

FAMILY LAW ACT 1975

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

AT ADELAIDE

No. (P)BRC5743/2023

BETWEEN

McInnes Wilson Lawyers
23/345 Queen Street
BRISBANE QLD 4000

GAIL JENKINS

(Applicant)

AND

Mccarthy Durie Lawyers - Brisbane
Office
Level 7 239 George Street
BRISBANE QLD 4000

BRETT JENKINS

(Respondent)

FINAL ORDER 24/5/2023

FAMILY LAW ACT 1975

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

FILE NO: (P)BRC5743/2023

BETWEEN:

GAIL JENKINS

(Applicant)

AND:

BRETT JENKINS

(Respondent)

BEFORE:

DEPUTY REGISTRAR EKERT

DATE:

24 May 2023

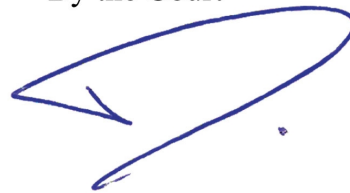
MADE AT:

ADELAIDE

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 2001*, 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

File No. of 2023

BETWEEN

GAIL JENKINS
(Applicant)

AND

BRETT JENKINS
(Respondent)

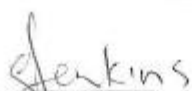
CONSENT ORDERS

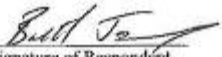
BY CONSENT IT IS ORDERED ON A FINAL BASIS:

Definitions

1. The following terms have the meaning set out below:

- (a) **Settlement sum** is equal to \$319,325.
- (b) **Funds held in McInnes Wilson Lawyers Trust Account** are the funds held in file number 153780A (MCW as Stakeholder for Brett Jenkins and Gail Jenkins as trustee for the Jenkins Investment Trust) and are equal to \$414,730.50.
- (c) **Jenko & Sons Pty Ltd ATF B & G Jenkins Family Trust** is Jenko & Sons Pty Ltd ACN 123 045 296 of which the Husband is the sole director.
- (d) **Jenkins Investment Trust** is a trust of which the Husband and Wife are both appointors and trustees of and holds the following real properties:
 - (i) a property situated at 80 Landsberg Drive, Stanage, more particularly described as Lot 125, Crown Plan PS175, Title Reference 30627179 (**Landsberg Drive property**);
 - (ii) a property situated at 41 Lancewood Drive, Barcaldine, more particularly described as Lot 51, Survey Plan 249553, Title Reference 50865005 (**41 Lancewood Drive property**);


Signature of Applicant
Gail Jenkins


Signature of Respondent
Brett Jenkins



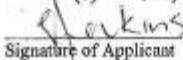
- (iii) a property situated at 45 Lancewood Drive, Barcaldine, more particularly described as Lot 52, Survey Plan 249553, Title Reference 50865006 (**45 Lancewood Drive property**);
- (iv) a property situated at 49 Lancewood Drive, Barcaldine, more particularly described as Lot 53, Survey Plan 249553, Title Reference 50865007 (**49 Lancewood Drive property**);
- (v) a property situated at 16 Beefwood Drive, Barcaldine, more particularly described as Lot 54, Survey Plan 249553, Title Reference 50865008 (**Beefwood Drive property**).
- (e) **Jenkins Dream Retirement Fund** is the self-managed super fund of which Jenko Super Pty Ltd ACN 631 323 272 is the corporate trustee of.
- (f) **The Fir Street property** is a property situated at 117 Fir Street, Barcaldine, more particularly described as Lot 1, Registered Plan 612957, Title Reference 30454097.
- (g) **The Boree Street property** is a property situated at 56 Boree Street, Barcaldine, more particularly described as Lot 11, Registered Plan 614456, Title Reference 30485160.
- (h) **Joint account** is the Westpac Choice Basic bank account with the BSB 734 121 and account number 508954.
- (i) **Viridian Line of Credit** is the Commonwealth Bank of Australia Viridian Line of Credit account with the BSB 064 175 and account number 10314898.

Funds held in McInnes Wilson Lawyers Trust Account

- 2. Within 48 hours of the date of this Order, the funds held in the McInnes Wilson Lawyers Trust Account are to be distributed as follows:
 - (a) \$400,731.50 to the Husband, \$400,000 of which is to be paid to Mary Lynch in full and final satisfaction of any monies owed to her; and
 - (b) \$14,000 to the Wife to form part of the settlement sum.

