FAMILY LAW PROPERTY Final Orders Constructive Trust former matrimonial homeconstructed on land ownedby husbands parents wife sought adeclaration that the third parties hold their entire interests in the formermatrimonialhome upon trust for the husband and the wife wife allegesconstructive trust or equitable estoppel wife submits housewasconstructed using husbands funds wife submits husbandsparents gifted the property to husband and wifeduring a dinner party where husband maintains no such representations were made considerationof elements of constructivetrust and equitable estoppel where wife hasfailed to establish representation was made where wife was failed toestablish detrimental reliance. FAMILY LAW PROPERTY FinalOrders Add backs where wife submits large cash withdrawals madeby the husbandshould be included in the asset pool where husband andhusbands parents have failed to adequately disclose the financialcircumstances of the family business evidence of husband andhusbands parents unreliable monies may stillbe available to thehusband consideration of notional property following Stanford vStanford [2012] HCA 52; (2012) 247 CLR 108 appropriate to add back aggregate cashwithdrawals. FAMILY LAW PROPERTY Final orders where wife seeks a distribution of property 55/45 in her favour wifesproposed orders included the former matrimonial home in asset pool where husband seeks an equal division of property wife has madesignificant homemaker contribution while husband provided financial contributionwith the assistance of his parents where husband likely to have theongoing financial support of his family wife is primary caregiver fortheir twoyoung children consideration of just and equitable orders made for final adjustment of property in terms of 62.5/37.5in favour ofthe wife. Family Law Act 1975 (Cth) s 79(2), 79(4),75(2) Bell & Bell [2000] FamCA 1301 Bevan & Bevan [2013] FamCAFC 116; (2013) FLC 93-545 Biltoft & Biltoft[1995] FamCA 45; (1995) FLC 92-614 Boileau v Rutlin [1848] EngR 661; (1848) 2 Ex 665 Buckmaster vMeiklejohn [1853] EngR 415; (1853) 8 Ex 634 Clauson & Clauson (1995) FLC92-595 Commonwealth of Australia v Verwayen (1990) 170 CLR394 Hickey & Hickey & Attorney General for theCommonwealth of Australia [2003] FamCA 395; (2003) FLC 93-143 Pierce & Pierce[1998] FamCA 74; (1999) FLC 92-844 Re Ronald Neville Mcgorm ex-parte:the Co-operative Building Society of South Australia [1989] FCA87 Riches v Hogben [1985] 2 QDR 292 Sidhu v Van Dyke

[2014] HCA 19; (2014)308 ALR 232 Stanford v Stanford [2012] HCA 52; (2012) 247 CLR 108 Truman &Truman [2013] FamCA 765 Waltons Stores (Interstate) Ltd v Maher[1988] HCA 7; (1988) 164 CLR 387 Waters & Jurek (1995) FLC 92-635 Watson& Ling [2013] FamCA 57; (2013) FLC 93-527; (2013) 49 Fam LR 303 APPLICANT: Ms Georgiades RESPONDENT: Mr Georgiades SECOND AND THIRDRESPONDENTS: Mr Georgiades Snr and Mrs Georgiades Snr FILENUMBER: MLC 11134 of 2011 DATE DELIVERED: 8 September 2014 PLACE DELIVERED: Adelaide PLACE HEARD: Melbourne JUDGMENT OF: Berman J HEARING DATE: 19, 20, 21, 27 and 28 March 2014 and 28, 29, 30, 31 July 2014 REPRESENTATION COUNSEL FOR THE APPLICANT: Ms Smallwood SOLICITOR FOR THE APPLICANT: MCK Legal COUNSEL FOR THE RESPONDENT: Litigant in Person COUNSELFOR THE SECOND AND THIRD RESPONDENTS: Mr Glick SC with Ms Fisken SOLICITOR FOR THE INTERVENOR: Berry Family Law ORDERS (1) Thatthe application of the wife seeking a declaration that the second and thirdrespondents hold the property situate at andknown as N Street, Suburb O upontrust for the husband and the wife be dismissed. (2) In full and final settlement of any claim that either party may have againstthe other by way of settlement of property or variationof or alteration oftheir separate interests in property pursuant to s 79 of the Family Law Act1975 (Cth):- (a) That withinsixty (60) days the husband do pay or caused to be paid to the trust account ofMCK Legal for and on behalf of thewife the sum of TWO HUNDRED AND SIXTY NINETHOUSAND SEVEN HUNDRED AND SEVENTEEN DOLLARS ($269,717; (b) Thatpending payment of the said settlement sum other than as may be necessary tocomply with paragraph 2 (a) hereof, the husbandbe restrained and an injunctionis granted restraining him from encumbering, selling, disposing of or otherwisedealing with thefollowing:- (i) His titleand interest in P Street, Suburb C; (ii) Hisshareholding and interest in G Pty Ltd; (iii) His motorcycle; (iv) The jetski; (v) Theboat. (c) That indefault of payment of the said settlement sum, the husband shall forthwith placeon the market for sale his one quartershare in P Street, Suburb C, his motorcycle, the jet ski, the boat and his shareholding in G Pty Ltd by public auctionor privatetreaty and upon such terms and conditions as the parties may agreeand in default of agreement as may be ordered by this HonourableCourt, with thenet proceeds of sale to be applied as follows:- (i) In

paymentof all costs, commission and expenses of the default sale; (ii) In paymentof the settlement sum or so much thereof as may be outstanding together withdefault interest from the due date untilthe date of payment at the rateprescribed pursuant to the Family Law Rules 2004 (Cth) from time totime; (iii) Thebalance if any to the husband. (d) That the husband indemnify the wife and keep her so indemnified against anyand all liability of the husband to Mr and Mrs GeorgiadesSnr; (e) That eachparty be liable for and indemnify and keep indemnified the other against anyliabilities of each of them associatedwith or attached to any item of propertyretained by them; (f) Subject tothe payment of the settlement sum, the husband shall retain to the exclusion ofthe wife:- (i) Hisinterest in G Pty Ltd; (ii) Hisinterest in P Street, Suburb C; (iii) Fundsstanding to his credit in bank accounts; (iv) All motorvehicles in his possession; (v) Hiscollectibles, household contents and personal effects; (vi) Hissuperannuation entitlements. (g) Subject tothese orders the wife shall retain to the exclusion of the husband thefollowing:- (i) Herinterest in the property at J Street, Suburb Y; (ii) Fundsstanding to her credit in bank accounts; (iii) All motorvehicles in her possession; (iv) Hercollectables, household contents and personal effects; (v) Hersuperannuation entitlement. (3) That each party will do all such things and sign all such documents that maybe required to give effect to this order PROVIDEDthat if the parties or eitherof them shall refuse or neglect to execute any transfer or other documentationpursuant to the termsof these orders within seven days after the same shallhave been tendered to him or her by or on behalf of the other party for thatpurpose THEN and in such case a Registrar of the Family Court of Australia uponproof by affidavit of such refusal or neglect ishereby appointed to execute andif in his/her opinion it shall be necessary so to do to settle the same and todo all such otheracts and things and to execute such other documents as may benecessary to give full force and effect thereto. (4) That the proceedings be certified as fit for counsel and seniorcounsel. IT IS NOTED that publication of this judgmentby this Court under the pseudonym Georgiades & Georgiades and Ors hasbeen approved by the Chief Justice pursuant to s 121(9)(g) of the Family LawAct 1975 (Cth). FAMILY COURT OF AUSTRALIA AT FILE NUMBER:MLC 11134 of 2011 Ms Georgiades Applicant And Mr Georgiades Respondent And Mr Georgiades Snr and Mrs GeorgiadesSnr Second and Third Respondents REASONS FOR

JUDGMENT INTRODUCTION Theproceedings are for settlement of matrimonial property concerning a marriage ofapproximately six years, but a period of cohabitationof approximately nineyears. Ms Georgiades (the wife) commenced proceedings by way ofan Initiating Application filed19 December 2011 and sought orders forsettlement of property pursuant to Part VIII of the Family Law Act 1975(Cth) and in particular the extent to which (if any) there should be anadjustment of their respective interests in their property. Mr Georgiades(the husband) opposed the relief sought by the wife in hisResponse filed 23 January 2012. By AmendedInitiating Application filed 1 May2012, the wife sought an order that:- Mr Georgiades Snr andMrsGeorgiades Snr be joined as parties to the proceedings. Theproposed third parties are the parents of the husband. They filed an AmendedResponse to the Amended Initiating Application on18 February 2013 and followingthe filing by the wife of a further Amended Initiating Application on 3 April2013 the third partiesfiled a Response to that document on 19 May 2013. Thehusband filed an Amended Response on 27 May 2013. Aconvenient starting point is to set out the list of assets and interest inproperty that the wife contends should be brought toaccount. There issubstantial disagreement by the husband in respect of the wifesassertion. J Street, Suburb Y $ 350,000 Agreed N Street, Suburb O $ 720,000 Not agreed P Street, Suburb C (1/4 share) $ 60,000 Agreed G Pty Ltd (1/4 share holding) $ 266,000 Not agreed Motor cycle $ 8,000 Agreed Jet Ski $ 3,000 Agreed Ford motor vehicle $ 15,000 Agreed Husbands furniture $ 6,730 Agreed Boat $ 35,000 Not agreed Aggregate cash withdrawals by husband $ 217,800 Not agreed TOTAL $1,681,530 Liabilities Mortgage, Suburb Y $ 111,000 Not agreed NET $1,570,533 Insummary, the husband contends that his parents hold the legal and equitableinterest in the Suburb O property and denies that theparties hold any interestin same. Whilst the value of the shareholding in G Pty Ltd is not significantlyin dispute (although thehusband contends that there is a substantial offsetting liability by G Pty Ltd in favour of his parents), his principalcontentionis that his shareholding is held on trust for his parents. Theaggregate of cash withdrawals in the sum of $217,800 is the cumulative count ofsignificant cash deposits paid into the husbandspersonal account between20 November 2007 and 2 August 2010. Those monies were withdrawn by the husbandby six irregular but substantialwithdrawals. The contention of the husband

isthat the monies belonged to the family business and that for various reasonstheywere parked in his account but ultimately withdrawn at thedirection of his father with no benefit gained or enjoyedby the husband. Thewife seeks that the total aggregate sum be treated as an add back,and therefore property of thehusband and consequently included in the assetpool. Thehusband is possessed of a speed boat. There is no significant dispute as to itsvalue but the husband argues that the moniesused to purchase the boat wereborrowed from his father and that he therefore has a countervailing liabilityequal to if not greaterthan the current value of the boat. The wife contentsthat any alleged loan is a sham. Thewife seeks to bring to account a mortgage liability in respect of the Suburb Yproperty of $111,000. The husband does not disputethat there is an underlyingmortgage but it is his assertion that the wife has drawn down on the mortgagecausing it to increasefrom $66,000 at separation to its current level. Thewife agrees that the outstanding mortgage balance has increased and admitsthatany increase can be attributed to the payment of her legal fees. Tohighlight the yawning gulf between the parties, the husband contends that thetotal net property of each of them is $403,000, whereasthe wife considers thetotal property to be $1,570,530. Thedifference is found in the challenge by the wife to the husbands positionthat he holds his shares in G Pty Ltd for andon his parents behalf, andthe wifes argument that the aggregate cash withdrawals should be broughtback to accountand in particular the wifes claim in relation to theSuburb O property. It is the last claim that is central to the involvementofthe third parties namely:-

[10] The second and third respondentshold the title on trust for the applicant and first respondent. Theyrepresented to the applicantand the first respondent the land was gifted tothem, and was theirs to build on. Construction of the dwelling proceeded on therepresentation. It would be unconscionable for the second and third respondentsto retain beneficial ownership of the property. Thatclaim by the wife has the obvious consequence that if made out will affect theinterests of the third parties. Giventhe considerable uncertainty in respect of the property that will form the poolof property available for division it is difficultto assess and determine theextent of the parties respective contributions or the weight that isgiven to the various relevantfactors pursuant to s 75 (2) of the Act. The wifemaintains that her current position, that she should receive 55 per cent of theproperty of the

partiesis tempered by how the Court may decide the threecentral issues namely, the wifes claim in respect of the Suburb Oproperty,the value of the husbands shareholding in G Pty Ltd and whetherthere should be an add back to represent theaggregate of cashwithdrawals held by the husband. The husbands position is that thereshould be an adjustment of the propertyof the parties to equality. He alsorecords that to date he has paid the total valuation fees of $15,729.50 and thatthe wife shouldcontribute equally to same. Thereare two children of the marriage namely V Georgiades born in 2006 and HGeorgiades born in 2008. The parties have reached agreementin respect ofparenting arrangements and in a general sense the children live with the wifebut spend substantial and significanttime with the husband. Theproceedings were initially managed by Bennett J and were listed for trial on 23October 2013. The third parties sought that therebe an adjournment of thefinal hearing and following ex-tempore reasons, the proceedings were adjournedfor final hearing on 11 March2014. HerHonours reasons are encapsulated in the followingparagraphs:- [5] Very broadly and in relation to but one of theassets which it is said to be divisible between the husband and the wife, atleaston the wifes account, it is that the monies which were paid toconstruct the dwelling on the property at [N Street, SuburbO] were monies towhich the husband was beneficially entitled in which the third parties had noentitlement. Therefore, when serviceproviders and trades people were paid forthe construction of that dwelling, they were paid with monies that came from thehusbandand the wife, rather than monies to which the third parties wereentitled. Ms Smallwood, in opposing the adjournment says that areading of theaffidavit material thus far would indicate what the wifes case is andwhat case they have to meet. I am afraidthat I cannot agree with that. [6] Not only is there the contentions in relation to whose monies paid forproperty in this particular case but what remedies wouldbe attracted in theevent that the wife succeeds in making at least some or all facts alleged byher. HerHonour was of the view that it would not be fair for the proceedings to commenceat that stage if there was uncertainty as tothe case that the third parties hadto meet. Aspart of the further orders made that day, her Honour required that the wife fileand serve contentions of fact and lawrelied upon and that thehusband and the third parties file and serve a response to the wifescontentions of fact andlaw and if so advised his or own differentcontentions.

Duringthe course of the trial before me, there was considerable reference to therespective contention documents filed by each ofthe parties and submissionsmade before her Honour on 23 October 2013. Thetrial commenced before me on 19 March 2014 and evidence was taken on 20, 21, 27,28 March 2014 and then on 28 and 29 July 2014with final submissions on 30 and31 July 2014. Judgment was thereafter reserved. DOCUMENTS RELIED UPON Thewife relied upon the following documents:- (1) FurtherAmended Initiating Application filed 28 March 2013 (2) FinancialStatement of wife filed 16 September 2013 (3) Affidavitof wife filed 1 May 2012 (4) Affidavitof wife filed 16 September 2013 (5) Trialaffidavit of wife filed 13 February 2014 (6) Affidavitof Ms A filed 16 September 2013 (7) Affidavitof Ms K filed 16 September 2013 (8) Affidavitof Ms S filed 18 May 2012 (9) Affidavitof Mr K filed 10 May 2012 (10) Affidavitof Mr A filed 16 September 2013 Additionally,the wife relied upon the document titled Contentions of Fact and Law ofthe applicant filed 2 December2013. Thehusband relied upon the following documents:- (1) AmendedResponse filed 27 May 2013 (2) FinancialStatement of husband filed 13 September 2013 (3) TrialAffidavit of husband filed 27 September 2013 (4) A documenttitled Husbands Response to Applicants Contention of Factand Law filed 2 August 2013. Thethird parties relied upon the following documents:- (1) Response toFurther Amended Initiating Application filed 19 May 2013 (2) Affidavitof Mr Georgiades Snr filed 29 August 2013 (3) Affidavitof Mr Georgiades Snr filed 7 October 2013 (4) Affidavitof Mrs Georgiades Snr filed 7 October 2013 (5) Affidavitof Mr B filed 11 September 2013 (6) Affidavitof Mr B filed 25 February 2014 (7) Affidavitof Mr Z filed 7 October 2013 (8) Affidavitof Ms Z filed 7 October 2013 Thethird parties also relied upon a document entitled Response of the Secondand Third Respondents to the ApplicantsContentions of Fact andLaw filed 16 December 2012. Notwithstandingthat they were referred to in the Outline of Case document filed by the thirdparties, they did not call nor relyupon the affidavits of Mr A G and Mr PG. ORDER SOUGHT Thewife sought orders as set out in the Further Amended Initiating Applicationfiled 3 April 2013. Principally she sought a declarationthat the third partieshold their entire interests in the property situate at N Street, Suburb O in theState of Victoria upon trustfor the husband and the wife. Thereafter, shesought orders by way of settlement of property which were better particularisedinthe

