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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MONMOUTH COUNTY
DOCKET NO. MON-C-150-23

JAMES SHARKEY,

Plaintiff,

v.

DEBORAH OVERBECK,

Defendant.

OPINION

Decided May 13, 2025.

Melofchik & Fox (Gary E. Fox, Esq., appearing), attorneys for plaintiff.

Law Offices of Peter C. Lucas, LLC (Peter C. Lucas, Esq., appearing), attorneys for defendant.

FISHER, P.J.A.D. (t/a, retired on recall).

In A Midsummer Night's Dream, Shakespeare said, "the course of true love never did run smooth." He might have added that, when not so true, love's course might run to a six-day chancery trial.

The parties here entered into a romantic relationship and then decided to purchase together a home in Middletown in late 2021 (J-1), with an understanding they would indefinitely cohabit there without necessarily marrying. To solidify their respective rights in this property, they entered into a cohabitation agreement (P-1); among other things, the cohabitation agreement provided remedies should their relationship not last. It didn't. In July 2023, approximately eighteen months after they moved in together, defendant Deborah Overbeck gave plaintiff James Sharkey written notice (P-3), under paragraph 19 of the cohabitation agreement, that she would no longer reside with him in their Middletown home. Their disagreements about how they were then to partition the property or otherwise settle their competing property claims – not perfectly explained in the agreement – generated this litigation.

I

James commenced the action in November 2023, a few months after Deborah moved out, by filing a complaint seeking partition of the property and other relief based on what he claims was Deborah's unjust enrichment. Deborah responded with an answer and counterclaim, in which she sought damages or

other relief by way of: a palimony theory; a claim that she and James had entered into a partnership or joint venture that required him to account; a similar claim that sought the imposition of a resulting trust; conversion; unjust enrichment; and partition. Her counterclaim also sought a declaratory judgment that, if granted, would invalidate the cohabitation agreement.

A trial commenced on April 28, 2025, and continued for the following four consecutive days, during which, in open court, the parties testified, as did the attorney who represented them during the purchase of the Middletown home and in the creation of the cohabitation agreement. During this phase, the court also heard testimony from vendors who claimed to have sold either goods or services to James that went into the Middletown home. The trial resumed by way of a virtual proceeding on May 6, 2025, for the sole purpose of confirming and resolving any objections to the many trial exhibits; at its conclusion, the court permitted the admission of over 100 exhibits in evidence.[1] And the trial resumed virtually again on May 8, 2025, during which the court heard counsel's thorough and forceful summations.

The court's findings of fact and conclusions of law now follow.

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[1] J-1, J-2, J-3, P-1 through P-12, P-15 through P-77, P-79 through P-88, P-91 through P-94, P-96, and P-97, D-1 through D-11, Conley-1, Ataide-1, and Ataide-2.

II

In turning to the factual disputes illuminated by the testimony and exhibits, the court first considers the parties' cohabitation agreement and the dispute about its enforceability. If enforceable, the court would be required to determine what the parties intended when they included certain ambiguous or unclear provisions. And, if unenforceable, the court would then have to determine how the property should be partitioned and whether, through the application of equitable principles, certain credits ought to be allowed. See, e.g., Newman v. Chase, 70 N.J. 254, 263 (1976); Swartz v. Becker, 246 N.J. Super. 406, 412-13 (App. Div. 1991).[2]

Deborah's contention that the cohabitation agreement is unenforceable is based on a combination of things. She has asserted, for instance, that the attorney who prepared the agreement, and who represented the parties at the closing of their purchase of the Middletown home, was James's attorney and that the attorney never made this conflict known to her. Deborah also argues that the formation of the agreement was rushed and that its execution was even more rushed and didn't allow for her to freely and knowingly understand or appreciate

[2] Although the Legislature has recognized partition as a legal remedy, N.J.S.A. 2A:56-1 to -44, whether or how property should be partitioned by statutory authority is only permissive and ultimately turns on equitable principles. See Newman, 70 N.J. at 263.

that to which she was binding herself. The court finds from the credible evidence[3] that Deborah was under no compulsion of the type or to the degree that might free her from the promises contained in the cohabitation agreement.

Deborah does not contend that she was physically forced to sign the cohabitation agreement. No one twisted her arm. Her claim is that she wasn't given all relevant information[4] and that she was either under economic duress

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[3] This is perhaps a propitious time to discuss the court's views about the parties' credibility. It is also a good opportunity to recognize that, unlike the theory underlying the "false-in-one-false-in-all" doctrine, see Capell v. Capell, 358 N.J. Super. 107, 111 n.1 (App. Div. 2003) (when a witness deliberately testifies falsely about a material fact, the finder of fact may draw an inference that the witness spoke falsely in many or all other matters), a witness may be credible in some respects and not credible in others. People do not either always lie or always tell the truth and that understanding what certainly true here. Both James and Deborah were mostly credible, but the court also found that at the times they weren't credible, and that occurred on occasions when their testimony was motivated by a desire to better their respective economic position in this case. The court is also mindful that Deborah has argued that the court should not find James credible because of his past criminal convictions, even though those convictions have no particular bearing on the circumstances of this case. To be sure, the law recognizes that this type of evidence is admissible and may be considered by the trier of fact in ascertaining a witness's credibility, N.J.R.E. 609, but the court rejects the notion – at least as it might apply here – that having been convicted of a crime means that a witness is never to be believed. In any event, the court is unable to say that one party was always credible and the other was never credible. Quite simply, there were times when the court found things both said to be credible and times when there were things they said that weren't credible, not for any glaring reason or from something about their demeanor while testifying, but because of the court's application of common sense about whether what it was they said made sense or seemed likely.

