

When to Make an Interim Property Application

In **Lacey [2016] FCCA 38** the parties separated in 2010 after a 37 year relationship. When the parties married, the wife was 20 and had no assets. The husband was 25 and had a 25% shareholding in a family company commenced by his parents. At the time of the Application both parties were in their 60's and the husband controlled the company.

Despite their property settlement proceedings having begun in 2011, the parties were still arguing about preliminary issues in late 2015, hence the perceived need for this interim application before **Judge Terry**.

While there had been repeated disputes about obtaining valuations and some disputes about disclosure, the main problem causing the delay had been disputes within the husband's family making it impossible until shortly prior to this application to be sure about the quantum of the asset pool.

The asset pool was worth close to \$10M and the husband controlled the vast majority of it. The wife owned a modest home but was dependent on a Newstart allowance and voluntary payments made by the husband.

The wife sought an order for \$1M which she claimed would provide her with sufficient money to among other things purchase an investment property and generate some income. It was her case that she should not have to wait until some indefinite time in the future to be able to fulfil this modest expectation when there was so much in the pool.

For a variety of reasons, among them the possibility that the amount the wife sought might exceed her ultimate entitlement and the risk that the wife would make poor spending decisions and diminish the pool, the husband opposed the wife's application.

While Judge Terry rejected the husband's submission that the Court had to establish the value of the asset pool by admissible evidence before it could consider the wife's application for an interim property settlement, she noted that the fact that at an interim stage the court is unlikely to be able to definitively establish the value of the asset pool is a reason for the court to be conservative in any order it makes.

On the best available figures Judge Terry estimated that of the parties net assets and superannuation a little less than 4.5% was currently in the wife's possession and a little over 95.5% is in the husband's and further observed that long experience indicated that it was extremely unlikely that the wife would not receive more than 4.5% of the pool or even more than the 15 or 20% of the pool which she would have if \$1m was transferred to her.

However the Full Court in *Strahan*¹ [2011] FLC 93-466, stressed that something more was required to justify an interim order than that a party was likely to receive a certain amount at the end of proceedings. In Judge Terry's view there was 'something more' in this case.

While waiting for the proceedings to finalise the wife was living on Centrelink benefits and a modest voluntary payment by the husband in circumstances where there was no good reason why she should be required to continue to be beholden to the husband five years after the marriage had ended. There was ample property which could be transferred to her and used to generate an income over which she would have control which could be done at minimal risk of impinging on the husband's property settlement entitlements.

The Judge also noted that in some respects the wife's interim application favoured the husband because she was not seeking spouse maintenance which would not be taken into account in determining a final property settlement but was seeking an interim property settlement which would be.

The Judge considered it both appropriate and just and equitable to make an order that the wife receive \$1m by way of an interim property settlement which while still less than 15% of the pool, would allow her to purchase a property and a car and make some improvements to her home and to pay for lawyers and valuations.

It would give her control over her own life and her own future.