Outline of Case document filed 14 October 2013. Onthe basis of an adjustment of property (including the Suburb O property) 55 percent in her favour she sought orders that wouldrequire the husband to pay thesettlement sum of $599,441 and thereafter effectively each party would retaintheir own separate property. Thehusband relied upon the orders sought in his Amended Response filed 27 May2013. Hesought orders by way of settlement of property that would require the wife topay a settlement sum equivalent to 40 per cent ofthe equity in the property atJ Street, Suburb Y. Atthe conclusion of the hearing, the husband handed up a Summary document whichsought that there be an equal division of the propertyof the parties aspromoted by the husband. Thesecond and third respondents continued to seek orders as set out in theirResponse filed 19 May 2013. Effectively, the secondand third respondents seekthe dismissal of the orders sought by the wife directed to their legal interestin the Suburb O property. BACKGROUND Thehusband was born in 1973 and is 40 years of age. The wife was born in 1975 andis 39 years of age. In1986 the husbands parents purchased vacant blocks of land at 1A and 1B NStreet, Suburb O for the sum of about $84,000. In 1991 the husbandsfather purchased property at P Street, Suburb C with the property beingultimately placed in the namesof the four children as registeredproprietors. Whilststill a matter of some dispute, the third parties assert that in 1992 theyborrowed monies from their daughter Ms Z in thesum of $36,000 and insatisfaction of that debt, they transferred to her the vacant land at 1A NStreet, Suburb O. In1994 a factory was built on the Suburb C property and the neighbouring blocks atP Street. Itis conceded that the husbands parents provide funds to the four children(the registered proprietors of the property) inthe sum of $223,245 to meet theconstruction costs. When completed in 1997, the P Street premises were leasedto KK Pty Ltd (KK)as trustee for the Georgiades Family Trustwhich operated the trading entity known as ZZ. InJanuary 1996 Ms Z and her husband Mr Z commenced construction of a dwelling on1A N Street. On25 August 1999 G Pty Ltd is incorporated with each of the siblings being thedirectors and holding one share. The assertion ofthe husband is that his share(and similarly the shares held by his three siblings), are held on trust for thethird parties. Thisis not an agreed position and before there can be aconcluded asset pool which sets out the property of each of the parties andtheirseparate and joint interests, a

decision is required as to the ownershipand interest that the husband has in the G Pty Ltd shareholding. In1999 G Pty Ltd purchased a property in north east Victoria with funds loaned byKK which in turn borrowed money from the CommonwealthBank for $520,000. Theredoes not appear to be any controversy in this aspect of the history of G Pty Ltdbut to the extent thatthere is alleged to be a loan by KK in favour of G PtyLtd, issues remain for determination as to whether the said loan is securedandthe current extent of the liability. In2000 the husband alleges that he spoke to his parents and asked whether he couldreside in any house that was eventually constructedon 1B N Street, Suburb O. The extent of any discussion, any agreement reached and the terms and conditionsof same remain a matterof dispute and require a determination andresolution. Thehusband also alleges that in or about 2000 the husband and his siblings signed aloan agreement in favour of the third partiesconfirming that monies advanced toacquire the P Street property and then to build the factory premises thereuponwas a loan. Thereremains significant dispute between the parties as to thestatus and veracity of this and subsequent loan agreements. Thewife purchased the Suburb Y property in 2001 for $183,000 with a mortgage ofapproximately $160,000. It was at about this timethat the parties met and bySeptember of that year, they commenced cohabitation at the Suburb Yproperty. InMarch 2003, the third parties obtain a building permit in respect of the SuburbO property and preparatory work commences leadingto the construction of a newhome on the property. InApril 2003, the husbands father underwent major heart surgery following aheart attack in March 2003. It was common groundthat Mr Georgiades Snr remainsin poor and parlous health. Thewife asserts that the parties became engaged in July 2003 coinciding with herbirthday. The husband alleges that it occurredthree days later. In general,not much turns on that issue save and except its proximity to the departure ofthe husbandsparents overseas on 27 July 2003 and their return on 24October 2003. The wife alleges that soon thereafter there was a celebratorydinner at the home of the third parties. The wife and husband were present. The wifes parents were invited and also attended. The significance ofthat dinner is central to the wifes case in that it was on that occasionMr Georgiades Snr allegedlygifted the land at 1B N Street, Suburb O to theparties as a wedding present. There remains some uncertainty on thewifescase as

to the precise date of this dinner. The husband and hisparents for their part deny that the dinner took place soon afterthe return ofthe third parties from overseas and say that a dinner did take place but at atime after the engagement party in November2003 and closer to the date ofwedding in October 2004. It is specifically denied that Mr Georgiades Snr madeany representationregarding the Suburb O property. Theconstruction of the new home on the Suburb O property continued and on 28 March2006 the parties moved out of the Suburb Y propertyand took up residence in thenew home. Thechild V was born in 2006 and the child H was born in 2008. There is relevanceto the event of the birth of the child V. Thewife alleges that she had acordial and happy relationship with the husbands parents, but inparticular his mother Mrs GeorgiadesSnr. On her case, Mr Georgiades Snrconsidered that V, being the first born child, should have a first name thatderives from theGeorgiades family. The parties refused and according to thewife it was that act of defiance that then poisoned the relationshipthat shehad with her husbands parents. For their part, the husband contends thathis parents never approved of the wifeand considered her unsuitable in everyrespect to marry the husband and form part of their family. Whilst there is nodoubt thatthe Georgiades family, but in particular the husbands parents,harbour a dislike and even loathing for the wife, the relevantissue is whetherthat was a pre-existing attitude as and from the commencement of therelationship between the parties, or whetheras the wife alleges it arose as andfrom the date of Vs birth in 2006. On11 July 2010, the husband purchased a speed boat for $40,500. Thehusbands position (and supported by his parents) is thathe borrowed mostif not the entire purchase price from his parents. It was intended at the timemoney was provided that it wouldbe by way of a loan and accordingly, repayableupon terms and conditions. The wife disputes that the money used to purchasetheboat was his parents money and if it was, then it was a gift and notrepayable. Apparently, in December 2010 Mr Georgiades,assisted by hisaccountant Mr B, attended upon a solicitor Mr I who took instructions and thenprepared four loan agreements, oneof which purported to evidence the loanarrangements between the husband and his parents for the purchase of the boat.That documentforms Annexure NG2 to the trial affidavit of thehusband filed 27 September 2013. It is demonstrable from the documentthat thedate that the agreement is purportedly made,

namely 12 July 2010, is obviouslynot the date upon which the husbandsparents, the husband and thehusbands sister Ms Z as witness affixed their signatures. That couldonly have happened in orafter December 2010. Theparties separated on 22 November 2010 and after residing with her parents, thewife and the children moved into the Suburb Y property. Proceedingswere issued by the wife on 19 December 2011, a Response was filed by the husbandon 23 January 2012 and a Divorce Orderwas made on 3 April 2012. STATUS OF THE CONTENTIONS OF FACT AND LAW AS ORDERED BY BENNETTJ ON 23 OCTOBER 2013 Followingthe adjournment of the final hearing on 23 October 2013 being the first day oftrial, Bennett J ordered that each of theparties prepare a document describedas Contentions of Fact and Law. Thefocus of her Honours order was to better understand the case being putforward by the wife in respect of the declarationsought that the Suburb Oproperty of which the husbands parents were the registered proprietorswas held on behalf of theparties pursuant to a constructivetrust. It was argued in the alternative by the wife that if not aconstructivetrust then she claimed an equitable estoppel. Thehusband and his parents oppose the orders sought by the wife and, taking intoaccount the value of the Suburb O property as againstthe balance of theproperty of the parties, the dispute is significant. On the wifes caseit would represent almost one halfof the total property of the parties. Itsimportance is self-evident. Thedocuments are clearly not pleadings, but are of assistance in betterunderstanding the material facts upon which the wife at firstinstance relies tosupport her equitable claim. In opposition, the material facts that the husbandand his parents say are relevantto the dismissal of the wifes claim arehelpfully traversed. Each of the parties provides a summary of the law thattheysay supports their adopted position. Thecontention documents cannot have the status of evidence in circumstances wherethey are not sworn and in any event each of theparties rely upon extensiveaffidavit material in compliance with the trial directions of Bennett J. InBoileau v Rutlin [1848] EngR 661; (1848) 2 Ex 665 at 680-1 Parke Bobserved:- It would seem that [Bills in Equity], as well aspleadings at common law, are not to be treated as positive allegations of thetruthof the facts therein, for all purposes, but only as statements of the caseof the party, to be admitted or denied by the oppositeside, and if denied to beproved, and ultimately submitted for judicial decision...the statements of aparty in a

declaration orplea, though, for the purposes of the cause, he isbound by those that are material, and the evidence must be confined to them uponan issue, ought not, it should seem, to be treated as confessions of the truthof the facts as stated. InBuckmaster v Meiklejohn [1853] EngR 415; (1853) 8 Ex 634 the following wassaid:- In point of law, pleadings are not admissions but are merelythe statements of the case, which the party wishes to raise for the opinionofthe jury. Iconsider that the contention documents including matters of fact and law areanalogous to pleadings in terms of how the informationcontained within thedocument should be treated. They are nonetheless, helpful in the sense thatthey supplement in a detailed andhelpful fashion the case outline documentsfiled on behalf of each of the parties. The respective contention documentshighlightthe seminal importance of the status of the Suburb O property to theproceedings. Thepreparation of the contentions document submitted on behalf of the husband wasthe subject of cross examination by the wifescounsel. He was asked thecircumstances by which he came to prepare the document and it was his clearassertion that he had preparedthe document with the assistance of a friend(ultimately revealed to be Mr Z). The husband was challenged with respect ofthe circumstancessurrounding the preparation of the document on 20 and 21 March2014. At line 14, page 254 of the transcript the following exchangetakesplace:- Ms Smallwood: Yesterday we were talking about; when westopped we were talking about the response you filed to the applicantscontentions of fact and law. Do you remember we were talking about that? Husband: Mmm. Ms Smallwood: And you said that you had not seen your parents responseto the second and third respondents applicationsto contentions of factand law prior to drawing yours. Husband: Thats correct. Ms Smallwood: Yes, do you stick to that do you? Husband: Yes. Ms Smallwood: You stick to that do you? Husband: I didnt see it, yes. Ms Smallwood: Ok. And this friend who helped you. Husband: Yes. Ms Smallwood: Who was that? Husband: Do I have to name him? Ultimately,the husband named his brother-in-law Mr Z. The husband was shown the responsedocument prepared on behalf of his parentsand he denied that he had ever seenthat document prior to the preparation of his response. Forreasons best known to the husband he chose to maintain a trenchant positionnamely, that his document had not been prepared withthe assistance of seeinghis parents document or by his parents solicitor. Ultimately,I

required the wifes counsel to present both documents for comparison tothe husband and counsel properly highlightedthat the wording of the documentswere in some areas identical and importantly, the husbands document andthe document preparedby his parents solicitor bore the same referencenumbers. The implication was obvious. This was put to the husband asfollows:- Ms Smallwood: You see that there is a reference documentthere. Husband: Yes Ms Smallwood: 130699 Husband: Yes... Ms Smallwood: Yes, and look on your one. Thats the same referencenumber of the document. Husband: Right Ms Smallwood: Yes, because its the template that was used by you to doyours, your parents document wasnt it? Husband: Thats what it looks like to be, yes. Ms Smallwood: Yes and thats the truth isnt it? Husband: No its not the truth. I am just telling you I did not lookat this one here that youre saying my parents,to do this one. Thats what I am saying. Thehusband maintained his position that he was given assistance by Mr Z. Indeed,the husband said that Mr Z had helped him preparethe document, read it and thentold the husband to sign it, and on his case he did. Interestingly,when Mr Z gave his evidence and was asked about this matter, his answer waspredictably truthful. The contentionsdocument was highly complex and containedsignificant reference to material facts and the law. Mr Z thought it laughablethat hewould be able to construct such a document. Theevidence of the husband on this topic was unsatisfactory. For reasons that arenot immediately apparent in terms of the significanceof the contentionsdocument, the husband refused to tell the truth. So obvious was the falsehoodthat the husbands responsecould only be described as bizarre. LIST OF WITNESSES The Wife Theevidence of the wife was presented initially in her affidavit material filed 16September 2013 and 13 February 2014. Atthe commencement of the relationship, the wife had recently purchased the SuburbY property with a deposit of approximately $20,000and assistance from the FirstHome Buyers grant of about $14,000. The husband owned a motor vehicle and amotor bike. The wifealleges that the husband advised her that he had aninterest with his siblings in a farm at [north east Victoria] andalso in a property at P Street, Suburb C. Fromthe commencement of cohabitation, the parties lived in the Suburb Y property forabout five years until taking up residence inthe Suburb O property. The wifealleges that she would continue to meet the mortgage on the Suburb Y

property,but that the husbandwould use his income towards the construction of the homeon the Suburb O property. Astime passed, the husband disclosed and the wife accepted that his family hadinterests in various farm and other properties andproduced a well-known productnamely ZZ. Followingthe engagement of the parties in July 2003, the husbands parentstravelled to Greece and returned in late 2003. The wifes evidence isthat following their return there was one celebratory dinner during which thehusbands fatherannounced that he was giving us the block of landfor our marriage. Notingthe wedding occurred on 30 October 2004, the parties planned an engagementparty. The husbands parents did not attend. It is their evidence thatby that time they thought so little of the wife that they were barely able to becivil to her. The wifealleges that at that time she had a close relationshipwith the husband s parents and it was only that she and the husbandhadinvited the husbands brother and his wife who had previously refused tocomply with the naming traditionthat was the reason for theparents refusal. Thehouse construction commenced in late 2003 following the completion of aretaining wall and the granting of a building permit. The constructionconcluded in about 2006 with the parties taking up occupation. Whilstthere is significant dispute as to the level of involvement by the wife, Iaccept that she had some input into the plans forthe construction of the home,was involved in the purchase of whitegoods and had substantial influence interms of the interior style,fit-out and decoration. The wife asserts that thekitchen and laundry benches were non-standard to suit her height and that sheand the husband worked tirelessly during every spare moment on the house inrespect of those jobs that did not require the skillof a tradesperson. Thewife also comments that some of the work undertaken was performed bytradespeople known to her or upon herrecommendation. Tothe extent that the husband denies the effort and involvement of the wife asalleged, I prefer the wifes evidence to thatof the husband. Thediscovery of invoices suggests that the building costs were in excess of$300,000. It is common ground thatall of the tradespeople, material and otherhouse components were paid for by cash provided by the husband. The wifebelieved thatthe husband had access to large quantities of cash and acceptedthe husbands boasts about his ability to accesscash atshort notice. Whilst it is true that the husband appeared to access substantialquantities of cash, it is his evidence thatit was at all

times hisfathers money. As will be seen, the husband paid cash for a boat in thesum of $48,500, allegedlyborrowing $40,500 from his parents. He paid cash of$14,000 to enrol the child V in her school and the wife observed on at leastoneoccasion the husband accessing $10,000 in cash in order to assist hiscousin. Iam in no doubt that the husband was in the practice of boasting of the financialsecurity of his parents and of his own prospectseven to the point where heeither asserted or at the very least did not dispel the impression gained by thewife that he had accessto cash and was the owner of certain items ofproperty. Theparties did pay for some outgoings but they were relatively modest. TheGeorgiades family appeared to cover a significant proportionof the householdoutgoings. Duringthe course of the marriage, the wife denies that there was any discussion ofloans as between the husband and his parents andshe treated the Suburb Oproperty as if it was owned by the husband at all material times. Subsequentto their separation in November 2010, the wife became aware of significant cashwithdrawals totalling $217,800 that weredeposited in the husbands bankaccount between November 2007 and July 2010. The wife considers that the cashmonies wereby way of additional supplement to the modest income received by thehusband from his employment in the family business, whereasthe husbandsposition is that the large withdrawals during this period were monies relatingto the business takings and thatthey were deposited in his account rather thanin the business account, initially in error and then for convenience. Theparties have reached agreement as to the parenting arrangements in respect ofthe children. The husband has been assessed forchild support in the sum of $37per week. The wife is employed as a sales assistant. The husband continues hisemployment in thefamily business. Theparties have a poor relationship. It is unlikely that the wife will receive anysignificant financial support from the husband. Thewife was cross examined by the husband to little effect, but more so by seniorcounsel on behalf of the husbands parents. Aswas expected, there was significant focus on the acquisition of the Suburb Oland and its subsequent development. Thewife conceded that any statement made by Mr Georgiades Snr purporting to giftthe Suburb O land to the parties only occurred ata dinner held to celebratetheir engagement. Additionally, she also conceded that the architectural ordrafting plans were preparedbefore the date of the alleged representation andthe purported gift. Thewife was

