

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
CIVIL DIVISION**

BUILDING AND PROPERTY LIST

VCAT REFERENCE NO.BP815/2014

CATCHWORDS

Co-owned property. S.233 Property Law Act 1958 - adjustment of interests of co-owners.

APPLICANT	Mr Gabriel Kon Koroneos
RESPONDENT	Mr Koronis Peter Koroneos
WHERE HELD	Melbourne
BEFORE	Senior Member M. Farrelly
HEARING TYPE	Hearing
DATE OF HEARING	27 April 2017 Final written submissions received 5 May 2017
DATE OF ORDERS	30 May 2017
CITATION	Koroneos v Koroneos (Building and Property) [2017] VCAT 766

ORDERS

1. The balance of the proceeds of sale, referred to in the order 12(b)(v) made 3 February 2017, are to be distributed as follows:
 - first, \$112,370.38 to the respondent; and
 - the remainder to be distributed equally between the applicant and the respondent.
2. I find and declare that the respondent is solely liable for any sum payable to K&J Woolley Master Plumbers pursuant to its tax invoice addressed to the respondent dated 10 March 2017.
3. Costs reserved with liberty to apply. **I direct the Principal Registrar to list any application for costs to be heard by Senior Member Farrelly, allowing half a day.**

SENIOR MEMBER M. FARRELLY

APPEARANCES:

For the Applicant

Mr P. Barton of Counsel

For the Respondent

Mr J. Constantinou, Solicitor

REASONS

- 1 The applicant, Gabriel Koroneos, is the son of the respondent, Koronis Koroneos. In 2007 they became registered joint proprietors of a property in Werribee South, Victoria (“**the property**”). The applicant commenced this proceeding in December 2014 seeking orders under Part IV of the *Property Law Act 1958* (“**the Act**”) for the sale of the property and the distribution of the proceeds of sale.
- 2 By decision handed down 29 March 2016 (“**the 2016 decision**”), I rejected the respondent’s claim that he was entitled to live exclusively at the property until he dies, and I found that the applicant was entitled to orders for the sale of the property and the distribution of the proceeds of sale. As set out in the 2016 decision, having made such findings I considered it appropriate to allow the parties some time to negotiate arrangements in respect of the property, which may have included the transfer of the applicant’s interest to the respondent on agreed terms, or alternatively the terms on which the property would be put up for sale and the proceeds of sale distributed.
- 3 The parties were unable to reach agreement and, as a result, orders were made on 11 November 2016 setting the matter down for further hearing before me on 3 February 2017. The orders also required the parties to file and serve material relevant to any claim for financial adjustment or compensation.
- 4 At the commencement of the hearing on 3 February 2017, the respondent’s lawyer sought an adjournment because the respondent had not yet prepared material in accordance with the orders made 11 November 2016. Although the hearing was adjourned, the parties reached agreement that day as to orders for the sale of the property, and consent orders were duly made in that regard on 3 February 2017. The remaining issue, the distribution of the balance proceeds of sale, after discharge of the mortgage and all other expenses associated with the property and the costs and expenses associated with the sale, (“**the balance proceeds of sale**”) was listed for hearing before me on 27 April 2017.
- 5 Prior to the hearing, the respondent filed and served material relevant to his claim for an adjustment of his financial interest, and the applicant filed and served expert material as to market rent for the property.
- 6 At the hearing on 28 April 2016, Mr Barton of Counsel represented the applicant and Mr Constantinou, solicitor, represented the respondent. Both the applicant and the respondent gave evidence. Mr Cundall, a certified practising valuer, called by the applicant, gave opinion evidence as to market rent for the property with reference to reports he had prepared.

