



## **Family Law Case Update #1: Spousal Maintenance**

**Caroline Counsel**

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### ***Silver & Woden* [2015] FamCA 6**

Coram: Justice Stevenson  
Registry: Sydney  
Interim Decision

#### **Facts**

- Husband was born 1951, aged 63 at time. Wife born 1985, and aged 30 at the time.
- Parties married June 2010 and were divorced in July 2013.
- One child born in 2008 (6 years old), lived with wife and spent no time with husband for 2 years.
- Husband owned a property in Town H prior to marriage, the evidence was that the property was worth \$800,000 and was encumbered by two mortgages equating to \$980,000 or \$970,000.
- The husband had previously attempted to sell the property in December 2013, but now circumstances had changed, he no longer wanted to sell the home in Town H and move to Sydney to spend time with his son.
- Wife received government support and child support of \$150 per week.
- Husband received \$70,000 per annum gross.

#### **Issues**

- Wife sought interim orders in Application in a Case:
- sale of property in Town H and payment, after costs of sale and discharge of any mortgage(s) the balance be paid into controlled monies account by the wife's solicitor.
- Sought litigation funding order of \$5,000.
- Sought spousal maintenance of \$200 per week pursuant to s.74.
- Husband to pay the wife's costs.



## Counsel Family Lawyers

### Decision

- Sale of house
- The Court decided not to order sale - as husband entitled to pursue his wish to retain the property, cannot say at this point whether he is unable to refinance his companies to retain the property.
- No utility in sale due to mortgages wiping out any net equity.

### *Interim Costs*

- Nothing in the father's documents that point to any available savings, with which to pay the lump sum of \$5,000 for the wife's litigation funding i.e. her interim legal costs.

### *Maintenance*

- Found that wife was unable to support herself adequately pursuant to s.72 of the *Family Law Act*.
- The next issue Court considered was whether husband had capacity to pay maintenance to the wife.
- Looking at husband's financial statement, it disclosed a gross weekly salary of \$1,537 upon which he pays tax of \$211.
- The husband's weekly income amounted to \$2,050 including salary and rental income. The husband deposed to expenditure of \$2,157 per week.
- The Court found that the husband had expenditure of \$1,763 and therefore he had a surplus of \$287 per week.
- The Court ordered husband pay the wife interim spousal maintenance.

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### **CONTACT US**

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