

The Value of an Embryonic Business as an Initial Contribution

The recent decision of the Family Court in **Hagan [2013] FamCA 714** provided an interesting analysis of a set of facts by Rees J which while obviously specific to this case has relevance to many others.

The facts:

- in 1987 the (future) husband and his business partner established an on-going business;
- when cohabitation commenced in 1996 the wife had no assets and a small debt;
- while the husband gave (disputed) evidence of gross turnover of \$1.78M when cohabitation commenced, he could not establish that the business was profitable at that time. In the absence of the husband producing any valuation evidence, the Court attributed no retrospective value to it;
- in 1997 the wife commenced working substantively in the business;
- the husband conceded that while the wife spent less time working in the business than he, she had made a valuable contribution to it as well as being the primary parent and homemaker;
- the parties separated in 2008 (however the final hearing of the case was not until August 2013);
- the two children (aged 14 and 15 at the time of the final hearing) spent most of the period between the 2008 separation and 2012 in the primary care of the wife before beginning a shared parenting arrangement which remained in place at the time of the hearing;
- at all relevant times the husband's interest in the business was held by a trust which he controlled;
- in the four completed financial years to 30 June 2012, the trust's business-generated income consistently averaged about \$596K per annum;
- despite their substantial available income the net assets totalled a relatively modest \$1.020M;
- in 2011 the husband terminated the wife's employment and trust distributions of \$3K per week;
- the wife promptly obtained an interim order for spousal maintenance and child support of \$3K per week and began her own consultancy business which by the time of the recent hearing was generating taxable income of \$65K.

Outcome

Despite being unable to attribute a value to the business as at the commencement of cohabitation, the Judge took account of the fact that the business interest grew in value throughout the relationship. As the parties' sole source of a substantial income, this amounted to a significant disparity of initial contributions.

On the basis that the parties were each found to have reasonably performed their respective roles as breadwinners, homemakers and parents during and after the relationship, the Judge made an overall **contributions' assessment** of 55/45 in the husband's favour reflecting his initial contribution.

When comparing the parties' respective **future needs**, the Judge took into account the shared parenting arrangement and the wife's current income of \$65K compared to the husband's established income stream of approximately \$596K and ordered an adjustment in the wife's favour of 15%.

- The wife received 60% of the asset pool;
- The spousal maintenance order was discontinued; and
- The husband received 40% of the asset pool together with his liabilities for child support and private school fees.