

Superannuation and the Significance of Pre-Cohabitation Contributions

In **Palmer** [2012] FamCAFC 159 the Full Court of the Family Court had the opportunity to clarify the treatment of pre-cohabitation superannuation entitlements which are introduced to a relationship.

The Court accepted the two pool principle dividing assets into the classes of:

- Superannuation; and
- Non-superannuation,

and while it indicated that the same “contributions” considerations applied to each class, it did not make an adjustment to the superannuation entitlements for the “future financial needs” considerations it thought were relevant when dividing the non-superannuation pool.

Taking into account the parties’ respective contributions and future financial needs the wife received 73% of the non-superannuation pool before the Court considered the superannuation issue.

Applying the statutory formula the husband’s accumulation benefit at the commencement of cohabitation was retrospectively valued for the purposes of the hearing at \$94K (which represented 11 years of fund membership).

At the time of the parties’ separation 17 years later the husband’s superannuation was valued at \$864K while the wife’s superannuation entitlements were only of nominal value as she had for the most part devoted herself to the homemaker role.

In deciding how to deal with the pre-cohabitation entitlements, the Full Court in upholding the appeal specifically rejected adopting (as the Trial Judge appeared to have done) any formula based on the years of cohabitation as a proportion of the years of fund membership as it considered such formulae dilute the other party’s contributions and ignore the fact that typically the more substantial superannuation contributions are made late in a career.

Instead the Court deducted the amount of the husband’s initial entitlement from his final entitlement leaving a balance of \$770K representing the increase in the value of the his interest in the fund during the relationship and made a superannuation splitting order dividing that amount equally between the parties.

In taking this approach the Court ignored the very significant compounding effect of interest earned on the initial superannuation balance to the member’s entitlement at the time of separation 17 years later.

Applying an annual compounding interest rate of 7% over the 17 years of the parties’ relationship would have seen the husband’s initial entitlement of \$94K increase to nearly \$300K without any member or employer contributions in the interim.

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