Settlement Sum

- 3. The Husband is to pay or cause to be paid the balance of the settlement sum to the Wife as follows:
 - (a) \$180,325 within 28 days of the date of this Order;
 - (b) \$62,500 on or before 31 December 2023; and
 - (c) \$62,500 on or before 31 December 2024.


Signature of Applicant
Gail Jenkins


Signature of Respondent
Brett Jenkins



Superannuation rollover

4. That in relation to the Jenkins Dream Retirement Fund ("the SMSF")

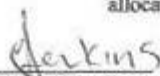
(a) In making these Orders the Court notes:

- (i) the SMSF is a self-managed superannuation fund listed by the Australian Taxation Office on the Super Fund Lookup Website as a complying superannuation fund;
- (ii) the SMSF was established under a Deed of Trust. The Rules governing the operation of the SMSF are contained in the Deed of Trust ("the Rules");
- (iii) the Applicant Wife and the Respondent Husband are members of the SMSF;
- (iv) the Trustee of the SMSF is Jenko Super Pty Ltd ACN 631 323 272 ("the trustee company") of which the Applicant Wife and Respondent Husband are both directors;
- (v) The Applicant Wife has a member account in the SMSF and in accordance with s 90XT(2) of the Family Law Act 1975 (Cth) as at 6 December 2022 the balance of that account was approximately \$191,346.19;
- (vi) The Respondent Husband has a member account in the SMSF and in accordance with s 90XT(2) of the Family Law Act 1975 (Cth) as at 6 December 2022 the balance of that account was approximately \$201,701.50;
- (vii) That the requirements of procedural fairness in accordance with s 90XZD of the Family Law Act 1975 (Cth) have been observed on the basis that the Applicant Wife and Respondent Husband are directors of the trustee company of the SMSF.

5. That within 60 days of the date of this Order, in accordance with section 90XT(4) of the *Family Law Act 1975*, a base amount of \$75,000 is allocated to the Wife's interest in the Jenkins Dream Retirement Fund out of Husband's interest in the Jenkins Dream Retirement Fund.

6. That, in accordance with section 90XT(1)(a) of the *Family Law Act 1975*:

- (b) the Wife (or Wife's administrators, executors, beneficiaries, heirs or assigns), to the extent permitted by law, is entitled to be paid, using the base amount allocated in the immediately preceding order, the amount calculated in


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Gail Jenkins


Signature of Respondent
Brett Jenkins



accordance with Part 6 of the *Family Law (Superannuation) Regulations 2001*; and

- (a) the entitlement of Husband in the Jenkins Dream Retirement Fund (or the entitlement of such other person who becomes entitled to receive a payment out of Husband's superannuation interest) is correspondingly reduced by force of this Order.
7. That the Husband and Wife in their capacity as directors of Jenko Super Pty Ltd as trustee for the Jenkins Dream Retirement Fund ("the trustee") shall do all such acts and things and sign all such documents as may be necessary to:
 - (a) calculate, in accordance with the requirements of the *Family Law Act 1975* the entitlement awarded to the Wife in the immediately preceding clause of this Order; and
 - (a) pay the entitlement whenever the trustee makes a splittable payment from Husband's interest in the Jenkins Dream Retirement Fund.
8. That this Order has effect from the operative time and the operative time is 7 days from the date of this Order.
9. Within 14 days of compliance with Order 5, the parties shall do all things necessary and sign all such documents that may be necessary to rollover or transfer the entitlement of the Wife in the Jenkins Dream Superannuation Fund to another complying superannuation fund of the Wife's choosing.
10. That contemporaneously with Order 9, the Husband and Wife shall sign (or cause to be signed) all necessary documents and do all acts and things necessary for the Wife to:
 - (a) resign as a member of the Jenkins Dream Retirement Fund;
 - (b) resign as a director of Jenko Super Pty Ltd.
 - (c) transfer the Wife's shareholding in Jenko Super Pty Ltd to the Husband.
11. Upon completion of Order 10, the Husband shall thereafter:
 - (a) be solely responsible for the management and control of the Jenkins Dream Retirement Fund;
 - (b) indemnify and keep the Wife indemnified against any costs of administering the Fund.


Signature of Applicant
Gail Jenkins


Signature of Respondent
Brett Jenkins



Default of payment of Settlement Sum

12. In the event the Husband fails to make payment of any portion of the settlement sum to the Wife by the dates specified in Order 3, or such other time as agreed between the parties in writing, then the Husband is to do all things necessary to effect the sale of the following properties in the following order of priority, with each consecutive property to be listed for sale within 7 days of settlement of the prior property until the Wife's settlement sum is paid (more than one if necessary):

- (a) the Landsberg Drive property;
- (b) the Beefwood Drive property;
- (c) the 49 Lancewood Drive property;
- (d) the 45 Lancewood Drive property;
- (e) the 41 Lancewood Drive property.

collectively referred to as ("the properties").