[4] Although the cohabitation agreement refers to schedules setting forth the parties' assets and liabilities, no such schedules were attached. The agreement

or just overwhelmed by the rapidity and circumstances of the agreement's creation and execution.

The classic understanding of economic duress requires a "wrongful or unlawful act or threat" that "deprives the victim of his [or her] unfettered will," Quigley v. KPMG Peat Markwick, LLP, 330 N.J. Super. 252, 263 (App. Div. 2000), with the decisive factor being the wielded pressure's "wrongfulness," Continental Bank v. Barclay Riding Academy, Inc., 93 N.J. 153, 176 (1983). And, as Judge Freund further explained for the court in Wolf v. Marlton Corp., 57 N.J. Super. 278, 287 (App. Div. 1959), the conduct that generates duress "may be wrongful even though the act threatened is lawful"; courts instead look for conduct or threats that are "wrongful . . . in a moral or equitable sense."

The court first finds no economic duress arising from the agreement's content. The agreement provides for a 70/30 split of ownership. That, of course, isn't an equal split but the evidence reveals that while both parties were jointly liable on the mortgage loan, James contributed 77% and Deborah only 23% of the remaining cash needed to close.[5] This fact reveals that Deborah was getting

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recognizes that this exchange of information could be waived, and the court concludes from their testimony that the parties were aware of their respective financial conditions and chose not to provide greater detail to each other.

[5] To be precise, James put in $49,263.07 (P-2), and Deborah put in $14,896.94 (D-9).

a better deal than one would normally expect under the circumstances. And while the cohabitation agreement included provisions that would allow James credits upon a cessation of their cohabitation for the money he contributed toward closing and for renovations done after closing,[6] there's nothing unfair or burdensome about that. There is nothing unconscionable or one-sided in a provision that simply allowed a return of what was put into the home during cohabitation. The parameters of those credits are discussed later in this opinion.

Another bone of contention was James's right of first refusal in the event the parties should cease cohabiting. That the parties agreed James would have that right is hardly unfair or inequitable. The evidence, and the cohabitation agreement itself (paragraph 12), reveals that the property was also to be James's child's home, and James – beyond any question – put more into the property than Deborah. Common sense dictated that if either party was to have a right of first refusal, it would be James, who had the greater interest in the property and its retention after a termination of cohabitation. For these reasons, the court finds nothing unfair to Deborah about this part of the agreement.

Deborah, however, further argues that the circumstances in which the cohabitation agreement was entered suggest a form of duress or

[6] The cohabitation agreement doesn't appear to expressly allow for a similar return to Deborah of what she put into the closing, but the court will come to that later.

unconscionability that ought to urge a court of equity to step in and free her of its consequences. She claims that the agreement was hurried and that it was produced by an attorney who had represented James in the past and who had failed to reveal this conflict. The court rejects all of this. To be sure, the execution of the cohabitation agreement, on December 30, 2021, occurred during a COVID lockdown and papers were actually handed through car windows to the parties for execution. But – despite Deborah's testimony that she never saw the document until December 27, an assertion the court finds lacking in credibility – Deborah previously had plenty of time to review the draft agreement and to suggest changes. Indeed, the material terms seem based on a text Deborah had sent a month earlier on November 14, 2021 (P-96). The credible evidence also revealed that Deborah sent to the attorney red-lined suggestions and changes (P-93). And lastly, whether the agreement ended up containing ambiguities or uncertainties – as noted elsewhere in this opinion – does not create a reason to refuse its enforcement; they just create interpretation problems.

The court also rejects Deborah's argument that the drafting attorney was in a conflict of interest – in that she indisputably had previously represented James – and that the attorney had not sought or obtained Deborah's waiver of that conflict. The court finds Deborah was not credible about this. The court

instead finds Deborah was aware the attorney had represented James before, and the attorney – while the parties were engaged in negotiating the material terms of the agreement – told Deborah on more than one occasion about the advisability of obtaining independent counsel, as the attorney credibly testified. The cohabitation agreement itself clearly states that, by signing, Deborah was waiving any conflict of interest (P-1 at page 1, sixth whereas clause). The court concludes that the prior representation was known by Deborah and that she knowingly waived the conflict.

