

Are leases and loans worth the paper they're printed on in the Family Court?

Helpful parents must dot the i's, cross the t's and obtain two signatures to ensure that monies loaned and assets leased don't sink in their child's matrimonial asset pool.

In **Preston** [2012] FCWA 6 the Court rejected the husband's claim that a herd of cattle should be excluded from the matrimonial asset pool because they were leased from his father pursuant to a written agreement which was disputed by the wife.

The Court rejected the husband's claim and included the cattle in the parties' asset pool because:

- although there was a written agreement no lease payments were ever made;
- the farm accounts made no provision for a relevant accrued liability;
- the lease had not been reviewed or extended at the end of the specified term; and
- the accounts suggested the husband had treated the cattle as his own and had sold some.

In **Liakos** [2011] FamCA 547 the Court accepted that the husband's father had advanced substantial sums to the husband both before and after he and the wife were married. The father and husband claimed these loans were applied toward the purchases of properties and a business in the husband's name.

The father and the husband claimed that while they had entered into a specific agreement in each instance, some of the agreements were in writing and others were oral.

The wife had not been a party to any of the loans and while she conceded that some amounts had been advanced, she neither admitted all the loans nor any of the amounts claimed.

As to the facts the Court found as follows:

- the terms of most of the alleged loans, particularly those which were oral, were so vague as to make them difficult to enforce;
- where the terms were more precise, they had been ignored for many years;
- interest which is neither stipulated nor collected during the term of the loan cannot be implied; and
- on the facts of this case, any loans were only enforceable by the father against his son, the husband, as the wife had not been party to them.

In the circumstances the Court was not prepared to treat the father's advances to the husband as loans for which the matrimonial assets were the primary security. Accordingly the whole of the matrimonial asset pool remained available to the Court to divide between the husband and the wife.

The outcome was a 60:40 division of the parties' \$600K matrimonial asset pool in the husband's favour leaving his father to pursue his debt claim against his son!

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