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### Family Law Case Update #6: Property

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#### **Blackwell & Trantor [2014] FCCA 1667**

**Court:** Federal Court of Australia (Sydney)

**Judges:** Judge Scarlett

#### **FACTS:**

- Blackwell (husband) and Trantor (wife) began living together in 1998.
- Married in 2001 – separated in 2011.
- No children of the marriage.
- Matrimonial Home (Property A) purchased for \$348,000. Deposit of \$127,000 and a mortgage of \$257,000.
- 4 December 2006 the husband purchased a Mazda motor car for \$32,243.00 subject to lease.
- Mortgage on Property A was paid out on 22 February 2010.
- Parties separated on 5 August 2011, however they continued to live separately under one roof

#### **PROCEDURAL HISTORY:**

- 5 April 2012 – Husband initiated proceedings
- 8 August 2012 – Parties enter into Interim Consent Orders that required the wife to pay the husband \$5,000 a month through electronic funds.
- Wife was also granted sole occupancy of Property A.

#### **ISSUES:**

- Property Division
- Extent of initial contributions
- Financial loss in the marriage
- Contributions to the matrimonial home
- Contributions of superannuation
- Factors of s.75(2) Family Law Act.

#### **HELD:**

- The guidelines of section 79 *Family Law Act* must be met in order to determine readjustment of the legal and equitable interests of the parties.
- Any adjustment between the parties made by the Court must be “just and equitable” (s.79(2)).
- Total net asset pool is \$1,159,023.00



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- Party contributions should be split 70% to the wife 30% to the husband.
- Adjustment of 10% in husband's favour due to s.75(2) maintenance factors.
- Husband to receive 40% of net asset pool and wife to receive 60%.

### **REASONS:**

#### Asset Pool

- \$38,000 added back to asset pool against the husband. Addbacks should be used sparingly and there is no hard and fast rule as to whether they will be allowed. The reality is that if the asset no longer exists, the Court cannot reinvent the asset.
- Non superannuation assets are \$867,686.00.
- \$74,463 in liabilities.
- \$365,800.00 in superannuation.
- Adding back to asset pool - Husband spent around \$17,000 on dating websites and expensive restaurants that the wife should not have to account for. Additional expenses included legal fees.
- Liabilities are not increased as mortgage on the house has been paid off.

#### Party Contributions

- Wife's initial contribution was substantially more than the husband's.
- Due to the wife's assets and income the matrimonial home was purchased.
- During marriage when comparing the husband and wife's contributions, the husband's were substantially less.

#### S75(2) Factors

- Wife is younger than the husband and has greater income earning capacity.
- The court accepted that the wife had a temporary injury in relation to which she was undergoing treatment, however the Court also found that this would not impact on her ability to earn income.
- Husband was unemployed and had dim prospects of returning to employment, given his age.
- Husband's standard of living has deteriorated since the marriage ended.

### **ORDERS:**

- Husband received 40% of the net assets - which in the body of the judgment included the husband's MLC superannuation interests.
- \$113,908.00 to be paid by wife to husband in order to achieve this outcome;
- Husband to transfer Mazda motor car to wife;
- Husband to indemnify wife against indebtedness against Mercedes Benz.



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In conclusion the judge said:

*101. Again, the Court should consider whether the proposed orders are just and equitable. The husband will receive 40% of the net asset pool and the wife will receive 60%. The Husband will receive substantially less than the Wife, even allowing for a 10% s.75(2) adjustment in his favour, because his contributions to the marriage were significantly less than those of the wife. I am satisfied that the proposed orders are just and equitable.*

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