Lastly, the court finds no unequal bargaining power that would suggest Deborah was under wrongfully-imposed duress or coercion. She, as the November text (P-96) reveals, had a full say in the agreement's material terms. In fact, as the drafting attorney credibly testified and without contradiction from Deborah, from the start of the negotiations to the final version James's percentage of ownership in the property dropped from 90% to 80% to 70%. This convinces the court that Deborah was not an overwhelmed victim of duress; she possessed and successfully wielded her equal bargaining power in this transaction.[7]

[7] The attorney testified credibly that it was James who was feeling the pressure of these negotiations. The court gathers from all this that while both James and Deborah may have felt the stress that may be brought on when on the verge of entering into an important transaction, that stress or pressure was not unduly

In short, the court finds no economic duress, unconscionability, lack of bargaining power, or coercion here. Deborah was familiar with the agreement's material terms – having dictated some of them – and she entered into the agreement freely and knowingly. There was nothing compelling Deborah to sign off on the cohabitation agreement. She could have simply refused to sign it, or she could have asked for more time to think about it. Without sharing any of the concerns she now alleges, Deborah proceeded to sign the document. The court finds no legal or equitable ground for excusing her current performance of or compliance with the cohabitation agreement.[8] Indeed, as the record reveals, Deborah continually believed the cohabitation agreement governed their rights in the property by providing James, on July 11, 2023, with a notice of termination (P-3), which expressly invoked paragraph 19 of the cohabitation agreement; she then said nothing to suggest she believed the agreement was unenforceable.[9] Her present claim of some legal or equitable defect in the

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imposed by either party and certainly not to the extent that it would render their agreement unenforceable.

[8] It should not go unnoticed that James performed his part of the bargain in all respects.

[9] She also invoked the cohabitation agreement's paragraph 13 about items she left behind in the premises.

crafting or execution of the cohabitation agreement is not supported by the credible evidence and has no merit.

III

Although the cohabitation agreement is enforceable, it is also true that it is no model of clarity.[10] Nevertheless, notwithstanding some confusing provisions, the court has been able to ascertain the parties' intentions by resorting to familiar principles of contract interpretation, see, Barila v. Bd. of Educ. of Cliffside Park, 241 N.J. 595, 615 (2020), and through consideration of the agreement's plain language, its purposes, and the surrounding circumstances, see Highland Lakes Country Club & Cmty. Ass'n v. Franzino, 186 N.J. 99, 115 (2006); Jacobs v. Great Pacific Century Corp., 104 N.J. 580, 586 (1986).

Paragraph 19 declares that both parties have a right of first refusal – "[e]ach party will give the other party the right of first refusal" – which seems like an impossibility unless the clause referred to a sale of a party's interest to some other person. But the paragraph does state that James would "hav[e] the

[10] For example, the very first "whereas" clause declares the parties were not married and had no "present intention of marrying," while the very last paragraph (paragraph 37) states that the agreement "shall become effective upon the date the parties are married." The court finds from the credible evidence of the drafting attorney that paragraph 37's inclusion was erroneous. This and other typos or loose language demonstrate the agreement was not carefully constructed.

first right as mortgagor" (emphasis added). The "as mortgagor" phrase is confusing because both parties were mortgagors, but, putting aside that ambiguity, this provision does otherwise convey that it is James, not Deborah, who possessed "the first" right to buy out Deborah, not the other way around. As observed earlier, this makes sense considering the overall transaction, with James bearing the lion share of the investment and with the parties' acknowledgement that James's daughter would also reside there. If a party was later to decide that the cohabitation should not continue, it made sense – and was no doubt the parties' intention – that James would be the party who would have the first opportunity to buy out Deborah.

And so, the court concludes that the agreement envisioned and for the most part provided an understanding about the orderly disposition and vindication of the parties' property rights upon a terminating event. The agreement's fundamental concepts about how to proceed on a terminating event are clear enough to allow for its enforcement. See, e.g., Barry M. Dechtman, Inc. v. Sidpaul Corp., 89 N.J. 547, 552 (1982) (recognizing that "the terms of the contract must be definite and certain so that the court may decree with some precision what the defendant must do" but that this certainty shouldn't stand in the way of the "practicalities and a full understanding of the parties' intent").

Since it was Deborah who announced a termination on July 11, 2023 (P-3), it became incumbent on James – upon choosing to exercise his right to buy out Deborah – to timely obtain an appraisal of the property (P-1, paragraph 19[11]). He did that, providing, at his cost, an appraisal that stated the property's value to be $694,000 (P-4).[12] This value fixed one part of the calculus for fixing the compensation due Deborah on James's exercise of his right to buy her out.

The second part of the calculus must be derived from paragraph 11 and James's entitlement to credits for having provided most of the consideration for the purchase of the home toward the end of 2021 and, though disputed, the money expended in improving the property then or soon after. It is here that the parties' cohabitation agreement – at times not very enlightening – generated the greatest uncertainty and necessitated the six-day trial just completed.[13]

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[11] James's purchase of Deborah's interest is to be based on "the fair market value" of the property which was to "be determined by a professional evaluator, the cost of whose services shall be borne by the party seeking to purchase the other's interest."

[12] There is no dispute about the accuracy of this appraisal at the time it was performed.

