



Counsel Family Lawyers

Family Law Case Update #10: Property

Caroline Counsel

Counsel Family Lawyers

George & George [2015] FamCA 29

Family Court before Justice Watts

Facts:

- Parties married for 16 years. There are four children of the marriage born 1996, 1998, 2000 and 2004.
- Parties agreed that their contributions during the relationship were equal
- Parties had resolved parenting issues.
- Parties commenced cohabitation in China in 1994. In December 1994 parties moved to Indonesia for the husband's work
- When the parties started living together the husband had properties one purchased in 1984 worth \$52,000 and one purchased in 1988 for \$141,000.
- In July 1995 parties married in the UK.
- March 1996, parties moved to Hong Kong for husband's work
- July 1997 parties purchased F property, in husband's sole name.
- 1999-2000 parties launched W Pty Ltd, a communications systems company. In which the wife and husband hold shares.
- July 2000 parties purchased property in Hong Kong
- 2002 husband set up his own Company EE, in which wife was born.
- December 2004 family relocated to Sydney.
- October 2005 bought property at Town s for \$900,000 and sold property Town Y for \$495,000.
- March 2006 husband employed as senior executive. Feb 2010 wife commenced bachelor degree at University.
- Parties separated under one roof in January 2011.
- 24 June 2011 wife and children moved out of former matrimonial home.
- Events in July 2011 where Husband was charged with ABH to the wife an interim AVO was ordered.
- 29 June 2011 husband sold the Hong Kong property and put monies into controlled account.



Counsel Family Lawyers

Issues:

- Treatment of initial contributions by husband
- Post separation contributions by each party
- Adjustment to be made

Decision:

Initial Contributions:

The value of initial contributions over the course of a long relationship may deteriorate or ameliorate as a result of other contributions made throughout the relationship.

The wife made no significant contributions at the start of the relationship.

Husband had two properties - one valued at \$53,000 at start and valued at trial as per expert valuer's report at \$430,000. That property generated income through the marriage and following separation.

Second property was Y property purchase for \$149,000 and sold 9 August 2005 for \$495,000 and generated rental income of \$325 per week (outgoings of \$270 per week).

Husband also had savings of \$88,000.

Additionally he had two tranches of shares which he sold in his Company PP. This seems to be the husband's family company in so far as the husband alleged that the second tranche of shares that were in his name, were shares held on trust by him for this father and brother. The wife contended that all shares in this Company were the husband's.

The Court agreed with the husband's contention. .

Husband asserted at trial that his initial contributions totalled \$1.2 million.

Post Separation Contributions:

H continued to make payments towards Suburb F and Town S mortgages.

Suburb M continued to generate income since separation.

Husband also paid school fees.

Wife had to pay rent, father had the benefit of the former matrimonial home.

Husband suggested based on his initial contributions, that there be a redistribution of legal and equitable interests in his favour and expressed in percentage terms of 65-35.

[186-187] *"The assets brought by the husband into the cohabitation and marriage are significant. They cannot be dealt with mathematically in the manner suggested by the husband because of the myriad of contributions made otherwise by both parties during the cohabitation and since separation. Both parties have had use of significant capital in the period since separation.*



Counsel Family Lawyers

I find an appropriate adjustment in respect of contributions is 60 per cent to the husband and 40 per cent to the wife"

Future Needs:

Wife relied heavily on disparity in income earning capacity to argue up to 10% adjustment.

Wife ceased work in 2003 and had not worked since.

Wife was aged 46 and the husband 53 at the time of trial.

Husband argued wife had skills as a former educator and health care worker. Wife had completed a bachelor degree at end of 2013.

Wife gave evidence entry level salary \$35K - 45K - at hearing there was no evidence that the wife had obtained employment.

Husband salary \$218,764.00.

Adjustment of 7.5% to wife in relation to spousal maintenance factors.

Overall division of 52.5% to the husband and 47.5% to the wife.

Conclusions regarding Child Support

Power under s.124 of Child Support Assessment legislation for Court to order non-periodic payment, otherwise than in form of periodic amounts paid pursuant to an assessment, where just and equitable and otherwise proper to do so.

"The husband gave evidence that there will be a spoke in his expenditure in relation to the children in the next three years after which time his commitments will abate to a considerable degree. If the husband does have to make a choice between keeping the Town S property, which the children enjoy as part of their recreational holidays with the husband and keeping them in their private schools, I prioritise the stability gained by the children continuing their existing schooling.

Taking into account the respective earning capacity of the parties and their overall financial positions after the property settlement (as already referred to in these reasons), I find that it is just and equitable and otherwise proper to make an order that the husband pay 75 per cent and the wife pay 25 per cent of those matters referred to in the order sought by the wife." [246] - [247].

Spousal maintenance

Wife had not demonstrated that she could not support herself.



Counsel Family Lawyers

Property

- Total net assets of \$3,731,780

Main assets property

- in joint names Town S property \$750,000
- Suburb M property \$430,000
- Suburb F property \$1,300,000
- Shares in W Pty Ltd \$273,842 each for husband and wife
- Controlled monies account holding proceeds sale Hong Kong property \$248,967

Orders

Property

- Husband transfer to wife the Suburb F property and discharge mortgage over property at Town S and pay wife \$115,455
- Other ancillary orders

Child Support

- Pursuant to s 124 of the Child Support (Assessment) Act 1989 (Cth) be a departure from the current assessment so that in addition to the current assessment the husband pay by way of non-periodic child support 75% until each of the children complete their Higher School Certificate:
 - School fees, text books, extra-curricular fees, medical expenses, mobile telephone accounts

Spouse Maintenance

- Application be dismissed.

Contributions

183. The wife submits a disparity in the post separation contributions in her favour. She asserts that the husband's initial contributions are eroded by other contributions during the marriage. The wife submits that an overall finding should be made that contributions of all natures should be found to be such to lead to a 50/50 percent division of the overall pool of assets.



Counsel Family Lawyers

184. *The husband submits that his initial contributions should be given significant weight and that given the amount of funds provided to the wife post separation, contributions after separation should be seen as equal.*

185. *It is husband's position that an alteration should be made in his favour of no less than 65 per cent to him and 35 per cent to the wife, based on contributions.*

186. *The assets brought by the husband into the cohabitation and marriage are significant. They cannot be dealt with mathematically in the manner suggested by the husband because of the myriad of contributions made otherwise by both parties during the cohabitation and since separation. Both parties have had use of significant capital in the period since separation.*

187. *I find an appropriate adjustment in respect of contributions is 60 per cent to the husband and 40 per cent to the wife.*

Adjustments

203. *Taking into account all the considerations discussed but in particular the wife's age, her absence from employment for the last ten years, and the level of salary available to the wife when compared to the husband's earning capacity, I find it appropriate to make an adjustment of 7.5 per cent in favour of the wife for s 79(2) factors.*

Final conclusions

"The overall adjustment based on findings made in respect to contributions and s 79(4)(d)-(g) factors is 52.5 per cent to the husband and 47.5 per cent to the wife."
para 223

This included the parties' superannuation as well.

This case summary does not constitute legal advice and CFL is not responsible for any reliance upon its contents in the absence of legal advice being provided to you in conference or in writing concerning your specific circumstances.

CONTACT US

COUNSEL FAMILY LAWYERS

(03) 9320 3900

ccteam@ccfamlaw.com.au