THE LAW

7 The relevant law is set out in section 233 of the Act:

233 Orders as to compensation and accounting

- (1) In any proceeding under this Division, VCAT may order—
 - (a) that compensation or reimbursement be paid or made by a co-owner to another co-owner or other co-owners;
 - (b) that one or more co-owners account to the other co-owners in accordance with section 28A;
 - (c) that an adjustment be made to a co-owner's interest in the land or goods to take account of amounts payable by co-owners to each other during the period of the co-ownership.
- (2) In determining whether to make an order under subsection (1), VCAT must take into account the following—
 - (a) any amount that a co-owner has reasonably spent in improving the land or goods;
 - (b) any costs reasonably incurred by a co-owner in the maintenance or insurance of the land or goods;
 - (c) the payment by a co-owner of more than that co-owner's proportionate share of rates (in the case of land), mortgage repayments, purchase money, instalments or other outgoings in respect of that land or goods for which all the co-owners are liable;
 - (d) damage caused by the unreasonable use of the land or goods by a co-owner;
 - (e) in the case of land, whether or not a co-owner who has occupied the land should pay an amount equivalent to rent to a co-owner who did not occupy the land;
 - (f) in the case of goods...
- (3) VCAT must not make an order requiring a co-owner who has occupied the land to pay an amount equivalent to rent to a co-owner who did not occupy the land unless—
 - (a) the co-owner who has occupied the land is seeking compensation, reimbursement or an accounting for money expended by the co-owner who has occupied the land in relation to the land; or
 - (b) the co-owner claiming an amount equivalent to rent has been excluded from occupation of the land; or
 - (c) the co-owner claiming an amount equivalent to rent has suffered a detriment because it was not practicable for that co-owner to occupy the land with the other co-owner.

- 8 The nature of the property and the history of the parties' dealings with the property are set out in the 2016 decision. Salient matters include:
- (a) There are two homes on the property. For convenience, I will refer to the large one as “**the main home**” and the smaller one as “**the cottage**”;
 - (b) To finance the property purchase, the applicant and the respondent borrowed \$320,000 from the Bendigo Bank. Security for the loan included a mortgage over the property, pursuant to which the applicant and the respondent are the named mortgagors. The loan account, in the names of both the applicant and the respondent, operates as a line of credit which allows for deposits and withdrawals subject to a maximum allowed credit balance of around \$325,000 (“**the Bendigo loan account**”);
 - (c) The respondent managed all finances in respect of the property including the collection of rent from tenants, the payment of rates and other expenses related to the property and the management of the Bendigo loan account. Over the years since the property was purchased, there has been numerous deposits into, and withdrawals from, the Bendigo loan account, all managed by the respondent.
 - (d) As discussed below, I find that the respondent lived at the main home from December 2007 to June 2016. He paid no rent.
 - (e) The applicant has made no loan repayments or any other payments or financial contribution of any significance in respect of the property. He retains joint responsibility as mortgagor.
- 9 The respondent says that there should be an adjustment of interests in his favour. That is, he says he should receive a greater proportion of the balance proceeds of sale, having regard to his financial contributions in respect of the property including improvements to the land, repairs and maintenance, payment of insurance and rates, and mortgage payments.
- 10 The applicant says that as he and the respondent are joint proprietors of the property, the balance proceeds of sale should be distributed equally between them. However, having regard to the respondent's claim for compensatory adjustment, the applicant says that any adjustment should, pursuant to sections 233 (2)(e) and 233(3)(a) of the Act, include a nominal rent allowance equivalent to market rent for the respondent's occupation of the main home.

THE RESPONDENT'S HABITATION OF THE MAIN HOME AND RENT ALLOWANCE.

- 11 The contract of sale for the property is dated 1 December 2006. There is no dispute that settlement of the sale occurred in around June 2007.

