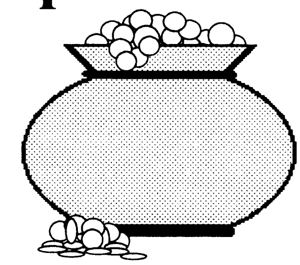
Court Decision Opens a Money Pot



Doctors, accountants, lawyers and others who are partners in professional practices cannot expect to be able to "talk down" their net worth when negotiating pre or post divorce property settlements, according to Brisbane lawyer Ruth Copelin.

Ms Copelin, a Family Law partner with national law firm Clayton Utz, said today that a decision of the full Court of the Family Court would hit such professionals hard and leave their spouses better off financially.

"The decision seems to establish once and for all that an interest in a professional partnership is property which can be valued and treated just like any other matrimonial asset," Ms Copelin said.

"Until this judgment was handed down, the wording of partnership deeds enabled many professionals to put the value of their interest beyond their spouse's reach. Now, this is no longer seems possible," she said.

The case which produced the decision involved the partner of a Sydney law firm and his wife of approximately 16 years.

The couple had four children aged between nine and 15. At the time of the property settlement, the children were in full-time care of the wife. The court heard evidence that because the wife had sacrificed her working career at a young age to care for and raise the children, she had little prospects of re-employment.

Although the couple had assets of $1.2 million, their liabilities of $1.1 million meant that there was only about $100,000 to be shared between them.

When the property settlement first went before a single judge of the Family Court, the husband argued that his interest in the law firm was not property. The judge found that ordinarily it would have been but that in this case it was not because of various factors including the wording of the partnership deed.

The wife appealed successfully against this decision. The Full Court ruled that as a partner in the firm, the husband had various rights which, although somewhat limited by the partnership deed, still constituted property.

The Full Court valued the husband's partnership interest at approximately $160,000 by using what it called the "super profit" method. This involved calculating the excess profit earned by the husband over and above that which he could expect to earn as an employed solicitor - and applying an appropriate capitalisation rate.

The Full Court also overturned the original decision that the wife should get 70 per cent of the marriage's net assets. After comparing the husband's substantial ongoing earning capacity and his partnership interest with the relatively small pool of net assets available, it decided that it was only just and equitable for the wife to receive the full $100,000.

"This case makes it clear that even though partners in professional practices do not own any goodwill and their partnership deeds may deter them from assigning or transferring their interest, that interest is nonetheless property," Ms Copelin said.

"Partners in professional practices would do well to keep this in mind when structuring their affairs and entering into property settlements," she said.

PUBLICATIONS RECEIVED

Agender
Federal Sex Discrimination Commissioner
No 2, October 1994

Brief
The Law Society of Western Australia
Vol 21, No 8, October 1994

NT Anti-Discrimination Commission Newsletter
NT Anti-Discrimination Commission
Vol 1, No 2, September 1994

Law Talk
New Zealand Law Society
25 October 1994

Annual Report 1993/94
Australian Securities Commission

Annual Report 1993-94
Australian Banking Industry Ombudsman Limited

18th Annual Report 1993-94
Administrative Review Council

Annual Report 1993/94
NT Anti-Discrimination Commission

Review of Commonwealth Merits Review Tribunals Discussion Paper
Administrative Review Council

Hilarian
Law Student's Society of SA
No 4 1994