challenged as to her statement in an affidavit filed 1 May 2012 thatthe construction of the house was completedby using the savings thatboth the husband and I had. The wife asserts that this was a truthfulstatement and whilst shedid not have significant savings, she alleges that thehusband had access to large amounts of cash. MrGlick SC put to the wife certain statements made by her in the contentionsdocument as ordered by Bennett J. The wife acceptedthe previous representationmade by her namely:- A finding of there being a constructive trustought to be made upon the following grounds:- (1) The respondent worked for many years for the parents and their corporateentity for little wages is not an accurate reflection of thewifes case. The wife agreed with that proposition. She also acceptedthat the husbandwas not registered as the owner-builder of theSuburb O property but rather, his father had been named as the registeredowner-builder. Thewife was further challenged on earlier matters raised in her affidavit that moreclosely linked the celebratory dinner at whichthe wife alleges that the SuburbO property was gifted to the date of the parties engagement in July2003. Theimportance of the dinner is obvious and the wife was challenged as to previousaffidavit material which did not bring to accountthe overseas travel of thehusbands parents and the subsequent evidence of the wife that thecelebratory dinner occurred inOctober 2003 and not earlier. Thewife also conceded that the plans for the building of the home were concluded anumber of months prior to the alleged gift inOctober 2003. The wife wasrequired to concede certain inaccuracies in her affidavit, particularly inrelation to any temporal connectionbetween the engagement, an alleged dinner inOctober 2003 and the preparation of the house plans. The wife also agreed thatby thetime of the celebratory dinner and by reference to the building costinvoices tendered as Exhibit 1, about $65,500 had been expendedon the property.The wife accepted that proposition. Generally,the wife was a satisfactory witness. She was prepared to concedeinconsistencies between her current evidence and earlieraffidavit materialtogether with representations made in the contention document. Tothe extent that it was put to the wife she was not telling the truth as to herevidence in respect of the celebratory dinner followingthe announcement of theparties engagement and the method and manner by which the house was constructedit did not appear to be adeliberate attempt by the wife to mislead but rather,a genuinely held view which, upon proof to the contrary she was

prepared toconcede. To a large degree her evidence was coloured by her belief of what shesays were representations made by the husband boastingof his involvement in thebusiness and his ability to access cash. Much of the difficulty in this casearises from the propensityof the husband to big note and embellishhimself and her reliance upon those misstatements. Iconsider the wife generally to be a witness of truth. Mr L MrL was the draftsperson who prepared plans comprising the design of the house tobe built on the Suburb O property. His only involvementwas the preparation ofplans which form Exhibit 4. He did not have any detailed recollection of hisdealings with the parties buthad assumed that the plans were for the husbandand the wife notwithstanding that the name on each of the plans was that ofMrGeorgiades Jnr. The witness agreed that the original drawingswere prepared in January 2003 with revision in March 2003. The witness agreedthat any view held by him that the husband and the wife were to live in theproperty was an assumption on hispart and not as a result of any suggestion orstatement made to him. Mr A Thiswitness is the father of the wife. The thrust of his evidence as contained inhis affidavit filed 16 September 2013 is thatshortly after he and his wifelearned of the engagement in July 2003, the husbands parents invited thewifes parentsto a celebratory dinner. It was his recollection that atthat dinner the husbands father stated that he was giftingtheblock of land at [1B N Street, Suburb O] in the State of Victoria to both [thehusband] and [the wife]. Notsurprisingly, Mr A was cross examined as to his meaning behind the use of theword shortly. There was some uncertaintyin the evidence of thiswitness. At line 3 on page 156 of the transcript is asfollows:- Glick: And then I will leave it! Answer: Well, how many times do I have to answer it. Shortly, to me meansshortly afterwards. A month. Glick: Shortly after...? Answer: In my language, shortly could be anytime. Glick: It could be anytime? Answer: Shortly. It could be anytime within months, yes. Question: Ok 6 months later? Answer: Thats still...its under a year. Itwas put to Mr A that the inconsistency in the wifes evidence as to thetiming of the celebratory dinner following the engagementand after thehusbands parents had returned from Greece was uncertain and problematic. The witness was asked whether he hadbeen made aware of the inconsistency andhad in effect modified his evidence to have a period of time more expansivelydescribedthan the original meaning intended to be conveyed by the wordshortly. The witness denied the assertion. Thewitness

was further challenged as to his recollection as to when the celebratorydinner took place. The witness was unable toremember when the husbandsparents returned from overseas and the best he could do was to recollect that itoccurred priorto the engagement party. That is of little assistance to thewifes case. The witness was unable to recollect the exact dateof theengagement party. Whilst the recollection of the witness was that it was morelikely in 2003, it is open on the evidencethat it could have occurred in thefollowing year. Otherthan the alleged celebratory dinner and the engagement party, the witness gaveevidence as to a reciprocal dinner at their homefor the husbands parentsand then a meeting to trial the wedding food. The witness was not able torecollect with any precisionthe dates of these subsequent meetings, but wasclear that not on any other occasion did the issue of the alleged gift of thehousearise for discussion. Generally,I find that the witness was doing the best that he could to recollect thechronology of events but that ultimately hismemory was flawed and thesignificant uncertainty as to crucial dates supports the view that his evidenceis unreliable. Ms A Theevidence of this witness was contained in an unsatisfactory affidavit filed 16September 2013 which did no more than adopt theevidence and affidavit of herhusband, Mr A. Theobvious difficulty arose when it was put to the witness that in adopting theaffidavit of her husband, she also adopted the uncertaintycreated by the use ofthe word shortly. Thewitness was asked for her recollection of the date of the celebratory dinner. She was uncertain in which month, but believedthat it was before the engagementparty and therefore not in the month of September 2003. There is no note of thedinner, this witnessdid not write a letter thanking the husbands parentsfor their hospitality, nor was there any subsequent telephone or othercommunication in respect of the dinner. Thewitness was able to confirm that the engagement party was in mid November 2003. By necessary implication, if there had been adinner at the home of Mr and MrsGeorgiades Snr then it must have occurred after they returned from Greece inlate October 2003 andprior to the engagement party. WhilstI have no doubt that the witness was attempting to be helpful, she was alsouncertain as to the chronology of the event andindeed the uncertainty wasfurther compounded by the following evidence given at line 3, page 204 of thetranscript:- His Honour: Can I just ask you a question. I am sorry.I know people are asking you lots of questions

about this dinner? Answer: Thats fine. Question: On your evidence there appears to be two dinners that happenedbetween [late] July 2003 and [mid] November 2003. Therewas the gift dinner andthen there was a dinner at your home? Answer: Thats correct. Question: Thats as you remember it is it not? Answer: Yes. Question: Alright. Are you able to say how far apart these dinners were. So I accept that you dont remember the dates ofthese dinners or even themonth, but do you have a sense as to whether the dinners were separated by oneweek, one month, three months,six months? Answer: No it wasnt! It wouldnt be six months that I canrecall. Question: Do the best you can. I want you to think about it. Answer: Its a long time ago. Question: No. Answer: I dont know. Two weeks or something. Iwas not assisted significantly by the evidence of thiswitness. The Husband Thehusbands evidence is contained in his trial affidavit filed 27 September2013. It is his position that at the commencementof cohabitation he had a 25per cent interest in the property situate at P Street, Suburb C which wassubject to a loan to his parentsin the sum of $200,000. He had some modestsavings, a motor bike worth about $12,000 and some personal belongings. Thewifesassets were not dissimilar in value in that she was the registeredproprietor of the Suburb Y property which was subject to a mortgagein the sumof $160,000. Over and above that interest, she owned a motor vehicle, somemodest savings and her personal belongings. Thehusband asserts that his income throughout the course of the marriage was modestand as at the date of separation he was earningabout $33,000 per annum. Hedenies specifically any other financial benefit or financial assistance providedby his parents. Thehusband does not concede that he holds any interest in the Suburb O property. He says that his father contemplated that he andhis wife would live in theproperty once completed, but that he wanted the husband to project manage thebuilding works. The husbandspecifically denies that he made any decisionswhatsoever in respect of the building in that every aspect of the constructionhadto be approved by his father. The husband used none of his own money butrather all of the building works were paid for by his parents. Thehusband denies that the wife chose any of the materials or had any involvementin the in the interior design or fit-out. Thehusband alleges that in August 2005 as the property was nearing completion, hisfather agreed that the parties could take up residencein the property rent freeand that he was happy for them to

remain in the Suburb O property until themortgage on the Suburb Y propertyhad been discharged. The arrangement wasclearly open-ended and there was no definition and particularity to the termsand conditionsof the ongoing residence. Indeed, the husband continues toreside in the property under terms not dissimilar to that which he saidwasagreed by his parents. Whilstthe husband acknowledges that he holds a 25 per cent shareholding in G Pty Ltd,and notwithstanding their disclosure in earlieraffidavit material and hisfinancial statement, it is his position that at all times he holds the shares ontrust for his parents. Theproperty at P Street, Suburb C was purchased by the husband and his threesiblings in March 1992. He says that his father providedthe funds for thepurchase of the property which comprised vacant land. In 1994, a factory wasconstructed on P Street and an adjoiningproperty owned by two of thehusbands siblings at P Street. The husbands parents loaned thesiblings $223,245 andit is alleged that the siblings entered into a loanagreement with the husbands parents on 3 May 1994. The original loanagreement cannot be found and it is a matter of some contention as to thecircumstances in which a duplicate document was preparedin order to replicatethe original. Uponthe completion of the factory premises, they were leased to KK Pty Ltd astrustee for the Georgiades Family Trust trading asZZ. Rentis notionally paid by KK to the siblings, but in reality it is retained by thehusbands parents in repayment of the underlyingloan. The current amountoutstanding is $140,000 with the husbands share being $35,000. In2010, the husband purchased a boat for $48,000 with monies entirely provided byhis parents. The husband alleges that he is obligedto repay the monies andthat the agreement is evidenced by a loan document dated 12 July 2010. Thehusband denies that the wife assisted in any way with the construction and/ordecoration of the Suburb O property. Other thanthe application of someundercoat painting, he denies that the wife attended to any cleaning of theproperty nor organising any ofthe tradespeople. Whilst the husband assertsthat he worked tirelessly to build my parents property hedeniesthat the wife had any such involvement, and that she was not entitled toconsider the property our home. Thehusband admits that there were occasions when he had significant sums of cash inand around the home, but not to the extent asalleged by the wife, nor does heaccept that he received cash income supplemental to his regular income. Undercross

examination the husband was challenged as to his knowledge of hisinvolvement in G Pty Ltd. He was uncertain as to whetherhe was a director andhe says that his father asked him to sign a document when the north eastVictorian property was purchased andhe did so without reading the contents ofthe document. Whenthe husbands shareholding in G Pty Ltd was raised, his position was thathe was not aware of the nature of his interestand has not ever bothered tocheck notwithstanding that the proceedings were ongoing for some years and thathe knew his interestin G Pty Ltd was a live issue. Itwas pointed out to the husband that he had asserted in an earlier affidavit thathe had a quarter share in a property at P Street,Suburb C but also held sharesin G Pty Ltd. Thehusband also alleges that his parents formed a dislike for the wife almost fromthe very first meeting, but in particular whenhe moved into her unit. In hisearlier affidavit material, the husband asserts that his parents developed adislike from the timeof their first separation in 2003. Thehusband was cross examined as to matters of insurance on the house. The husbandconceded that for the four years of occupation,the wife had attended to theinsurance and the policies were in the names of the parties. The husbandalleges that he had neverhad a conversation with the wife about the insurancepolicies and it was only after it came to his attention that the policies werein their names rather than the names of his parents that he took steps to havethe error corrected. The effect of the husbandsevidence is that heconcedes he asked his wife to arrange the house and contents insurance, but healleges that he did not tell thewife how much to insure the property for andeffectively left it to her to guess. Theevidence of the husband on this topic was unsatisfactory. His attitude anddemeanour was off hand and he did notimpress as trying to assistthe Court in a better understanding of the issues. Thehusband was asked as to the status of his legal fees noting that he appears as aself-represented litigant. He confirmed thathis father had paid his previouslegal fees in the sum of $105,000 and he confirmed that he considers he stillowes his father thatsum and intends to repay it. The unlikely prospect of thatoccurring was highlighted by reminding the husband that his income atpresent isabout $30,000 per annum. If the husband is to be believed, his financialposition is further exacerbated by a boat purchasedby him shortly afterseparation with monies borrowed from his father in the sum of $40,000. I am inno doubt that the husband willnever

be called upon to repay the monies andagain it was obvious that the husband was simply not telling the truth. It isinconceivablethat on $30,000 the husband could ever repay the liabilities thathe alleges are outstanding. There is significant uncertainty asto thefinancial circumstances of the husband and the financial arrangements that existbetween he and his family. I do not acceptthat the husband has made full andfrank disclosure of his financial circumstances. Itwas put to the husband that replicate loan agreements were signed by him and inrelation to G Pty Ltd the husband signed as a director. This was donenotwithstanding the husbands uncertainty as to whether he holds thatposition or not. Inrespect of the repayment of loan monies allegedly provided by his parents, thehusband was not able to assist the Court. I amuncertain whether the husbandwas not prepared to answer the questions on the topic truthfully or whether hisstate of knowledgeis so deficient that his evidence can only be given the mostminimal weight. Itwas put to the husband that whilst he had annexed insurance certificates overthe Suburb O property to show that the interestsof the husbands parentshad been noted, he had failed to exhibit certificates which showed thatfollowing the separation ofthe parties the subsequent certificates noted thehusband as the policy owner in respect of the property and contents. In effect,if the husband was keen to establish via the insurance certificates that when itcame to his attention that his parents were notproperly described as the policyowner, he responded but could not explain why he took no similar action when hisown name appeared. Thebundle of insurance certificates forms Exhibit 7. The husbandsexplanation as to why he did not disclose the completehistory of the insurancearrangements was unclear and unsatisfactory. On12 July 2010, the husband purchased a boat in the sum of $48,000. His evidencewas that he had about $7,500 in cash and in orderto complete the purchase hisparents advanced him $40,500 by way of an alleged loan. Neither the initialdeposit provided by thehusband nor the balance of the monies provided by hisparents were the subject of record in the sense that the purchase price waspaidin cash. Whilstthis evidence has a focus in terms of the status of the alleged loanarrangement, it is important that at the time the husbandpurchased the boat heacknowledged that the wife was not happy about it. The wife said that the moneycould have been used for anumber of different purposes and on thehusbands case his income was modest and but

for the accommodation of thehusbandsparents allowing them to remain in the house rent free, thefamily would have had difficulty in making financial ends meet. In summary,thewifes position was that the purchase of the boat was financiallyreckless. The husband was challenged as to his motivationto buying the boatnotwithstanding that he conceded that he was not prepared to pay for thechildrens ongoing education. His reason for buying the boat was simplythat he liked fishing. Iam in no doubt that if the financial position as presented by the husband shouldbe accepted, the purchase of the boat could onlybe considered as financiallyreckless. The other alternative explanation open to me on the evidence is tofind that the husbandhad a level of confidence that his parents represented aready source of funds without any condition of repayment. Atpage 311 of the transcript, the husband is shown his first financial statementfiled 23 January 2012 which discloses a referenceto G Pty Ltd with a value of$175,000. The husband was not able to explain the inclusion of his interest inGe Pty Ltd as part ofthe property owned by him. Hisbest explanation was that his fathers accountant had helped with thefigures and the preparation of the document but heis uncertain. The documentwas clearly prepared by the husbands lawyer and presumably on hisinstructions. Thefollowing evidence is recorded at line 44 of page 311 of thetranscript:- His Honour: How would anybody? How is anybody going toknow, Mr [Georgiades]? You see, you would appreciate that until these questionsare being asked of you, anybody reading this document, me reading this document,would assume that whats in there? Whatsin there? Answer: Thats true. Question: How would anybody know what parts of the document are matters aboutwhich you are certain and about which you now say youare not sure or youdont know? How would anybody know? Answer: I understand your point there. Thehusband effectively conceded that the information contained in the financialstatement and by reasonable implication the documentsthat follow have asignificant level of unreliability about them. The husband was cavalier in hisresponse and I am satisfied thathe was unconcerned in respect of his obligationto make full and frank disclosure. Thehusbands difficulties were further compounded by it being highlightedthat in the first financial statement filed he listedthe boat loan to hisparents at $48,000, when in fact his evidence was that it was only ever $40,800taking into account he had providedthe initial deposit of $7,500. The

husbandconceded that it was an error not just in respect of the first financialstatement butalso carried forward into the second financial statement filed 13September 2013. The husbands evidence on the topic wasunsatisfactory. Whilstit will be dealt with separately under the topic of the various alleged loansand the purported loan agreements, it is importantto note the husbandsevidence that he did not engage Mr I, solicitor, to prepare the loan agreements,but rather his parentsdid. Thehusband was questioned as to the method and manner by which the invoices andbills for the house construction was handled. Hisevidence was that allaccounts were paid in cash provided by his father upon the husbandsrequest. The husband gave an examplethat when a tradesperson, for example therenderer, would need to be paid he would ask his father who would then organisethe moneyand pass it on to him. Thefollowing appears at line 45 of page 337 of the transcript:- HisHonour: Did you pay a tradesperson $36,000 in cash? Answer: Yes, thats what my father wanted to do. Where he got themoney, ask him. Question: No I am not criticising anybody. I am just-it is an unusuallylarge transaction to pay a tradesperson? Answer: That is what it was the bill... Question: But someone would physically have to get the cash to you, you wouldthen give the cash to the tradesperson? Answer: Thats correct. Question: He would put it in his kit bag or whatever he has got? Answer: Yes. Itwas then put to the husband that between June 2006 and 30 April 2008 there wereno invoices that had been supplied. The husbandconceded that work was doneduring that period and whilst there would have been invoices rendered, they wereall provided to hisfather. The husband could not explain why the invoices werenot available notwithstanding work had clearly been undertaken duringthatperiod. Thefather was also challenged in respect of his evidence that when the whitegoodswere purchased, notwithstanding that he went withthe wife to the shop, he wasnonetheless acting on his mothers instructions as to the particularappliances that she wanted. The husbands evidence was that he was awareof the pop-up shop and before he had inspected what was on offerhe spoke to his mother who was in Greece at the time and she gave him adescription of the particular appliances that she wanted. The husbandsevidence on this topic was vague and uncertain. It is more likely that thedecision as to the whitegoods tobe purchased was made as between the partiesrather than under the direction of the husbands parents. If that