- 12 The respondent says that, after arranging/carrying out various works to the main home, he moved into the main home in December 2007, and he lived there until June 2016. As the applicant cannot recall exactly when his father moved in and out of the main home, I accept the respondent's evidence in this regard.
- 13 The applicant says that, even accepting that the respondent moved into the main home in December 2007, allowance for nominal rent should be taken from 1 June 2007 when the main home became available. The applicant submits because, in the period June 2007 to December 2007, the main home was being prepared for the respondent's occupancy, the nominal rent allowance should include this period.
- 14 I do not accept the applicant's submission. I accept the respondent's evidence, which is not disputed by the applicant, that works to the main home between June 2007 and December 2007 included:
 - (a) repairs to the kitchen, bathroom, roof and a number of other areas which had been water damaged;
 - (b) installation of new kitchen appliances including cook top, stove and dishwasher;
 - (c) repair/installation of a number of damaged or missing doors; and
 - (d) installation of window coverings throughout.
- 15 I accept the respondent's evidence that the main home was not in a suitable condition to rent in June 2007, and the substantial works carried out and arranged by the respondent brought the main home to a suitable condition in December 2007.
- 16 There is no evidence that the applicant sought to rent the main home out as soon as practicable, or at any time whatsoever. The applicant made no contribution to the cost of carrying out the necessary works to the main home to make it suitable for habitation. The applicant left the management of the property, including the main home, entirely to the respondent.
- 17 As the respondent is seeking an adjustment of interest in his favour in respect of the financial contributions he has made to the property, it is appropriate in my view that allowance, equivalent to the market rent that might reasonably have been obtained from renting the main home, also be made for the period of the respondent's occupation of the main home. In my view there is no basis upon which an allowance for nominal rent should include any other period when the respondent did not reside at the property.
- 18 As the exact dates when the respondent moved into the main home in December 2007, and moved out of the main home in June 2016, are unknown, I think it fair, for the purpose of calculating an adjustment for nominal rent, to allow the period 1 January 2008 to 30 June 2016 as the period of the respondent's occupation of the main home.

- 19 The applicant relies on the evidence of Mr Cundall as to the reasonable market rental allowance for the main home. For the period 1 January 2008 to 30 June 2016, Mr Cundall allows a sum of \$115,960¹.
- 20 Although the respondent questions the reliability of Mr Cundall's assessment in circumstances where Mr Cundall only first inspected the property in July 2015, the respondent has presented no alternative expert opinion. In any event, in final submissions as to an appropriate adjustment of interests, the respondent, adopting a pragmatic and in my view sensible approach, makes allowance for rent based on Mr Cundall's assessment.
- 21 Having considered Mr Cundall's report, and his evidence given at the hearing, I am satisfied that an allowance of \$115,960 is a reasonable allowance for nominal rent for the period 1 January 2008 to 30 June 2016.

Rent received in respect of the main home after June 2016

- 22 The respondent says that soon after he moved out of the main home, the main home was rented to a group of women at a rate of \$200 per week. The rental arrangement was informal in the sense that there was no written lease, and the rent was paid in cash to the respondent at irregular intervals. The respondent says there was no payment of rent for a period of approximately four weeks in the second half of 2016 when the tenants travelled to China. The respondent says that the tenancy arrangement recently ceased when the women moved out of the main home. All up, the respondent says he received, by way of cash payments, around \$7200 in rent from the women.
- 23 The applicant says he is aware that a number of women resided in the main home after the respondent moved out, but he does not know the actual dates. He says he believes that the women may have paid more than \$200 per week. His belief in this regard is founded on a conversation he overheard one day when he was at the property, where one woman spoke to another woman of rent in the sum of \$100 per week being paid by each of the women. The applicant's evidence in this regard lacks probative value because it is both unclear and hearsay.
- 24 On the evidence before me, I will make allowance in the sum of \$7200 as rent for the main home received by the respondent after June 2016. I accept the respondent's evidence that this rental was paid to him in cash, and was not deposited into the Bendigo loan account.

