

Dead or Alive. Can a deceased defacto make a property claim ?

In **Watson & Ling** [2013] FamCA 57 the Family Court acknowledged that it could make a financial settlement order in favour of the Estate of a deceased de facto partner provided he had commenced those proceedings prior to his death. Ironically the proceedings were subsequently continued by the deceased's divorced wife (against his former de facto partner) on behalf of their children who were her former husband's sole beneficiaries.

However in Mr Watson's case, the Court indicated it would not have made an order in his favour even if he hadn't died because it would not have been just and equitable to alter the parties' financial interests in either circumstance for the following reasons:

- The relationship of about 5 years was considered to be of only a short duration;
- The parties' relationship was not based on a mutual assumption of financial responsibilities as they lived essentially independent financial lives never having a joint bank account for day to day expenses;
- They ran their own businesses independent of the other, neither employing the other nor sharing any business income or expenses;
- Prior to his death Mr Watson had sold property (albeit not of great value) and not shared the proceeds with his de facto partner;
- The properties existing immediately prior to Mr Watson's death were overwhelmingly those of his partner having been acquired by her without financial input from Mr Watson and were secured by his partner without any assistance from him given his lack of assets and modest income;
- Mr Watson didn't contribute to the payment of mortgages, rates or other outgoings apart from shared utilities;
- Mr Watson made sporadic payments to his partner which could have been attributed to rent for the privilege of having somewhere to live without the commitment of making regular financial contributions; and
- Mr Watson made only minor contributions to repairs, maintenance and other work in and about his partner's properties.

While the Family Law Act prescribes the factors to be considered in determining whether or not there has been a relevant de facto relationship, the assessment of those factors certainly leaves plenty of scope for the exercise of subjective judicial discretion.

While the above analysis focuses almost exclusively on 'contributions', it glosses over the significant point that whether previously in a marriage or in a de facto relationship, a deceased Applicant lacks the capacity to bolster a claim by reference to their 'future financial needs'.

Had he been alive, Mr Watson's impecunious circumstances and poor health would surely have enabled him to make a successful claim against his former partner.

Had Mr Watson made a more meaningful contribution in any one of the above categories he would also surely have been able to make a successful claim against his former partner whether dead or alive.

It's also worth noting that the Family Court cannot take into account the claims or financial circumstances of the beneficiaries of a deceased spouse's estate.