[13] Do-it-yourself contracts, handshake agreements, or those drafted "on the cheap" – this one cost the parties $500 – provide great fodder for chancery cases. In a commercial from the 1970s, an auto mechanic, in advising the purchase of a Fram oil filter, tells the customer: "you can pay me now or pay me later." In other words, he was telling the customer he could either spend a few extra bucks for a new oil filter now or pay later for a new transmission. The parties' failure to take the time and to expend the funds needed to obtain separate counsel to

To gain a proper understanding of the parties' intentions, the court starts with the fact, to which there is no dispute, that money was put into the home to improve it and that James provided those funds. The question about those expenditures that requires resolution concerns the extent to which James should now be given a credit for those expenditures. The parties' views of their intentions about paragraph 11's meaning diverge greatly. Because of those conflicting versions of the paragraph's meaning, and because of its importance to the disposition of this case, the court will break down paragraph 11, piece by piece.

Paragraph 11's first sentence – a long one – states that "[n]otwithstanding any provision contained herein to the contrary, any improvement that may be made to the aforesaid [p]remises, including, without limitation, the installation of any fixtures (e.g., plumbing, electrical, etc.), renovations, repairs, installation of carpeting, curtains, draperies, blinds, air conditioning systems, burglar alarm systems, landscaping, additions or improvements irrespective of the parties' financial contributions toward same, shall become the parties' joint and equally owned property, unless otherwise agreed." This sentence, it is fair to say, suggests that as a basic matter, or as a legal consequence, the things added to

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ensure a far clearer agreement has led them to pay later for the cost of ascertaining their property rights.

the premises would be understood as being jointly owned. But the sentence ends with "unless otherwise agreed," and so the first sentence doesn't really answer the question about James's entitlement to credits for funds expended in the improving or altering of the property's condition because the parties did, in fact, "otherwise agree[]."

The very next sentence of paragraph 11 is that to which the unless-otherwise-agreed phrase in the first sentence clearly refers. This second sentence states that "[i]t is agreed that SHARKEY's contribution as to the retaining wall and move in renovations in the amount estimated at $100,000 shall be credited to SHARKEY." To explain, James's credible testimony revealed there was a need to do something about a retaining wall because of the property's hilly nature. The parties' cohabitation agreement concedes the importance of dealing with the retaining wall and, indeed, James received an estimate to repair or rebuild the retaining wall of $96,350 (P-72).[14] This provision about the credit to which James would be due, however, is not limited to repairing or replacing the retaining wall, because the sentence itself also encompasses "move in renovations." The sentence does not further define what was meant by "move in

[14] This amount was never fully paid, and the work has yet to be done. Instead, James credibly testified that he made an $18,000 deposit on the job but that's as far as things progressed. He also testified credibly that the deposit was no longer refundable because the contractor purchased materials for the job.

renovations" and the parties have divergent interpretations about what that phrase means.

Before turning to that key move-in-renovation phrase, the court should further observe that no one thought or has argued that the interpretating canon known as the doctrine of "the last antecedent" applies. See State v. Gelman, 195 N.J. 475, 484 (2008) (absent a contrary intention, "a qualifying phrase . . . refers to the last antecedent phrase"); see also C.R. v. M.T., 461 N.J. Super. 341, 347-48 (App. Div. 2019), rev'd on other grounds, 248 N.J. 428 (2021). That is, if applied, this canon would suggest that this phrase – "the retaining wall and move in renovations in the amount estimated at $100,000" – means that the $100,000 estimate applies or modifies only "move in renovations," and the cost of repairing or replacing the retaining wall would not be part of the $100,000 estimate. Certainly, grammar and common sense would make highly dubious any claim to a "first antecedent" interpretation: that the $100,000 figured modified or related to the retaining wall but not move-in renovations. But oddly, as noted, the estimate for the retaining wall approximated $100,000, and that an awkward "first antecedent" interpretation may have actually been the parties' intention. It's all perplexing but the testimony of both parties reveals to the court that they viewed the $100,000 estimate to envelop both the retaining wall and

whatever they meant by move-in renovations, so the court need not wrestle further with what it is that the $100,000 estimate might be construed to modify.

Moreover, the $100,000 figure was – as the sentence states – just an "estimate," it wasn't a limit. And even more relevant is the fact that the expenditures James seeks as his credit under paragraph 11 does not reach $100,000, so whether that amount was intended as either an estimate or a limit is irrelevant.

And so, the court turns to the dispute about what constitutes "move in renovations," which, as noted, is not otherwise defined in the cohabitation agreement. It seems from their testimony that James understood move-in renovations as including any improvements that occurred during the short time (approximately eighteen months) that Deborah resided in the premises. On the other hand, Deborah contends that move-in renovations are different from "improvements," and that the former merely encompasses those things that had to be done for the parties to be able to move into the home. And, since they moved into the home the night they closed, and since the home then had a certificate of occupancy, there were, in Deborah's view, no move-in renovations.

The court doesn't accept Deborah's limited view of move-in renovations. It may be that the parties moved in immediately, so theoretically there were no

renovations that had to be done before they could move in, but it is also clear to the court that both parties felt changes had to be made in the near future to bring the premises around to the way they preferred, and it's that loose understanding which the parties meant by move-in renovations.