Cottage rent and other income from the use of the property

- 25 Since 2007, various tenants have lived in the cottage at the property. The respondent says that rent has always been paid by the tenants directly into the Bendigo loan account by way of electronic transfer. He says that the

¹The figure is extracted from the table produced at page 4 of Mr Cundall's report dated 17 January 2017. The allowance for the 2007 year is discarded and half only of the allowance for the 2016 year is included.

rent payments are identifiable in the Bendigo loan account statements. The Bendigo loan account statements were produced at the hearing. In material filed by the respondent prior to the hearing, the respondent says the total deposits identifiable in the Bendigo loan account statements as rent for the cottage is \$65,951. There are no other records for rent received in respect of the cottage.

- 26 Determining the total sum of rent deposited into the Bendigo loan account is important because it is a necessary step in calculating the total mortgage loan repayments made by the respondent. This is because the Bendigo loan account was both the mortgage loan account and a general account used by the respondent for other purposes, including the deposit of rent payments for the cottage. The respondent says that his total contribution to mortgage loan repayments is calculated as the net difference between total deposits, not including deposits identifiable as cottage rental payments, and withdrawals in the Bendigo loan account.
- 27 During cross-examination, the respondent was asked a number of questions in relation to a small number of specific deposit entries in the Bendigo loan account. The respondent was unable to say for certain whether some of the entries were rent payments made by tenants of the cottage. The respondent says the uncertainty arises in respect of a few entries because sometimes a tenant may have identified his business name rather than his personal name when making the transfer payment.
- 28 The respondent also conceded in cross-examination that a small number of entries identified in the Bendigo loan account statements appeared to be cash deposits, and not electronic transfer deposits, in respect of rent received from cottage tenants.
- 29 The respondent also confirmed that a few deposit entries in the Bendigo loan account were payments received for storage of equipment and goods at the property. That is, the respondent allowed one or two acquaintances to store equipment/goods at the property for a modest fee, and these payments were deposited into the Bendigo loan account.
- 30 I accept that rental income from the cottage can generally be identified in the Bendigo loan account. An exact figure for rental, and any other income received in respect of the use of the property, cannot be ascertained from the limited records available.
- 31 The applicant submits that, having examined the Bendigo loan account statements and having heard the evidence of the respondent, \$72,061 is a reasonable allowance for the total sum of deposits appearing in the Bendigo loan account attributable to rent and storage income derived from use of the property. As I understand it, the respondent, adopting a pragmatic and sensible approach, accepts that figure. Accordingly, I will attribute **\$72,061** as the total sum of deposits in the Bendigo loan account attributable to rent and storage income derived from the property.

- 32 As noted above, I allow a further sum of **\$7200** as rental income received by the respondent in respect of the main home which was not deposited into the Bendigo loan account.

Mortgage loan repayments by the respondent

- 33 The respondent calculates the net balance of deposits and withdrawals in the Bendigo loan account, after excluding \$72,061 as rental and storage income, as \$132,667. That is, taking rental and storage income of \$72,061 out of the equation, deposits exceed withdrawals by \$132,667. The applicant does not challenge the calculation and, as such, I accept the calculation as accurate.
- 34 Accordingly, I am satisfied that the sum of **\$132,667** fairly represents the total sum of payments to the mortgage loan for the property made by the respondent.

REPAIRS, MAINTENANCE, IMPROVEMENTS

- 35 As discussed above, the respondent arranged for various works to the main home in the second half of 2007 before he moved into the home. The applicant concedes that such works were carried out. The applicant concedes also that various other maintenance and repair works have been carried out to the main home and the cottage since 2008.
- 36 Documentation produced by the respondent in support of the claims is less than conclusive. In some cases invoices have been produced, and in other cases mere quotes have been produced. Some of the quotes and invoices are addressed to the respondent, while others are addressed to 'Ayriljea Pty Ltd', a corporate entity wholly owned and controlled by the respondent. Some are addressed to both the respondent and Ayriljea Pty Ltd.
- 37 The respondent has produced no documents evidencing payments made by him for the repairs/maintenance works carried out. He has no such documents because he says he invariably made the payments in cash.
- 38 I will deal with each of the claims in turn, noting the items which are conceded by the applicant.

