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IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY

M. No. 105/79

No Special Consideration

IN THE MATTER of the Matrimonial Property Act 1976

BETWEEN JOAN ANN STEEL of Te Puke, Married Woman

Applicant

A N D STANLEY GEORGE STEEL of Te Puke, Orchardist

Respondent

Hearing: 10 and 11 September 1980

Counsel: J.L. Saunders & Mary Capamagian for applicant wife
G.R. Joyce for respondent husband

Judgment: Reserved decision delivered 20/10/80

Deputy Registrar

JUDGMENT OF QUILLIAM J

I refer to the parties as the husband and the wife.

The wife has applied under the Matrimonial Property Act 1976 for an order in respect of matrimonial property but I am asked to decide as a preliminary matter whether an agreement entered into between the parties ought to be set aside as void.

The parties were married on 9 March 1968. There have been two children, a son aged 11 years and an adopted daughter aged 8 years. At this stage I set out only the facts relating to the completion of the agreement in question. There had been disharmony for a considerable time and, indeed, the husband asserts that life had been a misery throughout the whole marriage. The wife had apparently left the matrimonial home in Te Puke on previous occasions but had not stayed away long. On 11 December 1978 matters finally came to a head. The wife left the home and went that night to a friend in Te Puke. Early next morning the husband rang her. He suggested that she should go to her sister in Raetihi in order to have a break away from the children. She agreed and he gave her some money for the purpose. She went to Raetihi that day and stayed with her sister until 21 December 1978. When she arrived she was plainly upset and distressed

but settled down to some extent while she was there. Her sister, Mrs Irwin, is a good deal older and has been more in the nature of a mother to her. On 13 December the husband arrived at Mrs Irwin's place. The wife was out and the husband told Mrs Irwin that he had been to see his solicitor to have a separation agreement prepared. When the wife arrived home there was a discussion, the precise nature of which is a matter of conflict. I prefer the account of Mrs Irwin, who was present throughout and who impressed me as a sensible and reliable person. Her account is that the husband told the wife he had been to see his solicitor and had also seen a Mr Joe Rouse. Mrs Irwin had no knowledge of Rouse but he was, in fact, a man with whom the wife had become friendly and with whom she went to live on a de facto basis as soon as she had signed her separation agreement on 21 December. The effect of what the husband said in Mrs Irwin's presence was to make an offer to the wife of about $2,000 or $3,000 so that the wife and Mr Rouse could go to Australia together, although it appears that at some stage during that discussion he increased his offer to $10,000. He told her she would have to telephone a solicitor to see to her side of the agreement. Mrs Irwin's account goes on:

> " He told her that her solicitor would tell her to wait, but that it was no use because, if she fought for anything or delayed, the money would all go in legal costs and neither of them would get anything. He told her that her solicitor would advise her to go for half of everything, but that if she accepted his offer of money it would all be over and done with by Christmas. "

The wife made virtually no response to what the husband said. The husband asked her to make out a list of everything she wanted from the matrimonial home, telling her she was not to go back there or to return to Te Puke.

That evening the wife made a list as requested and next morning the husband called to collect it. Later that day, 14 December, the wife went to see Miss McFarlane, a solicitor practising in Taupo but who visits a branch office at Raetihi each Thursday. She told Miss McFarlane of the

separation and discussed with her matters of custody and maintenance. There was also quite a lengthy discussion concerning matrimonial property. The wife was able to give some indication of the husband's assets. These include principally a 20% shareholding in a family company which carries on farming and orchardist businesses. Although Miss McFarlane did not have any details of the husband's assets at that stage it was obvious to her that they were likely to be considerable. The wife told her of the offer of $10,000 and of the suggestion that she and Mr Rouse should go to Australia. She said she wanted to accept the offer. Miss McFarlane recognised at once that the offer ought not to be accepted and also that the wife's emotional state was such that she was not properly appreciating what was involved. She explained to the wife the general principle of equal sharing of matrimonial property.

Miss McFarlane tried to telephone the husband's solicitor in order to get further details of the husband's assets but could not reach him. She managed to put matters off by making an appointment for the wife to see her again the following week. She advised the wife not to make any final settlement at this stage but to wait for a while. The wife, however, was anxious to get the matter over and done with. After the wife had left Miss McFarlane was able to speak to the husband's solicitor who undertook to obtain details of the assets and said the values would be very high. He said he would insert a clause in the agreement to the effect that the wife had seen a doctor to obtain a certificate that she was in a fit state to enter into the agreement. Miss McFarlane recognised the implications of such a remark and was further on her guard. The wife is under the impression that she saw Miss McFarlane again on about 19 December, but it is clear she did not do so. She almost certainly saw a clerk in Miss McFarlane's office who passed on to her a message from Miss McFarlane as to her discussion with the husband's solicitor.

