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IN THE MATTER of an application pursuant to Section 21(8) of the Matrimonial Property Act 1976

BETWEEN

CLARKSON

APPLICANT

A N D

CLARKSON

RESPONDENT

Hearing: 30 April 1984  
Judgment: 30 April 1984  
Counsel: W.J. Scotter for Applicant  
K. Ryan for Respondent

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ORAL JUDGMENT OF CASEY J.

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This is an application by Mrs Clarkson for an order under s.21(8) of the Matrimonial Property Act declaring a separation agreement made between her husband and herself on 5th August 1981 void in respect of the disposition of the matrimonial property which it contained. They were married on 7th June 1969. There were two children born in 1970 and 1972 and after a period of trouble and difficulty which resulted in an earlier agreement of 10th November 1978 (not given effect due to a reconciliation) the parties finally ended their marriage as I have related. There is no doubt that Mrs Clarkson had legal advice and the agreement was entered into following negotiations between their solicitors. In his submissions in support, Mr Scotter sought first to persuade me that the provisions of the document itself should lead the Court to the conclusion that it would be unjust to give effect to it, following the provisions of s.21(10)(a) of the Matrimonial Property Act. I am satisfied that the real issue in this case is the application of subsection 10(c) - namely, whether the agreement was unfair or unreasonable in the light of all the circumstances at the time it was entered into.

Under its terms Mrs Clarkson received a lump sum of \$45,000; \$8,000 was paid on 1st February 1982 and the balance was due a year later, but has not yet been paid due to the intervention of this application. In her affidavit she describes business activities in which Mr Clarkson was involved for the greater part of their marriage, involving dealing with motor vehicle parts in what was apparently a large scale operation. She believes his assets which could comprise matrimonial property were substantially more than what was understood at the time the agreement was entered into. It is also suggested that the implications were not properly grasped by her solicitor, although there is no affidavit from him about the advice she was given at the time.

Be that as it may, Mr Ryan, after consulting with his client at the close of his submissions, accepted that in all the circumstances it would be appropriate for these provisions to be avoided so that the whole matter could come before the Court on a fully contested matrimonial property application and Mr Clarkson's evidence be probed in cross-examination. In the affidavit he filed in reply, the evidence of his business activities and assets did not throw a great deal of light on his wife's allegations. I think his acceptance of the situation now conveyed through his Counsel is responsible, and is the obvious way that the strife which has developed between these parties can be effectively resolved.

I accordingly make an order avoiding the provisions of the agreement of 5th August 1981 relating to the parties' matrimonial property, leaving the payments as they stand. They can be taken into account in any subsequent disposition or orders. It is quite obviously in the interests of both to have the outstanding matters resolved as quickly as possible so that each can do what at least Mr Clarkson thought was open to him at the time the agreement was signed, and go their own separate ways, drawing a line through their matrimonial property.

I therefore direct that the substantive application be filed within ten days. Mr Ryan has indicated that the

Respondent's affidavit in reply can be filed within 30 days thereafter, and I direct that be done accordingly; and that Mrs Clarkson file any affidavit in answer to that as quickly as possible. If either party feels that there is undue delay by the other side, he or she may come to Court to seek orders requesting times to be fixed. I direct that the application be given as high a priority as it can within the programme of the Court. This will be a matter for the Executive Judge at the time but he will no doubt bear in mind that this application has also been subject to priority orders. Costs are reserved.

*M. G. Casey J.*

Solicitors:

Harkness Henry & Co., Hamilton, for Applicant  
K. Ryan, Auckland, for Respondent