hadbeen so,it is difficult to explain why the husband would not then have told thewife that his mother had already determined the range ofappliance optionsrather than remain silent on the topic. The husband does not say that he toldthe wife that he was under his mothersinstructions rather than it beinga decision that the parties were able to freely make. Thehusband was shown his credit card statements between the period 18 December 2004to 18 January 2010. The statements were tenderedas Exhibit 8. Varioussignificant deposits were highlighted and the husband was asked for anexplanation. The husband acceptedthat they could not have been part of hiswage because he was able to identify those separate deposits. The amounts weresignificant. On 18 October 2007, there were deposits totalling $10,078 whichhad the effect of placing the credit card account in credit of $9,215. On20 November 2007, there was a transfer of $12,000 cash from the account. Thehusband was challenged as to the provenance of other large cash deposits intohis credit card and other accounts. The husbandwas not able to provide anyexplanation and his standard answer was that he had no idea about the varioustransactions. Whilstit is possible that the husband may have had difficulty in recollecting withprecision the detail of various transactions involvinglarge cash deposits thathad occurred a number of years ago, I do not consider that the husband couldhave no information and norecollection of at least some of the circumstancessurrounding these deposits. Once the husband conceded that it was not his wage,it is difficult then to accept he has no recollection at all as to the varioustransactions. The husbands evidence was evasiveand I formed the clearview that he was doing his best not to assist the Court in gaining a betterunderstanding of his financialdealings. Thehusband was shown statements from his Commonwealth Bank Streamline Accounttendered as Exhibit 9. His attention was directedto a number of significantcash deposits which over the period from 20 November 2007 to 2 August 2010 (whenthe deposits seem tohave come to an end), the aggregate totalled $217,800. Atfirst the husband was not able to proffer any explanation as to the sourceofthose monies, but ultimately his evidence was that on occasion and at the end ofa working day if there were cash monies lefton the premises, he would collectthem and deposit them in his bank account. Theobvious question was put to the husband namely, if the monies belonged to theemployer company KK and given that it also bankedwith the Commonwealth

Bank andat the same branch as the husband, why not put the money into the companyaccount?. When that wasput to the husband, his evidence was asfollows:- Ms Smallwood: Can I ask you why you didnt put it in and that was [KK] Pty Ltds money. Answer: Yes. Question: Yes. And given that [KK] also banked with the Commonwealth. Answer: Thats correct. Question: And you had to take the cash to the Commonwealth Bank. Answer: Yes. Question: Why did you not put it into [ KK] Pty Ltds account. Answer: I dont have their numbers and details of the  of [KK]. I have always had my own account card, which and I just said, I will putit into mine and my father knew it was there. I dont have the details ofthe [KK] account. Question: And you never thought to say to your dad, give me the details ofthe account and I will just pay the cash in when I go downto the banktonight. Answer: No, no, no. Question: See I suggest to you youre just lying about that. Answer: No I am not lying. Question: Yes. Answer: Youre assuming I am lying; I am telling you I am not. Im sorry. Thehusband conceded that by way of withdrawals of amounts not related to thedeposits into the account, the following large monieswerewithdrawn:- 20 November 2007 $30,000 29 December 2007 $35,400 21 June 2008 $49,000 2 September 2008 $19,000 2 June 2009 $54,400 27 August 2010 - $30,000 TOTAL $217,800 Therewas no satisfactory explanation by the husband as to why the amounts remained inhis account for relatively long periods oftime. It would not have beendifficult for the husband to ask the officer manager for the account details ofKK. There was no sensibleexplanation to justify paying the income of KK intoany other account. Theevidence of the husband on this topic was demonstrably unsatisfactory. Hisanswers made no sense and even making substantialallowances for what might beconsidered lax financial controls, I was not satisfied that the husband wasattempting to assist theCourt. Thehusband was referred to paragraph 34 of his affidavit sworn 26 September 2013where the following is recorded:- In previous affidavit andfinancial statement filed in these proceedings I had stated that I had a 25 percent shareholding in [GPty Ltd]. When I disclosed those shares in my previousaffidavit and financial statement I believed I was required to do so becausethey were in my name. I understand that at all times my siblings and I held ourshares on trust for my parents. Theclear implication is that notwithstanding the statement to the contrary, thehusband at all times understood that he held theG Pty Ltd shares on trust. Thehusband

was asked when he gained that understanding and he admitted that it wasonly during the course of the proceedings thatsomebody told him that hewasnt really the owner of the G Pty Ltd shares. Clearly, it is not thecase that the husband hadan understanding from the very beginning but rather,is purportedly accepting what someone else has told him is the circumstancesofthe proceeding. Thehusbands evidence was unsatisfactory as to why he was a director andwhether he brought his own judgment to bear or whetherhe was simply availableto do the bidding of his father. I am satisfied that whatever the positionmight have been, the husbandon each and every occasion would do exactly as hisfather requested without question. Thefollowing appears at pages 409  410 of the transcript commencing line30:- Ms Smallwood: When the matter became before her Honour BennettJ on 27 February 2013 and we touched upon this already, your counselindicatedto the Court that you thought you owed, pursuant to the loan agreement, some$368,000; do you recall me touching uponthat the other day. Answer: Yes. Question: Ok. What do you say now, Mr [Georgiades], do you say you owe the$368,000 which would now have increased of course withrespect to interest. Answer: Yes. Question: Do you say you owe that. Answer: Yes. Question: Who do you owe it to. Answer: To my father, if thats the case. Question: Ok, and is the basis of that debt a loan agreement. Answer: On the [G] thing. Question: Yes. Answer: Yes. Question: Yes. Answer: Thats what it is saying. Question: Yes but you also say that you dont own your interest in the[G Pty Ltd] shares beneficially but that you hold themon trust for yourdad. Answer: Thats correct. Question: And your mother. Answer: Sorry. Question: And your mother. Answer: I dont know. And my mother is that what you said. Question: Yes I did. Yes. Answer: Yes if thats the case, yes. Question: Is that the case, Im asking you. Answer: I am assuming it is, yes because my mother and father are the actualowners. Question: And I ask you why would you owe them a loan yourself of some$400,000, it would be now, it was $368,000 back in February2013. Why would youowe them money for something for a  the real estate purchased by [G] PtyLtd when you now have no beneficialinterest in that real estate. Answer: Well thats the way the accountant done something. Idont know. You will need to ask him. He will... His Honour: Is that a serious answer Mr [Georgiades]. Answer: Well I didnt do the paperwork. I dont doanything. Question: You understand

the logic of what Ms Smallwood is putting to youdont you. Answer: Yes, I understand what she is saying yes. Question: So you are asserting that you dont have an interest in theshares. Answer: No I dont have an interest. Question: Therefore you dont have an interest in the property that thecompany owns. Answer: No. Question: And given and therefore it doesnt make sense that you wouldowe anybody money for something that you donthave an interest in. Answer: Thats true. Question: You understand. Answer: Yes thats true. Thehusbands evidence on this topic was nonsensical and again I formed theview that he was not trying to assist the Courtin gaining a betterunderstanding as to the method by which he allegedly held the shares in G PtyLtd on trust for his parents. Thehusband was questioned at length as to the circumstances of the loan agreementsevidencing the four loans between the husbandand his parents. The husband hadlittle or no knowledge of the circumstances surrounding the preparation of thereplicate loan agreementsand I am satisfied that he gave no instructions to theaccountant, nor did he challenge the financial arrangements. When the husbandwas asked whether he was still paying the loan to his parents for the P Streetloan and if so, what was its current status, the followingevidence appears inthe transcript at page 414  415 commencing line1:- Question: Well youre still paying [KK]  sorry youre still paying the rental to your parents from [KK]. Answer: The rental is still  yes. Thats still going. Question: And whats the state of that loan. Answer: Whats the balance of it...the balance I dont know. Question: You dont know. Answer: No I dont know. Question: At all. Answer: Be honest, I am telling you no. Question: Have you ever known. Answer: No. Question: Never. Answer: No. Question: Why not. Dont you care. Answer: No. Question: You dont. Answer: No I dont. Question: Why would that be. Answer: Just the way I live. Question: Just the way you live. Answer: Yes. Question: Is that a serious answer. Answer: Well no I dont care, I trust my... Question: Mr [Georgiades], you understand it is an answer which doesnt it doesnt place you in good light, doesit on this particulartopic. Answer: They will tell me when its finished and the... Question: Will they. Answer: Yes and the accountant, yes. Thehusband did not impress as a witness of truth. He gave little regard to theanswers that he gave and he had about him a demeanourwhich was to the effectthat he simply did not care as to whether his answers were true or not. Hisevidence was

entirely unreliable and I have no doubt that he was prepared toconcoct his evidence if he thought it would assistin promoting the positionadopted by his family. Hisanswers to questions were vague and inconsistent and in respect of some mattershe was either deliberately lying or demonstrablyreckless. Mr Georgiades Snr Theevidence of this witness is contained in his affidavits filed 15 June 2012, 29August 2013 and his trial affidavit filed 7 October2013. Heasserts that in 1991 he purchased vacant land at P Street, Suburb C and thenlater further vacant land at P Street. In1994, a factory was constructed on the property which was clearly designed tofurther the business interests of the family. MrGeorgiades Snr confirmed thatthe business operates under the name of KK. TheP Street property was placed in the name of the four children. A loan agreementwas prepared in relation to P Street and signedby the children, Mr GeorgiadesSnr and his wife. The KK business operates from business premises and paysrent. Inor about 1986, Mr Georgiades Snr purchased two vacant blocks at 1A and 1B NStreet, Suburb O. He says it was his intention tobuild a house on each of theblocks and that he engaged an architectural draftsman to undertake thatprocess. Therewere difficulties with the block in that it was very steep and because therewere other priorities he did not move forward withthe plans. Asa trade-off for monies provided by his daughter Ms Z, Mr Georgiades Snrtransferred 1A N Street, Suburb O to her in satisfactionof the debt. Ms Z andher husband constructed a home on the property and managed the projectthemselves. Mr Z holds the qualificationof an engineer. In or about the year2000, Mr Georgiades Snr says that the husband asked whether if the house waseventually builton 1B N Street whether he could live there. Thehusbands parents considered the request and ultimately agreed to it. Thatdiscussion allegedly took place prior to the husband meeting the wife. In2006, the husbands parents purportedly honoured the agreement and did notdemand the payment of any rent or utility charges. Accordingly, if thatevidence is correct the necessary implication that flows from it is that whenthe house was built the husbandsparents had no intention and/orexpectation that they would take up residence in the property at any foreseeabletime. In1999, the husbands parents purchased the rural land at north eastVictoria. The four children were made directors of GPty Ltd and four shareswere issued. The witness refers to Annexure BG1 to his affidavit filed 29August

2013 being an ASIC documentwhich shows that the shares held by each ofthe four children are not beneficially held. Inorder to fund the purchase of the rural property, KK obtained a loan from theCommonwealth Bank of $520,000. That money was thenadvanced to G Pty Ltd forthe purchase of the property. It is his evidence that as at 30 June 2012 G PtyLtd is indebted to thehusbands parents in the sum of $1,437,238 and toKK as trustee of the Georgiades Family Trust in the sum of $74,924. Tothe extent that it is a relevant consideration, he says that he had littlecontact with the wife from the time that the partiesmoved into the Suburb Oproperty and it was only following the separation of the parties that thewitness and his wife were ableto establish a relationship with theirgrandchildren. Inevidence, it was put to the witness that the intention of the formation of G PtyLtd was to protect the rural property from creditorsarising out of pendinglitigation. Mr Georgiades agreed that was the initial concern. He also agreedthat the monies borrowed byMr Georgiades Snr and his wife from the CommonwealthBank in order to purchase the farm required that his three sons wereguarantors. Itwas put to him that the original loan to G Pty Ltd now exceeds $1.5 million andaccordingly the loan could not be considered genuine. The witnesswas not able to properly answer the question but rather, deferred to thatdecision having been made by his former accountantMr F, now deceased. Whenpressed, his position was that as long as he was alive he would expect payment,but if he dies then he does not know what wouldhappen. Thewitness was asked whether the loan agreement in respect of G Pty Ltd was reallyintended to be no more than a device to potentiallyreduce the pool of propertyavailable to the wife in terms of these proceedings. In short, that the loanagreement was a sham. Mr Georgiades Snr had little answer to the propositionthat the terms of the current loan agreement would see him at the age of94years before it was repaid and in circumstances where there were no interim orother payments required. When interest is added,the amount outstanding wouldfar exceed the value of the underlying property. The simple answer from thewitness was that it wasa matter to put to his accountant. Thewitness was demonstrably unhelpful and his attitude was such that he was clearlyresentful of the process in which he found himselfas a party and struggled tounderstand why he should be required to answer any questions about his financialaffairs. MrGeorgiades Snr was asked as to the circumstances of

providing the husband with$40,000 to purchase the boat. It is clear fromhis evidence that there was noagreement at the time and the transaction was as simple as the husband askingfor the money and MrGeorgiades Snr being able to provide it from cash readilyavailable to him. He did not have to go to the bank and it is his evidencethathe always carries cash to maximise any opportunities that might arise. Thewitness was asked about his inability to provide documents in answer to a formalrequest from the wifes solicitors. Inparticular, she sought the dailyreceipt records prepared on behalf of KK for the period between November 2007and April 2010, thosebeing the dates between which significant deposits andwithdrawals were evidenced by the husbands Commonwealth Bank Streamlineaccount. The purpose of the request was obvious. The wife was looking to seewhether the husbands assertion, namely thatthe large deposits in hisaccount, were really KK takings. Theresponse from the solicitors representing the husbands parents was thatthe documents for the relevant period were eitherlost or destroyed. MrGeorgiades Snr was not able to assist and his stock answer to any question puton the topic was to refer thematter to his accountant Mr B or to his daughterMs Z. The import of the questions put to the witness was that the explanationofthe relevant documents evidencing the daily takings of KK having beingdestroyed was a convenient ruse to make it difficult to disprovethehusbands assertion that the monies deposited by him into his bank accountbelonged to KK. Theprocess by which cash coming into the business is dealt with is that the witnesscounts the cash and then it is placed in an envelopewith information written onthe front of it. It would then be banked and the cash would be recorded in thebanking deposits saveand except that from time to time Mr Georgiades wouldretain substantial quantities of cash which were then brought to account ashisdrawings. Themonies that are not banked are recorded in a diary kept by Ms Z. When asked whythese documents were not provided in circumstanceswhere they were clearlyrelevant to the proper questions that were being asked on behalf of the wife inorder to establish whetherthe monies banked by the husband could be matched tothe daily takings, his answer was that he did not know how Ms Z organised heraffairs including the diary, that in any event it was his business and whilst hecould have asked for the diary he could not be surewhich diary kept by Ms Zwould be relevant to the enquiry. Itwas then put to Mr Georgiades Snr that a

response from his solicitors BerryFamily Law in relation to a request for the diariesstated that they no longerexisted. The witness could not say how Berry Family Law obtained thatinformation. The evidence of thiswitness on this topic was unsatisfactory andhe was demonstrably uncooperative and resistant to answer questions properlyput. Onoccasions his answers bordered on the hysterical and were overlydramatic. At one point he suggested that in being required to answerquestionsabout the movement of cash in his business, he was exposing himself to themafia and in order to better protecthimself when he takes themoney home, it would be put next to his seven guns. A simple proposition wasput to Mr Georgiades thatrather than run the inordinate risk that he alludedto, it would be a far simpler solution to put the money in the bank. Thewitnessdenied that it would be an effective option. He was also not clear asto when and in what circumstances his sons would be entrustedwith money fromthe business. I found the evidence of the witness to be unreliable and at timeshe simply refused to provide anyresponsive answer. The witness was asked abouthis attitude towards the wife. His position was that from early 2003 andfollowingan alleged first separation between the parties, he detested her. Heconsiders that the wife is a liar and that the proceedingsare motivated by thewife believing that the husband and his family are wealthy. Sotrenchant is the negative view of Mr Georgiades Snr towards the wife that Iconsider much of his evidence to be coloured by whatcould be described asbarely disguised hatred of her. Whenconfronted with obvious inconsistencies in his affidavit material, Mr GeorgiadesSnr agreed that there were inconsistencies butthat they could be explained bythe error and omission of his solicitors at the time. The witness did notaccept that to the extentof a mistake in the affidavit, thiscould be attributed to his instructions rather than the mistake or error of hisformer solicitors. Itwas put to Mr Georgiades Snr that notwithstanding his assertion that the housewas being built for he and his wife that at no stagedid he meet with thedraftsman Mr L. At first Mr Georgiades Snr considered that he could not do thatbecause his health was poorand that he had had a heart attack. When it was putto him that the plans were prepared at least a year before his heart attack,there was no sensible answer. Thewitness attention was drawn to the date of the alleged celebratorydinner. The summary of the wifes case on thispoint is that between thereturn of the husbands parents from Greece on 24

