

FAMILY LAW ACT 1975

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

AT SYDNEY

No. (P)BRC13820/2021

BETWEEN

Neumann & Turnour Lawyers
GPO Box 649
BRISBANE QLD 4001

**MELANIE BERNADETTE
COLBERT**

(Applicant)

AND

Von Doussas Legal Pty Ltd
PO Box 49
MOUNT BARKER SA 5251

ANDREW KEVIN COLBERT

(Respondent)

ORDER 16/11/2021

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FAMILY LAW ACT 1975

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

FILE NO: (P)BRC13820/2021

BETWEEN:

MELANIE BERNADETTE COLBERT (Applicant)

AND:

ANDREW KEVIN COLBERT (Respondent)

BEFORE:

DEPUTY REGISTRAR LLOYD

DATE:

16 November 2021

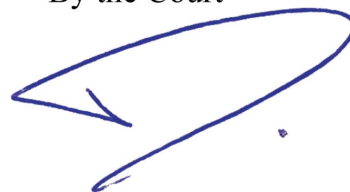
MADE AT:

SYDNEY

UPON APPLICATION TO THE COURT being considered in chambers and there being no appearance required of the parties

THE COURT ORDERS BY CONSENT and pursuant to Part 10.2 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*, orders, declarations and notations are made in terms of the “Consent Orders” attached.

By the Court



Registrar



FAMILY LAW ACT 1975

IN THE FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

AT BRISBANE (Division 2)

File No. BRC13820/2021

BETWEEN

MELANIE BERNADETTE COLBERT
(Applicant)

AND

ANDREW KEVIN COLEERT
(Respondent)

CONSENT ORDERS

BY CONSENT IT IS ORDERED


Transfer of Brighton Property

1. Within ninety (90) days of these Orders:

1.1. The Applicant shall pay to the Respondent the sum of \$81,600.00; and

1.2. The Respondent shall do all such acts and things and sign all such documents as may be required to transfer to the Applicant at the expense of the Applicant all of his right title and interest in the property situate at 8 Cremorne Place, Brighton more particularly described as Lot 7 on Survey Plan 186618 with Title Reference Number 50608092 ("the Brighton Property") subject to any encumbrances.

2. The Applicant shall do all acts and things to refinance the mortgage number 718823105 or any other liability as may be registered or secured over the Brighton Property and release and indemnify the Respondent from such mortgage or liability.


Signed by the Applicant

Dated 15 / 10 / 2021



Signed by the Respondent

Dated 13 / 10 / 2021



3. In the event the Applicant fails, omits, neglects or is otherwise unable to comply with paragraphs 1.1 and 2 of these Orders, the parties shall forthwith list the Brighton Property for sale for 3 months with the price to be agreed and with Real Estate Agents to be agreed and on such terms as agreed and failing agreement as to the agent, sale price or terms of sale, as specified by the Chief Executive Officer of the Real Estate Institute of Queensland or his/her nominee.
4. Should the Brighton Property not be sold within the specified period the same shall be auctioned with a reserve price to be agreed and with Auctioneers and Agents to be agreed and on such terms as agreed and failing agreement as to the Auctioneer, Agent or reserve price, as determined by the Chief Executive Officer of the Real Estate Institute of Queensland or his/her nominee.
5. The Respondent shall not sign any contract for sale of the Brighton property without first receiving the written consent of the Applicant such consent not to be unreasonably withheld.
6. This Order authorises any person or entity, including but not limited to:
 - 6.1. The property manager/letting agent;
 - 6.2. The selling agent;
 - 6.3. The mortgagee, being Bankwest;
 - 6.4. Conveyancing solicitor;
 - 6.5. Brisbane City Council;
 - 6.6. Queensland Urban Utilities;
 - 6.7. Any insurer;
 - 6.8. Any contractor appointed by the Respondent to undertake work at the property or to facilitate the saleto provide to the Applicant, her solicitor or her nominated agent any information and/or documents relating to the Brighton property.


