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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: **1287/2022**

In the matter between:

A[...] T[...] E[...]

Plaintiff

and

D[...] T[...]

Defendant

Coram: Joubert AJ

Oral evidence: 29 May 2025 and 2 June 2025

Oral argument: 8 August 2025

Further written submissions delivered 8 September 2025

Judgment delivered electronically: 26 September 2025

JUDGMENT

JOUBERT AJ:

INTRODUCTION

1. The parties lived together as romantic partners in the defendant's house from about February 2011 until 23 April 2022 when the plaintiff moved out of the house.
2. In his summons, the plaintiff claims the following:
 - 2.1 An order declaring that a partnership existed between the parties in equal shares in respect of the assets of the universal partnership.
 - 2.2 An order dissolving the partnership as from 23 April 2022.
 - 2.3 An order appointing a liquidator, alternatively a receiver with authority to:
 - 2.3.1 realise the assets of the partnership;
 - 2.3.2 pay the liabilities of the partnership;
 - 2.3.3 prepare a final account and reconciliation of the partnership assets and liabilities as above;
 - 2.3.4 make payments to the plaintiff of 50% of the profits derived from the aforesaid process as set out in the aforesaid account and reconciliation.
 - 2.4 Payment in the amount of R230 000.

- 2.5 Interest *ex tempore morae* on the aforesaid sum from date of summons to date of final payment.
- 2.6 Costs of suit.
- 2.7 Further and/or alternative relief.
3. The matter was set down for hearing in the Fourth Division of this Court on Thursday 29 May 2025. The parties however agreed beforehand that the merits and quantum be separated and that the merits be dealt with first, which agreement was recorded in a Joint Practice Note. In effect, this includes the relief set out in paragraphs 2.1 to 2.3 above. More will be said about the plaintiff's claim for "equal shares in respect of the assets" and "50% of the profits" later herein.
4. After the evidence of the parties was heard on 29 May 2025 and 2 June 2025,¹ the matter was postponed by agreement between the parties in order for a transcript of the evidence to be obtained, heads of argument to be filed, and argument to be heard.
5. After having heard argument on 8 August 2025, I directed the parties to submit written notes on the following:
- 5.1 In the event that the Court declares that a universal partnership existed between the parties:

¹ The defendant applied for absolution from the instance at the end of the plaintiff's case, which was dismissed.

- 5.1.1 Does the Court have the power to determine the respective shares in such universal partnership, or is the Court bound to decide whether or not the plaintiff has a 50% share in such partnership as claimed in the plaintiff's Particulars of Claim, and nothing else ?
- 5.1.2 If the Court does have the power to declare a share percentage other than 50% each, what should the share percentages be and on what grounds / considerations should such determination be made ?
- 5.1.3 Is the Court requested, and does it have the power, to declare which assets form part of such universal partnership, and if so, should the value of the defendant's house situated at [...] C[...] Close, Milnerton be included therein ?

THE RELEVANT LEGAL PRINCIPLES

6. For the test and factors to be considered in determining whether a universal partnership existed between two parties, one need not look further than the judgments of the Supreme Court of Appeal in *Ponelat v Schrepfer* 2012 (1) SA 206 (SCA) ("*Ponelat*") and *Butters v Mncora* 2012 (4) SA 1 (SCA) ("*Butters*").
7. In *Ponelat* it was *inter alia* explained that:²

² At paras 19 – 20, quoting with approval a passage from the judgment of the trial court, in turn quoting from *Pezzuto v Dreyer* 1992 (3) SA 379 (A).

- 7.1 The essentials of a partnership in general as formulated by the French jurist RJ Pothier³ namely that (1) each of the partners must bring something into the partnership, whether it be money, labour or skill (2) that the business should be carried on for the joint benefit of the parties and (3) that the object should be to make a profit, apply equally to a universal partnership.
- 7.2 A universal partnership in which the parties agree to put in common all their property, both present and future, known as a *universum bonorum*, has been described as “effectively a community of property”.⁴
- 7.3 The approach as to whether a tacit agreement can be held to have been concluded was whether it was more probable than not that such a tacit agreement has been reached.
- 7.4 The Court must also “*be careful to ensure that there is an animus contrahendi*” and that the conduct from which a contract is sought to be inferred is not simply that which reflects what is ordinarily to be expected of a spouse in a given situation.
- 7.5 The universal partnership exists if the necessary requirements for existence are met, regardless of whether the parties are married, engaged or cohabiting.