13. For the purposes of Order 12, the following will apply:

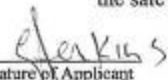
- (a) within 28 days of the Husband's default, the Landsberg property is to be listed for sale by private treaty with a real estate as is agreed between the parties and failing agreement, then as nominated by the Real Estate Institute of Queensland (**the Agent**) and each property thereafter listed for sale within 7 days of settlement of the prior property;
- (b) the list prices of the properties are to be at least as set out at (i) to (v) herein, unless otherwise agreed between the parties in writing, or as recommended by the Agent, with the parties to adopt the Agent's recommendations as to the list price.
 - (i) \$100,000 for the Beefwood Drive property;
 - (ii) \$395,000 for the Landsberg Drive property;
 - (iii) \$45,000 for the 49 Lancewood Drive property;
 - (iv) \$40,000 for the 45 Lancewood Drive property;
 - (v) \$40,000 for 41 Lancewood Drive property.
- (c) the sale price of each property is to be agreed between the parties and failing agreement any offer to buy a property that is at least 95% of the list price be accepted by the parties as the sale price;



Signature of Applicant
Gail Jenkins


Signature of Respondent
Brett Jenkins



- (d) the Husband is to co-operate in every way with the Agent in relation to the marketing of any of the properties for sale including making the key readily available, allowing inspection of the property at all times reasonably requested by the Agent and ensuring that the property is clean, neat and in good order at the time of inspection by any prospective buyer;
 - (e) upon agreement being reached for sale of any of the properties the Husband will execute the contract of sale and all other documents necessary to complete the sale of the property including all transfer documentation upon its submission to them by the agent or their solicitor;
 - (f) the contract of sale will provide for completion within 30 days after the date of the contract;
 - (g) The proceeds of sale of any of the properties will be paid in the following manner and priority:
 - (i) to discharge any mortgage secured over the property;
 - (ii) to pay any sale payment of the agent's commission and advertising or other expenses, if any, payable on the sale;
 - (iii) to pay any capital gains tax;
 - (iv) such sum to the Wife that is outstanding pursuant to Order 3; and
 - (v) the balance (if any) to the Husband.
14. In the event that any of the properties are not sold by private treaty pursuant to Order 13 within 3 months of its listing, then the Husband is to do all things necessary to sell the property by auction and the following is to apply:
- (a) the properties will be listed with the Agent appointed under Order 13(a) (the Auctioneer) for sale by auction within a further 3 months;
 - (b) the Husband will execute all documents requested by the auctioneer for sale of the properties by auction.
 - (c) the reserve price of any of the properties will be determined in accordance with Order 13(b);
 - (d) the Husband will pay the Auctioneer any sums requested for advertising or auction expenses;
 - (e) the Husband will give such instructions as are necessary to a solicitor to prepare a contract of sale and provide it to the Auctioneer prior to the auction no later than the date sought by the Auctioneer;
 - (f) the Husband agrees to co-operate in every way with the auctioneer in relation to the sale by auction including allowing inspection of any of the properties at all


Signature of Applicant
Gail Jenkins


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Brett Jenkins



times reasonably requested by the auctioneer and ensuring that those properties are clean, neat and in good order at the time of any inspection and on the day of auction;

- (g) the sale price of any of the properties will be any amount in excess of the reserve price but in the event of the reserve price not being reached, the sale price of the property will be such amount as is agreed between the parties or failing agreement any offer received after the auction to buy any of the properties at a price that is at least 90% of the reserve price will be accepted by the Husband;
 - (h) that the Husband is to attend at the auction and negotiate with the highest bidder or any other interested party in the event that the reserve price is not reached, for the purpose of reaching agreement under Order 14(g);
 - (i) that upon agreement being reached for sale of any of the properties, Orders 13(e) 13(f), 13(g) will apply.
15. In the event that any of the properties are not sold at the auction pursuant to Order 14 or within 14 days after the date of the auction by further negotiation, then the Husband is to cause a further auction of the property being sold to be held within 3 months after the date of the first auction and every 3 months thereafter until that property is sold with the reserve price to be decreased by 5% each time and for that purpose the provisions of Order 14 will apply.
16. Should the Husband sell or dispose of any of the properties outlined at Order 12 before the full settlement sum has been paid to the Wife, the Wife is to be paid any monies payable to her pursuant to Order 3 at settlement of the property, even if the due date for such payment has not yet occurred.
17. Pending compliance with Order 3, the Husband is restrained from further encumbering any property outlined at Order 12 without written agreement from the Wife, or unless it is for the purpose of making payment of the settlement sum to the Wife pursuant to this Order.
18. In the event that, even after all properties listed at Order 12 are sold (or in the event they are unable to be sold), the full settlement sum has not been paid to the Wife, the Court allocates such sum that is equivalent to the outstanding monies owed to the Wife pursuant to Order 3 to the Wife out of the Husband's interest in the Jenkins Dream Retirement Fund pursuant to Order 19 below.

