Splitting relationship property

LEGAL MATTERS

ALAN KNOWSLEY
RAINEY COLLINS LAWYERS

A recent case involved a restraint of trade payment that the husband received one year after the couple had divorced.

He had entered into a restraint of trade with the company he had sold, which prevented him from using his skills and contacts in competition with that company for five years, across an extensive geographical region.

The payment for this restraint of trade was $8 million.

The Court of Appeal recently decided the restraint of trade was the husband's separate property and therefore not relationship property.

Based on that decision, the wife could not make a claim.

However, leave has been granted for her to appeal the decision to the Supreme Court.

Watch this space – I will update you on the outcome.

The normal rule for division of relationship property is 50/50.

In one High Court case, however, the court awarded the wife 70 per cent of the property.

The decision to direct a 70/30 division, rather than the usual 50/50, was based on the finding that the husband's income and living standards were significantly higher than his wife's, and that this was as a result of the division of functions in their relationship.

The wife had given up her career as a nurse to care for the parties' three children.

She had also followed her husband's surgical career around the world, moving several times with the children, which allowed him to enhance his career.

When they separated he was earning about $1m per annum, whereas she obtained a job earning $30,000.

Not surprisingly, this difference in income resulted in significantly different living standards.

To redress the "economic disparity", the Family Court granted the wife 70 per cent of the couple's relationship property pool.

Upon appeal, the High Court agreed and upheld the decision.

In another 2014 decision, the Supreme Court also made it clear the valuation date to be used for relationship property was the date matters are resolved (the date of hearing or settlement), not the date of separation.

The parties in this case separated in 2004.

Their main relationship assets were a family home worth about $1.55m when the parties separated and several businesses with a combined value of about $1.7m at the time of separation.

The intention was that the wife would retain the home and the husband would retain the businesses.

However, by the time they came to resolve their relationship property matters in the Family Court in 2012, the businesses had decreased in value significantly, to about $973,000.

The Supreme Court ruled that the starting point should be the hearing/settlement date value, not the separation date value.

The effect for the wife was that she had to share in the significant business losses.

The family home, which the wife wanted to retain, was found to have increased in value and the husband was able to share in that increase.

The case is a reminder to resolve property matters as soon as possible, rather than wait for several years.

It is also worth noting that if there had been deliberate actions or inactions by the husband to decrease the business assets, that would have created a different outcome.

That was not the situation in this case.

▮ Column courtesy of Rainey Collins Lawyers, phone 0800 733484. If you have a legal inquiry, email aknowsley@raineycollins.co.nz.