³ *Traité du Contrat de Société* (Treatise on the Contract of Partnership).

⁴ In *Sepheri v Scanlan* 2008 (1) SA 322 (C) at 338C

8. It is worth noting that, in the passage from *Pezzuto* referred to in footnote 2 above, it was *inter alia* stated that partnership could be tacit or implied from the facts, “...provided they admit of no other conclusion than that the parties intended to create a partnership...”. However, the Supreme Court of Appeal in *Ponelat* confirmed the less onerous “probability test” referred to in paragraph 7.3 above, following its own judgment in the case of *Mühlmann v Mühlmann* 1984 (3) SA 102 (A). In *Mühlmann*, the Court expressly rejected the “no other reasonable interpretation”-test.⁵
9. In *Butters*, the Court *inter alia* held as follows:
- 9.1 The general rule of our law is that cohabitation does not give rise to special legal consequences and the supportive and protective measures established by family law are generally not available to those who remain unmarried, despite their cohabitation even for a long period;
- 9.2 To establish a universal partnership the plaintiff had to establish that she and the defendant were not only living together as husband and wife, but that they were partners, which required proof of the three essential elements as formulated by Pothier;⁶
- 9.3 In Roman-Dutch law a distinction was drawn between a *societas universorum bonorum* by which the partes agree to put in common all their property, present and future, and a *societas universorum quae ex quaestu*

⁵ At 124C

⁶ At para 11

veniunt where they agree that all they may acquire during the existence of the partnership shall be partnership property.⁷

9.4 Crucially, for purposes of this case, the contention that the partnership must consist of some commercial undertaking was rejected after a careful analysis of the Roman and Roman-Dutch law of partnership.⁸

9.5 *Contra* the statement in *Ponelat* referred to in paragraph 7.2 above, the Court held that “...*A universal partnership is not the same as a marriage in community of property*”.⁹ I return to this question later in this judgment.

9.6 In summary, the Court formulated the following principles:¹⁰

9.6.1 Universal partnerships of all property which extend beyond commercial undertakings were part of Roman-Dutch law and still form part of our law;

9.6.2 A universal partnership of all property does not require an express agreement. Like any other contract, it can also come into existence by tacit agreement, that is, by an agreement derived from the conduct of the parties.

⁷ See also *Heaton et Kruger: South African Family Law*, LexisNexis 5th Ed., p 305; *Sepheri v Scanlan* (*supra*) at 338 A-C; *Booyesen v Stander* 2018 (6) SA 528 (WCC) at para [67]

⁸ At paras 12 – 15

⁹ At para 30

¹⁰ At para 18

9.6.3 The requirements for a universal partnership of all property, including universal partnerships between cohabitees, are the same as those formulated by Pothier for partnerships in general.

9.6.4 Where the conduct of the parties is capable of more than one inference, the test for when a tacit universal partnership can be held to exist is whether it is more probable than not that a tacit agreement had been reached.¹¹

10. Based on the aforementioned principles, it was held in *Butters* that a tacit universal partnership had been established by the plaintiff in that case in circumstances where her contribution was that “*she spent all her time, effort and energy in promoting the interests of both parties in their communal enterprise by maintaining the common home and raising their children*” and “*her earnings were far less than the defendant’s and her financial contribution was therefore quite modest when compared to his*”.
11. As an aside, I consider the phrase “communal enterprise” in the passage quoted above to be helpful and appropriate to employ in considering whether a partnership came into existence, rather than the word “partnership” which presupposes the answer to the enquiry.
12. It hardly bears mentioning that in our law same-sex partners, such as the parties in this case, are constitutionally entitled to the same legal recognition as

¹¹ See also *Christie’s The Law of Contract in South Africa*, Vol 1, 8th Ed, pp 110 – 111

heterosexual partners¹² and no distinction is to be made between heterosexual relationships and same-sex relationships in the application of the legal principles relating to universal partnerships.