Although not much focus was put on the last sentence of the agreement's paragraph 11, it too suggests that move-in renovations were something more than what it would take to make the property habitable. That sentence states: "SHARKEY shall provide actual costs of retaining wall and any renovations to the actual amount which shall be treated as contribution." Again, that's an awkward sentence, but the court views this – as illuminated by the parties' testimony – as incorporating those changes that were made soon after they moved in, which were accounted for by placing invoices, receipts and other memoranda constituting proof of James's expenditures, into a box. Deborah does not dispute that receipts were placed in a specific box. So, if, as she contends, there was to be no reimbursement for any improvements at all, then why make it a point to put these receipts and invoices into a box dedicated for that purpose?

The court also finds that the costs and expenses in dispute are typical of what a purchaser of a home might change after moving in even if the absence of such a change does not leave the home uninhabitable. James seeks a credit for

painting, flooring, lighting in the home, among many other things, including, as he testified, repeated changes in the backsplash in the kitchen because Deborah so insisted, and the court is satisfied that the parties intended that these expenditures would fall into the category to which James would entitled a credit in exercising his right to buy out Deborah.

To be specific, the court finds that James is entitled to the expenditures represented by the invoices and other receipts in evidence as P-6 through P-12, P-15 through P-41, P-44 through P-77, and P-79 through P-87.[15] These were all expenses incurred for the purpose of bringing, or at least starting to bring, the premises into a condition that the parties mutually desired, and all occurred during the cohabitation, with Deborah's consent, and prior to her permanent departure in mid-July 2023. Adding up these invoices provides a total credit of $88,820.17.

[15] Cross-examination of James and some of these vendors revealed there was some re-creation of the paperwork in that James may not have had in his possession, as this litigation progressed, paperwork to demonstrate some of these charges – James claimed that Deborah may have taken some receipts when she moved out – but the court does not view James's obtaining or re-obtaining some of these invoices as something that would call into question their veracity or James's veracity about the expenditures. To be valid or persuasive, an invoice need not be contemporaneous. Those vendors who were questioned testified that, even if some were later re-creations, the invoices were consistent with the work done or services provided or were supported by their books and records.

The court rejects certain alleged additional expenditures – Jet Painting's representative testified that James paid him another $3,000 for work done that is not reflected in Jet Painting's invoices (P-46 and 47), and 365 Law and Tree Care's representative testified that he was paid an additional $4,150 for other landscaping work done on the premises not reflected in his invoice (P-6) – as not proven. The court finds it unlikely that these witnesses actually did other work not invoiced or that they were providing anything other than testimony they believed helpful to James, who was shown or suggested to be either James's friend or acquaintance.

Despite the unusual circumstance that James made most of the payments for those items with cash – thus providing fodder for Deborah's suspicions about the legitimacy of his expenditures – the court has been given no cause, other than as stated, to doubt the testimony of the vendors or James himself, who the court largely found credible despite his occasional inability or unwillingness to precisely or even generally respond to some questions. Indeed, Deborah never denied that the flooring was redone or that extensive painting occurred in the home or that stone was provided for the driveway or that the other work reflected in the invoices was done. While cash payments inevitably and quite naturally engender suspicion, Deborah hasn't claimed that she made any of the payments for which James seeks a credit and, again, she didn't testify that the work wasn't

done, so the only logical alternative is that it was James who paid for the alterations, modification, and improvements reflected in the invoices and receipts admitted into evidence and delineated above.

And to repeat the earlier findings, there's nothing unfair or inequitable about James receiving a credit for those expenditures. It bears observing that Deborah, with little or no outlay of her own funds beyond the $14,896.94 (D-9) she provided for the closing (as compared to James's $49,263.07 outlay at that time (P-2)) – she in fact provided no evidence nor did she even claim that she paid for any of the painting, flooring, tree pruning/removal, or other work done on the house. She lived in the premises as a co-equal member of the household for eighteen months, only providing approximately 30% of the roof expenses,[16] and, when it suited her, she terminated the cohabitation agreement and never paid another dime toward the mortgage, roof expenses, or other improvements, to protect her investment. It is certainly fair in these circumstances – and the parties so deemed it fair by way of paragraph 11 – that the exercise of James's right to buy her out would take into consideration the money James expended to improve the property while Deborah lived there.

[16] The court is mindful that Deborah provided evidence that she contributed slightly more than her agreed on 30%. See D-3. Her claim to a credit for this alleged overpayment is discussed later in this opinion.

IV

James also seeks credits beyond those based on paragraph 11, as does Deborah. Whether considered a credit in the calculation of the amount required on James's exercise of his right to buy out Deborah, or a claim for a separate award of damages, James has asserted that: he lent $9,000 to Deborah for her purchase of a Jeep and that she has not repaid that loan, and that Deborah caused damage to two deer heads for which he incurred taxidermy repairs of $1,600. Deborah claims she is entitled to reimbursements or credits for furnishings left in the premises after she departed and for her payment of more than 30% of the roof expenses during the time she lived in the Middletown home. The court deals with those four claims in that order.