Signed by the Applicant
Dated 15 / 10 / 2021

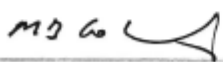

Signed by the Respondent
Dated 13 / 10 / 2021




7. Upon settlement of the sale of the Brighton Property whether by way of private treaty or public auction the proceeds of the same shall be apportioned in the following manner and priority:
- 7.1. To Real Estate Agents commission (if any);
 - 7.2. To Auctioneers and Agents fees (if any);
 - 7.3. To advertising expenses (if any);
 - 7.4. Reimbursement to either party for any of the above expenses as have been paid by either or both of the parties;
 - 7.5. the amounts required to pay all municipal and water rates outstanding with respect to the property
 - 7.6. To Bankwest being the mortgagee any and all liability owing; and
 - 7.7. As to the balance of the proceeds the same shall be paid to the Applicant.

Respondent's Retention of Tenerife Property

- 8. Within ninety (90) days of these Orders the Respondent shall do all acts and things to refinance the mortgage number 718823105 or any other liability as may be registered or secured over the property situate at Unit 708/38 Helen Street, Tenerife more particularly described as Lot 708 on Survey Plan 274449 with Title Reference Number 50986538 ("the Tenerife Property") and release and indemnify the Applicant from such mortgage or liability.
- 9. The Applicant shall, within four (4) days of receipt of the same from the Respondent, sign any documents required to release the Applicant from the mortgage number 718823105 or any other liability as may be registered or secured over the property.
- 10. In the event the Respondent fails, omits, neglects or is otherwise unable to comply with paragraph 8 of these Orders, the Respondent shall forthwith list the Tenerife Property for sale for 3 months with the price to be agreed with the Applicant and with Real Estate Agents to be agreed with the Applicant and on such terms as agreed with the Applicant and failing agreement


Signed by the Applicant
Dated 15 / 10 / 2021


Signed by the Respondent
Dated 13 / 10 / 2021



as to the agent, sale price or terms of sale, as specified by the Chief Executive Officer of the Real Estate Institute of Queensland or his/her nominee.

11. Should the Tenerife Property not be sold within the specified period the same shall be auctioned with a reserve price to be agreed with the Applicant and with Auctioneers and Agents to be agreed with the Applicant and on such terms as agreed and failing agreement as to the Auctioneer, Agent or reserve price, as determined by the Chief Executive Officer of the Real Estate Institute of Queensland or his/her nominee.
12. The Respondent shall not sign any contract for sale of the Tenerife property without first receiving the written consent of the Applicant such consent not to be unreasonably withheld.
13. Upon settlement of the sale of the Tenerife Property whether by way of private treaty or public auction the proceeds of the same shall be apportioned in the following manner and priority:
 - 13.1. To Real Estate Agents commission (if any);
 - 13.2. To Auctioneers and Agents fees (if any);
 - 13.3. To advertising expenses (if any);
 - 13.4. Reimbursement to either party for any of the above expenses as have been paid by either or both of the parties;
 - 13.5. the amounts required to pay all municipal and water rates outstanding with respect to the Property
 - 13.6. To Bankwest being the mortgagee any and all liability owing; and
 - 13.7. As to the balance of the proceeds the same shall be paid to the Respondent.
14. The Respondent shall remain responsible for and indemnify the Applicant from any capital gains tax liability incurred on the sale of the Tenerife Property.

MO GILL
Signed by the Applicant
Dated 15 / 10 / 2021

[Signature]
Signed by the Respondent
Dated 13 / 10 / 2021



Transfer of Honda Civic

15. The Respondent shall do all acts and execute all documents to transfer to the Applicant and at the Applicant's cost the registration and all the parties' right, title and interest in the Honda Civic motor vehicle with Registration Number 668 VUX ("Honda Civic").
16. The Applicant shall be solely responsible for the remaining liability secured over the Honda Civic, meet the repayments as and when they fall due and indemnify the Respondent from such liability.