13. Whether the plaintiff in this case succeeded in establishing a tacit universal partnership on the evidence before the Court must now be considered in the light of the aforementioned legal principles.

THE RELEVANT EVIDENCE

14. Although they had met earlier, the plaintiff and defendant started dating when the plaintiff was 25 and the defendant 41 years old. The plaintiff was struggling financially and was on the brink of being evicted from his flat in Sea Point, Cape Town. After three months of dating, the defendant invited the plaintiff to move in with him, in the defendant's house at [...] C[...] Close, Milnerton (*"the house"* or *"the property"*).
15. The plaintiff, by his own admission, did not earn a particularly substantial income. He had worked in the travel industry with Flight Centre but later got involved in real estate, managing rentals with Cape 24 Properties. At the time that he moved in with the defendant he was earning R6000 to R7000 per month whereas his rental alone was R6000 a month. By the time he moved out of the house in 2022 he was earning around R20 000 – R25 000 per month.

¹² A collection of relevant case law in this regard is conveniently cited in *Booyesen v Stander (supra)* at para [45]

16. The defendant was, and still is, employed as Airport Service Manager for Emirates Airline. The only oral evidence of the defendant's income was provided by the plaintiff who testified that the defendant earned at least R50 000 per month more than him, which evidence was not placed in dispute by the defendant in any manner. However, in the defendant's counsel's further written submissions it was stated that his average net salary over the period from 2016 to 2022 was R44 175 per month, with reference to a document in the agreed trial bundle which contains the defendant's salary details over the relevant years.
17. Although the aforementioned document was not identified and dealt with in the defendant's evidence, since it renders his position in relation to the comparative contributions of the parties less favourable to him than the plaintiff's evidence referred to above, I will accept his counsel's submission in that regard.
18. No evidence was given of the plaintiff's average monthly income. On his own evidence, it fluctuated substantially. I return to this issue, and the comparative contributions of the parties to the household finances, below.
19. Approximately four months after the plaintiff moved in with the defendant, the defendant's parents also moved into the house. They had been living there before but were away visiting in Johannesburg at the time that the plaintiff moved in. Approximately a year later, the defendant's sister and her disabled son also moved into the house. Later, during around 2020, the plaintiff's other sister and her grandson also moved into the house, replacing the first sibling and her son.

20. During 2018, while on holiday in Phuket, the Plaintiff asked the Defendant to marry him to which the Defendant agreed. The Defendant testified that although he is generally not in favour of gay marriages, the proposal was unexpected and he was caught up in the moment and mood of the happy time that they were having. No date for a wedding was set and they simply remained engaged until the relationship ended.
21. The main, or at least final, cause for the breakdown in the relationship between the parties was admitted infidelity on the part of the plaintiff. However, neither of the parties contended that the reasons for the termination of their relationship has relevance to the issues at hand and I accordingly say no more about that.
22. During the currency of the relationship between the parties, the financial affairs of the household were managed as follows:
- 22.1 The defendant had two accounts, being an Absa account number 7[...] (*“the Absa account”*) and an FNB Premium/Platinum¹³ account number 6 [...] (*“the FNB Premium account”*). The defendant had an FNB account number 6 [...]. The Absa account was in effect a joint account from which all the household expenses were paid, including the bond. The plaintiff paid most of his salary into the Absa account and the defendant was in complete control of it and took care of the household finances. The plaintiff testified that he did not really know anything about the household finances and that he *“felt safe and secure like that”*.

¹³ “Premium” and “platinum” were used interchangeably in evidence.

