

Is a Prospective Forced Sale of an Asset a Relevant Valuation Consideration?

In **Nickson [2013] FCCA 1798 Judge McGuire** had to decide whether to take into account the possibility of a 'forced' sale of a substantial asset as a relevant consideration when a valuer giving sworn evidence conceded that a forced sale would decrease by 15-20% the market value of a farm he had otherwise valued at \$1.4M.

As is common in these situations, the party wishing to retain the asset was trying desperately to minimise its value so as to reduce the amount of the net asset pool and the consequential payment to be made to the other party once the value of the pool was defined and the proportions of the division determined.

The thrust of the husband's evidence had made clear his preference to retain the farm and that its sale was his least preferred option.

While the wife sought an order for the sale of the property should the husband be either unwilling or unable to retain it, she had also indicated that she would assist the husband's retention of the farm by accepting either instalments or a delayed payment and if that was not sufficient, then she would allow time for the proper marketing of the property to elicit a prudent purchaser.

In these circumstances the Judge rejected the husband's argument that the farm's value for the purpose of calculating the matrimonial asset pool should be decreased by 15-20% on account of a forced or distressed sale and noted that Courts dealing with family law matters are confronted daily with proposed or necessary sales of properties which do not ordinarily result in reduced values on account of the possibility of a 'forced sale'.

Where the possibility of a sale is foreshadowed, the Court's orders should contemplate a reasonable time for the sale on the open market of the particular asset in question so as to attract a ready, able and willing purchaser at fair market value.

The Judge also noted that the rationale of the valuation exercise had been to determine the market value on the assumption, or even possibility, of the husband retaining the property, whereas if a sale of the farm became necessary then the market would determine its value in any event.

Obviously the appropriateness of that observation depends on whether the orders provide for the parties to each receive a percentage of the net proceeds rather than entitling one to a specified amount from the net proceeds regardless of the amount realised on the sale.

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