First. As for the Jeep, the record supports James's assertion that he provided a check dated December 8, 2022,[17] payable to an auto dealer in the amount of $9,000, that bears a notation on the memo line: "Deb's Grand Cherokee" (P-88). Deborah doesn't deny that fact. The dispute is whether this $9,000 constituted a loan or a gift. To support his claim, James provided not only his own testimony that it was a loan but copies of two checks provided by

[17] The testimony didn't clarify whether the check was dated December 8 or 18 – it's hard to tell just by looking at the date – but the check's reverse side reveals that it was negotiated by the car dealer on December 12, so the court assumes December 8 is the date on the front side of the check.

Deborah and payable to him dated December 15 and 19, 2022, in the amounts of $1,000, and $335, respectively (P-88[18]). The memo lines state "Grand Cherokee" on the former and "Loan" on the latter.

All this gives the appearance of the $9,000 being a loan, with these checks arguably appearing to be installment payments. That's James's testimony, but Deborah denies that assertion and testified these two checks were written in anger late one night during an argument. The court also notes that Deborah's two checks were made within days of James's $9,000 check, which doesn't seem to make much sense or at least it hasn't been explained why, for example, Deborah needed a $9,000 loan when she was capable of repaying at least $1,000 of it a few days later; in that case, why didn't he just loan her $8,000. Another unanswered question: if both Deborah's checks were written one late night during an argument and, apparently, just to make a point, then why do they bear different dates? And lastly, if James truly believed these checks constituted repayments of a $9,000 loan, then why is it, as he testified, that James never cashed them?

[18] The checks are photocopied on top of the dealer's invoice, which reveals that the total consideration for the Jeep's purchase consisted of James's $9,000 check and $4,000 in cash.

The court finds from all this – particularly the fact that James never negotiated the checks – that, as Deborah testified, the $9,000 was a gift and there was no expectation of repayment. Thus, the court denies James's claim.[19]

Second. The court finds James's claim about the damaged stuffed deer heads to be in equipoise. To be sure, there are taxidermy bills in evidence (P-42 and 43) that the court has no reason to doubt were incurred or that $1,600 was paid to the taxidermist, but the record is bereft of any clear or persuasive evidence as to the cause of the damage. All the court has beyond the invoices is James's testimony that Deborah caused the damage, and Deborah's testimony that she didn't. On this item, the court isn't persuaded to the truth of either party's testimony. Because James has the burden of persuasion and because he hasn't shown the allegation that Deborah caused the damage is more likely true than not, see N.J. Div. of Child Prot. & Permanency v. J.R.-R., 248 N.J. 353, 376 n.11 (2021), the court finds the evidence in equipoise and James's burden of persuasion un-sustained, Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 169 (2006).

[19] Deborah has also argued that the court should not consider this claim because it was never alleged in or fairly incorporated by James's complaint. But the court heard testimony from both parties on this, and they both had a full and fair opportunity to prosecute or defend against the claim, so the court deems it appropriate to allow an amendment to James's complaint in this regard to conform to the evidence adduced at trial. See R. 4:9-2.

Third. Deborah seeks a credit for furnishings she brought to the property that were left behind. In opposition, James asserts, among other things, that there is insufficient proof of their value. The court finds that Deborah's proofs on this question are sufficient. She provided a list (D-4) that contains fourteen different items or categories of items that, in her opinion, should be collectively valued at $2,300. She explained how she reached these values, namely, by providing in some instances what it is she originally paid that she then significantly discounted to reach the values stated in the exhibit. The court finds her approach reasonable and fair, and sufficient to provide an accurate value. That Deborah may not have expertise in evaluating property of this nature is not greatly relevant. An individual may express an opinion about the value of owned property with evidence of the type offered by Deborah here. See Teets v. Hahn, 104 N.J.L. 357, 360 (E. & A. 1928); Nixon v. Lawhon, 32 N.J. Super. 351, 354 (App. Div. 1954). So, the court finds Deborah is entitled to a credit of $2,300 for furnishings left in the premises upon her departure in July 2023.

Fourth. The court rejects Deborah's claim to a credit for what she claims was her overpayment of the roof expenses. She provided evidence of this overpayment, summarized in a chart contained within D-3, which includes bank records to support her expenditures. By way of that chart, Deborah contends her 30% obligation amounted to anywhere from a low of $1,022.11 in June 2023 to

a high of $1,277.39 in March 2022, but that she paid $1,500 for each of those months, the only exception being the first month (February 2022) when she paid $2,500. For the eighteen months in question, Deborah claims she collectively contributed $8,429.77 more than 30% of the overall expenditures for the mortgage payment, insurance, taxes, and utilities.

That her 30% share was roughly rounded off to $1,500 per month seems based on the terms Deborah proposed at the outset. In her November 14, 2021 text (P-96) Deborah inserted question marks for James's monthly roof-expense contribution but proposed "Deborah will pay $1,500?? of the required monthly payments for the mortgage, homeowners' insurance, property taxes."