- 22.2 The defendant's FNB Premium account was made available to the plaintiff for use as a credit card. He was provided with a physical bank card bearing his name and also had signing powers in respect of that account. The reason for this was that it provided more benefits than his own bank account such as lower interest rates, airport lounge access, etc. When the FNB account did not have sufficient funds, the plaintiff would request more funds from the defendant who would then always make sure that there was enough money in it for the plaintiff's use.
- 22.3 Over the period from May 2012 to April 2022, the total funds transferred from the FNB account into the Absa account amounted to R1 009.330, which represents the total of the plaintiff's contribution to the joint account over that period. This amounts to approximately R7600 per month on average over the 11 year period. To what extent that would have covered the plaintiff's share of the household expense was not dealt with in evidence.
- 22.4 The defendant's parents were reliant on SASSA grants which they also contributed to the household finances. The amount of their contributions was not dealt with in the evidence.
23. The defendant urged upon the Court that, viewed holistically, the plaintiff ultimately caused a substantial diminution of his (the defendant's) estate. The following facts are relevant in this regard:

- 23.1 The defendant purchased the (2-bedroomed) house in 2008 and had an extra flatlet added for his parents. In 2011, at the time that the plaintiff moved in with him, his financial position was stable in that he had his own house, own car and two or three credit loans. The bond on the house was R1.25 million.
- 23.2 By contrast, according to the defendant, when the relationship ended in 2022, he was struggling financially. In this regard he referred to an Experian Credit Report dated 29 June 2023 in which various credit account balances are recorded, which were summarized in a schedule handed in and marked Exhibit C, which shows a total balance in the amount of R718 539.
- 23.3 The defendant has settled the aforementioned debts by increasing the mortgage bond on the house from R1.25 million to approximately R1.9 million. The bond has now been reduced to approximately R1.8 million.
24. When the plaintiff moved in with the defendant he brought with him the furniture and appliances that he had in his flat, but the parties subsequently agreed on the items that he could take with him. During their relationship, the plaintiff was given the use of an Audi A4 convertible motor vehicle which was acquired by the sale of the plaintiff's father's Corolla motor vehicle and an Opel Astra motor vehicle. The Audi A4 was purchased for R100 000 but later sold for R35 000, whereafter the plaintiff was given the use of a Renault Sandero motor vehicle, which had actually been obtained for the defendant's sister's disabled son through the latter's trust.

25. Lastly, as regards financial affairs, it should be mentioned that the parties concluded a lease agreement in terms of which the plaintiff would notionally pay rental to the defendant. It was however clearly not intended to be implemented or enforced but rather to submit to the bank as proof of additional income to the defendant for purposes of obtaining an increase in the mortgage bond.
26. Further relevant aspects of the evidence will be appear from the discussion of the merits of the plaintiff's claim below.

DID A UNIVERSAL PARTNERSHIP COME INTO EXISTENCE?

27. The enquiry must commence with a consideration of the three essential requirements for a partnership as formulated by Pothier followed by a consideration as to whether, on a conspectus of all of the relevant evidence, it is more probable than not that a tacit agreement, entailing the requisite *animus contrahendi*, had been reached.

Each of the partners must bring something into the partnership, whether it be money, labour or skill

28. The plaintiff's case in respect of his contributions to the communal enterprise may be summarized as follows:

28.1 He essentially paid over his entire income, or the bulk of it, for the defendant to utilise as he saw fit.

28.2 He was very involved in planning and executing improvements to the house. Given his background in property, he had good ideas in this regard, which the defendant candidly admitted.

28.3 Albeit not to the extent of the plaintiff in *Butters* (he did not sacrifice his career and there were no children that required raising and looking after), he contributed to “*looking after the household*”, assisting with errands, occasionally providing transport to the defendant’s parents (although they could also drive themselves, etc). Since he did not have a full-time job, he was the one that could attend to household issues or emergencies that inevitably arise. In the plaintiff’s words, he “*gave his life to the defendant and the partnership and brought joy to the household*”.

28.4 He also on occasion played a significant role in hosting staff functions for the defendant.

29. The defendant did not dispute the plaintiff’s case in that regard. If anything, he candidly acknowledged the contributions to the relationship that the plaintiff relies upon as appears, for example, from the following evidence given by him in his evidence in chief:

“MR BOTHA: What skills do you think you brought to the relationship, if any?

