

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV 2009-404-002398

UNDER the Property (Relationships) Act 1976

BETWEEN VICKY HARISH NARAYAN
First Appellant

AND BIJAY NARAYAN AND SAROJNI
NARAYAN
Second Appellants

AND SAMEETA NARAYAN (AKA
SAMEETA PAL)
Respondent

Hearing: (On the papers)

Counsel: K Davis for the First Appellant
S R Shankar for the Second Appellants
A Hall for the Respondent

Judgment: 20 November 2009 at 2:30pm

[COSTS] JUDGMENT OF WYLIE J

This judgment was delivered by Justice Wylie
on 20 November 2009 at 2:30pm
pursuant to r 11.5 of the High Court Rules

Registrar/Deputy Registrar
Date:

Solicitors/Counsel:
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[1] In my judgment delivered on 9 October 2009, I reserved the issue of costs. I did indicate that it was my preliminary view that each party should bear his, her or their own costs.

[2] The first appellant has applied for costs on a 2B basis. The second appellants adopt the submissions of the first appellant. It is acknowledged on their behalf that generally in matrimonial matters, the Court does not award costs, but they submit that from their point of view, this was not a relationship property case, but rather a recovery of debt case. The respondent opposes any award of costs.

[3] I decline to award costs in favour of any party. Costs are in the discretion of the Court. In the present case, I do not consider that an award of costs is appropriate for the following reasons:

- a) My decision turned on the “irrevokeable document”. I found that the effect of that document was to record a loan by Mr and Mrs Narayan senior to Vicky Narayan.
- b) Sameeta Narayan was not present when the monies were advanced by Mr and Mrs Narayan senior to Vicky Narayan.
- c) Judge Adams found in the Family Court that both Mrs Narayan senior and Vicky Narayan regarded Sameeta Narayan as a “mere cipher”. He found that Sameeta Narayan was left out of the loop in relation to family financial matters. My judgment does not disturb those findings.
- d) Judge Adams found that Sameeta Narayan did not know that the monies advanced by Mr and Mrs Narayan senior were a loan. The Judge concluded that Vicky Narayan told Sameeta Narayan that the monies were a gift, and that she had no knowledge of the “irrevokeable document” until after the parties had separated. Again my judgment does not disturb those findings.

- e) In my view, the appellants brought the proceedings on themselves. Had they been more open with Sameeta Narayan from the outset, it is unlikely that the matter would have proceeded to either the Family Court or to this Court on appeal.
- f) In my view, it would be inappropriate for the appellants to receive an award of costs in their favour. Sameeta Narayan was not responsible for the events which lead to the litigation.

[4] Accordingly, I decline to award costs.

[5] The parties have also asked for directions in relation to interest which accumulated on the sum of \$92,725.71 after the matrimonial home was sold and while the monies were held on trust by one of the firms of solicitors involved. I have held that the sum of \$92,725.71 was a relationship debt and that it had to be taken into account in determining the extent of the party's relationship property. I have also held – at [58] – that the legal effect of the “irrevokeable document” was to record a loan by Mr and Mrs Narayan senior to Vicky Narayan. Interest under the “irrevokeable document” is payable by Vicky Narayan as the debtor. Mr and Mrs Narayan senior's rights in relation to interest arise under the “irrevokeable document”. Interest earned on the sum of \$92,725.71, while it was on deposit, is relationship property. In the absence of any specific agreement, the interest should be dealt with in terms of the Property (Relationships) Act 1976. Mr and Mrs Narayan senior have no claim to any part of the interest earned while the moneys were on deposit.

Wylie J