October 2003 and beforethe engagement party inmid November 2003, they invited the wifes familyand the parties to dinner. The witness denied that such an event had takenplace. Accordingly, if the dinner had occurred it was in a narrow compass oftime namely, less than three weeks. It was also putto him that after thecelebratory dinner at his home there was a reciprocal dinner at the home of thewifes parents some fewweeks later. That was also denied. Mr GeorgiadesSnr conceded that there had been a dinner but that it occurred two months beforethe wedding and there was not any announcement of a gift of the Suburb Oland. MrGeorgiades Snr was confused as to monies he had provided the husband to put intothe safe in the Suburb O property. The witnesswas confused as to where in thehouse the safe installed by the husband was situated and I am not satisfied thatthere has been anyexplanation as to why the husband would install a second safein a property that he contends belonged to his parents. Therewas also inconsistency as to whether the witness attended the property, whetherhe arranged for monies to be held in his safeand/or removed in person or byasking his son to assist. Thewitness was pressed on the topic of distributions from the Georgiades FamilyTrust. Notwithstanding the assertion in his affidavitthat distributions arealways equal between the children, Mr Georgiades Snr really had no idea andreverted to his standard answerwhich was to speak to hisaccountant. Atthe time the parties commenced their relationship, the husband was driving amotor vehicle which purportedly belonged to his father. At some point thehusband decided to trade the motor vehicle in on another and received $12,000. Notwithstanding that the vehiclebelonged to Mr Georgiades Snr he had noobjection to the husband retaining the trade-in proceeds. Thewitness was asked as to whether it was likely the husband would ever repay theboat loan and if it was obvious that such an eventwould be unlikely, why wasthe money offered in the first place. The answer given was that the husband is aperson of moderate habitand taking into account the pressure that he was under(arising from this litigation and the behaviour of the wife) he needed anactivity to relax and to take his mind off his troubles. The motivation forproviding the money is irrelevant. Inherent in theresponse of the witness is aclear position that does not suggest that there is any expectation of thehusband ever repaying thealleged loan. That finding has a further resonance interms of the adverse inference that is created by the purported loan agreementof 12

July 2010 in respect of the boat loan in circumstances where it was neverthe intention of Mr Georgiades Snr to seek repaymentfrom his son, but that hewas prepared to enter into a sham document for the purpose of theseproceedings. Similarly,there is no real expectation that the legal fees of $105,000 incurred by thehusband and paid for by his father will everbe repaid. Thehusbands father was shown to be an unsatisfactory and unreliable witness.He was evasive in his answers and often expressedthe view that he should not berequired to answer questions as to his financial position and the manner inwhich his business operated. There was no sense in which this witness wasattempting to assist the Court. Iam however satisfied that in relation to the expenses incurred in theconstruction of the house on the Suburb O property that thosemonies came fromMr and Mrs Georgiades Snbr. Onalmost every topic I prefer the evidence of the wife than that of Mr GeorgiadesSnr. His evidence did not assist me in determiningwhether the allegedcelebratory dinner did or did not occur in the period after the husbandsparents returned from overseasand before the engagement party in November. Nonetheless, the burden of proof remains with the wife. Mr B MrB is currently the accountant for the husbands parents and their relatedentities. He commenced worked with the previousaccountant Mr F in the year2000 and became a partner in the firm in July 2002. Mr F died in November 2009and Mr B then took overthe accounting work for the husbands parents. Itis his evidence that he is familiar with the financial arrangements of MrandMrs Georgiades Snr and their business interests. Inrelation to the income of the husband he confirms that all of the children werepaid a minimum wage and they received no otherpayments other than distributionsfrom the Georgiades Family Trust. The import of this evidence was to establishthat neither thewife nor the husband had sufficient income over the period ofthe house construction on the Suburb O land that would have enabledthem to meetthe ongoing costs of construction. Hewas also called to confirm that from 2002 the electronic filing of the ASICreturns in respect of G Pty Ltd were completed in errorin that they record theshares as being held beneficially by the shareholders, whereas the correctposition is that they were notbeneficially held. MrB was also integrally involved in the replication of the loan agreements and thepreparation of financial statements in respectof the various entities, but inparticular G Pty Ltd. Byreference to the affidavit of Mr I filed 13 February 2014,

the following appearsat paragraph 4:- In or about December 2010 [Mr B] attended mypractice with [Mr Georgiades Snr] and asked me to draw some loan agreements for[Mr GeorgiadesSnr]. I had not met [Mr Georgiades Snr] before and I have notspoken to him since. [Mr B] provided verbal instructions, and I recall[MrGeorgiades Snr] also provided verbal instructions to me. The file produced byme is my complete record of those dealings andthe loan agreements I drew. Irecall my meeting with them was relatively short perhaps half an hour. MrB was asked what instructions he gave to Mr I. His response was that he soughtthat there be replicate loan agreements prepared. It is difficult to ascertainfrom his evidence what information he provided, if any. Given the evidence ofMr Georgiades Snr thathe had little knowledge of the detail of the loans, it isdifficult to understand what instruction he could have given to Mr I. Theloan agreements when prepared were then provided to Mr B at his office. That isconceded by the witness. What occurs thereafterhowever is problematic. Itappears that the loan agreements that were signed were different to those whichwere provided by Mr Ito Mr B. To the extent that the document was changed, thewitness denied any knowledge of that event and could not explain the obviousanomaly. Givenhis involvement in the preparation of the loan agreements, the documentpurported to be a loan agreement between the husbandsparents and G PtyLtd in respect of the north east Victoria property states that the outstandingloan of $604,870 is secured overthe said north east Victoria land. It was putto Mr B that he had no direct knowledge of whether there was security or not. MrB had not done a search and accordingly, he did not know of his ownknowledge. He was then shown a copy of the financial statementsfor G Pty Ltdfor the financial year ending June 2001 and the loan in favour of Mr and MrsGeorgiades Snr is recorded as being unsecured. Whilst that clearly does notdecide the matter conclusively, it suggests that in the absence of any otherdocument it would nothave been possible for Mr B to determine whether there wasor was not security in respect of the provision of the money. Essentially,itwas put to Mr B that the replication of the alleged loan agreements was nothingmore than a device made necessary by the separationof the parties and thedesire of the Georgiades family to minimise the pool of property available forconsideration by the Court. Afurther inconsistency was put to Mr B in respect of the loan agreement thatrelates to the P Street property. The loan agreementattached to

the affidavitof Mr I and acknowledged as having been received by Mr B is demonstrablydifferent to the loan agreementthat was ultimately signed by the parties and asappears as Exhibit BG3 to the affidavit of Mr Georgiades Snr filed 7 October2013. The address of the lender is described as 1B N Street, Suburb O. In thefinal executed agreement, the address is E Street, SuburbAE. The originalborrowed sum was $476,324 advanced as and from 13 May 1992. The final agreementrecords the borrowed sum as $223,245advanced as and from 3 May 1994. Theterms and conditions are also different. The term of the loan is for a periodof 30 years as and from 13 May 1992, whereas thefinal agreement commences 3 May1994. The expiry date is also different. Mr B was not able to explain thedifferences and, whilstultimately and somewhat reluctantly acknowledging thatthe documents were clearly different, could offer no explanation as to howthatoccurred. Thewitness also confirmed that he was the accountant for the husband. He was awareof the purchase of the boat and whilst understandingthat the husbandsfinancial position was poor and was not indicative of any ability to sustain aloan to his parents, nonethelessgave no advice on the matter. Asignificant issue arises in the loan agreement between the husband and hisparents in respect of the boat. In the I draft, paragraph6 reads asfollows:- The borrower hereby covenanced to grant a charge over anyproperty of which he is the registered proprietor on the property at [1BNStreet, Suburb O] in the aforesaid State to secure the repayments pursuant ofthe said loan agreement. Inthe equivalent document being Annexure BG1 to the affidavit of Mr GeorgiadesSnr, the reference to 1B N Street, Suburb O has beenremoved. MrB confirms that when he attended Mr I with Mr Georgiades Snr, he was not able toremember what instructions were given on the topic. To the extent that he wasthere not just to facilitate the introduction between Mr Georgiades Snr and MrI, but rather as his capacityas accountant for the Georgiades family, Mr Bconfirmed that he had an active role to play in the information that wasprovided toMr I and that ultimately was encapsulated in the loanagreements. Again,Mr B was not able to provide the Court with any assistance as to how the loanagreements could have been changed and alteredafter he had passed them on. MrB was evasive in his evidence on this topic and I am not able to place anyweight, nor have confidence in his assertion that hehas no knowledge of how andwhen the loan agreements

were altered after he had received from thesolicitor. Thewitness was asked to consider the financial statements for G Pty Ltd beingAnnexure JA3 to his trial affidavit filed 5 September2013. As at 30 June 2001,the financial statements record an unsecured loan in favour of Mr and MrsGeorgiades of $568,828. Thatliability remains generally constant until 2008when it is recorded as a secured loan in the sum of $644,002 and then in 2009 asecuredloan in the sum of $1,207,530. The witness confirms that the dramaticchange in the status of the loan from that as being describedas unsecured inthe financial statements to secured as from the 2008 financial year and then thedramatic increase was his idea. Theevidence of Mr B is that in preparation of the 2009 financial statements, heconsidered it appropriate to recalculate the interestthat had allegedly beenomitted up until that time. There were no working papers to establish themethod and manner of calculationor indeed the interest rate that was charged. Equally, there was no satisfactory explanation as to why the loan would bealteredfrom unsecured to secured. It was put to Mr B that if he had never seenthe original loan agreement he could not possibly know whatrate of interest hadintended to be charged. His answer was that there is a standard form ofinterest referable to Division 7 andthe FBT interest rate that the ATO deemappropriate. Given that those benchmarks would not normally apply to theprovider of a loan,the correct interest rate should be the rate of any that wasagreed. Theissue is whether Mr B had been instructed to undertake a review of all financialissues that could potentially impact upon thecurrent proceedings commenced bythe wife. I do not consider that the change in the status of the Georgiadesloan as recorded inthe financial statements of G Pty Ltd as at 30 June 2009 issimply a coincidence. Whatever the accounting imperatives may have been,Iconsider the principal motivation was to consider whether any opportunityexisted to reduce the value of property in which thehusband may have had aninterest. Whenasked whether Mr and Mrs Georgiades Snr instructed him to change the status ofthe G Pty Ltd loan from unsecured to secured,his answer was that he was not soinstructed. It is a bold proposition to suggest that a dramatic change in whichthe books of accountare to be prepared and presented would not at firstinstance be referrable to the directors of G Pty Ltd. Itis common ground that the financial statements for the year ending 30 June 2012reflect a secured loan in favour of the husbandsparents of $1,437,238. Clearly, the current outstanding

loan would be significantly greater than thisfigure. Attachedto an affidavit of Mr B is a spreadsheet of the costs of construction and theparticulars of drawings. As previously stated,the purpose of the summary wasto show that the husband did not have sufficient income over the period of theconstruction to meetthe construction costs. Mr B admitted that Mr GeorgiadesSnr gave him instructions to cobble together information to showthat[the husband] couldnt afford to pay for the house. Thespreadsheet was not prepared by Mr B but rather by anothermember of theGeorgiades family. It was given to him by Mr Z but it is not known who was theauthor of the document. TheSchedule being Annexure GA2 to the affidavit of Mr B filed 25 February 2014bears the following note:- The spreadsheet demonstrates that all of[the husbands] wages and distributions have been used. My understanding was the monies of [the husbands] wages anddistribution were used to reduce the mortgage of the wifesunit leavingno surplus funds at all to pay for the construction. Thatstatement is not to be attributed to Mr B, but rather, the mystery author of theSchedule. It is unsatisfactory that such adocument would form the evidence ofMr B in circumstances where he could not vouch for its accuracy in the sensethat he had no informationas to how the wifes wages were used during thecourse of the relationship. MrB was asked whether he had any knowledge of the practice that had allegedlydeveloped wherein the cash takings for the day weretaken home by one of thesiblings and placed in their own account rather than in the business account. Mr B did know of the practiceand advised against it. He confirmed that on anumber occasions he had suggested that it was not a good idea for KK income topassthrough the personal accounts of the siblings. According to the witness, itwas on his advice that the practice should cease whenit did in 2010. There isof course no explanation as to why the practice continued for some years incircumstances where Ms Z spokeagainst it and ultimately Mr B supported thatview from the time that he took over the conduct of the Georgiadesaccounts. Thewitness was also asked about the management of the Georgiades Family Trust andthe manner in which distributions were made. Heconfirmed that distributionsare made through the relevant family trust and accordingly it is income thatneeds to be declared inthe tax return of the recipient. Mr B confirmed thatwhen the husband in particular receives a distribution which is otherwisetaxable,the tax is paid by the trust and not by the

husband. Mrs Georgiades Snr Theevidence of this witness is to follow and support the evidence of Mr GeorgiadesSnr. I am satisfied that generally Mrs Georgiadesdefers to the direction andinstruction of her husband. She agreed that in respect of P Street she signed areplacement loan agreementasserting that $223,245 was owing. Mrs Georgiadeswas uncertain as to whether it really was a loan due and outstanding. Afurther difficulty arose in that the witness to the loan agreement being Ms Dpurported to witness the signature of the husbandnotwithstanding that he wasnot present at the time and date of purported execution. MrsGeorgiades Snr denied any knowledge of a change to the loan agreement documentsthat had been presented to her and was not ableto shed any light on thisissue. Ata stage in the evidence of his wife, Mr Georgiades Snr became animated and thefollowing is recorded at page 182 line 20 of thetranscript:- MrGlick: Thank you for the indulgence, your Honour. No discourtesy is intendedbut Mr [Georgiades Snr] will sit outside for a while. His Honour: No difficulty at all. Mr Glick: Thank you your Honour. His Honour: Mr Glick, whilst you are on your feet can I ask you this. Inrelation to this witnesses evidence at this stagein terms of these loanarrangements or these loan agreements are you going to be asking me to placesignificant weight on her evidence. Mr Glick: Your Honour might find that there wont be much submissionfrom me about these loans. His Honour: No, no. I appreciate that. It seems to me that the matter ofthe loans, at least so far, rises or falls on the evidenceof Mr [GeorgiadesSnr]. Mr Glick: Yes. Mrs  your Honour wont hear much... Counselfor the wife sought to establish the parameters of the relationship between MrsGeorgiades Snr and the wife. It was the wifescase that she had been onfriendly terms with Mrs Georgiades Snr until the naming rights of their firstchild had become problematic. The witness became animated over the suggestionthat she and the wife had a cordial relationship and she responded with anexpletive. In a manner not dissimilar to her husband, Mrs Georgiades Snr wasunable to keep her personal dislike for the wife from colouringand distortingher evidence. The witness made it clear that she did detest the wife and thatwhatever she has done she did for thehusband in theseproceedings. Ms Z Itis difficult to assess the extent of the involvement in this witness in thedealings between the husband, the wife and his parents. She was able to providesome information as to the internal accounting arrangements and in particularthe manner in

which cash wasdealt with on a day to day basis during therelevant period. She does confirm that she spoke against the practice of thesiblingstaking money home and placing it in their personal accounts. Sheconfirmed that periodically the cash and cheques would be reconciled with thewholesale cost of the stock. Cash was not recordedon a daily basis, but MrGeorgiades Snr would count the takings usually on the weekend. It was notrecorded or counted more regularlythan that. Thewitness was asked to consider the various incantations of the loan agreementsbut was not able to assist as to who changed thedetail in the loan agreementsthat were finally signed as opposed to the original draft prepared by Mr I. Importantly,the witness confirmed that she did not really understand how the businessoperated and that she simply did what she wastold to do by her father. Alldecisions were made by him and if the witness is to be believed she really knewnothing of how thebusiness operated. Given her position, I reject thatproposition. MsZ did recall the letter which forms Exhibit 18 seeking discovery of variousinformation but in particular the daily receipt recordsfor the period 12November 2007 to 20 February 2014. To the extent that there is a category ofdocuments that would satisfy thisrequest, those documents have been lost ordestroyed. Whilst there is a diary that is kept, the witness alleged that shedestroyedher diaries each year. Giventhe focus of these proceedings and in particular the status of monies receivedby the husband between 2007 and 2010, it is difficultto understand the paucityof effort that members of the Georgiades family have expended on attempting tocomply with the provisionof demonstrably critical documents. Thewitness was shown the letter from Berry Family Law to MCK Legal dated 14 March2014 and one of the documents comprising Exhibit18. To the extent that themajority of these documents would have been in the possession or control of MsZ, suggests that the informationand instruction for that letter would have atleast in part derived from this witness. Thedenial of documents is based upon a number of assertions, but in particular thefollowing as set out in that letter:- (a) Our clientdoes not have any documents as requested. (b) Our clientsare not directors of [G] Pty Ltd. (c) Our clientsdo not have in their possession, power or control the bank recordssought. Thatstatement on instructions is clearly a device by the family to avoid theprovision of documents that may have been perceivedas not being of assistanceto the husbands case. Thehusbands position is that he knows