MR T[...]: I think his ideas ... [intervenes]

MR BOTHA: In respect of the renovations?

MR T[...]: Ja.

MR BOTHA: Ok ... [intervenes]

MR T[...]: He mentioned yesterday like I do not know if I misunderstood him, but he said he brought joy, like I said five years, it was absolute beautiful but the past six years was an absolute disaster.”

30. Under cross-examination, the defendant also acknowledged that the defendant’s salary was paid into his (the defendant’s) account for the benefit of everybody in the household.
31. The overall impression to be gained from the foregoing is that the plaintiff’s role in the relationship was akin to that of a spouse in a marital relationship who earns less than the other spouse but contributes what he or she is able to by way of finances in addition to intangible and non-pecuniary contributions such as affection, support and companionship.
32. In my view the plaintiff’s contributions to the relationship and “communal enterprise” qualified as contributions envisaged in the first requirement for a partnership, in the context of a universal partnership.

The partnership must be carried on for the joint benefit of the parties

33. The plaintiff denied the defendant’s case, as pleaded, that their relationship was no more than a “romantic entanglement”. In doing so, he *inter alia* testified as follows:

“I would say that 13 years of constant work together at a common goal of success, of being there for his family, being there for one another, pushing, working hard, motivating one another, being through hard times, getting through them.”

34. As regards what he meant by “common goal”, he testified that

“For success, whether it be if we eventually have to sell our house one day and get equity within the property we made together, because we renovated. If it were to be one day we decide that the family is no longer a burden and we retire to Spain. I do not know, we just wanted to better our lives together and work together to make it happen and we were good at it.”

35. That evidence was not directly contested or refuted. The defendant was asked during his evidence in chief whether, if he had been asked at the beginning of the relationship to join forces with the defendant and enter into a commercial partnership with him, romantic relationship aside, he would have agreed to such an endeavour. His response was that he would not because his priority was his family. However, as I have pointed out, the defendant’s approach that a commercial partnership had to be established was incorrect.

36. During cross-examination, the defendant agreed that their relationship had all the characteristics of a marriage such as living under one roof, sharing a bed, combining their salaries, etc and conceded that he was happy and comfortable to receive the benefits which are associated with a marriage.

37. I am of the view that the evidence also establishes the second requirement, namely that the communal enterprise was carried on for the joint benefit of the parties.

The object of the partnership must be to make a profit

38. Again, “profit” in this sense does not necessarily refer to commercial profit, and in my view the “common goal of success” relied upon by the plaintiff in the passage from his evidence quoted in paragraphs 33 and 34 above satisfies this requirement.
39. Moreover, the defendant conceded that the plaintiff’s home improvement knowledge and skills were valuable and did not contest the plaintiff’s evidence that the improvements that were made, which were largely initiated and driven by the plaintiff, did not constitute an overcapitalization of the property, given the desirable area in which it is located.
40. Evidence was not given of the current market value of the property but I am prepared to assume that it would at the very least have kept up with normal increases in property values in the greater Cape Town area. As quoted in paragraph 34 above, the plaintiff did suggest that the equity in the property would be increased by the renovations, which was not contested by the defendant. To be clear, I make no estimation of what such increase might have been.

Did the applicant show the requisite *animus contrahendi*?

41. In the context of tacit agreement, the conclusion that the parties intended to contract with each other “...*has to be reached by inference as to their intentions properly drawn from the proved facts*”.¹⁴

