

Litigation Can Be a Lottery When a Marriage Isn't a Partnership

Mr Stiller discovered to his detriment and grave disappointment that sharing the financial benefits of a marriage may require more of a joint effort than just a walk down the aisle and co-existence.

In **Stiller v Power** [2011] FMCA Fam 996 the Court decided that It would be an impermissible exercise of its judicial discretion and a form of social engineering to make a financial adjustment in the husband's favour from the wife's substantial pool of assets merely because they had been married for 20 years.

In this case the parties married in 1991 while in their mid 50's when they both had:

- quite substantial assets;
- tertiary qualifications;
- employment; and
- good health.

When they separated 20 years later their personal circumstances were very different.

The wife had accrued assets to the value of \$4M compared to the husband's remaining \$315K.

The husband subsequently claimed about \$1.8M from the wife to equalise their respective assets whereas she proposed he should receive nothing and that he should also repay her a debt of \$84K.

The Court ultimately awarded the husband nothing (other than to extinguish the debt claimed by the wife) because:

- the parties had for the most part continued to reside in their separate homes;
- the parties had kept their finances entirely separate apart from various loans between them which had been carefully documented and with one exception, repaid during the relationship;
- when they holidayed together they shared their expenses; and
- the husband retired by choice early in the marriage and subsequently pursued his sailing passion while the wife continued to work and built up a substantial and profitable business.

In the circumstances the Court considered this was an exceptional case in which it was appropriate to take an "asset by asset" approach to assessing the contributions the parties had each made to their assets rather than the more usual "global" approach.

Upon taking this approach the Court found that neither party had made any relevant contributions to any of the other's assets.

It remained open to the Court to make a financial adjustment in the husband's favour based on his greater future financial needs given that he now suffers from poor health and his remaining assets are depreciating and already of minimal value. However the Court elected not to do so.

Despite being an 'exceptional' case, such an outcome is surprising and could not have been anticipated with any confidence. Accordingly it's hard to imagine the wife's lawyer not advising her client prior to the hearing that she was at serious risk of being required to make a payment of some amount to the husband based on his "greater future financial needs".

As the Court's decision not to order the wife to make a payment to the husband could not have been confidently predicted by her legal advisors, one would assume that the husband had rejected an offer of a financial settlement prior to the hearing. If so, that decision was one he lived to regret.

Kim Henderson

kim@mediatefirst.com.au

0414 863 507