

Valuing a Professional Business Interest in the Family Court

In **Esposito and Coster** (2012) the Trial Judge increased the husband's share of the matrimonial assets by a significant proportion because the assets he was to retain included the goodwill of the husband's interest in a professional practice which could not be traded in the marketplace.

The parties' asset pool totalled about \$1.5M and included the goodwill associated with the husband's interest in his professional practice expertly valued for the purposes of the case at \$450K (the precise nature of the business was not disclosed in the law report).

However the Trial Judge considered the business valuation should effectively be discounted and awarded the husband a much greater proportion of the assets than he would otherwise have been entitled to because:

- the value of the business interest the husband was to retain in the settlement was unlikely to be realised or alternatively any realisation was likely to be deferred for a lengthy and indeterminate period; and
- its value would ultimately depend upon the husband's uncertain future income generating capacity.

The wife appealed this decision.

The Full Court rejected the Trial Judge's approach on the basis that the value of the husband's business interest was a matter of fact to be determined by the evidence of expert valuers who were responsible for and capable of taking into account the various idiosyncrasies of each asset class.

The Court concluded that once the current value of the goodwill of a business has been established by an expert's valuation it's not for the Court to further discount that value because the interest is or may be difficult to liquidate.

If you have any queries about this case or wish to discuss its implications please contact me at either kim@mediatefirst.com.au or on 0414 863 507.

Please also feel free to forward this commentary to any of your colleagues to whom it may be of interest or invite them to connect with me on LinkedIn.