¹⁴ Christie’s *The law of Contract (supra)* at p 110

42. As has been mentioned above, earlier conflicting formulations for the test for establishing this, have been settled in favour of the “more probable than not”-formulation.
43. In my view, the evidence that I refer to above does give rise to an inference that the parties intended their relationship to be much more than just a “romantic entanglement”, as the defendant would have it. Not only did he concede that the relationship had all the characteristics of a marital relationship, but the duration thereof alone in my view placed it beyond a mere romantic relationship, even if the mere fact of cohabitation as romantic partners does not in and of itself place their relationship on a much deeper level than that.
44. To my mind, the fact that the parties were engaged for four years and right up until the relationship terminated, places the issue beyond doubt. To become engaged is to intend to get married, with all the mutual support and common goal of achieving success that normally characterizes a marital relationship. Even though the parties were not yet actually married, they for all intent and purposes already lived together like a married couple, for eleven years.¹⁵
45. Taking all of the above into account, I find that a universal partnership did come into existence between the parties from the date that the plaintiff moved into the defendant’s house during February 2011 until he moved out on 23 April 2022. It follows that an order dissolving the partnership as from the latter date must be granted.

¹⁵ In *Allner v Werner* [2020] JOL 46691 (ECG), a cohabitation arrangement between romantic partners was held to have progressed to a “*completely different level*” i.e. a universal partnership, when they “*resumed cohabitation in all earnesty (sic) and for all intent and purposes were living together as a family unit*” (at para 11).

The consequences of the dissolution of the universal partnership

46. The question as to what further relief ought to be granted must be answered with reference to the submissions made by the parties in response to the questions posed to them as set out in paragraph 5 above.
47. The parties are *ad idem* that the Court is called upon to declare such percentage share of the universal partnership as it considers to be appropriate and in accordance with each party's contribution.
48. The plaintiff's counsel, in his supplementary note, pointed out that in *Butters*, the Supreme Court of Appeal did not interfere with the share percentage awarded by the trial court.¹⁶ In the court *a quo*, Chetty J *inter alia* pointed out that the apportionment "...*though arbitrary, is one with an equitable outcome*" and referred with approval to a judgment of the Botswana Court of Appeal in *Mogorisi v Mogorisi*,¹⁷ in which it was *inter alia* held that "*We have to find a way of fairly weighing and allowing for contributions of all the interested parties*".¹⁸ It was reiterated that the contributions to which a financial value could not be assigned had to be taken into account, as well as the contribution of the respondent "*to the growth of the estate and the universal partnership...*" and that the Court also had to give "*full weight to the fact that the appellant was already the owner of some property before 1966*". The court *a quo* in *Butters* apportioned a share of 30% of

¹⁶ *Mncora v Butters* 2010 ZAECPHC (72) 7 December 2010

¹⁷ 7 (CAPP04105) [2005] BWCA 18 (30 January 2008)

¹⁸ See also *Heaton et Kruger: South African Family Law (supra)* at p 307

the universal partnership to the net asset value of the defendant as at the date of the dissolution of the partnership.

49. Taking a broad view, it can be said that the parties in effect contributed financially to the household what they earned. It is not possible to determine what the plaintiff's average income over the period of eleven years amounted to. However, at best for him, I shall assume the average of his income to be between the lowest figure of R6000 per month referred to as his income at the beginning of the relationship and R25 000 as the maximum at the end of the relationship, which amounts to approximately R15 000. Compared to the average of the defendant's income in the amount of approximately R45 000 000, that calculates to a ratio of roughly 25/75 of their joint contributions.
50. In this equitable outcome enquiry I also take into consideration that the defendant financed the overseas holiday trips that the parties enjoyed and also in effect made available to the plaintiff the vehicles that he used for his own purposes, including his own job and career.
51. The non-pecuniary contributions of the plaintiff cannot be compared with the circumstances that prevailed in *Butters* in that no children that had to be raised and looked after were involved.
52. In my view, apportioning a 20% share of the universal partnership to the plaintiff would be equitable in the circumstances of this case.

