

Was Splitting the Difference A Tad Too Obvious ?

In **Jennings & Branson [2015] FCCA 91** the parties were in their early 40's and there were no children of their 14 year relationship. Both were employed in professional occupations and jointly contributed to the acquisition of their home, the husband's business and their investment properties. In the most recent financial year the wife earned approximately \$110K and the self-employed husband's taxable income was \$445K.

The wife proposed that their net pool of assets worth approximately \$2M be divided in the proportions of 55/45 in her favour compared to the husband's 50/50 proposal.

Shortly after commencing to live together they purchased their first home for \$195K using the wife's savings and inheritance totalling about \$60K. That property was subsequently used as security for borrowings which funded the purchase of an investment property which later provided the security for the borrowings for the purchase of the husband's business interests.

The wife's case was that the contributions of the parties were equal because:

- she made a greater introduced financial contribution to the relationship which enabled the purchase of their first home and she worked full-time for most of the relationship for the parties' mutual benefit;
- the husband's business was established and expanded using joint savings and joint assets as security; and
- she also contributed by way of undertaking the domestic duties associated with the relationship.

However the wife also maintained that the significant disparity in the parties' earnings was likely to endure into the future and justified a 5% adjustment in her favour.

The husband's case was that his financial contributions, during the relationship were greater than the wife's in that:

- his earnings applied to the benefit of the parties were much greater than the wife's;
- he was solely responsible for the accumulation of a real estate portfolio during the relationship;
- he made the overwhelming and only meaningful contribution to the acquisition, conservation and improvement of the business franchises, which has been valued at \$565K; and
- he also claimed that the parties shared their domestic duties.

The husband submitted that there should be no adjustment for the income disparity as both parties were in good health and working full time in their professional careers with no certainty that the current disparity would endure.

Somewhat surprisingly Judge Jones concluded that the husband's contributions were in fact greater than the wife's and after weighing up the above factors she considered they warranted a 51.5/48.5 adjustment in his favour.

After all that, the main issue in dispute ultimately revolved around the income, investments and financial resources of each party in relation to which the Judge accepted the wife's submission that the disparity was significant and that a further adjustment of 5% in the wife's favour was just and equitable despite her reasonable income.

It's difficult to imagine that either party derived much satisfaction from a two day trial which produced an outcome of 53.5/46.5 when the starting point was 55/45 versus 50/50.

Perhaps even the Judge thought a '52.5/47.5' outcome was just a tad too obvious given all the time, money and effort expended by the parties and their lawyers.