Locksmiths

- 39 As noted above, the works to the main home in 2007 included installation of a number of doors. The respondent says he incurred locksmith's expense of approximately \$1000. The respondent has no supporting documentation.
- 40 While the applicant acknowledges that the door works were carried out, in the absence of supporting documentation, the applicant does not concede the locksmith expense.
- 41 In my view, where a home is being renovated to make it suitable for occupation, and the renovations include the installation of missing doors, it is reasonable that locksmith expense will also be incurred. In my view an

allowance of \$1,000 is reasonable. I accept the respondent's evidence and will allow **\$1,000** as locksmith's expense incurred by him.

Painting

- 42 The respondent produced the following documents in support of his claim for costs incurred in painting works to the main home and the cottage:
- (a) 'B.J. Painting (Vic) Pty Ltd' quotation dated 26 June 2007, addressed to the respondent, identifying a quoted sum of \$2,385 for plaster repairs and painting works. The document does not identify whether the works relate to the main home or the cottage. The respondent says this is a quote for works which were subsequently carried out, for the quoted price, to the main home in 2007. The applicant does not concede this item.
 - (b) 'B.J. Painting (Vic) Pty Ltd' invoice dated 26 June 2007 addressed to the respondent in a sum of \$2,200 for the completion of interior painting works. The document does not identify whether the works relate to the main home or the cottage. The respondent says that this invoice is for painting works carried out to the cottage in 2007. The applicant is prepared to concede this item.
 - (c) An undated 'receipt' addressed to the respondent from 'Aldo Paints' confirming receipt of \$2,900 for painting works carried out. The document does not identify whether the works relate to the main home or the cottage. The respondent says this is the cost incurred in having the cottage and carport recently repainted. That is, repainting some years after 2007. The applicant is prepared to concede this item.
- 43 I will allow the painting costs conceded by the applicant, but I do not allow the sum identified in the B.J. Painting (Vic) Pty Ltd' quotation dated 26 June 2007. I am not satisfied, on the evidence before me, that the works identified in the quotation are different from the works identified in the B.J. Painting (Vic) Pty Ltd' invoice of the same date.
- 44 Accordingly, for painting works, I allow a total of **\$5,100**.

Carpentry/miscellaneous building repairs

- 45 The respondent produced the following documents in support of his claim for general carpentry/building repair costs:
- (a) 'Paul Lorimer' quotation addressed to Ayriljea Pty Ltd dated 18 July 2007. The quotation identifies a quoted price of \$3800 (\$4,180 with the addition of GST) for various works related to repair and installation of doors, bench tops, cupboard doors and roof leaks.
 - (b) 'Paul Lorimer' quotation addressed to Ayriljea Pty Ltd dated 10 January 2008 identifying a quoted price of \$2,420 for the supply and installation of a number of bi-fold doors.

- 46 I am satisfied that the works identified in the quotations are part of the renovation works, referred to earlier in these reasons, carried out to the main home to make it suitable for occupation. While no invoices or records of payment have been produced, there is no dispute from the applicant that the works of this nature were in fact carried out. The quoted sums appear reasonable to me and, on the evidence before me, I am satisfied that the works were carried out at the quoted cost.
- 47 The applicant says I should make no allowance in favour of the respondent in respect of these costs because the quotations relied on by the respondent are addressed not to the respondent, but to Ayriljea Pty Ltd.
- 48 As noted above, Ayriljea Pty Ltd is a company wholly owned and controlled by the respondent. I accept the evidence of the respondent that he, personally, paid for these works by cash payments to the contractor. As such, I am satisfied that allowance, in favour of the respondent, should be made for these items of expenditure.
- 49 I allow **\$6220** for this item.

