan Account that I had borrowed to take my mother to Israel. Jane did not contribute to Karyn's Loan Account during these four months. The total amount I paid during this time was $10,160.

f. From March 2012 to September 2012, Jane and I attended Westpac Bank together each month and paid equally the amount of cash required to cover the repayments on Karyn's Loan Account. The total amount we paid during this time was $15,935.

g. From October 2012 to settlement of the sale of …, Jane and I each attended Westpac Bank separately each month and paid equal amounts of cash required to cover the repayments on Karyn's Loan Account, save that there were some adjustments from time to time between the two of us. The total amount we paid during this time was $9,500.[5]

34. Therefore the pre-settlement payments were made up as follows:

[5] Witness statement of Belinda Bennett dated 24 April 2014 at paragraph 70..

Date	No of payments	Bennett payment	Cogan Payment	Payment sourced from the 7069 Account
May to July 2011	3			$7,620
August to October 2011	3			$7,620
November 2011 to February 2012	4	$10,160		
March to September 2012	7	$7,967.50	$7,967.50	
October to March	6	$4,750	$4,750	
TOTAL	**23**	**$22,877.50**	**$12,717.50**	**$15,240**

35. In Bennett's witness statement dated 24 April 2014, she states that, by reason of the payment set out in paragraph 70 a. to g. (see above), she and Cogan *each paid a total of $35,595 from our own source of funds towards Karyn's Loan Account, of which we are owed half each by Karyn.*[6] However, that statement is not entirely correct. As the table above demonstrates, the amount paid by Bennett is different to the amount paid by Cogan.

36. In Bennett's *Addendum to Witness Statement* dated 7 May 2013, she clarifies what repayments were made after Jackson ceased making monthly repayments:

> 2. … All of the payments to which I referred to in paragraphs 70 (e), (f) and (g) were made by Jane and I arranging for sufficient funds to be deposited into the Offset Account to enable Westpac Bank to directly debit each month the amount due under Karyn's Loan Account. I recently looked more carefully at the Westpac Bank Statements for My Loan Account and the Offset Account. It is apparent from the bank statements for the period November 2011 to April 2013 that the amounts being debited by Westpac Bank towards Karyn's Loan Account for several months during this period were less than the amounts Jane and I deposited into the Offset Account for the purposes of the direct debit. The bank statements show that Jane and I had deposited a total of $37,295 from our own source of funds into the Offset Account. However, the bank statements also showed that the total sum of $36,759.56 was debited by Westpac Bank from the Offset Account and applied towards Karyn's Loan Account. For this reason I believe that Jane and I are entitled to half of the amount debited by Westpac bank

[6] Witness statement of Belinda Bennett dated 24 April 2014 at paragraph 71.

towards Karyn's Loan Account during this period being $18,379.78 each.

37. The difficulty with Bennett's evidence on this issue is not cured by what she states in her *Addendum to Witness Statement*. In particular, what she states in paragraph 70 a. to g. of her witness statement does not reconcile with the general statement that the total amount paid by Bennett and Cogan of $35,595 (or $36,759.56) represented equal repayments by each of them. As the table above demonstrates, Bennett and Cogan did not make equal repayments.

38. In my view, this needs to be clarified before any final orders can be made under s 233 of the Act, awarding compensation or reimbursement to either Bennett or Cogan.

39. Given that the proceeding is to be returned to the Tribunal in order to determine each of the parties' rights or liabilities following the sale of the Second Allotment, it is appropriate that this issue be re-considered by the Tribunal at that point in time. In that way, the parties can adduce further evidence and materials dealing with the inconsistencies raised above.

Post settlement payments

40. The claims made by both Bennett and Cogan in respect of the cost to discharge the Jackson Loan following settlement of the Second Allotment again focus on being reimbursed for their financial contribution to the payout of that loan.

41. However, there are difficulties with the evidence given by Bennett and Cogan going to this issue. According to both Bennett and Cogan, the payout figure for the Jackson Loan was $369,446.28. A single page extract of the Westpac bank statement in respect of the 7069 Account was produced as evidence of the payout figure. Although it confirmed that the payout figure was $369,446.28, no details were provided as to the payments made during the life of that loan.

42. No details have been provided as to the type of loan drawn from the 7069 Account. If that loan was a principal and interest loan, it is inconceivable that the loan amount could grow from $353,871.23 to $369,446.28 over a period of nearly three years, in circumstances where all monthly repayments were made until the loan was finally discharged in April 2013. There is no evidence suggesting that the monthly repayments were insufficient to reduce the debt or that there was any period of time when no monthly repayments were made, either by Jackson, Bennett or Cogan.

43. Moreover, the evidence of both Bennett and Cogan is that more than the original loan amount of $353,871.23 was borrowed as a contingency fund. That additional borrowing skews the calculations. How can Jackson be liable to reimburse Bennett and Cogan in respect of a loan which also comprises additional borrowings relating to a contingency fund?

44. In my view, further evidence will need to be adduced, so that an accurate assessment can be made of what the actual payout figure for the Jackson Loan was as at 23 April 2013, having regard to the amount that was originally borrowed, the interest that has accrued on that borrowing, countered against all repayments made.

45. Given the fact that further orders will have to be made following the sale of the Second Allotment, I consider it appropriate that no final determination be made in respect of this particular head of claim until the Second Allotment has been sold and the net proceeds of sale (or liabilities) brought to account.

ORDERS

46. Having regard to my findings, I will order that the proceeding be listed for a further directions hearing before me, at which time the parties can advise as to whether the Second Allotment has sold. At that point, further orders can be made as to the future conduct of the proceeding, having regard to my findings regarding the beneficial interests of the parties and their respective rights and liabilities. Those orders may include an order that the matter be referred to further mediation or a compulsory conference. I encourage the parties to give some thought to the form of orders to be made prior to the proceeding being returned.

SENIOR MEMBER E. RIEGLER