

When Contributions Just Don't Count (even in a long marriage)

In **Friar [2013] FamCA 121** the parties had been in a relationship for 35 years and had two children but unless the wife's 'trust' claims succeeded in relation to unencumbered real estate (which included their matrimonial home of many years) gifted to the husband and his sister as tenants-in-common during the relationship, there was only a very modest amount of property amenable to a Family Law property settlement.

At the time of the transfer by gift in 1975 the parties and their children had been residing at the property for 6 years.

While there is no evidence as to its value in 1975, the property was sold for \$1.5M in 2012 before the hearing.

The question to be asked and answered to support the wife's claim was:

What statements were made either at the time of the transfer or subsequently which amounted to or might reasonably be construed as a representation that the wife would obtain an interest in the property upon which she relied to her detriment which should be redressed by the creation of an equitable interest ?

While the Court accepted that the wife had made a range of direct and indirect contributions to the marriage and the property, that evidentiary finding begged the question as to whether notions of 'justice and fairness' necessarily provide the basis for an equitable intervention which erodes existing legal interests.

The Court concluded the wife needed the evidence to establish that there was a commonality of intention or joint endeavour with her husband and sister-in-law which she had relied upon to her detriment which would make it unconscionable for them to deny her a beneficial interest in the property.

The evidentiary elements the wife had to establish were that:

- she was entitled to assume that a particular legal relationship existed from which the respondents could not withdraw;
- the respondents had induced the wife to adopt that assumption;
- the wife had acted in reliance on that assumption;
- the respondents knew or intended the wife to rely on that assumption;
- the wife's conduct in relying on that assumption was to her detriment as it was not fulfilled; and
- the respondents failed to act so as to avoid the wife acting to her detriment.

Representations relied upon to found such a claim must be 'clear and unequivocal' or 'unambiguous'.

For the wife to establish her case that she was entitled to an interest in the property she needed to be able to point to conduct that amounted to her specific contribution toward a specific joint plan or endeavour as distinct from the contributions a spouse might normally make in the course of a relationship.

The Judge could not find any evidence to suggest that the gifting of the property to the husband and his sister in 1975 was part of any plan or joint endeavour involving the wife. Indeed the evidence indicated the wife had been excluded from the planning and financial arrangements which led to the gift. Nor was there any unequivocal evidence that the husband had ever expressly acknowledged that the wife had an interest in the property.

To the extent that there was any common intention or joint plan or endeavour, the evidence indicated a plan or joint endeavour which included only blood related family members.

The wife claimed to have made significant contributions to the acquisition, conservation and improvement of the property which were central to her claim to include that property in the divisible matrimonial pool. However the Judge noted that he could not discern any evidence of contributions the wife made in reliance upon a representation that she would have an interest in the property which she would not otherwise have made to the marriage and in particular to creating a home for the children.

This judgement is very fact specific and is limited to deciding what assets should be included in the asset pool.

The Judge graciously invited the parties to return on another day to have an entirely separate debate about the issues of contributions and future financial needs in the context of the token matrimonial asset pool that excluded the husband's property interests.

One can only assume that the wife received the lion's share of the small pool which remained.