

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

A.452/83

IN THE MATTER of the Declaratory
 Judgments Act 1908

BETWEEN

A REID
 Of Lower Hutt, Retired
Plaintiff

1629
 reported
 (1984) 3 NZFLR
 297

AND

L REID
 Of Lower Hutt,
 Married woman
Defendant

Hearing 10 October 1984
 Counsel Plaintiff in person
 M E Perkins for defendant
 P J H Jenkin amicus curiae
 Judgment 7 December 1984

JUDGMENT OF DAVISON C.J.

The plaintiff has sought by originating summons issued under the Declaratory Judgments Act 1908 to have the Court interpret certain provisions of the Matrimonial Property Act 1976 ("the Act"). Mr Jenkin was appointed as amicus curiae to assist the Court.

The plaintiff and defendant intend to enter into an agreement under the Act to define their property interests and are concerned to ascertain the interpretation to be given to the words "The proceeds of the disposition of any [separate] property" as contained in clauses 7 and 8 of the proposed agreement which read:

- Cl.7 "That the proceeds of the disposition of any separate property of the wife is the separate property of the wife.
 Cl.8 That the proceeds of the disposition of any separate property of the husband is the separate property of the husband. "

They are also concerned to ascertain the interpretation to be given to the word "acquired" when used in Clauses 9, 10 and 11 of the proposed agreement which read:

No Special
 Consideration

- Cl.9 "That property acquired by either the husband or the wife by succession or by survivorship or as a beneficiary under a trust or by gift shall be the separate property of the recipient of the property.
- Cl.10 That in consideration for all other rights which the wife has forgone by way of being party to this agreement the husband agrees that, subject to paragraph 9 of this agreement, the wife has the right of ownership to one half of all property acquired by the husband after the marriage and such property is to be the wife's separate property.
- Cl.11 That in consideration for all other rights which the husband has forgone by way of being party to this agreement the wife agrees that, subject to paragraph 9 of this agreement, the husband has the right of ownership to one half of all property acquired by the wife after the marriage and such property is to be the husband's separate property. "

THE MATRIMONIAL PROPERTY ACT 1976

- s.8 "Matrimonial property shall consist of -
- (f) Any income and gains derived from, the proceeds of any disposition of, and any increase in the value of, any property described in paragraphs (a) to (ee) of this section.
- s.9 (2) Subject to subsection (6) of this section and to sections 8(ee) and 10 of this Act, all property acquired out of separate property, and the proceeds of any disposition of separate property, shall be separate property.
- (6) Subject to section 10 of this Act, any separate property which is or any proceeds of any disposition of, or any increase in the value of, or any income or gains derived from, separate property, which are, with the express or implied consent of the spouse owning, receiving, or entitled to them, used for the acquisition or improvement of, or to increase the value of, or the

amount of any interest of either the husband or the wife in, any property referred to in section 8 of this Act shall be matrimonial property.

- s.10 (1) Property, being -
- (a) Property acquired by succession or by survivorship or as a beneficiary under a trust or by gift from a third person; or
 - (b) The proceeds of any disposition of property to which paragraph (a) of this subsection applies; or
 - (c) Property acquired out of property to which paragraph (a) of this subsection applies, -
- shall not be matrimonial property unless, with the express or implied consent of the spouse who received it, the property or the proceeds of any disposition of it have been so intermingled with other matrimonial property that it is unreasonable or impracticable to regard that property or those proceeds as being separate property.
- (2) Property acquired by gift from the other spouse shall not be matrimonial property unless the gift is used for the benefit of both the husband and the wife. "

DECISION

I propose to interpret the words the subject of these proceedings in the context of the clauses of the proposed agreement in which they are found and not to embark upon an interpretation derived from the sections of the Act alone.

PROCEEDS OF DISPOSITION OF PROPERTY

Clauses 7 and 8 refer to "the proceeds of the disposition of any separate property" being separate property. This is in accord with s 9(2) of the Act. What then are the "proceeds of the disposition"? The word "proceeds" is not defined in the Act but in its ordinary meaning it means: "That which proceeds from something: produce, outcome, profit": see Shorter Oxford English Dictionary. Or to express it in a

way more usually understood "proceeds" means the amount realised from the sale of property: see, for example, Tyser v Attorney-General [1938] Ch. 426, 432:

" What then are 'the proceeds of sale' upon which duty must be levied? In my judgment they are the proceeds of sale which reach the vendor or any person on his behalf and for his use after payment of the proper expenses of sale. "

Also, James v South Western Railway Company [1872] L.R.7 Exch. 287, 296:

" The words 'proceeds thereof'... clearly mean, in my judgment, 'proceeds of the sale' or money resulting from a sale. "

Used in relation to "sale", "proceeds of sale" means the money or consideration received from the sale, and likewise, "proceeds of disposition" means the money or other consideration received from the disposition. Such are by s 9(2) of the Act stated to be separate property because it appears that where separate property is disposed of, the proceeds of that disposition are regarded as representing that separate property. They may be said to be the alter ego of that separate property and to have the same status as the separate property from which they were derived.

But the words used in s. 8(f) of the Act and also in s. 9(2) are "proceeds of any disposition... of any property".

Mr Reid endeavoured to gain some assistance in the interpretation of those words by referring to the definition of "disposition of property" contained in s.2 of Estate and Gift Duties Act 1968. I am satisfied that that Act is of no assistance at all in interpreting similar words in the Matrimonial Property Act.