Superannuation split (if required)

19. That Orders 4(a)(i) to (vii) apply and in accordance with section 90XT(1)(a) of the *Family Law Act 1975*:


Signature of Applicant
Gail Jenkins


Signature of Respondent
Brett Jenkins



- (j) the Wife (or Wife's administrators, executors, beneficiaries, heirs or assigns), to the extent permitted by law, is entitled to be paid a base amount to be determined subject the outstanding settlement sum owing to the Respondent as determined at Order 3 of these Orders, the amount calculated in accordance with Part 6 of the *Family Law (Superannuation) Regulations 2001*; and
 - (k) the entitlement of Husband in the Jenkins Dream Retirement Fund (or the entitlement of such other person who becomes entitled to receive a payment out of Husband's superannuation interest) is correspondingly reduced by force of this Order.
20. That the Husband in his capacity as director of Jenko Super Pty Ltd as trustee for the Jenkins Dream Retirement Fund ("the trustee") shall do all such acts and things and sign all such documents as may be necessary to:
- (a) calculate, in accordance with the requirements of the *Family Law Act 1975* the entitlement awarded to the Wife in the immediately preceding clause of this Order; and
 - (b) pay the entitlement whenever the trustee makes a splittable payment from Husband's interest in the Jenkins Dream Retirement Fund.
21. That this Order has effect from the operative time and the operative time is 14 days from settlement of the last property referred to in Order 12.
22. The parties shall do all such things and sign all documents necessary for the rollover or transfer the Wife's new interest in the Jenkins Dream Retirement Fund to a complying superannuation fund of the Wife's choosing.
23. The Husband is restrained from withdrawing his member balance from, or winding up, the Jenkins Dream Retirement Fund until payment of the settlement sum to the Wife has been made in full, or 31 December 2024, whichever occurs first.

Sale of the Fir Street property

24. The Husband and Wife will do all things necessary to effect the sale of the Fir Street property and for that purpose the following apply:
- (a) within 14 days of the date of this Order the Fir Street property will be listed for sale by private treaty with a real estate agent as is agreed between the parties and failing agreement then as nominated by the Real Estate Institute of Queensland (**the Agent**) AND IT IS NOTED the Fir Street property is already listed for sale;
 - (b) the list price of the Fir Street property is to at least \$280,000 unless otherwise recommended by the Agent or agreed by the parties in writing, with the parties to accept the recommendation of the Agent;


Signature of Applicant
Gail Jenkins


Signature of Respondent
Brett Jenkins



- (c) the sale price of the Fir Street property is to be agreed between the parties and failing agreement any offer to buy the property that is at least 95% of the list price be accepted by the parties as the sale price;
 - (d) the parties are to co-operate in every way with the Agent in relation to the marketing of the Fir Street property for sale including making the key readily available, allowing inspection of the property at all times reasonably requested by the Agent and ensuring that the property is clean, neat and in good order at the time of inspection by any prospective buyer;
 - (e) upon agreement being reached for sale of the Fir Street property the parties will execute the contract of sale and all other documents necessary to complete the sale of the property including all transfer documentation upon its submission to them by the agent or their solicitor;
 - (f) the contract of sale will provide for completion within 30 days after the date of the contract;
 - (g) The proceeds of sale of Fir Street property will be paid in the following manner and priority:
 - (i) payment of the agent's commission and advertising or other expenses, if any, payable on the sale;
 - (ii) payment of the legal costs and outlays relating to the sale;
 - (iii) payment of any capital gains tax;
 - (iv) the balance to discharge the mortgage secured over the Boree Street property, specifically Commonwealth Bank of Australia Mortgage No. 717462684; and
 - (v) the balance, if any, to the Wife with the Settlement Sum to be correspondingly reduced by such amount.
25. In the event that the Fir Street property is not sold by private treaty pursuant to Order 24 on or before six months from the date of this Order then the Husband and Wife are to do all things necessary to sell the property by auction and the following applies:
- (a) the Fir Street property will be listed with the Agent appointed under Order 24(a) (the Auctioneer) for sale by auction within a further 3 months;
 - (b) the parties will execute all documents requested by the auctioneer for sale of the Fir Street property by auction.
 - (c) the reserve price of the Fir Street property will be at least \$280,000 unless otherwise agreed by the parties are recommended by the Auctioneer;
 - (d) the Husband will pay the Auctioneer any sums requested for advertising or auction expenses which will be reimbursed from the proceeds of sale;


