

## Two Bites at the Property Pie Caused Severe Heartburn

In **Marchant** [2012] FamCAFC 181 the husband appealed unsuccessfully against an interim order awarding the wife \$1.3M from an asset pool of @\$16M when he argued that the Court had no power to make an interim order for a payment from capital unless it was in relation to an application for maintenance or litigation funding.

The Full Court acknowledged that the interests of justice are generally best served by one single and final determination of property orders. Accordingly it is usually inappropriate to distribute property on an interim basis merely because at a final hearing the applicant would receive more than the amount of the property sought in the interim.

However the Court confidently concluded that it does have the power to make an interim property order in appropriate circumstances and having that power, this was a case to exercise it if ever there was one. Indeed the facts which the Court relied upon to justify the exercise of its power in this case are so compelling one wonders what advice the husband was receiving.

Those facts included the following:

- the wife's interim application was for a payment of \$1.3M;
- the parties' pool of assets was worth about \$16M and included liquid assets of more than \$1.3M;
- the parties' pool of assets was effectively controlled by the husband;
- the husband's senior counsel conceded on his client's behalf that the wife would ultimately be entitled to a 20% share of the \$16M asset pool (more than \$3M);
- the final orders sought by the wife were for more than 20% of the pool;
- it would take another 2 years before the case came to trial for a final hearing; and
- the wife was living in rented accommodation with the primary care of the parties' two dependent children and had only a modest amount of capital at her disposal.

In this case the wife was able to point to relevant circumstances other than the fact of the substantial size of the asset pool and her likely entitlement (even on the husband's best case) in comparison to the interim orders sought.

Accordingly the Full Court considered the Judge who heard the interim application was entirely justified in exercising the power to make the interim financial order sought by the wife as the facts of the case were compelling.

However the husband had better luck on another front when the Full Court concluded that perhaps the Judge below should have provided a clearer explanation for making a further interim order that the husband also pay the wife \$11,500 per month pending the final hearing.

That latter issue was remitted for rehearing.

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