53. As regards the question as to whether the Court has the power to declare which assets form part of the universal partnership and, if so, whether the value of the defendant's house should be included therein, the parties were not *ad idem*.
54. The plaintiff submitted that his Particulars of Claim are formulated widely enough to include the house as one of the assets which he expressly alleges forms part of the universal partnership. The plaintiff however adopts what his counsel refers to as an "accrual-style approach" and requests that it be declared that the value added to the house during the partnership forms part of the partnership assets, alternatively that the Court should direct that the receiver / liquidator account for the increase in equity in the property as part of the dissolution.
55. The defendant submitted that the Court is not requested in the pleadings and Joint Practice Note to declare which assets form part of the partnership but that it does have the inherent jurisdiction to do so as part of determining what is to be liquidated and distributed.
56. The defendant however submitted that the value of the house should not form part of the universal partnership, based mainly on (a) the fact that it was purchased by him prior to the formation of the universal partnership, (b) a submission that it cannot be included unless a clear intention to contribute it to the partnership is proven, (c) that the plaintiff did not contribute financially to the improvements of the house whatsoever, and (d) that the references in the plaintiff's evidence to the house as "our house" is legally insufficient to sustain an argument that thereby the value of the house formed part of the universal

partnership. Lastly, the defendant submits that to include the house in the partnership assets would result in unjustified enrichment of the plaintiff.

57. In *Khan v Shaik* 2020 (6) 375 (SCA), the Supreme Court of Appeal confirmed that a universal partnership establishes personal contractual rights as opposed to real rights and that a partner in a universal partnership accordingly does not have a direct claim to an asset owned by the other party, which distinguishes it from a marriage in community of property. Accordingly, it must be determined what the parties intended in this regard: either a *societas universorum bonorum*, or a *societas universorum ex quaestu veniunt*.
58. The plaintiff's approach, namely that any accrual in the value of the property over the period of the universal partnership falls to be included in the dissolution of the partnership, is in accordance with the *universum quae ex quaestu veniunt* construction, which is the less favourable to him, and which I accordingly accept as the basis on which the property must be dealt with. I believe that it would be prudent to state this in the order that I make.
59. Although the parties did not raise any issues relating to the manner of appointing a liquidator or the precise terms of such appointment, I am concerned that the absence of such terms might give rise to a dispute and even further litigation. I accordingly include in the order that I grant, additional provisions relating to the practicalities of the liquidator's appointment in line with the order that was granted by the court *a quo* in *Butters*, which was confirmed by the Supreme Court of Appeal.

60. It stands to reason that, if the defendant's share can be paid to him by the plaintiff without the need to realise assets, that would be far more equitable and preferable. Having had insight into the financial affairs of the defendant, I am concerned that he may not be able to pay whatever amount the liquidator finds to be payable to the plaintiff immediately and I accordingly also include provision for a reasonable period within which payment can be made as an alternative to liquidating any assets. I do so in the exercise of the Court's equitable jurisdiction.
61. Lastly, as regards costs, the plaintiff was substantially successful and I grant the costs order requested by him.
62. I accordingly make the following order:
1. It is declared that a universal partnership existed between the parties of all assets and liabilities acquired by them during the period from February 2011 to 23 April 2022 in which the plaintiff obtained a 20% and the defendant a 80% share.
 2. The universal partnership is dissolved as from 23 April 2022.
 3. The increase in value of the defendant's house situated at [...] C[...] Close, Milnerton, over the period of the universal partnership, if any, falls within the assets of the universal partnership.
 4. The partners are to appoint a liquidator and receiver with authority to prepare a final account and, if necessary, realise the universal partnership

assets and pay to the plaintiff 20% of the net proceeds thereof, the remainder to be paid to the defendant together with interest thereon at the legal rate calculated from date of summons to date of payment.

5. The receiver and liquidator shall have the power to provide for a method and reasonable time period for the payment by the defendant to the plaintiff of any amount that is found to be so payable as an alternative to liquidating the relevant assets in terms of paragraph 4 above.
6. In the event that the parties are unable to reach consensus on the appointment of a liquidator and receiver, the parties are authorized to approach the court for directions in relation to such dispute.
7. The parties are also authorised to approach the court for directions should there be a dispute as to the period within which payment is to be made in the event of the liquidator exercising the power set out in paragraph 5 above.
8. Costs follow the result and the defendant is ordered to pay the plaintiff's costs on the scale as between party and party, counsel's fees to be taxed on Scale B.

D C JOUBERT AJ

Plaintiff's counsel: Adv L Gabriel

Defendant's Counsel: Adv M Botha