 Signature of Applicant
 Gail Jenkins


 Signature of Respondent
 Brett Jenkins




- (c) the parties will give such instructions as are necessary to a solicitor to prepare a contract of sale and provide it to the Auctioneer prior to the auction no later than the date sought by the Auctioneer;
 - (f) the parties agree to co-operate in every way with the auctioneer in relation to the sale by auction including allowing inspection of the Fir Street property at all times reasonably requested by the auctioneer and ensuring that the property is clean, neat and in good order at the time of any inspection and on the day of auction;
 - (g) the sale price of the property will be any amount in excess of the reserve price but in the event of the reserve price not being reached the sale price of the Fir Street property will be such amount as is agreed between the parties or failing agreement any offer received after the auction to buy the property at a price that is at least 90% of the reserve price will be accepted by the parties;
 - (h) that the parties attend at the auction and negotiate with the highest bidder or any other interested party in the event that the reserve price is not reached, for the purpose of reaching agreement under Order 25(g);
 - (i) that upon agreement being reached for sale of the property, Orders 24(e) 24(f) and 24(g) will apply.
26. In the event that the Fir Street property is not sold at the auction pursuant to Order 25 or within 14 days after the date of the auction by further negotiation, then the Husband and Wife will cause a further auction of the Fir Street property to be held within 3 months after the date of the first auction and every 3 months thereafter until the Fir Street property is sold with the reserve price to be decreased by 5% each time and for that purpose the provisions of Order 25 will apply.

Transfer and discharge of the Boree Street property

27. In the event the balance of the sale proceeds from the Fir Street property pursuant to Order 24 (g) are insufficient to discharge the mortgage secured over the Boree Street property, the Husband is to do all things necessary to discharge the mortgage secured over the property within a further 28 days of the settlement of the Fir Street property, failing which he is to refinance the mortgage into his sole name, secured against such other asset in his sole name, contemporaneous with the transfer of the Boree Street property pursuant to Order 30.
28. That if the Husband is unable to refinance the mortgage pursuant to Order 27, then Orders 13 and 14 shall apply with the sale proceeds to be distributed as follows:
- (a) to discharge any mortgage secured over the property sold;


Signature of Applicant
Gail Jenkins


Signature of Respondent
Brett Jenkins



- (b) to pay any sale payment of the agent's commission and advertising or other expenses, if any, payable on the sale;
 - (c) to pay any capital gains tax;
 - (d) to pay the sum owing on the Boree Street Property mortgage such that the mortgage is discharged; and
 - (e) the balance (if any) to the Husband.
29. Pending discharge of the mortgage secured over the Boree Street property, or the Husband refinancing the mortgage into his sole name, the Husband will be responsible for all mortgage payments and rates associated with the Boree Street property as they fall due, with the Wife to be responsible for all other outgoings.
30. Within 28 days of settlement of the Fir Street property, the Husband and Wife are to do all things to transfer the Husband's right, title and interest in the Boree Street property to the Wife, at the Wife's cost.
31. Pending the transfer referred to at Order 30, the Wife will have the sole right to occupy the Boree Street property.
32. Within 7 days of the date of this Order, the Husband is to do all things necessary to list the Wife as an authorised representative on the current Boree Street insurance policy to ensure she is able to communicate with, and receive information from the insurance company and within a further 7 days of the Boree Street property being transferred to the Wife, the Wife is to be responsible for the premiums on the existing insurance policy and then obtain a new policy once the pending insurance claim is finalised.