Blinds

- 50 I accept the respondent's evidence that, as part of the renovation works to the main home in 2007, window coverings were purchased and installed. This evidence is not contested by the applicant.
- 51 The respondent has produced a tax invoice from 'Werribee Blinds' addressed to Ayriljea Pty Ltd in the sum of \$2600 for the supply of blinds. I accept the respondent's evidence, not contested by the applicant, that the invoice confirms the cost of blinds purchased for installation in the main home.
- 52 Again, although the invoice is addressed to Ayriljea Pty Ltd, I accept the respondent's evidence that he personally paid the invoice, and as such I am satisfied that allowance, in favour of the respondent, should be made for these items of expenditure.
- 53 I allow **\$2600** for this item.

Appliances

- 54 The respondent has produced a copy of a 'Knights Retrovision' quotation dated 5 November 2007 in the sum of \$2959 for the supply and delivery of a dishwasher, and electric oven and a cooktop. I am unable to identify who the quotation is addressed to.
- 55 As noted earlier, I accept the respondent's evidence that appliances were purchased and installed in the main home in 2007. That evidence is not disputed by the applicant.

- 56 I accept the respondent's evidence that this quotation confirms the cost of those appliances. I also accept the respondent's evidence that he personally paid for the items.
- 57 Accordingly I allow **\$2959** for this item.

Solar panels

- 58 The applicant concedes the respondent's claim for an allowance of **\$4500** for the installation of solar panels to the main home. As such I allow that sum.

Plumbing

- 59 The respondent produced three invoices from 'K&J Wooley Master Plumbers' addressed to him for various works related to drainage, sewerage and other plumbing works at the property. The first invoice dated 16 June 2016 identifies works completed on 2 June 2016 at a cost of \$5314.10. The second invoice dated 18 January 2017 identifies works completed on 10 January 2017 at a cost of \$548.50. The third invoice dated 10 March 2017 identifies works completed recently on 7 March 2017 at a cost of \$11,823.30.
- 60 The applicant concedes the first two invoices. The applicant is prepared to concede the sum of the third invoice, subject to proof of payment.
- 61 The respondent says that, in respect of the third invoice, he has made part payment in the sum of \$2500, and that he will in due course pay the balance.
- 62 I am satisfied that the respondent has incurred personal liability for payment of the third invoice and, as such, I consider it appropriate to allow the full sum of this invoice together with the two earlier invoiced sums conceded by the applicant. Accordingly I will allow a total sum of **\$17,685.90**.
- 63 For clarity, in final orders I will make a declaration that the respondent is solely liable for any sum payable to K&J Woolley Master Plumbers pursuant to the third invoice dated 10 March 2017.

Floodlights

- 64 The respondent says he installed floodlights to the property, primarily for security. The applicant does not dispute this evidence.
- 65 The respondent says he paid \$1500 for the supply and installation of the floodlights. No supporting documents have been produced.
- 66 Accepting that the floodlights were in fact installed, and accepting also that \$1500 is a reasonable cost for the installation of floodlights, I think it fair to allow this item. I allow **\$1500**.

Plants

- 67 The applicant claims \$1691.50 as the cost of various plants, trees and shrubs he has purchased and planted at the property. He has produced a bundle of invoices from 'The Diggers Club' addressed to him which verify the cost.
- 68 The applicant does not dispute that the plants, trees and shrubs were purchased and planted at the property, but the applicant considers the expense to be discretionary and not related to the upkeep or maintenance of the property.
- 69 In my view the expense should be allowed as a valuable contribution to the maintenance and/or enhancement to the property. In my view the applicant benefits from the expenditure, in that the expenditure enhances the value of the property. I will allow the sum claimed, **\$1691.50**.

Irrigation

- 70 The respondent says he incurred expense of approximately \$2000 installing irrigation pipes to the property. No supporting documentation is produced.
- 71 The applicant does not admit that any such irrigation works were carried out, and accordingly makes no concession in respect of this item.
- 72 With no supporting documentation, and no concession from the applicant that these works have actually been carried out, I find that there is insufficient evidence to allow the sum claimed.