On 21 December the husband went to his own solicitor and signed the two agreements which had been prepared. These were a separation agreement and an agreement as

to matrimonial property. He then travelled to Miss McFarlane's Taupo office and delivered to her a letter from his solicitors enclosing the agreements and also searches of the land owned by the family company and copies of the company's accounts, as well as other documents relevant to the husband's assets. Miss McFarlane received these before the wife arrived and was able to study them. She was therefore able to discuss them in detail with the wife. Although the husband had a number of other assets the main one was his shareholding in the company. The matrimonial property agreement records the value of that holding as approximately $180,000 (depending on the method of valuation adopted). The other assets were said to have a value of about $10,000 to $12,000. The husband's solicitors, however, pointed out that the market value of some land owned by the company was probably in excess of $2 million. If this was so it meant that the value of the husband's shareholding would be of the order of $426,000. With this knowledge it is hardly surprising that Miss McFarlane was at pains to point out to the wife that she should not enter into the agreement. The value of the assets was discussed in detail and the wife acknowledges that she knew she was being advised not to agree and she knew the approximate extent of the discrepancy between the offer made to her and the amount she was probably entitled to. She said in evidence that she did not understand the long legal words used but I am satisfied that the terms of the agreement and the implications of it were explained to her in simple language by Miss McFarlane and that the wife understood that explanation. She nevertheless insisted upon completing the agreement. She rejected Miss McFarlane's advice to wait for three months to allow matters to settle down and made it clear she proposed to complete the agreement. She then signed the two agreements.

The husband had remained at Miss McFarlane's office throughout this time, evidently to take the documents away with him. He was not of course present at the interview but waited in the outer office. Miss McFarlane told him that the agreement had been signed but did not give the husband his copy. She told him she would post it to his solicitor and the husband then left. Miss McFarlane then looked through

all the documents again in order to satisfy herself that she could sign the certificate on the agreement required by s 21 (6) of the Matrimonial Property Act. She then signed that certificate. By then it was after 5 p.m. and her staff had left. As that was the last working day before the Christmas vacation she was not able to post the documents to the husband's solicitor as she had intended. On 17 January 1979, which was two days after her office re-opened, she received a telephone call from the wife who wanted to know if she could get out of the agreement. Miss McFarlane undertook to look into the matter and on 24 January she wrote to the wife advising her of her right to apply for an order declaring the agreement to be void. Although such an application was not made for some months it is acknowledged that this was not the fault of the wife and it is common ground that the husband or his solicitors were aware from January 1979 of the wife's desire to resile from the agreement.

There is no doubt that between 11 and 21 December 1978 the wife was in a disturbed emotional state although she certainly knew what she was doing. She has been referred to a clinical psychologist who concluded she is a person of slightly less than average intelligence. There were no indications of any form of psychiatric disturbance but the psychologist was able to detect signs of severe stress due to the circumstances of the break-up of the marriage. He was of the opinion that "she would be exceptionally easy to persuade into carrying out almost any action, particularly if at the time there were some emotional stress involved". He concluded, "From my examination of her I have formed the opinion of her that she has the intelligence to know what she was doing at the time she signed the agreement with her husband, but in my opinion it is most unlikely that she had any real understanding of the consequences of what she was doing."

The agreement signed by the parties is clear in its terms. It sets out the details of the husband's property together with approximate values. It provides for payment to the wife of $10,000 and acknowledges her to be the sole owner of her personal clothing and effects and of such household furniture and effects as she chooses to have. The clauses

of particular significance are 6, 9 and 10, which are as follows:

> " 6. This agreement is acknowledged to be a full and final satisfaction, release and discharge of and from all rights to property which either party might otherwise have against the other whether under the Matrimonial Property Act 1976 or under the Matrimonial Property Act 1963 or in law or in equity or otherwise howsoever and in particular is an agreement to settle differences pursuant to s 21 (2) of the Matrimonial Property Act 1976.
>
> 9. Each party acknowledges that before signing this agreement he or she has had independent legal advice as to its effect and implications.
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> 10. WITHOUT PREJUDICE to the generality of Clause 9 hereof the wife acknowledges that before signing this agreement (and as part of the independent legal advice which by Clause 9 she acknowledges that she has had) she:
>
> (a) Was advised that this agreement was or might be unjust and/or unfair and/or unreasonable to her.
>
> (b) Was also advised that there was no obligation on her part to make this or any such agreement and that a Court of competent jurisdiction could be asked to adjudicate on and in respect of property issues as between herself and the husband.
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> (c) Was also advised that it was open to her to seek and obtain independent valuations of the assets described in Schedules A and B of this agreement.
>
> (d) Was also advised that such independent valuations might disclose that some or all of the assets described in Schedules A and B of this agreement had or were likely to have a value substantially in excess of that recorded in the said Schedule.
>
> (e) Was also advised of (before signing this agreement) the wisdom of taking more time to consider and inquire as to the nature, extent, and value of or otherwise in respect of property whether specifically mentioned in this agreement or not which is was or might be matrimonial property or could be deemed to be such or otherwise applied to her benefit.

(f) Was also advised to seek independent medical advice as to her capacity to make this agreement with a rational comprehension of the effect and implications thereof and having chosen not to do so.

- Such advice notwithstanding the wife has determined to make this agreement now and does so of her own volition and without any sort of inducement on the husband's part or behalf. "

There is no doubt that the agreement is one to which s 21 of the Matrimonial Property Act applies and that the provisions of subss (5) and (6) of that section (relating to independent legal advice and the completion of a certificate) were duly complied with. For present purposes the relevant subsections of s 21 are:

" (8) An agreement under this section shall be void in any case where -

(a) Subsections (4) to (6) of this section have not been complied with; or

(b) The Court is satisfied that it would be unjust to give effect to the agreement.

(10) In deciding whether it would be unjust to give effect to an agreement under this section the Court shall have regard to:

(a) The provisions of the agreement:

(b) The time that has elapsed since the agreement was entered into:

(c) Whether the agreement was unfair or unreasonable in the light of all the circumstances at the time it was entered into:

(d) Whether the agreement has become unfair or unreasonable in the light of any changes in circumstances since it was entered into (whether or not those changes were foreseen by the parties):

(e) Any other matters that the Court considers relevant.

(12) Where any agreement purporting to be made pursuant to this section is void or is avoided or is unenforceable, the provisions of this Act (other than this section) shall have effect as if the agreement had never been made. "

The question which requires determination is whether it would be unjust to give effect to this agreement. This involves consideration of the way in which s 21 (8) is to be applied. There have been a number of decisions of this Court upon applications to set aside agreements made between husband and wife. Some of them were made under s 79 of the Matrimonial Proceedings Act 1963 and, more recently, there have been several under s 21. The relevant parts of s 79 for present purposes are:

> " (1) The Court may, on making a decree of nullity, or of separation, or of dissolution of a voidable marriage, or of divorce, inquire into the existence of any agreement between the parties to the marriage for the payment of maintenance or relating to the property of the parties or either of them or any ante-nuptial or post-nuptial settlement made on the parties, and may make such orders with reference to the application of the whole or any part of any property settled or the variation of the terms of any such agreement or settlement, either for the benefit of the children of the marriage or of the parties to the marriage or either of them, as the Court thinks fit.
>
> (2) In the exercise of its discretion under this section, the Court shall have regard to the conduct of the parties, and may take into account the circumstances of the parties and any change in those circumstances since the date of the agreement or settlement and any other matters which the Court considers relevant.
>
> ...
>
> (5) The Court shall not exercise its powers under this section so as to defeat or vary any agreement, entered into under section 21 of the Matrimonial Property Act 1976, between the parties to the marriage unless it is of the opinion that the interests of any child of the marriage so require. "

The language in those subsections is to be contrasted with that in s 21 (8) and (10). It is apparent that the juris-

diction given under the latter is wider and requires a less strict approach. This was the view of Barker J in Broyd v Broyd (unreported, Auckland, 14 September 1979, No. M.1473/77) at p 8, with which I respectfully agree. The decisions given under s 79 are accordingly to be considered in that light. I do not need to refer to them all. They use as their starting point the observations of Henry J in Hammond v Hammond [1974] 1 NZLR 135 at p 138:

> " The parties have canvassed in their affidavits many matters prior to the settlement. These, of course, were all known to them at the time of making the settlement. I have read the affidavits and can find no reason why a carefully drawn settlement, in which both parties appear to have had solicitors, should be reviewed and altered by this Court particularly so since no new matter has arisen. No injustice or unfairness has been proved in respect of the making of the settlement, nor has any new matter arisen which was not then fairly in the contemplation of the parties. "

The decisions under s 79 have consistently tended towards a reluctance to set aside an agreement freely negotiated and where both parties are represented. The position under s 21 is, I think, different as is indicated by the section itself. Section 21 (8) provides that an agreement shall be void in two different situations. The first is where subss (4) to (6) have not been complied with, that is, where the parties have not been separately advised or a party is not expressly seen to have had the effect and implications of the agreement explained. The other, which presupposes that those requirements have been complied with, is where it would be unjust to give effect to the agreement. That means that power is expressly given to declare the agreement void even though it is recognised that the agreement in question will have been completed at arms' length and after proper explanation to each party. One starts, therefore, from a point rather different from that envisaged in Hammond v Hammond and the other cases under s 79.

Section 21 (10) sets out the considerations to which the Court shall have regard. The first, para (a), is the provisions of the agreement. This contemplates something different from a comparison between the terms agreed upon and the likely result if an application had been decided by the Court because that is a consideration embraced by para (c). Paragraph (a) involves, I think, any terms of the agreement which enable one to see whether it may be regarded on its face as just or unjust. Paragraph (b) clearly applies to such questions as whether the applicant has delayed in challenging the agreement. It is under para (c) that there is a need to consider the agreement by comparison with what a Court may have awarded. Paragraph (d) (which has no application in the present case) speaks for itself. Paragraph (e) enables the Court to consider any other matters which may be relevant. Counsel for the wife suggested five such matters. They are not, of course, in any sense exhaustive, but I find them a useful basis from which to proceed and I set them out:

1. The demand of public policy that there should be certainty in agreements between parties.

2. The parties' own view of the agreement.

3. The conduct of the parties in the negotiation of the agreement.

4. The ability of the parties to understand properly the nature and effect of the transaction.

5. Whether or not the parties were properly advised before concluding their bargain.

I propose now to consider the application to the present agreement of each of the matters to which I have referred.

1. <u>The Provisions of the Agreement</u>

With a single exception the agreement is in a fairly standard form. It records the property which is involved and the way in which it is to be divided. The only

part of the agreement which requires special consideration for present purposes is cl 10 which I have set out earlier. That clause is in no sense a usual one. It is expressly directed to emphasising the fact that the wife has received all relevant advice and that she has freely elected to complete the agreement notwithstanding that advice. It is not easy to imagine a more comprehensive clause of its kind. One is at first disposed to say that to set aside an agreement containing such a clause would be unlikely. It has to be remembered, however, that the provisions of the agreement are only one of the factors requiring consideration. It is, I think, also the case that the very extent of cl 10 carries with it its own warning. It suggests that everyone but the wife herself realised she ought not to sign the agreement. This extends to the husband and his solicitor, because the document was prepared by the husband's solicitor, and it contains in cl 10 (a) an acknowledgment that the agreement was or might be unjust, unfair and unreasonable. It must be accepted that the Court ought not lightly to set aside an agreement containing a clause such as cl 10 but that clause cannot be regarded as any prohibition against doing so if it otherwise appears proper to do so.

2. <u>Time Elapsed</u>

There is nothing to suggest that there should be any hesitation to set the agreement aside upon the ground of delay. It was signed on the last day that legal offices were open before Christmas and the wife's desire to resile from it was made known at virtually the first opportunity after the legal vacation. She could scarcely have acted more promptly. There is, I think, no occasion to regard this as a compelling circumstance in the wife's favour. Rather I see it as a matter which suggests that she has avoided any question of prejudice to her application because of delay.

3. <u>Whether the Agreement was Unfair or Unreasonable</u>

I consider it must, at once, be acknowledged that it was, although I am unable to say with any precision just how unfair or unreasonable it was. This involves a consideration of what may have been the outcome of an application to the Court by the wife and there is insufficient information

available to me to be able to say what order would have been made. There is, however, enough for some kind of comparison to be made with the sum of $10,000 which the wife agreed to accept.