Jenko & Sons Pty Ltd ATF B & G Jenkins Family Trust

33. Within 28 days of the date of this Order the Husband and Wife will, at the cost of the Husband, do all things necessary for the Wife to:
- (a) transfer her shareholding in Jenko & Sons Pty Ltd to the Husband;
 - (b) relinquish all beneficial entitlements and/or loan accounts in the B & G Jenkins Family Trust Family Trust and/or Jenko & Sons Pty Ltd in her favour;
 - (c) transfer to the Husband any debt or debts owing to the parties either jointly or severally by the B & G Jenkins Family Trust and/or Jenko & Sons Pty Ltd;
 - (d) resign as trustee and appointor of the B & G Jenkins Family Trust;
 - (e) be released from and indemnified against any loan or liability owed to Mary Lynch;


Signature of Applicant
Gail Jenkins


Signature of Respondent
Brett Jenkins



- (f) transfer all the her right, title and interest in the following assets to the Husband, at the expense of the Husband:
- (i) loan accounts in Jenko & Sons Pty Ltd;
 - (ii) undistributed profits in Jenko & Sons Pty Ltd Pty Ltd;
 - (iii) loan accounts in B & G Jenkins Family Trust;
 - (iv) allocated but undistributed profits in B & G Jenkins Family Trust;
 - (v) undistributed profits in B & G Jenkins Family Trust.
34. The Husband and Wife will do all things necessary to release the Wife from and indemnify the Wife against any liability present or contingent including tax and bank liabilities, in respect of Jenko & Sons Pty Ltd and B & G Jenkins Family Trust.
35. The Husband will be responsible for all income tax assessed on income received or deemed to have been received by the Wife with respect to Jenko & Sons Pty Ltd and B & G Jenkins Family Trust for any year with outstanding tax returns, including but not limited to the income tax years ending 30 June 2022 and from 1 July 2022 to the date of these Orders.
36. The Husband will be responsible for and indemnify the Wife with respect to any capital gains tax assessed on any asset being transferred to or received by the Husband or Jenko & Sons Pty Ltd or B & G Jenkins Family Trust pursuant to this Order.

Jenkins Investment Trust

37. Within 28 days of the date of this Order the Husband and Wife will, at the cost of the Husband, do all things necessary for the Wife to:
- (a) transfer her shareholding in the Jenkins Investment Trust to the Husband;
 - (b) relinquish all beneficial entitlements and/or loan accounts in the Jenkins Investment Trust in her favour;
 - (c) transfer to the Husband any debt or debts owing to the parties either jointly or severally by the Jenkins Investment Trust;
 - (d) resign as trustee and appointor of the Jenkins Investment Trust;
 - (e) be released and indemnified against any liability she has to the Commonwealth Bank of Australia pursuant to the terms of the mortgage secured over the Landsberg Drive property, specifically Mortgage No. 720791606;


Signature of Applicant
Gail Jenkins


Signature of Respondent
Brett Jenkins



- (f) transfer all her right, title and interest in the following assets to the Husband, at the expense of the Husband:
- (i) loan accounts in the Jenkins Investment Trust;
 - (ii) allocated but undistributed profits in the Jenkins Investment Trust;
 - (iii) undistributed profits in Jenkins Investment Trust;
 - (iv) the Commonwealth Bank of Australia Business Transaction Account ending 6404;
 - (v) the 41 Lancewood Drive property;
 - (vi) the 45 Lancewood Drive property;
 - (vii) the 49 Lancewood Drive property;
 - (viii) the Landsberg Drive property;
 - (ix) the Beefwood Drive property.
38. The Husband and Wife will do all things necessary to release the Wife from and indemnify the Wife against any liability present or contingent including tax and bank liabilities in respect of the Jenkins Investment Trust, including Mortgage No. 720791606 in favour of the Commonwealth Bank of Australia.
39. In the event the Husband is unwilling or unable to release the Wife from any liability she has to the Commonwealth Bank of Australia pursuant to the terms of Mortgage No. 720791606 within 60 days of the date of this Order, then the Husband is to do all things necessary to sell the Landsberg Drive property unless it is already sold pursuant to Order 12 and for that purpose the following applies:
- (a) within 14 days of the Husband's default of Order 38, the property is to be listed for sale by private treaty with a real estate agent as is agreed between the parties and failing agreement then as nominated by the Real Estate Institute of Queensland (**the Agent**);
 - (b) the list price of the property is to be at least \$395,000 unless otherwise recommended by the Agent or agreed by the parties in writing;
 - (c) the sale price of the property is to be agreed between the parties and failing agreement any offer to buy the property that is at least 90% of the list price be accepted by the parties as the sale price.
 - (d) the Husband is to co-operate in every way with the Agent in relation to the marketing of the property for sale including making the key readily available, allowing inspection of the property at all times reasonably requested by the