very little about his own involvementin G Pty Ltd. He is at the behest of his fatherin all things. He has nodocuments that pertain to the company, nor does he have any access or control ofsame. The shares he holdsare really held for and on behalf of his parents andthey are the true owners of the company. The letter from MCK Legal promotestheview however that Mr and Mrs Georgiades Snr are not directors and therefore donot properly have access to the records. Ms Zclearly does and there is nomisunderstanding in her mind as to who could or should have provided thenecessary instruction for documentsto be the subject of discovery. Theevidence of this witness was unsatisfactory. She was determined to providelittle or no assistance to the Court and the destructionof her diaries incircumstances where those documents were the only record of the reconciliationof monies received, monies bankedand monies retained by Mr Georgiades asdrawings existed was likely deliberate, but in any event unhelpful. Ido not consider that this witness was attempting to assist theCourt. Mr Z Thiswitness agreed that he had assisted the husband in the preparation of variousdocuments. He went with Mr and Mrs Georgiadesto the solicitors office fromtime to time and observed affidavit material being prepared and sworn. Onoccasion he translated some of the affidavit material. Hedenied any knowledge of assisting the husband with his alleged preparation ofhis Contention of Fact and Law document. I acceptMr Z in this regard. Healso confirms that there have been many family discussions regarding theproceedings brought by the wife and those discussionshave involved planningthat may have had as its focus an attempt to minimise and/or reduce the extentof her claim. MrZ is not involved in the Georgiades family business and was not able to assistin that regard. He was not involved in the loanagreements and knows nothing ofthe contents of the document or any anomalies in respect of the replicated loanagreements. Inrelation to the Suburb O property, Mr Z confirms that he was involved in thefoundations, but that after that he had nothing muchto do with the ongoingconstruction. This is an important concession by this witness in circumstanceswhere Mr Georgiades Snr assertsthat he left the construction of the home to MrZ and the husband. Iconsider Mr Z to have done the best he could to assist the Court. He answeredquestions put to him in a frank and forthright fashionand notwithstanding hewas clearly aware of the dispute between the parties, he appears to have

donethe best that he could to removehimself from it. LEGAL PRINCIPLES TO BE APPLIED Section79 of the Act provides:- (1) In propertysettlement proceedings, the Court may make such orders as it considers as isappropriate:- (a) In the caseof proceedings with respect of the property of the parties to the marriage oreither of them altering the interestsof the parties to the marriage; or (b) ... (c) An orderfor a settlement of property in substitution for any interest in the property;and (d) An orderrequiring:- (i) either orboth of the parties to the marriage; (ii) ... tomake for the benefit of either or both of the parties to the marriage or achild of the marriage, such settlement or transferof property as the Courtdetermines. (2) The court shall not make an order under this section unless it is satisfiedthat, in all the circumstances, it is just and equitableto make the order. (3) ... (4) In considering what order (if any) should be made under this section inproperty settlement proceedings, the court shall takeintoaccount: (a) the financial contribution made directly orindirectly by or on behalf of a party to the marriage or a child of the marriagetothe acquisition, conservation or improvement of any of the property of theparties to the marriage or either of them, or otherwisein relation to any ofthat last-mentioned property, whether or not that last-mentioned property has,since the making of the contribution,ceased to be the property of the partiesto the marriage or either of them; and (b) the contribution, (other than a financial contribution) made directly orindirectly by or on behalf of a party to a marriage ora child of the marriageto the acquisition, conservation or improvement of any of the property of theparties to the marriage oreither of them, or otherwise in relation to any ofthat last-mentioned property, whether or not that last-mentioned property has,since the making of the contribution, ceased to be the property of the partiesto the marriage or either of them; and (c) the contribution made by a party of the marriage to the welfare of thefamily constituted by the parties to the marriage andany children of themarriage, including any contribution made in the capacity of homemaker orparent; and (d) the effect of any proposed order upon the earning capacity of eitherparty to the marriage; and (e ) the matters referred to in sub-section 75 (2) so far as they arerelevant; and (f ) any other order made under this Act affecting a party to the marriage ora child of the marriage; and (g) any child support under the Child Support (Assessment) Act 1989 that aparty to the marriage has provided, is to provide, or might be liable to providein the future, for a

child of the marriage. Propertyis defined in s 4 (1) of the Act as meaning:- Property to whichthose parties are, or that party is, as the case may be, entitled, whether inpossession or reversion. Priorto the consideration of the application of s 79 (2) of the Act by the High Courtin Stanford v Stanford [2012] HCA 52; (2012) 247 CLR 108, the preferredapproach is best encapsulated by the Full Court in Hickey &Hickey & Attorney General for the Commonwealth of Australia[2003] FamCA 395; (2003) FLC 93-143 where the Court supported what has been commonly referred toas a four step approach:- [39] The case law revealsthat there is a preferred approach to the determination of an applicationbrought pursuant to the provisionsof s. 79. That approach involved fourinter-related steps. Firstly, the Court should make findings as to the identityand value of the property,liabilities and financial resources of the parties asat the date of the hearing. Secondly, the Court should identify and assessthecontribution of the parties within the meaning of ss. 79 (4) (a) (b) and (c) anddetermine the contribution based entitlements of the parties expressed as apercentage of the net value ofthe property of the parties. Thirdly, the Courtshould identify and assess the relevant factors referred to in ss. 79 (4) (d)(e) (f) and (g) (the other factors) including, because of s 79 (4) (e ),thematters referred to in s. 75 (2) so far as they are relevant and determine theadjustment (if any) that should be made to the contribution based entitlementsof the parties established as step two. Fourthly, the Court should consider theeffect of those findings and determination and resolvewhat order is just andequitable in all the circumstances of the case; Lee Steere & LeeSteere (1985) FLC 91-626; Ferraro & Ferraro [1992] FamCA 64; (1993) FLC 92-335;Davut & Raif (1994) FLC 92-503... Itis notable that in Hickey (supra) there was not a close examination of s79 (2) in terms of whether it was just and equitable to make any order. InStanford the majority held:- [35] It will be recalled that s79 (2) provides that:- The Court shall not make an order under this section unless is satisfiedthat, in all the circumstances, it is just and equitableto make the order. Section 79(4) prescribes matters that must be taken into account inconsidering what order (if any) should be made under the section. Therequirementsof the two Sections are not to be conflated. In every case inwhich a property settlement order under s 79 is sought, it is necessary tosatisfy the Court that, in all the circumstances, it is just and equitable tomake the order. [36] The expression just and equitable is a

qualitativedescription of a conclusion reached after examination of a rangeof potentiallycompeting considerations. It does not admit of exhaustive definition. It isnot possible to chart its metes andbounds. Importantly the Court found:- Whether it is just and equitable to make the order is not to be answered byassuming that the parties rights to all interestsin marital property areor should be different from those that then exist. Itis therefore not an assumption that a party to a marriage has a right to aninterest in property by reference to matters arisingunder s 79 (4). In effect,a party cannot pull themselves up by their own boot straps by assertingcontribution under s 79 (4) and then using that position to satisfy theobligation created by s 79 (2). To do so would be to conflate the relevantsections. TheHigh Court further held that:- To conclude that making an order isjust and equitable only because of and by reference to various matters in s 79(4), without a separate consideration of s 79 (2), would be to conflate thestatutory requirements and ignore the principles laid down in the Act. Whilstclearly the Court has a significant obligation to consider the justice andequity of making any order that adjusts the propertyrights of parties, I do notconsider that Stanford goes so far as to suggest that there can be noregard to the matters that might fall for consideration under s 79 (4). It isthe very nature of the suite of contributions made by parties to a marriagewhich in and of themselves have the abilityto create equitable interests in theproperty of each of them. TheHigh Court in Stanford sought to define its likely application to casesin the following manner:- [42] In many cases where an application ismade for a property settlement order, the just and equitable requirement isreadily satisfiedby observing that, as a result of the choice made by one orboth of the parties, the husband and wife are no longer living in a maritalrelationship. It will be just and equitable to make a property settlement orderin such a case because there is not and will notthereafter be the common use ofproperty by the husband and the wife. No less importantly, the express andimplicit assumptions thatunderpinned the existing property arrangements havebeen brought to an end by the voluntary severance of the mutuality of themaritalrelationship. That is, any express or implicit assumption that theparties may have made to the effect that existing arrangementsof maritalproperty interests were sufficient or appropriate during the continuance oftheir marital relationship is brought to anend with the ending of the

maritalrelationship. And the assumption that any adjustment to those interests couldbe effected consensuallyas needed or desired, is also brought to an end. Henceit would be just and equitable that a Court makes a property settlement order.What order, if any, should then be made is determined by applying s 79 (4). InBevan & Bevan [2013] FamCAFC 116; (2013) FLC 93-545 the majority of the Full Court said(in relation to the previously quoted paragraph inStanford:- [70] In our experience, the circumstancesdescribed in the paragraph above encapsulates the vast majority of cases. Hencethe reminderin Stanford of the pivotal role of s 79 (2) is unlikely tohave any impact in most cases, although it will serve as a reminder to trialjudges that the precondition to makingany order is a finding that it is justand equitable to do so. Atparagraph 73 the Full Court in Bevan (supra) stated that the rationale ofStanford can be reduced to three fundamentalprinciples:- (1) A Courtneeds to consider the existing property interests of the parties and identifythose interests (by reference to commonlaw and equity); (2) Thediscretion must be exercised in accordance with legal principles and not inrespect of any assumption that the parties interestsshould be different fromthose determined by common law equity; and (3) Section 79(2) cannot be conflated by reference only to matters in s 79 (4). Asto the inter-relationship of s 79 (4) and s 79 (2) the consideration of the FullCourt as to the expression just and equitable isinformative:- [84] Just as the expression just andequitable does not admit of exhaustive definition, it is not possible tocataloguethe range of competing considerations that may be takeninto account in determining whether it is just and equitableto make an orderaltering property interests. However, in our view, it would be a fundamentalmisunderstanding to read Stanford as suggesting that the matters referredto in s 79 (4) should be ignored in coming to that decision. Indeed, such areading would ignore the plain words of s 79 (4), which makes clear that inconsidering what order if any to make, the Court must takeinto account the matters referred to in the sub-section (emphasis added). Furtherthe Full Court at paragraph 88 gave favourable consideration to the analysis ofMartin Bartfeld QC in his paper entitled Stanfordv Stanford  Lotsof Questions  Very Few Answers by reference to the followingextract:- ...there is scope for taking into account the factors that under s 79(4) in theexercise of the [s 79(2)] discretion. This can be accomplished, it issubmitted, that by treating the

contribution factorand the factors under s79(2) as having two simultaneous characteristics; (a) Adiscretionary characteristic, which is used to identify those matters which arerelevant to enliven the exercise of the discretion. Thus the fact that a partyhas made substantial contributions, over a long period of time, which are notreflected in their assetholdings but are reflected in the other partysassets may found a basis for finding that it is just and equitable for an orderto be made; and (b) An evaluative characteristic, which is used to measure the weight or toquantify the effect of a particular contribution. Theproblem of conflation can easily be overcome by clearly identifying the use towhich a factor is being put. Accordingly,I must give proper and separate regard to the legal and equitable interests ofeach of the parties. Thisraises the extent of the continued applicability of the four stepapproach as determined by the Full Court in Hickey. InWatson & Ling [2013] FamCA 57; (2013) FLC 93-527 Murphy J was of the opinion that thefour step approach may well provide a level of rigor that couldlead to error. Therefore, the process needed furtherconsideration:- As a result of those matters, the Courtsapproach to s 79/s 90SM may be less compartmentalised than what a strict orunthinking adherence to four (or three) steps might otherwisereveal. The task is essentially holistic; is it just and equitable in theparticular circumstances of the particular relationshipor marriage underconsideration to make an order and, if so, its terms must similarly meet thatcriteria. Of course, holistic thoughthe approach is, it must be referenced towhat the Act requires and care must be taken to ensure that the Courtsreasons makethat clear. Inthis case both the husband and the wife seek that there be an alteration oftheir respective interests in property. LEGAL AND EQUITABLE INTERESTS OF THE PARTIES Theperiod of cohabitation is nine years. The parties were generally employedthroughout that period and had an arrangement as tohow their income would beutilised. There was an intermingling of their financial arrangements and bothparties entered into themarital partnership with a long term goal of promotingthe interests of the family, in particular following the birth of the twochildren. Thewife undertook the role of homemaker, whilst the husband continued in hisemployment with his parents business. Subjectto a determination of what is the property of the parties, I am satisfied thatit is just and equitable in circumstances wherethe parties have made a mutualcommitment to each other that an order should be made to adjust the propertyinterests of

each ofthem. PROPERTY POOL BeforeI am able to determine the assets and liabilities of each of the parties, thefollowing disputes need to be resolved:- (1) Whether thehusband and the wife hold an equitable interest in the property at 1B N Street,Suburb O, and if so to what extentand value. (2) Whether thehusbands shareholding in G Pty Ltd should be brought to account and if soto what value. (3) The valueof the boat, but in particular whether it is the subject of a loan to thehusbands parents. (4) Thetreatment of the aggregate cash withdrawals alleged by the wife to be $217,800between November 2007 and August 2010. (5) The extentof the Suburb Y mortgage namely, whether the liability should be determined asat the date of separation (about $66,000)or at the date of trial($111,000). 1B N STREET, SUBURB O Inthe notice of contention of fact and law, the applicant seeks thefollowing:- (1) Adeclaration that the property at [1B N Street, Suburb O] (of which the thirdparties are the registered proprietors) is heldby them on behalf of theapplicant wife and the respondent husband as equitable and beneficial ownerspursuant to a constructivetrust. (2) In thealternative the applicant wife claims an equitable estoppel arising from therepresentations and encouragement made bythe third parties, that [Suburb O] wasgifted to the applicant and the respondent. Forthe purposes of determining the matter, counsel for the third parties acceptsthat there was no point of distinction between theclaim of equitable interestarising out of a constructive trust, or the relief sought by the wife by way ofequitable estoppel. Theconstructive trust arises from an alleged representation made by Mr GeorgiadesSnr and either the tacit acceptance and endorsementof the representation by hiswife Mrs Georgiades, or in the absence of finding of common intention,whether, according toequity, it would be unconscionable to allow a legalowner of the property to enjoy sole beneficial ownership. Thealleged representations created an expectation in the husband and the wife andin reliance on that representation the partiesacted to their detriment, seeCommonwealth of Australia v Verwayen (1990) 170 CLR 394. Thealleged representation was the gifting of the property at N Street, Suburb O tothe parties as a wedding gift to the parties purportedlymade at a celebratorydinner soon after the parties had announced their engagement. The reliance wasthat upon the parties now understandingthat the land belonged to them, theyconstructed a home on the property at their personal expense. Whateverthe status is of the

principal representation, it appears to be conceded thatthere was no other representation made at anyother time. Accordingto the wife, there did not need to be any further representations made by Mr andMrs Georgiades Snr because from about March2003 the building works commenced,the property was situate next to a house in which the husbands sister andher husband livedand it would have been obvious to the husbands parentsthat significant construction works were being undertaken. Notwithstandingthat the husbands parents would ask the Court to accept that theirrelationship with the wife was poor andthat they did not attend the Suburb Oproperty, nonetheless, even on their case they were aware of the constructionworks becausethey assert that the house was being built for them, that theywere the owner/builder and that all plans, fittings and fixtures wereselectedand approved by them and importantly, paid for without contribution from theparties. Thehusbands parents deny that any representation as alleged by the wife wasmade and moreover, there is not agreement thatthe celebratory dinner at whichthe representation was purportedly made was held during the period as alleged bythe wife. Itis conceded however that in the year 2000 the husband asked his father forpermission to live in any house that was ultimatelyconstructed on the Suburb Oproperty and that in 2005/2006 in anticipation of the birth of the first childof the parties, the husbandsparents agreed that they could reside in thenow constructed house until such time as they had managed to discharge themortgageon the wifes Suburb Y property. Theparties became engaged in late July 2003. I prefer the evidence of the wife onthis topic. Notwithstanding that the evidenceof the husband in general wasinherently unreliable, the wife is able to establish the dinner at which thehusband proposed by referenceto her own birth date. Shortlythereafter and on 27 July 2003, the husbands parents travelled to Greece.They return on 24 October 2003. The partiesagree that there was an engagementparty in mid November 2003. The husbands parents did not attend thatparty. The celebratorydinner at which the alleged representations were madeaccording to the wife, occurred in the period following the return of thehusbandsparents from their overseas holiday, but before the November2003 engagement party. Thehusband and his parents deny that the dinner took place at that time, but allegethat it took place in the following year andat a time considerably moreproximate to the date of marriage on 30 October

