

SUPREME COURT OF QUEENSLAND

CITATION: *Guest v Guest* [2026] QSC 239

PARTIES: **MARK VICTOR GUEST and ANOTHER**
(applicants)
v
MICHELLE NICOLE GUEST
(respondent)

FILE NO/S: No 5966 of 2025

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland at Brisbane

DELIVERED ON: 22 May 2026 (*ex tempore*)

DELIVERED AT: Brisbane

HEARING DATE: 22 May 2026

JUDGE: Treston J

ORDER:

1. **That upon settlement of the sale of the property situated at 9 Advance Place, Sunrise Beach in the State of Queensland 4567 and described as Lot 3 on Group Titles Plan 103834 with Title Reference 50110354 (“the Property”), the sale proceeds shall be paid in the following manner:**
 - (a) **firstly, in payment of all necessary selling costs including agent’s commissions, legal costs, marketing and advertising costs and all other necessary costs incurred in the sale that remain outstanding at the time of settlement;**
 - (b) **secondly, to divide the remaining balance between:**
 - (i) **firstly, to the Applicants as to 47.5%; and**
 - (ii) **secondly, in discharge of any liabilities secured against the property by registered mortgages; and**
 - (iii) **thirdly, the remaining 52.5% to the Respondent.**
2. **The parties are to do any act and sign any document required to facilitate the settlement of the property and in the event that a party fails to do so the Registrar of**

the Court is appointed to perform the act and/or sign the document in place of the party.

3. That there be liberty to apply upon 5 days' notice.

4. No order as to costs.

CATCHWORDS: REAL PROPERTY – GENERAL PRINCIPLES – INCIDENTS OF ESTATES AND INTERESTS IN LAND – JOINT TENANCY AND TENANTS – TENANTS-IN-COMMON – GENERALLY – where property previously held between the parties on the Sunshine Coast as tenants-in-common – where property sold by agreement between the parties and the sale proceeds held in a solicitors' trust account pending its division – where respondent alleges contributions made to the property to renovate the internals and grounds which justify an adjustment or contribution in her favour – where no evidence adduced as to the cost or time taken to undertake the enhancements -- where orders sought pursuant to s 34 of the *Property Law Act 2023* (Qld) as to the division of the proceeds – where court empowered to make any order that the nature of the case requires to ensure a just and fair accounting of amounts received by co-owners – where respondent contends for a five per cent adjustment in her favour – whether such an adjustment should be made

Property Law Act 2023 (Qld), s 38, s 42

Squire v Rogers (1979) 39 FLR 106

APPEARANCES The applicant and respondent appeared, self-represented.

- [1] HER HONOUR: This matter came on for hearing before me in applications court today. The originating application on which the application is brought is an originating application filed 22 December 2025. It was an application that pursuant to s 38 of the *Property Law Act 2023* (Qld) (**the Act**), there be a statutory trustee for sale appointed in respect of a property at Sunrise Beach. The matter, when it originally came on for hearing, was adjourned and ultimately came for hearing today, 22 May 2026. On the return of the application today, I was told that, in fact, it was no longer an application for the appointment of a statutory trustee for sale; rather, it was an application pursuant to s 34 of the Act for orders in respect of the distribution of sale proceeds of a property.
- [2] This, can I say as neutrally as possible, was a most unedifying dispute between the applicant, Mark Victor Guest, who is a solicitor but appears self-represented in the proceedings, and his wife Anne Claire Middleton against Mark Guest's sister, Michelle Nicole Guest. Only Mr Guest produced some written submissions, which were of some limited assistance to me today. His sister relied upon her various affidavits which she had filed in the proceedings. Without the benefit of any submissions as to the authorities which are relevant to my consideration, and by reference to largely inadmissible submissions from the bar table, I am left to try to resolve this, as I say, unedifying, to be kind to the parties, dispute.