Signature of Applicant
Gail Jenkins


Signature of Respondent
Brett Jenkins



Agent and ensuring that the property is clean, neat and in good order at the time of inspection by any prospective buyer;

- (e) upon agreement being reached for sale of the property the Husband will execute the contract of sale and all other documents necessary to complete the sale of the property including all transfer documentation upon its submission to them by the agent or their solicitor;
 - (f) the contract of sale will provide for completion within 30 days after the date of the contract;
 - (g) The proceeds of sale of the property will be paid in the following manner and priority:
 - (i) payment of the agent's commission and advertising or other expenses, if any, payable on the sale;
 - (ii) payment of the legal costs and outlays relating to the sale;
 - (iii) the balance to discharge the mortgage secured over the property, specifically Mortgage No. No. 720791606.
 - (iv) such sum to the Wife to satisfy any remaining balance of the Settlement Sum; and
 - (v) the balance, if any, to the Husband.
40. In the event the balance of the sale proceeds is insufficient to discharge the mortgage secured over the Landsberg Drive property, the Husband is to do all things necessary to discharge the mortgage secured over the property within 28 days or secure it to such other asset provided the Wife is released from any liability to that mortgage.
41. In the event the Landsberg Drive property is not sold by private treaty pursuant to Order 39 within 3 months, then the Husband is to do all things necessary to sell the property by auction and the following apply:
- (a) the property will be listed with the Agent appointed under Order 39(a) (the **Auctioneer**) for sale by auction within a further 3 months;
 - (b) the Husband will execute all documents requested by the auctioneer for sale of the property by auction.
 - (c) the reserve price of the property will be at least \$395,000 unless otherwise agreed by the parties are recommended by the Auctioneer;
 - (d) the Husband will pay the Auctioneer any sums requested for advertising or auction expenses which will be reimbursed from the proceeds of sale;


Signature of Applicant
Gail Jenkins



Signature of Respondent
Brett Jenkins



- (e) the Husband will give such instructions as are necessary to a solicitor to prepare a contract of sale and provide it to the Auctioneer prior to the auction no later than the date sought by the Auctioneer;
 - (f) the Husband is to co-operate in every way with the auctioneer in relation to the sale by auction including allowing inspection of the property at all times reasonably requested by the auctioneer and ensuring that the property is clean, neat and in good order at the time of any inspection and on the day of auction;
 - (g) the sale price of the property will be any amount in excess of the reserve price but in the event of the reserve price not being reached the sale price of the property will be such amount as is agreed between the parties or failing agreement any offer received after the auction to buy the property at a price that is at least 80% of the reserve price will be accepted by the Husband;
 - (h) the Husband will attend at the auction and negotiate with the highest bidder or any other interested party in the event that the reserve price is not reached, for the purpose of reaching agreement under Order 41(h).
 - (i) that upon agreement being reached for sale of the property, Orders 39(e) 39(f), 39(g) and 40 will apply.
42. In the event that the Landsberg Drive property is not sold at the auction pursuant to Order 41 or within 14 days after the date of the auction by further negotiation, then the Husband will cause a further auction of the property to be held within 3 months after the date of the first auction and every 3 months thereafter until the property is sold with the reserve price to be decreased by 5% each time and for that purpose the provisions of Order 41 will apply.
43. The Husband is to be solely responsible for and indemnify the Wife against any capital gains tax payable on the sale of the Landsberg Drive property.
44. The Husband will be responsible for all income tax assessed on income received or deemed to have been received by the Wife with respect to the Jenkins Investment Trust for any year with outstanding tax returns, including but not limited to the income tax years ending 30 June 2022 and from 1 July 2022 to the date of these Orders.
45. The Husband will be responsible for and indemnify the Wife with respect to any capital gains tax assessed on any asset being transferred to or received by the Husband or Jenko & Sons Pty Ltd or B & G Jenkins Family Trust pursuant to this Order.

Joint account

46. That within 14 days of the date of this Order, the Husband and Wife will do all things necessary to close all joint accounts and the parties are thereafter to divide the balance (if any) equally.


Signature of Applicant
Gail Jenkins


Signature of Respondent
Brett Jenkins



Viridian Line of Credit


47. That within 14 days of the date of this Order, the Husband is to refinance the Viridian Line of Credit into his sole name and indemnify the Wife against any liability she has to the Commonwealth Bank of Australia as a result of the line of credit.
48. In the event the Husband is unable to refinance the Viridian Line of Credit into his sole name, the account is to be closed and the Husband is to pay any outstanding balance.

