To Split or Not to Split an Indexed Superannuation Pension

In **Balzano [2014] FCCA 615** Judge Bender divided matrimonial property interests following the breakdown of a 40 year marriage in which, due to their ages and ill health, neither party was able to return to work.

The parties' pool of assets totalled $1M, which included $700K of superannuation if the husband's indexed annual pension of $42K was attributed its commuted lump sum value of $456K.

The husband sought orders dividing the 'realisable' assets 55% to 60% to the wife. He sought to receive 40% to 45% as well as retaining the total benefit of his indexed pension.

The husband argued that his pension entitlement should be dealt with differently to the parties' realisable assets, and that in the circumstances where he wished to retain his pension a just and equitable outcome could be achieved by the wife receiving a greater proportion of the parties' realisable assets.

The husband also argued there should be an overall adjustment in his favour in relation to his superannuation entitlements as he had contributed for 5 years prior to the parties commencing co-habitation. However that argument found no favour with the Judge, who noted the many cases which have held that when considering the initial contributions made by parties to their assets the Court must give due recognition to the myriad of other contributions that each of the parties made during the relationship.

In this instance the minimal impact, if any, on the husband's final superannuation entitlements upon retirement of only 5 years of relevant employment at the commencement of cohabitation led the Judge to conclude their contributions had been equal when considered in the context of the 'myriad of contributions' made by the parties over their very lengthy marriage, which included the wife's role as the primary carer of the parties' children, her role as the major home maker and her almost continuous paid employment throughout the marriage.

The wife sought an equal division of all the assets including the husband's superannuation, arguing that as the parties were married for 40 years and were both retired an equal division of all their property including superannuation entitlements was just and equitable, and as the husband's pension entitlement could be converted to a lump sum it should not be treated any differently to the parties' other assets.

Given the husband's wish to retain the former matrimonial home, an equal division of property needed to include a splitting order in relation to the husband's superannuation as the parties did not otherwise have sufficient assets to enable the husband to retain the entirety of his superannuation.

Most of the cases in which the Court has dealt with a superannuation-pension in the payment phase separately to the parties' other 'realisable assets' have involved a DFRDB pension, which cannot be commuted to a lump sum in the event of the Court making a splitting order. By contrast the husband's defined benefit superannuation pension in this matter could, and indeed had to be commuted to a lump sum in the event a splitting order was made.

As the husband's superannuation was able to be commuted to a known lump sum for division between the parties, this distinguished it from those cases where the Court has preferred an asset by asset approach when dealing with matters where a party's superannuation is a pension in the payment phase.

Accordingly the Judge concluded that the parties' contributions to the totality of their assets should be considered equal, and adopted a global approach when equally dividing their pool of assets, which included the husband's superannuation at its lump sum value.