Driveway and landscaping

- 73 The respondent produced an invoice addressed to him dated 12 December 2011 from 'Kwik Kerb Werribee' in the sum of \$7900 for the installation of a circular driveway and other landscaping works at the property.
- 74 The applicant does not dispute that the driveway and landscaping works were carried out.
- 75 I am satisfied that this is an expense incurred by the respondent in maintaining/enhancing the value of the property, and I allow the sum claimed, **\$7900**.

New kitchen in the cottage

- 76 The respondent says that he recently installed a new kitchen (cabinetry) in the cottage at a cost of \$900. No supporting documentation is produced.
- 77 As the applicant concedes that a new kitchen was in fact recently installed in the cottage, I am satisfied that allowance should be made for the expense incurred by the respondent. There is no supporting documentation, but I consider **\$900** to be a modest allowance and I allow that sum.

Conclusion on maintenance/repair/ improvements allowance

78 In summary, I allow the following for financial contributions of the respondent in respect of maintenance, repairs and improvements to the property:

- locksmiths	\$1000
- painting	\$5100
- carpentry/miscellaneous	\$6220
- blinds	\$2600
- appliances	\$2959
- solar panels	\$4500
- plumbing	\$17,685.90
- floodlights	\$1500
- plants	\$1691.50
- driveway/landscaping	\$7900
- cottage kitchen	<u>\$900</u>
Total	\$52,056.40

RATES AND BILLS

79 The respondent claims allowances in respect of his payment of rates and certain bills associated with the property.

Conveyancing

80 The respondent says he paid approximately \$1,000 for conveyancing costs when the property was purchased. The respondent produced no records to support the claim. Even though there are no supporting documents, having regard to the fact that the applicant made no contribution to conveyancing costs, and accepting that conveyancing costs would have been incurred, and considering the sum claimed to be within the reasonable range for such costs, I accept the applicant's evidence and find that allowance should be made for the sum claimed, **\$1000**.

Insurance

81 Initially, a sum of \$41,000 was claimed as the cost of various insurances related to the property. At the hearing, the respondent reduced the allowance claimed to \$20,000.

82 Allowance to be made for insurance is not straightforward. For many years all insurances, including house and contents for the main home and the cottage and other business insurances have been packaged together under a 'Sunrise Farm Insurance Countrypak' policy.

- 83 The respondent produced a recent policy schedule identifying the cost of the insurance for the 2015/16 year. The schedule indicates a premium cost of \$2468.69 for insurance for the main home and the cottage. Insurance documentation for previous years has not been produced, however I accept the respondent's evidence that insurance has been maintained throughout the period since the property was purchased.
- 84 Without the prior documentation, the respondent adopts a pragmatic approach, based on the 2015/16 premium, and submits that an overall allowance of \$20,000 is reasonable for the cost of insurance from the time the property was purchased. In my view, this is a sensible and reasonable approach.
- 85 The applicant says that the respondent, alone, should bear the cost of insurance in respect of the main home for the period the respondent occupied the main home. I do not agree.
- 86 In my view, house and contents insurance for the main home has been a prudent expenditure to protect the interests of both the applicant and the respondent in the main home. While I accept that a portion of the contents insured, such as the respondent's clothing, belong only to the respondent, that portion of benefit in terms of the cost of the insurance for the main home and the cottage is minimal. There is no material before me upon which I might make a deduction from the insurance for the relative "cost" of the insurance which might be said to have protected *only* the respondent's interests. And in any event, I am satisfied that the \$20,000 submitted by the respondent is a fair allowance for the cost of the insurance since the property was purchased which has protected the interests of both the applicant and the respondent.
- 87 As such, I will allow **\$20,000** as the financial contribution made by the respondent for the cost of insurance for the property.