Motor vehicle

49. In the event the 2002 Nissan Patrol GU Wagon is not already registered in the Wife's name, within 14 days of the date of this Order, the Husband and Wife are to do all things necessary to transfer all of the Husband's right, title and interest in the 2002 Nissan Patrol GU Wagon to the Wife, at the Wife's cost.

All other property

50. Unless otherwise specified in this Order, the Wife is to be declared the sole, legal and beneficial owner in the following:
- (a) the Boree Street property;
 - (b) the 2022 Nissan Patrol GU Wagon;
 - (c) any furniture and contents situated in the Boree Street property, save for the items mentioned at Order 51(h);
 - (d) any bank accounts in her sole name;
 - (e) any funds held in the McInnes Wilson Lawyers Trust Account on account of her legal fees (file number 153780);
 - (f) her interest in Australian Retirement Trust (QSuper).
51. Unless otherwise specified in this Order, the Husband is to be declared the sole, legal and beneficial owner in the following:
- (a) his interest in Jenko & Sons Pty Ltd ATF B & G Jenkins Family Trust;
 - (b) the Jenkins Investment Trust;
 - (c) any bank accounts in his sole name;
 - (d) any Commsec shares;
 - (e) his gun and gun safe;

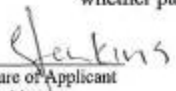

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Signature of Respondent
Brett Jenkins



- (f) his trailers;
 - (g) his flatpack kit shed;
 - (h) the following items situated in the Borce Street property:
 - (i) fishing gear, tools and equipment remaining in the sheds (if any);
 - (ii) 2 x shipping container;
 - (iii) 1 x mountain design grey and maroon thermal coat;
 - (iv) lock picking gear;
 - (v) drill and jackhammer bits in carport.
 - (i) his interest in TAL Superannuation;
 - (j) his interest in the Jenkins Dream Retirement Fund, save for any rollover to the Wife pursuant to Orders 4 to 11 and 19 to 23.
52. That the Applicant Wife be responsible for and indemnify the Respondent Husband in relation to the following liabilities:
- (a) All liabilities including claims, actions, suits or demands of whatsoever nature arising out of, or in connection with, her interest in any business, real property or corporation including in relation to:
 - (i) Taxation (including CGT), subject to Order 34 to 36; and
 - (ii) Duties (including stamp duty);
53. That the Respondent Husband be responsible for and indemnify the Applicant Wife in relation to the following liabilities:
- (a) Any personal taxation debt owing to the Australian Taxation Office, including any taxation debt owed as a result of his interest in any business or corporation.
 - (a) All liabilities including claims, actions, suits or demands of whatsoever nature arising out of, or in connection with, his interest in any business, real property or corporation including in relation to:
 - (i) Taxation (including CGT); and
 - (ii) Duties (including stamp duty);

whether past, present or future



Signature of Applicant
Gail Jenkins



Signature of Respondent
Brett Jenkins



General Orders

54. Unless otherwise specified in this Order except for the purposes of enforcing payment of any money due under this or any subsequent Orders
- (a) each party be solely entitled to the exclusion of the other to all property in the possession of such party as at this date including any jewellery, furniture, furnishings, shares and motor vehicles;
 - (b) moneys standing to the credit of the parties in any bank accounts to be the property of the party in whose name such bank account is held;
 - (c) each party hereby foregoes any claims they may have to any superannuation benefit to or owned by the other. The party in whose name any such policy of superannuation or insurance stand will be deemed to be the owner and the beneficiary of such policy to the exclusion of the other;
 - (d) each party be solely liable for and indemnify the other against any liability encumbering any item of property to which that party is entitled pursuant to these Orders.
55. That:
- (a) each party shall do all acts and things reasonably required by the other including the signing or execution of all necessary documents to give effect to the provisions of these Orders within 14 days of being requested to do so;
 - (b) if either party refuses or neglects to sign or execute and return a document within 14 days of a written request to do so then the Registrar of the Brisbane Registry of the Federal Circuit and Family Court is hereby appointed under Section 106A of the *Family Law Act 1975* to sign or execute such document on behalf of that party upon lodgement of such document and the filing of an affidavit of a solicitor on behalf of the requesting party as to the said neglect or refusal;
 - (c) the requesting party be at liberty to apply for costs when submitting such an affidavit to the Registrar.
56. That each party pay their own costs of and incidental to these proceedings.


Signature of Applicant
Gail Jenkins


Signature of Respondent
Brett Jenkins

