

## Redundancy Entitlements-Who Gets a Share ?

In the current economic climate it's worth revisiting the touchy subject of redundancy entitlements in the context of relationship breakdowns. The issue may arise in several ways:

- **Does the prospect of a potential redundancy entitlement need to be disclosed when either negotiating or litigating a Family Law financial settlement ?**

In **Suiker [1993] FamCA 141** the Full Court endorsed the Trial Judge's view that a property settlement should be set aside when it later emerged that the husband had applied for a Telstra redundancy package during the settlement negotiations even though the wife had made no enquiry and nor had there been any discussion about what the husband's entitlements would be if he retired in the near future or at any later time for that matter.

The Trial Judge held that the husband had been under a duty to disclose to the wife before the Consent Order was made that he had applied for redundancy (even though his termination was uncertain) and what the payment would or might be and that by reason of his failure to inform the wife there had been a miscarriage of justice. The Judge set aside the Consent Order and ordered the husband to make a further substantial payment to the wife.

- **What to do about a redundancy received and spent after a separation but before a settlement ?**

This very issue arose in **Bayer [2009] FamCA 884** involving a marriage that ended in 2006 after 26 years of cohabitation.

No doubt to the eternal regret of the husband who had moved on in life, a financial settlement had not been concluded by early 2009 when his employer merged with another company, his position was made redundant and he was terminated and received a net payment of \$321K.

To the husband's credit he paid \$120K to discharge the mortgage on the former matrimonial home and some thousands of dollars on other matrimonial debts. However he also spent \$173K to partially discharge the mortgage on a property he had jointly purchased with his new partner as well as some other minor expenditure, leaving only \$7,500 unaccounted for.

The Court's approach was to add \$183K of the monies the husband had spent on his new life back into the matrimonial pool of his former one by notionally treating that expenditure as part of the matrimonial capital to which he was entitled in the settlement. In circumstances where the husband was unemployed and likely to be without Centrelink entitlements for several years because of the size of his redundancy and the wife employed on a modest income, the husband received 52.5% of the parties' total asset pool which included the \$183K of 'add backs'.

- **What to do about the possibility of a redundancy which has been disclosed but is not certain to eventuate and where the prospects of the potentially redundant employee spouse are uncertain ?**

Either put the settlement negotiations or legal proceedings on hold until the situation is clarified or consider a conditional settlement which treats the prospect of a redundancy windfall as an asset which is only to be divided if it materialises within a nominated period of time after the Orders have been made.

The authorities make it abundantly clear that long-term spouses who receive or are likely to receive redundancy payments calculated by reference to years of employment coinciding with long-term relationships should expect to share those entitlements with their spouses whether or not those relationships continue.

Each party's future employment prospects are only likely to affect the proportions in which such entitlements are divided rather than whether they will be divided.