How the Court deals with a significant financial contribution where the property value soared after rezoning

Date : December 5, 2018

With the fluctuating property market and endless residential rezoning, how the Family Court deals with property introduced by one party to the relationship that has dramatically increased is sure to be a recurrent theme for separating couples.

Background Facts

In one recent case of Jabour, where the parties had been married for a long period and had raised three adult children this circumstance arose.

When the parties first got together the husband owned a 50% share in three blocks of land which he had purchased from his father in 1975 for $26,000.

11 years into the marriage the husband sold his share in two of the blocks to purchase the other 50% share in the third larger block.

The property acquired by the husband was later re-zoned for residential use causing the property value to increase significantly. The property subsequently sold in October 2017 for $10,350,000.

When the case went to Court to be heard by the Judge, the Husband proposed that the proceeds of sale from the property, after costs and expenses be distributed 70% to him and 30% to the Wife. The Wife sought a 50/50 split.

Contributions during the marriage

The parties agreed that otherwise the financial and non financial contributions during the relationship were equal. Jointly throughout their marriage the parties purchased and sold various properties often with the benefit of loans from the Husbands family; and they started and operated a number of businesses which they were both involved in to some extent.

The Court noted citing an earlier 2017 Court of Appeal case stated, “There can be little doubt on the evidence that each party contributed to the maximum of their respective capacities and abilities within these various roles. There was a genuine mutuality to their relationship and it, and the financial decisions and arrangements within it, were subject to the ‘unstated assumptions’ that devolve from that mutuality.”

Contributions after separation

After the parties had separated but before their property case was concluded, the husband received a $330,000 inheritance from his mother's estate. Of this amount received, $130,000 was used to repay a debt that the parties owed to his mother. The husband additionally paid child support at a high rate, he attended to the costs of the property outgoings, he paid for the family holidays and he paid for the children's living expenses whilst they were in his care. The Judge held that the post separation contributions of the husband exceeded that of the wife.

Court's Decision

The Judge after reflection on the way in which the parties appear to have conducted themselves throughout their marriage, stated that "having regard to the timing of this sale, and the purpose for which the proceeds of sale were applied, there is some merit to the proposition that the decision to purchase the half interest in the …lot… was a joint decision". The Judge continued that this support by the Wife in the decision was a non-financial contribution to their ultimate position.

The Judge however reiterated the importance that this contribution be weighed against the fact that if the Husband did not have the original interest in the three blocks, he would not have had the opportunity to utilise this to purchase the remaining 50% share in the larger block now subject to review by the Court.

The Court ultimately concluded that it would be just and equitable to make orders to distribute the parties' non-superannuation assets 34% to the wife and 66% to the husband in addition to making an order equalising their superannuation.

The Jabour case illustrates how the significance of an initial contribution can be assessed even in the circumstances of a long marriage.