The agreement sets out the husband's assets. It refers first to some life insurance policies. The surrender value is not given but it was accepted by counsel that this was likely to be less than $3,000. There is then an interest of $9,000 in a boat and two small bank accounts totalling just over $500. There is an interest in a partnership and in some land but these are evidently regarded as of little, if any, value. The main asset is the husband's shareholding in the family company. As I have said earlier, this is shown in the agreement as about $180,000 but before the agreement was signed it was known this figure was arrived at on the basis of substantial under-values of land. The true value of the shares is more likely to have been about $426,000. It is, therefore, reasonable to say that the total value of the husband's assets would have been something in excess of $400,000.

It is a good deal more difficult to say what may have been the wife's entitlement out of that sum although it requires little imagination to conclude that it will have been very much in excess of $10,000. The attitude of the husband, expressed in the course of his evidence, was that notwithstanding his solicitor's advice he personally did not regard the agreement as in any way unjust. His attitude arose out of his sense of bitterness over what he regarded as the wife's failure to perform her obligations as wife and mother and becuase she had formed an antagonism towards their only natural child as from the time of his birth. It is understandable he should attach importance to these matters although, of course, they could have little relevance to the wife's rights under the Matrimonial Property Act.

The wife's evidence was that while she acknowledged she had little interest in cooking or household duties she offset that by her enjoyment of work in the orchard. She claimed to have provided substantial assistance in this

way, particularly during the five months or so of the fruit season. There was no suggestion that she had made any contribution to the acquisition of any of the husband's assets - indeed, in a sense neither had he. They were derived from his parents. A consideration of the wife's contribution to the marriage partnership in terms of s 18 of the Act may well have produced the result that the husband's contribution was clearly greater than the wife's. I am not, of course, in a position to make a finding to that effect but I am prepared to accept for the moment that it would be so. When one considers, however, that even a 20% contribution would still amount to about $80,000, it is obvious that the amount of $10,000 is grossly disproportionate to what the wife may be expected to have received.

4. Whether the Agreement has Become Unfair or Unreasonable

It was common ground that this was not a matter requiring consideration in the present case.

5. Other Relevant Matters

(a) Certainty of Agreements

It is plainly desirable that agreements which are properly made between parties who are separately represented should normally be adhered to. As I have already said, however, the statute contemplates that such agreements are not to be regarded as inviolate. There must be circumstances in which they may be declared void. I do not think that will occur except where there are compelling reasons and that will be a matter for determination in the particular case.

(b) The Parties' own View

The view of the husband, as expressed in evidence, was that he considered the agreement a just one. His reasons, however, are mainly reasons which can have little weight in terms of the Matrimonial Property Act. I have referred to cl 10 (a) of the agreement. It was argued that this indicated the husband himself recognised the agreement as being an unjust, unfair and unreasonable one from the wife's point of view. I doubt whether that clause can be regarded in that way. It was certainly the view of the husband's solicitor, who prepared the agreement, that the wife was

likely to be advised this was the effect of it, but it does not necessarily follow that the insertion of that clause reflected the view of the husband himself.

The wife's view of the agreement at the time of signing it is not easy to determine. There is nothing to suggest she thought it a fair or reasonable agreement. Her attitude was simply that she insisted on signing it. I do not think that any great assistance is derived either way from a consideration of the views of the parties themselves.

(c) <u>The Conduct of the Parties</u>

I consider this is a matter of importance. The negotiation of the agreement was a matter which occupied very little time. It was really concluded on the occasion of the husband's first visit to the wife at Mrs Irwin's home. Indeed, there was really no negotiation at all. The husband stated his terms. They were that he would pay $10,000 and hand over such personal chattels as the wife may wish to have. The interview was conducted in the tense atmosphere which is normally associated with the break-up of a marriage but with the added circumstance that the husband's attitude was very much in the nature of an ultimatum. Although the wife consulted Miss McFarlane the next day there was never any suggestion of Miss McFarlane being able to try and negotiate any better terms. Her hands were tied by a lack of knowledge of the nature of the assets involved and by the wife's insistence on accepting the offer in any event.