The cohabitation agreement may have called for a 30% contribution but the court rejects Deborah's claim to this so-called overpayment. To be sure, homeowners encounter expenses other than just mortgage payments, insurance, taxes, sewage, utilities, in maintaining a home, and there is no evidence of Deborah having complained about overpaying during the eighteen months she resided at the premises. The parties seemed to have assumed that 30% was equal to $1,500 per month, and the latter may have presupposed that her contribution would be provided to address not just her share of the mortgage payments, the utilities, insurance, etc., but other things that homeowners occasionally face.

V

The court must also consider the parties' disputes about other credits that seem based on equitable principles, namely, the fact that Deborah did not contribute her 30% once she moved out in July 2023 and until now, and the fact that James has had exclusive possession of the property since Deborah moved out.

First, as already noted, Deborah gave her written notice of termination of the cohabitation agreement on July 11, 2023, having moved out the day before. There were then reasonably timely communications about James's exercise of his right to buy her out, including discussions about a compromise, but no agreement was reached,[20] and suit was filed by James on November 9, 2023. Deborah filed an answer and counterclaim, which sought, among other things, an award of palimony, and asserted that the cohabitation agreement was

[20] The court considers this testimony over Deborah's objection because it falls outside the scope of N.J.R.E. 408 (recognizing that an offer of compromise "is not admissible either to prove or disprove the liability for, or invalidity of, or amount of the disputed claim" but that "[s]uch evidence shall not be excluded when offered for another purpose"). That is, the testimony was admissible to show the parties were seeking to reach a resolution not to show that one or the other is liable in some respect on a disputed issue. Greater detail about their negotiations was provided in documents marked for identification as P-89, but no one ever moved that exhibit into evidence, so the court gives P-89 no consideration at all. The other testimony about negotiations, however, is relevant to show the parties were both negotiating, not the content of their positions.

unenforceable, so from that point, the matter came to be fully litigated, resulting in the trial just completed.

The court can see no equity in either party's claim to a credit or reimbursement for the consequences of the nearly two-year period during which Deborah did not share in the mortgage payments and during which James had exclusive use of the premises. Indeed, if Deborah had some continuing obligation to provide her share of the mortgage payments once she terminated the cohabitation agreement, one would expect the cohabitation agreement would have so stated. It doesn't. To be sure, paragraph 10 of the cohabitation agreement obligated the parties to share 70/30 the mortgage payments and the other roof expenses, but the agreement also allowed for a termination, and there is no contention that Deborah didn't terminate the agreement in good faith.

The agreement may be silent about this interim period because paragraph 19 presupposed that the disposition of the parties' property would occur quickly. For example, upon a termination, paragraph 19 directs that the property "shall be immediately listed for sale" (emphasis added), a provision that would also suggest James's right to buy out Deborah would likewise be exercised immediately, and the fixing of the parties' obligations toward each other, in that event, would also be ascertained immediately. It was only the agreement's lack of clarity about the credits – particularly the conflict about what constitutes a

move-in renovation – that caused the nearly two-year state of limbo in the winding down of their joint venture, and so many months of mortgage payments elapsed as did so many months of James having exclusive possession. Ultimately, because James retained the use of the premises, it is only fair that he also be held obligated for the entire amount of those mortgage payments while, by failing to contribute, Deborah's claim to a fair market rental credit should likewise be denied.

Deborah's claim to the fair market rental value of the premises is found wanting for an additional reason. She has offered evidence that the fair market rental value was $3,900 per month (D-2), which would, if applied, result in a credit to her of 30% of that amount, i.e., $1,170 per month. For the same reasons the court has concluded that James isn't entitled to the accrual of what would have been Deborah's 30% contribution toward the mortgage payments, the court concludes that James isn't liable to her for the rental value of the property; Deborah's termination of cohabitation ended both obligations.

Further still, the court finds from the credible testimony that James sought Deborah's consent to leasing out a portion of the premises during this post-termination/pre-resolution period. Consent was needed because the cohabitation agreement's paragraph 12 declared that "neither party shall permit any third

party to reside with them without the other's express written consent."[21] It would be inequitable to allow Deborah a rental credit or reimbursement for the fact that James has had exclusive possession of the property when she precluded James from generating some income to offset the absence of her 30% contribution toward the roof expenses. Deborah should not be permitted to claim a credit for the rental value when she alone stood in the way of James's attempt to mitigate for her absence and obtain at least some of the income that she claims is now her due. Cf., Sommer v. Kridel, 74 N.J. 446, 456-57 (1977); Frank Stamato & Co. v. Lodi, 4 N.J. 14, 21 (1950).

This interim period has no doubt gone on longer than anticipated when the cohabitation agreement was formed. But that's a product of the good faith litigation of this dispute by both parties, necessitated by the lack of the type of clarity in a cohabitation agreement that might have sufficiently solidified the parties' positions and rights going forward upon a valid termination, as occurred here. Neither party should benefit or be unduly disadvantaged because their somewhat confusing agreement led to this full-blown litigation and an extended interim period.

