

May v Costaras

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Appellant's Reply Submissions



1. These reply submissions of the appellant are filed pursuant to the orders made on 11 June 2025 and respond to the respondent's written submissions filed 14 July 2025 (**RS**).
2. The assertions at RS [2] about the value of 13 Waterski Parade, Cumberland Reach (**Cumberland Reach property**) in 2020 are not supported by any evidence below. The Evidence at Blue 9R was rejected.
3. The assertions at RS [3] (as to what the appellant had done before the respondent had even met him) are not supported by any evidence below.
4. The assertions at RS [5] are not consistent with the evidence below. There is no concession at Black 92 to the effect contended. The closest the evidence went was the evidence at Black 91V ("you hurried finishing it, but...").
5. The assertions at RS [6] are not consistent with the evidence below. There is no concession at Black 97 consistent with the assertion at RS [6], although the appellant did use the term 'hand in hand' in his evidence – Black 96L.
6. As to RS [7], there was no finding by the primary judge that the value of Cumberland Reach had increased, let alone that it had increased significantly, still less that any increase was the result of anything done by the respondent.
7. There was no evidence below to support the assertions at RS [8] as to the effect of the renovations on the value of Cumberland Reach. To the extent that the assertions rely upon the paragraph at Blue 11T, that paragraph was rejected.
8. As to RS [9], this paragraph overstates the finding at [121] (Red 76). In particular, that finding did not include a finding that there had been no reimbursement (which would have

been a finding inconsistent with both parties' evidence – see the appellant's written submissions at [29(c)]), nor that the respondent had contributed 'extensive unpaid labour'.

9. The assertions at RS [10] are not consistent with the evidence below.
10. The assertions in the second sentence at RS [11] are not supported by the evidence below.
11. The assertions at RS [12] are not supported by the evidence below and the affidavit that purportedly would have supported it was not read.
12. The assertions at RS [12] are not supported by the evidence below.
13. As to RS [19], the page of the Black Book referred to (Black 284) does not appear to exist and the appellant does not understand what evidence (if any) is referred to by the respondent.
14. As to the submissions at RS [21]-[24]:
 - a. they rely upon the assertion in the first sentence of RS [22] as to an increase in the value of Cumberland Reach, but there was no evidence of any such increase; and
 - b. even if something the respondent had done had led to an increase in the value of Cumberland Reach, that might give rise in some circumstances to an interest of the respondent in the Cumberland Reach property, but not in the Scott St property.
15. As to RS [26], even if there had been a finding that the respondent's financial and non-financial contributions were made due to a shared understanding that the respondent would receive a proprietary interest, the proprietary interest in question can only have been an interest in the Cumberland Reach property, not the Scott St property. That is because any contributions ceased by February 2022 (Blue 51) whereas the Scott St property was not purchased until June 2022 (Blue 142). As such, any finding as to contributions or of a shared understanding would only support a finding that the respondent had an interest in the Cumberland Reach property, not the Scott St property. The submission at RS [29] would similarly only support a finding that the respondent had an interest in the Cumberland Reach property, not the Scott St property.
16. As to RS [32], the appellant does not principally rely upon a purchase money resulting trust. As set out in the appellant's written submissions at [16], the type of resulting trust

relied upon was the type found to exist in *Jenkins v Wynen*, and in the alternative the type of resulting trust described in those submissions at [17]. Issues in relation to a purchase money resulting trust only arise if there was no intention of the parties to marry. In that event the respondent was a de facto wife; no presumption of advancement therefore applies; and the transfer into joint names affords no basis for rebutting the presumption of a purchase monies resulting trust in favour of the appellant – *Jenkins v Wynen* at 47. That is, whether or not there was an intention to marry would not affect the interests of the parties – if there was an intention to marry then legal title is held subject to a resulting trust because the gift was conditional, whereas if there was no intention to marry then title is held subject to a purchase monies resulting trust.

17. Further in relation to RS [32], it is unclear which parts of the decisions in *Cong v Shen (No 3)* or *Jenkins v Wynen* are said to be authority for there being a requirement for 'clear evidence of intent'. To the extent that those decisions found a requirement for clear evidence of intent, the intent in question is that of the appellant *to make a gift to the respondent* – see *Cong v Shen (No 3)* at [1641]. The lack of such clear evidence of intent in this case would therefore result in a finding in favour of the appellant based upon one of the types of resulting trust contended for.
18. As to RS [34], it is not clear what promises the respondent submits were found by his Honour to have been made to the respondent. If it was the alleged promise at Blue 25U to add the respondent to the title of the Cumberland Reach property and give the respondent half the profit from the renovation of the Cumberland Reach property, then in the absence of evidence as to any such profit it would not result in the respondent having any beneficial interest in the Cumberland Reach property, let alone in the Scott St property. Similarly, if it was the alleged promise at Blue 26L that the appellant would add the respondent to the title of the Cumberland Reach property if she contributed to the mortgage over that property, then in the absence of evidence as to any such contributions it would not result in the respondent having any beneficial interest in the Cumberland Reach property, let alone in the Scott St property.
19. As to RS [36], it is unclear which parts of the decisions in *Cong v Shen (No 3)* or *Jenkins v Wynen* are said to be authority for there being a requirement for 'clear evidence of intent'. To the extent that those decisions found a requirement for clear evidence of intent, the intent in question is that of the appellant *to make a gift to the respondent* – see *Cong v Shen (No 3)* at [1641]. The lack of such clear evidence of intent in this case would therefore result in a finding in favour of the appellant based upon one of the types of resulting trust contended for.

20. As to RS [37], there was no unconscionable conduct by the appellant. The fact that funds drawn down on one of the appellant's loan accounts were apparently paid into a transaction account rather than applied to reduce the balance of another loan account did not result in any net change in the appellant's financial position, let alone the sort of change that it would have been unconscionable for the appellant to take advantage of.
21. There is similarly no unconscionability of the type asserted at RS [43] given that the alleged promises, even if made, were subject to the pre-conditions set out in [18] above that do not appear to have been satisfied. Furthermore, any unconscionability would only give rise to an interest in the Cumberland Reach property, not the Scott St property.
22. As to [48], the appellant agrees that the contributions by the parties were not examined in detail. Indeed, as set out in the appellant's written submissions at [29]-[30], the finding that the respondent's financial contributions were in excess of \$50,000 was clearly wrong and inconsistent even with the view of the evidence most favourable to the respondent. Similarly, as submitted at [32], the appellant's relevant contributions were not taken into account at all. While they may not have been a factor taken into account in the first instance decision, they were a critical component and therefore should have been.
23. As to RS [49]-[51], the appellant repeats the matters in [20] above and denies any conduct that could be characterised as misconduct or disentitling conduct. For the reasons set out in the appellant's written submissions and above, the appellant is entitled to equitable relief and seeking such relief is not unfair, let alone disentitling conduct.

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