The meaning of the words was also considered by the Courts in the various Reid cases but without any intensive analysis. As a starting point one is thrown back, in the absence of any definition of "disposition of

property" in s.2 of the Act, to the ordinary dictionary definition of "disposition". The Court must then apply the primary rule of construction and give effect to the words in their natural sense: see Maxwell on Interpretation of Statutes (12th ed) pp 28 and 43. "Disposition" is "the action of disposing of"; to "dispose of" means:

" To deal with definitely; to get rid of; to get done with, finish; to make over by way of sale or bargain, sell. "
see: Shorter Oxford English Dictionary

It seems to me that the primary meaning of the word "disposition" when used in relation to property is to deal with the property in a number of ways: see Re Leven (Earl) (deceased) [1954] 3 All ER 81, 85. It is a broad term covering all forms of alienation of interests in property.

Butterworth's Words and Phrases Legally Defined (2nd ed) gives a large number of examples of the meanings to be given to the word "disposition" in the context of various statutes where the word is defined and, of course, those meanings are governed by those definitions. Such references are not of great assistance when endeavouring to arrive at the primary meaning to be given to the word "disposition". There are, however, several cases in which Judges have interpreted the word in its primary meaning.

In Carter v Carter [1896] 1 Ch 62 Stirling J. at p 67 said:

" The words 'dispose' and 'disposition' in the Fines and Recoveries Act [1833, s 77 of which dealt with the right of a married woman before 1833 to 'dispose' of property] are not technical words, but ordinary English words of wide meaning; and where not limited by the context those words are sufficient to extend to all acts by which a new interest (legal or equitable) in the property is effectually created. "

In the Australian case of Roache v Australian Mercantile Land & Finance Co Ltd (No 2) [1966] 1 NSW 384, Jacobs J. said:

" A delivery to an auctioneer for the purpose of sale, on behalf of the person delivering, is not a disposition within the ordinary meaning of that word. In a legal context, disposition means the act of disposing or disposing of (see Shorter Oxford English Dictionary). Disposing of, in this sense, means dealing with definitely or a getting rid of or a getting done with a particular item (ibid). It usually refers in this particular meaning to a making over of an item by way of sale or bargain because then there is a definite dealing with the item and a getting rid of it, a finishing with it. "

It is in the sense used by Jacobs J. that in my judgment the word "disposition" must be interpreted in ss 8(f) and 9(2) of the Matrimonial Property Act 1976 and in clauses 7 and 8 of the draft Agreement. It is impossible at this point in time to define specifically all the forms of dealing with property which will fall within the word "disposition" but such will have to be determined within the context of the definition of "disposition" given above as individual cases arise.

"The proceeds of disposition of any property" as referred to in the Act and in clauses 7 and 8 of the draft Agreement are therefore the money or consideration received from the getting rid of any property.

ACQUIRED

Sections 8, 9 and 10 of the Act and Clauses 10 and 11 of the draft Agreement refer to property "acquired". The meaning to be given to the word "acquired" has been the subject of extensive litigation in which Mr Reid and his former wife took part (Reid v Reid).

The word "acquired" is not defined in the Act. In such a case the approach referred to by Richardson J. in Reid v Reid [1979] 1 NZLR 572, 605, should be adopted:

" The Matrimonial Property Act is not a technical statute. It is social legislation of the widest general application. It is obviously important that it should identify in the clearest terms the property which is to be subject to the matrimonial property sharing regime on the breakdown of marriage. These considerations should be kept in mind when questions of interpretation arise. As Lord Simon of Glaisdale pointed out in Maunsell v Olins [1975] AC 373, 391; [1975] 1 All ER 16, 25, where a statute is dealing with people in their everyday lives, the language is presumed to be used in its ordinary sense, unless this stultifies the purpose of the statute, or otherwise produces some injustice, absurdity, anomaly or contradiction. If the language is plain and points unmistakably to one conclusion, then that prima facie interpretation may be departed from only where that course is required to give effect to the clear intention of the legislature as manifested in the statute itself. So the first step is to consider the statutory language. "

The word "acquire" is defined in the Shorter Oxford English Dictionary as meaning:

- " 1. To give or get as one's own (by one's own exertions or qualities).
2. To receive, to come into possession of. "

That part of the meaning which refers to getting "by one's own exertions or qualities" was held by all three Judges of our Court of Appeal not to apply to the word "acquired" as used in the Act, and those views were upheld by the Privy Council in 1982 (NZLR 147, 151).

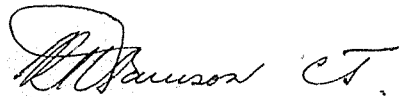
The manner in which the word "acquired" is to be interpreted where used in the Act is clearly set forth by Richardson J. (1979 1 NZLR 572, 605) as follows:

" The critical words of the first limb of s 8(e) are perfectly plain and unambiguous. The section directs that subject to certain qualifications 'all property acquired by either the husband or the wife after the marriage' is matrimonial property. It is all

property without exception. The manner in which it was derived is irrelevant. The source of any funds used to acquire the property is irrelevant. So is the purpose for which it was acquired. No such limitations are expressed in the first limb. On its face it applies equally to property resulting from a change of investments as it does to property created from the efforts of one or both of the spouses. And it draws no distinction between property acquired out of matrimonial property and property acquired out of previously separate property. "

The words "property acquired" means therefore "property got or received in any manner whatsoever". Mr Reid endeavoured to argue that "to acquire" property means to gain something in addition and that if what is acquired as the result of the disposition of property is only equal in quantum to original property, nothing has been acquired.

I do not accept that such is so. I have answered the question as posed in the originating summons as far as I am able at this stage. More definitive answers will need to await the happening of events which require the application of those interpretations of the several expressions which I have given.



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