[21] The only exception was the paragraph's acknowledgement of the right of James's minor child to reside in the premises.

VI

So how do all these findings get put together into a judgment that clearly defines the parties' rights going forward? First, the court starts with the property's fair market value at the time James exercised his right to buy out Deborah's interest. As the cohabitation agreement required, James expeditiously obtained an appraisal, which determined that the fair market value at the time of termination was $694,000. The court rejects Deborah's claim that the starting point should be a more current appraisal.[22] That contention is not consistent with what the cohabitation agreement requires. To accept her "current" value would reward her for the rising marketplace when she refused to share in the roof expenses or the maintaining of the premises while this litigation has proceeded to this point.

Next, the amount owed on the mortgage at that time the termination was declared was $435,869.49 (P-5). That amount should be subtracted from the then fair market value of $694,000 to obtain a starting point for the amount of equity in the property of $258,130.51.

The cohabitation agreement allows James a reimbursement of the money he paid toward the property's purchase, i.e., $49,263.07 (P-2), which reduces

[22] The appraisal she provided that is in evidence (D-1) places a fair market value of the property as of May 21, 2024, at $800,000.

the net equity figure to $208,867.44. Although the cohabitation agreement doesn't expressly provide, Deborah should likewise get back that which she put in at the same time, i.e., $14,896.94 (D-9). This is implicit in the provision that allows for James's reimbursement of his share of the purchase price. To read the agreement literally to allow a return of the investment only to James would lead to an absurd result, since nothing has been submitted to suggest that there was a rational reason for the agreement's one-sided approach.[23] See, e.g., Quinn v. Quinn, 225 N.J. 34, 45 (2016) (observing that when an agreement is clear and unambiguous it should be enforced as written "unless doing so would lead to an absurd result"). So, the judgment will reflect the return to Deborah of her $14,896.94, and the $208,867.44 figure must be further reduced by that amount. That brings the remaining amount of equity in the property to $193,970.50.

Then, pursuant to the cohabitation agreement and as already explained, James is entitled to a credit for the additions, alterations, repairs, and other improvements to the property already discussed in Section III of $88,820.17. Doing the math, this lowers the equity figure to $105,150.33. And then there is

[23] Deborah's share of the purchase price was likely not accounted for in the agreement because the attorney who drafted it, as the attorney credibly testified, had the impression that Deborah was contributing nothing. Deborah should not be deprived of this equitable claim merely because the drafter made a mistake or misunderstood what the parties would be contributing at closing.

the last adjudgment, the credit due Deborah for her furnishings of $2,300 that reduces the remaining equity in the premises to $102,850.33.

Based on the 70/30 ratio of ownership, Deborah is entitled to 30% of that figure – $30,855.10 – as that which James must pay in exercising his right to buy out Deborah, along with the $14,896.94 that must be returned to her. The total payment to Deborah to buy out her interest in the premises is, therefore, $45,752.04.

In addition, although not mentioned in the cohabitation agreement, James must – if he is to fully exercise his buy-out right in a way that is equitable to Deborah – take those steps necessary either through an agreement with the mortgagee or through a refinancing of the property or otherwise, to ensure that Deborah is no longer burdened by her responsibility on the mortgage loan.

The cohabitation agreement is similarly silent as to the timing of all this, but the court will fill in that gap with a reasonable time period, see Kas Oriental Rugs, Inc. v. Ellman, 394 N.J. Super. 278, 287 (App. Div. 2007), and require that this transaction be completed within 45 days. That time limit may be extended by consent or, without consent, for 30 days on a demonstration of good cause.

The court lastly observes that Deborah has argued throughout this matter that James will be unable to either refinance or remove her from the obligations

imposed by their mortgage loan. See D-6. The trial produced insufficient information or evidence by which the court could possibly either accept or reject that conclusion. In any event, even if the court had doubts, no harm would result in allowing James an opportunity to pursue the remedy the cohabitation agreement provides him. Deborah testified that James has made all the mortgage payments – she claims only one payment was late – and her credit rating has not suffered by her remaining on this obligation since she left the premises for the last time nearly two years ago. The court sees no harm in delaying a resolution for the brief time that will be allowed for an exercise of James's buy-out rights.

In the final analysis, the proof of James's ability to buy out Deborah's interest and remove her from the mortgage obligation will be in the pudding. Equity requires that he be given the opportunity to try.

VII

If James is unable or unwilling to complete the transaction for a purchase of Deborah's interest in the property as delineated immediately above, then the property shall be immediately thereafter listed for sale, and the marketplace will determine its value. Still, the parties will be entitled – once the sale proceeds are received – to the return of their initial investments (again $49,263.07 to James and $14,896.94 to Deborah), and James would be entitled to his credit of $88,820.17. Since the court assumes the furnishings for which Deborah received

a credit of $2,300 would not be transferred in any sale of the premises to a third person, she would not in that case be entitled to that credit from the proceeds but instead entitled to the return to her of the personal property.

* * *

Judgment has been entered in conformity with this opinion.