

NOTE: PURSUANT TO S 35A OF THE PROPERTY (RELATIONSHIPS) ACT 1976, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO 11D OF THE FAMILY COURTS ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE [HTTP://WWW.JUSTICE.GOV.T.NZ/COURTS/FAMILY-COURT/LEGISLATION/RESTRICTIONS-ON-PUBLICATIONS](http://www.justice.govt.nz/courts/family-court/legislation/restrictions-on-publications).

ANY COMPLYING PUBLICATION IS TO REFER TO THE PARTIES AS DICKSON V KINGSLEY AND TO [COMPANY NAME DELETED] AS THE COMPANY AND IS TO COMPLY WITH ANY ADDITIONAL LATER MINUTE APPROVING FOR PUBLICATION A MORE DEEPLY ANONYMISED VERSION OF THIS JUDGMENT.

**IN THE FAMILY COURT
AT AUCKLAND**

**FAM-2013-004-000875
FAM-2013-004-000876
[2016] NZFC 2192**

IN THE MATTER OF	PROPERTY (RELATIONSHIPS) ACT 1976
BETWEEN	JAKE DIXON Applicant
AND	CAROL KINGSLEY Respondent

Hearing: 14 March 2016 in Chambers
Appearances: K Muir for Applicant
D Chambers QC for Respondent
Judgment: 18 March 2016

**RESERVED JUDGMENT No. 3 OF JUDGE D R BROWN
[Relationship Property]**

[1] The applicant asks the Court to correct (under the power in Rule 204 of Family Court Rules) its Judgment of 11 December 2015.

[2] Rule 204 provides:

Clerical mistakes and slips

1. This Rule applies to a judgment –
 - a. That contains a clerical mistake or an error arising from an accidental slip or omission, whether or not the mistake, error, slip, or omission was made by an officer of the Court; or
 - b. That is drawn up in a way that does not express what was actually decided and intended.
2. The judgment may be corrected by the Court or, if the judgment was made by a Registrar, by the Registrar.
3. The correction may be made by the Court or the Registrar, as the case requires on his or her or its own initiative or on an interlocutory application for the purpose.

[3] Two corrections are sought.

[4] The first is uncontentious. In paragraph 154 of my judgment I referred to two alleged advances to the parties by Mr Dixon's father as "\$196,281.55 and \$21,025 – a total of \$219,306.55". The first of those figures was incorrect and should have read \$198,281.55. I correct the judgment accordingly. The total remains at \$219,306.55 and the judgment does not require any further correction on this account.

[5] The second correct requested is less straightforward. Having found the debt established at \$219.306.55 I said at paragraph 15[7]:

Ms Kingsley acknowledged that she had heard of an interest rate of 8%. I fix interest on this loan at that figure.

[6] I omitted to calculate the resulting interest sum and include it in the final division of property.

[7] How interest was to be calculated was not explored at hearing beyond the inclusion in the claim for Mr Dixon of the entire sum of \$380,000 he paid to his father on the basis that it included interest.

[8] Mr Dixon's position is simple. He contends that it is to be inferred from such documentation of the loans that was available as evidence that interest was accruing on a compound basis and, so calculated, interest at 8% amounts to \$171,958.72.

[9] Ms Kingsley's position is that it is clearly established on the evidence that when Mr Dixon repaid the debt, he paid \$380,000 to discharge both principal and interest. Since Mr Dixon's claim for these loans totalled \$298,929.60 (of which only \$198,281.55 was found proved) the interest paid by Mr Dixon cannot have been more than \$81,070 (the difference between the total loan claimed and \$380,000). Since the amount found proved (\$198,281.55) was 73% of the amount claimed (\$298,929.60), interest should be calculated at \$59,181 (being 73% of \$81,070).

[10] The Family Court Rules do not provide for *recall* of judgments as do the District Court Rules and the High Court Rules. The only provision for the correction of judgments is Rule 204 which is in the same terms as its District and High Court Rules equivalent. I choose then to correct my judgment of 11 December 2015 within this judgment rather than withdrawing the judgment of 11 December 2015 and reissuing it in a corrected form.

[11] The jurisdiction under Rule 204 is to correct the "error" arising from my "omission".

[12] If I had calculated interest in the course of my Judgment of 11 December 2015 it would have become immediately apparent that the sum of \$380,000 repaid cannot be the result of the calculation of compound interest at 8% on the claim of loans of \$298,929.60 over a period of 6-7 years. That seen, the next logical proposition must have been that Mr Dixon could not receive back more in interest than he actually paid. On that basis, imperfect as it is, in the sea of obscurity and conflict that is this proceeding, the only principled outcome would have been to

calculate interest on the proportional basis argued for Ms Kingsley. I therefore fix interest at \$59,181.

[13] I now set out a corrected table of calculation:

Property Pool	
Ms Kingsley's 40% parcel of The Company shares	4,860,000.00
Nathaniel Dixon loan for [details deleted] advance	-278,487.55
John Morley debt and interest	500,000.00
The Company dividends	335,126.61
Vehicle and boats	52,889.00
Bank accounts	5,975.00
Proceeds held by DG Law	502,567.00
Interim distribution received by Mr Dixon	770,000.00
Interim distribution received by Ms Kingsley	20,000.00
Chattels and tools	40,000.00
Total	6,808,070.06

Compensation and determination of shares of relationship property		
	Mr Dixon	Ms Kingsley
Initial division of value	3,404,035.03	3,404,035.03
Section 17 compensation for Waiheke	- 50,000.00	50,000.00
Section 18B award (mortgage)	-28,588.00	28,588.00
Section 18B award (childcare)	-40,000.00	40,000.00
Section 18B award (The Company increase in value)	-750,000.00	750,000.00
Share of relationship property after compensation awards	2,535,447.03	4,272,623.03
Division of Relationship Property		
	Mr Dixon	Ms Kingsley
Ms Kingsley's 40% parcel of The Company shares		4,860,000.00
Bank account		5,975.00
Dixon loan for [details deleted] advance	-278,487.55	
John Morley debt and interest	500,000.00	
The Company dividends		335,126.61
Vehicle and boats	52,889.00	
Proceeds held by DG Law	502,567.00	
Interim distribution received by Mr Dixon	770,000.00	

Interim distribution received by Ms Kingsley		20,000.00
Chattels and tools	40,000.00	
	1,586,968.45	5,221,101.61

[16] On that corrected basis, Ms Kingsley is required to pay Mr Dixon \$948,478.58 (\$918,888.08 in the original judgment).

[17] The sum in order [181](a) is to read \$948,478.58.

D R Brown
Family Court Judge