



Property settlement out of time granted after 10 years of separation

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The recent case of [Vince \(No 2\) \[2021\] FCCA 282](#) ("Vince") in February 2021 highlights the requirement for parties to financially sever their relationship within the required timeframes. Learn more about those time limits in our previous blog "[Are there time limits for property settlement after separation or divorce?](#)".

Background

In Vince, the parties were married in 1999 and [divorced](#) on 11 April 2009. There were two children of the marriage who were the subject of Family Court proceedings regarding [parenting arrangements](#) between August 2007 and October 2016.

At the date of their final separation, the parties were living in rental accommodation and were in debt with roughly equal superannuation holdings. Accordingly, they did not financially sever their relationship by commencing (or finalising) their property settlement.

The time limitation commence property settlement would have been in around April 2010 (that is, within one year after their divorce was granted by the Federal Circuit Court of Australia.)

Application for property settlement lodged out of time

On 23 March 2017 (almost 8 years after divorce), the wife commenced proceedings seeking leave to proceed with property settlement proceedings out of time.

The circumstances for this were that the husband had received various payments between 2011 and 2018 (post separation) totalling \$710,000 as the result of a workplace injury which was suffered during the course of the marriage.

The Judge's comments

Judge Brown weighed up the wife's hardship that would be suffered if leave was not granted quoting:

"...it would be contrary to the interest of justice to fail to grant leave in all the circumstances of this case given the hardship...her significant contributions towards the welfare of the parties' family...both before and after separation"

Judge Brown went on to weigh up the husband's inequity of having received deferred income which is his alone, quoting:

"... on the other hand, deferred income, received attributable to this period would be his alone. In my view this would be axiomatically unfair to the wife and, as such, its inherent inequity overcomes any inadequacies, actual or perceived, in [the wife's] explanations for the delay".

Ultimately, the Court granted the wife's application for leave to proceed with her application for property settlement out of time.

Orders made

Orders were made as follows:

1. That the husband pay to the wife the sum of \$52,000 within 14 days of the Orders;
2. That the husband transfer 32.5% of his share portfolio to the wife within 14 days of the Orders; and
3. That there be a superannuation splitting order that the husband's superannuation fund pay the wife the sum of \$60,000.

In summary

This case illustrates the Court's ability to grant leave for a party to apply for property settlement out of time in the event that it can be proven that a hardship would occur if leave was not granted.

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