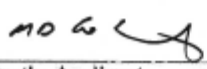
Superannuation


Valuation of Colbert Family Superannuation Fund

17. The parties in their capacity as directors of Colbert Super Pty Ltd A.C.N 165 627 181 ('the Trustee'), the Trustee for the Colbert Family Superannuation Fund ('the SMSF'), acknowledge that they have been afforded procedural fairness in the making of these Orders.
18. Within seven (7) days of the date of these Orders the parties in their capacity as directors of the Trustee shall do all such acts and things necessary to value each parties' interest in the SMSF as at 30 June 2020 and in particular shall:
 - 18.1. Engage Karen Barnes, Chartered Accountant of Green Frog Super ('Green Frog Super') to prepare the financial statements and income tax return for the SMSF for the financial year ended 30 June 2020.
 - 18.2. pay existing tax liabilities for the SMSF from the funds by the SMSF; and
 - 18.3. pay Green Frog Super any fees relating to the preparation of the financial statements and income tax return for the SMSF for the financial year ended 30 June 2020.

Roll Over of Applicant's Interest in SMSF

19. Within seven (7) days of the completion of the steps referred to in paragraph 18:
 - 19.1. The Applicant and Respondent shall each do all things necessary and sign all such documents as are required in their respective capacity as directors of the Trustee to effect a


Signed by the Applicant
Dated 15 / 10 / 2021


Signed by the Respondent
Dated 13 / 10 / 2021



rollover of the Applicant's entitlement in the SMSF (such entitlement being the sum of the Applicant's balance as at 30 June 2020 plus or minus contributions and life insurance premiums, net of tax, made by or on behalf of the Applicant between 30 June 2020 and the making of these Orders) to such new regulated fund as she shall nominate ("New Fund").

19.2. For the purposes of the roll over of the Applicant's entitlement in accordance with the provisions of sub-paragraph 19.1 to the New Fund:

19.2.1. the Applicant nominate the name of the New Fund on or before the expiration of 14 days of the date of these Orders.

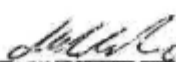
19.2.2. the Applicant's entitlement in the Fund be paid to the New Fund in cash.

19.2.3. if the roll over is not effected within thirty (30) days of the valuation of the Applicant's entitlement by Green Frog Super, interest be paid by the Fund on the Applicant's entitlement in the Fund at the rate set under reg 45D of the Family Law (Superannuation) Regulations until the date the Applicant's entitlement in the SMSF is paid to the New Fund.

Split of Respondent's Interest

20. That in accordance with s 90XT(1)(a) of the Family Law Act 1975, whenever a splittable payment becomes payable in respect of the superannuation interests of the Respondent in the SMSF, the Applicant will be entitled to be paid an amount calculated in accordance with Part 6 of the *Family Law (Superannuation) Regulations 2001* using the base amount calculated in accordance with paragraph 28 and there will be a corresponding reduction in the entitlement of the Respondent would have had but for this order.
21. That paragraph 20 of these Orders shall take effect from the operative time.
22. The operative time for these Orders is four business (4) days after the service of these sealed Orders upon the Trustee.
23. These Orders bind the Trustee.


Signed by the Applicant
Dated 15 / 10 / 2021


Signed by the Respondent
Dated 13 / 10 / 2021



24. Paragraphs 17 to 23 of these Orders shall be binding on the Applicant and Respondent and their executors, administrators and personal representatives.
25. In calculating the Applicant's entitlement to be rolled out pursuant to paragraph 19 and the Applicant's entitlement pursuant to paragraph 20, the cost of the preparation of and calculating the amounts due to the Applicant (including capital gains tax) will be borne by the parties in proportion to their interests in the fund.

Applicant's Resignation from SMSF

26. Contemporaneously with the completion of paragraphs 19 and 20 of these Orders, the Applicant shall:

26.1. resign as a director of Colbert Super Pty Ltd; and

26.2. transfer to the Respondent, at the expense of the Respondent, her shareholdings in Colbert Super Pty Ltd.