2004. Whilstthe wife does not allege that there was any representation made by MrsGeorgiades Snr, she submits that common intention canbe inferred fromconduct, acts or omission. Thereis further dispute as to the chronology of the construction of the houseproperty. The husband asserts that work commencedin or about March 2003 at atime prior to the engagement. The wifes position is that work commencedsomewhat later than allegedby the husband. Thereis little doubt that the work commenced and plans were submitted for councilapproval on or before 18 March 2003. Moreover,the list of invoices formingExhibit 1 clearly shows that construction costs were incurred from as early asAugust 2001 (likely torelate the construction of the retaining wall), paymentfor initial preparation of plans in 2002 and other costs including consultancyand council fees in March 2003. Theconstruction costs were in excess of $300,000 and it remains part of thewifes case that the cash used to pay for the variousconstruction costswas money received by the husband in some form or another arising from hisemployment in the Georgiades familybusiness. The evidence of the husband andhis parents is that the construction costs were paid by Mr and Mrs GeorgiadesSnr viathe son and upon his request for money as and when invoices wererendered by contractors and tradespeople. By2006, the construction of the property had mostly concluded and the family movedout of the wifes property at Suburb Y intothe newly constructed Suburb Opremises. Onthe wifes case, the celebratory dinner at which the representationgifting the land to the parties was made, occurred between24 October 2003 andmid November 2003. At that stage whilst the foundations were laid, the propertywas effectively vacant land. The third parties make the point that if there wasa gift then it could not have been in respect of the house, but only over theland. There was no allegation that any representation was made as to theconstruction of a house or the provision of the constructioncosts. Indeed, thewifes case is that the money used for the construction of the house wasmoney properly received by thehusband with the necessary implication being thatthe parties built the house with their own money. It is put forward that thisrepresents the significant detriment potentially sustained by the parties inthat the husbands parents observed that theybuilt a house on the land attheir own cost and it would be unconscionable to now deny the representation andthe subsequent detriment. Thefirst issue is whether the representation was made

and the second is that if itwas made, does the evidence support the wifescontention namely, that theconstruction costs were paid from money to which the husband was properlyentitled in reliance on therepresentations. Itis a matter for the wife to satisfy the Court that on the balance ofprobabilities the contended representation was made. Whilstit is not necessarily fatal, it would seem to be an important evidentiaryfoundation that the wife establish that the celebratorydinner occurred when shesays it did. The wife and her parents contend that there was a celebratorydinner soon after the husbandsparents returned from Greece. The husbandand his parents agree that a dinner was held at his parents home but thatit wasat a time significantly closer to the wedding in 2004. Theevidence demonstrates that on the wifes affidavit material and inparticular the affidavit of her father, there is temporaluncertainty. The wordshortly is used and when challenged, neither the wife nor herfather were convincing that theuse of the word was meant to convey a moregenerous period of time for the dinner to have taken place. Iam not satisfied that the wife has satisfied the necessary burden of proof toestablish that the celebratory dinner occurred inthe period as stated. Theevidence of what was allegedly said by Mr Georgiades Snr is equivocal. Whateverwas said by him was certainly not said by hiswife. It is also possible that ifsomething was said in order to congratulate the parties on their engagement, itmay have beenno more than an elaboration on an understanding reached betweenthe husband and his father in 2000 wherein the husband indicatedthat he wouldwish to reside in the property if and when a house was constructed on the SuburbO land. As is common ground, theparties did reside in the property with thepermission of the husbands parents once the house had beencompleted. Theposition of Mr and Mrs Georgiades Snr was that in 2005, and upon learning thatthe wife was to give birth to their first grandchild,they offered the partiesthe opportunity to reside in the property rent free until the mortgage on theSuburb Y unit was discharged. Ihave no doubt that the wife was involved in certain decisions in respect of theselection of fittings and dcor for the home. Whatever the initialintention of Mr and Mrs Georgiades Snr when the plans were first developed, itwould seem that the husbandformed a view that he would be able to reside in theproperty when it was completed. The husband was demonstrated to be a boastfulperson and prone to exaggeration and self-aggrandisement. It may even have beenthe case

as alleged by the wife that he representedto her that the propertywould be his and that it would form their family home. Indeed, for some yearsuntil separation that waslikely the case. Sucha finding does not however relieve the wife of the obligation to establish thatthe alleged representation was made. It is animportant consideration that whatmight be seen to be an important discussion as to the gifting of the land to theparties was notraised or repeated again. No effort was made to change thetitle to reflect the interests of the husband and the wife, particularlyincircumstances where the wife alleges that the constructions costs were paid byshe and the husband. Moreover, the issue gaineda further level of complexityin August 2005 when the joint tenancy of the land by Mr and Mrs Georgiades Snrwas separated and theirinterests were reflected as tenants in common. This wasdone to reflect one of the only areas of difference between Mr and MrsGeorgiadesSnr namely, he considered his interest on his death should devolve tohis children whereas Mrs Georgiades Snr considered that herinterest shouldultimately transfer to the grandchildren. IfI am wrong in my assessment that the onus of proof in relation to detrimentalreliance falls to the wife and she has not dischargedthat onus, equitableintervention requires unconscionability and a finding of significantdetriment. McPhersonJ in Riches & Hogben [1985] 2 QDR 292 at 300 said:- Thecritical element is the conduct of the defendant after the representation inencouraging the plaintiff to act upon it; Olsson v Dyson [1969] HCA 3; (1969) 120 CLR365, 379 per Kitto J. That is what makes it unconscionable for the defendant todeny the right which the plaintiff has been led to expect... InSidhu v Van Dyke [2014] HCA 19; (2014) 308 ALR 232 the pluralitysaid:- [77] This category of equitable estoppel serves to vindicatethe expectations of the representee against the party who seeks unconscionablyto resile from an expectation he or she has created. The extent to which it isunconscionable of the applicant to seek to resilefrom the position expressed inhis assurances to the respondent may be gauged by reflecting on the likelyresponse of the respondentif the appellant had told her in January 1989;I am happy for you to remain at Oaks Cottage, but only for so long as itsuitsme and my wife to have you here; and, while you remain on the property,you must care for it as if you were the owners of the property... Thereis no doubt that the house was built. It is a live question as to who paid forthe construction costs. Whilst I accept thatthere were some minor fees,

ratesand utility charges paid for by the parties (notwithstanding the denials of thehusband), the sourceof the money for the construction costs remainsundetermined. There is no doubt that the construction costs initially came fromthe husbands father. His business operated significantly on a cashreceived basis and whatever the criticism might be asto the lack of accountingrigor within the business operation, it is not improbable that cash was providedby the husbandsfather from time to time. Clearly, on thehusbands income of about $30,000 per annum, he could not have paid forthe constructioncosts. There is also no evidence that supports the contentionthat the monies provided by Mr Georgiades Snr to his son were intendedto be asupplement to an inadequate wage. It was also not contended by the wife thatthe money provided by Mr Georgiades Snr forthe construction costs were by wayof a gift. Whilstit is the wifes case that there were representations made as to the land,the wife does not allege a representationthat Mr Georgiades Snr would constructa house on the Suburb O property. Atparagraph 91 of Sidhu v Van Dyke (supra) Gageler J said:- Toestablish that the belief to which she was induced by the appellantsrepresentations was a contributing cause to the courseof action or inactionwhich she took, the respondent needed to establish more than that she had thebelief and took the belief intoaccount when she acted or refrained from acting.She needed to establish that having the belief and taking the belief intoaccountmade a difference to her taking the course of action or inaction; thatshe would not have so acted or refrained from acting if shedid not have thebelief. IfI am not able to find that the monies used for the construction costs properlycame from the husband, it is difficult to discernwhat detriment, if any, hasbeen sustained by the parties. Ihave considered the elements of a constructive trust or promissory estoppel, asopined by Brennan J in Waltons Stores (Interstate) Ltd v Maher [1988] HCA 7; (1988) 164CLR 387 at 428-429:- (1) Theplaintiff assumed that a particular legal relationship then existed between theplaintiff and the defendant or expected thata particular legal relationshipwould exist between them and, in the latter case, that the defendant would notbe free to withdrawfrom the expected legal relationship; (2) Thedefendant has induced the plaintiff to adopt that assumption orexpectation; (3) Theplaintiff acts of abstains from acting in reliance on the assumption orexpectation; (4) Thedefendant knew or intended him to do so; (5) Theplaintiffs actions or inaction will occasion

detriment if the assumptionor expectation is not fulfilled; and (6) Thedefendant has failed to avoid that detriment whether by fulfilling theassumption or expectation or otherwise. Ihave come to the position that the wife did not establish that the necessaryrepresentation was made, but that if it was, neitherdetriment norunconscionable conduct has been established. G PTY LTD In1999, the husbands parents caused the incorporation of a company known asG Pty Ltd for the purpose of purchasing a farmat north east Victoria. Thedirectors of the company were the four children of Mr and Mrs Georgiades Snr. Each of the childrenwas issued with one share. Thewife seeks to bring to account the husbands interest in G Pty Ltd whichon her case translates to a value of $266,000 beingone quarter of the value ofthe said property at 29 May 2013 in the total sum of $1,065,000. Whilstthere is not a dispute as to the value of the farm land, the contention of thehusband is that at all material times he holdshis share on trust for hisparents. Theproperty was purchased by way of an initial deposit provided by the corporateentity of the husbands parents namely, KK. The balance of monies wereprovided through KK via a loan facility of $520,000 with the Commonwealth Bankof Australia. Themonies borrowed from the Commonwealth Bank are evidenced by a loan approvalletter which appears as Annexure BG 4 to the affidavitof Mr Georgiades Snrfiled 29 August 2013. Acareful consideration of the letter sets out the extent of the security which isfirstly by way of a registered mortgage over therural property and then, by wayof joint and several guarantees required to be given by the husband and his twobrothers. Theinitial ASIC returns would suggest that the shares were not intended to bebeneficially held. However, as and from 2002 the husbandsfather allegesthat there was a mistake made in the electronic filing of the returns and thestatus and manner of holding of theshares was changed to them beingbeneficially held. Mr Georgiades Snr says that this is an error and when hiscurrent accountantMr B took over the accounting affairs of the Georgiadesfamily, the error was corrected. Itis important that Mr and Mrs Georgiades Snr were keen to alienatethe farm property given that they were in litigationand they had receivedadvice that they should not be shown as directors of the company orshareholders. AnnexureBG 2 to the affidavit of Mr Georgiades Snr filed 7 October 2013 is the loanagreement between the husbands parentsand G Pty Ltd via the fourdirectors. Theloan agreement is a replicate of the alleged original agreement

which had beensigned in or about October 1999. The evidencein respect of this loan agreementtogether with others signed by various members of the Georgiades family isunsatisfactory and uncertain. The loan agreements annexed to the affidavit ofMr I, solicitor, are the draft agreements prepared by Mr I followinginstructionsfrom Mr Georgiades Snr and his accountant Mr B. Those agreementswere forwarded to Mr B and he then says that they were forwardedto theGeorgiades family for signing. Some of the loan agreements are demonstrablydifferent to the agreements that appear as annexuresto the affidavit of MrI. WhilstI am satisfied that Mr and Mrs Georgiades Snr borrowed money from theCommonwealth Bank and then on-lent those monies via KKto effect the purchase ofthe north east Victoria property by G Pty Ltd, I cannot be satisfied as to theterms and conditions ofany loan, nor that the purported loan agreement everexisted in the first place. The evidence of the husband and his father wasinherently unreliable and I have already found that there was a clear plan toensure that the husbands financial interestswere arranged followingseparation in such a way as to minimise the property that was available for theCourts consideration. Itwas highlighted that in the husbands financial statement filed 23 January2012 he included his interest in G Pty Ltd ata value of $175,000. Thefinancial statements for G Pty Ltd are annexures to the affidavit of Mr B filed5 September 2013. They provide a running historyof the financial position ofthe company, but in particular they record from as early as 2001 the unsecuredloan from the husbandsparents of $568,828. I have already commented onthe unsatisfactory manner in which the account appears to have been conductedandin particular the inadequate explanation of why in the 2009 year theunsecured loan went from $644,200 to a secured loan of $1,207,530. Giventhe purported loan agreement requires no interim or other payments until 4October 2029 and noting the rate of interest of 6.5per cent, it is obvious thatthe total loan would exceed the value of the property by a significant sum. Even on its present valuation,G Pty Ltd is indebted to Mr and Mrs Georgiadesfor an amount greater that the current value of the land. Ifind that the loan agreement is a device designed to minimise the availableproperty of the parties. Thevery fact that on the husbands own case the purported loan agreementcontains no requirement for any interim payment andthat no payment has beenmade since 1999 would entitle the Court to assume

that there is no reallikelihood of the loan ever beingcalled in and certainly not in the year2029. Iam not entitled to affect the substantive rights of third parties and I do notintend to do so. Given the unsatisfactory evidencegiven by the husband and hisfather, I am not satisfied that the evidence of the husband and his father, thepurported loan agreementor indeed, the financial statements of G Pty Ltd obligethe Court to find that there is any loan outstanding and if there is, thattheobligation for repayment is so certain that I should bring it to account. SeeBiltoft & Biltoft [1995] FamCA 45; (1995) FLC 92-614. Thesuggestion that the husband should be bound by a joint and several guarantee tothe Commonwealth Bank in respect of an interestin G Pty Ltd that he says heholds for his parents is difficult to reconcile. Inall the circumstances, I reject the position put by the husband and I propose toattribute a value to the husbands shareholdingand interest in G Pty Ltdof $266,000. To the extent that demonstrably the property was purchased withfunds supplied and arrangedby the husbands parents, that will be broughtto account as a matter of contribution, noting however that there is nocertaintyas to the financial arrangements between the husband and his parents,and what benefit they have received from the company over theyears. BOAT AND LOAN Asdiscussed, little weight can be placed on the evidence of the husband and hisfather as to the circumstances of the acquisitionof the boat in thehusbands possession. There was little or no evidence as to the terms andconditions of the acquisitionand whilst it would seem likely that thehusbands father provided cash to the sum of about $40,500 to enable thehusband topurchase the boat, where that money came from and what arrangementsexisted between the husband and Mr Georgiades Snr is not known. Theboat was purchased on a whim and in circumstances where the husband knew thewife was opposed to the transaction. On the husbandscase, the familywas short of money given the husbands modest income and it was only thatthey did not pay mortgage or rentthat they could make financial ends meet. Theloan agreement entered into between the husband and his parents is clearly aconcoction by the parties to allege a loan that wasunlikely to have been theoriginal intention or agreement. The loan document that was ultimately signedby the parties and formsAnnexure BG1 to the affidavit of Mr Georgiades Snrfiled 7 October 2013, is not the same document that was prepared by Mr I on theinstructions of Mr Georgiades Snr and his accountant Mr B.

