

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

CIV 2007-419-001535

BETWEEN KAY ELZIABETH DAWSON DIXON
 Applicant

AND GRAEME HENRY DIXON
 Respondent

Hearing: 15 December 2009

Appearances: K E D Dixon in Person
 C M Earl for the Respondent
 W J Scotter for the Court appointed receiver, Hamish McDonald

Judgment: 15 December 2009

[ORAL] JUDGMENT OF WYLIE J

Solicitors/Counsel:
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C M Earl, P O Box 9337, Waikato Mail Centre, Hamilton 3240

Copy to:
K E D Dixon, 7 Rothbrook Street, Hamilton East 3216

[1] Mr McDonald was appointed by the Court under ss 33(5) of the Property (Relationships) Act to sell the property of the G H and K E Dixon partnership and as a receiver to realise all outstanding partnership assets. He has applied to the Court seeking its approval to the final distribution of the proceeds of sale.

[2] The background to this matter is set out in judgments by Ronald Young J and Priestley J delivered on 18 December 2007 and 14 November 2008 respectively. There are also subsequent Minutes issued by Cooper J on 4 March 2009, by Priestley J on 24 March 2009 and by Harrison J on 27 April 2007.

[3] I will not endeavour to detail the background to these proceedings. It is complicated, and there has been much acrimonious litigation. In the event, Priestley J on 14 November 2008 made various orders and directions designed to bring matters to a head. Those orders involved the appointment of a Mr McDonald. He has now completed the sale of the various assets. He wrote to the parties seeking their views on the distribution of the sale proceeds. He received a response from Mr Earl on behalf of Mr Dixon raising substantive matters. He also received a series of responses from Mrs Dixon. Mrs Dixon's responses did not advance matters significantly. They make a series of personal attacks on Mr McDonald and on the way he has conducted the various tasks he was appointed to undertake.

[4] On 20 November 2009, Mr McDonald, after taking into account the matters raised by the parties, wrote to them enclosing a set of draft accounts and setting out a proposed final distribution of the proceeds of sale or a proposed interim distribution in the event that the parties wished to seek the directions of the Court. The proposed interim distribution to be paid to both parties was \$750,000. In addition, Mr Dixon was to receive the difference between the partners current accounts, to make a total payment in his favour of \$843,096. The interim distribution would leave a sum in excess of \$500,000 on deposit and held in trust. Mr McDonald then received further letters from Mrs Dixon. Those letters were vituperative. In the circumstances, Mr McDonald considered it appropriate to make application by the Court seeking approval to the distribution of the partnership assets. In my view he was wise to do so.

[5] Mrs Dixon endeavoured to file a notice of opposition to the application. The Registrar declined to accept the same pursuant to Harrison J's Minute of 27 April 2007. The document has been handed to me in Court this morning. It is unfocused and it makes a series of allegations, many of which cannot possibly be relevant to the matters in issue. Nevertheless, in the particular circumstances of this case, and given my limited familiarity with the issues involved, I have decided to accept the same. Some of the matters raised by Mrs Dixon may have some bearing on the proposed distribution. For example, she challenges costs, accumulated interest, misappropriated funds she alleges were not recovered, and adjustments for compensation. Whether there is any factual basis for these challenges remains to be seen. Similarly whether they could affect the draft accounts and the ultimate distribution also remain to be seen.

[6] Mr Dixon for his part initially objected to Mr McDonald's treatment of various matters in the draft accounts, but he was prepared to take those issues no further if Mrs Dixon also accepted Mr McDonald's draft accounts. She has not done so.

[7] The extent of the dispute between the parties is not clear to me. Mrs Dixon has signalled that she wishes to raise matters in relation to the Springdale Farm Trust. Mr Earl takes the view that those matters have already been dealt with by the Court and that Mrs Dixon is seeking to re-open the litigation. In the time available, I cannot determine whether this is the case or not. I record that I have expressly advised Mrs Dixon that she is at risk of costs in the event she seeks to re-open matters which have already been decided by the Court or previously agreed to by her. She has acknowledged that I have given her that warning.

[8] In the circumstances, it seems to me appropriate to approve the interim distribution proposed by Mr McDonald and detailed in paragraph 6 of his letter of 20 November 2009. There will still be more than sufficient funds available for any final adjustments to be made before a final distribution is undertaken. I direct that Mr McDonald is to make an interim distribution of \$843,096 to Mr Dixon and \$750,000 to Mrs Dixon.

[9] Mrs Dixon's notice of opposition has been accepted by me. She has advised that she wishes to file an affidavit in support of that notice of opposition. Mr Earl appearing on behalf of Mr Dixon has advised that his client may now also wish to dispute the draft accounts prepared by Mr McDonald.

[10] Accordingly I order that Mrs Dixon is to file an affidavit in support of her notice of opposition and that Mr Dixon is to file a notice of opposition and an affidavit in support, both by Friday 22 January 2010. Any affidavits in reply are to be filed by both parties on or before 29 January 2010.

[11] Counsel and Mrs Dixon take the view that a day may be required for the hearing, depending on the extent of the matters that are ultimately in dispute. The matter is allocated a fixture on 12 February 2010, probably before Duffy J.

[12] Costs are reserved in relation to today's hearing.

Wylie J