27. Upon the Applicant's compliance with paragraph 26 of these Orders, the Respondent shall be responsible for and indemnify the Applicant with regard to all liability of the Applicant arising out of the Applicant's involvement in the SMSF, including any and all liability for payment of tax to the Deputy Commissioner of Taxation with respect to that superannuation fund.

28. For the purpose of calculating the base amount of the split of the Respondent's interest in the SMSF pursuant to these Orders, the parties agree:

28.1. The value of the parties' interests in the SMSF shall be calculated in accordance with paragraph 18 above ("SMSF Value").

28.2. The value of the Applicant's roll over from the SMSF shall be in accordance with paragraph 19.2.2 above ("Applicant's SMSF interest").

28.3. The base amount of the split of the Respondent's interest in the fund shall be calculated using the formula:

$$\text{Base Amount} = ((\$6,000 + \text{SMSF Value}) \div 2) - \text{Applicant's SMSF interest}$$


Signed by the Applicant

Dated 15 / 10 / 2021


Signed by the Respondent

Dated 13 / 10 / 2021



Other Property

29. Except as otherwise provided by these Orders, the Applicant shall retain:

29.1. all monies in bank accounts, Building Societies and Credit Unions;

29.2. motor vehicles;

29.3. shares, managed funds, other investments and equities;

29.4. insurance policies;

29.5. her superannuation interest in QSuper;

29.6. jewellery and personal effects; and

29.7. furniture and chattels.

in her name, possession or control not otherwise dealt with in these Orders and relinquish any claim upon the same in the name, possession or control of the Respondent.

30. Except as otherwise provided by these Orders, the Respondent shall retain:

30.1. all monies in bank accounts, Building Societies and Credit Unions;

30.2. motor vehicles;

30.3. shares, managed funds, other investments and equities;

30.4. insurance policies;

30.5. his superannuation interest in Sunsuper;

30.6. jewellery and personal effects; and

30.7. furniture and chattels.

in his name, possession or control not otherwise dealt with in these Orders and relinquish any claim upon the same in the name, possession or control of the Applicant.


Signed by the Applicant

Dated 15 / 10 / 2021


Signed by the Respondent

Dated 13 / 10 / 2021



31. Each party relinquishes any right, title or interest in or to any inheritance, redundancy or other work-related entitlement in the name of the other.

Liabilities


32. Each party shall be responsible for their own debts and any other liability in their own name not otherwise dealt with in these Orders and meet the payments when due and do all acts and things, sign all documents and writing and pay all moneys necessary to indemnify and keep indemnified the other party from all claims, actions, suits or demands in relation to or arising out of such debts.


Default – Section 106A

33. The parties shall do all acts and things and execute all Deeds and instruments to give effect to the terms hereof.
34. That if either party refuses or neglects to sign (within fourteen (14) days of a written request to do so) any document necessary to effect the terms of these Orders, the Registrar or a Deputy Registrar of the Family Court of Australia at Brisbane is hereby appointed pursuant to the provisions of Section 106A of the *Family Law Act 1975* (as amended) to execute all such documents in the name of the party in default and to do all such acts and things necessary to give validity and operation to these Orders and the party in default shall pay to the other party to this Application that party's costs and disbursements.
35. Each party bear their own costs of and incidental to this Application.

NOTATION

- A. In the financial year ended 30 June 2020 the Respondent made a withdrawal of \$10,000 from the parties' self-managed superannuation fund by way of a partial property settlement.
- B. The parties have agreed to adopt their financial positions as at 30 June 2020 for the purposes of these Orders.
- C. The parties agree that upon the making of these Orders each is able to support themselves without:


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Dated 15 / 10 / 2021

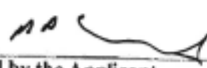

Signed by the Respondent
Dated 13 / 10 / 2021

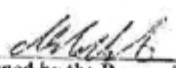


a) an income tested pension, allowance or benefit; and

b) maintenance from the other party

and each party relinquishes any claim for maintenance from the other.


Signed by the Applicant
Dated 15 / 10 / 2021


Signed by the Respondent
Dated 13 / 10 / 2021