Municipal Rates

- 88 The respondent claims an allowance of \$17,329.54 for municipal rates incurred since the property was purchased. During the hearing the applicant confirmed that it did not challenge the quantum of rates paid, however the applicant submits that the respondent should bear a larger burden than the applicant because of his habitation in the main home for approximately 9 years. I do not accept the submission. In my view, appropriate allowance for the respondent's habitation of the main home is covered by the rental allowance discussed earlier in these reasons. I will allow the full sum of the rates, **\$17,329.54**.

Water rates and land tax

- 89 The respondent produced documentation confirming water rates and land tax expense for the relevant period in a total sum of \$12,477.44.²
- 90 As I understand it, the respondent does not dispute the quantum, but submits that the respondent should bear a greater proportion of the water rates cost having regard to his habitation of the main home for 9 years. I do not accept the submission. Bearing in mind that water rates are charged on the whole property, including the cottage, and rates were payable regardless of whether or not the main home was tenanted, I think it fair that the full sum for water rates be allowed.
- 91 As I understand it, there is no submission from the applicant in respect of land tax.
- 92 Accordingly, I allow **\$12,477.44** for water rates and land tax.

Summary rates and bills

- 93 In summary I allow the following for financial contributions of the respondent in respect of rates and bills related to the property:

- Conveyancing	\$1000
- Insurance	\$20,000
- Municipal rates	\$17,329.54
- Water rates and land tax	<u>\$12,477.44</u>
Total	\$50,806.98

ADJUSTMENT

- 94 In my view, in calculating any adjustment for the distribution of the balance proceeds of sale, it is appropriate to first allocate to each of the applicant and the respondent 50% responsibility for the net costs and expenses of the property. In this regard, net costs and expenses is the sum of all costs and expenses, including loan mortgage repayments, less the nominal rental income for the main home for the period the respondent occupied it and the cash rental income for the main home received by the respondent which was not deposited into the Bendigo loan account. Using this methodology, I calculate the net costs and expenses, and each party's 50% responsibility for such costs and expenses, as follows:

- mortgage loan repayments	\$132,667.00
- repairs, maintenance and improvements	\$ 52,056.40
- rates and bills	<u>\$ 50,806.98</u>

² The figure includes the most recent water rates account in the sum of 154 \$7.65 produced by the respondent at the hearing.

Total \$235,530.38

Subtract

- nominal rent for the respondent's occupation of main home, \$115,960, together with cash rent for the main home received by the respondent, \$7,200 \$123,160.00
- Net costs and expenses \$112,370.38
- Each party's 50% responsibility **\$56,185.19**

- 95 The above calculation does not include rental income from the cottage and the storage income referred to earlier in these reasons. There is no need to include such income in the calculation because such income was deposited into the Bendigo loan account, the mortgage loan account, for the equal benefit of the applicant and the respondent.
- 96 The respondent has borne 100% of the net costs and expenses, that is both his 50% responsibility, \$56,185.19, and the applicant's 50% responsibility, \$56,185.19. It is appropriate, in my view, that this imbalance be rectified by orders that the balance proceeds of sale be distributed as follows:
- first, \$112,370.38 to the respondent; and
 - the remainder to be distributed equally between the applicant and the respondent.

CONCLUSION

- 97 For the above reasons, I will order that the balance of the proceeds of sale, referred to in the order 12(b)(v) made 3 February 2017, be distributed as follows:
- first, \$112,370.38 to the respondent; and
 - the remainder to be distributed equally between the applicant and the respondent.
- 98 I will also make a declaratory order that the respondent is solely liable for any sum payable to K&J Woolley Master Plumbers pursuant to its tax invoice addressed to the respondent dated 10 March 2017.
- 99 I will reserve costs with liberty to apply, and in so doing I draw the parties' attention to sections 109 to 114 in the *Victorian Civil and Administrative Tribunal Act 1998*.

SENIOR MEMBER M. FARRELLY