

## **FAMILY LAW**

### **MANAGEMENT OF PROPERTY APPLICATIONS**

If it is necessary to make an application to the Court for Orders relating to the division of matrimonial property, great care needs to be taken with the management of the application. Unless the application is sensible and can be supported by evidence the client is exposed to danger. Any applicant is exposed to the possibility of having to pay the costs of the other party. This exposure to an Order for costs must always be in the mind of the lawyer. An experienced Family Lawyer will have two goals in mind:

1. To obtain a just and equitable division of property for the client; and
2. To protect the client.

#### **EXAMPLE:**

Betty and Harold had been married for 25 years. Their marriage has broken down after Harold had an affair. The pool of property assets available for division is \$2 million. Betty sought the advice of an old friend who was a Lawyer but not a Family Lawyer. Harry obtained the services of an experienced Family Lawyer.

Betty made an application to the Court that she receive 80% of the property. There was no justification for such financial orders Betty sought, she just thought that she was morally entitled to this much since Harold had an affair and she was devastated. Harold sought an equal division of property. During the marriage both Betty and Harold contributed equally to the acquisition of assets, whether in terms of raising the children, housework or paid income. All the children had grown up and moved out. Betty and Harold were pensioners on similar incomes and they were of the same age and both in good health.

Betty would not budge from her position. Harold's Lawyer made an open offer of settlement saying he would settle for an equal division of property and the letter

also stated, *“In the event the offer is not accepted this letter will be used to support an application for costs.”* This part of the letter was totally ignored by Betty’s Lawyer.

The matter proceeded to a trial. The Judgment delivered had the effect of dividing the property equally between Betty and Harold.

Harold’s Lawyer then made an application that legal costs incurred by him in having to bring the matter to final hearing, be paid by Betty. The evidence in support of the application for costs was the open offer of settlement sent approximately one month after the application had been made by Betty. It had taken 18 months for the matter to come before the Court and Harold had incurred legal costs of \$35,000.00.

The Court listened intently to the application and, based on the offer of Harold to settle the matter some 18 months prior to the trial on the same terms as now ordered by the Court, the Court then made an Order that Betty pay the whole of Harold’s costs.

Betty was less than pleased with the result. Firstly, she had been led to believe that her application for 80% of the property was a proper application to make and she expected to be successful. Secondly, her Lawyer had not advised her as to the risk she was exposed to by the offer of settlement from Harold.

The lesson to be learned is that any application to the Court must be managed carefully. You must be advised along the way as to offers that are made, how they should be responded to, and what risk you are being exposed to by those offers. If you are being advised by experienced Family Lawyers, they will protect you from unnecessary risks.