- [3] The subject property of the application is a property situated at 3/9 Advance Place, Sunrise Beach (**the property**). The property is registered in the name of two parties as tenants in common: as to one part, Mark Victor Guest and Anne Claire Middleton as joint tenants representing a half share interest, and the balance half share interest held in the name of Michelle Guest alone. The property was purchased in August 2021, I am told, for a sum of \$750,000. It has now been sold or is under a contract of sale to settle shortly for a sum of \$1.195 million. There is a dispute, which is unable to be resolved before me, as to what the original agreement was between the parties as to how the loans were to be structured, how rent was to be paid, et cetera, and none of that is anything that I am able to determine factually today.
- [4] No party was required for cross-examination, despite the fact that there are obvious and glaring factual disputes. So I am left with the way in which the property is held in an attempt to deal with the last best part of five years of obvious sibling disagreement over a property which was the home of the respondent, Michelle Guest. On a distribution application such as this, the court's powers are set out in s 42 of the Act, which gives me the power to determine questions of fact arising in proceedings for the purposes of adjusting the rights of co-owners.
- [5] Mr Guest seeks a series of orders by which the net proceeds of sale are distributed; , first, in the discharge of all the outgoings connected to the sale, being agents, commission, legal costs, marketing, advertising and the like, and second, to divide the balance firstly as to one half between he and his wife, and as to the balance half, it to be applied to discharge the secured registered mortgage over the property, and in payment of what he says is outstanding rent owed by his sister, the respondent, and, after those deductions, then the balance be paid to the respondent. The purpose of the structure, it seems, is that as only the respondent's mortgage is actually registered over the property, and the applicants will have responsibility for the discharge of their own mortgage, but, it is said, that they ought to be in a position to pay out their mortgage out of their one-half share.
- [6] The respondent contends that there ought to be some readjustment or distribution in her favour to reflect the following matters. Firstly, she says that she has carried out substantial improvements to the property. She refers to issues such as interior and exterior painting, the landscaping, bathroom fixture upgrades, and sanding and varnishing of the deck annually. She further contends that because her efforts to improve the overall value of the property, the property in question was sold for a sum of approximately \$200,000 more than the property next door. She seeks an adjustment of either \$55,000 in her favour or alternatively, that she obtains five per cent more of the value of the property than her brother.
- [7] The only evidence before me in relation to the value of the property next door is an email sent from a real estate agent to the owner of the property next door at unit 2, which suggests that the buyers in respect of that property are likely to be in range of \$940,000 to \$1 million, whereas the sale of the property in question was \$1.195 million. As such, the respondent contends, effectively, that there is a \$200,000 difference between her property and the property next door. She does not, however, seek to attribute the whole of that to herself. She, as I say, suggests that she should get \$55,000 or a five per cent adjustment.

- [8] In respect of the improvements, in terms of the painting, her brother submits that he contributed an amount for the cost of the painting, but the respondent contends that she personally painted the interior of all of the property, including the upstairs and downstairs. There is no evidence now before me as to the amount of time that that took or the value that I ought to attribute to it.
- [9] Second, she says she did a large amount of gardening, and installed grass and plants. Again, there is no particular evidence before me as to what was done. At best, she says there was about \$700 in respect of the cost of grass, plus her own time in terms of installing it.
- [10] She says that she carried out the installation of curtains which cost her \$400, which her brother did not contribute to. She paid for tree lopping on the property herself. She produces photographs that demonstrate what the apartment looked like when it was purchased versus the photographs which were taken for the presentation for the property for sale. There can be little doubt that the property that was presented for sale was neater and cleaner and more modern than that which was purchased in August 2021, but it is impossible, on the state of the evidence, for me to make any meaningful assessment of the difference in value.
- [11] The court is in an unenviable position of trying to make an assessment in a circumstance where evidence before the court has not been tested. The warring siblings appeared before the court, as I say, in the most unedifying display, particularly in circumstances where the amount that is in dispute is so small and certainly not within the jurisdiction of this court.
- [12] The best that I can say in respect of the claim for the value of improvements from my own endeavours, not from any assistance that I received from the parties, was that in *Squire v Rogers* (1979) 39 FLR 106, Deane J (with whom Brennan and Forster JJ agreed) said:
- “ ... In no case can the co-owner who has improved the property obtain more than his outlay, though such outlay may have tripled the value of the property. ...”
- [13] That is a matter that is relevant towards the claim that is made by the respondent that her outlays have improved the value of the property. That would be a matter that is against rewarding the respondent by giving her substantially more than 50 per cent or effectively 50 per cent.
- [14] Against that, I am entirely satisfied that she has lived there since August 2021 and has by her efforts in terms of physically painting the property and updating the garden and generally updating the property, almost certainly contributed to the increase in value overall. It is not lost on me, however, that almost certainly the bulk of the increased value of the property is linked to the mere effluxion of time and overall rising property values, no doubt which itself has caused this unedifying sibling dispute.
- [15] Doing the best I can, I am not prepared to make any adjustment in respect of the further rent that the applicants claim is owed by the respondent, which amount on the draft order to a sum of \$7,977.50. I have disallowed the applicant’s claim for payment

in respect of rent because I am entirely unsatisfied on the evidence that there was an agreement that would compel the respondent to pay that further sum.

- [16] Otherwise, the order of the court will be that upon settlement of the sale of the property situated at 9 Advance Place, Sunrise Beach and in respect of the balance after the payment of all necessary selling costs such as legal costs and agent's commission, the order will be to divide the proceeds as follows:

- (a) firstly, to the applicants, in the sum of 47.5 per cent;
- (b) secondly, in discharge of the liabilities secured against the property; and
- (c) thirdly, the remaining balance which, for the record, will represent the overall sum of 52.5 per cent, less the respondent's secured liability,

so that there is a modest adjustment in favour of the respondent for the actual outgoings she incurred and for her physical efforts to improve the value of the property.

- [17] I am assured that the solicitors, who have been appointed for the purposes of being a stakeholder of the property, McCormick Lawyers of Noosa, have been given instructions to divide the proceeds of sale only in accordance with the court's order, and I direct each of the applicants and the respondent to provide a copy of this order to them.