The husband had obviously been advised that any agreement would be worthless unless the wife was separately advised and he made sure that she consulted a solicitor. There is, however, little doubt that the wife was frightened of him and anxious to do whatever was necessary to conclude the whole matter. The anxiety of the husband to have her sign an agreement without too much opportunity for changing her mind is shown by his actions on the day the agreement was completed. Notwithstanding the unusual provisions of cl 10 and the need for Miss McFarlane to see and explain to the wife the various documents supplied to her, the husband was plainly determined to ensure that no time was

lost. He took the documents to Taupo and then waited at Miss McFarlane's office until they were signed. His very presence there must have been a matter which was likely to affect the wife's attitude. She knew he was there and this may well have resulted in her continued insistence on signing the agreement in the face of advice to the contrary. Even though the position of the parties was theoretically equal because each was separately represented, I do not think they were ever equal in fact and that the husband's actions ensured that in the wife's mind they would not become equal.

(d) The Ability to Understand

There is, of course, no doubt about the ability of the husband to understand the agreement. It was he who dictated the terms. The wife's position, however, was altogether different. She has acknowledged that she knew what she was doing in the sense that she was agreeing to accept $10,000 even if she was really entitled to a great deal more. She has acknowledged, further, that her desire was to conclude the whole matter and that she was prepared to accept the offer in order to achieve that. This, however, is far from an end of the matter. I have referred already to the evidence of the clinical psychologist, Mr Pearson, who tested the wife in October 1979. The result of his tests was really to confirm what was apparent to me in any event from my observation of the wife in the witness box. She was in no sense an intellectual match for the husband. She is described by Mr Pearson as having a slightly less than average intelligence. She is of limited education. Mr Pearson considered "she would be exceptionally easy to persuade into carrying out almost any action, particularly if at the time there were some emotional stress involved." This assessment of her might suggest that, free from the influence of her husband, it would not be difficult for a solicitor to persuade her not to enter into a disastrous bargain and Mr Pearson said he would have expected her to follow her solicitor's advice. It is apparent, however, that the solicitor was completely unsuccessful in persuading her at all. I think this is explained by the fact that she did not regard herself as free from the influence of the husband and that her desire

to be free from him dominated her thinking. I cannot accept that she ever exercised a truly independent or intelligent decision when she signed the agreement. I am satisfied that she never really turned her mind to the implications of what she was doing, even though she was aware in a superficial way of what was happening.

(e) Whether the Parties were Properly Advised

This is not in issue. It is clear that Miss McFarlane did all she could to make the wife's position clear to her. She recognised at once that the offer made to the wife ought not to be accepted and did what she could to advise the wife accordingly. It is no reflection on her that that advice was not accepted. Miss McFarlane was required to certify that she explained the effect and implications of the agreement. Curiously enough she was not required to certify that the wife appeared to understand that explanation, but the wife herself acknowledges that she did.

In the light of all these considerations it becomes necessary to decide whether "it would be unjust to give effect to the agreement." This must involve a decision as to which were the most important considerations. Upon a review of the whole position there can, I think, be no doubt at all where the justice of the matter lies. The need to preserve the sanctity of contract is something not lightly to be put aside, but in this case it must yield to the plain fact that the wife, notwithstanding she was separately and competently advised, was never on level terms with the husband and never fully appreciated the implications of what she was doing. There needs to be some explanation as to why she insisted upon entering into such a disastrous agreement and I am sure it is to be found in the fact that she was unable to free herself from the dominant influence of the husband. Whether he intended that result or not (and the determination which he showed to be rid of the wife and to see that she signed an agreement as soon as possible suggest very strongly that he did) there is no doubt in my mind that the wife was prompted to sign the agreement for reasons other than a genuine desire to accept its terms.

I have made no reference to a number of decisions of this Court on applications of a similar kind made under s 21 (8). I have read them and I do not overlook them. I have not, however, found them to assist greatly because cases of this kind must inevitably depend very much on their own facts. I should simply say that I find nothing in any of those cases which suggests that I ought not to reach the conclusion I have. I record that the principal cases to which I refer were: Watson v Watson (unreported, Auckland, 29 November 1978, No. D.747/77); Broyd v Broyd (supra); and Williamson v Williamson (unreported, Gisborne, 5 August 1980, No. M.16/79).

There will be an order dismissing the application of the husband for the wife's application to be struck out and a declaration that the agreement dated 21 December 1980 between the parties is void. It will now be necessary for the wife's application for an order determining the respective shares of the parties in the matrimonial property to be heard.

The wife is entitled to her costs which I fix at $250 and disbursements, if any.

Solicitors: Murray, Dillon, Gooch & Partners, TAURANGA, for applicant wife

Fenton, McFadden & Paterson, TE PUKE, for respondent husband