Importantly,paragraph 6 of the agreement is significantly differentto the final agreementin respect of the deletion of the reference to the property at [1B NStreet, Suburb O]. Giventhe unsatisfactory evidence of the Georgiadesfamily arising from their inability to explain how the original loan agreementas presentedby the solicitor was subsequently altered, I have little difficultyin rejecting that there is any loan arrangement between the husbandand hisparents. Indeed, senior counsel for Mr and Mrs Georgiades Snr did not wish tobe heard in respect of the legion of inconsistenciesarising from thistransaction. Ipropose to bring the boat to account in the sum of $35,000 and exclude anypurported loan. TREATMENT OF CASH WITHDRAWALS Between20 November 2007 and 2 August 2010 the husband banked significant amounts ofcash totalling $217,800 into his personal accounts. The husband withdrewequivalent amounts as detailed elsewhere in these reasons. Theexplanation of the husband was both nonsensical and incredible. It wassuggested by him that the money represented the dailytakings of KK from time totime and rather than leave the cash in the factory premises overnight, thehusband took the money withhim and banked the cash into his personal account. It was conceded by him that it could have been banked into the KK account giventhat both KK and the husband used the same bank and branch. Ms Z says that shedisapproved of the practice and made it known thatit should stop. According toher, her request was denied both by her father and presumably the husband. Thewife sought discovery from the husband and his parents of various documentswhich would assist in establishing whether the assertionof the husband namely,that the monies banked by him could be linked to the takings of KK could beestablished. Theresponse from the solicitors of the husbands parents that the relevantcategory of documents had either been lost or destroyedwas clearly unhelpful. It became problematic when the evidence of Ms Z established that there wereother collateral documents thatwould have provided assistance as to the extentof cash received by KK during the relevant period. Theposition of the husband was that he certainly neither had any documents whichwould assist in the enquiry nor did he have accessto them. The response of hisparents was that whatever documents may have existed they were now lost ordestroyed. Iconsider that the husband and his father have not been prepared to assist thewife by making full and frank disclosure. The depositsinto

the husbandsaccount during the relevant period are clearly identified and it would not havebeen a difficulty to providethe takings for the relevant periods which wouldclearly have established the true position. InBell & Bell [2000] FamCA 1301 the Full Courtsaid:- [44] The obligation of parties in financial proceedings tomake a full and frank disclosure of their financial circumstances, andallmatters relevant thereto, has been considered in a number of authorities; StJohn v St John (NSW Court of Appeal 19 June 1974, unreported per Hutley JA);Penfold v Penfold [1980] HCA 4; (1980) FLC 90-800 at 75,055; Livesey v Jenkins (1985) 1All ER 106; Oriolo v Oriolo (1985) FLC 91-653; Guinti vGuinti [1986] FamCA 15; (1986) FLC 91-759; Mezzacappa v Mezzacappa [1987] FamCA 20; (1987) FLC 91-853;Milligan v Milligan (Full Court, 4 February 1991, unreported); Black& Kellner (1992) FLC 92-287; Weir v Weir (1993) FLC92-338;... [45] In our opinion, some of the principles emerge from authorities are asfollows:- In proceedingsin the Family Court, in relation to financial matters, there is an obligation oneach party to make a full and frankdisclosure of his/her financialcircumstances and all matters relevant thereto; The obligationarises because of the necessity for the Court in such proceedings to considerall aspects of the financial circumstancesof each party (step 1, 2 and 3); If there is anon-disclosure, in the relevant sense, then the failure to disclosure underminesthe who process of adjudication ofthe proceedings in relation to financialmatters; The obligationis not created by the rules or practice of the Court and the rules simply setout the procedure by which that obligationmay be fulfilled; If there is adeficiency in the rules or practice adapted for the purpose of making such adisclosure mere compliance with the requirementsof the relevant rule orpractice, if deficient, is not enough; A finding ofnon-disclosure may, in appropriate cases, result in the other party beinggranted, without more, the relief sought. However it does not follow that theoutcome sought is appropriate in all such cases. It depends on thecircumstances of each case. It may be, in the circumstances of certain casesthat it is appropriate to simply award to the innocent party all that he/sheseeks. However, we do not accept that such an outcome is required or necessaryin all cases where there is a finding of non-disclosure. That said, it alsodoes not follow that non-disclosure should be ignored; Penfold &Penfold (supra). However, if there is finding of non-disclosure thereshould always be reasons given supporting the finding and for

theconsequencesof such a finding. [46] It may be appropriate, depending upon thecircumstances, to make notional adjustments to the pool of assets to reflectidentifieditems of property that have been bona fide disposed of or one partyonly has had the benefit of to the exclusion of the other party;Townsend& Townsend (supra); Farnell & Farnell (1996) FLC 92-681. [47] It may also be appropriate, depending upon the circumstances, tonotionally include in the pool of assets items of property inrespect of whichno or no reasonable explanation has been given for the assertion that they nolonger exist or never existed; Mezzacappa & Mezzacappa (supra). Inother words, it is also possible, in appropriate cases, to have regard to, andnotionally include in the list of assets,what is called unascertained propertythe value of which is capable of some identification and quantification. Thequestion remains therefore how the Court should treat the aggregate sum of$217,800 given that I am satisfied the husband putsforward no crediblealternate explanation to the proposition of the wife that the husband wasentitled to that money. Theapproach of adding back a notional item of property to theproperty interests of each of the parties has limitedscope. InWatson & Ling [2013] FamCA 57; (2013) FLC 93-527 Murphy J at paragraph 33  34said:- How might that be recognised? First, consistent withexisting authority, it can be recognised pursuant to s 75(2)(o) (cf s90SF(3)(r)) (see, for example, Omacini & Omacini [2005] FamCA 195; (2005) FLC 93-218,Browne & Green [1999] FamCA 1483; (1999) FLC 92-873 and Cerini). Secondly, itmight be contended that it might be recognised within the assessment ofcontributions. This Court has long eschewedthe notion of negativecontributions (see, for example, Antmann & Antmann (1980) FLC90-908). Nevertheless, it might be argued that the non-dissipatingparty can be seen to have made a disproportionally greaterindirectcontribution to the existing legal and equitable interests (for example to theirpreservation) if it is established that,but for the other partysunilateral dissipation, those existing legal and equitable interests would havebeen greater or hada greater value. The assessment of the circumstance under discussion is, ultimately, a matterof discretion ... Equally, however, authority dictatesthat it will bethe exception rather than the rule (Cerini at [46]) that adirect dollar adjustment equivalent to the amount of the alleged dissipation ofthe pool is made to the otherwiseentitlement of a party ... Whilstthe cases where it would be appropriate to add property back tothe interests of each

of the parties will berelatively few, I do not considerthat there is no place for such a consideration. Thepresent case has about it the significant distinction of the husband beinguncooperative and recalcitrant in respect of his obligationto make full andfrank disclosure. He does not have the luxury of attempting to deflect hisobligation to provide appropriate discoveryonto others. See Re RonaldNeville Mcgorm ex-parte: the Co-operative Building Society ofSouth Australia [1989] FCA 87:- [5] The obligation resting on aparty obliged to give discovery requires that he make proper enquiries andefforts to identify anddisclose all relevant documents that are not in hispossession. The obligation extends to making enquiries from the person in whosepossession the documents now are; see Mertens v Haigh [1863] EngR633. Itwas said in the 19th Century case of Taylor v Rundle 41ER429at 433 by Lyndhurst LC if it is in your power to give the discovery, youmust give it; if not, you must show thatyou have done your best to procure themeans of giving it.... [6] The scope of the enquiries that should be made will depend on thecircumstances of the case having regard to the need for discoveryin order todispose fairly of the matters in question, or to save costs in the proceedings.The enquiries must be reasonable, butdo not demand of the party givingdiscovery that he goes to lengths which are oppressive. Accordingly,this is not a situation where the husband has provided a satisfactoryexplanation as to how the money has been utilised. All that is known is that itentered the husbands account in circumstances which defy logicalexplanation and without patternor temporal connection to the date of deposit orthe amounts so deposited significant cash sums are withdrawn. Thereis no evidence as to the destination of the funds and I consider it open to theCourt to find that in the absence of full andfrank disclosure, those monies maystill be available to the husband as opposed to the proposition that they havebeen dissipated,spent or in some way returned to KK or the husbandsfather. Ipropose to include in the pool the aggregate cash withdrawals of$217,800. LEGAL FEES Thecurrent mortgage on the Suburb Y property is $111,000. The wife concedes thatat the date of separation the mortgage had beenreduced to $66,000 (the wifesays $70,000). The extent of the increase can be attributed to day to dayliving costs and expensesof the wife, but predominantly to the payment of herlegal fees in respect of the present proceedings. Whilstthe husband was self-represented, it is his case that his legal fees were

about$105,000, but they have been paid for by hisfamily. There is no realcontention that he will be required to repay those funds. Indeed on his case,with an income of about$30,000 per annum taking into account all the allegedobligations he says he has to his family, it would be an impossibility forthatto occur. Moreover, it is inferential from the evidence of Mr Georgiades Snrthat he recognises those monies are not likelyto be repaid and any loanarrangements are likely to be forgiven on his death. InTruman & Truman [2013] FamCA 765, Fowler J gave consideration to thetreatment of legal fees incurred by the parties. At paragraph 54 his Honoursaid:- This Court does not follow the practice of adding back anddividing non-existent assets. There is no warrant for doing so in theAct. Theonce fashionable practice was one which assisted in pointing perhaps the way toa just solution; however, there existsplenty of opportunity for the Court tocome to a just and equitable assessment as to the source and application offunds in its considerationof contribution under section79 (4) and mattersreferred to in section 75 (2) and also in particular section 75 (2) (o). Ido not propose to add back the parties separate paid legal fees into the pool ofassets. Givenmy finding that the husband is unlikely to be required to repay legal fees tohis father, it would seem to me to be a propermatter to bring to account unders 75 (2) (o) of the Act. SUPERANNUATION OF THE PARTIES Thehusband has an entitlement with AMP and as at the date of his last financialstatement being 13 September 2013, he held an AMPinterest to the value of$34,507 and an interest in a self-managed superannuation fund namely XGeorgiades Superannuation Fund of$23,632. Thewife holds superannuation with XX Super in the sum of $62,124. Takinginto account the ages of the parties and noting that the husband and wife eachhave more than 20 years before they will satisfya condition of release, Ipropose to leave their respective superannuation entitlements to the partieswithout adjustment. JOINT LIST OF ASSETS AND LIABILITIES Wife Net value of J Street, Suburb Y 239,000 Ford motor vehicle 15,000 TOTAL $254,000 Husband Quarter share P Street, Suburb C 60,000 Motor cycle 8,000 Jet Ski 3,000 Furniture 6,730 Boat 35,000 Aggregate cash withdrawal 217,800 G Pty Ltd shares 266,000 TOTAL $596,530 COMBINED TOTAL $850,530 CONTRIBUTIONS Section 79 (4) (a) Financial Contributions Thisis a relationship of about 10 years with two young children. At thecommencement of the relationship, the wife had a modestinterest in

her propertyat Suburb Y. The husband held his interest in P Street, shareholding in G PtyLtd and his motor cycle. Byreference to the valuation evidence as set out in the affidavits of the singleexperts M Firm in relation to the north east Victoriaproperty and Mr W inrelation to the P Street property, their value as at September 2001 $665,000 and$120,000 respectively. Iam not told of the value of the husbands motor cycle but accept that itwas of significant value. Forthe reasons already given, I consider that the acquisition of the aggregate cashwithdrawals and the boat form property of thehusband that was accumulated andaccrued during the course of the relationship and the husband has failed toestablish that the genesisof those items of property came from either hisfamily or the Georgiades family business other than by the proper entitlement ofthe husband. Duringthe course of the marriage, the parties worked hard and cooperatively in orderto accumulate their asset pool and to make properprovision for the family. Thehusband remained in full time employment, whereas the wife managed heremployment to enable her toproperly care for and supervise the children. Postseparation, the position is more complex. Orders were soon made putting in placeappropriate arrangements for the care of thechildren. The husband continuesto assert that his wage is modest and is not the subject of any supplement byongoing benefit providedby his family. The wife returned to the Suburb Ypremises and it became her place of residence. The husband with the allegedconsentof his parents, continues to reside in the Suburb O property. He doesso rent free and without mortgage payment. I am uncertainas to the extent ofthe utility charges that he is responsible for, but taking into account thehistory, it is more likely than notthat the Georgiades family in some manner orother pays for the husbands ongoing utility expenses. I assume thehusband payshis other outgoings. TheFull Court in Pierce & Pierce [1998] FamCA 74; (1999) FLC 92-844 has provided helpfulassistance as to the manner in which significant contributions should be broughtto account:- In our opinion it is not such a matter of erosion ofcontribution but a question of what weight should be attached, in all thecircumstances,to the initial contribution. It is necessary to weigh theinitial contribution by a party with all other relevant contributionsboth ofthe husband and the wife. In considering the weight to be attached to theinitial contribution, in this case of the husband,regard must be had to the usemade by the parties of that contribution. Neitherparty has put significant

evidence before the Court as to the non-financialcontribution made either directly or indirectlyin respect of the property ofthe parties. Section 79 (4) (c) Duringthe course of the relationship the wife was the primary carer for the childrenmade the significant homemaker contribution. The husband however remained incontinuous employment within the Georgiades family business and provided thenecessary financialsupport, certainly during the period when the wife suspendedher employment in order to look after the children. Postseparation the care of the children has been effectively shared. Onbalance, there should be modest adjustment in favour of the husband to reflecthis introduction into the relationship of his interestsin G Pty Ltd and PStreet, which together now represent a significant proportion of the totalproperty pool. That is however temperedby the advantage to the husband of hiscontinued residence in the Suburb O property and the likelihood that themajority of his expensesboth in respect of that property and otherwise are paidfor by the Georgiades family business. Thewife has not had that advantage following separation. Inall the circumstances and taking into account the relevant contribution factors,the contributions of the parties should be recognisedas 57.5/42.5 per cent infavour of the husband. Section 75 (2) factors Theparties are 41 and 39 years respectively. They are both in good health. Thewife is currently employed as a sales assistant and her income is in the orderof $46,600 per annum. The husband alleges thathis income from KK Pty Ltd isnot dissimilar. The difficulty that I have is that I do not accept that thehusband has been fulland frank in respect to the totality of his financialarrangements with his family and the Georgiades family business and it is likelyin all the circumstances that he will continue to receive generous andsubstantial ongoing financial benefit. He continues to residein the Suburb Oproperty on terms that are most favourable to him. That will continue into thefuture. He continues to operatea valuable boat in circumstances where hisunderlying income would not suggest such a pastime to be financially sensible. He isunlikely to be required to pay his legal fees (if they have indeed beenpaid by the Georgiades family) and from time to time he willreceivedistributions from the Georgiades Family Trust and other substantialbenefit. Ido not consider that there is any likelihood that the husband will be asked toleave the Suburb O property and look for and fundhis own accommodation. Therelationship between the husband and his family

is particularly close and thereis no suggestion that the extraordinary financialgenerosity of thehusbands parents towards him on the husbands case, will not otherthan continue. Thecare of the children is effectively shared, although the current orders providefor the children to remain in the wifescare for eight days out of everyfourteen. Asindicated, both parties are in employment. The wifes income isrelatively certain. There is no certainty or indeed anyability to accuratelyassess the extent of the husbands income or his ability to access cashsupplemental to his income. Neitherof the parties have the responsibility to support any other person, nor am Iadvised that either of them are eligible fora pension allowance or relevantbenefit. Whilstthe wife rails against her circumstances and those of the husband residing inthe Suburb O property, I consider that the generalityof the situation is thatthe parties have a not dissimilar standard of living and that whilst as far asthe wife is concerned itis modest, is nonetheless adequate. Neitherparty is obliged to pay spousal maintenance to the other. Ido not consider that there are any factors relevant to ss 75 (2) (ha), (j), (l),(m), (n), (naa), (p) and (q) that are relevant to the proceedings. Section75 (2) (o) needs to be considered, particularly in respect of the manner inwhich legal fees paid by the parties should be brought toaccount. Whilst theexpenditure of the wife on her legal fees has had the effect of increasing themortgage on the home, equallyon the husbands case, the payment of hissubstantial legal fees by his father would appear to be an appropriateoffsettingand countervailing factor. I do not consider that there should beany adjustment to bring to account the manner in which each ofthe parties paidfor their separate legal fees. Whengiving consideration to the manner in which the relevant s 75 (2) factors shouldbe brought to account and in particular the appropriate weight that should begiven, I am reminded of the judgmentof Fogarty J in Waters & Jurek (1995) FLC 92-635 where at page 82,376 the following is said:- Inthe majority of property cases little difficulty is encountered in thecontribution step and increasingly in the general run ofcases the conclusion islikely to be one of equality or thereabouts. There is no doubt that the centreof gravity in the determinationof property cases has especially, in more recenttimes, moved to the evaluation of the s. 75 (2) factors, and the significance ofthat has been heightened because of recent Full Court decisions which haveemphasized thoseprovisions and indicated that they should be given real ratherthan token

weight. As was said by his Honour the provision does not invite a process ofsocial engineering (Clauson & Clauson (1995) FLC 92-595 at81,912). InClauson (supra) at page 81,911 the Full Court said:- It haslong been recognized that in most cases the most valuable assetwhich a party can take out of the marriage isa substantial, reliable, incomeearning capacity; see Best & Best [1993] FamCA 107; (1993) FLC 92-418 at 80,295. There is, we think, at times a tendency to assess s. 75 (2) factors inpercentage terms without considering its real impact, and we think there islegitimacy in the views expressed in morerecent times that the Court has tendedto operate in this area within artificially delineated boundaries. That is, itappears almostto be inevitable that the s. 75 (2) factors will be assessed in arange between 10% and 20%. A number of cases will justify an assessment outsidethose parametersand in any event it is the real impact in money terms which isultimately the critical issue. Accordingly,I am obliged to give real weight to the relevant s 75 (2) factors. Forthe above reasons, I propose to provide a further adjustment of 20 per cent infavour of the wife. CONCLUSION Accordingly,the rights of the parties in respect of matrimonial property held jointly andseverally shall be adjusted to reflect62.5 per cent of the total to the wifeand 37.5 per cent to the husband. Ofa total pool of $850,530, the wife should retain $531,581. Thewife retains thefollowing:- J Street, Suburb U 239,000 Ford motor vehicle 15,000 TOTAL $254,000 Byorder made 27 February 2013, the husband was to pay the full cost of valuationsand then have liberty to seek contribution fromthe wife. The husband claimsthat the total amount paid was $15,729. Notwithstanding that the husband hasnot demonstrated thathe will be required to pay his costs to his parents, it isreasonable that the wife be responsible for one half of the costs in thesum of$7864. Thewife is therefore entitled to a settlement sum of $277,581 less the sum of$7,864, namely $269,717. I propose to give the husband60 days for the paymentof the said amount. Orderswill be made as set out at the commencement of thesereasons. I certify that the preceding three hundred and eighty two(382) paragraphs are a true copy of the reasons for judgment of the HonourableJustice Berman delivered on 8 September 2014. Associate: Date: 8 September 2014 