

Berkett v Dempsey 30/9/02, France J, HC Wellington AP53/02

Largely unsuccessful appeal as to measure of damages - partly successful cross-appeal as to measure of damages - B and D entered into a de facto relationship and purchased a property pursuant to a property agreement - the agreement included an option for B to purchase D's share - B gave notice she was going to exercise the option but defaulted - the property was sold by the Registrar of the High Court of Wellington for a lower figure than it was valued - it was found in the District Court ("DC") that B had breached the contract by defaulting on the option to purchase and was liable for damages to D to restore him to the position he would have been in had the breach not occurred - B appealed the amount of damages awarded relating to the failure to correctly measure mitigating amounts - D cross-appealed the amount of damages questioning C's treatment of chattels and the award of interest as damages.

Held, cost of discharging the caveat over the property was credited to both parties when it should have only been credited to B therefore the balance is awarded to her - the amount of occupation rent and interest granted to B stand as they are discretionary awards - C should have awarded D full share of the chattels and accordingly his share is increased - C inappropriately only awarded interest for the losses D suffered from B's failure to exercise the option accordingly D is now awarded recovery of the costs incurred - appeal on measure of damages largely dismissed - cross-appeal on measure of damages partly granted.